

# STATE OF NEW YORK

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## SENATE - ASSEMBLY

(Prefiled)

January 7, 2009

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IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to the definition of presence in New York in determining a taxpayer's New York residency status (Part A); to amend the tax law, in relation to conforming the definition of manufacturing under the capital base to the definition of manufacturing under the entire net income base (Part B); to amend the tax law, in relation to the exemption from the franchise tax on insurance corporations under article thirty-three of such law for town or county cooperative insurance corporations (Part C); to amend the tax law, in relation to increasing the rate of the premiums tax on certain insurance companies and eliminating the franchise tax imposed on life insurance companies, and to repeal certain provisions of the tax law relating thereto (Part D); to amend the tax law, in relation to collection and offset agreements with the United States or other states (Part E); to amend the tax law, in relation to the treatment of overcapitalized captive insurance companies (Part F); to amend the tax law, in relation to limiting various underutilized tax credits (Part G); to amend the tax law, in relation to requiring nonresidents to include as a source of income the gain or loss from the sale of a partnership, limited liability corporation, S corporation or a non-publicly traded C corporation with one hundred or fewer shareholders to the extent that the gain or loss includes gain or loss from real property located in New York (Part H); to amend the tax law, in relation to changing the percentage used to complete the mandatory first installment of franchise tax and the metropolitan commuter transportation district business tax surcharge under articles 9, 9-A, 32 and 33 (Part I); to amend the tax law, in relation to adding filing fees for partnerships (Part J); to amend the general municipal law and the tax law, in relation to enacting reforms to the empire zones program; and to repeal certain

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

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provisions of such laws relating thereto (Part K); to amend the public housing law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part L); to amend the tax law and the administrative code of the city of New York, in relation to limiting itemized deductions for certain taxpayers and

determining the amount of estimated tax installments to be paid (Part M); to amend the tax law, in relation to the treatment of income received by partners for performing investment management services as New York source income received for the performance of services (Part N); to amend the tax law, in relation to providing taxpayers with a credit for increasing research activities (Part O); to amend the tax law, in relation to the qualified emerging technology company facilities, operations and training credit (Part P); to amend the tax law, in relation to imposing sales tax on cable television service (Part Q); to amend the tax law, in relation to the tobacco products and cigarette taxes to remedy various compliance and enforcement problems and in relation to taxing cigars by unit rather than by a percentage of the wholesale price (Part R); to amend the tax law, in relation to including the amount of any discount given for a coupon in the amounts subject to the sales and compensating use taxes (Part S); to amend the state finance law, in relation to investment of lottery moneys available and retained on deposit for the payment of lottery prizes (Part T); to amend the tax law, in relation to replacing the year-round sales and compensating use tax exemption for clothing and footwear under one hundred ten dollars with two one-week exemption periods with a five hundred dollar threshold and authorizing counties and cities that impose such taxes to elect or decline such exemption weeks; and to repeal subdivision (k) of section 1210 of such law relating thereto (Part U); to amend the tax law, in relation to imposing state and local sales and compensating use taxes on certain personal services and credit rating and reporting services currently imposed by a city of one million or more, and to repeal section 11-2002 and subchapter 3 of chapter 20 of title 11 of the administrative code of the city of New York, relating to that city's sales and use taxes on those personal services and credit rating and reporting services (Part V); to amend the tax law, in relation to making technical corrections regarding the operation of video lottery gaming and approving the construction or alteration of any facility housing video lottery gaming; and to amend chapter 383 of the laws of 2001, amending the tax law and other laws relating to authorizing the division of the lottery to conduct a pilot program involving the operation of video lottery terminals at certain racetracks, in relation to the effectiveness thereof; and to repeal certain provisions of the tax law relating thereto (Part W); to amend the tax law and the alcoholic beverage control law, in relation to taxing flavored malt beverages at the low liquor tax rate (Part X); to amend the racing, pari-mutuel wagering and breeding law in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation

to extending certain provisions thereof (Part Y); to amend the tax law, in relation to changing the rate of the prepaid sales tax on cigarettes (Part Z); to amend the tax law, in relation to curtailing certain abusive sales and use tax avoidance schemes by narrowing the use tax non-resident exemption for certain items of tangible personal property and the sales tax exemption for commercial aircraft (Part AA); to repeal subdivision (e-1) of section 1132 of the tax law relating to a sales tax bad debt credit or refund for purchases made by private label credit cards (Part BB); to amend the tax law and the rural electric cooperative law, in relation to imposing sales and

compensating use tax on digital products and clarifying the corporation franchise tax treatment of these products (Part CC); to amend the tax law, chapter 35 of the laws of 2006 amending the tax law relating to computing sales and compensating use tax on motor fuel and diesel motor fuel and amending the tax law and the general business law relating to requiring retail dealers of motor fuel and diesel motor fuel to reduce prices for such fuel, and chapter 109 of the laws of 2006 amending the tax law and other laws relating to the sales tax imposed on motor fuel and diesel motor fuel, in relation to repealing the state and any local sales and compensating use tax cap on motor fuel and diesel motor fuel and restoring the percentage rate of those taxes on those fuels (Part DD); to amend the tax law, in relation to reauthorizing the commissioner of taxation and finance to require the use of decals in certain instances (Part EE); to amend the tax law, in relation to expanding the definition of vendor for purposes of the sales and compensating use taxes (Part FF); to amend the racing, pari-mutuel wagering and breeding law and the tax law, in relation to authorizing video lottery gaming at Belmont Park (Part GG); to amend the tax law and the state finance law, in relation to imposing a state sales and compensating use tax surcharge on certain beverage products (Part HH); to amend chapter 405 of the laws of 1999, amending the real property tax law relating to improving the administration of the school tax relief (STAR) program, in relation to eliminating the expiration and repeal of the Quick Draw lottery game; and to amend the tax law, in relation to the game of Quick Draw (Part II); to amend the tax law, in relation to participation in more than one joint, multi-jurisdiction and out-of-state lottery (Part JJ); to amend the alcoholic beverage control law, in relation to creating a new grocery or drug store wine license (Part KK); to amend the tax law, in relation to taxes on beer and wine under article 18 of the tax law (Part LL); to amend the tax law, in relation to the special tax on passenger car rentals under article 28-A of such law (Part MM); to amend the tax law, in relation to imposing state and local sales taxes on certain transportation services (Part NN); to amend the tax law, in relation to expanding sales taxes on certain amusement charges; and to repeal sections 1122 and 1123 of such law relating thereto (Part OO); to amend the tax law, in relation to narrowing the sales taxes definition and treatment of capital improvement (Part PP); to amend the tax law, in relation to the fees for replacement highway use tax credentials (Part QQ); to amend the tax law, in relation to imposing an additional rate of sales tax on certain luxury property (Part RR); and to amend the tax law, in relation to reporting information regarding deposits and bank settlements (Subpart A); to amend the tax law, in relation to authorizing the use of generally accepted statistical sampling to determine the amount of sales and compensating use tax due under articles 28 and 29 of such law (Subpart B); to amend the tax law, in

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relation to imposing a penalty for failure to keep mandatory records, to provide records in auditable format or to provide access to mandatory records maintained electronically (Subpart C); to amend the tax law, in relation to the failure of a responsible person to collect and pay over withholding tax (Subpart D); to amend the tax law, in relation to certain penalties; to amend chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information, in relation to making the penalty amount for aiding or assisting in the giving of fraudulent returns permanent; and to repeal certain provisions of the tax law relating thereto (Subpart E); to amend the tax law, in relation to providing expedited hearings relating to cancellations, revocations, or suspensions of certain credentials and to penalties imposed on persons who aid or assist in the filing of fraudulent tax documents (Subpart F); to amend the tax law, in relation to establishing an award program for significant informa-

tion concerning noncompliance with the tax laws of the state of New York (Subpart G); to amend the tax law, in relation to changing the last quarterly withholding filing date for employers (Subpart H); to amend the tax law, in relation to a branch or separate office of a bank (Subpart I); to amend the criminal procedure law, the penal law and the tax law, in relation to creating the offense of "tax fraud act"; to amend the tax law, in relation to simplifying and consolidating the provisions describing the acts that constitute offenses under such law; and to repeal certain provisions of the tax law relating thereto (Subpart J); to amend the county law, in relation to authorizing district attorneys to appoint attorneys employed by the department of taxation and finance as special assistant district attorneys in tax cases (Subpart K); to amend the tax law, in relation to clarifying some technical aspects of the voluntary disclosure and compliance program (Subpart L); to amend the tax law, abandoned property law, environmental conservation law, insurance law, lien law, mental hygiene law, public health law, real property tax law, social services law, state finance law and the administrative code of the city of New York, in relation to decreasing the overpayment and increasing the underpayment rates of interest, changing the overpayment interest accrual date for sales and compensating use taxes and providing for an interest-free period for refunds or credits of sales and compensating use taxes (Subpart M); to amend the tax law, in relation to requiring certain third-parties to file information returns providing information about vendors, hotel operators and recipients of amusement charges (Subpart N); to amend the tax law, in relation to the filing of tax warrants and related records in the department of state; and to repeal section 6 of such law relating thereto (Subpart O); and to amend the tax law, in relation to the collection of a penalty and interest on sales and use taxes upon a bulk sale of assets (Subpart P) (Part SS)

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

1 Section 1. This act enacts into law major components of legislation  
2 which are necessary to implement the state fiscal plan for the 2009-2010  
3 state fiscal year. Each component is wholly contained within a Part  
4 identified as Parts A through SS. The effective date for each particular  
5 provision contained within such Part is set forth in the last section of  
6 such Part. Any provision in any section contained within a Part, includ-  
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1 ing the effective date of the Part, which makes a reference to a section  
2 "of this act", when used in connection with that particular component,  
3 shall be deemed to mean and refer to the corresponding section of the  
4 Part in which it is found. Section three of this act sets forth the  
5 general effective date of this act.

6 PART A

7 Section 1. Subparagraph (A) of paragraph 1 of subsection (b) of  
8 section 605 of the tax law, as amended by chapter 760 of the laws of  
9 1992, is amended to read as follows:

10 (A) who is domiciled in this state, unless (i) ~~he~~ the taxpayer main-  
11 tains no permanent place of abode in this state, maintains a permanent  
12 place of abode elsewhere, and spends in the aggregate not more than  
13 thirty days of the taxable year in this state, or (ii) (I) within any  
14 period of five hundred forty-eight consecutive days ~~he~~ the taxpayer is  
15 present in a foreign country or countries for at least four hundred  
16 fifty days, and (II) during ~~such~~ the period of five hundred forty-  
17 eight consecutive days ~~he is~~ the taxpayer, the taxpayer's spouse  
18 (unless the spouse is legally separated) and the taxpayer's minor chil-  
19 dren are not present in this state for more than ninety days ~~and does~~

20 ~~not maintain a permanent place of abode in this state at which his~~  
21 ~~spouse (unless such spouse is legally separated) or minor children are~~  
22 ~~present for more than ninety days~~], and (III) during the nonresident  
23 portion of the taxable year with or within which [~~such~~] the period of  
24 five hundred forty-eight consecutive days begins and the nonresident  
25 portion of the taxable year with or within which [~~such~~] the period ends,  
26 [~~he~~] the taxpayer is present in this state for a number of days which  
27 does not exceed an amount which bears the same ratio to ninety as the  
28 number of days contained in [~~such~~] that portion of the taxable year  
29 bears to five hundred forty-eight, or

30 § 2. Paragraph 1 of subsection (a) of section 1305 of the tax law, as  
31 amended by chapter 790 of the laws of 1978, is amended to read as  
32 follows:

33 (1) who is domiciled in the city wherein the tax is imposed, unless  
34 (A) [~~he~~] the taxpayer maintains no permanent place of abode in [~~such~~]  
35 the city, maintains a permanent place of abode elsewhere, and spends in  
36 the aggregate not more than thirty days of the taxable year in [~~such~~]  
37 the city, or (B) (i) within any period of five hundred forty-eight  
38 consecutive days [~~he~~] the taxpayer is present in a foreign country or  
39 countries for at least four hundred fifty days, and (ii) during such  
40 period of five hundred forty-eight consecutive days [~~he is~~] the taxpay-  
41 er, the taxpayer's spouse (unless the spouse is legally separated) and  
42 the taxpayer's minor children are not present in [~~such~~] the city for  
43 more than ninety days [~~and does not maintain a permanent place of abode~~  
44 ~~in such city at which his spouse (unless such spouse is legally sepa-~~  
45 ~~rated) or minor children are present for more than ninety days~~], and  
46 (iii) during any period of less than twelve months, which would be  
47 treated as a separate taxable period pursuant to section thirteen  
48 hundred seven, and which period is contained within [~~such~~] the period of  
49 five hundred forty-eight consecutive days, [~~he~~] the taxpayer is present  
50 in [~~such~~] the city for a number of days which does not exceed an amount  
51 which bears the same ratio to ninety as the number of days contained in  
52 [~~such~~] that period of less than twelve months bears to five hundred  
53 forty-eight, or

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1 § 3. Subparagraph (A) of paragraph 1 of subdivision (b) of section  
2 11-1705 of the administrative code of the city of New York, as amended  
3 by chapter 333 of the laws of 1987, is amended to read as follows:

4 (A) who is domiciled in this city, unless (i) [~~he~~] the taxpayer main-  
5 tains no permanent place of abode in this city, maintains a permanent  
6 place of abode elsewhere, and spends in the aggregate not more than  
7 thirty days of the taxable year in this city, or (ii) (I) within any  
8 period of five hundred forty-eight consecutive days [~~he~~] the taxpayer is  
9 present in a foreign country or countries for at least four hundred  
10 fifty days, and (II) during [~~such~~] the period of five hundred forty-  
11 eight consecutive days [~~he is~~] the taxpayer, the taxpayer's spouse  
12 (unless the spouse is legally separated) and the taxpayer's minor chil-  
13 dren are not present in this city for more than ninety days [~~and does~~  
14 ~~not maintain a permanent place of abode in this city at which his spouse~~  
15 ~~(unless such spouse is legally separated) or minor children are present~~  
16 ~~for more than ninety days~~], and (III) during any period of less than  
17 twelve months, which would be treated as a separate taxable period  
18 pursuant to section 11-1754, and which period is contained within [~~such~~]  
19 the period of five hundred forty-eight consecutive days, [~~he~~] the  
20 taxpayer is present in this city for a number of days which does not  
21 exceed an amount which bears the same ratio to ninety as the number of  
22 days contained in [~~such~~] that period of less than twelve months bears to  
23 five hundred forty-eight, or

24 § 4. Paragraph 1 of subsection (a) of section 1325 of the tax law, as  
25 added by chapter 345 of the laws of 1984, is amended to read as follows:

26 (1) who is domiciled in the city wherein the city income tax surcharge  
27 is imposed pursuant to the authority of this article, unless (A) [~~he~~]

28 the taxpayer maintains no permanent place of abode in such city, main-  
29 tains a permanent place of abode elsewhere, and spends in the aggregate  
30 not more than thirty days of the taxable year in [~~such~~] the city, or  
31 (B)(i) within any period of five hundred forty-eight consecutive days  
32 [~~he is~~] the taxpayer, the taxpayer's spouse (unless the spouse is legal-  
33 ly separated) and the taxpayer's minor children are present in a foreign  
34 country or countries for at least four hundred fifty days, and (ii)  
35 during [~~such~~] the period of five hundred forty-eight consecutive days  
36 [~~he~~] the taxpayer is not present in [~~such~~] the city for more than ninety  
37 days [~~and does not maintain a permanent place of abode in such city at~~  
38 ~~which his spouse (unless such spouse is legally separated) or minor~~  
39 ~~children are present for more than ninety days~~], and (iii) during any  
40 period of less than twelve months, which would be treated as a separate  
41 taxable period pursuant to section thirteen hundred twenty-seven of this  
42 article, and which period is contained within [~~such~~] the period of five  
43 hundred forty-eight consecutive days, [~~he~~] the taxpayer is present in  
44 [~~such~~] the city for a number of days which does not exceed an amount  
45 which bears the same ratio to ninety as the number of days contained in  
46 [~~such~~] that period of less than twelve months bears to five hundred  
47 forty-eight, or

48 § 5. Paragraph 1 of subsection (f) of section 1 contained in  
49 subsection (c) of section 1340 of the tax law, as added by chapter 345  
50 of the laws of 1984, is amended to read as follows:

51 (1) who is domiciled in the city, unless (A) [~~he~~] the taxpayer main-  
52 tains no permanent place of abode in the city, maintains a permanent  
53 place of abode elsewhere, and spends in the aggregate not more than  
54 thirty days of the taxable year in the city, or (B) (i) within any peri-  
55 od of five hundred forty-eight consecutive days [~~he~~] the taxpayer is  
56 present in a foreign country or countries for at least four hundred  
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1 fifty days, and (ii) during such period of five hundred forty-eight  
2 consecutive days [~~he is~~] the taxpayer, the taxpayer's spouse (unless the  
3 spouse is legally separated) and the taxpayer's minor children are not  
4 present in the city for more than ninety days [~~and does not maintain a~~  
5 ~~permanent place of abode in the city at which his spouse (unless such~~  
6 ~~spouse is legally separated) or minor children are present for more than~~  
7 ~~ninety days~~], and (iii) during any period of less than twelve months,  
8 which would be treated as a separate taxable period based on a change of  
9 resident status, and which period is contained within [~~such~~] the period  
10 of five hundred forty-eight consecutive days, [~~he~~] the taxpayer is pres-  
11 ent in the city for a number of days which does not exceed an amount  
12 which bears the same ratio to ninety as the number of days contained in  
13 [~~such~~] that period of less than twelve months bears to five hundred  
14 forty-eight, or

15 § 6. This act shall take effect immediately and apply to taxable years  
16 beginning on or after January 1, 2009.

17 PART B

18 Section 1. Subparagraph 2 of paragraph (b) of subdivision 1 of section  
19 210 of the tax law, as amended by section 1 of part GG-1 of chapter 57  
20 of the laws of 2008, is amended to read as follows:

21 (2) For purposes of subparagraph one of this paragraph, the term  
22 "manufacturer" shall mean a taxpayer which during the taxable year is  
23 principally engaged in the production of goods by manufacturing, proc-  
24 essing, assembling, refining, mining, extracting, farming, agriculture,  
25 horticulture, floriculture, viticulture or commercial fishing. However,  
26 the generation and distribution of electricity, the distribution of  
27 natural gas, and the production of steam associated with the generation  
28 of electricity are not qualifying activities for a manufacturer under  
29 this subparagraph. Moreover, for purposes of computing the capital base  
30 in a combined report, the combined group shall be considered a "manufac-

31 turer" for purposes of this subparagraph only if the combined group  
32 during the taxable year is principally engaged in the activities set  
33 forth in this subparagraph, or any combination thereof. A taxpayer or a  
34 combined group shall be "principally engaged" in activities described  
35 above if, during the taxable year, more than fifty percent of the gross  
36 receipts of the taxpayer or combined group, respectively, are derived  
37 from receipts from the sale of goods produced by such activities. In  
38 computing a combined group's gross receipts, intercorporate receipts  
39 shall be eliminated. A "qualified New York manufacturer" is a manufac-  
40 turer that has property in New York that is described in clause (A) of  
41 subparagraph (i) of paragraph (b) of subdivision twelve of this section  
42 and either (i) the adjusted basis of that property for federal income  
43 tax purposes at the close of the taxable year is at least one million  
44 dollars or (ii) all of its real and personal property is located in New  
45 York. In addition, a "qualified New York manufacturer" means a taxpayer  
46 that is defined as a qualified emerging technology company under para-  
47 graph (c) of subdivision one of section thirty-one hundred two-e of the  
48 public authorities law regardless of the ten million dollar limitation  
49 expressed in subparagraph one of such paragraph.  
50 § 2. This act shall take effect immediately and shall apply to taxable  
51 years beginning on or after January 1, 2009.

52 PART C  
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1 Section 1. Paragraph 7 of subdivision (a) of section 1512 of the tax  
2 law, as amended by chapter 817 of the laws of 1987, is amended to read  
3 as follows:  
4 (7) a town or county cooperative insurance corporation as heretofore  
5 contemplated by section one hundred eighty-seven of this chapter in  
6 effect immediately prior to January first, nineteen hundred  
7 seventy-four, that properly reported to the superintendent of insurance  
8 total direct premiums written for the taxable year of twenty-five  
9 million dollars or less.  
10 § 2. This act shall take effect immediately and apply to taxable years  
11 beginning on or after January 1, 2009.

12 PART D  
13 Section 1. Subdivisions (g), (h), (i) and (j) of section 1500, and  
14 sections 1501, 1502, 1502-a, 1503, 1504, and 1505 of the tax law are  
15 REPEALED.  
16 § 2. Subdivision (e) of section 1500 of the tax law, as amended by  
17 section 1 of part H3 of chapter 62 of the laws of 2003, is amended to  
18 read as follows:  
19 (e) The term "taxpayer" means any insurance corporation subject to the  
20 tax imposed under section [~~fifteen hundred one, fifteen hundred two-a,~~  
21 ~~or~~] fifteen hundred ten or any captive insurance company subject to the  
22 tax imposed under section fifteen hundred two-b of this article.  
23 § 3. Subdivision (a) of section 1502-b of the tax law, as separately  
24 amended by section 3 of part H1 of chapter 62 and chapter 188 of the  
25 laws of 2003, is amended to read as follows:  
26 (a) In lieu of the [~~taxes~~] tax and tax surcharge imposed by sections  
27 [~~fifteen hundred one, fifteen hundred two-a,~~] fifteen hundred five-a[~~7~~],  
28 and fifteen hundred ten of this article, every captive insurance company  
29 licensed by the superintendent of insurance pursuant to the provisions  
30 of article seventy of the insurance law, other than the metropolitan  
31 transportation authority and a public benefit corporation or not-for-  
32 profit corporation formed by a city with a population of one million or  
33 more pursuant to subsection (a) of section seven thousand five of the  
34 insurance law, each of which is expressly exempt from the payment of  
35 fees, taxes or assessments whether state or local, shall, for the privi-  
36 lege of exercising its corporate franchise, pay a tax on (1) all gross

37 direct premiums, less return premiums thereon, written on risks located  
38 or resident in this state and (2) all assumed reinsurance premiums, less  
39 return premiums thereon, written on risks located or resident in this  
40 state. The rate of the tax imposed on gross direct premiums shall be  
41 four-tenths of one percent on all or any part of the first twenty  
42 million dollars of premiums, three-tenths of one percent on all or any  
43 part of the second twenty million dollars of premiums, two-tenths of one  
44 percent on all or any part of the third twenty million dollars of premi-  
45 ums, and seventy-five thousandths of one percent on each dollar of  
46 premiums thereafter. The rate of the tax on assumed reinsurance premiums  
47 shall be two hundred twenty-five thousandths of one percent on all or  
48 any part of the first twenty million dollars of premiums, one hundred  
49 and fifty thousandths of one percent on all or any part of the second  
50 twenty million dollars of premiums, fifty thousandths of one percent on  
51 all or any part of the third twenty million dollars of premiums and  
52 twenty-five thousandths of one percent on each dollar of premiums there-  
53 after. The tax imposed by this section shall be equal to the greater of  
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1 (i) the sum of the tax imposed on gross direct premiums and the tax  
2 imposed on assumed reinsurance premiums or (ii) five thousand dollars.

3 § 4. Subdivisions (a) and (e) of section 1505-a of the tax law, subdi-  
4 vision (a) as amended by section 6 of part II-1 of chapter 57 of the  
5 laws of 2008 and subdivision (e) as amended by chapter 166 of the laws  
6 of 1991, are amended to read as follows:

7 (a) (1) Every domestic insurance corporation and every foreign or  
8 alien insurance corporation, and every life insurance corporation  
9 described in paragraph two of subdivision (b) of section fifteen hundred  
10 ~~[one]~~ ten of this article, for the privilege of exercising its corporate  
11 franchise, or of doing business, or of employing capital, or of owning  
12 or leasing property in the metropolitan commuter transportation district  
13 in a corporate or organized capacity, or of maintaining an office in the  
14 metropolitan commuter transportation district, for all or any part of  
15 its taxable years commencing on or after January first, nineteen hundred  
16 eighty-two, but ending before December thirty-first, two thousand thir-  
17 teen, except corporations specified in subdivision (c) of section  
18 fifteen hundred twelve of this article, shall annually pay, in addition  
19 to the ~~[taxes otherwise]~~ tax imposed by section fifteen hundred ten of  
20 this article, a tax surcharge on ~~[the taxes imposed under this article]~~  
21 that tax after the deduction of any credits otherwise allowable under  
22 this article as allocated to such district. ~~[Such taxes shall be allo-~~  
23 ~~cated to such district for purposes of computing such tax surcharge upon~~  
24 ~~taxpayers subject to tax under subdivision (b) of section fifteen~~  
25 ~~hundred ten of this article by applying the methodology, procedures and~~  
26 ~~computations set forth in subdivisions (a) and (b) of section fifteen~~  
27 ~~hundred four of this article, except that references to terms denoting~~  
28 ~~New York premiums, and total wages, salaries, personal service compen-~~  
29 ~~sation and commissions within New York shall be read as denoting within~~  
30 ~~the metropolitan commuter transportation district and terms denoting~~  
31 ~~total premiums and total wages, salaries, personal service compensation~~  
32 ~~and commissions shall be read as denoting within the state. If it shall~~  
33 ~~appear to the commissioner that the application of the methodology,~~  
34 ~~procedures and computations set forth in such subdivisions (a) and (b)~~  
35 ~~does not properly reflect the activity, business or income of a taxpayer~~  
36 ~~within the metropolitan commuter transportation district, then the~~  
37 ~~commissioner shall be authorized, in the commissioner's discretion, to~~  
38 ~~adjust such methodology, procedures and computations for the purpose of~~  
39 ~~allocating such taxes by:~~

- 40 (A) ~~excluding one or more factors therein;~~  
41 (B) ~~including one or more other factors therein, such as expenses,~~  
42 ~~purchases, receipts other than premiums, real property or tangible~~  
43 ~~personal property; or~~  
44 (C) ~~any other similar or different method which allocates such taxes~~

45 ~~by attributing a fair and proper portion of such taxes to the metropol-~~  
46 ~~itan commuter transportation district. The commissioner from time to~~  
47 ~~time shall publish all rulings of general public interest with respect~~  
48 ~~to any application of the provisions of the preceding sentence. The~~  
49 ~~commissioner may promulgate rules and regulations to further implement~~  
50 ~~the provisions of this section.~~

51 ~~(2) Such taxes]~~ The tax imposed by section fifteen hundred ten shall  
52 be allocated to such district for purposes of computing such tax  
53 surcharge [~~upon taxpayers subject to tax under section fifteen hundred~~  
54 ~~two-a of this article]~~ pursuant to a fraction, the denominator of which  
55 shall be the direct premiums subject to tax under section fifteen  
56 hundred ten of this article, and the numerator of which shall be the  
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1 direct premiums subject to tax under section fifteen hundred ten of this  
2 article that are written on risks located or resident in the metropol-  
3 itan commuter transportation district, including premiums written,  
4 procured or received in the metropolitan commuter transportation  
5 district on business that cannot be specifically assigned as located or  
6 resident in an area of New York state outside the metropolitan commuter  
7 transportation district, or in another state or states; provided, howev-  
8 er, in the case of special risk premiums, the numerator shall include  
9 only those premiums written, procured or received in the metropolitan  
10 commuter transportation district on property or risks located or resi-  
11 dent in the metropolitan commuter transportation district. If it shall  
12 appear to the commissioner that the application of the methodology,  
13 procedures and computations set forth in this paragraph does not proper-  
14 ly reflect the activity[, ] or business [~~or income~~]  
15 of a taxpayer within the metropolitan commuter transportation district, then the commissioner  
16 shall be authorized, in the commissioner's discretion, to adjust such  
17 methodology, procedures and computations for the purpose of allocating  
18 such taxes by: (A) excluding the factor therein and including one or  
19 more other factors such as expenses, purchases, receipts other than  
20 premiums, real property or tangible personal property; or (B) any other  
21 similar or different method which allocates such taxes by attributing a  
22 fair and proper portion of such taxes to the metropolitan commuter  
23 transportation district. The commissioner from time to time shall  
24 publish all rulings of general public interest with respect to any  
25 application of the provisions of the preceding sentence. The commission-  
26 er may promulgate rules and regulations to further implement the  
27 provisions of this section.

28 [~~3~~] (2) Such tax surcharge shall be computed at the rate of [~~eigh-~~  
29 ~~teen percent of the taxes imposed under sections fifteen hundred one and~~  
30 ~~fifteen hundred ten of this article as limited by section fifteen~~  
31 ~~hundred five of this article, as allocated to such district, for such~~  
32 ~~taxable years or any part of such taxable years ending before December~~  
33 ~~thirty first, nineteen hundred eighty three after the deduction of any~~  
34 ~~credits otherwise allowable under this article, at the rate of seventeen~~  
35 ~~percent of the taxes imposed under such sections as limited by section~~  
36 ~~fifteen hundred five of this article, as allocated to such district, for~~  
37 ~~such taxable years or any part of such taxable years ending on or after~~  
38 ~~December thirty first, nineteen hundred eighty three and before January~~  
39 ~~first, two thousand three after the deduction of any credits otherwise~~  
40 ~~allowable under this article, and at the rate of seventeen percent of~~  
41 ~~the taxes imposed under sections fifteen hundred one, fifteen hundred~~  
42 ~~two-a, and fifteen hundred ten of this article, as limited or otherwise~~  
43 ~~determined by subdivision (a) or (b) of section fifteen hundred five of~~  
44 ~~this article, as allocated to such district, for such taxable years or~~  
45 ~~any part of such taxable years ending after December thirty first, two~~  
46 ~~thousand two after the deduction of any credits otherwise allowable~~  
47 ~~under this article]~~ seventeen percent of the tax imposed by section  
48 fifteen hundred ten of this article after the deduction of any credits  
49 otherwise allowable under this article, as allocated to such district,

50 for taxable years or any part of a taxable year ending after December  
51 thirty-first, two thousand eight; provided, however, that the tax  
52 surcharge imposed by this section shall not be imposed upon any taxpayer  
53 for more than three hundred seventy-two months. [~~Provided however, that~~  
54 ~~for taxable years commencing on or after July first, two thousand, and~~  
55 ~~in the case of taxpayers subject to tax under section fifteen hundred~~  
56 ~~two-a of this article, for taxable years of such taxpayers beginning on~~

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1 ~~or after July first, two thousand and before January first, two thousand~~  
2 ~~three, such surcharge shall be calculated as if (i) the rate of the tax~~  
3 ~~computed under paragraph one of subdivision (a) of section fifteen~~  
4 ~~hundred two of this article was nine percent and (ii) the rate of the~~  
5 ~~limitation on tax set forth in section fifteen hundred five of this~~  
6 ~~article for domestic, foreign and alien insurance corporations except~~  
7 ~~life insurance corporations was two and six-tenths percent.]~~

8 (e) The provisions concerning returns under section fifteen hundred  
9 fifteen of this article shall be applicable to this section, except that  
10 for purposes of an automatic extension for six months for filing a  
11 return covering the tax surcharges imposed by this section, such auto-  
12 matic extension shall be allowed only if a taxpayer files with the  
13 commissioner an application for extension in such form and manner as  
14 said commissioner may prescribe by regulation and such taxpayer pays on  
15 or before the date of such filing in addition to any other amounts  
16 required under this article, either ninety percent of the entire tax  
17 required to be paid under this section for the applicable period, or not  
18 less than the tax surcharge shown on the taxpayer's return for the  
19 preceding taxable year, if such preceding taxable year was a taxable  
20 year of twelve months. The tax surcharge imposed by this section shall  
21 be payable to the commissioner in full at the time the return is  
22 required to be filed, and such tax surcharge or the balance thereof,  
23 imposed on any taxpayer which ceases to exercise its franchise or be  
24 subject to the tax surcharge imposed by this section shall be payable to  
25 the commissioner at the time the return is required to be filed,  
26 provided such tax surcharge of such domestic, foreign or alien insurance  
27 corporation including life insurance corporations, as described in para-  
28 graph two of subdivision (b) of section fifteen hundred [~~one~~] ten of  
29 this article, shall be subject to adjustment as the circumstances may  
30 require; all other tax surcharges of any such taxpayer, which pursuant  
31 to the foregoing provisions of this section would otherwise be payable  
32 subsequent to the time such return is required to be filed, shall never-  
33 theless be payable at such time. All of the provisions of this article  
34 presently applicable are applicable to the tax surcharge imposed by this  
35 section.

36 § 5. The section heading of section 1510 of the tax law, as amended by  
37 section 7 of part H3 of chapter 62 of the laws of 2003, is amended to  
38 read as follows:

39 [~~Additional franchise~~] Franchise tax on insurance corporations.

40 § 6. Subdivision (a) of section 1510 of the tax law, as amended by  
41 section 7 of part H3 of chapter 62 of the laws of 2003, is amended to  
42 read as follows:

43 (a) Domestic, foreign and alien insurance corporations except life  
44 insurance corporations. [~~Except as hereinafter provided, for taxable~~  
45 ~~years beginning before January first, two thousand three every~~] Every  
46 domestic insurance corporation, every foreign insurance corporation and  
47 every alien insurance corporation, other than such corporations trans-  
48 acting the business of life insurance, (1) authorized to transact busi-  
49 ness in this state under a certificate of authority from the superinten-  
50 dent of insurance or (2) which is a risk retention group as defined in  
51 subsection (n) of section five thousand nine hundred two of the insur-  
52 ance law, shall, for the privilege of exercising corporate franchises or  
53 for carrying on business in a corporate or organized capacity within  
54 this state, and in addition to any other taxes imposed for such privi-

1 tax imposed by this subdivision shall be two percent on premiums [~~writ-  
2 ten on or after January first, nineteen hundred seventy four and before  
3 January first, nineteen hundred seventy five, one and nine-tenths  
4 percent on premiums written on or after January first, nineteen hundred  
5 seventy five and before January first, nineteen hundred seventy six, one  
6 and eight-tenths percent on premiums written on or after January first,  
7 nineteen hundred seventy six and before January first, nineteen hundred  
8 seventy eight, one and two-tenths percent on premiums written on or  
9 after January first, nineteen hundred seventy eight and before January  
10 first, nineteen hundred ninety two and one and three-tenths percent on  
11 premiums written on and after such date. Provided, however, that the  
12 rate of tax imposed by this subdivision on all gross direct premiums,  
13 less return premiums thereon, for accident and health insurance  
14 contracts shall be one and six-tenths percent for such premiums written  
15 on or after January first, nineteen hundred seventy four and before  
16 January first, nineteen hundred seventy eight, and one percent for such  
17 premiums written on or after January first, nineteen hundred seventy-  
18 eight~~].

19 § 7. Paragraph 1 of subdivision (b) of section 1510 of the tax law, as  
20 amended by section 7 of part H3 of chapter 62 of the laws of 2003, is  
21 amended to read as follows:

22 (1) Except as hereinafter provided, every domestic life insurance  
23 corporation, and every foreign and alien life insurance corporation  
24 authorized to transact business in this state under a certificate of  
25 authority from the superintendent of insurance, shall, for the privilege  
26 of exercising corporate franchises or for carrying on business in a  
27 corporate or organized capacity within this state, and in addition to  
28 any other taxes imposed for such privilege, pay a tax on all gross  
29 direct premiums, less return premiums thereon, received in cash or  
30 otherwise on risks resident in this state, including supplemental  
31 contracts for total and permanent disability benefits and accidental  
32 death benefits. The rate of such tax shall be [~~(i) one and six-tenths~~  
33 two percent on such premiums [~~received on or after January first, nine-  
34 teen hundred seventy four and before January first, nineteen hundred  
35 seventy eight, (ii) one percent on such premiums received on or after  
36 January first, nineteen hundred seventy eight and before January first,  
37 nineteen hundred eighty seven, (iii) eight-tenths percent on such premi-  
38 ums received on or after January first, nineteen hundred eighty seven  
39 and before January first, nineteen hundred ninety eight, and (iv)  
40 seven-tenths percent on such premiums received on or after January  
41 first, nineteen hundred ninety eight~~].

42 § 8. Section 1510 of the tax law is amended by adding a new subdivi-  
43 sion (d) to read as follows:

44 (d) In no event can the tax imposed under this section be less than  
45 two hundred fifty dollars.

46 § 9. Paragraph 2 of subdivision (e) of section 1511 of the tax law, as  
47 amended by section 8 of part H3 of chapter 62 of the laws of 2003, is  
48 amended to read as follows:

49 (2) In no event shall the credit herein provided for be allowed in an  
50 amount which will reduce the tax payable to less than the minimum tax  
51 fixed by [~~paragraph four of subdivision (a) of section fifteen hundred  
52 two of this article or section fifteen hundred two a of this article,  
53 whichever is applicable~~] subdivision (d) of section fifteen hundred ten  
54 of this article. If, however, the amount of credit allowable under this  
55 subdivision for any taxable year reduces the tax to such amount, any  
56 amount of credit not deductible in such taxable year may be carried over  
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1 to the following year or years and may be deducted from the taxpayer's

2 tax for such year or years.

3 § 10. Subparagraph (A) of paragraph 3 and paragraph 5 of subdivision  
4 (f) of section 1511 of the tax law, subparagraph (A) of paragraph 3 as  
5 amended by chapter 803 of the laws of 1985 and paragraph 5 as amended by  
6 section 9 of part H3 of chapter 62 of the laws of 2003, are amended to  
7 read as follows:

8 (A) For each calendar year for which a credit has been authorized  
9 pursuant to section seven thousand seven hundred twelve of the insurance  
10 law, the commissioner of taxation and finance shall determine the total  
11 tax liability of all life insurance corporations under this article,  
12 ~~[other than under section fifteen hundred five-a of this article,]~~  
13 before the application of any credits allowed pursuant to this section,  
14 for taxable years beginning in such calendar year. Such total tax  
15 liability shall be published in the state register on or before the  
16 thirtieth day of September of the next succeeding calendar year.

17 (5) No credit allowed pursuant to this subdivision shall reduce the  
18 tax payable by any taxpayer under this article for any taxable year to  
19 an amount less than the minimum tax fixed by ~~[paragraph four of subdivi-~~  
20 ~~sion (a) of section fifteen hundred two of this article or section~~  
21 ~~fifteen hundred two-a of this article, whichever is applicable]~~ subdivi-  
22 sion (d) of section fifteen hundred ten of this article.

23 § 11. The closing paragraph of paragraph 4 and paragraph 5 of subdivi-  
24 sion (g) of section 1511 of the tax law, the closing paragraph of para-  
25 graph 4 as amended by section 10 and paragraph 5 as amended by section  
26 11 of part H3 of chapter 62 of the laws of 2003, are amended to read as  
27 follows:

28 Provided, further, however, that the credit provided for herein with  
29 respect to the taxable year, and carryovers of such credit to the taxa-  
30 ble year, deducted from the tax otherwise due, may not, in the aggre-  
31 gate, exceed fifty percent of ~~[(i) in the case of taxpayers subject to~~  
32 ~~tax under subdivision (b) of section fifteen hundred ten of this arti-~~  
33 ~~cle, the lesser of (I) the limitation on tax computed pursuant to subdivi-~~  
34 ~~sion (a) of section fifteen hundred five, or (II) the greater of the~~  
35 ~~sum of the taxes imposed under sections fifteen hundred one and fifteen~~  
36 ~~hundred ten or the amount of tax computed pursuant to subdivision (b) of~~  
37 ~~section fifteen hundred five, or (ii) for all other insurance corpo-~~  
38 ~~rations,]~~ the tax imposed under section fifteen hundred ~~[two-a]~~ ten of  
39 this article, computed without regard to any credit provided for under  
40 this article.

41 (5) The credit or carryovers of such credit allowed under this subdivi-  
42 sion for any taxable year shall not, in the aggregate, reduce the tax  
43 due for such year to less than the minimum tax fixed by ~~[paragraph four~~  
44 ~~of subdivision (a) of section fifteen hundred two of this article or by~~  
45 ~~section fifteen hundred two-a of this article, whichever is applicable]~~  
46 subdivision (d) of section fifteen hundred ten of this article. Howev-  
47 er, if the amount of credit or carryovers of such credit, or both,  
48 allowed under this subdivision for any taxable year reduces the tax to  
49 such amount, or if any part of the credit or carryovers of such credit  
50 may not be deducted from the tax otherwise due by reason of the final  
51 sentence in paragraph four ~~[hereof]~~ of this subdivision, any amount of  
52 credit or carryovers of such credit thus not deductible in such taxable  
53 year may be carried over to the following year or years and may be  
54 deducted from the taxpayer's tax for such year or years.

55 § 12. Paragraphs 2 and 3 of subdivision (h) of section 1511 of the tax  
56 law, paragraph 2 as amended by section 12 of part H3 of chapter 62 of  
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1 the laws of 2003 and paragraph 3 as amended by chapter 708 of the laws  
2 of 1993, are amended to read as follows:

3 (2) The credit and carryover of such credit allowed under this subdivi-  
4 sion for any taxable year shall not, in the aggregate, reduce the tax  
5 due for such year to less than the minimum fixed by ~~[paragraph four of~~  
6 ~~subdivision (a) of section fifteen hundred two of this article or by~~

7 ~~section fifteen hundred two-a of this article, whichever is applicable]~~  
8 subdivision (d) of section fifteen hundred ten of this article. Howev-  
9 er, if the amount of credit or carryovers of such credit, or both,  
10 allowed under this subdivision for any taxable year reduces the tax to  
11 such amount, or if any part of the credit or carryovers of such credit  
12 may not be deducted from the tax otherwise due by reason of the final  
13 sentence of this paragraph, any amount of credit or carryovers of such  
14 credit thus not deductible in such taxable year may be carried over to  
15 the following year or years and may be deducted from the tax for such  
16 year or years. In addition, the amount of such credit, and carryovers of  
17 such credit to the taxable year, deducted from the tax otherwise due may  
18 not, in the aggregate, exceed fifty percent of [~~(i) in the case of~~  
19 ~~taxpayers subject to tax under subdivision (b) of section fifteen~~  
20 ~~hundred ten of this article, the lesser of (I) the limitation on tax~~  
21 ~~computed pursuant to subdivision (a) of section fifteen hundred five, or~~  
22 ~~(II) the greater of the sum of the taxes imposed under sections fifteen~~  
23 ~~hundred one and fifteen hundred ten or the amount of tax computed pursu-~~  
24 ~~ant to subdivision (b) of section fifteen hundred five, or (ii) for all~~  
25 ~~other insurance corporations,] the tax imposed under section fifteen  
26 hundred ~~[two-a]~~ ten of this article, computed without regard to any  
27 credit provided for under this article.~~

28 [~~(3) Where the stock, partnership interest or other ownership interest~~  
29 ~~arising from a qualified investment as described in subparagraphs (A)~~  
30 ~~and (B) of paragraph one of this subdivision is disposed of, the taxpay-~~  
31 ~~er's entire net income shall be computed, pursuant to regulations~~  
32 ~~promulgated by the commissioner, so as to properly reflect the reduced~~  
33 ~~cost thereof arising from the application of the credit provided for~~  
34 ~~herein.]~~

35 § 13. Paragraph 5 of subdivision (j) of section 1511 of the tax law,  
36 as amended by section 13 of part H3 of chapter 62 of the laws of 2003,  
37 is amended to read as follows:

38 (5) Carryover. The credit and carryovers of such credit allowed under  
39 this subdivision for any taxable year shall not, in the aggregate,  
40 reduce the tax due for such year to less than the minimum tax fixed by  
41 [~~paragraph four of subdivision (a) of section fifteen hundred two of~~  
42 ~~this article or by section fifteen hundred two-a of this article, which-~~  
43 ~~ever is applicable]~~ subdivision (d) of section fifteen hundred ten of  
44 this article. However, if the amount of credit or carryovers of such  
45 credit, or both, allowed under this subdivision for any taxable year  
46 reduces the tax to such amount, then any amount of credit or carryovers  
47 of such credit thus not deductible in such taxable year may be carried  
48 over to the following year or years and may be deducted from the taxpay-  
49 er's tax for such year or years.

50 § 14. Paragraph 3 of subdivision (k) of section 1511 of the tax law,  
51 as amended by section 14 of part H3 of chapter 62 of the laws of 2003,  
52 is amended to read as follows:

53 (3) No credit allowable pursuant to this subdivision shall reduce the  
54 tax payable under this article to less than the minimum tax fixed by  
55 [~~paragraph four of subdivision (a) of section fifteen hundred two of~~  
56 ~~this article or by section fifteen hundred two-a of this article, which-~~  
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1 ~~ever is applicable]~~ subdivision (d) of section fifteen hundred ten of  
2 this article. If, however, the amount of credit allowable under this  
3 subdivision for any taxable year reduces the tax to such amount, any  
4 amount of credit not taken in such taxable year may be carried over to  
5 the following year or years and may be deducted from the taxpayer's tax  
6 for such year or years.

7 § 15. Subdivision 1 of section 1511 of the tax law, as amended by  
8 section 15 of part H3 of chapter 62 of the laws of 2003, is amended to  
9 read as follows:

10 (1) Credit for purchase of an automated external defibrillator. A  
11 taxpayer shall be allowed a credit as hereinafter provided, against the

12 tax imposed by this article for the purchase, other than for resale, of  
13 an automated external defibrillator, as such term is defined in section  
14 three thousand-b of the public health law. The amount of the credit  
15 shall be the cost to the taxpayer of automated external defibrillators  
16 purchased during the taxable year, such credit not to exceed five  
17 hundred dollars with respect to each unit purchased. The credit allowed  
18 under this subdivision for any taxable year shall not reduce the tax due  
19 for such year to less than the minimum tax fixed by [~~paragraph four of~~  
20 ~~subdivision (a) of section fifteen hundred two of this article or by~~  
21 ~~section fifteen hundred two-a of this article, whichever is applicable~~]  
22 subdivision (d) of section fifteen hundred ten of this article.

23 § 16. Paragraph 2 of subdivision (m) of section 1511 of the tax law,  
24 as amended by section 16 of part H3 of chapter 62 of the laws of 2003,  
25 is amended to read as follows:

26 (2) In no event shall the credit herein provided for be allowed in an  
27 amount which will reduce the tax payable to less than the minimum tax  
28 fixed by [~~paragraph four of subdivision (a) of section fifteen hundred~~  
29 ~~two of this article or by section fifteen hundred two-a of this article,~~  
30 ~~whichever is applicable~~] subdivision (d) of section fifteen hundred ten  
31 of this article. If, however, the amount of credit allowable under this  
32 subdivision for any taxable year reduces the tax to such amount, any  
33 amount of credit not deductible in such taxable year may be carried over  
34 to the following year or years and may be deducted from the taxpayer's  
35 tax for such year or years.

36 § 17. Paragraph 2 of subdivision (n) of section 1511 of the tax law,  
37 as amended by section 17 of part H3 of chapter 62 of the laws of 2003,  
38 is amended to read as follows:

39 (2) Application of credit. The credit and carryovers of such credit  
40 allowed under this subdivision for any taxable year shall not, in the  
41 aggregate, reduce the tax due for such year to less than the minimum tax  
42 fixed by [~~paragraph four of subdivision (a) of section fifteen hundred~~  
43 ~~two of this article or by section fifteen hundred two-a of this article,~~  
44 ~~whichever is applicable~~] subdivision (d) of section fifteen hundred ten  
45 of this article. However, if the amount of credit or carryovers of such  
46 credit, or both, allowed under this subdivision for any taxable year  
47 reduces the tax to such amount, then any amount of credit or carryovers  
48 of such credit thus not deductible in such taxable year may be carried  
49 over to the following year or years and may be deducted from the taxpay-  
50 er's tax for such year or years.

51 § 18. Paragraph 2 of subdivision (o) of section 1511 of the tax law,  
52 as amended by section 18 of part H3 of chapter 62 of the laws of 2003,  
53 is amended to read as follows:

54 (2) Carryover. The credit and carryovers of such credit allowed under  
55 this subdivision for any taxable year shall not, in the aggregate,  
56 reduce the tax due for such year to less than the minimum tax fixed by

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1 [~~paragraph four of subdivision (a) of section fifteen hundred two of~~  
2 ~~this article or by section fifteen hundred two-a of this article, which-~~  
3 ~~ever is applicable~~] subdivision (d) of section fifteen hundred ten of  
4 this article. However, if the amount of credit or carryovers of such  
5 credit, or both, allowed under this subdivision for any taxable year  
6 reduces the tax to such amount, then any amount of credit or carryovers  
7 of such credit thus not deductible in such taxable year may be carried  
8 over to the following year or years and may be deducted from the taxpay-  
9 er's tax for such year or years.

10 § 19. Paragraph 2 of subdivision (p) of section 1511 of the tax law,  
11 as amended by section 19 of part H3 of chapter 62 of the laws of 2003,  
12 is amended to read as follows:

13 (2) Application of credit. The credit allowed under this subdivision  
14 for any taxable year shall not reduce the tax due for such year to less  
15 than the minimum tax fixed by [~~paragraph four of subdivision (a) of~~  
16 ~~section fifteen hundred two of this article or by section fifteen~~

17 ~~hundred two-a of this article, whichever is applicable]~~ subdivision (d)  
18 of section fifteen hundred ten of this article. However, if the amount  
19 of credit allowed under this subdivision for any taxable year reduces  
20 the tax to such amount, then any amount of credit thus not deductible in  
21 such taxable year shall be treated as an overpayment of tax to be cred-  
22 ited or refunded in accordance with the provisions of section ten  
23 hundred eighty-six of this chapter. Provided, however, the provisions of  
24 subsection (c) of section ten hundred eighty-eight of this chapter  
25 notwithstanding, no interest shall be paid thereon.

26 § 20. Paragraph 4 of subdivision (q) of section 1511 of the tax law,  
27 as amended by section 20 of part H3 of chapter 62 of the laws of 2003,  
28 is amended to read as follows:

29 (4) Except as otherwise provided in this paragraph, the credit allowed  
30 under this subdivision for any taxable year shall not reduce the tax due  
31 for such year to less than the amount fixed as a minimum tax by [~~para-~~  
32 ~~graph four of subdivision (a) of section fifteen hundred two of this~~  
33 ~~article or by section fifteen hundred two-a of this article, whichever~~  
34 ~~is applicable]~~ subdivision (d) of section fifteen hundred ten of this  
35 article. However, if the amount of credit allowable under this subdivi-  
36 sion for any taxable year reduces the tax to such amount, any amount of  
37 credit allowed for a taxable year may be carried over to the fifteen  
38 taxable years next following such taxable year and may be deducted from  
39 the taxpayer's tax for such year or years. In lieu of such carryover,  
40 any such taxpayer which qualifies as a new business under paragraph  
41 seven of this subdivision may elect to treat the amount of such carry-  
42 over as an overpayment of tax to be credited or refunded in accordance  
43 with the provisions of section one thousand eighty-six of this chapter,  
44 provided, however, the provisions of subsection (c) of section one thou-  
45 sand eighty-eight of this chapter notwithstanding no interest shall be  
46 paid thereon.

47 § 21. Paragraph 2 of subdivision (r) of section 1511 of the tax law,  
48 as amended by section 21 of part H3 of chapter 62 of the laws of 2003,  
49 is amended to read as follows:

50 (2) Application of credit. The credit allowed under this subdivision  
51 for any taxable year shall not reduce the tax due for such year to less  
52 than the minimum tax fixed by [~~paragraph four of subdivision (a) of~~  
53 ~~section fifteen hundred two of this article or by section fifteen~~  
54 ~~hundred two-a of this article, whichever is applicable]~~ subdivision (d)  
55 of section fifteen hundred ten of this article. However, if the amount  
56 of credit allowed under this subdivision for any taxable year reduces  
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1 the tax to such amount, then any amount of credit thus not deductible in  
2 such taxable year shall be treated as an overpayment of tax to be cred-  
3 ited or refunded in accordance with the provisions of section ten  
4 hundred eighty-six of this chapter. Provided, however, the provisions of  
5 subsection (c) of section ten hundred eighty-eight of this chapter  
6 notwithstanding, no interest shall be paid thereon.

7 § 22. Paragraph 2 of subdivision (s) of section 1511 of the tax law,  
8 as amended by section 22 of part H3 of chapter 62 of the laws of 2003,  
9 is amended to read as follows:

10 (2) Application of credit. The credit allowed under this subdivision  
11 for any taxable year shall not reduce the tax due for such year to less  
12 than the minimum tax fixed by [~~paragraph four of subdivision (a) of~~  
13 ~~section fifteen hundred two of this article or by section fifteen~~  
14 ~~hundred two-a of this article, whichever is applicable]~~ subdivision (d)  
15 of section fifteen hundred ten of this article.

16 § 23. Paragraph 2 of subdivision (u) of section 1511 of the tax law,  
17 as added by section 11 of part H of chapter 1 of the laws of 2003, is  
18 amended to read as follows:

19 (2) Application of credit. The credit allowed under this subdivision  
20 for any taxable year shall not reduce the tax due for such year to less  
21 than the minimum fixed by [~~paragraph four of subdivision (a) of section~~

22 ~~fifteen hundred two of this article~~] subdivision (d) of section fifteen  
23 hundred ten of this article. However, if the amount of credits allowed  
24 under this subdivision for any taxable year reduces the tax to such  
25 amount, any amount of credit thus not deductible in such taxable year  
26 shall be treated as an overpayment of tax to be credited or refunded in  
27 accordance with the provisions of section ten hundred eighty-six of this  
28 chapter. Provided, however, the provisions of subsection (c) of section  
29 ten hundred eighty-eight of this chapter notwithstanding, no interest  
30 shall be paid thereon.

31 § 24. Paragraph 2 of subdivision (v) of section 1511 of the tax law,  
32 as added by section 18 of part H of chapter 1 of the laws of 2003, is  
33 amended to read as follows:

34 (2) Application of credit. The credit allowed under this subdivision  
35 for any taxable year shall not reduce the tax due for such year to less  
36 than the minimum tax fixed by [~~paragraph four of subdivision (a) of~~  
37 ~~section fifteen hundred two of this article~~] subdivision (d) of section  
38 fifteen hundred ten of this article. However, if the amount of credit  
39 allowed under this subdivision for any taxable year reduces the tax to  
40 such amount, any amount of credit thus not deductible in such taxable  
41 year shall be treated as an overpayment of tax to be credited or  
42 refunded in accordance with the provisions of section ten hundred eight-  
43 y-six of this chapter. Provided, however, the provisions of subsection  
44 (c) of section ten hundred eighty-eight of this chapter notwithstanding,  
45 no interest shall be paid thereon.

46 § 25. Paragraph 2 of subdivision (w) of section 1511 of the tax law,  
47 as added by section 29 of part H of chapter 1 of the laws of 2003, is  
48 amended to read as follows:

49 (2) Application of credit. The credit allowed under this subdivision  
50 for any taxable year shall not reduce the tax due for such year to less  
51 than the minimum fixed by [~~paragraph four of subdivision (a) of section~~  
52 ~~fifteen hundred two or section fifteen hundred two-a of this article~~]  
53 subdivision (d) of section fifteen hundred ten of this article. However,  
54 if the amount of credits allowed under this subdivision for any taxable  
55 year reduces the tax to such amount, any amount of credit thus not  
56 deductible in such taxable year shall be treated as an overpayment of  
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1 tax to be credited or refunded in accordance with the provisions of  
2 section one thousand eighty-six of this chapter. Provided, however, the  
3 provisions of subsection (c) of section one thousand eighty-eight of  
4 this chapter notwithstanding, no interest shall be paid thereon.

5 § 26. Paragraph 2 of subdivision (x) of section 1511 of the tax law,  
6 as added by chapter 537 of the laws of 2005, is amended to read as  
7 follows:

8 (2) Application of credit. The credit allowed under this subdivision  
9 for any taxable year shall not reduce the tax due for such year to less  
10 than the minimum fixed by [~~paragraph four of subdivision (a) of section~~  
11 ~~fifteen hundred two or section fifteen hundred two-a of this article~~]  
12 subdivision (d) of section fifteen hundred ten of this article. However,  
13 if the amount of credits allowed under this subdivision for any taxable  
14 year reduces the tax to such amount, any amount of credit thus not  
15 deductible in such taxable year shall be treated as an overpayment of  
16 tax to be credited or refunded in accordance with the provisions of  
17 section one thousand eighty-six of this chapter. Provided, however, the  
18 provisions of subsection (c) of section one thousand eighty-eight of  
19 this chapter notwithstanding, no interest shall be paid thereon.

20 § 27. Paragraph 3 of subdivision (x) of section 1511 of the tax law,  
21 as added by chapter 446 of the laws of 2005, is amended to read as  
22 follows:

23 (3) Application of credit. The credit allowed under this subdivision  
24 for any taxable year shall not reduce the tax due for such year to less  
25 than the minimum tax fixed by [~~paragraph four of subdivision (a) of~~  
26 ~~section fifteen hundred two of this article or by section fifteen~~

27 ~~hundred two-a of this article, whichever is applicable]~~ subdivision (d)  
28 of section fifteen hundred ten of this article. However, if the amount  
29 of credit allowed under this subdivision for any taxable year reduces  
30 the tax to such amount, any amount of credit thus not deductible in such  
31 taxable year may be carried over to the following year or years and may  
32 be deducted from the taxpayer's tax for such year or years.

33 § 28. Subdivision (b) of section 1513 of the tax law, as amended by  
34 section 25 of part H3 of chapter 62 of the laws of 2003, is amended to  
35 read as follows:

36 (b) Definition of estimated tax and estimated tax surcharge. The terms  
37 "estimated tax" and "estimated tax surcharge" mean the amounts which the  
38 taxpayer estimates to be the taxes imposed by [~~sections fifteen hundred~~  
39 ~~one, fifteen hundred two-a and~~] section fifteen hundred ten of this  
40 article or the tax surcharge imposed by section fifteen hundred five-a  
41 of this article, respectively, for the current taxable year, less the  
42 sum of any credits which it estimates to be allowable against such taxes  
43 or tax surcharge, respectively.

44 § 29. Subdivisions (e) and (f) of section 1514 of the tax law, subdi-  
45 vision (e) as amended by chapter 166 of the laws of 1991 and subdivision  
46 (f) as amended by section 26 of part H3 of chapter 62 of the laws of  
47 2003, are amended to read as follows:

48 (e) Interest on certain installments based on the preceding year's  
49 tax. Notwithstanding the provisions of section one thousand eighty-  
50 eight of this chapter or section sixteen of the state finance law, if an  
51 amount paid pursuant to subdivision (a) of this section exceeds the tax  
52 or tax surcharge, respectively, shown on the return required to be filed  
53 by the taxpayer for the taxable year during which such amount was paid,  
54 interest shall be allowed and paid on the amount by which the amount so  
55 paid pursuant to such subdivision (a) exceeds such tax or tax surcharge,  
56 at the overpayment rate set by the commissioner of taxation and finance  
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1 pursuant to subdivision (e) of section one thousand ninety-six or, if no  
2 rate is set, at the rate of six percent per annum, from the date of  
3 payment of the amount so paid pursuant to such subdivision (a) to the  
4 fifteenth day of the third month following the close of the taxable  
5 year, provided, however, that no interest shall be allowed or paid under  
6 this subdivision if the amount thereof is less than one dollar [~~or if~~  
7 ~~such interest becomes payable solely because of a loss described in~~  
8 ~~paragraph four of subdivision (b) of section fifteen hundred three~~].

9 (f) The preceding year's tax defined. As used in this section, "the  
10 preceding year's tax" means[, ~~for taxpayers subject to tax under subdi-~~  
11 ~~vision (b) of section fifteen hundred ten of this article, the taxes~~  
12 ~~imposed upon the taxpayer by sections fifteen hundred one and fifteen~~  
13 ~~hundred ten of this article from the preceding taxable year or as other-~~  
14 ~~wise determined by subdivision (b) of section fifteen hundred five of~~  
15 ~~this article, and for taxpayers subject to tax under section fifteen~~  
16 ~~hundred two-a of this article, the tax imposed upon the taxpayer by such~~  
17 ~~section fifteen hundred two-a of this article from the preceding year,]~~  
18 the tax imposed on the taxpayer by this article without regard to the  
19 tax surcharge imposed by section fifteen hundred five-a, or for purposes  
20 of computing the first installment of estimated tax when an application  
21 has been filed for extension of the time for filing the return required  
22 to be filed for such preceding taxable year, the amount properly esti-  
23 mated pursuant to paragraph one of subdivision (b) of section fifteen  
24 hundred sixteen of this article as the tax imposed upon the taxpayer for  
25 such taxable year.

26 § 30. Paragraph 1 of subdivision (e) of section 1515 of the tax law,  
27 as amended by chapter 770 of the laws of 1992, is amended to read as  
28 follows:

29 (1) [~~1f~~] For taxable years beginning before January first, two thou-  
30 sand nine, if the amount of the life insurance company taxable income  
31 (which shall include, in the case of a stock life insurance company

32 which has an existing policyholders surplus account, the amount of  
33 direct and indirect distributions during the taxable year to sharehold-  
34 ers from such account), taxable income of a partnership or taxable  
35 income, as the case may be, or alternative minimum taxable income for  
36 any year of any taxpayer as returned to the United States treasury  
37 department is changed or corrected by the commissioner of internal  
38 revenue or other officer of the United States or other competent author-  
39 ity, such taxpayer shall report such change or corrected taxable income  
40 or alternative minimum taxable income within ninety days (or one hundred  
41 twenty days, in the case of a taxpayer making a combined return under  
42 this article for such year) after the final determination of such change  
43 or correction or as required by the commissioner, and shall concede the  
44 accuracy of such determination or state wherein it is erroneous. Any  
45 taxpayer filing an amended return with such department shall also file  
46 within ninety days (or one hundred twenty days, in the case of a taxpay-  
47 er making a combined return under this article for such year) thereafter  
48 an amended return with the commissioner which shall contain such infor-  
49 mation as the commissioner shall require. The allowance of a tentative  
50 carryback adjustment based upon a net operating loss carryback or net  
51 capital loss carryback pursuant to section sixty-four hundred eleven of  
52 the internal revenue code or upon an operations loss carryback pursuant  
53 to section eight hundred ten of the internal revenue code, shall be  
54 treated as a final determination for purposes of this subdivision.

55 § 31. Subdivisions (f) and (g) of section 1515, subdivision (g) of  
56 section 1518 and section 1520 of the tax law are REPEALED.

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1 § 32. Paragraph 1, clause (ii) of subparagraph (B) of paragraph 2 and  
2 subparagraph (A) of paragraph 3 of subdivision (f) of section 16 of the  
3 tax law, as amended by section 14 of part CC of chapter 85 of the laws  
4 of 2002, are amended to read as follows:

5 (1) General. The tax factor shall be, in the case of article nine-A of  
6 this chapter, the larger of the amounts of tax determined for the taxa-  
7 ble year under paragraphs (a) and (c) of subdivision one of section two  
8 hundred ten of such article. The tax factor shall be, in the case of  
9 article twenty-two of this chapter, the tax determined for the taxable  
10 year under subsections (a) through (d) of section six hundred one of  
11 such article. The tax factor shall be, in the case of article thirty-two  
12 of this chapter, the larger of the amounts of tax determined for the  
13 taxable year under subsection (a) and paragraph two of subsection (b) of  
14 section fourteen hundred fifty-five of such article. The tax factor  
15 shall be, in the case of article thirty-three of this chapter, the  
16 ~~[larger of the amounts]~~ amount of tax determined for the taxable year  
17 under ~~[paragraphs one and three of]~~ subdivision (a) or (b) of section  
18 fifteen hundred ~~[two]~~ ten of such article.

19 (ii) For purposes of article nine-A[~~7~~] or thirty-two ~~[or thirty-three]~~  
20 of this chapter, the term "partner's income from the partnership" means  
21 partnership items of income, gain, loss and deduction, and New York  
22 modifications thereto, entering into entire net income, minimum taxable  
23 income, alternative entire net income or entire net income plus compen-  
24 sation and the term "partner's entire income" means entire net income,  
25 minimum taxable income, alternative entire net income or entire net  
26 income plus compensation, allocated within the state. For purposes of  
27 article twenty-two of this chapter, the term "partner's income from the  
28 partnership" means partnership items of income, gain, loss and  
29 deduction, and New York modifications thereto, entering into New York  
30 adjusted gross income, and the term "partner's entire income" means New  
31 York adjusted gross income.

32 (A) Where the taxpayer is a qualified empire zone enterprise and is  
33 required or permitted to make a return or report on a combined basis  
34 under article nine-A[~~7~~] or thirty-two ~~[or thirty-three]~~ of this chapter,  
35 the taxpayer's tax factor shall be the amount determined in paragraph  
36 one of this subdivision which is attributable to the income of the qual-

37 ified empire zone enterprise. Such attribution shall be made in accord-  
38 ance with the ratio of the qualified empire zone enterprise's income  
39 allocated within the state to the combined group's income, or in accord-  
40 ance with such other methods as the commissioner may prescribe as  
41 providing an apportionment which reasonably reflects the portion of the  
42 combined group's tax attributable to the income of the qualified empire  
43 zone enterprise. In no event may the ratio so determined exceed 1.0.

44 § 33. Subparagraph (A) of paragraph 3 of subsection (d) of section  
45 1085 of the tax law, as amended by chapter 170 of the laws of 1994, is  
46 amended to read as follows:

47 (A) General. An amount equal to ninety-one percent of the tax for the  
48 taxable year computed on all items entering into the computation of the  
49 tax or taxes of the taxpayer for the taxable year under article nine,  
50 nine-A[7] or thirty-two [~~or thirty-three~~] of this chapter. For purposes  
51 of computing the tax, all items of receipts, income and expenses shall  
52 be placed on an annualized basis--

53 (i) for the first three months of the taxable year, in the case of the  
54 installment required to be paid in the sixth month,

55 (ii) for the first six months of the taxable year, in the case of the  
56 installment required to be paid in the ninth month, and

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1 (iii) for the first nine months of the taxable year, in the case of  
2 the installment required to be paid in the twelfth month.

3 § 34. Clause (i) of subparagraph (A) of paragraph 4 of subsection (d)  
4 of section 1085 of the tax law, as amended by chapter 57 of the laws of  
5 1993, is amended to read as follows:

6 (i) take the items entering into the computation of the tax or taxes  
7 of the taxpayer for the taxable year under article nine, nine-A[7] or  
8 thirty-two [~~or thirty-three~~] of this chapter, for all months during the  
9 taxable year preceding the filing month,

10 § 35. Paragraph 1 of subsection (e) of section 1085 of the tax law, as  
11 amended by section 28 of part H3 of chapter 62 of the laws of 2003, is  
12 amended to read as follows:

13 (1) Paragraphs (1) and (2) of subsection (d) of this section shall not  
14 apply in the case of any corporation (or any predecessor corporation)  
15 which had entire net income, or the portion thereof allocated within the  
16 state, of one million dollars or more for any taxable year during the  
17 three taxable years immediately preceding the taxable year involved;  
18 provided, however, that in the case of a corporation subject to tax  
19 under section fifteen hundred [~~two-a~~] ten of this chapter, paragraphs  
20 (1) and (2) of subsection (d) of this section shall not apply if [~~such~~  
21 ~~corporation had entire net income, or the portion thereof allocated~~  
22 ~~within the state, of one million dollars or more for any of the three~~  
23 ~~taxable years immediately preceding the taxable year involved, or if~~]  
24 the direct premiums subject to tax under section fifteen hundred [~~two-a~~]  
25 ten of this chapter of the corporation for any of such three preceding  
26 taxable years [~~beginning on or after January first, two thousand three~~]  
27 equals or exceeds three million seven hundred fifty thousand dollars.

28 § 36. This act shall take effect immediately and apply to taxable  
29 years beginning on or after January 1, 2009; provided however, that  
30 section four of this act shall apply to taxable years ending after  
31 December 31, 2008.

32

PART E

33 Section 1. The tax law is amended by adding a new section 171-t to  
34 read as follows:

35 § 171-t. Reciprocal offset agreements with the United States or other  
36 states. (1) For the purposes of this section, the definitions provided  
37 for in section one hundred seventy-one-n of this article apply together  
38 with the following:

39 (a) "Claimant" means any state or the United States that enters into a

40 reciprocal agreement under this section or requests application of a  
41 vendor payment or an overpayment to a debt.

42 (b) "Debt" means a "tax debt" as defined in section one hundred seven-  
43 ty-one-n of this article and any other past due legally enforceable  
44 obligation owed to a state or the United States, which arises from (i)  
45 an enforceable judgment of a court of competent jurisdiction that is no  
46 longer subject to judicial review, or (ii) an enforceable determination  
47 of an administrative body that is no longer subject to administrative or  
48 judicial review, or (iii) a determination that has become final or  
49 finally and irrevocably fixed and no longer subject to administrative or  
50 judicial review, and that has not been delinquent for more than ten  
51 years.

52 (c) "Debtor" means a person who owes a debt.

53 (d) "Person" has the same meaning as that term has in subdivision (a)  
54 of section eleven hundred one of this chapter.

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1 (e) "Vendor payment" means any payment, other than an overpayment,  
2 made by a state or the United States to any person, and includes but is  
3 not limited to any expense reimbursement to an employee of the state or  
4 the United States; but does not include a person's salary, wages or  
5 pension.

6 (2) The commissioner may, in his or her discretion, enter into a  
7 collection and offset agreement with another state or with the United  
8 States secretary of the treasury through the internal revenue service or  
9 the financial management service of the department of the treasury of  
10 the United States under which the commissioner, on behalf of the state  
11 of New York, may, in his or her discretion, agree to pay to a claimant  
12 owed a debt by a taxpayer or other person the whole or part of an over-  
13 payment or a vendor payment owed by the state to that taxpayer or other  
14 person, provided the claimant grants substantially similar privileges to  
15 this state. However, the United States will not be required under this  
16 section to offset tax overpayments owed by it except to the extent that  
17 it agrees to do so. An agreement with the claimant must specify that a  
18 taxpayer or any person owed a vendor payment will receive thirty days  
19 advance written notice of the offset and will be provided with an oppor-  
20 tunity to present written or oral evidence about the application of the  
21 overpayment or vendor payment to the debt. A proceeding for judicial  
22 review of the decision in the manner provided by article seventy-eight  
23 of the civil practice law and rules may be commenced by a taxpayer or a  
24 person owed a vendor payment within four months after a copy of a deci-  
25 sion adverse to the taxpayer or that person is mailed to the taxpayer or  
26 that person. Article forty of this chapter does not apply to any hearing  
27 or proceeding on whether an overpayment or vendor payment may be applied  
28 to a debt under this section. The remedy provided by this section for  
29 review of hearings and proceedings is the exclusive remedy available to  
30 judicially determine whether an overpayment or vendor payment may be  
31 applied to a debt under this section. The amount of a debt remaining due  
32 as certified by a claimant will be prima facie evidence of the correct  
33 amount of a debt.

34 (3) The commissioner will calculate the amount of an overpayment and  
35 interest thereon that is to be credited against the amount of a past due  
36 legally enforceable debt owed by a taxpayer which is certified to the  
37 department for collection under this section using the rules in subdivi-  
38 sion five of section one hundred seventy-one-f of this article. If a  
39 taxpayer or a person owes more than one debt which is certified to the  
40 commissioner for collection under this section, any overpayment or  
41 vendor payment will be credited against the debts in the order in which  
42 the debts accrued. A debt will be considered to have accrued at the time  
43 at which the debt became past due.

44 (4) Notwithstanding any other law, the commissioner is authorized to  
45 release to a claimant taxpayer information for purposes of implementing  
46 and administering an agreement entered into between the claimant and

47 this state under this section.

48 § 2. Subdivision 2 of section 171-p of the tax law, as added by  
49 section 1 of part BB-1 of chapter 57 of the laws of 2008, is amended to  
50 read as follows:

51 (2) The commissioner may implement procedures under which any cost or  
52 fee imposed or charged by the United States or any state, with respect  
53 to payment or remittance of a taxpayer's overpayment to satisfy a tax  
54 debt of the taxpayer, must not be credited by the commissioner to  
55 payment or satisfaction of the tax debt, must be deemed to be part of  
56 the taxpayer's tax debt, and must be eligible for offset against the  
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1 taxpayer's overpayment to the extent permitted by law. The commissioner  
2 may also implement procedures under which any cost or fee imposed or  
3 charged by the United States or any other state, with respect to any  
4 other payment or remittance of a taxpayer's overpayment or a vendor  
5 payment to satisfy a debt of the taxpayer or the person who is owed the  
6 vendor payment as authorized by section one hundred seventy-one-t of  
7 this article, must not be credited by the state of New York to payment  
8 or satisfaction of the debt, must be deemed to be part of the taxpayer's  
9 or person's debt, and must be eligible for offset against the taxpayer's  
10 overpayment or the person's vendor payment to the extent permitted by  
11 law.

12 § 3. This act shall take effect immediately.

13 PART F

14 Section 1. Section 2 of the tax law is amended by adding a new subdi-  
15 vision 11 to read as follows:

16 11. The term "overcapitalized captive insurance company" means an  
17 entity that is treated as an association taxable as a corporation under  
18 the internal revenue code (a) more than fifty percent of the voting  
19 stock of which is owned or controlled, directly or indirectly, by a  
20 single entity that is treated as an association taxable as a corporation  
21 under the internal revenue code and not exempt from federal income tax;  
22 (b) that is licensed as a captive insurance company under the laws of  
23 this state or another jurisdiction; (c) whose business includes provid-  
24 ing, directly and indirectly, insurance or reinsurance covering the  
25 risks of its parent and/or members of its affiliated group; and (d)  
26 fifty percent or less of whose gross receipts for the taxable year  
27 consist of premiums. For purposes of this subdivision, "affiliated  
28 group" has the same meaning as that term is given in section 1504 of the  
29 internal revenue code, except that the term "common parent corporation"  
30 in that section is deemed to mean any person, as defined in section 7701  
31 of the internal revenue code; references to "at least eighty percent" in  
32 section 1504 of the internal revenue code are to be read as "fifty  
33 percent or more;" section 1504 of the internal revenue code is to be  
34 read without regard to the exclusions provided for in subsection (b) of  
35 that section; "premiums" has the same meaning as that term is given in  
36 paragraph one of subdivision (c) of section fifteen hundred ten of this  
37 chapter, except that it includes consideration for annuity contracts and  
38 excludes any part of the consideration for insurance, reinsurance or  
39 annuity contracts that do not provide bona fide insurance, reinsurance  
40 or annuity benefits; and "gross receipts" includes the amounts included  
41 in gross receipts for purposes of section 501(c) (15) of the internal  
42 revenue code, except that those amounts also include all premiums as  
43 defined in this subdivision.

44 § 2. Paragraph (a) of subdivision 4 of section 211 of the tax law is  
45 amended by adding a new subparagraph 7 to read as follows:

46 (7) (i) For purposes of this subparagraph, the term "closest control-  
47 ling stockholder" means the corporation that indirectly owns or controls  
48 over fifty percent of the voting stock of an overcapitalized captive  
49 insurance company; is subject to tax under this article or article thir-

50 ty-two of this chapter, or is otherwise required to be included in a  
51 combined return or report under this article or article thirty-two of  
52 this chapter; and is the fewest tiers of corporations away in the owner-  
53 ship structure from the overcapitalized captive insurance company. The  
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1 commissioner is authorized to prescribe by regulation or published guid-  
2 ance the criteria for determining the closest controlling stockholder.

3 (ii) An overcapitalized captive insurance company must be included in  
4 a combined report with the corporation that directly owns or controls  
5 over fifty percent of the voting stock of the overcapitalized captive  
6 insurance company if that corporation is subject to tax or required to  
7 be included in a combined report under this article.

8 (iii) If over fifty percent of the voting stock of an overcapitalized  
9 captive insurance company is not directly owned or controlled by a  
10 corporation that is subject to tax or required to be included in a  
11 combined report under this article, then the overcapitalized captive  
12 insurance company must be included in a combined return or report with  
13 the corporation that is the closest controlling stockholder of the over-  
14 capitalized captive insurance company. If the closest controlling stock-  
15 holder of the overcapitalized captive insurance company is subject to  
16 tax or otherwise required to be included in a combined report under this  
17 article, then the overcapitalized captive insurance company must be  
18 included in a combined report under this article.

19 (iv) If the corporation that directly owns or controls the voting  
20 stock of the overcapitalized captive insurance company is described in  
21 subparagraph two, three, or five of this paragraph as a corporation not  
22 permitted to make a combined report, then the provisions in clause (iii)  
23 of this subparagraph must be applied to determine the corporation in  
24 whose combined return or report the overcapitalized captive insurance  
25 company should be included. If, under clause (iii) of this subparagraph,  
26 the corporation that is the closest controlling stockholder of the over-  
27 capitalized captive insurance company is described in subparagraph two,  
28 three or five of this paragraph as a corporation not permitted to make a  
29 combined return, then that corporation is deemed not to be in the owner-  
30 ship structure of the overcapitalized captive insurance company, and the  
31 closest controlling stockholder will be determined without regard to  
32 that corporation.

33 (v) If an overcapitalized captive insurance company is required under  
34 this subparagraph to be included in a combined report with another  
35 corporation, and that other corporation is also required to be included  
36 in a combined report with another related corporation or corporations  
37 under this paragraph, then the overcapitalized captive insurance company  
38 must be included in that combined report with those corporations.

39 (vi) If an overcapitalized captive insurance company is not required  
40 to be included in a combined report with another corporation under  
41 clause (ii) or (iii) of this subparagraph, or in a combined return under  
42 the provisions of subparagraph (v) of paragraph two of subsection (f) of  
43 section fourteen hundred sixty-two of this chapter, then the overcapi-  
44 talized captive insurance company is subject to the opening provisions  
45 of this paragraph and the provisions of subparagraph four of this para-  
46 graph. The overcapitalized captive insurance company must be included in  
47 a combined report under this article with another corporation if either  
48 the substantial intercorporate transactions requirement in the opening  
49 provisions of this paragraph or the inter-company transactions or agree-  
50 ment, understanding, arrangement or transaction requirement of subpara-  
51 graph four of this paragraph is satisfied, and both more than fifty  
52 percent of the voting stock of the overcapitalized captive insurance  
53 company and substantially all of the capital stock of that other corpo-  
54 ration are owned and controlled, directly or indirectly, by the same  
55 corporation.

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1 § 3. Subparagraph 1 of paragraph (b) of subdivision 4 of section 211  
2 of the tax law, as amended by section 4 of part FF-1 of chapter 57 of  
3 the laws of 2008, is amended to read as follows:

4 (1) Tax. (i) In the case of a combined report the tax shall be meas-  
5 ured by the combined entire net income, combined minimum taxable income,  
6 combined pre-nineteen hundred ninety minimum taxable income or combined  
7 capital, of all the corporations included in the report, including any  
8 captive REIT [~~or~~], captive RIC or overcapitalized captive insurance  
9 company; provided, however, in no event shall the tax measured by  
10 combined capital exceed the limitation provided for in paragraph (b) of  
11 subdivision one of section two hundred ten of this article.

12 (ii) In the case of a captive REIT or captive RIC required under this  
13 subdivision to be included in a combined report, entire net income must  
14 be computed as required under subdivision five (in the case of a captive  
15 REIT) or subdivision seven (in the case of a captive RIC) of section two  
16 hundred nine of this article. However, the deduction under the internal  
17 revenue code for dividends paid by the captive REIT or captive RIC to  
18 any member of the affiliated group that includes the corporation that  
19 directly or indirectly owns over fifty percent of the voting stock of  
20 the captive REIT or captive RIC shall not be allowed for taxable years  
21 beginning on or after January first, two thousand eight. The term  
22 "affiliated group" means "affiliated group" as defined in section  
23 fifteen hundred four of the internal revenue code, but without regard to  
24 the exceptions provided for in subsection (b) of that section.

25 (iii) In the case of an overcapitalized captive insurance company  
26 required under this subdivision to be included in a combined report,  
27 entire net income must be computed as required by subdivision nine of  
28 section two hundred eight of this article.

29 § 4. Subsection (d) of section 1452 of the tax law, as amended by  
30 section 5 of part FF-1 of chapter 57 of the laws of 2008, is amended to  
31 read as follows:

32 (d) Corporations taxable under article nine-A. Notwithstanding the  
33 provisions of this article, all corporations of classes now or hereto-  
34 fore taxable under article nine-A of this chapter shall continue to be  
35 taxable under article nine-A, except: (1) corporations organized under  
36 article five-A of the banking law; (2) corporations subject to article  
37 three-A of the banking law, or registered under the federal bank holding  
38 company act of nineteen hundred fifty-six, as amended, or registered as  
39 a savings and loan holding company (but excluding a diversified savings  
40 and loan holding company) under the federal national housing act, as  
41 amended, which make a combined return under the provisions of subsection  
42 (f) of section fourteen hundred sixty-two; (3) banking corporations  
43 described in paragraph nine of subsection (a) of this section; [~~and~~] (4)  
44 any captive REIT or captive RIC that is required to be included in a  
45 combined return under the provisions of subsection (f) of section four-  
46 teen hundred sixty-two of this article; and (5) any overcapitalized  
47 captive insurance company required to be included in a combined return  
48 under subsection (f) of section fourteen hundred sixty-two of this arti-  
49 cle. Provided, however, that a corporation described in paragraph three  
50 of this subsection which was subject to the tax imposed by article  
51 nine-A of this chapter for its taxable year ending during nineteen  
52 hundred eighty-four may, on or before the due date for filing its return  
53 (determined with regard to extensions) for its taxable year ending  
54 during nineteen hundred eighty-five, make a one time election to contin-  
55 ue to be taxable under such article nine-A. Such election shall continue  
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1 to be in effect until revoked by the taxpayer. In no event shall such  
2 election or revocation be for a part of a taxable year.

3 § 5. Paragraph 4 of subsection (m) of section 1452 of the tax law, as  
4 added by section 6 of part FF-1 of chapter 57 of the laws of 2008, is  
5 amended to read as follows:

6 (4) The provisions of this subsection shall not apply to a captive

7 REIT [~~or~~], a captive RIC or an overcapitalized captive insurance  
8 company.

9 § 6. Paragraph 2 of subsection (f) of section 1462 of the tax law is  
10 amended by adding a new subparagraph (vi) to read as follows:

11 (vi) (A) For purposes of this subparagraph, the term "closest control-  
12 ling stockholder" means the corporation that indirectly owns or controls  
13 over fifty percent of the voting stock of an overcapitalized captive  
14 insurance company, is subject to tax under this article or article  
15 nine-A of this chapter or otherwise required to be included in a  
16 combined return under this article or article nine-A of this chapter,  
17 and is the fewest tiers of corporations away in the ownership structure  
18 from the overcapitalized captive insurance company. The commissioner is  
19 authorized to prescribe by regulation or published guidance the criteria  
20 for determining the closest controlling stockholder.

21 (B) An overcapitalized captive insurance company must be included in a  
22 combined return with the banking corporation or bank holding company  
23 that directly owns or controls over fifty percent of the voting stock of  
24 the overcapitalized captive insurance company if that banking corpo-  
25 ration or bank holding company is subject to tax or required to be  
26 included in a combined return under this article.

27 (C) If over fifty percent of the voting stock of an overcapitalized  
28 captive insurance company is not directly owned or controlled by a bank-  
29 ing corporation or bank holding company that is subject to tax or  
30 required to be included in a combined return under this article, then  
31 the overcapitalized captive insurance company must be included in a  
32 combined return or report with the corporation that is the closest  
33 controlling stockholder of the overcapitalized captive insurance compa-  
34 ny. If the closest controlling stockholder of the overcapitalized  
35 captive insurance company is a banking corporation or bank holding  
36 company that is subject to tax or otherwise required to be included in a  
37 combined return under this article, then the overcapitalized captive  
38 insurance company must be included in a combined return under this arti-  
39 cle.

40 (D) If the corporation that directly owns or controls the voting stock  
41 of the overcapitalized captive insurance company is described in subpar-  
42 agraph (ii) or (iv) of paragraph four of this subsection as a corpo-  
43 ration not permitted to make a combined return, then the provisions in  
44 clause (C) of this subparagraph must be applied to determine the corpo-  
45 ration in whose combined return or report the overcapitalized captive  
46 insurance company should be included. If, under clause (C) of this  
47 subparagraph, the corporation that is the closest controlling stockhold-  
48 er of the overcapitalized captive insurance company is described in  
49 subparagraph (ii) or (iv) of paragraph four of this subsection as a  
50 corporation not permitted to make a combined return, then that corpo-  
51 ration is deemed not to be in the ownership structure of the overcapi-  
52 talized captive insurance company, and the closest controlling stock-  
53 holder will be determined without regard to that corporation.

54 (E) If an overcapitalized captive insurance company is required under  
55 this subparagraph to be included in a combined return with another  
56 corporation, and that other corporation is required to be included in a

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1 combined return with another corporation under other provisions of this  
2 subsection, the overcapitalized captive insurance company must be  
3 included in that combined return with those corporations.

4 § 7. Paragraph 3 of subsection (f) of section 1462 of the tax law, as  
5 amended by section 11 of part FF-1 of chapter 57 of the laws of 2008, is  
6 amended to read as follows:

7 (3) (i) In the case of a combined return, the tax shall be measured by  
8 the combined entire net income, combined alternative entire net income  
9 or combined assets of all the corporations included in the return,  
10 including any captive REIT [~~or~~], captive RIC or overcapitalized captive  
11 insurance company. The allocation percentage shall be computed based on

12 the combined factors with respect to all the corporations included in  
13 the combined return. In computing combined entire net income and  
14 combined alternative entire net income intercorporate dividends and all  
15 other intercorporate transactions shall be eliminated and in computing  
16 combined assets intercorporate stockholdings and intercorporate bills,  
17 notes and accounts receivable and payable and other intercorporate  
18 indebtedness shall be eliminated.

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

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

52 § 8. Subdivision (a) of section 1500 of the tax law, as amended by  
53 chapter 188 of the laws of 2003, is amended to read as follows:

54 (a) The term "insurance corporation" includes a corporation, associ-  
55 ation, joint stock company or association, person, society, aggregation  
56 or partnership, by whatever name known, doing an insurance business,  
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1 and, notwithstanding the provisions of section fifteen hundred twelve of  
2 this article, shall include (1) a risk retention group as defined in  
3 subsection (n) of section five thousand nine hundred two of the insur-  
4 ance law, (2) the state insurance fund and (3) a corporation, associ-  
5 ation, joint stock company or association, person, society, aggregation  
6 or partnership doing an insurance business as a member of the New York  
7 insurance exchange described in section six thousand two hundred one of  
8 the insurance law. The definition of the "state insurance fund"  
9 contained in this subdivision shall be limited in its effect to the  
10 provisions of this article and the related provisions of this chapter  
11 and shall have no force and effect other than with respect to such  
12 provisions. The term "insurance corporation" shall also include a  
13 captive insurance company doing a captive insurance business, as defined  
14 in subsections (c) and (b), respectively, of section seven thousand two  
15 of the insurance law; provided, however, "insurance corporation" shall  
16 not include the metropolitan transportation authority, or a public bene-

17 fit corporation or not-for-profit corporation formed by a city with a  
18 population of one million or more pursuant to subsection (a) of section  
19 seven thousand five of the insurance law, each of which is expressly  
20 exempt from the payment of fees, taxes or assessments, whether state or  
21 local; and provided further "insurance corporation" does not include any  
22 overcapitalized captive insurance company. The term "insurance corpo-  
23 ration" shall also include an unauthorized insurer operating from an  
24 office within the state, pursuant to paragraph five of subsection (b) of  
25 section one thousand one hundred one and subsection (i) of section two  
26 thousand one hundred seventeen of the insurance law.

27 § 9. Subdivision (a) of section 1502-b of the tax law, as separately  
28 amended by chapter 188 and section 3 of part H3 of chapter 62 of the  
29 laws of 2003, is amended to read as follows:

30 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen  
31 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen  
32 hundred ten of this article, every captive insurance company licensed by  
33 the superintendent of insurance pursuant to the provisions of article  
34 seventy of the insurance law, other than the metropolitan transportation  
35 authority and a public benefit corporation or not-for-profit corporation  
36 formed by a city with a population of one million or more pursuant to  
37 subsection (a) of section seven thousand five of the insurance law, each  
38 of which is expressly exempt from the payment of fees, taxes or assess-  
39 ments whether state or local, and other than an overcapitalized captive  
40 insurance company, shall, for the privilege of exercising its corporate  
41 franchise, pay a tax on (1) all gross direct premiums, less return  
42 premiums thereon, written on risks located or resident in this state and  
43 (2) all assumed reinsurance premiums, less return premiums thereon,  
44 written on risks located or resident in this state. The rate of the tax  
45 imposed on gross direct premiums shall be four-tenths of one percent on  
46 all or any part of the first twenty million dollars of premiums, three-  
47 tenths of one percent on all or any part of the second twenty million  
48 dollars of premiums, two-tenths of one percent on all or any part of the  
49 third twenty million dollars of premiums, and seventy-five thousandths  
50 of one percent on each dollar of premiums thereafter. The rate of the  
51 tax on assumed reinsurance premiums shall be two hundred twenty-five  
52 thousandths of one percent on all or any part of the first twenty  
53 million dollars of premiums, one hundred and fifty thousandths of one  
54 percent on all or any part of the second twenty million dollars of  
55 premiums, fifty thousandths of one percent on all or any part of the  
56 third twenty million dollars of premiums and twenty-five thousandths of  
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1 one percent on each dollar of premiums thereafter. The tax imposed by  
2 this section shall be equal to the greater of (i) the sum of the tax  
3 imposed on gross direct premiums and the tax imposed on assumed reinsur-  
4 ance premiums or (ii) five thousand dollars.

5 § 10. This act shall take effect immediately and apply to taxable  
6 years beginning on or after January 1, 2009; provided, however that the  
7 amendments to subparagraph 1 of paragraph (b) of subdivision 4 of  
8 section 211 of the tax law made by section three of this act shall not  
9 affect the expiration of such subparagraph and shall be deemed expired  
10 therewith; the amendments to subsection (d) and paragraph 4 of  
11 subsection (m) of section 1452 of the tax law made by sections four and  
12 five of this act, respectively, shall not affect the expiration and  
13 repeal of such subsection and paragraph and shall be deemed expired and  
14 repealed therewith; and the amendments to paragraph 3 of subsection (f)  
15 of section 1462 of the tax law made by section seven of this act shall  
16 not affect the expiration and reversion of such paragraph and shall  
17 expire and be deemed repealed therewith.

18 PART G

19 Section 1. Subdivision 1 of section 187-b of the tax law, as amended

20 by section 14 of part W-1 of chapter 109 of the laws of 2006, is amended  
21 to read as follows:

22 1. General. [A] For taxable years beginning before January first, two  
23 thousand nine, a taxpayer shall be allowed a credit, to be credited  
24 against the taxes imposed under sections one hundred eighty-three, one  
25 hundred eighty-four, and one hundred eighty-five of this article. Such  
26 credit, to be computed as hereinafter provided, shall be allowed for  
27 alternative fuel vehicle refueling property placed in service during the  
28 taxable year. Provided, however, that the amount of such credit allow-  
29 able against the tax imposed by section one hundred eighty-four of this  
30 article shall be the excess of the credit allowed by this section over  
31 the amount of such credit allowable against the tax imposed by section  
32 one hundred eighty-three of this article.

33 § 2. Paragraph (g) of subdivision 24 of section 210 of the tax law, as  
34 amended by section 15 of part W-1 of chapter 109 of the laws of 2006, is  
35 amended to read as follows:

36 (g) Termination. The credit allowed by paragraph (b) of this subdivi-  
37 sion shall not apply in taxable years beginning after December thirty-  
38 first, two thousand ~~ten~~ eight.

39 § 3. Paragraph 6 of subsection (p) of section 606 of the tax law, as  
40 amended by section 16 of part W-1 of chapter 109 of the laws of 2006, is  
41 amended to read as follows:

42 (6) Termination. The credit allowed by paragraph two of this  
43 subsection shall not apply in taxable years beginning after December  
44 thirty-first, two thousand ~~ten~~ eight.

45 § 4. Subdivision 25 of section 210 of the tax law, as added by section  
46 1 of part J of chapter 407 of the laws of 1999, is amended to read as  
47 follows:

48 25. Credit for purchase of an automated external defibrillator. [A]  
49 For taxable years beginning before January first, two thousand nine, a  
50 taxpayer shall be allowed a credit, to be computed as hereinafter  
51 provided, against the tax imposed by this article, for the purchase,  
52 other than for resale, of an automated external defibrillator, as such  
53 term is defined in section three thousand-b of the public health law.  
54 The amount of credit shall be the cost to the taxpayer of automated  
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1 external defibrillators purchased during the taxable year, such credit  
2 not to exceed five hundred dollars with respect to each unit purchased.  
3 The credit allowed under this subdivision for any taxable year shall not  
4 reduce the tax due for such year to less than the higher of the amounts  
5 prescribed in paragraphs (c) and (d) of subdivision one of this section.

6 § 5. Subsection (s) of section 606 of the tax law, as added by section  
7 3 of part J of chapter 407 of the laws of 1999, is amended to read as  
8 follows:

9 (s) Credit for purchase of an automated external defibrillator. [A]  
10 For taxable years beginning before January first, two thousand nine, a  
11 taxpayer shall be allowed a credit as hereinafter provided, against the  
12 tax imposed by this article for the purchase, other than for resale, of  
13 an automated external defibrillator, as such term is defined in section  
14 three thousand-b of the public health law. The amount of credit shall be  
15 the cost to the taxpayer of automated external defibrillators purchased  
16 during the taxable year, such credit not to exceed five hundred dollars  
17 with respect to each unit purchased.

18 § 6. Subsection (j) of section 1456 of the tax law, as added by  
19 section 4 of part J of chapter 407 of the laws of 1999, is amended to  
20 read as follows:

21 (j) Credit for purchase of an automated external defibrillator. [A]  
22 For taxable years beginning before January first, two thousand nine, a  
23 taxpayer shall be allowed a credit as hereinafter provided, against the  
24 tax imposed by this article for the purchase, other than for resale, of  
25 an automated external defibrillator, as such term is defined in section  
26 three thousand-b of the public health law. The amount of the credit

27 shall be the cost to the taxpayer of automated external defibrillators  
28 purchased during the taxable year, such credit not to exceed five  
29 hundred dollars with respect to each unit purchased. The credit allowed  
30 under this subsection for any taxable year shall not reduce the tax due  
31 for such year to less than the minimum tax fixed by subsection (b) of  
32 section fourteen hundred fifty-five of this article.

33 § 7. Subdivision (1) of section 1511 of the tax law, as amended by  
34 section 15 of part H3 of chapter 62 of the laws of 2003, is amended to  
35 read as follows:

36 (1) Credit for purchase of an automated external defibrillator. [A]  
37 For taxable years beginning before January first, two thousand nine, a  
38 taxpayer shall be allowed a credit as hereinafter provided, against the  
39 tax imposed by this article for the purchase, other than for resale, of  
40 an automated external defibrillator, as such term is defined in section  
41 three thousand-b of the public health law. The amount of the credit  
42 shall be the cost to the taxpayer of automated external defibrillators  
43 purchased during the taxable year, such credit not to exceed five  
44 hundred dollars with respect to each unit purchased. The credit allowed  
45 under this subdivision for any taxable year shall not reduce the tax due  
46 for such year to less than the minimum tax fixed by paragraph four of  
47 subdivision (a) of section fifteen hundred two of this article or by  
48 section fifteen hundred two-a of this article, whichever is applicable.

49 § 8. Subdivision (a) of section 26 of the tax law, as added by chapter  
50 537 of the laws of 2005, is amended to read as follows:

51 (a) Allowance of credit. [A] For taxable years beginning before Janu-  
52 ary first, two thousand nine, a taxpayer, which is subject to tax under  
53 article nine, nine-A, twenty-two, thirty-two or thirty-three of this  
54 chapter and which is a qualified building owner, shall be allowed a  
55 credit against such tax. The amount of the credit allowed under this  
56 section shall equal the sum of the number of qualified security officers  
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1 providing protection to a building or buildings owned by the taxpayer  
2 multiplied by three thousand dollars. Provided, however, that in the  
3 case of a worker not so employed for a full year, such amount shall be  
4 prorated to reflect the length of such employment under regulations of  
5 the commissioner.

6 § 9. Subdivision 1 of section 187-n of the tax law, as added by chap-  
7 ter 537 of the laws of 2005, is amended to read as follows:

8 1. Allowance of credit. [A] For taxable years beginning before January  
9 first, two thousand nine, a taxpayer shall be allowed a credit, to be  
10 computed as provided in section twenty-six of this chapter, against the  
11 tax imposed by this article.

12 § 10. Paragraph 1 of subsection (ii) of section 606 of the tax law, as  
13 added by chapter 537 of the laws of 2005, is amended to read as follows:

14 (1) Allowance of credit. [A] For taxable years beginning before Janu-  
15 ary first, two thousand nine, a taxpayer shall be allowed a credit, to  
16 be computed as provided in section twenty-six of this chapter, against  
17 the tax imposed by this article.

18 § 11. Paragraph 1 of subsection (t) of section 1456 of the tax law, as  
19 added by chapter 537 of the laws of 2005, is amended to read as follows:

20 (1) Allowance of credit. [A] For taxable years beginning before Janu-  
21 ary first, two thousand nine, a taxpayer shall be allowed a credit, to  
22 be computed as provided in section twenty-six of this chapter, against  
23 the tax imposed by this article.

24 § 12. Paragraph 1 of subdivision (x) of section 1511 of the tax law,  
25 as added by chapter 537 of the laws of 2005, is amended to read as  
26 follows:

27 (1) Allowance of credit. [A] For taxable years beginning before Janu-  
28 ary first, two thousand nine, a taxpayer shall be allowed a credit, to  
29 be computed as provided in section twenty-six of this chapter, against  
30 the tax imposed by this article.

31 § 13. Subdivision 1 of section 187-n of the tax law, as added by chap-

32 ter 446 of the laws of 2005, is amended to read as follows:

33 (1) Allowance of credit. [~~A~~] For taxable years beginning before Janu-  
34 ary first, two thousand nine, a taxpayer whose business is not substan-  
35 tially engaged in the commercial generation, distribution, transmission,  
36 or servicing of energy or energy products shall be allowed a credit  
37 against the taxes imposed by sections one hundred eighty-three, one  
38 hundred eighty-four and one hundred eighty-five of this article, equal  
39 to its qualified fuel cell electric generating equipment expenditures.  
40 Provided, however, that the amount of such credit allowable against the  
41 tax imposed by section one hundred eighty-four of this article shall be  
42 the excess of the amount of such credit over the amount of any credit  
43 allowed by this section against the tax imposed by section one hundred  
44 eighty-three of this article. This credit shall not exceed one thousand  
45 five hundred dollars per generating unit with respect to any taxable  
46 year. The credit provided for herein shall be allowed with respect to  
47 the taxable year in which the fuel cell electric generating equipment is  
48 placed in service.

49 § 14. Paragraph (a) of subdivision 37 of section 210 of the tax law,  
50 as added by chapter 446 of the laws of 2005, is amended to read as  
51 follows:

52 (a) Allowance of credit. [~~A~~] For taxable years beginning before Janu-  
53 ary first, two thousand nine, a taxpayer shall be allowed a credit  
54 against the tax imposed by this article, equal to its qualified fuel  
55 cell electric generating equipment expenditures. This credit shall not  
56 exceed one thousand five hundred dollars per generating unit with  
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1 respect to any taxable year. The credit provided for herein shall be  
2 allowed with respect to the taxable year in which the fuel cell electric  
3 generating equipment is placed in service.

4 § 15. Paragraph 1 of subsection (g-2) of section 606 of the tax law,  
5 as added by chapter 446 of the laws of 2005, is amended to read as  
6 follows:

7 (1) General. [~~Am~~] For taxable years beginning before January first,  
8 two thousand nine, an individual taxpayer shall be allowed a credit  
9 against the tax imposed by this article equal to twenty percent of qual-  
10 ified fuel cell electric generating equipment expenditures. This credit  
11 shall not exceed one thousand five hundred dollars per generating unit  
12 with respect to any taxable year. The credit provided for herein shall  
13 be allowed with respect to the taxable year in which the fuel cell elec-  
14 tric generating equipment is placed in service.

15 § 16. Paragraph 1 of subsection (t) of section 1456 of the tax law, as  
16 added by chapter 446 of the laws of 2005, is amended to read as follows:

17 (1) Allowance of credit. [~~A~~] For taxable years beginning before Janu-  
18 ary first, two thousand nine, a taxpayer shall be allowed a credit  
19 against the tax imposed by this article, equal to its qualified fuel  
20 cell electric generating equipment expenditures. This credit shall not  
21 exceed one thousand five hundred dollars per generating unit with  
22 respect to any taxable year. The credit provided for in this subsection  
23 shall be allowed with respect to the taxable year in which the fuel cell  
24 electric generating equipment is placed in service.

25 § 17. Paragraph 1 of subdivision (x) of section 1511 of the tax law,  
26 as added by chapter 446 of the laws of 2005, is amended to read as  
27 follows:

28 (1) Allowance of credit. [~~A~~] For taxable years beginning before Janu-  
29 ary first, two thousand nine, a taxpayer shall be allowed a credit  
30 against the tax imposed by this article, equal to its qualified fuel  
31 cell electric generating equipment expenditures. This credit shall not  
32 exceed one thousand five hundred dollars per generating unit with  
33 respect to any taxable year. The credit provided for in this subdivision  
34 shall be allowed with respect to the taxable year in which the fuel cell  
35 electric generating equipment is placed in service.

36 § 18. Paragraph (a) of subdivision 12-F of section 210 of the tax law,

37 as added by section 32 of part A of chapter 56 of the laws of 1998, is  
38 amended to read as follows:

39 (a) [A] For taxable years beginning before January first, two thousand  
40 nine, a taxpayer shall be allowed a credit against the tax imposed by  
41 this article. The amount of the credit shall be equal to one of the  
42 following percentages, per each qualified investment in a qualified  
43 emerging technology company as defined in section thirty-one hundred  
44 two-e of the public authorities law, made during the taxable year, and  
45 certified by the commissioner, either:

46 (1) ten percent of qualified investments in qualified emerging tech-  
47 nology companies, except for investments made by or on behalf of an  
48 owner of the business, including, but not limited to, a stockholder,  
49 partner or sole proprietor, or any related person, as defined in subpar-  
50 agraph (C) of paragraph three of subsection (b) of section four hundred  
51 sixty-five of the internal revenue code, and provided, however, that the  
52 taxpayer certifies to the commissioner that the qualified investment  
53 will not be sold, transferred, traded, or disposed of during the four  
54 years following the year in which the credit is first claimed; or

55 (2) twenty percent of qualified investments in qualified emerging  
56 technology companies, except for investments made by or on behalf of an  
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1 owner of the business, including, but not limited to, a stockholder,  
2 partner or sole proprietor, or any related person, as defined in subpar-  
3 agraph (C) of paragraph three of subsection (b) of section four hundred  
4 sixty-five of the internal revenue code, and provided, however, that the  
5 taxpayer certifies to the commissioner that the qualified investment  
6 will not be sold, transferred, traded, or disposed of during the nine  
7 years following the year in which the credit is first claimed.

8 "Qualified investment" means the contribution of property to a corpo-  
9 ration in exchange for original issue capital stock or other ownership  
10 interest, the contribution of property to a partnership in exchange for  
11 an interest in the partnership, and similar contributions in the case of  
12 a business entity not in corporate or partnership form in exchange for  
13 an ownership interest in such entity.

14 The total amount of credit allowable to a taxpayer under this provision  
15 for all years, taken in the aggregate, shall not exceed one hundred  
16 fifty thousand dollars in the case of investments made pursuant to  
17 subparagraph one of this paragraph and shall not exceed three hundred  
18 thousand dollars in the case of investments made pursuant to subpara-  
19 graph two of this paragraph.

20 § 19. Paragraph 1 of subsection (r) of section 606 of the tax law, as  
21 added by section 2 of part I of chapter 407 of the laws of 1999, is  
22 amended to read as follows:

23 (1) [A] For taxable years beginning before January first, two thousand  
24 nine, a taxpayer shall be allowed a credit against the tax imposed by  
25 this article. The amount of the credit shall be equal to one of the  
26 following percentages, per each qualified investment in a qualified  
27 emerging technology company as defined in section thirty-one hundred  
28 two-e of the public authorities law, made during the taxable year, and  
29 certified by the commissioner, either:

30 (A) ten percent of qualified investments in qualified emerging tech-  
31 nology companies, except for investments made by or on behalf of an  
32 owner of the business, including, but not limited to, a stockholder,  
33 partner or sole proprietor, or any related person, as defined in subpar-  
34 agraph (C) of paragraph three of subsection (b) of section four hundred  
35 sixty-five of the internal revenue code, and provided, however, that the  
36 taxpayer certifies to the commissioner that the qualified investment  
37 will not be sold, transferred, traded, or disposed of during the four  
38 years following the year in which the credit is first claimed; or

39 (B) twenty percent of qualified investments in qualified emerging  
40 technology companies, except for investments made by or on behalf of an  
41 owner of the business, including, but not limited to, a stockholder,

42 partner or sole proprietor, or any related person, as defined in subpar-  
43 agraph (C) of paragraph three of subsection (b) of section four hundred  
44 sixty-five of the internal revenue code, and provided, however, that the  
45 taxpayer certifies to the commissioner that the qualified investment  
46 will not be sold, transferred, traded, or disposed of during the nine  
47 years following the year in which the credit is first claimed.

48 (C) "Qualified investment" means the contribution of property to a  
49 corporation in exchange for original issue capital stock or other owner-  
50 ship interest, the contribution of property to a partnership in exchange  
51 for an interest in the partnership, and similar contributions in the  
52 case of a business entity not in corporate or partnership form in  
53 exchange for an ownership interest in such entity. The total amount of  
54 credit allowable to a taxpayer under this provision for all years, taken  
55 in the aggregate, shall not exceed one hundred fifty thousand dollars in  
56 the case of investments made pursuant to subparagraph (A) of this para-  
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1 graph and shall not exceed three hundred thousand dollars in the case of  
2 investments made pursuant to subparagraph (B) of this paragraph.

3 § 20. Subdivision (a) of section 20 of the tax law, as added by  
4 section 1 of part I of chapter 63 of the laws of 2000, is amended to  
5 read as follows:

6 (a) Allowance of credit. **[A] For taxable years beginning before Janu-**  
7 **ary first, two thousand nine, a** taxpayer subject to tax under article  
8 nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter  
9 shall be allowed a credit against such tax, pursuant to the provisions  
10 referenced in subdivision (d) of this section. The credit shall be  
11 allowed where a taxpayer has made a certified contribution of at least  
12 ten million dollars to a qualified transportation improvement project in  
13 a prior taxable year. The credit shall be equal to six percent of the  
14 taxpayer's increased qualified business facility payroll for the taxable  
15 year. The aggregate of all credit amounts allowed to the taxpayer pursu-  
16 ant to this section with respect to a certified contribution shall not  
17 exceed the amount of such certified contribution.

18 § 21. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
19 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of  
20 the laws of 2008, is amended to read as follows:

21 (B) shall be treated as the owner of a new business with respect to  
22 such share if the corporation qualifies as a new business pursuant to  
23 paragraph (j) of subdivision twelve of section two hundred ten of this  
24 chapter.

25 The corporation's credit base under  
26 section two hundred ten or section  
27 With respect to the following fourteen hundred fifty-six of this  
28 credit under this section: chapter is:

29 Investment tax credit Investment credit base  
30 under subsection (a) or qualified  
31 rehabilitation  
32 expenditures under  
33 subdivision twelve of  
34 section two hundred ten

35 Empire zone Cost or other basis  
36 investment tax credit under subdivision  
37 under subsection (j) twelve-B  
38 of section two hundred  
39 ten

40 Empire zone Eligible wages under  
41 wage tax credit subdivision nineteen of  
42 under subsection (k) section two hundred ten

43		or subsection (e) of	
44		section fourteen hundred	
45		fifty-six	
46	Empire zone	Qualified investments	
47	capital tax credit	and contributions under	
48	under subsection (l)	subdivision twenty of	
49		section two hundred ten	
50		or subsection (d) of	
51		section fourteen hundred	
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1		fifty-six	
2	Agricultural property tax	Allowable school	
3	credit under subsection (n)	district property taxes under	
4		subdivision twenty-two of	
5		section two hundred ten	
6	Credit for employment	Qualified first-year wages or	
7	of persons with dis-	qualified second-year wages	
8	abilities under	under subdivision	
9	subsection (o)	twenty-three of section	
10		two hundred ten	
11		or subsection (f)	
12		of section fourteen	
13		hundred fifty-six	
14	Employment incentive	Applicable investment credit	
15	credit under subsec-	base under subdivision	
16	tion (a-1)	twelve-D of section two	
17		hundred ten	
18	Empire zone	Applicable investment	
19	employment	credit under sub-	
20	incentive credit under	division twelve-C	
21	subsection (j-1)	of section two hundred ten	
22	Alternative fuels credit	<del>[Cost]</del> <u>For taxable</u>	
23	under subsection (p)	<u>years beginning</u>	
24		<u>before January first,</u>	
25		<u>two thousand nine, cost</u>	
26		under subdivision	
27		twenty-four of section two	
28		hundred ten	
29	Qualified emerging	Applicable credit base	
30	technology company	under subdivision twelve-E	
31	employment credit	of section two hundred ten	
32	under subsection (q)		
33	Qualified emerging	<del>[Qualified]</del> <u>For taxable years</u>	
34	technology company	<u>beginning before January</u>	
35	capital tax credit	<u>first, two thousand nine,</u>	
36	under subsection (r)	<u>qualified</u>	
37		investments under	
38		subdivision twelve-F of	
39		section two hundred ten	
40	Credit for purchase of an	<del>[Cost]</del> <u>For taxable years</u>	
41	automated external defibrillator	<u>beginning before January</u>	
42	under subsection (s)	<u>first, two thousand</u>	
43		<u>nine, cost</u>	

44		of an automated	
45		external defibrillator under	
46		subdivision twenty-five of	
47		section two hundred ten	
48		or subsection (j) of section	
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1		fourteen hundred fifty-six	
2	Low-income housing	Credit amount under	
3	credit under subsection (x)	subdivision thirty	
4		of section two hundred ten or	
5		subsection (l) of section	
6		fourteen hundred fifty-six	
7	Credit for transportation	<u>[Amount] For taxable</u>	
8	improvement contributions	<u>years beginning before</u>	
9	under subsection (z)	<u>January first, two</u>	
10		<u>thousand nine, amount</u>	
11		of credit under sub-	
12		division thirty-two of section	
13		two hundred ten or subsection	
14		(n) of section fourteen	
15		hundred fifty-six	
16	QEZE credit for real property	Amount of credit under	
17	taxes under subsection (bb)	subdivision twenty-seven of	
18		section two hundred ten or	
19		subsection (o) of section	
20		fourteen hundred fifty-six	
21	QEZE tax reduction credit	Amount of benefit period	
22	under subsection (cc)	factor, employment increase factor	
23		and zone allocation	
24		factor (without regard	
25		to pro ration) under	
26		subdivision twenty-eight of	
27		section two hundred ten or	
28		subsection (p) of section	
29		fourteen hundred fifty-six	
30		and amount of tax factor	
31		as determined under	
32		subdivision (f) of section sixteen	
33	Green building credit	Amount of green building credit	
34	under subsection (y)	under subdivision thirty-one	
35		of section two hundred ten	
36		or subsection (m) of section	
37		fourteen hundred fifty-six	
38	Credit for long-term	Qualified costs under	
39	care insurance premiums	subdivision twenty-five-a of	
40	under subsection (aa)	section two hundred ten	
41		or subsection (k) of section	
42		fourteen hundred fifty-six	
43	Brownfield redevelopment	Amount of credit	
44	credit under subsection	under subdivision	
45	(dd)	thirty-three of section	
46		two hundred ten	
47		or subsection (q) of	
48		section fourteen hundred	
49		fifty-six	

<p>1 Remediated brownfield  2 credit for real property  3 taxes for qualified  4 sites under subsection  5 (ee)  6</p>	<p>Amount of credit under  subdivision thirty-four  of section two hundred  ten or subsection (r) of  section fourteen hundred  fifty-six</p>
<p>7 Environmental  8 remediation  9 insurance credit under  10 subsection (ff)  11  12  13</p>	<p>Amount of credit under  subdivision thirty-five of  section two hundred  ten or subsection  (s) of section  fourteen hundred  fifty-six</p>
<p>14 Empire state film production  15 credit under subsection (gg)  16  17  18</p>	<p>Amount of credit for qualified  production costs in production  of a qualified film under  subdivision thirty-six of  section two hundred ten</p>
<p>19 Qualified emerging  20 technology company facilities,  21 operations and training credit  22 under subsection (nn)</p>	<p>Qualifying expenditures and  development activities under  subdivision twelve-G of section  two hundred ten</p>
<p>23 Security training tax  24 credit under  25 subsection (ii)  26  27  28  29  30  31</p>	<p><u>[Amount] For taxable years</u>  <u>beginning before January</u>  <u>first, two thousand</u>  <u>nine, amount</u>  of credit  under subdivision thirty-seven  of section two hundred ten or  under subsection (t) of  section fourteen hundred fifty-six</p>
<p>32 Credit for qualified fuel  33 cell electric generating equipment  34 expenditures under subsection (g-2)  35  36  37  38  39  40  41</p>	<p><u>[Amount] For taxable years</u>  <u>beginning before January</u>  <u>first, two thousand</u>  <u>nine, amount</u>  of credit under  subdivision thirty-seven  of section two hundred ten  or subsection (t) of  section fourteen hundred  fifty-six</p>
<p>42 Empire state commercial production  43 credit under subsection (jj)  44  45  46</p>	<p>Amount of credit for qualified  production costs in production  of a qualified commercial under  subdivision thirty-eight of sec-  tion two hundred ten</p>
<p>47 Biofuel production  48 tax credit under  49 subsection (jj)  S. 60</p>	<p>Amount of credit  under subdivision  thirty-eight of</p>
<p>1</p>	<p>section two hundred ten</p>
<p>2 Clean heating fuel credit</p>	<p>Amount of credit under</p>

3	under subsection (mm)	subdivision thirty-nine of
4		section two hundred ten
5	Credit for rehabilitation	Amount of credit under
6	of historic properties	subdivision forty of
7	under subsection (oo)	subsection two hundred ten
8	Credit for companies who	Amount of credit under
9	provide transportation	subdivision forty of
10	to individuals	section two hundred ten
11	with disabilities	
12	under subsection (oo)	

13 § 22. This act shall take effect immediately; provided, however that  
14 the empire state film production credit under subsection (gg), the  
15 empire state commercial production credit under subsection (jj) and the  
16 credit for companies who provide transportation to individuals with  
17 disabilities under subsection (oo) of section 606 of the tax law  
18 contained in section twenty-one of this act shall expire on the same  
19 date as provided in section 9 of part P of chapter 60 of the laws of  
20 2004, as amended, section 10 of part V of chapter 62 of the laws of  
21 2006, as amended and section 5 of chapter 522 of the laws of 2006, as  
22 amended, respectively.

23 PART H

24 Section 1. Subparagraph (A) of paragraph 1 of subsection (b) of  
25 section 631 of the tax law is amended by adding a new clause 1 to read  
26 as follows:

27 (1) For purposes of this subparagraph, the term "real property located  
28 in this state" includes an interest in a partnership, limited liability  
29 corporation, S corporation, or non-publicly traded C corporation with  
30 one hundred or fewer shareholders (hereinafter the "entity") that owns  
31 real property that is located in New York and has a fair market value  
32 that equals or exceeds fifty percent of all the assets of the entity on  
33 the date of sale or exchange of the taxpayer's interest in the entity.  
34 Only those assets that the entity owned for at least two years before  
35 the date of the sale or exchange of the taxpayer's interest in the enti-  
36 ty are to be used in determining the fair market value of all the assets  
37 of the entity on the date of sale or exchange. The gain or loss derived  
38 from New York sources from the taxpayer's sale or exchange of an inter-  
39 est in an entity that is subject to the provisions of this subparagraph  
40 is the total gain or loss for federal income tax purposes from that sale  
41 or exchange multiplied by a fraction, the numerator of which is the fair  
42 market value of the real property located in New York on the date of  
43 sale or exchange and the denominator of which is the fair market value  
44 of all the assets of the entity on the date of sale or exchange.

45 § 2. This act shall take effect immediately and shall apply to sales  
46 or exchanges of entity interests that occur thirty or more days after  
47 the date this act becomes law.

48 PART I

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1 Section 1. Paragraph (a) of subdivision 1 of section 197-b of the tax  
2 law, as amended by section 1 of part JJ-1 of chapter 57 of the laws of  
3 2008, is amended to read as follows:

4 (a) For taxable years beginning on or after January first, nineteen  
5 hundred seventy-seven, every taxpayer subject to tax under section one  
6 hundred eighty-two, one hundred eighty-two-a, former section one hundred  
7 eighty-two-b, one hundred eighty-four, one hundred eighty-six-a or one  
8 hundred eighty-six-e of this article, must pay in each year an amount  
9 equal to (i) twenty-five percent of the tax imposed under each of such

10 sections for the preceding taxable year if the preceding year's tax  
11 exceeded one thousand dollars but was equal to or less than one hundred  
12 thousand dollars, or (ii) [~~thirty~~] forty percent of the tax imposed  
13 under any of these sections for the preceding taxable year if the  
14 preceding year's tax exceeded one hundred thousand dollars. If the  
15 preceding year's tax under section one hundred eighty-four, one hundred  
16 eighty-six-a or one hundred eighty-six-e of this article exceeded one  
17 thousand dollars and the taxpayer is subject to the tax surcharge  
18 imposed by section one hundred eighty-four-a or one hundred eighty-six-c  
19 of this article, respectively, the taxpayer must also pay in each such  
20 year an amount equal to (i) twenty-five percent of the tax surcharge  
21 imposed under such section for the preceding taxable year if the preced-  
22 ing year's tax exceeded one thousand dollars but was equal to or less  
23 than one hundred thousand dollars, or (ii) [~~thirty~~] forty percent of the  
24 tax surcharge imposed under that section for the preceding taxable year  
25 if the preceding year's tax exceeded one hundred thousand dollars. The  
26 amount or amounts must be paid with the return or report required to be  
27 filed with respect to the tax or tax surcharge for the preceding taxable  
28 year or with an application for extension of the time for filing the  
29 return or report.

30 § 2. Subdivision (a) of section 213-b of the tax law, as amended by  
31 section 2 of part JJ-1 of chapter 57 of the laws of 2008, is amended to  
32 read as follows:

33 (a) First installments for certain taxpayers.--In privilege periods of  
34 twelve months ending at any time during the calendar year nineteen  
35 hundred seventy and thereafter, every taxpayer subject to the tax  
36 imposed by section two hundred nine of this chapter must pay with the  
37 report required to be filed for the preceding privilege period, or with  
38 an application for extension of the time for filing the report, an  
39 amount equal to (i) twenty-five percent of the preceding year's tax if  
40 the preceding year's tax exceeded one thousand dollars but was equal to  
41 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty  
42 percent of the preceding year's tax if the preceding year's tax exceeded  
43 one hundred thousand dollars. If the preceding year's tax under section  
44 two hundred nine of this chapter exceeded one thousand dollars and the  
45 taxpayer is subject to the tax surcharge imposed by section two hundred  
46 nine-B of this chapter, the taxpayer must also pay with the tax  
47 surcharge report required to be filed for the preceding privilege peri-  
48 od, or with an application for extension of the time for filing the  
49 report, an amount equal to (i) twenty-five percent of the tax surcharge  
50 imposed for the preceding year if the preceding year's tax was equal to  
51 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty  
52 percent of the tax surcharge imposed for the preceding year if the  
53 preceding year's tax exceeded one hundred thousand dollars.

54 § 3. Subsection (a) of section 1461 of the tax law, as amended by  
55 section 3 of part JJ-1 of chapter 57 of the laws of 2008, is amended to  
56 read as follows:

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

15 return, an amount equal to (i) twenty-five percent of the tax surcharge  
16 imposed for the preceding year if the preceding year's tax was equal to  
17 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty  
18 percent of the tax surcharge imposed for the preceding year if the  
19 preceding year's tax exceeded one hundred thousand dollars.

20 § 4. Paragraph 1 of subdivision (a) of section 1514 of the tax law, as  
21 amended by section 4 of part JJ-1 of chapter 57 of the laws of 2008, is  
22 amended to read as follows:

23 (1) Except as otherwise provided in paragraph two of this subdivision,  
24 for taxable years beginning on or after January first, nineteen hundred  
25 seventy-six, every taxpayer subject to tax under this article must pay  
26 in each year an amount equal to (i) twenty-five percent of the tax  
27 imposed under this article for the preceding taxable year if the preced-  
28 ing year's tax exceeded one thousand dollars but was equal to or less  
29 than one hundred thousand dollars, or (ii) [~~thirty~~] forty percent of the  
30 tax imposed under this article for the preceding taxable year if the  
31 preceding year's tax exceeded one hundred thousand dollars. If the  
32 preceding year's tax exceeded one thousand dollars and the taxpayer is  
33 subject to the tax surcharge imposed by section fifteen hundred five-a  
34 of this article, the taxpayer must also pay an amount equal to (i) twen-  
35 ty-five percent of the tax surcharge imposed under section fifteen  
36 hundred five-a for the preceding taxable year if the preceding year's  
37 tax was equal to or less than one hundred thousand dollars, or (ii)  
38 [~~thirty~~] forty percent of the tax surcharge imposed for the preceding  
39 taxable year if the preceding year's tax exceeded one hundred thousand  
40 dollars.

41 § 5. This act shall take effect immediately and shall apply to taxable  
42 years beginning on or after January 1, 2010.

43 PART J

44 Section 1. Paragraph 3 of subsection (c) of section 658 of the tax  
45 law, as amended by section 1 of part AA-1 of chapter 57 of the laws of  
46 2008, is amended to read as follows:

47 (3) Filing fees. (A) Every subchapter K limited liability company,  
48 every limited liability company that is a disregarded entity for federal  
49 income tax purposes, and every [~~limited liability~~] partnership [~~under~~  
50 ~~article eight-B of the partnership law and every foreign limited liabil-~~  
51 ~~ity partnership,~~] which has any income derived from New York sources,  
52 determined in accordance with the applicable rules of section six  
53 hundred thirty-one of this article as in the case of a nonresident indi-  
54 vidual, shall, within thirty days after the last day of the taxable  
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1 year, make a payment of a filing fee. The amount of the filing fee is  
2 the amount set forth in subparagraph (B) of this paragraph. The minimum  
3 filing fee is twenty-five dollars for taxable years beginning in two  
4 thousand eight and [~~after~~] thereafter. Limited liability companies that  
5 are disregarded [~~entitled~~] entities for federal income tax purposes must  
6 pay a filing fee of twenty-five dollars for taxable years beginning on  
7 or after January first, two thousand eight.

8 (B) The filing fee will be based on the New York source gross income  
9 of the limited liability company or [~~limited liability~~] partnership for  
10 the taxable year immediately preceding the taxable year for which the  
11 fee is due. If the limited liability company or [~~limited liability~~]  
12 partnership does not have any New York source gross income for the taxa-  
13 ble year immediately preceding the taxable year for which the fee is  
14 due, the limited liability company or [~~limited liability~~] partnership  
15 shall pay the minimum filing fee. Partnerships, other than limited  
16 liability partnerships under article eight-B of the partnership law and  
17 foreign limited liability partnerships, with less than one million  
18 dollars in New York source gross income are exempt from the filing fee.  
19 New York source gross income is the sum of the partners' or members'

20 shares of federal gross income from the [~~limited liability~~] partnership  
21 or limited liability company derived from or connected with New York  
22 sources, determined in accordance with the provisions of section six  
23 hundred thirty-one of this article as if those provisions and any  
24 related provisions expressly referred to a computation of federal gross  
25 income from New York sources. For this purpose, federal gross income is  
26 computed without any allowance or deduction for cost of goods sold.

27 The amount of the filing fee for taxable years beginning on or after  
28 January first, two thousand eight will be determined in accordance with  
29 the following table:

30 If the New York source gross income is:	The fee is:
31 not more than \$100,000	\$25
32 more than \$100,000 but not over \$250,000	\$50
33 more than \$250,000 but not over \$500,000	\$175
34 more than \$500,000 but not over \$1,000,000	\$500
35 more than \$1,000,000 but not over \$5,000,000	\$1,500
36 more than \$5,000,000 but not over \$25,000,000	\$3,000
37 Over \$25,000,000	\$4,500

38 (C) No credits provided by this article may be taken against the fee  
39 imposed by this paragraph.

40 (D) Where the filing fee is not timely paid, it shall be paid upon  
41 notice and demand and shall be assessed, collected and paid in the same  
42 manner as taxes, and for those purposes any reference in this article to  
43 tax imposed by this article shall be deemed also to refer to this filing  
44 fee.

45 § 2. Subsection (a) of section 1304-C of the tax law, as amended by  
46 section 5 of part AA-1 of chapter 57 of the laws of 2008, is amended to  
47 read as follows:

48 (a) In addition to any other taxes or fees authorized by this article  
49 or any other law, any city imposing the taxes authorized by this article  
50 is hereby authorized and empowered to adopt and amend local laws provid-  
51 ing that every subchapter K limited liability company (as such term is  
52 defined in subsection (b) of section thirteen hundred two of this arti-  
53 cle), every limited liability company that is a disregarded entity for  
54 federal income tax purposes and every [~~limited liability~~] partnership  
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1 [~~under article eight-B of the partnership law and every foreign limited~~  
2 ~~liability partnership,~~] which has any income derived from sources within  
3 such city, determined in accordance with the applicable rules of section  
4 six hundred thirty-one of this chapter as in the case of a state nonres-  
5 ident individual (except that in making that determination any refer-  
6 ences in section six hundred thirty-one of this chapter to "New York  
7 source" or "New York sources" shall be read as references to "New York  
8 city source" or "New York city sources" and any references in that  
9 section to "this state" or "the state" shall be read as references to  
10 "this city" or "the city"), shall within thirty days after the last day  
11 of the taxable year make a payment of a filing fee. The amount of the  
12 filing fee shall be the amount determined under paragraph three of  
13 subsection (c) of section six hundred fifty-eight of this chapter,  
14 except that in making that determination any references in that section  
15 to "New York source gross income" must be read as reference to "New York  
16 city source gross income". Any local law imposing the filing fee author-  
17 ized by this section shall provide that where the filing fee is not  
18 timely paid, it shall be paid upon notice and demand and shall be  
19 assessed, collected and paid in the same manner as the taxes imposed  
20 pursuant to the authority of this article, and for these purposes any  
21 reference in the local law imposing those taxes to the taxes imposed by  
22 that local law shall be deemed also to refer to the filing fee imposed  
23 pursuant to the authority of this section.

24 § 3. This act shall take effect immediately and shall apply to taxable

25 years beginning on or after January 1, 2009.

26

PART K

27 Section 1. Section 957 of the general municipal law, as added by chap-  
28 ter 686 of the laws of 1986, subdivisions (b) and (f) as amended and  
29 subdivisions (c), (g), (i), (j), (k), and (l) as added by chapter 624 of  
30 the laws of 1990, subdivision (d) as amended and subdivision (r) as  
31 added by section 1 of part HH of chapter 59 of the laws of 2006, para-  
32 graphs (iii), (iv), (v) and (vi) of subdivision (d) as added by section  
33 5 of part A of chapter 63 of the laws of 2005, subdivision (e) as  
34 amended and subdivisions (m), (n) and (o) as added by chapter 708 of the  
35 laws of 1993, subdivision (h) as amended by chapter 39 of the laws of  
36 2004, subdivision (p) as added by chapter 170 of the laws of 1994,  
37 subdivision (q) as amended by chapter 161 of the laws of 2005, subdivi-  
38 sions (s) and (t) as added by section 1 of part V-1 of chapter 109 of  
39 the laws of 2006, subdivision (u) as added by chapter 494 of the laws of  
40 2008 and subdivisions (a), (e), (f), (k), and (m) as further amended  
41 pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is  
42 amended to read as follows:

43 § 957. Definitions. As used in this article, the following words and  
44 terms shall have the following meanings unless the context shall indi-  
45 cate another or different meaning or intent:

46 (a) "Applicant" shall mean the county, city, town or village submit-  
47 ting an application in the manner authorized by local law for desig-  
48 nation of an area as an empire zone.

49 (b) "Commissioner" shall mean the commissioner of economic develop-  
50 ment.

51 (c) "Minority-owned business enterprise" shall [~~mean a business enter-~~  
52 ~~prise, including a sole proprietorship, partnership or corporation, that~~  
53 ~~is:~~

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1 ~~(i) at least fifty one percent owned by one or more minority group~~  
2 ~~members;~~

3 ~~(ii) an enterprise in which such minority ownership is real, substan-~~  
4 ~~tial and continuing;~~

5 ~~(iii) an enterprise in which such minority ownership has and exercises~~  
6 ~~the authority to control independently the day-to-day business decisions~~  
7 ~~of the enterprise; and~~

8 ~~(iv) an enterprise authorized to do business in this state and inde-~~  
9 ~~pendently owned and operated] have the same meaning as provided in~~

10 section three hundred ten of the executive law.  
11 (d) "Empire zone" shall mean an area within the state that has been  
12 designated as an empire zone pursuant to this article and:

13 (i) all empire zones designated under paragraph (i) of subdivision (a)  
14 and subdivision (d) of section nine hundred fifty-eight of this article  
15 shall be referred to as "investment zones" and shall be wholly contained  
16 within up to three distinct and separate contiguous areas; provided,  
17 however, that empire zones designated prior to the enactment of this  
18 paragraph shall identify up to three distinct and separate contiguous  
19 areas, which shall equal up to their total allotted acreage at the time  
20 of designation by January first, two thousand six. Provided however, the  
21 existing zone must include as much designated acreage into the distinct  
22 and separate contiguous areas as possible. Provided, however, notwith-  
23 standing the provisions of paragraphs (i) and (ii) of subdivision (a) of  
24 section nine hundred fifty-eight and subdivision (d) of section nine  
25 hundred fifty-nine of this article a regionally significant project may  
26 be located outside of the investment zone's distinct and separate  
27 contiguous areas, provided such significant project is located within  
28 the zone applicant's municipal boundaries. Provided further however, if  
29 the investment zone is located in a county that does not have a develop-  
30 ment zone such significant project may be located within the county's

31 boundaries. For the purpose of this article a "regionally significant  
32 project" shall mean: a manufacturer projecting the creation of fifty or  
33 more jobs; or an agri-business or high tech or biotech business making a  
34 capital investment of ten million dollars and creating twenty or more  
35 jobs; or a financial or insurance services or distribution center creat-  
36 ing three hundred or more jobs; or a clean energy research and develop-  
37 ment enterprise shall be eligible as a regionally significant project as  
38 determined by [~~the local zone administrative board and~~] the commission-  
39 er. Other projects may be considered by the zone designation board;

40 (ii) all empire zones designated under subdivisions (b) and (c) of  
41 section nine hundred fifty-eight of this article shall be referred to as  
42 "development zones" and shall be wholly contained within up to six  
43 distinct and separate contiguous areas. However, an empire zone located  
44 in more than one county at the time of designation shall be wholly  
45 contained in up to twelve distinct and separate contiguous areas.  
46 Provided, however, that empire zones designated prior to the enactment  
47 of this paragraph shall identify up to six distinct and separate contig-  
48 uous areas, which shall equal up to their total allotted acreage at the  
49 time of designation, by January first, two thousand six or in the case  
50 of an empire zone located in more than one county, at the time of desig-  
51 nation shall identify twelve distinct and separate contiguous areas.  
52 Provided however, the existing zone must include as much designated  
53 acreage into the distinct and separate contiguous areas as possible.  
54 Provided, however, a regionally significant project may be located  
55 outside of the development zone's distinct and separate contiguous  
56 areas. For the purpose of this article a "regionally significant

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1 project" shall mean: a manufacturer projecting the creation of fifty or  
2 more jobs; or an agri-business or high tech or biotech business making a  
3 capital investment of ten million dollars and creating twenty or more  
4 jobs; or a financial or insurance services or distribution center creat-  
5 ing three hundred or more jobs; or a clean energy research and develop-  
6 ment enterprise shall be eligible as a regionally significant project as  
7 determined by [~~the local zone administrative board and~~] the commission-  
8 er. Other projects may be considered by the zone designation board;

9 (iii) provided, however, a zone may apply by no later than March thir-  
10 ty-first, two thousand nine to add one additional distinct and separate  
11 contiguous area, pursuant to paragraphs (i) and (ii) of this subdivi-  
12 sion, to such zone upon the demonstration of need, provided, however,  
13 such additional distinct and separate contiguous area shall not result  
14 in an empire zone that exceeds the maximum allotted acreage;

15 (iv) a "development zone", pursuant to paragraph (ii) of this subdivi-  
16 sion, shall apply by no later than March thirty-first, two thousand  
17 nine, pursuant to subdivisions (a) and (d) of section nine hundred  
18 fifty-eight of this article, to have up to three distinct and separate  
19 contiguous areas defined as "investment zones", pursuant to this subdivi-  
20 sion;

21 (v) any certified businesses located outside of the empire zone's  
22 distinct and separate contiguous areas, pursuant to this section, shall  
23 be allowed the empire zone benefits until they are decertified; and

24 (vi) the boundaries that comprise the distinct and separate contiguous  
25 areas in this subdivision must include at least the real property on one  
26 side of a public thoroughfare when such street is used as a boundary. No  
27 boundary shall be constructed as to connect one tax parcel to another  
28 tax parcel by using a thoroughfare's center line, sidewalk or other  
29 similar means of connecting a non-contiguous area to the zone's distinct  
30 and separate contiguous areas.

31 (e) "Local empire zone administrative board" shall mean the entity  
32 designated by the applicant that is responsible for monitoring, evaluat-  
33 ing and coordinating all empire zone benefits on behalf of the appli-  
34 cant. Such entity shall consist of at least six members, none of whom  
35 shall be the local empire zone certification officer, and shall be

36 representative of local businesses, organized labor, community organiza-  
37 tions, financial institutions, local educational institutions and resi-  
38 dents of the empire zone.

39 ~~(f) ["Local empire zone certification officer" shall mean the official~~  
40 ~~designated by the applicant who is responsible for jointly certifying~~  
41 ~~and decertifying together with the commissioner and the commissioner of~~  
42 ~~labor those business enterprises eligible to receive benefits pursuant~~  
43 ~~to this article.~~

44 ~~(g)~~ "Women-owned business enterprise" shall [~~mean a business enter-~~  
45 ~~prise, including a sole proprietorship, partnership or corporation, that~~  
46 ~~is:~~

47 ~~(i) at least fifty one percent owned by one or more United States~~  
48 ~~citizens or permanent resident aliens who are women;~~

49 ~~(ii) an enterprise in which the ownership interest of such women is~~  
50 ~~real, substantial and continuing;~~

51 ~~(iii) an enterprise in which such women ownership has and exercises~~  
52 ~~the authority to control independently the day to day business decisions~~  
53 ~~of the enterprise; and~~

54 ~~(iv) an enterprise authorized to do business in this state and inde-~~  
55 ~~pendently owned and operated]~~ have the same meaning as provided in  
56 section three hundred ten of the executive law.

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1 ~~(h)~~ (g) "Locally owned business enterprise" shall mean (i) a busi-  
2 ness firm in which the total ownership interest held by individuals who  
3 are full time bona fide residents of such zone is more than eighty  
4 percent, whose business activities are conducted in a manner whereby at  
5 least fifty percent of the assets of such firm are located and utilized  
6 in such zone, and at least forty percent of such firm's employees are  
7 principally employed in such zone; or (ii) an agricultural cooperative  
8 established pursuant to section one hundred eleven of the cooperative  
9 corporations law; provided however, for business firms located within  
10 zones designated in a city such individuals shall reside within a commu-  
11 nity planning board or within traditional neighborhood boundaries and  
12 provided further however for business firms located within zones outside  
13 of a city such individuals may reside in the county in which the zone is  
14 designated.

15 ~~(i)~~ (h) "Chief executive" shall mean (i) a county executive or  
16 manager of a county; (ii) in a county not having a county executive or  
17 manager, the chairperson or other presiding officer of the county legis-  
18 lative body; (iii) a mayor of a city or village, except where a city or  
19 village has a manager, it shall mean such a manager; or (iv) a supervi-  
20 sor of a town, except where a town has a manager, it shall mean such  
21 manager.

22 ~~(j)~~ (i) "Minority group member" shall [~~mean a United States citizen~~  
23 ~~or permanent resident alien who is and can demonstrate membership in one~~  
24 ~~of the following groups:~~

25 ~~(i) Black persons having origins in any of the Black African racial~~  
26 ~~groups;~~

27 ~~(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,~~  
28 ~~Central or South American of either Indian or Hispanic origin, regard-~~  
29 ~~less of race;~~

30 ~~(iii) Native American or Alaskan native persons having origins in any~~  
31 ~~of the original peoples of North America; and~~

32 ~~(iv) Asian and Pacific Islander persons having origins in any of the~~  
33 ~~Far East countries, South East Asia, the Indian subcontinent or the~~  
34 ~~Pacific Islands]~~ have the same meaning as provided in section three  
35 hundred ten of the executive law.

36 ~~(k)~~ (j) "Targeted employee" shall mean a New York resident who  
37 receives empire zone wages pursuant to subdivision nineteen of section  
38 two hundred ten of the tax law and who is (i) an eligible individual  
39 under the provision of the targeted jobs tax credit (section fifty-one  
40 of the internal revenue code), (ii) eligible for benefits under the

41 provisions of the job training partnership act (P.L. 97-300, as  
42 amended), (iii) a recipient of public assistance benefits, or (iv) an  
43 individual whose income is below the most recently established poverty  
44 rate promulgated by the United States department of commerce, or a  
45 member of a family whose family income is below the most recently estab-  
46 lished poverty rate promulgated by the appropriate federal agency.

47 An individual who satisfies the criteria set forth in clause (i), (ii)  
48 or (iv) of this subdivision at the time of initial employment in the job  
49 with respect to which the credit is claimed, or who satisfies the crite-  
50 rion set forth in clause (iii) of this subdivision at such time or at  
51 any time within the previous two years, shall be a targeted employee so  
52 long as such individual continues to receive empire zone wages.

53 ~~[(l)]~~ (k) "Single enterprise" means two or more related business  
54 enterprises characterized by an absence of arms length relationships  
55 found among enterprises that are not integrated. Factors to be consid-  
56 ered, among other things, in determining the existence of a single  
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1 enterprise are interrelation of operations, common management, central-  
2 ized control of labor relations, common ownership and common financial  
3 control.

4 ~~[(m)]~~ (l) "Zone administrative entity" shall mean a community-based  
5 local development corporation or entity contracting with the local  
6 empire zone board pursuant to paragraph (viii) of subdivision ~~[(b)]~~ a of  
7 section nine hundred sixty-three of this article or the municipality in  
8 which the zone is located in those instances where the municipality  
9 actively participates in the local administration of the zone program.

10 ~~[(n)]~~ (m) "Human resource development" shall mean job preparation and  
11 placement, skills training and education for zone residents and employ-  
12 ees of zone businesses, child and family care services and facilities,  
13 and activities to improve the health benefits and other benefits  
14 provided by zone businesses to their employees.

15 ~~[(o)]~~ (n) "Community development projects" shall mean projects spon-  
16 sored by not-for-profit organizations which have been approved by the  
17 zone board, which will advance the zone development plan. For purposes  
18 described in subdivision twenty of section two hundred ten, subsection  
19 (1) of section six hundred six, subsection (d) of section fourteen  
20 hundred fifty-six and subdivision (h) of section fifteen hundred eleven  
21 of the tax law, such projects shall be limited to child care programs  
22 serving zone residents and businesses; community development projects in  
23 direct support of economic development and business revitalization  
24 activities, such as commercial revitalization projects; and business  
25 development activities of local development corporations.

26 ~~[(p)]~~ (o) "Zone equivalent area" shall mean an area designated as such  
27 pursuant to former subdivision (bb) of section nine hundred fifty-nine  
28 of this article.

29 ~~[(q)]~~ (p) "Cost benefit analysis" shall mean, for purposes of para-  
30 graph (i) of subdivision (a) of section nine hundred fifty-nine and  
31 subdivision (b) of section nine hundred seventy of this article, a meth-  
32 od of determining whether to certify a business ~~[pursuant to section~~  
33 ~~nine hundred sixty-three of this article]~~ enterprise based on the ~~[busi-~~  
34 ~~ness]~~ business enterprise's projected job creation and/or investment  
35 ~~[in the zone]~~ at the location or locations approved by the commissioner,  
36 versus the total amount of empire zone tax benefits the business enter-  
37 prise will potentially be allowed to ~~[claim pursuant to sections four-~~  
38 ~~teen, fifteen, and sixteen of the tax law.]~~ use and have refunded to it  
39 and shall be a ratio of at least 20:1, the numerator of which is the sum  
40 of (i) the estimated value of all wages and benefits paid for the first  
41 three years of certification to all existing and projected employees of  
42 the business enterprise at the location or locations approved by the  
43 commissioner and (ii) the estimated value of capital investments for the  
44 first three years of certification at the location or locations, and the  
45 denominator of which is the estimated amount of total empire zone tax

46 benefits that may be used and may be refunded for the first three years  
47 of certification at the location or locations approved by the commis-  
48 sioner.

49 ~~[Such cost benefit analysis shall include, but not be limited to, an~~  
50 ~~estimate for the first five years commencing in the year in which the~~  
51 ~~business is certified, of: (i) the amount of all the state tax credits~~  
52 ~~under the empire zones program which may be claimed by the entity or its~~  
53 ~~members, partners, or shareholders each year, (ii) the value of the~~  
54 ~~sales tax exemption on an annual basis, (iii) the estimated number of~~  
55 ~~jobs created, (iv) the total annual remuneration and benefits for the~~  
56 ~~employees within the zone location, (v) the cost of construction, reno-~~

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1 ~~vation or expansion of the business's location within the zone, and (vi)~~  
2 ~~the investment being made with respect to tangible personal property or~~  
3 ~~other tangible property which is depreciable pursuant to section 179(d)~~  
4 ~~of the Internal Revenue Code. Non-quantifiable factors may include a~~  
5 ~~business enterprise's positive impact on an area that has high commer-~~  
6 ~~cial vacancy rates, and/or is characterized by blight and disinvestment~~  
7 ~~or the business enterprise is part of a strategic industry cluster or~~  
8 ~~supply chain; or is anticipated to access zone capital credits.]~~

9 (q) "Cost benefit analysis" shall mean, for purposes of subdivision  
10 (w) of section nine hundred fifty-nine and subdivision (d) of section  
11 nine hundred seventy of this chapter, a method of determining whether to  
12 continue to certify a business enterprise at the location or locations  
13 approved by the commissioner based on the business enterprise's actual  
14 job creation and/or capital investment versus the total amount of empire  
15 zone benefits the business enterprise used and had refunded and shall be  
16 a ratio of at least 20:1, the numerator of which is the sum of (i) the  
17 actual value of all wages and benefits paid for at least three years of  
18 certification to all employees of the business enterprise at the  
19 location or locations approved by the commissioner and (ii) the value of  
20 capital investments for at least three years at the location or  
21 locations approved by the commissioner, and the denominator of which is  
22 the total amount of empire zone tax benefits actually refunded and used  
23 by the business enterprise for at least three years, at the location or  
24 locations approved by the commissioner.

25 (r) "Clean energy research and development enterprise" shall mean any  
26 electric generating facility that used pulverized coal technology,  
27 circulating fluidized bed technology or integrated gasification combined  
28 cycle technology and that is capable of capturing carbon dioxide for  
29 sequestration or capable of being retrofitted to capture carbon dioxide  
30 for sequestration.

31 (s) "Qualified investment project" shall mean a project (i) located  
32 within an empire zone, (ii) at which five hundred or more jobs will be  
33 created, provided such jobs are new to the state and are in addition to  
34 any other jobs previously created by the owner of such project in the  
35 state, and (iii) which will consist of tangible personal property and  
36 other tangible property, including buildings and structural components  
37 of buildings, described in subparagraphs (i), (ii), (iii), (iv) and  
38 clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision  
39 twelve-B of section two hundred ten of the tax law, the basis of which  
40 for federal income tax purposes will equal or exceed seven hundred fifty  
41 million dollars. Provided however, the owner of such project does not  
42 employ more than two hundred persons in the state at the time such  
43 project is commenced.

44 (t) "Significant capital investment project" shall mean a project (i)  
45 located within an empire zone, (ii) which will be either a newly  
46 constructed facility or a newly constructed addition to or expansion of  
47 a qualified investment project, consisting of tangible personal property  
48 and other tangible property, including buildings and structural compo-  
49 nents of buildings, described in subparagraphs (i), (ii), (iii), (iv)  
50 and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivi-

51 sion twelve-B of section two hundred ten of the tax law, the basis of  
52 which for federal income tax purposes will equal or exceed seven hundred  
53 fifty million dollars, (iii) which is constructed after the basis for  
54 federal income tax purposes of the property comprising such qualified  
55 investment project equals or exceeds seven hundred fifty million  
56 dollars, and (iv) at which five hundred or more jobs will be created,  
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1 provided such jobs are new to the state and are in addition to any other  
2 jobs previously created by the owner of such project in the state.

3 (u) In the case of a manufacturer: (i) that has acquired a silicon  
4 manufacturing facility: (A) where more than seven hundred fifty persons  
5 are employed; (B) that has been designated as a regionally significant  
6 project as defined in this article; and (C) which has a cost or other  
7 basis for federal income tax purposes in tangible personal property at  
8 such silicon manufacturing facility, including equipment and machinery,  
9 buildings and structural components of buildings, equal to or exceeding  
10 two hundred million dollars; and (ii) that is projecting the creation of  
11 fifty or more silicon manufacturing jobs at the silicon manufacturing  
12 facility referred to in paragraph (i) of this subdivision, then, subject  
13 to the written approval of the commissioner, such manufacturer may elect  
14 an effective date for designation of such manufacturing facility as a  
15 regionally significant project for purposes of this article, and  
16 provided such manufacturer has been certified as an empire zone enter-  
17 prise pursuant to this article, and has obtained the written approval of  
18 the commissioner, may elect an effective date for such certification as  
19 an empire zone enterprise pursuant to this article, provided that such  
20 dates are: (A) no earlier than the date that the manufacturing facility  
21 is acquired; (B) no earlier than sixty days prior to the date upon which  
22 a local law was enacted by the city, county, town or village approving  
23 the inclusion of the regionally significant project within the empire  
24 zone; and (C) no later than the date the local zone administrative board  
25 approves the application for certification as an empire zone enterprise,  
26 and further provided that such effective date for designation and such  
27 effective date for certification as an empire zone enterprise pursuant  
28 to this article shall be the same date. Subject to the written approval  
29 of the commissioner, such election shall be made by such manufacturer to  
30 the commissioner on or before the second anniversary of the date upon  
31 which the local law was enacted by the city, county, town or village  
32 approving the inclusion of the regionally significant project within the  
33 empire zone.

34 § 2. Paragraph (ii) and the opening paragraph of paragraph (vi) of  
35 subdivision (a), subdivision (b), the opening paragraph of subdivision  
36 (c), the opening paragraph of subdivision (d) and subdivision (g) of  
37 section 958 of the general municipal law, paragraph (ii) and the opening  
38 paragraph of paragraph (vi) of subdivision (a) and the opening paragraph  
39 of subdivision (c) as amended by chapter 708 of the laws of 1993, subdi-  
40 vision (b) as amended by chapter 624 of the laws of 1990, the opening  
41 paragraph of subdivision (d) as amended by chapter 41 of the laws of  
42 2000, subdivision (g) as added by section 5 of part A of chapter 63 of  
43 the laws of 2005, and paragraph (ii) of subdivision (a), subdivision  
44 (b), the opening paragraph of subdivision (c), and the opening paragraph  
45 of subdivision (d) as further amended pursuant to section 15 of part GG  
46 of chapter 63 of the laws of 2000, are amended to read as follows:

47 (ii) lands nearby or contiguous to census tracts or block numbering  
48 areas described in paragraph (i) of this subdivision may be eligible to  
49 be included within an empire zone if, upon the request of the applicant  
50 by March thirty-first, two thousand nine, the commissioner finds, in  
51 accordance with regulations promulgated pursuant to this article, that  
52 such additional lands have significant potential for business develop-  
53 ment and job creation, which will enhance economic revitalization of the  
54 zone and benefit zone residents; provided, however, that lands nearby  
55 shall not be included in a zone until the commissioner, in consultation

1 with the director of the budget, promulgates regulations governing the  
2 inclusion of such lands;

3 such other requirements as may be established in regulations promul-  
4 gated by the commissioner [~~with the approval of the director of the~~  
5 ~~budget and after consultation with the commissioner of labor~~], including  
6 but not limited to:

7 (b) Notwithstanding the provisions of paragraph (i) of subdivision (a)  
8 of this section, any county in which the average rate of unemployment in  
9 the two most recent calendar years was at least one and one-quarter  
10 times the state average for those years and in which the rate of poverty  
11 for individuals was at least thirteen percent according to the most  
12 recent census data available, and which does not contain a census tract  
13 or tracts, portion of a block numbering area or a city, town or village  
14 which meets the criteria specified in such paragraph (i) of subdivision  
15 (a), may apply by no later than March thirty-first, two thousand nine  
16 for designation of an area within a municipality as an empire zone. The  
17 area proposed for designation shall be characterized by pervasive pover-  
18 ty, high unemployment and general economic distress.

19 Notwithstanding the provisions of paragraph (i) of subdivision (a) of  
20 this section, any county may apply by no later than March thirty-first,  
21 two thousand nine for designation of an area within a municipality as an  
22 empire zone provided that the following requirements are met:

23 Notwithstanding the provisions of paragraph (i) of subdivision (a) of  
24 this section, any municipality may apply by no later than March thirty-  
25 first, two thousand nine for designation as an empire zone for an area  
26 which shall include a United States census tract or tracts or block  
27 numbering area or areas or portions thereof, each full census tract or  
28 portion of a block numbering area of which according to the most recent  
29 census data available has:

30 (g) Notwithstanding any other provision of this section, after March  
31 thirty-first, two thousand five, a municipality shall demonstrate in an  
32 application for designation as an empire zone submitted no later than  
33 March thirty-first, two thousand nine, that there is no viable alterna-  
34 tive area or areas that has or have existing public sewer or water  
35 infrastructure available other than the proposed zone.

36 § 3. Section 959 of the general municipal law, as amended by section 5  
37 of part A of chapter 63 of the laws of 2005 and subdivision (w) as  
38 amended by section 2 of part CCC1 of chapter 57 of the laws of 2008, is  
39 amended to read as follows:

40 § 959. Responsibilities of the commissioner. The commissioner shall:

41 (a) [~~After consultation with the director of the budget, the commis-~~  
42 ~~sioner of labor, and the commissioner of taxation and finance, promul-~~  
43 ~~gate~~] Promulgate regulations, which, notwithstanding any provisions to  
44 the contrary in the state administrative procedure act, may be adopted  
45 on an emergency basis, governing (i) [~~criteria of eligibility for empire~~  
46 ~~zone designation, provided, however, that such criteria be approved by~~  
47 ~~the director of the budget;~~ (ii) ~~the application process;~~ (iii)] the  
48 [~~joint~~] certification by the commissioner[~~, the commissioner of labor,~~  
49 ~~and, in the case of an empire zone, the local empire zone certification~~  
50 ~~officer,~~] as to the eligibility of business enterprises for benefits  
51 referred to in section nine hundred sixty-six of this article[~~,~~  
52 ~~provided, however, that a business enterprise that has shifted its oper-~~  
53 ~~ations, or some portions thereof, from an area within New York state not~~  
54 ~~designated as an empire zone or zone equivalent area to an area so~~  
55 ~~designated shall not be certified to receive such benefits except where~~  
56 ~~such shift is entirely within a municipality and has been approved by~~

1 ~~the local governing body of such municipality or in situations where it~~  
2 ~~has been established, after a public hearing, that extraordinary circum-~~  
3 ~~stances exist which warrant the relocation of a business, in whole or~~

4 ~~part, into an empire zone or a zone equivalent area from another municipi-~~  
5 ~~ality and the municipality from which the business is relocating~~  
6 ~~approves of such relocation; or where such shift in operations is from a~~  
7 ~~business incubator facility operated by a municipality or by a public or~~  
8 ~~private not-for-profit entity which provides space and business support~~  
9 ~~services to newly established firms]; and [(iv)] (ii) the [joint] decer-~~  
10 ~~tification by the commissioner[, the commissioner of labor, and, in the~~  
11 ~~case of an empire zone, the local empire zone certification officer] so~~  
12 as to revoke the certification of business enterprises for benefits  
13 referred to in section nine hundred sixty-six of this article with  
14 respect to an empire zone or zone equivalent area upon a finding that  
15 (1) the business enterprise made material misrepresentations of fact on  
16 its application for certification or in any of its business annual  
17 reports, or the business enterprise failed to disclose facts in its  
18 application for certification that would constitute grounds for not  
19 issuing a certification; (2) the business enterprise has failed to  
20 construct, expand, rehabilitate or operate or invest in its facility  
21 substantially in accordance with the representations contained in its  
22 application for certification; (3) the business enterprise has failed to  
23 create new employment or prevent a loss of employment in the empire zone  
24 or zone equivalent area [~~provided, however, that such failure was not~~  
25 ~~due to economic circumstances or conditions which such business could~~  
26 ~~not anticipate or which were beyond its control]; (4) where applicable,~~  
27 the business enterprise has failed to submit an annual report after it  
28 has applied for zone [~~incentives~~] tax benefits or program assistance  
29 based on new hires or investments or failed to submit other information  
30 [~~to the local empire zone certification officer~~] when due; [~~or~~] (5) the  
31 business enterprise has committed substantial violations of laws for the  
32 protection of workers including all federal, state and local labor laws,  
33 rules or regulations; or (6) the business enterprise has failed to meet  
34 the requirements of the cost-benefit analysis as established by and  
35 conducted pursuant to this article unless the commissioner determines in  
36 his or her sole discretion that continued certification is warranted,  
37 based upon other economic, social and environmental factors, as provided  
38 in subdivision (w) of this section; said regulations shall provide that  
39 whenever any business enterprise is decertified with respect to an  
40 empire zone: (A) the date determined to be the earliest event constitut-  
41 ing grounds for revoking certification shall be the effective date of  
42 decertification; (B) its certified single enterprise, if any, may also  
43 be decertified; and (C) the commissioner shall notify the commissioner  
44 of taxation and finance that such decertification has occurred, and such  
45 notification should include the effective date of such decertification  
46 and the zone or zone equivalent area to which such decertification  
47 applies; with respect to any business enterprise decertified pursuant to  
48 subparagraph six of paragraph (ii) of this subdivision, that decertif-  
49 ication (1) will be effective for a taxable year beginning on or after  
50 January first, two thousand eight and before January first, two thousand  
51 nine for a business enterprise for which a review is required to be  
52 conducted pursuant to subdivision (w) of this section in calendar year  
53 two thousand nine, and (2) thereafter will be effective for the taxable  
54 year during which the commissioner makes his or her determination (prior  
55 to any appeal) to revoke the certification of a business enterprise;

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1 (b) Receive by no later than March thirty-first, two thousand nine and  
2 review applications for designation of areas as empire zones;

3 (c) Analyze and make recommendations to the empire zones designation  
4 board for designation of areas as empire zones, provided, however, that  
5 all such areas recommended by the commissioner shall meet the require-  
6 ments of this article;

7 (~~Review new applications to replace any previously designated~~  
8 ~~empire zone the designation of which has been terminated or withdrawn;~~  
9 (e)] File notice of the designation or redesignation of an empire zone

10 or of the revision or termination of such designation with the appli-  
11 cant, the department of taxation and finance, the secretary of state,  
12 with the county, city, town or village clerk of each county, city, town,  
13 or village, respectively, in which the empire zone is located, with the  
14 school district governing body in which the empire zone is located, with  
15 the state board of real property services and with other state and local  
16 entities; provided, however, that such notice shall specify the date  
17 such action was taken and shall contain a description sufficient to  
18 identify the empire zone, including the names of the abutting streets,  
19 roads, highways, bodies of water, or other identifying physical  
20 features;

21 [~~(f)~~] (e) Request, and shall receive from any department, division,  
22 board, bureau, commission, agency or public authority of the state such  
23 assistance as may be necessary to establish a procedure whereby applica-  
24 tions submitted by business entities, community-based organizations,  
25 not-for-profit organizations, human service agencies, labor unions and  
26 municipal agencies located within an empire zone requesting financial  
27 and other assistance provided by state programs, including, but not  
28 limited to, capital development, human resource development, business  
29 assistance, job training and job placement shall, consistent with feder-  
30 al law, be given priority over applications submitted by entities not  
31 located in empire zones;

32 [~~(g)~~] (f) Establish a priority for the allocation of authority to  
33 issue private activity bonds for the benefit of municipalities and busi-  
34 ness enterprises located or to be located within empire zones;

35 [~~(h)~~] (g) Coordinate, with the local empire zone administrative board  
36 and state agencies and authorities, the provision of business develop-  
37 ment programs and services for each empire zone in order to stimulate  
38 the creation and development of new small businesses, including new  
39 small minority-owned and women-owned business enterprises, and may  
40 request and shall receive from any department, division, board, bureau,  
41 commission, agency or public authority of the state such assistance as  
42 may be necessary;

43 [~~(i)~~] (h) Coordinate with the comptroller and the commissioner of  
44 taxation and finance a linked deposit program. The comptroller and the  
45 commissioner of taxation and finance are hereby authorized and empowered  
46 to enter into agreements with financial institutions located in or serv-  
47 ing the empire zones, to provide for the deposit of funds administered  
48 jointly by them in such institutions, at reduced rates of return to the  
49 state, in return for commitments by such institutions to businesses of  
50 loans of comparable amounts, at reduced interest rates, for business  
51 development projects in the zones that will create or preserve jobs;

52 [~~(j)~~] (i) Assist each local empire zone board in preparing a small  
53 business assistance plan as required by section nine hundred sixty-three  
54 of this article and coordinate with the local empire zone administrative  
55 board and state agencies and authorities the development of small busi-  
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1 ness procurement, export and marketing programs for businesses within  
2 the empire zones;

3 [~~(k)~~] (j) Promulgate regulations~~[, in consultation with the commis-~~  
4 ~~sioner of labor,]~~ for program evaluation and coordinate implementation  
5 of an evaluation system, which is capable of compiling and analyzing  
6 accurate and consistent information necessary for an assessment of  
7 whether statutory objectives and criteria are being met;

8 [~~(l)~~] (k) Review performance objectives and progress in meeting objec-  
9 tives with zone boards and zone administrative entities as part of the  
10 annual administrative contract process;

11 [~~(m)~~] (l) Assist zone boards and zone administrative entities to  
12 effect and implement job training and social services agreements and  
13 programs provided for in paragraphs (v), (vi) and (vii) of subdivision  
14 [~~(b)~~] (a) of section nine hundred sixty-three of this article and  
15 request and receive from any agency or authority of the state such

16 assistance as may be necessary to improve the delivery and coordination  
17 of human resource development programs to the zones;

18 [~~(n)~~] (m) Assist zones in increasing their child care capacity and in  
19 planning special care activities, including the provision of technical  
20 assistance by the department in planning for the provision of child care  
21 services in the zones;

22 [~~(e)~~] (n) Coordinate with the department of labor, the state education  
23 department, the job training partnership council and agencies of the  
24 state the inclusion in annual and biennial plans of such entities strat-  
25 egies for increasing and improving human resource development services  
26 on a priority basis, consistent with federal statutory and regulatory  
27 requirements, to residents of the zones and employees of zone busi-  
28 nesses, including, but not limited to, the governor's plan for coordi-  
29 nation and special services of the job training partnership council, the  
30 jobs plan and Wagner-Peyser annual plan for services of the department  
31 of labor, and the career education state plan of the state education  
32 department;

33 [~~(p)~~] (o) Arrange with the job training partnership council the  
34 provision of the workforce investment act funds for use within the zones  
35 with the cooperation of the service delivery areas in the governor's  
36 plan for coordination and special services;

37 [~~(q)~~] (p) Subject to the availability of funds, arrange for the allo-  
38 cation and reservation of funds from the infrastructure improvement  
39 programs of state agencies and authorities to assist the zones to make  
40 public improvements necessary for community, commercial, industrial and  
41 tourism development projects in support of zone revitalization;

42 [~~(r)~~] (q) Systematically enlist other state agencies and authorities  
43 to participate in zone programs and projects and in cooperative planning  
44 of interagency zone activities in support of zone revitalization  
45 efforts;

46 [~~(s)~~] (r) Recommend for economic development loan and grant programs  
47 of the department of economic development, urban development corpo-  
48 ration, job development authority, and science and technology foundation  
49 special terms and conditions for viable zone projects and programs;

50 [~~(t)~~] (s) Award preference to be given to applications submitted by or  
51 on behalf of zones for entrepreneurial assistance programs under article  
52 nine of the omnibus economic development act of nineteen hundred eight-  
53 y-seven to support the creation of new entrepreneurial development and  
54 entrepreneurial support centers;

55 [~~(u)~~] (t) Coordinate with the urban development corporation the  
56 creation of a special category of assistance for zones within the  
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1 regional economic development partnership program, which will make  
2 available economic development assistance grants for zone programs and  
3 activities, including, but not limited to, planning, service coordi-  
4 nation, and local institutional capacity building for human resource  
5 development necessary for economic revitalization; planning and develop-  
6 ment of small business incubators; job placement and preparedness  
7 programs for zones residents; education and training programs for zone  
8 businesses; child care programs and projects supportive of business  
9 development; technical assistance for minority and women-owned business  
10 development; training for zone officials; business and tourism develop-  
11 ment and marketing programs; and other innovative programs and activ-  
12 ities in support of economic and community development within the zones;  
13 [~~and~~]

14 [~~(v)~~] (u) Assist in the development of a plan, in coordination with  
15 the health and insurance departments, to assist zones in obtaining  
16 affordable employee health insurance for small business enterprises  
17 located within the zone[~~+~~];

18 [~~(w)~~] (v) Approve applications for qualification of a business enter-  
19 prise as the owner of a qualified investment project or as the owner of  
20 a significant capital investment project, as defined in subdivisions (s)

21 and (t), respectively, of section nine hundred fifty-seven of this arti-  
22 cle. As a condition for approval of such application, the commissioner  
23 is authorized to specify certain requirements to be satisfied as a  
24 condition for approval of such application as the commissioner deems  
25 necessary to ensure that the project will make a substantial contrib-  
26 ution to the economic development of this state. An application for  
27 qualification of a business enterprise as the owner of a qualified  
28 investment must be submitted by December thirty-first, two thousand  
29 nine. An application for qualification of a business as the owner of a  
30 significant capital investment project as defined in subdivision (t) of  
31 section nine hundred fifty-seven of this article, which application is  
32 submitted by an entity previously qualified by the commissioner as the  
33 owner of a qualified investment project or an entity which is a related  
34 person, as that term is defined in section 465(b)(3)(c) of the internal  
35 revenue code, to an entity previously qualified by the commissioner as  
36 the owner of a qualified investment project, must be submitted by June  
37 thirtieth, two thousand eleven. No applications submitted after these  
38 dates may be approved; and

39 (w) Conduct a review during calendar year two thousand nine of all  
40 business enterprises certified before April first, two thousand five to  
41 determine whether the business enterprises have met the requirements of  
42 the cost-benefit analysis as set forth in subdivision (q) of section  
43 nine hundred fifty-seven of this article and the regulations promulgated  
44 under this article. Thereafter in succeeding calendar years, the commis-  
45 sioner shall conduct a review of all business enterprises certified on  
46 or after April first, two thousand five, to determine whether the busi-  
47 ness enterprises have met the requirements of the cost-benefit analysis  
48 as set forth in subdivision (q) of section nine hundred fifty-seven of  
49 this article and the regulations promulgated under this article. The  
50 cost-benefit analyses referred to in this subdivision shall be based  
51 upon data contained in at least three business annual reports filed by  
52 the business enterprise. If the commissioner determines that a business  
53 enterprise meets the requirements of the cost-benefit analysis described  
54 above, the commissioner shall issue an empire zone retention certificate  
55 to the business enterprise establishing that the business enterprise has  
56 retained its certification under this article. If any business enter-

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1 prise fails the cost-benefit analysis described above, the commissioner  
2 shall revoke the certification of such business enterprise pursuant to  
3 paragraph (ii) of subdivision (a) of this section and as specified here-  
4 in; provided, however, the commissioner may consider, in his or her sole  
5 discretion, other economic, social and environmental factors when evalu-  
6 ating the costs and benefits of a project to the state and whether  
7 continued certification is warranted based on such factors. The commis-  
8 sioner shall provide written notification to such business enterprise of  
9 his or her determination to revoke the certification, including the  
10 reasons therefor. Such notification shall state that the business enter-  
11 prise may appeal the determination by sending a written notice to the  
12 commissioner of such appeal no later than ten business days from the  
13 date of the commissioner's revocation notification. Provided that the  
14 business enterprise appeals the commissioner's determination within ten  
15 business days of the commissioner's revocation notification, the busi-  
16 ness enterprise may present a written submission to the commissioner no  
17 later than sixty days following the date the commissioner's revocation  
18 notification was sent to the business enterprise explaining why it  
19 failed the cost-benefit analysis. The commissioner shall consider the  
20 explanation provided by the business enterprise, but shall not reverse  
21 the determination to revoke the business enterprise's certification if  
22 the commissioner finds in his or her sole discretion that there was  
23 insufficient evidence presented demonstrating that the business enter-  
24 prise in fact met the requirements of the cost-benefit analysis, or that  
25 any extraordinary circumstances occurred which would explain why the

26 business enterprise failed the cost-benefit analysis.

27 § 4. Subdivisions (b) and (c) of section 959-b of the general municipi-  
28 pal law, as added by section 17 of part W1 of chapter 109 of the laws of  
29 2006, are amended to read as follows:

30 (b) The commissioner of economic development shall serve as the sole  
31 certification officer for businesses seeking certification as a clean  
32 energy enterprise. The commissioner of economic development, after  
33 consultation with the executive director of the New York state energy  
34 research and development authority, shall promulgate regulations govern-  
35 ing (i) criteria of eligibility for designation of a clean energy enter-  
36 prise, (ii) the application process, and (iii) the certification by the  
37 commissioner of economic development as to the eligibility of business  
38 enterprises for benefits referred to in section nine hundred sixty-six  
39 of this article. A business so certified shall be deemed to be eligible  
40 for such benefits as if such business were located in an investment zone  
41 as defined in paragraph (i) of subdivision (d) of section nine hundred  
42 fifty-seven of this article. No such certification shall be made after  
43 ~~[December]~~ March thirty-first, two thousand ~~[eleven]~~ nine.

44 (c) Such enterprise shall be exempt from the requirements of paragraph  
45 (iii) of subdivision (a) of section nine hundred fifty-eight, sections  
46 ~~[nine hundred sixty-one,]~~ nine hundred sixty-two and nine hundred  
47 sixty-three of this article.

48 § 5. Subdivisions (a-1) and (a-2) and the opening paragraph of para-  
49 graph (ii) of subdivision (e) of section 960 of the general municipal  
50 law, subdivision (a-1) as amended by section 2 of part HH of chapter 59  
51 of the laws of 2006, subdivision (a-2) as added and the opening para-  
52 graph of paragraph (ii) of subdivision (e) as amended by section 5 of  
53 part A of chapter 63 of the laws of 2005, are amended to read as  
54 follows:

55 (a-1) The empire zones designation board may consider designating  
56 empire zone acreage for the following categories of regionally signif-  
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1 icant projects as set forth in section nine hundred fifty-seven of this  
2 article submitted for approval no later than March thirty-first, two  
3 thousand nine: agri-business or high tech or biotech business making a  
4 capital investment of ten million dollars and creating twenty or more  
5 jobs; or a financial or insurance services or distribution center creat-  
6 ing three hundred or more jobs; or a clean energy research and develop-  
7 ment enterprise. Such consideration shall be upon application submitted  
8 by the ~~[local zone administrative board and/or the]~~ commissioner no  
9 later than March thirty-first, two thousand nine. Such application shall  
10 be made after a public hearing in accordance with section nine hundred  
11 sixty-nine of this article and in accordance with findings which shall  
12 consider factors including but not limited to: the creation and  
13 retention of a regionally significant number of skilled or otherwise  
14 quality jobs; substantial capital investment; or the export of a  
15 substantial amount of goods or services beyond the immediate region; and  
16 further findings as to why such project cannot be accommodated within  
17 the distinct and separate contiguous areas pursuant to section nine  
18 hundred fifty-seven of this article. Such findings shall be published  
19 once a week for four successive weeks, in two newspapers of the county  
20 of which the project is to be located or if no newspaper is published  
21 therein, in the newspaper nearest thereto. Proof of such publication  
22 shall be submitted to the board. The board shall not act on such project  
23 or projects until thirty days of the final publication of such findings.

24 (a-2) The empire zones designation board may consider designating  
25 empire zone acreage for other regionally significant projects in accord-  
26 ance with section nine hundred fifty-seven of this article, upon appli-  
27 cation submitted by the ~~[local zone administrative board and/or the]~~  
28 commissioner no later than March thirty-first, two thousand nine. Such  
29 application shall be made after a public hearing in accordance with  
30 section nine hundred sixty-nine of this article and in accordance with

31 findings which shall consider factors including, but not limited to: the  
32 creation and retention of a regionally significant number of skilled or  
33 otherwise quality jobs; substantial capital investment; or the export of  
34 a substantial amount of goods or services beyond the immediate region;  
35 and further findings as to why such project cannot be accommodated with-  
36 in the distinct and separate contiguous areas pursuant to section nine  
37 hundred fifty-seven of this article. Such findings shall be published  
38 once a week for four successive weeks, in two newspapers of the county  
39 of which the project is to be located or if no newspaper is published  
40 therein, in the newspaper nearest thereto. Proof of such publication  
41 shall be submitted to the board. The board shall not act on such project  
42 or projects until thirty days of the final publication of such findings.  
43 Provided, however, that the commissioner shall promulgate rules and  
44 regulations for the implementation of this subdivision after approval by  
45 the empire zones designation board. Provided further, approval of such  
46 projects and related regulations requires an affirmative vote by at  
47 least five voting members of such board.

48 An entity independent of the department shall conduct and submit to  
49 the governor and the legislature by no later than ~~December~~ August  
50 thirty-first, two thousand ~~nine~~ ten, a comprehensive evaluation of the  
51 performance of the zones program and of individual zones on meeting  
52 criteria established pursuant to this section. The criteria by which the  
53 empire zones program and individual zones are to be evaluated shall  
54 include, but not be limited to, the following:

55 § 6. Section 961 of the general municipal law is REPEALED.

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1 § 7. Subdivision (y) of section 962 of the general municipal law, as  
2 added by section 5 of part A of chapter 63 of the laws of 2005, is  
3 amended to read as follows:

4 (y) a description of how the local economic development entities, [~~as~~  
5 ~~described in paragraph (xii) of subdivision (b) of section nine hundred~~  
6 ~~sixty-one of this article~~] including but not limited to the local devel-  
7 opment corporation, local development councils, authorities, agencies  
8 and all other such entitles concerned with the economic development of  
9 the municipality, will integrate its services to allow for the best  
10 possible economic development support for the zone;

11 § 8. Subdivision (cc) of section 962 of the general municipal law is  
12 REPEALED.

13 § 9. Subdivision (a) of section 963 of the general municipal law is  
14 REPEALED and subdivisions (b), (c), (d), (e), (f) and (g) are relettered  
15 (a), (b), (c), (d), (e) and (f).

16 § 10. Subdivision (f) of section 963 of the general municipal law, as  
17 added by section 5 of part A of chapter 63 of the laws of 2005, and as  
18 relettered by section nine of this act, is amended to read as follows:

19 (f) All [~~certified~~] businesses certified on or before March thirty-  
20 first, two thousand nine are required to provide a certified annual  
21 report to the local zone administration board which report shall include  
22 but not be limited to the following:

23 (i) Business certification information to include: organization name,  
24 organization address in the zone, contact information, federal employ-  
25 ment ID number, New York state unemployment insurance number, state of  
26 formation or incorporation, verification that the business is authorized  
27 to conduct business in the state of New York;

28 (ii) Employment numbers calculated in the same manner in which the  
29 employment number is required to be calculated by section fourteen of  
30 the tax law including: total existing full-time equivalent jobs [~~in the~~  
31 ~~zone~~] at the location or locations approved by the commissioner as of  
32 the date of certification [~~within that zone~~], total existing jobs [~~in~~  
33 ~~the zone~~] at the location or locations approved by the commissioner for  
34 the year for which the report is being provided, total remuneration paid  
35 to employees [~~in the zone~~] at the location or locations approved by the  
36 commissioner each quarter of the reported year, total number of employ-

ees in all [~~zones~~] locations, total annual remuneration in all [~~zones~~] locations, total annual remuneration paid in New York state for the reported year, total employment number in New York state for the reported year as shown on each business' NYS-45 wage reporting form filed with the department of labor;

(iii) Capital investment to include: total investment made in the [~~zone~~] location or locations approved by the commissioner for the reported year[~~, with such investment being made with respect to tangible personal property or other tangible property which is depreciable pursuant to section one hundred seventy-nine (d) of the internal revenue code~~];

(iv) Tax [~~credits claimed~~] benefits used and refunded: provide an estimation of the amount of the [~~following credits claimed~~] tax benefits used and refunded for the reported year by the certified business, or by the taxpayers within the certified business including its shareholders, members, partners or the owner of a sole proprietorship[+] including the wage tax credits, investment tax credits, employment incentive tax credits, real property tax credit, [~~and~~] tax reduction credit; and

(v) [~~Other benefits: estimated value to the certified business of the~~] The sales tax [~~exemption~~] credits and refunds for the reported year.

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§ 11. Subdivision (a) of section 964 of the general municipal law, as amended by chapter 708 of the laws of 1993 and as further amended pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(a) No more than three empire zone capital corporations may be established in each zone for the purpose of raising funds through private and public grants, donations or investments, to be used in making investments in, and loans to, business firms certified pursuant to subdivision (a) of section nine hundred [~~sixty-three~~] fifty-nine of this article for the purpose of encouraging the establishment or expansion of businesses and the provision of additional job opportunities within such area. A zone capital corporation may serve one or more zones within an economic development region or zones within two or more regions. Prior to the establishment of a zone capital corporation, the zone board and the commissioner of the department of economic development shall approve the formation of the proposed zone capital corporation, its board of directors and management, and its procedures for making, servicing and monitoring investments. In no event, however, shall an empire zone capital corporation acquire an ownership interest in any certified business firm which amounts to more than twenty-five percent of the ownership interest of such certified business firm. No loan to or investment in any business firm shall be made by an empire zone capital corporation located in a zone within a town with a population of more than twenty-five thousand, until such corporation has accumulated at least two hundred thousand dollars in capital stock. No loan or investment in any business firm shall be made by an empire zone capital corporation located in a zone within a town with a population of less than twenty-five thousand until such corporation has accumulated at least one hundred thousand dollars in capital stock. A zone capital corporation shall submit to the zone board an annual report on its activities.

§ 12. Subdivision (b) and the opening paragraph of subdivision (c) of section 969 of the general municipal law, as amended by section 5 of part A of chapter 63 of the laws of 2005, are amended to read as follows:

(b) After consultation with the director of the budget [~~and the commissioner of labor~~], the commissioner may terminate the designation of an area as an empire zone upon a finding that (1) the applicant has failed substantially to implement the empire zone development plan within the time stated therein; (2) there has been no substantial business development or job creation within the area designated as an empire zone within five years after such designation; (3) there has been inadequate

42 management and evaluation of the zone at the local level; or (4) the  
43 applicant has repeatedly failed to comply with program reporting  
44 requirements, provided, however, that no termination shall occur unless  
45 and until written notice has been given to the applicant and a public  
46 hearing has been held thirty days prior to the effective date of such  
47 termination.

48 The governing body of a city, county, town or village may, by resol-  
49 ution, submit to the commissioner a request to revise the boundaries of  
50 an existing empire zone. The commissioner may~~[, after consultation with~~  
51 ~~the commissioner of labor,~~] approve such revision subject to the follow-  
52 ing provisions:

53 § 13. The general municipal law is amended by adding a new section 970  
54 to read as follows:

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1 § 970. Certification of manufacturing (including high-tech, bio-tech,  
2 clean-tech and agri-business), and financial service enterprises, and  
3 extraordinary projects.

4 (a) Notwithstanding anything to the contrary set forth in this arti-  
5 cle, commencing April first, two thousand nine, only (i) manufacturing  
6 (including high-tech, bio-tech, clean-tech, and agri-business) and  
7 financial service enterprises and extraordinary projects, as defined in  
8 the regulations promulgated pursuant to subdivisions (b) and (c) of this  
9 section, and (ii) the owner of a qualified investment project or a  
10 significant capital investment project, in accordance with the require-  
11 ments and conditions set forth in subdivision (v) of section nine  
12 hundred fifty-nine of this article, may apply for certification pursuant  
13 to this article.

14 (b) The commissioner shall serve as the sole certification officer for  
15 business enterprises applying for certification as manufacturing  
16 (including high-tech, bio-tech, clean-tech and agri-business) and finan-  
17 cial service enterprises. The commissioner shall promulgate regulations  
18 (i) defining manufacturing (including high-tech, bio-tech, clean-tech  
19 and agri-business) and financial service enterprises; (ii) governing the  
20 criteria for the certification of manufacturing (including high-tech,  
21 bio-tech, clean-tech and agri-business) and financial service enter-  
22 prises (which criteria shall include, but not be limited to, meeting the  
23 requirements of the cost benefit analysis referred to in subdivision (p)  
24 of section nine hundred fifty-seven of this article); and (iii) estab-  
25 lishing the application process for certification. Notwithstanding any  
26 other provisions to the contrary in the state administrative procedure  
27 act, such regulations may be adopted on an emergency basis. A business  
28 so certified shall be deemed to be eligible for benefits referred to in  
29 section nine hundred sixty-six of this article as if such business were  
30 located in an investment zone as defined in paragraph (i) of subdivision  
31 (d) of section nine hundred fifty-seven of this article.

32 (c) The commissioner shall serve as the sole certification officer for  
33 business enterprises applying for certification of extraordinary  
34 projects. The commissioner shall promulgate regulations (i) defining  
35 extraordinary projects; (ii) establishing the application process for  
36 certification; and (iii) governing the criteria for certification of an  
37 extraordinary project, which criteria shall include, but not be limited  
38 to, (1) whether the extraordinary project, if certified, is reasonably  
39 likely to create substantial new employment or prevent a substantial  
40 loss of employment; (2) whether certification will have the undesired  
41 effect of causing individuals to transfer from existing employment with  
42 another business enterprise to similar employment with the business  
43 enterprise so certified, and transferring existing employment from one  
44 of more other municipalities, towns or villages in the state; (3) wheth-  
45 er such extraordinary project is likely to bring substantial capital  
46 investment; (4) whether the extraordinary project is likely to lead to  
47 the export of a substantial amount of goods or services beyond the imme-  
48 diate region; (5) whether the business enterprise, during the three

49 years preceding the submission of an application for certification, has  
50 engaged in a substantial violation or a pattern of violations of laws  
51 regulating environmental protection, unemployment insurance, workers'  
52 compensation, public work, child labor, employment of minorities and  
53 women, safety and health, or other laws for the protection of workers as  
54 determined by final judgment of a judicial or administrative proceeding;  
55 (6) if the commissioner establishes that the business enterprise has  
56 been found in a criminal proceeding to have violated, in the previous  
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1 three years, any of the laws referred to in paragraph five of this  
2 subdivision or regulations promulgated pursuant to such laws, the condi-  
3 tions of any permit issued thereunder, or similar statute, regulation,  
4 order or permit condition of any other government agency, foreign or  
5 domestic, such business shall not be certified. Notwithstanding any  
6 other provisions to the contrary in the state administrative procedure  
7 act, such regulations may be adopted on an emergency basis. A business  
8 so certified shall be deemed to be eligible for such benefits as if such  
9 business were located in an investment zone as defined in paragraph (i)  
10 of subdivision (d) of section nine-hundred fifty-seven of this article.

11 (d) All business enterprises certified on or after April first, two  
12 thousand nine pursuant to subdivisions (b) or (c) of this section or  
13 pursuant to subdivision (w) of section nine hundred fifty-nine of this  
14 article shall be required to meet the requirements of the cost-benefit  
15 analysis established in subdivision (q) of section nine hundred fifty-  
16 seven of this article and the regulations promulgated under this article  
17 after they have been certified for at least three years. Failure to meet  
18 the requirements of the cost-benefit analysis shall result in the busi-  
19 ness enterprise being decertified pursuant to paragraph (ii) of subdivi-  
20 sion (a) of section nine hundred fifty-nine of this article, unless the  
21 commissioner makes a determination in his or her discretion to retain  
22 the certification of a business enterprise, notwithstanding the failure  
23 to meet the requirements of the cost-benefit analysis, in accordance  
24 with subdivision (w) of section nine hundred fifty-nine of this article.

25 (e) All businesses certified pursuant to this section are required to  
26 provide a certified annual report to the commissioner which report shall  
27 include but not be limited to the following:

28 (i) Business certification information to include: organization name,  
29 organization address, contact information, federal employment ID number,  
30 New York state unemployment insurance number, state of formation or  
31 incorporation, verification that the business is authorized to conduct  
32 business in the state of New York;

33 (ii) Employment numbers calculated in the same manner in which the  
34 employment number is required to be calculated by section fourteen of  
35 the tax law including: total existing full-time equivalent jobs at the  
36 location or locations approved by the commissioner as of the date of  
37 certification, total existing jobs at the location or locations approved  
38 by the commissioner for the year for which the report is being provided,  
39 total remuneration paid to employees at the location or locations  
40 approved by the commissioner each quarter of the reported year, total  
41 number of employees in all locations, total annual remuneration in all  
42 locations, total annual remuneration paid in New York state for the  
43 reported year, total employment number in New York state for the  
44 reported year as shown on each business' NYS-45 wage reporting form  
45 filed with the department of labor;

46 (iii) Total capital investment made in the location or locations  
47 approved by the commissioner for the reported year;

48 (iv) Total empire zone tax benefits: provide an estimation of the  
49 total amount of empire zone tax benefits used and the total amount of  
50 empire zone tax benefits refunded for the reported year by the certified  
51 business, or by the taxpayers within the certified business including  
52 its shareholders, members, partners or the owner of a sole proprietor-  
53 ship, including but not limited to wage tax credits, investment tax

54 credits, employment incentive tax credits, real property tax credit, tax  
55 reduction credit; and sales tax benefits.

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1 § 14. Subdivision 19 of section 210 of the tax law is amended by  
2 adding a new paragraph (e-1) to read as follows:

3 (e-1) Any carry over of a credit from prior taxable years will not be  
4 allowed if an empire zone retention certificate is not issued pursuant  
5 to subdivision (w) of section nine hundred fifty-nine of the general  
6 municipal law to the empire zone enterprise which is the basis of the  
7 credit.

8 § 15. Subsection (k) of section 606 of the tax law is amended by  
9 adding a new paragraph 5-a to read as follows:

10 (5-a) Any carry over of a credit from prior taxable years will not be  
11 allowed if an empire zone retention certificate is not issued pursuant  
12 to subdivision (w) of section nine hundred fifty-nine of the general  
13 municipal law to the empire zone enterprise which is the basis of the  
14 credit.

15 § 16. Subsection (e) of section 1456 of the tax law is amended by  
16 adding a new paragraph 5-a to read as follows:

17 (5-a) Any carry over of a credit from prior taxable years will not be  
18 allowed if an empire zone retention certificate is not issued pursuant  
19 to subdivision (w) of section nine hundred fifty-nine of the general  
20 municipal law to the empire zone enterprise which is the basis of the  
21 credit.

22 § 17. Subdivision (g) of section 1511 of the tax law is amended by  
23 adding a new paragraph 5-a to read as follows:

24 (5-a) Any carry over of a credit from prior taxable years will not be  
25 allowed if an empire zone retention certificate is not issued pursuant  
26 to subdivision (w) of section nine hundred fifty-nine of the general  
27 municipal law to the empire zone enterprise which is the basis of the  
28 credit.

29 § 18. Subdivision 12-B of section 210 of the tax law is amended by  
30 adding a new paragraph (d-1) to read as follows:

31 (d-1) Any carry over of a credit from prior taxable years will not be  
32 allowed if an empire zone retention certificate is not issued pursuant  
33 to subdivision (w) of section nine hundred fifty-nine of the general  
34 municipal law to the empire zone enterprise which is the basis of the  
35 credit.

36 § 19. Subsection (j) of section 606 of the tax law is amended by  
37 adding a new paragraph 4-a to read as follows:

38 (4-a) Any carry over of a credit from prior taxable years will not be  
39 allowed if an empire zone retention certificate is not issued pursuant  
40 to subdivision (w) of section nine hundred fifty-nine of the general  
41 municipal law to the empire zone enterprise which is the basis of the  
42 credit.

43 § 20. Subdivision 12-C of section 210 of the tax law is amended by  
44 adding a new paragraph (c-1) to read as follows:

45 (c-1) Any carry over of a credit from prior taxable years will not be  
46 allowed if an empire zone retention certificate is not issued pursuant  
47 to subdivision (w) of section nine hundred fifty-nine of the general  
48 municipal law to the empire zone enterprise which is the basis of the  
49 credit.

50 § 21. Subsection (j-1) of section 606 of the tax law is amended by  
51 adding a new paragraph 3-a to read as follows:

52 (3-a) Any carry over of a credit from prior taxable years will not be  
53 allowed to an empire zone enterprise which is the basis of the credit,  
54 if an empire zone retention certificate is not issued to such entity  
55 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
56 general municipal law.

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1 § 22. Subdivision 20 of section 210 of the tax law is amended by

2 adding a new paragraph (b-1) to read as follows:

3 (b-1) Any carry over of a credit from prior taxable years will not be  
4 allowed to an empire zone enterprise which is the basis of the credit,  
5 if an empire zone retention certificate is not issued to such entity  
6 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
7 general municipal law.

8 § 23. Subsection (1) of section 606 of the tax law is amended by  
9 adding a new paragraph 1-a to read as follows:

10 (1-a) Any carry over of a credit from prior taxable years will not be  
11 allowed to an empire zone enterprise which is the basis of the credit,  
12 if an empire zone retention certificate is not issued to such entity  
13 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
14 general municipal law.

15 § 24. Subsection (d) of section 1456 of the tax law is amended by  
16 adding a new paragraph 2-a to read as follows:

17 (2-a) Any carry over of a credit from prior taxable years will not be  
18 allowed to an empire zone enterprise which is the basis of the credit,  
19 if an empire zone retention certificate is not issued to such entity  
20 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
21 general municipal law.

22 § 25. Subdivision (h) of section 1511 of the tax law is amended by  
23 adding a new paragraph 2-a to read as follows:

24 (2-a) Any carry over of a credit from prior taxable years will not be  
25 allowed to an empire zone enterprise which is the basis of the credit,  
26 if an empire zone retention certificate is not issued to such entity  
27 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
28 general municipal law.

29 § 26. Section 1088 of the tax law is amended by adding a new  
30 subsection (h) to read as follows:

31 (h) Notwithstanding any other provision in this section, for taxable  
32 years beginning on or after January first, two thousand eight and before  
33 January first, two thousand nine, interest will be allowed on an over-  
34 payment on any return or report on which one or more empire zone tax  
35 credits are claimed, only from the one hundred eightieth day after the  
36 taxpayer files with the department an empire zone retention certificate  
37 issued pursuant to subdivision (w) of section nine hundred fifty-nine of  
38 the general municipal law to the empire zone enterprise which is the  
39 basis for the tax credit or credits claimed on the return or report.

40 § 27. Section 688 of the tax law is amended by adding a new subsection  
41 (h) to read as follows:

42 (h) Notwithstanding any other provisions in this section, for taxable  
43 years beginning on or after January first, two thousand eight and before  
44 January first, two thousand nine, interest will be allowed on an over-  
45 payment on any return or report on which one or more empire zone tax  
46 credits are claimed, only from the one hundred eightieth day after the  
47 taxpayer files with the department an empire zone retention certificate  
48 issued pursuant to subdivision (w) of section nine hundred fifty-nine of  
49 the general municipal law to the empire zone enterprise which is the  
50 basis for the tax credit or credits claimed on the return or report.

51 § 28. Subsection (c) of section 1089 of the tax law is amended by  
52 adding a new paragraph 4 to read as follows:

53 (4) Notwithstanding paragraph three of this subsection, no petition  
54 may be filed by a taxpayer claiming a refund of one or more empire zone  
55 tax credits for a taxable year beginning on or after January first, two  
56 thousand eight and before January first, two thousand nine, until six

1 months have expired after the date on which an empire zone retention  
2 certificate was issued pursuant to subdivision (w) of section nine  
3 hundred fifty-nine of the general municipal law to the empire zone  
4 enterprise which is the basis for the tax credit or credits claimed on  
5 the return or report.

6 § 29. Subsection (c) of section 689 of the tax law is amended by

7 adding a new paragraph 4 to read as follows:

8 (4) Notwithstanding paragraph three of this subsection, no petition  
9 may be filed by a taxpayer claiming a refund of one or more empire zone  
10 tax credits for a taxable year beginning on or after January first, two  
11 thousand eight and before January first, two thousand nine, until six  
12 months have expired after the date on which an empire zone retention  
13 certificate was issued pursuant to subdivision (w) of section nine  
14 hundred fifty-nine of the general municipal law to the empire zone  
15 enterprise which is the basis for the tax credit or credits claimed on  
16 the return or report.

17 § 30. Section 1085 of the tax law is amended by adding a new  
18 subsection (k-2) to read as follows:

19 (k-2) No penalty will be imposed pursuant to subsection (c) or (k) of  
20 this section for a taxable year beginning on or after January first, two  
21 thousand eight and before January first, two thousand nine resulting  
22 from the denial of an empire zone tax credit claimed by the taxpayer  
23 because an empire zone retention certificate was not issued pursuant to  
24 subdivision (w) of section nine hundred fifty-nine of the general munic-  
25 ipal law to the empire zone enterprise which is the basis for the tax  
26 credit or credits claimed on the return or report.

27 § 31. Section 685 of the tax law is amended by adding a new subsection  
28 (p-2) to read as follows:

29 (p-2) No penalty will be imposed pursuant to subsection (c) or (p) of  
30 this section for a taxable year beginning on or after January first, two  
31 thousand eight and before January first, two thousand nine resulting  
32 from the denial of an empire zone tax credit claimed by the taxpayer  
33 because an empire zone retention certificate was not issued pursuant to  
34 subdivision (w) of section nine hundred fifty-nine of the general munic-  
35 ipal law to the empire zone enterprise which is the basis for the tax  
36 credit or credits claimed on the return.

37 § 32. Subdivision (z) of section 1115 of the tax law is REPEALED.

38 § 33. Section 1119 of the tax law is amended by adding a new subdivi-  
39 sion (d) to read as follows:

40 (d)(1) Subject to the conditions and limitations provided for in this  
41 section, a refund or credit will be allowed for taxes imposed on the  
42 retail sale of tangible personal property described in subdivision (a)  
43 of section eleven hundred five of this article and on every sale of  
44 services described in subdivisions (b) and (c) of such section eleven  
45 hundred five and consideration given or contracted to be given for, or  
46 for the use of, such tangible personal property or services, where such  
47 tangible personal property or services are sold to a qualified empire  
48 zone enterprise, provided that (A) such property or property upon which  
49 such a service has been performed or such service (other than a service  
50 described in subdivision (b) of section eleven hundred five of this  
51 article) is directly and predominantly, or such a service described in  
52 clause (A) or (D) of paragraph one of such subdivision (b) of section  
53 eleven hundred five of this article is directly and exclusively, used or  
54 consumed by such enterprise in an area designated as an empire zone  
55 pursuant to article eighteen-B of the general municipal law with respect  
56 to which such enterprise is certified pursuant to such article eigh-

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1 teen-B, or (B) such a service described in clause (B) or (C) of para-  
2 graph one of subdivision (b) of section eleven hundred five of this  
3 article is delivered and billed to such enterprise at an address in such  
4 empire zone; provided, further, that, in order for a motor vehicle, as  
5 defined in subdivision (c) of section eleven hundred seventeen of this  
6 article, or tangible personal property related to such a motor vehicle  
7 to be found to be used predominantly in such a zone, at least fifty  
8 percent of such motor vehicle's use shall be exclusively within such  
9 zone or at least fifty percent of such motor vehicle's use shall be in  
10 activities originating or terminating in such zone, or both; and either  
11 or both such usages shall be computed either on the basis of mileage or

12 hours of use, at the discretion of such enterprise. For purposes of this  
13 subdivision, tangible personal property related to such a motor vehicle  
14 shall include a battery, diesel motor fuel, an engine, engine compo-  
15 nents, motor fuel, a muffler, tires and similar tangible personal prop-  
16 erty used in or on such a motor vehicle.

17 (2) Subject to the conditions and limitations provided for in this  
18 section, a refund or credit will be allowed for taxes imposed on the  
19 retail sale of, and consideration given or contracted to be given for,  
20 or for the use of, tangible personal property sold to a contractor,  
21 subcontractor or repairman for use in (A) erecting a structure or build-  
22 ing of a qualified empire zone enterprise, (B) adding to, altering or  
23 improving real property, property or land of such an enterprise or (C)  
24 maintaining, servicing or repairing real property, property or land of  
25 such an enterprise, as the terms real property, property or land are  
26 defined in the real property tax law; provided, however, no credit or  
27 refund will be allowed under this paragraph unless such tangible  
28 personal property is to become an integral component part of such struc-  
29 ture, building, real property, property or land located in an area  
30 designated as an empire zone pursuant to article eighteen-B of the  
31 general municipal law in, and with respect to which such enterprise is  
32 certified pursuant to such article eighteen-B.

33 (3) Except as otherwise provided by law, the refund or credit provided  
34 for in this subdivision will not apply to taxes imposed by section elev-  
35 en hundred seven of this article or to taxes imposed pursuant to the  
36 authority of article twenty-nine of this chapter.

37 (4) In those instances when the provisions of subdivision (w) of  
38 section nine hundred fifty-nine of the general municipal law are appli-  
39 cable, no refund or credit will be allowed under this subdivision unless  
40 the qualified empire zone enterprise has been issued an empire zone  
41 retention certificate.

42 (5) A taxpayer may not apply for a credit or refund under this subdi-  
43 vision more frequently than once a sales tax quarter, pursuant to subdi-  
44 vision (b) of section eleven hundred thirty-six of the tax law.

45 § 34. Paragraph 2 of subdivision (a) of section 14 of the tax law, as  
46 amended by section 1 of part AA of chapter 62 of the laws of 2006, is  
47 amended to read as follows:

48 (2) for purposes of articles twenty-eight and twenty-nine of this  
49 chapter, during the "sales and use tax benefit period." Such period  
50 shall consist of one hundred twenty consecutive months beginning on the  
51 later of (A) March first, two thousand one, or (B) with regard to busi-  
52 ness enterprises certified pursuant to article eighteen-B of the general  
53 municipal law prior to April first, two thousand nine, the first day of  
54 the month next following the date of issuance of a qualified empire zone  
55 enterprise certification by the commissioner under subdivision (h) of  
56 this section, or (C) with regard to business enterprises certified

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1 pursuant to such article eighteen-B on or after April first, two thou-  
2 sand nine, the first day of the month next following the date of certifi-  
3 cation under article eighteen-B as an empire zone business. Provided

4 however, such period shall not include any month falling within a taxa-  
5 ble year immediately preceded by a taxable year with respect to which  
6 the business enterprise did not meet the employment test.

7 § 35. Subdivision (h) of section 14 of the tax law is REPEALED.

8 § 36. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
9 1210 of the tax law, as amended by section 4 of part SS1 of chapter 57  
10 of the laws of 2008, is amended to read as follows:

11 ~~[(i)]~~ Either, all of the taxes described in article twenty-eight of  
12 this chapter, at the same uniform rate, as to which taxes all provisions  
13 of the local laws, ordinances or resolutions imposing such taxes shall  
14 be identical, except as to rate and except as otherwise provided, with  
15 the corresponding provisions in such article twenty-eight, including the  
16 definition and exemption provisions of such article, so far as the

17 provisions of such article twenty-eight can be made applicable to the  
18 taxes imposed by such city or county and with such limitations and  
19 special provisions as are set forth in this article. The taxes author-  
20 ized under this subdivision may not be imposed by a city or county  
21 unless the local law, ordinance or resolution imposes such taxes so as  
22 to include all portions and all types of receipts, charges or rents,  
23 subject to state tax under sections eleven hundred five and eleven  
24 hundred ten of this chapter, except as otherwise provided. (i) Any local  
25 law, ordinance or resolution enacted by any city of less than one  
26 million or by any county or school district, imposing the taxes author-  
27 ized by this subdivision, shall, notwithstanding any provision of law to  
28 the contrary, exclude from the operation of such local taxes all sales  
29 of tangible personal property for use or consumption directly and  
30 predominantly in the production of tangible personal property, gas,  
31 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
32 essing, generating, assembly, refining, mining or extracting; and all  
33 sales of tangible personal property for use or consumption predominantly  
34 either in the production of tangible personal property, for sale, by  
35 farming or in a commercial horse boarding operation, or in both; and,  
36 unless such city, county or school district elects otherwise, shall omit  
37 the provision for credit or refund contained in clause six of subdivi-  
38 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
39 chapter. (ii) Any local law, ordinance or resolution enacted by any  
40 city, county or school district, imposing the taxes authorized by this  
41 subdivision, shall omit the residential solar energy systems equipment  
42 exemption provided for in subdivision (ee)[,] and the clothing and foot-  
43 wear exemption provided for in paragraph thirty of subdivision (a) [and  
44 the qualified empire zone enterprise exemptions provided for in subdivi-  
45 sion (z)] of section eleven hundred fifteen of this chapter, unless such  
46 city, county or school district elects otherwise as to either such resi-  
47 dential solar energy systems equipment exemption or such clothing and  
48 footwear exemption [or such qualified empire zone enterprise exemptions;  
49 provided that if such a city having a population of one million or more  
50 in which the taxes imposed by section eleven hundred seven of this chap-  
51 ter are in effect enacts the resolution described in subdivision (k) of  
52 this section or repeals such resolution or enacts the resolution  
53 described in subdivision (l) of this section or repeals such resolution  
54 or enacts the resolution described in subdivision (n) of this section or  
55 repeals such resolution, such resolution or repeal shall also be deemed  
56 to amend any local law, ordinance or resolution enacted by such a city

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~~1 imposing such taxes pursuant to the authority of this subdivision,  
2 whether or not such taxes are suspended at the time such city enacts its  
3 resolution pursuant to subdivision (k), (l) or (n) of this section or at  
4 the time of any such repeal; provided, further, that any such local law,  
5 ordinance or resolution and section eleven hundred seven of this chap-  
6 ter, as deemed to be amended in the event a city of one million or more  
7 enacts a resolution pursuant to the authority of subdivision (k), (l) or  
8 (n) of this section, shall be further amended, as provided in section  
9 twelve hundred eighteen of this subpart, so that the residential solar  
10 energy systems equipment exemption or the clothing and footwear  
11 exemption or the qualified empire zone enterprise exemptions in any such  
12 local law, ordinance or resolution or in such section eleven hundred  
13 seven are the same, as the case may be, as the residential solar energy  
14 systems equipment exemption provided for in subdivision (ee), the cloth-  
15 ing and footwear exemption in paragraph thirty of subdivision (a) or the  
16 qualified empire zone enterprise exemptions in subdivision (z) of  
17 section eleven hundred fifteen of this chapter].~~

18 § 37. Paragraph 4 of subdivision (a) of section 1210 of the tax law,  
19 as amended by section 5 of part SS1 of chapter 57 of the laws of 2008,  
20 is amended to read as follows:

21 (4) Notwithstanding any other provision of law to the contrary, any

22 local law enacted by any city of one million or more that imposes the  
23 taxes authorized by this subdivision (i) may omit the exception provided  
24 in subparagraph (ii) of paragraph three of subdivision (c) of section  
25 eleven hundred five of this chapter for receipts from laundering, dry-  
26 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;  
27 (ii) may impose the tax described in paragraph six of subdivision (c) of  
28 section eleven hundred five of this chapter at a rate in addition to the  
29 rate prescribed by this section not to exceed two percent in multiples  
30 of one-half of one percent; (iii) shall provide that the tax described  
31 in paragraph six of subdivision (c) of section eleven hundred five of  
32 this chapter does not apply to facilities owned and operated by the city  
33 or an agency or instrumentality of the city or a public corporation the  
34 majority of whose members are appointed by the chief executive officer  
35 of the city or the legislative body of the city or both of them; (iv)  
36 shall not include any tax on receipts from, or the use of, the services  
37 described in paragraph seven of subdivision (c) of section eleven  
38 hundred five of this chapter; (v) shall provide that, for purposes of  
39 the tax described in subdivision (e) of section eleven hundred five of  
40 this chapter, "permanent resident" means any occupant of any room or  
41 rooms in a hotel for at least one hundred eighty consecutive days with  
42 regard to the period of such occupancy; (vi) may omit the exception  
43 provided in paragraph one of subdivision (f) of section eleven hundred  
44 five of this chapter for charges to a patron for admission to, or use  
45 of, facilities for sporting activities in which the patron is to be a  
46 participant, such as bowling alleys and swimming pools; (vii) shall not  
47 provide the clothing and footwear exemption in paragraph thirty of  
48 subdivision (a) of section eleven hundred fifteen of this chapter but  
49 must exempt clothing and footwear and any item used or consumed to make  
50 or repair exempt clothing and which becomes a physical component part of  
51 that exempt clothing; (viii) shall omit the exemption provided in para-  
52 graph forty-one of subdivision (a) of section eleven hundred fifteen of  
53 this chapter; (ix) shall omit the exemption provided in subdivision (c)  
54 of section eleven hundred fifteen of this chapter insofar as it applies  
55 to fuel, gas, electricity, refrigeration and steam, and gas, electric,  
56 refrigeration and steam service of whatever nature for use or consump-  
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1 tion directly and exclusively in the production of gas, electricity,  
2 refrigeration or steam; and (x) shall omit, unless such city elects  
3 otherwise, the provision for refund or credit contained in clause six of  
4 subdivision (a) or in subdivision (d) of section eleven hundred nineteen  
5 of this chapter.

6 § 38. Paragraph 1 of subdivision (b) of section 1210 of the tax law,  
7 as separately amended by section 36 of part Y and section 11 of part GG  
8 of chapter 63 of the laws of 2000, is amended to read as follows:

9 (1) Or, one or more of the taxes described in subdivisions (b), (d),  
10 (e) and (f) of section eleven hundred five of this chapter, at the same  
11 uniform rate, including the transitional provisions in section eleven  
12 hundred six of this chapter covering such taxes, but not the taxes  
13 described in subdivisions (a) and (c) of section eleven hundred five of  
14 this chapter. Provided, further, that where the tax described in subdivi-  
15 sion (b) of section eleven hundred five of this chapter is imposed,  
16 the compensating use taxes described in clauses (E), (G) and (H) of  
17 subdivision (a) of section eleven hundred ten of this chapter shall also  
18 be imposed. Provided, further, that where the taxes described in subdivi-  
19 sion (b) of section eleven hundred five are imposed, such taxes shall  
20 omit the [~~exemptions provided for in subdivision (z) of section eleven~~  
21 ~~hundred fifteen~~] provision for refund or credit contained in subdivision  
22 (d) of section eleven hundred nineteen of this chapter with respect to  
23 such taxes described in such subdivision (b) of section eleven hundred  
24 five unless such city or county elects to provide such [~~exemptions~~]  
25 provision or, if so elected, to repeal such [~~exemptions~~] provision.

26 § 39. Subdivision (d) of section 1210 of the tax law, as amended by

27 section 12 of part GG of chapter 63 of the laws of 2000, is amended to  
28 read as follows:

29 (d) A local law, ordinance or resolution imposing any tax pursuant to  
30 this section, increasing or decreasing the rate of such tax, repealing  
31 or suspending such tax, exempting from such tax the energy sources and  
32 services described in paragraph three of subdivision (a) or of subdivi-  
33 sion (b) of this section or changing the rate of tax imposed on such  
34 energy sources and services or providing for the credit or refund  
35 described in clause six of subdivision (a) of section eleven hundred  
36 nineteen of this chapter must go into effect only on one of the follow-  
37 ing dates: March first, June first, September first or December first;  
38 provided, that a local law, ordinance or resolution providing for the  
39 exemption described in paragraph thirty of subdivision (a) [~~or providing~~  
40 ~~for the exemptions described in subdivision (z)~~] of section eleven  
41 hundred fifteen of this chapter or repealing any such exemption so  
42 provided and a resolution enacted pursuant to the authority of subdivi-  
43 sion (k) of this section providing such exemption [~~or subdivision (l) of~~  
44 ~~this section providing such exemptions~~] or repealing such exemption [~~or~~  
45 ~~exemptions~~] so provided or a local law, ordinance or resolution provid-  
46 ing for a refund or credit described in subdivision (d) of section elev-  
47 en hundred nineteen of this chapter or repealing such provision so  
48 provided must go into effect only on March first. No such local law,  
49 ordinance or resolution shall be effective unless a certified copy of  
50 such law, ordinance or resolution is mailed by registered or certified  
51 mail to the commissioner at the commissioner's office in Albany at least  
52 ninety days prior to the date it is to become effective. However, the  
53 commissioner may waive and reduce such ninety-day minimum notice  
54 requirement to a mailing of such certified copy by registered or certi-  
55 fied mail within a period of not less than thirty days prior to such  
56 effective date if the commissioner deems such action to be consistent  
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1 with the commissioner's duties under section twelve hundred fifty of  
2 this article and the commissioner acts by resolution. Where the  
3 restriction provided for in section twelve hundred twenty-three of this  
4 article as to the effective date of a tax and the notice requirement  
5 provided for therein are applicable and have not been waived, the  
6 restriction and notice requirement in section twelve hundred twenty-  
7 three of this article shall also apply.

8 § 40. Subdivision (1) of section 1210 of the tax law is REPEALED.

9 § 41. Subdivision (d) of section 1211 of the tax law, as amended by  
10 chapter 577 of the laws of 1997, is amended to read as follows:

11 (d) A local law or resolution imposing any tax pursuant to this  
12 section, increasing or decreasing the rate of such tax, repealing or  
13 suspending such tax or providing for the credit or refund described in  
14 clause six of subdivision (a) of section eleven hundred nineteen of this  
15 chapter must go into effect only on one of the following dates: March  
16 first, June first, September first or December first, subject to further  
17 requirement as to effective date provided for in subdivision (b) of this  
18 section; provided, that a local law or resolution providing for a refund  
19 or credit described in subdivision (d) of section eleven hundred nine-  
20 teen of this chapter or repealing such provision so provided must go  
21 into effect only on March first, subject to further requirement as to  
22 effective date provided for in subdivision (b) of this section. No such  
23 local law or resolution shall be effective unless a certified copy of  
24 such local law or resolution is mailed by registered or certified mail  
25 to the commissioner at the commissioner's office in Albany at least  
26 ninety days prior to the date it is to become effective. However, the  
27 commissioner may waive and reduce such ninety-day minimum notice  
28 requirement to a mailing of such certified copy by registered or certi-  
29 fied mail within a period of not less than thirty days prior to such  
30 effective date if the commissioner deems such action to be consistent  
31 with the commissioner's duties under section twelve hundred fifty of

32 this article and the commissioner acts by resolution. Where the  
33 restriction provided for in section twelve hundred twenty-three of this  
34 article as to the effective date of a tax and the notice requirement  
35 provided for therein are applicable and have not been waived, the  
36 restriction and notice requirement in section twelve hundred twenty-  
37 three of this article shall also apply.

38 § 42. Subdivisions (a) and (e) of section 1212 of the tax law, as  
39 amended by section 14 of part GG and subdivision (a) as separately  
40 amended by section 37 of part Y of chapter 63 of the laws of 2000, are  
41 amended to read as follows:

42 (a) Any school district which is coterminous with, partly within or  
43 wholly within a city having a population of less than one hundred twen-  
44 ty-five thousand, is hereby authorized and empowered, by majority vote  
45 of the whole number of its school authorities, to impose for school  
46 district purposes, within the territorial limits of such school district  
47 and without discrimination between residents and nonresidents thereof,  
48 the taxes described in subdivision (b) of section eleven hundred five  
49 (but excluding the tax on prepaid telephone calling services) and the  
50 taxes described in clauses (E) and (H) of subdivision (a) of section  
51 eleven hundred ten, including the transitional provisions in subdivision  
52 (b) of section eleven hundred six of this chapter, so far as such  
53 provisions can be made applicable to the taxes imposed by such school  
54 district and with such limitations and special provisions as are set  
55 forth in this article, such taxes to be imposed at the rate of one-half,  
56 one, one and one-half, two, two and one-half or three percent which rate  
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1 shall be uniform for all portions and all types of receipts and uses  
2 subject to such taxes. In respect to such taxes, all provisions of the  
3 resolution imposing them, except as to rate and except as otherwise  
4 provided herein, shall be identical with the corresponding provisions in  
5 such article twenty-eight of this chapter, including the applicable  
6 definition and exemption provisions of such article, so far as the  
7 provisions of such article twenty-eight of this chapter can be made  
8 applicable to the taxes imposed by such school district and with such  
9 limitations and special provisions as are set forth in this article. The  
10 taxes described in subdivision (b) of section eleven hundred five (but  
11 excluding the tax on prepaid telephone calling service) and clauses (E)  
12 and (H) of subdivision (a) of section eleven hundred ten, including the  
13 transitional provision in subdivision (b) of such section eleven hundred  
14 six of this chapter, may not be imposed by such school district unless  
15 the resolution imposes such taxes so as to include all portions and all  
16 types of receipts and uses subject to tax under such subdivision (but  
17 excluding the tax on prepaid telephone calling service) and clauses.  
18 Provided, however, that, where a school district imposes such taxes,  
19 such taxes shall omit the ~~[exemptions provided for in subdivision (z) of~~  
20 ~~section eleven hundred fifteen]~~ provision for refund or credit contained  
21 in subdivision (d) of section eleven hundred nineteen of this chapter  
22 with respect to such taxes described in such subdivision (b) of section  
23 eleven hundred five unless such school district elects to provide such  
24 ~~[exemptions]~~ provision or, if so elected, to repeal such ~~[exemptions]~~  
25 provision.

26 (e) A resolution imposing a tax pursuant to this section, increasing  
27 or decreasing the rate of such tax, or repealing or suspending such tax  
28 must go into effect only on one of the following dates: March first,  
29 June first, September first or December first; provided, that a resolu-  
30 tion providing for the ~~[exemptions described in subdivision (z) of~~  
31 ~~section eleven hundred fifteen]~~ refund or credit described in subdivi-  
32 sion (d) of section eleven hundred nineteen of this chapter or repealing  
33 such ~~[exemptions so provided]~~ provision must go into effect only on  
34 March first. No such resolution shall be effective unless a certified  
35 copy of such resolution is mailed by registered or certified mail to the  
36 commissioner at the commissioner's office in Albany at least ninety days

37 prior to the date it is to become effective. However, the commissioner  
38 may waive and reduce such ninety-day minimum notice requirement to a  
39 mailing of such certified copy by registered or certified mail within a  
40 period of not less than thirty days prior to such effective date if the  
41 commissioner deems such action to be consistent with the commissioner's  
42 duties under section twelve hundred fifty of this article and the  
43 commissioner acts by resolution.

44 § 43. Notwithstanding any provision of state or local law, ordinance  
45 or resolution to the contrary:

46 (a) Every local enactment that elected the qualified empire zone  
47 enterprise exemptions described in subdivision (z) of section 1115 of  
48 the tax law elected by a county or city pursuant to the authority of  
49 article 29 of the tax law that is in effect on the day before this act  
50 becomes a law or was elected prior to such date to take effect at a  
51 later date is hereby amended to elect the refund or credit described in  
52 subdivision (d) of section 1119 of the tax law.

53 (b) A county or city that elected the qualified empire zone enterprise  
54 exemptions described in subdivision (z) of section 1115 of the tax law  
55 pursuant to the authority of article 29 of the tax law may repeal such  
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1 exemptions in accord with the provisions of subdivisions (d) and (e) of  
2 section 1210 of the tax law.

3 § 44. Subdivision (m) of section 14 of the tax law is REPEALED.

4 § 45. The tax law is amended by adding a new section 17 to read as  
5 follows:

6 § 17. Empire Zones Tax Benefits Report. (a) The tax department must  
7 publish an empire zones tax benefits report annually by January thirty-  
8 first. The first report must be published by January thirty-first, two  
9 thousand thirteen.

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

14 (A) the name of each taxpayer claiming a credit; and

15 (B) the amount of each credit earned by each taxpayer.

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

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

27 (A) the name of each taxpayer claiming a credit or refund; and

28 (B) the total amount of credits or refunds allowed to each taxpayer.

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

33 § 46. This act shall take effect immediately, provided, however, that:

34 (a) sections fourteen through twenty-five of this act shall apply to  
35 taxable years beginning on and after April 1, 2009;

36 (b) sections thirty-two and thirty-three and sections thirty-six  
37 through forty-two of this act shall take effect on the first day of the  
38 sales tax quarter next commencing at least 60 days after this act  
39 becomes a law; and provided further that any refund or credit allowed  
40 pursuant to the amendments made by section thirty-three of this act may  
41 not be paid for that quarter for at least two hundred seventy days after  
42 this act becomes a law;

43 (c) section thirty-five of this act shall take effect April 1, 2009;  
44 and  
45 (d) the amendments to subdivision (u) of section 957 of the general  
46 municipal law made by section one of this act shall not affect the  
47 repeal of such subdivision and shall be deemed repealed therewith.

48 PART L

49 Section 1. Subdivision 4 of section 22 of the public housing law, as  
50 amended by section 1 of part XX-1 of chapter 57 of the laws of 2008, is  
51 amended to read as follows:

52 4. Statewide limitation. The aggregate dollar amount of credit which  
53 the commissioner may allocate to eligible low-income buildings under  
54 this article shall be [~~twenty~~] twenty-four million dollars. The limita-  
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1 tion provided by this subdivision applies only to allocation of the  
2 aggregate dollar amount of credit by the commissioner, and does not  
3 apply to allowance to a taxpayer of the credit with respect to an eligi-  
4 ble low-income building for each year of the credit period.

5 § 2. This act shall take effect immediately.

6 PART M

7 Section 1. Subsection (f) of section 615 of the tax law, as added by  
8 chapter 28 of the laws of 1987, is amended to read as follows:

9 (f) The New York itemized deduction otherwise allowable under this  
10 section shall be reduced by the sum of the amounts determined under  
11 paragraphs one [~~and~~], two and three of this subsection.

12 (1) An amount equal to the New York itemized deduction otherwise  
13 allowable under subsection (a) of this section, multiplied by a percent-  
14 age, such percentage to be determined by multiplying, for taxable years  
15 beginning in nineteen hundred eighty-eight, ten percent, and for taxable  
16 years beginning after nineteen hundred eighty-eight, twenty-five  
17 percent, by a fraction,

18 (A) in the case of an unmarried individual or married individual  
19 filing a separate return, the numerator of which is the lesser of fifty  
20 thousand dollars or the excess of such individual's New York adjusted  
21 gross income over one hundred thousand dollars and the denominator of  
22 which is fifty thousand dollars;

23 (B) in the case of a married individual filing a joint return or a  
24 surviving spouse, the numerator of which is the lesser of fifty thousand  
25 dollars or the excess of such individual's New York adjusted gross  
26 income over two hundred thousand dollars and the denominator of which is  
27 fifty thousand dollars;

28 (C) in the case of a head of household, the numerator of which is the  
29 lesser of fifty thousand dollars or the excess of such individual's New  
30 York adjusted gross income over one hundred fifty thousand dollars and  
31 the denominator of which is fifty thousand dollars.

32 (2) An amount equal to the New York itemized deduction of an individ-  
33 ual otherwise allowable under subsection (a) of this section, multiplied  
34 by a percentage, such percentage to be determined by multiplying, for  
35 taxable years beginning in nineteen hundred eighty-eight, ten percent,  
36 and for taxable years beginning after nineteen hundred eighty-eight,  
37 twenty-five percent, by a fraction, the numerator of which is the lesser  
38 of fifty thousand dollars or the excess of such individual's New York  
39 adjusted gross income over four hundred seventy-five thousand dollars  
40 and the denominator of which is fifty thousand dollars.

41 (3) With respect to an individual whose New York adjusted gross income  
42 is over one million dollars, an amount equal to the New York itemized  
43 deduction of an individual otherwise allowable under subsection (a) of  
44 this section, except the portion of the deduction attributable to any  
45 charitable contribution allowed under section one hundred seventy of the

46 internal revenue code, multiplied by fifty percent, for taxable years  
47 beginning after two thousand eight.

48 § 2. Clause (ii) of subparagraph (B) of paragraph 3 of subsection (c)  
49 of section 685 of the tax law, as amended by section 2 of part Y3 of  
50 chapter 62 of the laws of 2003, is amended to read as follows:

51 (ii) one hundred percent of the tax shown on the return of the indi-  
52 vidual for the preceding taxable year. Provided, however, the tax shown  
53 on such return for taxable years beginning in two thousand two shall be  
54 the tax calculated as if such years began in two thousand three.  
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1 Provided further, however, that the tax shown on such return for taxable  
2 years beginning in two thousand eight shall be calculated as if para-  
3 graph three of subsection (f) of section six hundred fifteen of this  
4 article has been in effect for taxable years beginning in two thousand  
5 eight.

6 § 3. Subdivision (f) of section 11-1715 of the administrative code of  
7 the city of New York, as added by chapter 333 of the laws of 1987, is  
8 amended to read as follows:

9 (f) The city itemized deduction otherwise allowable under this section  
10 shall be reduced by the sum of the amounts determined under paragraphs  
11 one [~~and~~], two and three of this subdivision.

12 (1) An amount equal to the city itemized deduction otherwise allowable  
13 under subdivision (a) of this section, multiplied by a percentage, such  
14 percentage to be determined by multiplying, for taxable years beginning  
15 in nineteen hundred eighty-eight, ten percent, and for taxable years  
16 beginning after nineteen hundred eighty-eight, twenty-five percent, by a  
17 fraction,

18 (A) in the case of an unmarried individual or married individual  
19 filing a separate return, the numerator of which is the lesser of fifty  
20 thousand dollars or the excess of such individual's city adjusted gross  
21 income over one hundred thousand dollars and the denominator of which is  
22 fifty thousand dollars;

23 (B) in the case of a married individual filing a joint return or a  
24 surviving spouse, the numerator of which is the lesser of fifty thousand  
25 dollars or the excess of such individual's city adjusted gross income  
26 over two hundred thousand dollars and the denominator of which is fifty  
27 thousand dollars;

28 (C) in the case of a head of household, the numerator of which is the  
29 lesser of fifty thousand dollars or the excess of such individual's city  
30 adjusted gross income over one hundred fifty thousand dollars and the  
31 denominator of which is fifty thousand dollars.

32 (2) An amount equal to the city itemized deduction of an individual  
33 otherwise allowable under subdivision (a) of this section, multiplied by  
34 a percentage, such percentage to be determined by multiplying, for taxa-  
35 ble years beginning in nineteen hundred eighty-eight, ten percent, and  
36 for taxable years beginning after nineteen hundred eighty-eight, twen-  
37 ty-five percent, by a fraction, the numerator of which is the lesser of  
38 fifty thousand dollars or the excess of such individual's city adjusted  
39 gross income over four hundred seventy-five thousand dollars and the  
40 denominator of which is fifty thousand dollars.

41 (3) With respect to an individual whose city adjusted gross income is  
42 over one million dollars, an amount equal to the city itemized deduction  
43 of an individual otherwise allowable under subdivision (a) of this  
44 section, except the portion of the deduction attributable to any chari-  
45 table contribution allowed under section one hundred seventy of the  
46 internal revenue code, multiplied by fifty percent, for taxable years  
47 beginning after two thousand eight.

48 § 4. Clause (ii) of subparagraph (B) of paragraph 3 of subdivision (c)  
49 of section 11-1785 of the administrative code of the city of New York,  
50 as amended by chapter 55 of the laws of 1992, is amended to read as  
51 follows:

52 (ii) one hundred percent of the tax shown on the return of the indi-

53 vidual for the preceding taxable year. Provided, however, that the tax  
54 shown on such return for taxable years beginning in two thousand eight  
55 shall be calculated as if paragraph three of subdivision (f) of section  
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1 11-1715 of this chapter was in effect for taxable years beginning in two  
2 thousand eight.

3 § 5. Notwithstanding the provisions of subsection (c) of section 685  
4 of the tax law or subdivision (c) of section 11-1785 of the administra-  
5 tive code of the city of New York, no addition to tax as a result of an  
6 underpayment of estimated tax that is attributable to the amendments  
7 made by sections one, two and three of this act shall be imposed with  
8 respect to any installment the due date for the payment of which is  
9 prior to 45 days after the date this act shall have become a law.

10 § 6. Notwithstanding any provision of law to the contrary, the commis-  
11 sioner of taxation and finance is authorized to prescribe by regulations  
12 the method of determining the amount to be deducted and withheld from  
13 wages on account of taxes imposed by or pursuant to the authority of  
14 article 22 of the tax law in taxable years beginning in 2009 in  
15 connection with the implementation of section one of this act. The  
16 commissioner of taxation and finance may adjust the withholding tables  
17 in regard to taxable years beginning in 2009 to account for the  
18 provisions of this act. In prescribing any such regulations, the commis-  
19 sioner of taxation and finance may adopt rules on an emergency basis  
20 notwithstanding anything to the contrary in section 202 of the state  
21 administrative procedure act. In carrying out his duties and responsi-  
22 bilities under this section, the commissioner of taxation and finance  
23 may accompany any such rule making procedure with a similar procedure  
24 with respect to the taxes required to be deducted and withheld by local  
25 laws imposing taxes pursuant to the authority of articles 30, 30-A and  
26 30-B of the tax law that take effect and become applicable in taxable  
27 years beginning in 2009, the provisions of any other law in relation to  
28 such a procedure to the contrary notwithstanding.

29 § 7. This act shall take effect immediately.

30 PART N

31 Section 1. Subparagraph (B) of paragraph 1 of subsection (b) of  
32 section 631 of the tax law, as amended by chapter 28 of the laws of  
33 1987, is amended to read as follows:

34 (B) a business, trade, profession or occupation carried on in this  
35 state, including investment management services to a partnership or  
36 other entity as defined in subsection (h) of this section; or

37 § 2. Section 631 of the tax law is amended by adding a new subsection  
38 (h) to read as follows:

39 (h) Special rules for partners providing investment management  
40 services. (1) For purposes of this section, the term "investment manage-  
41 ment services to a partnership or other entity" means providing a  
42 substantial quantity of any of the following services to the partnership  
43 or other entity:

- 44 (i) Advising the partnership as to the value of any specified asset.
- 45 (ii) Advising the partnership as to the advisability of investing in,  
46 purchasing, or selling any specified asset.
- 47 (iii) Managing, acquiring, or disposing of any specified asset.
- 48 (iv) Arranging financing with respect to acquiring specified assets.
- 49 (v) Any activity in support of any service described in subparagraphs  
50 (i) through (iv) of this paragraph.

51 (2) For purposes of this subsection, the term "specified asset" means  
52 securities (as defined in section four hundred seventy-five (c)(2) of  
53 the internal revenue code without regard to the last sentence thereof),  
54 real estate, commodities (as defined in section four hundred seventy-

1 five (e)(2) of the internal revenue code), or options or derivative  
2 contracts with respect to securities (as so defined), real estate, or  
3 commodities (as so defined).

4 § 3. This act shall take effect immediately and apply to taxable years  
5 beginning on or after January 1, 2009.

6 PART O

7 Section 1. The tax law is amended by adding a new section 30 to read  
8 as follows:

9 § 30. Research expenditures credit. (a) General. (1) A taxpayer  
10 subject to tax under article nine-A, twenty-two, thirty-two or thirty-  
11 three of this chapter shall be allowed a credit against such tax, pursu-  
12 ant to the provisions referenced in subdivision (e) of this section. The  
13 credit is equal to ten percent of the excess of the taxpayer's New York  
14 research expenditures incurred during the taxable year over the average  
15 amount of the taxpayer's New York research expenditures incurred during  
16 the two immediately preceding taxable years. If the taxpayer does not  
17 have two immediately preceding taxable years, then the credit is equal  
18 to ten percent of the excess of the taxpayer's New York research expend-  
19 itures incurred during the taxable year over the taxpayer's New York  
20 research expenditures incurred during the immediately preceding taxable  
21 year. The taxpayer is not allowed to claim this credit during its first  
22 taxable year in New York.

23 (2) New York research expenditures equal the sum of:

24 (A) the qualified research expenses that would qualify for the credit  
25 allowed under section 41 of the internal revenue code for research  
26 activities conducted in this state, and

27 (B) the grants made for qualified research by the taxpayer to a quali-  
28 fied research consortium, an educational institution, and an organiza-  
29 tion which is a state or federal laboratory for research activities to  
30 be conducted by that organization in this state.

31 (b) Meaning of terms. The terms "qualified research expenses", "quali-  
32 fied research", "qualified research consortium", and "educational insti-  
33 tution" shall have the same meanings as when used in section 41 of the  
34 internal revenue code, as such section of such code applied on December  
35 thirty-first, two thousand eight.

36 (c) Research expenditures credit certificates. To be eligible for the  
37 credit allowed by this section, a taxpayer shall obtain a research  
38 expenditures credit certificate from the urban development corporation.  
39 A taxpayer shall apply to the urban development corporation by January  
40 thirty-first of each year with respect to New York research expenditures  
41 incurred during the preceding taxable year. The urban development corpo-  
42 ration shall award research expenditures credit certificates by March  
43 thirty-first of each year, pursuant to procedures specified in rules and  
44 regulations promulgated by such corporation. Each research expenditures  
45 credit certificate shall specify the maximum amount of credit that the  
46 taxpayer is allowed to claim for the taxable year to which the credit  
47 certificate relates. For the state fiscal year commencing April first,  
48 two thousand nine, the urban development corporation shall not issue, in  
49 the aggregate, more than twenty million dollars of research expenditures  
50 credit certificates. For the state fiscal year commencing April first,  
51 two thousand ten, the aggregate amount of such certificates shall not be  
52 more than thirty-three million dollars. For the state fiscal year  
53 commencing April first, two thousand eleven and for each fiscal year

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1 thereafter, the aggregate of such certificates shall not be more than  
2 forty-five million dollars.

3 (d) Research expenditures credit report. (1) The department shall  
4 publish a research expenditures credit report annually by January thir-  
5 ty-first. The first report shall be published by January thirty-first,  
6 two thousand thirteen.

7 (2)(A) The research expenditures credit report shall contain the  
8 following information about the credits claimed under this section  
9 during the previous calendar year:

10 (i) the name of each taxpayer claiming a research credit; and

11 (ii) the amount of research credit earned by each taxpayer;

12 (B) If the taxpayer claims a credit pursuant to this section because  
13 the taxpayer is a member of a limited liability company treated as a  
14 partnership for federal tax purposes, a partner in a partnership or a  
15 shareholder in a subchapter S corporation, the name of each limited  
16 liability company, partnership or subchapter S corporation associated  
17 with any of those credits and the amount of credit associated with each  
18 entity shall be included in the report instead of information about the  
19 taxpayer claiming the credit.

20 (3) The information included in the research expenditures credit  
21 report shall be based on the information filed with the department  
22 during the previous calendar year, to the extent that it is practicable  
23 to use that information.

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

26 (1) article 9-A: section 210: subdivision 41.

27 (2) article 22: section 606: subsection (qq).

28 (3) article 32: section 1456: subsection (u).

29 (4) article 33: section 1511: subdivision (y).

30 § 2. Section 210 of the tax law is amended by adding a new subdivision  
31 41 to read as follows:

32 41. Research expenditures credit. (a) Allowance of credit. A taxpayer  
33 shall be allowed a credit, to be computed as provided in section thirty  
34 of this chapter, against the tax imposed by this article.

35 (b) Application of credit. The credit allowed under this subdivision  
36 for any taxable year shall not reduce the tax due for such year to less  
37 than the higher of the amounts prescribed in paragraphs (c) and (d) of  
38 subdivision one of this section. However, if the amount of credits  
39 allowed under this subdivision for any taxable year reduces the tax to  
40 such amount, any amount of credit thus not deductible in such taxable  
41 year shall be treated as an overpayment of tax to be credited or  
42 refunded in accordance with the provisions of section one thousand  
43 eighty-six of this chapter. Provided, however, the provisions of  
44 subsection (c) of section one thousand eighty-eight of this chapter  
45 notwithstanding, no interest shall be paid thereon.

46 § 3. Section 606 of the tax law is amended by adding a new subsection  
47 (qq) to read as follows:

48 (qq) Research expenditures credit. (1) Allowance of credit. A taxpay-  
49 er shall be allowed a credit, to the extent allowed under section thirty  
50 of this chapter, against the tax imposed by this article.

51 (2) Application of credit. If the amount of the credit allowed under  
52 this subsection for any taxable year exceeds the taxpayer's tax for such  
53 year, the excess shall be treated as an overpayment of tax to be credit-  
54 ed or refunded in accordance with the provisions of section six hundred  
55 eighty-six of this article, provided, however, that no interest shall be  
56 paid thereon.

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1 § 4. Subparagraph (B) of paragraph (1) of subsection (i) of section  
2 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57  
3 of the laws of 2008, is amended to read as follows:

4 (B) shall be treated as the owner of a new business with respect to  
5 such share if the corporation qualifies as a new business pursuant to  
6 paragraph (j) of subdivision twelve of section two hundred ten of this  
7 chapter.

8 The corporation's credit base under  
9 section two hundred ten or section  
10 With respect to the following fourteen hundred fifty-six of this

11	credit under this section:	chapter is:	
12	Investment tax credit	Investment credit base	
13	under subsection (a)	or qualified	
14		rehabilitation	
15		expenditures under	
16		subdivision twelve of	
17		section two hundred ten	
18	Empire zone	Cost or other basis	
19	investment tax credit	under subdivision	
20	under subsection (j)	twelve-B	
21		of section two hundred	
22		ten	
23	Empire zone	Eligible wages under	
24	wage tax credit	subdivision nineteen of	
25	under subsection (k)	section two hundred ten	
26		or subsection (e) of	
27		section fourteen hundred	
28		fifty-six	
29	Empire zone	Qualified investments	
30	capital tax credit	and contributions under	
31	under subsection (l)	subdivision twenty of	
32		section two hundred ten	
33		or subsection (d) of	
34		section fourteen hundred	
35		fifty-six	
36	Agricultural property tax	Allowable school	
37	credit under subsection (n)	district property taxes under	
38		subdivision twenty-two of	
39		section two hundred ten	
40	Credit for employment	Qualified first-year wages or	
41	of persons with dis-	qualified second-year wages	
42	abilities under	under subdivision	
43	subsection (o)	twenty-three of section	
44		two hundred ten	
45		or subsection (f)	
46		of section fourteen	
47		hundred fifty-six	
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1	Employment incentive	Applicable investment credit	
2	credit under subsec-	base under subdivision	
3	tion (a-1)	twelve-D of section two	
4		hundred ten	
5	Empire zone	Applicable investment	
6	employment	credit under sub-	
7	incentive credit under	division twelve-C	
8	subsection (j-1)	of section two hundred ten	
9	Alternative fuels credit	Cost under subdivision	
10	under subsection (p)	twenty-four of section two	
11		hundred ten	
12	Qualified emerging	Applicable credit base	
13	technology company	under subdivision twelve-E	
14	employment credit	of section two hundred ten	
15	under subsection (q)		

16	Qualified emerging	Qualified investments under
17	technology company	subdivision twelve-F of
18	capital tax credit	section two hundred ten
19	under subsection (r)	
20	Credit for purchase of an	Cost of an automated
21	automated external defibrillator	external defibrillator under
22	under subsection (s)	subdivision twenty-five of
23		section two hundred ten
24		or subsection (j) of section
25		fourteen hundred fifty-six
26	Low-income housing	Credit amount under
27	credit under subsection (x)	subdivision thirty
28		of section two hundred ten or
29		subsection (l) of section
30		fourteen hundred fifty-six
31	Credit for transportation	Amount of credit under sub-
32	improvement contributions	division thirty-two of section
33	under subsection (z)	two hundred ten or subsection
34		(n) of section fourteen
35		hundred fifty-six
36	QEZE credit for real property	Amount of credit under
37	taxes under subsection (bb)	subdivision twenty-seven of
38		section two hundred ten or
39		subsection (o) of section
40		fourteen hundred fifty-six
41	QEZE tax reduction credit	Amount of benefit period
42	under subsection (cc)	factor, employment increase factor
43		and zone allocation
44		factor (without regard
45		to pro ration) under
46		subdivision twenty-eight of
47		section two hundred ten or
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1		subsection (p) of section
2		fourteen hundred fifty-six
3		and amount of tax factor
4		as determined under
5		subdivision (f) of section sixteen
6	Green building credit	Amount of green building credit
7	under subsection (y)	under subdivision thirty-one
8		of section two hundred ten
9		or subsection (m) of section
10		fourteen hundred fifty-six
11	Credit for long-term	Qualified costs under
12	care insurance premiums	subdivision twenty-five-a of
13	under subsection (aa)	section two hundred ten
14		or subsection (k) of section
15		fourteen hundred fifty-six
16	Brownfield redevelopment	Amount of credit
17	credit under subsection	under subdivision
18	(dd)	thirty-three of section
19		two hundred ten
20		or subsection (q) of

21		section fourteen hundred	
22		fifty-six	
23	Remediated brownfield	Amount of credit under	
24	credit for real property	subdivision thirty-four	
25	taxes for qualified	of section two hundred	
26	sites under subsection	ten or subsection (r) of	
27	(ee)	section fourteen hundred	
28		fifty-six	
29	Environmental	Amount of credit under	
30	remediation	subdivision thirty-five of	
31	insurance credit under	section two hundred	
32	subsection (ff)	ten or subsection	
33		(s) of section	
34		fourteen hundred	
35		fifty-six	
36	Empire state film production	Amount of credit for qualified	
37	credit under subsection (gg)	production costs in production	
38		of a qualified film under	
39		subdivision thirty-six of	
40		section two hundred ten	
41	Qualified emerging	Qualifying expenditures and	
42	technology company facilities,	development activities under	
43	operations and training credit	subdivision twelve-G of section	
44	under subsection (nn)	two hundred ten	
45	Security training tax	Amount of credit	
46	credit under	under subdivision thirty-seven	
47	subsection (ii)	of section two hundred ten or	
48		under subsection (t) of	
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1		section fourteen hundred fifty-six	
2	Credit for qualified fuel	Amount of credit under	
3	cell electric generating equipment	subdivision thirty-seven	
4	expenditures under subsection (g-2)	of section two hundred ten	
5		or subsection (t) of	
6		section fourteen hundred	
7		fifty-six	
8	Empire state commercial production	Amount of credit for qualified	
9	credit under subsection (jj)	production costs in production	
10		of a qualified commercial under	
11		subdivision thirty-eight of sec-	
12		tion two hundred ten	
13	Biofuel production	Amount of credit	
14	tax credit under	under subdivision	
15	subsection (jj)	thirty-eight of	
16		section two hundred ten	
17	Clean heating fuel credit	Amount of credit under	
18	under subsection (mm)	subdivision thirty-nine of	
19		section two hundred ten	
20	Credit for rehabilitation	Amount of credit under	
21	of historic properties	subdivision forty of	
22	under subsection (oo)	subsection two hundred ten	

23 Credit for companies who Amount of credit under  
24 provide transportation subdivision forty of  
25 to individuals section two hundred ten  
26 with disabilities  
27 under subsection (oo)

28 Research expenditures credit Amount of credit under  
29 under subsection (qq) section thirty

30 § 5. Section 1456 of the tax law is amended by adding a new subsection  
31 (u) to read as follows:

32 (u) Research expenditures credit. (1) Allowance of credit. A taxpayer  
33 shall be allowed a credit, to be computed as provided in section thirty  
34 of this chapter, against the tax imposed by this article.

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

46 § 6. Section 1511 of the tax law is amended by adding a new subdivi-  
47 sion (y) to read as follows:

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1 (y) Research expenditures credit. (1) Allowance of credit. A taxpayer  
2 shall be allowed a credit, to be computed as provided in section thirty  
3 of this chapter, against the taxes imposed by this article.

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

14 § 7. The chairman of the urban development corporation, after consult-  
15 ing with the commissioner of taxation and finance and the director of  
16 the division of the budget shall promulgate regulations by October 31,  
17 2009 to establish procedures for the awarding and allocation of the tax  
18 research expenditures credits allowed under section thirty of the tax  
19 law, as added by section one of this act. Such rules and regulations  
20 shall include a description of the standards to be used to evaluate the  
21 applications, the type of documentation to be provided by taxpayers to  
22 substantiate the taxpayer's New York research expenditures, and any  
23 other provisions the chairman determines to be necessary. Notwithstand-  
24 ing any other provisions to the contrary in the state administrative  
25 procedure act, the rules and regulations described in this section shall  
26 be adopted on an emergency basis if necessary.

27 § 8. The chairman of the urban development corporation shall publish a  
28 report on the research expenditures credit and the research expenditures  
29 credit certificate issuance process on or before January first of each  
30 year. Such report shall include, but not be limited to, the following  
31 information:

32 (a) the total number of recipients and the total amount of credits  
33 awarded;

34 (b) the name of every recipient of a research credit certificate; and

35 (c) the amount of credit awarded to each recipient of a research cred-  
36 it certificate.

37 The report shall be issued no later than 60 days after the conclusion of  
38 the research expenditures credit allocation process.

39 § 9. The chairman of the urban development corporation shall not issue  
40 research expenditures credit certificates for the credit for increasing  
41 research activities allowed under section 30 of the tax law, as added by  
42 section one of this act, until the director of the division of the budg-  
43 et, in consultation with the commissioner of taxation and finance, vali-  
44 dates that the Empire Zone Program reforms enacted as part of the 2009-  
45 2010 Executive Budget have resulted in \$100 million in savings for the  
46 2009-10 state fiscal year.

47 § 10. This act shall take effect immediately and shall apply to taxa-  
48 ble years beginning on or after January 1, 2009; provided, however that  
49 the empire state film production credit under subsection (gg), the  
50 empire state commercial production credit under subsection (jj) and the  
51 credit for companies who provide transportation to individuals with  
52 disabilities under subsection (oo) of section 606 of the tax law  
53 contained in section four of this act shall expire on the same date as  
54 provided in section 9 of part P of chapter 60 of the laws of 2004, as  
55 amended, section 10 of part V of chapter 62 of the laws of 2006, as  
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1 amended and section 5 of chapter 522 of the laws of 2006, as amended,  
2 respectively.

3 PART P

4 Section 1. Paragraph (b) of subdivision 12-G of section 210 of the tax  
5 law, as amended by section 1-a of part A of chapter 63 of the laws of  
6 2005, is amended to read as follows:

7 (b) An eligible taxpayer shall (i) have no more than one hundred full-  
8 time employees, of which at least seventy-five percent are employed in  
9 New York state, except as otherwise provided in this paragraph, (ii)  
10 have a ratio of research and development funds to net sales, as referred  
11 to in section thirty-one hundred two-e of the public authorities law,  
12 which equals or exceeds six percent during its taxable year, and (iii)  
13 have gross revenues, along with the gross revenues of its affiliates and  
14 related members, not exceeding twenty million dollars for the taxable  
15 year immediately preceding the year the taxpayer is allowed a credit  
16 under this subdivision. For purposes of this paragraph, the term  
17 "related member" shall have the same meaning as set forth in [~~clauses~~  
18 clause (A) [~~and (B)~~] of subparagraph one of paragraph (o) of subdivision  
19 nine of section two hundred eight of this article, and the term "affil-  
20 iates" shall mean those corporations that are members of the same affil-  
21 iated group (as defined in section fifteen hundred four of the internal  
22 revenue code) as the taxpayer. For purposes of subparagraph (i) of this  
23 paragraph, employees who are employed outside the United States during  
24 the taxable year cannot be considered; a taxpayer that meets the employ-  
25 ment requirements in subparagraph (i) of this paragraph in the first  
26 year in which the credit allowed by this subdivision is claimed will not  
27 be considered ineligible solely as a result of having more than one  
28 hundred full-time employees in other taxable years in which the credit  
29 is claimed, provided at least seventy-five percent of the full-time  
30 employees in the other taxable years are employed in New York state; and  
31 an individual who is a partner in a partnership that is a qualified  
32 emerging technology company will be considered a full-time employee if  
33 the individual partner participates in the partnership on a full-time  
34 basis during the taxable year and the involvement of the individual  
35 partner in the activities of the partnership during the taxable year  
36 satisfies the requirements for material participation for the same taxa-  
37 ble year within the meaning of subsection (h) of section 469 of the  
38 internal revenue code.

39 § 2. Subparagraphs (i) and (iii) of paragraph 2 of subsection (nn) of  
40 section 606 of the tax law, as amended by section 1-a of part A of chap-  
41 ter 63 of the laws of 2005, are amended to read as follows:

42 (i) have no more than one hundred full-time employees, of which at  
43 least seventy-five percent are employed in New York state, except as  
44 otherwise provided in this paragraph,

45 (iii) have gross revenues, along with the gross revenues of its affil-  
46 iates and related members, not exceeding twenty million dollars for the  
47 taxable year immediately preceding the year the taxpayer is allowed a  
48 credit under this subsection. For purposes of this paragraph, the term  
49 "related member" shall have the same meaning as set forth in [~~clauses~~]  
50 clause (A) [~~and (B)~~] of subparagraph one of paragraph (o) of subdivision  
51 9 of section two hundred eight of this chapter, and the term "affil-  
52 iates" shall mean those corporations that are members of the same affil-  
53 iated group (as defined in section fifteen hundred four of the internal  
54 revenue code) as the taxpayer. For purposes of subparagraph (i) of this  
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1 paragraph, employees who are employed outside the United States during  
2 the taxable year cannot be considered; a taxpayer that meets the employ-  
3 ment requirements in subparagraph (i) of this paragraph in the first  
4 year in which the credit allowed by this subsection is claimed will not  
5 be considered ineligible solely as a result of having more than one  
6 hundred full-time employees in other taxable years in which the credit  
7 is claimed, provided at least seventy-five percent of the full-time  
8 employees in the other taxable years are employed in New York state; and  
9 an individual who is a partner in a partnership that is a qualified  
10 emerging technology company will be considered a full-time employee if  
11 the individual partner participates in the partnership on a full-time  
12 basis during the taxable year and the involvement of the individual  
13 partner in the activities of the partnership during the taxable year  
14 satisfies the requirements for material participation for the same taxa-  
15 ble year within the meaning of subsection (h) of section 469 of the  
16 internal revenue code.

17 § 3. This act shall take effect immediately and apply to taxable years  
18 beginning on or after January 1, 2010.

19 PART Q

20 Section 1. Subdivision (b) of section 1101 of the tax law is amended  
21 by adding a new paragraph 27-a to read as follows:

22 (27-a) (i) "Cable service" means the furnishing to purchasers of  
23 programs and other content from one or more television or radio stations  
24 or networks or other persons, by means of wire, cable, fiber-optic,  
25 laser, microwave, radio wave, satellite, or any other means.

26 (ii) "Direct-to-home satellite service" means only programming trans-  
27 mitted or broadcast by satellite directly to the subscribers' premises  
28 without the use of ground receiving or distribution equipment, except at  
29 the subscribers' premises or in the uplink process to the satellite.

30 § 2. Subdivision (c) of section 1105 of the tax law is amended by  
31 adding a new paragraph 12 to read as follows:

32 (12) (A) Cable service, including any tangible personal property and  
33 any service or other content provided with the cable service, whether or  
34 not for a separate charge, but not including direct-to-home satellite  
35 service, internet access service as defined in note section 1101 of  
36 section 151 of title 47 of the United States code, or telephony or  
37 telegraphy or telephone or telegraph service of whatever nature.

38 (B) Notwithstanding any other provision of law to the contrary, if  
39 cable service is received in a motor vehicle or vessel, the service is  
40 sourced to the purchaser's "place of primary use," as that term is  
41 defined in paragraph twenty-six of subdivision (b) of section eleven  
42 hundred one of this article, except that: (i) the term "mobile telecom-  
43 munications customer" means "purchaser"; and (ii) subparagraph (ii) of

44 such paragraph does not apply.

45 § 3. The tax law is amended by adding a new section 1105-E to read as  
46 follows:

47 § 1105-E. State tax on direct-to-home satellite service. (a) A tax is  
48 hereby imposed and must be paid on direct-to-home satellite service, at  
49 a rate equal to the sum of: (1) the state rate in the opening paragraph  
50 of section eleven hundred five of this part; (2) the rate in subdivision  
51 (a) of section eleven hundred nine of this part if the service is deliv-  
52 ered within the metropolitan commuter transportation district estab-  
53 lished pursuant to section twelve hundred sixty-two of the public  
54 authorities law; and (3) the sum of the local rates of tax described in  
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1 subdivision (a) of section twelve hundred ten or section twelve hundred  
2 eleven of this chapter imposed pursuant to the authority of subpart B of  
3 part I of article twenty-nine of this chapter in the place where the  
4 service is delivered.

5 (b) Deposit and distribution of revenue. After subtracting the amount  
6 disposed of pursuant to subdivision (h) of section twelve hundred  
7 sixty-one of this chapter and the amount disposed of under subdivision  
8 (i) of section eleven hundred nine of this part, any remaining taxes,  
9 interest and penalties collected or received by the commissioner from  
10 the tax imposed by this section will be disposed of in accordance with  
11 section one hundred seventy-one-a of this chapter as provided in section  
12 eleven hundred forty-eight of this article.

13 (c) Except as otherwise provided in this section, the taxes imposed by  
14 this section will be identical to, and administered and collected in a  
15 like manner as, the taxes imposed by section eleven hundred five of this  
16 article. All the provisions of this article, including the definition  
17 and exemption provisions and the provisions relating or applicable to  
18 the administration, collection and disposition of the taxes imposed by  
19 that section will apply to the tax imposed by this section so far as  
20 those provisions can be made applicable to the tax imposed by this  
21 section, with such modifications as may be necessary in order to adapt  
22 the language of those provisions to the tax imposed by this section.  
23 Those provisions will apply with the same force and effect as if the  
24 language of those provisions had been set forth in full in this section,  
25 except to the extent that any of those provisions is either inconsistent  
26 with a provision of this section or is not relevant to the tax imposed  
27 by this section. For purposes of this section, any reference in this  
28 chapter to a tax or the taxes imposed by section eleven hundred five of  
29 this article will be deemed also to refer to the tax imposed by this  
30 section unless a different meaning is clearly required.

31 (d) Separate statement of tax. Every person required to collect the  
32 tax imposed by this section shall state, charge, and show that tax sepa-  
33 rately from the price or charge, and also separately from any other tax  
34 imposed by this article or other law on any sales slip, invoice, receipt  
35 or other statement or memorandum of the price or charge, paid or paya-  
36 ble, given to the customer.

37 (e) Taxes to be in addition to any other. The taxes imposed by this  
38 section shall be in addition to any other tax imposed or authorized to  
39 be imposed by this chapter or other law.

40 (f) Taxes not to apply to other impositions. The taxes imposed by this  
41 section shall not apply to the taxes imposed by section eleven hundred  
42 seven, eleven hundred eight, or eleven hundred nine of this article or  
43 to taxes authorized to be imposed by article twenty-nine of this chap-  
44 ter.

45 § 4. Section 1109 of the tax law is amended by adding a new subdivi-  
46 sion (i) to read as follows:

47 (i) Notwithstanding any other provision of law to the contrary, the  
48 portion of the taxes, interest and penalties collected or received by  
49 the commissioner from the tax imposed by section eleven hundred five-E  
50 of this part in the area of the state within the metropolitan commuter

51 transportation district based on the rate of tax in effect in subdivi-  
52 sion (a) of this section, will be disposed of in accordance with the  
53 provisions of subdivision (d) of this section.

54 § 5. Clause (ii) of paragraph 1 of subdivision (b) of section 1116 of  
55 the tax law, as amended by section 1 of part KK-1 of chapter 57 of the  
56 laws of 2008, is amended to read as follows:

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1 (ii) sales, other than for resale, of services described in subdivi-  
2 sion (b) or paragraph five or twelve of subdivision (c) of section eleven  
3 hundred five of this article or in section eleven hundred five-E of  
4 this article by that organization, whether or not at a shop or store;

5 § 6. Section 1148 of the tax law, as amended by chapter 3 of the laws  
6 of 2004, is amended to read as follows:

7 § 1148. Deposit and disposition of revenue. All taxes, interest and  
8 penalties collected or received by the commissioner under this article  
9 shall be deposited and disposed of pursuant to the provisions of section  
10 one hundred seventy-one-a of this chapter; provided however, the comp-  
11 troller shall on or before the twelfth day of each month, pay all such  
12 taxes, interest and penalties collected under this article and remaining  
13 to the comptroller's credit in such banks, banking houses or trust  
14 companies at the close of business on the last day of the preceding  
15 month, into the general fund of the state treasury, except as otherwise  
16 provided in sections ninety-two-d and ninety-two-r of the state finance  
17 law ~~[and]~~, sections eleven hundred two, eleven hundred four and eleven  
18 hundred nine of this article, and subdivision (b) of section eleven  
19 hundred five-E of this article.

20 § 7. Section 1261 of the tax law is amended by adding a new subdivi-  
21 sion (h) to read as follows:

22 (h) Notwithstanding any provision of law to the contrary, a portion of  
23 the taxes, interest and penalties collected or received by the commis-  
24 sioner from the tax imposed by section eleven hundred five-E of this  
25 chapter will be allocated to each locality that imposes the taxes  
26 described in subdivision (a) of section twelve hundred ten or section  
27 twelve hundred eleven of this article based on the sum of the local  
28 rates of tax in effect in that locality imposed pursuant to the authori-  
29 ty of subpart B of part I of this article. The amount to be allocated to  
30 each locality will be certified by the commissioner in accordance with  
31 subdivision (a) of this section and, after reserving an amount for  
32 refunds and the reasonable costs of the commissioner in accordance with  
33 subdivision (b) of this section, the remainder will be net collections  
34 and will be distributed to each locality in accordance with the  
35 provisions of this part applicable to the respective locality.

36 § 8. In accordance with section 1105-E of the tax law, as added by  
37 section three of this act, the legislature intends that the tax on  
38 direct-to-home satellite service be imposed at the same total rate as  
39 similar services are taxed under article 28 and pursuant to the authori-  
40 ty of article 29 of the tax law, and that, consistent with the  
41 provisions of section 152 of title 47 of the United States code, the  
42 state revenues derived from the tax on direct-to-home satellite service  
43 be shared with each locality that imposes the taxes described in subdivi-  
44 sion (a) of section 1210 or 1211 of the tax law as provided in this  
45 act. However, the legislature further intends that, if the state rate  
46 set forth in such section 1105-E is invalidated or reduced by a court of  
47 final, competent jurisdiction, revenues from the sales tax imposed on  
48 direct-to-home satellite service must be preserved by imposing a uniform  
49 state rate of sales tax on that service. Therefore, if a court of final,  
50 competent jurisdiction adjudges the state sales tax rate set forth in  
51 such section 1105-E to be invalid, the state rate imposed on direct-to-  
52 home satellite service will be eight and three-quarters percent and that  
53 rate will apply statewide. The taxes, interest and penalties collected  
54 or received by the commissioner of taxation and finance from such state-  
55 wide rate, after reserving an amount for refunds and the reasonable

1 rates among the state and any county and city imposing general sales  
2 taxes pursuant to the authority of subdivision (a) of section 1210 of  
3 the tax law and any school district in which the taxes authorized by  
4 section 1211 of the tax law are in effect, and if the taxes imposed by  
5 section 1109 of the tax law are in effect where the service is deliv-  
6 ered, will be deposited with the mass transit operating assistance fund  
7 as provided in such section 1109. Moreover, the state rate provided for  
8 in this section will, in that event, take effect on the first day of the  
9 first month following the date the judgment of the court becomes final  
10 and will apply to sales occurring and services rendered on or after that  
11 date, in accordance with the applicable transitional provisions in  
12 section 1106 of the tax law.

13 § 9. This act shall take effect on June 1, 2009, and shall apply to  
14 sales occurring and services rendered on or after that date in accord-  
15 ance with the applicable transitional provisions in sections 1106 and  
16 1217 of the tax law.

17 PART R

18 Section 1. Subdivision 1 of section 470 of the tax law, as amended by  
19 section 1 of part MM1 of chapter 57 of the laws of 2008, is amended to  
20 read as follows:

21 1. "Cigarette." (a) Any roll for smoking made wholly or in part of  
22 tobacco or of any other substance wrapped in paper or in any other  
23 substance not containing tobacco, and (b) any roll for smoking made  
24 wholly or in part of tobacco wrapped in any substance containing tobacco  
25 that, because of its appearance, the type of tobacco used in the filler,  
26 or its packaging and labeling, is likely to be offered to, or purchased  
27 by, consumers as a cigarette described in paragraph (a) of this subdivi-  
28 sion. [~~However, a roll will not be considered to be a cigarette for~~  
29 ~~purposes of paragraph (b) of this subdivision if it is not treated as a~~  
30 ~~cigarette for federal excise tax purposes under the applicable federal~~  
31 ~~statute in effect on April first, two thousand eight.~~]

32 § 2. Paragraph (a) of subdivision 1 of section 471-b of the tax law,  
33 as amended by section 2 of part QQ1 of chapter 57 of the laws of 2008,  
34 is amended and a new paragraph (c) is added to read as follows:

35 (a) Such tax on tobacco products other than snuff and cigars shall be  
36 at the rate of thirty-seven percent of the wholesale price, and is  
37 intended to be imposed only once upon the sale of any tobacco products  
38 other than snuff and cigars.

39 (c) Such tax on cigars shall be at the rate of fifty cents per cigar.

40 § 3. Section 471-c of the tax law, as separately amended by section 3  
41 of part QQ1 of chapter 57 and chapter 552 of the laws of 2008, is  
42 amended to read as follows:

43 § 471-c. Use tax on tobacco products. (a) There is hereby imposed and  
44 shall be paid a tax on all tobacco products used in the state by any  
45 person, except that no such tax shall be imposed (1) if the tax provided  
46 in section four hundred seventy-one-b of this article is paid, or (2) on  
47 the use of tobacco products which are exempt from the tax imposed by  
48 said section, or (3) on the use of two hundred fifty cigars or less, or  
49 five pounds or less of tobacco other than roll-your-own tobacco, or  
50 thirty-six ounces or less of roll-your-own tobacco brought into the  
51 state on, or in the possession of, any person.

52 [~~(a)~~] (i) Such tax on tobacco products other than snuff and cigars  
53 shall be at the rate of thirty-seven percent of the wholesale price.

1 [~~(b)~~] (ii) Such tax on snuff shall be at the rate of ninety-six cents  
2 per ounce and a proportionate rate on any fractional parts of an ounce,  
3 provided that cans or packages of snuff with a net weight of less than

4 one ounce shall be taxed at the equivalent rate of cans or packages  
5 weighing one ounce. Such tax shall be computed based on the net weight  
6 as listed by the manufacturer.

7 (iii) Such tax on cigars shall be at the rate of fifty cents per  
8 cigar.

9 (b) Within twenty-four hours after liability for the tax accrues, each  
10 such person shall file with the commissioner a return in such form as  
11 the commissioner may prescribe together with a remittance of the tax  
12 shown to be due thereon. For purposes of this article, the word "use"  
13 means the exercise of any right or power actual or constructive and  
14 shall include but is not limited to the receipt, storage or any keeping  
15 or retention for any length of time, but shall not include possession  
16 for sale. All the other provisions of this article, if not inconsistent,  
17 shall apply to the administration and enforcement of the tax imposed by  
18 this section in the same manner as if the language of said provisions  
19 had been incorporated in full into this section.

20 § 4. Paragraphs (e) and (f) of subdivision 2 of section 480 of the tax  
21 law, as amended by chapter 744 of the laws of 1990, are amended and a  
22 new paragraph (g) is added to read as follows:

23 (e) ~~[Any]~~ Such applicant or any controlling person ~~[of such applicant]~~  
24 has committed any of the acts specified in subdivision three of this  
25 section within the preceding five years, ~~[or]~~

26 (f) Such applicant or any controlling person has been finally deter-  
27 mined to have violated any of the provisions of this article or article  
28 twenty-A of this chapter, or any rule or regulation adopted pursuant to  
29 this article or article twenty-A of this chapter~~[-], or~~

30 (g) After carefully evaluating the character, fitness, experience,  
31 maturity and financial responsibility of the applicant or any control-  
32 ling person, the commissioner determines that the public convenience and  
33 advantage would not be served by approval of the application.

34 § 5. Subparagraphs (ii), (iii) and (iv) of paragraph (b) of subdivi-  
35 sion 3 of section 480 of the tax law, subparagraphs (ii) and (iii) as  
36 added by chapter 860 of the laws of 1987 and subparagraph (iv) as  
37 amended by chapter 61 of the laws of 1989, are amended and two new  
38 subparagraphs (v) and (vi) are added to read as follows:

39 (ii) Has been convicted in a court of competent jurisdiction, either  
40 within or without the state, of a ~~[felony]~~ crime, bearing on the  
41 licensee's duties and obligations under this chapter,

42 (iii) Has impersonated any person represented to be a wholesale dealer  
43 under this article but not in fact licensed under this section, ~~[or]~~

44 (iv) Has knowingly aided and abetted the sale of cigarettes or tobacco  
45 products by a person which such licensee or controlling person knows (A)  
46 has not been licensed by the commissioner ~~[of taxation and finance]~~ and  
47 (B) is a wholesale dealer pursuant to the terms of subdivision eight of  
48 section four hundred seventy of this ~~[chapter-]~~ article,

49 (v) Has been convicted in a court of competent jurisdiction, either  
50 within or without the state, of a crime involving moral turpitude, or

51 (vi) Has engaged in conduct which bears on the licensee's or control-  
52 ling person's character, fitness, experience, maturity or financial  
53 responsibility and would have allowed the commissioner to refuse to  
54 issue a license to such licensee.

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1 § 6. Paragraphs (a) and (b) of subdivision 4 of section 480-a of the  
2 tax law, as added by chapter 629 of the laws of 1996, are amended to  
3 read as follows:

4 (a) If a retail dealer possesses or sells unstamped or unlawfully  
5 stamped packages of cigarettes, or if a retail dealer is also licensed  
6 as an agent pursuant to section four hundred seventy-two of this article  
7 and it possesses unlawfully stamped packages of cigarettes or sells  
8 unstamped or unlawfully stamped packages of cigarettes at retail, or if  
9 a retail dealer possesses or sells tobacco products with respect to  
10 which the tobacco products tax has not been paid or assumed by a

11 distributor or a tobacco products dealer, (i) its registration shall be  
12 suspended for a period of not more than six months, or (ii) for a second  
13 such possession or sale within a period of five years, its registration  
14 shall be suspended for a period of up to thirty-six months, or (iii) for  
15 a third such possession or sale within a period of five years, its  
16 registration may be revoked for a period of up to five years. A retail  
17 dealer registration shall be suspended or revoked pursuant to this  
18 subdivision immediately upon such dealer's receipt of written notice of  
19 suspension or revocation from the commissioner. If a retail dealer sells  
20 cigarettes or tobacco products through more than one place of business  
21 in this state, the retail dealer registration shall not be suspended or  
22 revoked pursuant to this subdivision, but the certificate of registra-  
23 tion issued to the place of business, cart, stand, truck or other  
24 merchandising device where unstamped or unlawfully stamped cigarettes or  
25 tobacco products with respect to which the tobacco products tax has not  
26 been paid or assumed by a distributor or a tobacco products dealer were  
27 found shall be suspended or cancelled for possession or sale of  
28 unstamped or unlawfully stamped packages of cigarettes or such tobacco  
29 products, as if such certificate of registration were a retail dealer  
30 registration. A suspension or cancellation of a certificate of registra-  
31 tion shall be treated as if it were a suspension or revocation of a  
32 registration. If unstamped or unlawfully stamped cigarettes or such  
33 tobacco products are found in a retail dealer's warehouse, the suspen-  
34 sion or revocation of the retail dealer's registration pursuant to this  
35 subdivision shall be applicable to each retail place of business in this  
36 state through which such retail dealer sells cigarettes or tobacco  
37 products.

38 (b) A retail dealer who is notified of a suspension or revocation of  
39 its registration pursuant to this subdivision shall have the right to  
40 have the suspension or revocation reviewed by the commissioner or his or  
41 her designee by contacting the department at a telephone number or an  
42 address to be disclosed in the notice of suspension or revocation within  
43 ten days of such dealer's receipt of such notification. The retail deal-  
44 er may present written evidence or argument in support of its defense to  
45 the suspension or revocation, or may appear at a scheduled conference  
46 with the commissioner or his or her designee to present oral arguments  
47 and written and oral evidence in support of such defense. The commis-  
48 sioner or his or her designee is authorized to delay the effective date  
49 of the suspension or revocation to enable the retail dealer to present  
50 further evidence or arguments in connection with the suspension or revo-  
51 cation. The commissioner or his or her designee shall cancel the suspen-  
52 sion or revocation of registration if the commissioner or his or her  
53 designee is not satisfied by a preponderance of the evidence that the  
54 retail dealer possessed or sold unstamped or unlawfully stamped packages  
55 of cigarettes or tobacco products with respect to which the tobacco

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1 products tax had not been paid or assumed by a distributor or a tobacco  
2 products dealer.

3 § 7. Paragraph (b) of subdivision 1 of section 481 of the tax law, as  
4 amended by chapter 262 of the laws of 2000, subparagraph (i) and clause  
5 (A) of subparagraph (ii) as amended by chapter 604 of the laws of 2008,  
6 is amended and a new paragraph (e) is added to read as follows:

7 (b) (i) In addition to any other penalty imposed by this article, the  
8 commissioner may (A) impose a penalty of not more than one hundred fifty  
9 dollars for each two hundred cigarettes, or fraction thereof, in excess  
10 of one thousand cigarettes in unstamped or unlawfully stamped packages  
11 in the possession or under the control of any person or (B) impose a  
12 penalty of not more than two hundred dollars for each ten unaffixed  
13 false, altered or counterfeit cigarette tax stamps, imprints or  
14 impressions, or fraction thereof, in the possession or under the control  
15 of any person. In addition, the commissioner may impose a penalty of not  
16 more than seventy-five dollars for each fifty cigars or one pound of

17 [~~tobacco~~] snuff, or fraction thereof, in excess of two hundred fifty  
18 cigars or five pounds of [~~tobacco~~] snuff in the possession or under the  
19 control of any person and a penalty of not more than one hundred fifty  
20 dollars for each fifty cigars or pound of [~~tobacco~~] snuff, or fraction  
21 thereof, in excess of five hundred cigars or ten pounds of [~~tobacco~~]  
22 snuff in the possession or under the control of any person, with respect  
23 to which the tobacco products tax has not been paid or assumed by a  
24 distributor or tobacco products dealer; provided, however, that any such  
25 penalty imposed shall not exceed seven thousand five hundred dollars in  
26 the aggregate. The commissioner may impose a penalty of not more than  
27 seventy-five dollars for each fifty cigars or one pound of [~~tobacco~~]  
28 snuff, or fraction thereof, in excess of fifty cigars or one pound of  
29 [~~tobacco~~] snuff in the possession or under the control of any tobacco  
30 products dealer or distributor appointed by the commissioner, and a  
31 penalty of not more than one hundred fifty dollars for each fifty cigars  
32 or pound of [~~tobacco~~] snuff, or fraction thereof, in excess of two  
33 hundred fifty cigars or five pounds of [~~tobacco~~] snuff in the possession  
34 or under the control of any such dealer or distributor, with respect to  
35 which the tobacco products tax has not been paid or assumed by a  
36 distributor or a tobacco products dealer; provided, however, that any  
37 such penalty imposed shall not exceed fifteen thousand dollars in the  
38 aggregate.

39 (ii) The penalties imposed by this subparagraph may be imposed by the  
40 commissioner in addition to any other penalty imposed by this article,  
41 but in lieu of the penalties imposed by subparagraph (i) of this para-  
42 graph:

43 (A) (I) (1) not less than thirty dollars but not more than two hundred  
44 dollars for each two hundred cigarettes, or fraction thereof, in excess  
45 of one thousand cigarettes but less than or equal to five thousand ciga-  
46 rettes in unstamped or unlawfully stamped packages knowingly in the  
47 possession or knowingly under the control of any person or (2) not less  
48 than thirty dollars but not more than two hundred dollars for each ten  
49 unaffixed false, altered or counterfeit cigarette tax stamps, imprints  
50 or impressions, or fraction thereof, less than or equal to two hundred  
51 fifty unaffixed false, altered or counterfeit cigarette tax stamps,  
52 imprints or impressions, knowingly in the possession or [~~knowing~~] know-  
53 ingly under the control of any person;

54 (II) (1) not less than seventy-five dollars but not more than two  
55 hundred dollars for each two hundred cigarettes, or fraction thereof, in  
56 excess of five thousand cigarettes but less than or equal to twenty  
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1 thousand cigarettes in unstamped or unlawfully stamped packages know-  
2 ly in the possession or knowingly under the control of any person or (2)  
3 not less than seventy-five dollars but not more than two hundred dollars  
4 for each ten unaffixed false, altered or counterfeit cigarette tax  
5 stamps, imprints or impressions, or fraction thereof, in excess of two  
6 hundred fifty unaffixed false, altered or counterfeit cigarette tax  
7 stamps, imprints or impressions but less than or equal to one thousand  
8 unaffixed false, altered or counterfeit cigarette tax stamps, imprints  
9 or impressions, knowingly in the possession or knowingly under the  
10 control of any person; and

11 (III) (1) not less than one hundred dollars but not more than two  
12 hundred dollars for each two hundred cigarettes, or fraction thereof, in  
13 excess of twenty thousand cigarettes in unstamped or unlawfully stamped  
14 packages, knowingly in the possession or knowingly under the control of  
15 any person or (2) not less than one hundred dollars but not more than  
16 two hundred dollars for each ten unaffixed false, altered or counterfeit  
17 cigarette tax stamps, imprints or impressions, or fraction thereof, in  
18 excess of one thousand unaffixed false, altered or counterfeit cigarette  
19 tax stamps, imprints or impressions, knowingly in the possession or  
20 knowingly under the control of any person.

21 (B)(I) not less than twenty-five dollars but not more than one hundred

22 dollars for each fifty cigars or one pound of [~~tobacco~~] snuff, or frac-  
23 tion thereof, in excess of two hundred fifty cigars or five pounds of  
24 [~~tobacco~~] snuff knowingly in the possession or knowingly under the  
25 control of any person, with respect to which the tobacco products tax  
26 has not been paid or assumed by a distributor or tobacco products deal-  
27 er; and

28 (II) not less than fifty dollars but not more than two hundred dollars  
29 for each fifty cigars or pound of [~~tobacco~~] snuff, or fraction thereof,  
30 in excess of five hundred cigars or ten pounds of [~~tobacco~~] snuff know-  
31 ingly in the possession or knowingly under the control of any person,  
32 with respect to which the tobacco products tax has not been paid or  
33 assumed by a distributor or tobacco products dealer; provided, however,  
34 that any such penalty imposed under this clause shall not exceed ten  
35 thousand dollars in the aggregate.

36 (C) (I) not less than twenty-five dollars but not more than one  
37 hundred dollars for each fifty cigars or one pound of [~~tobacco~~] snuff,  
38 or fraction thereof, in excess of fifty cigars or one pound of [~~tobacco~~]  
39 snuff knowingly in the possession or knowingly under the control of any  
40 person, with respect to which the tobacco products tax has not been paid  
41 or assumed by a distributor or tobacco products dealer; and

42 (II) not less than fifty dollars but not more than two hundred dollars  
43 for each fifty cigars or pound of [~~tobacco~~] snuff, or fraction thereof,  
44 in excess of two hundred fifty cigars or five pounds of [~~tobacco~~] snuff  
45 knowingly in the possession or knowingly under the control of any  
46 person, with respect to which the tobacco products tax has not been paid  
47 or assumed by a distributor or a tobacco products dealer; provided,  
48 however, that any such penalty imposed under this clause shall not  
49 exceed twenty thousand dollars in the aggregate.

50 (iii) In addition to any other penalty imposed by law, the commission-  
51 er may impose a penalty of two hundred percent of the amount of the tax  
52 for each pound of tobacco, other than cigars and snuff, in the  
53 possession or under the control of any person, with respect to which the  
54 tobacco products tax has not been paid or assumed by a distributor or  
55 tobacco products dealer. Provided, however, the penalty imposed under  
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1 this subparagraph shall only apply if the amount of tobacco, other than  
2 cigars and snuff, equals or exceeds five pounds.

3 (iv) Any penalty provided for in this paragraph shall be determined as  
4 provided in section four hundred seventy-eight of this [~~chapter~~]  
5 article, and may be reviewed only pursuant to such section. Such penalty  
6 shall be collected in the same manner as the taxes imposed by this arti-  
7 cle. The commissioner in [~~the commissioner's~~] his or her discretion, may  
8 remit all or part of such penalty. Such penalty shall be paid to the  
9 department and disposed of as hereinafter provided with respect to  
10 moneys derived from the tax.

11 (e) In addition to any other penalties that may be imposed by law, any  
12 or all of the following penalties may be imposed:

13 (i) Any person who fails to file an informational return under this  
14 article on or before the prescribed date must pay a penalty of fifteen  
15 hundred dollars for the first violation and a penalty of three thousand  
16 dollars for each subsequent violation, unless it can be shown that this  
17 failure is due to reasonable cause and not willful neglect.

18 (ii) Any person who fails to file an informational return within sixty  
19 days of the date prescribed for filing must pay a penalty of two thou-  
20 sand dollars for the first violation and a penalty of four thousand  
21 dollars for each subsequent violation, unless it can be shown that this  
22 failure is due to reasonable cause and not willful neglect.

23 (iii) Any person who fails to file a complete informational return  
24 must pay a penalty of fifteen hundred dollars for the first violation  
25 and a penalty of three thousand dollars for each subsequent violation,  
26 unless it can be shown that this failure is due to reasonable cause and  
27 not willful neglect.

28 (iv) In addition to any criminal penalty provided by law, if any  
29 person makes a statement on an informational return and, as of the time  
30 of the statement, there was no reasonable basis for such statement, that  
31 person must pay a penalty of two thousand dollars for the first  
32 violation and a penalty of four thousand dollars for each subsequent  
33 violation, unless it can be shown that this failure is due to reasonable  
34 cause and not willful neglect.

35 § 8. Section 481 of the tax law is amended by adding a new subdivision  
36 2-a to read as follows:

37 2-a. Any officer, director, shareholder or employee of a corporation  
38 or of a dissolved corporation, any employee of a partnership or any  
39 employee of an individual proprietorship, who as an officer, director,  
40 shareholder or employee is under a duty to act for such corporation,  
41 partnership or proprietorship in complying with any requirement of this  
42 article, and any partner of a partnership, that fails to pay the taxes  
43 imposed by or pursuant to this article, will, in addition to other  
44 penalties provided by law, be liable for a penalty equal to the total  
45 amount of the tax not paid, plus penalties and interest computed pursu-  
46 ant to this section. If the commissioner determines that this failure  
47 was due to reasonable cause and not due to willful neglect, it may waive  
48 all or part of the penalty imposed under this subdivision. That penalty  
49 will be determined, assessed, collected and paid in the same manner as  
50 the taxes imposed by this article and will be disposed of as hereinafter  
51 provided with respect to moneys derived from the tax.

52 § 9. This act shall take effect immediately; provided however that  
53 section one of this act shall take effect April 1, 2009; provided,  
54 further, that any tobacco product manufacturer required to file a  
55 certification between April 16 and April 30, 2008, under subdivision 1  
56 of section 480-b of the tax law, with respect to cigarettes that are  
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1 first being defined as cigarettes as a result of the amendments made by  
2 this act, must file that certification no later than 60 days after the  
3 date this act becomes a law; and provided further that sections two,  
4 three and four of this act shall take effect April 1, 2009, and shall  
5 apply to cigars that first become subject to taxation under article 20  
6 of the tax law on or after that date; and provided further that sections  
7 five, six, seven and eight of this act shall take effect on the first  
8 day of the first month next occurring 90 days after this act becomes a  
9 law and shall apply to sales made on or after such date.

10 PART S

11 Section 1. Paragraph 3 of subdivision (b) of section 1101 of the tax  
12 law, as amended by section 21 of part Y of chapter 63 of the laws of  
13 2000, is amended to read as follows:

14 (3) Receipt. The amount of the sale price of any property and the  
15 charge for any service taxable under this article, including gas and gas  
16 service and electricity and electric service of whatever nature, valued  
17 in money, whether received in money or otherwise and whether received  
18 from the purchaser or a third party, including any amount for which  
19 credit is allowed by the vendor to the purchaser, without any deduction  
20 for expenses [~~or~~], early payment discounts [~~and~~] or any discount given  
21 for a coupon. Receipt also [~~including~~] includes any charges by the  
22 vendor to the purchaser for shipping or delivery, and, with respect to  
23 gas and gas service and electricity and electric service, any charges by  
24 the vendor for transportation, transmission or distribution, regardless  
25 of whether such charges are separately stated in the written contract,  
26 if any, or on the bill rendered to such purchaser and regardless of  
27 whether such shipping or delivery or transportation, transmission, or  
28 distribution is provided by such vendor or a third party, but [~~exclud-~~  
29 ~~ing~~] excludes any credit for tangible personal property accepted in part  
30 payment and intended for resale. For special rules governing computation

31 of receipts, see section eleven hundred eleven of this article.  
32 § 2. Subdivision (b) of section 1101 of the tax law is amended by  
33 adding a new paragraph 33 to read as follows:  
34 (33) Coupon. (A) An instrument provided by a vendor or a third party,  
35 that is presented and surrendered by a purchaser to the vendor in order  
36 to receive a reduction in the sale price, whether or not any portion of  
37 the price reduction is paid to the vendor by a third party.  
38 (B) For purposes of the tax imposed by section eleven hundred ten and  
39 for purposes of section eleven hundred eleven of this article, the term  
40 "consideration" includes any discount given for a coupon.  
41 § 3. This act shall take effect on June 1, 2009 and shall apply to  
42 sales or uses occurring on or after that date in accordance with the  
43 applicable transitional provisions in sections 1106 and 1217 of the tax  
44 law.

45 PART T

46 Section 1. The closing paragraph of subdivision 1 of section 98-a of  
47 the state finance law, as amended by section 13 of part Y of chapter 61  
48 of the laws of 2005, is amended to read as follows:  
49 Provided, however, that income received from the investment of moneys  
50 of the local assistance account, the state purposes account and the  
51 capital projects fund may be credited in whole or in part to one or more  
52 of such funds to the extent necessary to reimburse first instance appro-  
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1 priations for interest on temporary obligations issued on behalf of the  
2 fund or funds to be credited. Notwithstanding any other provision of  
3 this section or of any other general or special law, all moneys avail-  
4 able and retained on deposit for the payment of lottery prizes may be  
5 invested or caused to be invested in obligations by the comptroller as  
6 herein provided [~~, except that~~] or in obligations other than as provided  
7 in this section, provided, however that such other investments shall be  
8 made with the care, skill, prudence and diligence under the circum-  
9 stances then prevailing that a prudent person acting in a like capacity  
10 and familiar with such matters would use in the conduct of an enterprise  
11 of a like character and with like aims, and that such other investments  
12 may be made by a money manager or other advisor recommended by the divi-  
13 sion of lottery and approved by the comptroller; and such obligations  
14 need not mature or be redeemable at the option of the holder within  
15 seven years of the date of such investment. Income received from such  
16 investments may be used for the payment of prizes awarded and made paya-  
17 ble in more than one payment, including prizes awarded and made payable  
18 throughout the lifetime of the lottery prize winner.  
19 § 2. This act shall take effect immediately.

20 PART U

21 Section 1. Paragraph 30 of subdivision (a) of section 1115 of the tax  
22 law, as amended by section 84 of part A of chapter 56 of the laws of  
23 1998, is amended to read as follows:  
24 (30) [~~Clothing~~] During the seven-day periods each year beginning the  
25 Monday immediately preceding the first Sunday of February and ending  
26 such Sunday, and beginning August twenty-fifth and ending August thir-  
27 ty-first, clothing and footwear for which the receipt or consideration  
28 given or contracted to be given is less than [~~one~~] five hundred [~~ten~~]  
29 dollars per article of clothing, per pair of shoes or other articles of  
30 footwear or per item used or consumed to make or repair such clothing  
31 and which becomes a physical component part of such clothing.  
32 § 2. Subdivision (g) of section 1109 of the tax law is amended by  
33 adding a new paragraph 9 to read as follows:  
34 (9) Notwithstanding that the sales and compensating use taxes imposed  
35 by a city of one million or more located in the metropolitan commuter

36 transportation district exempt clothing and footwear pursuant to the  
37 authority of clause (vii) of paragraph four of subdivision (a) of  
38 section twelve hundred ten of this article, during the two seven-day  
39 periods during which clothing and footwear are exempt from the taxes  
40 imposed by this article, such city shall, for purposes of this subdivi-  
41 sion, be deemed to have exempted such clothing and footwear pursuant to  
42 the authority of paragraph one of subdivision (a) of section twelve  
43 hundred ten of this chapter and such city and the state shall be subject  
44 to the reimbursement and other provisions of this subdivision.

45 § 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
46 amended by chapter 306 of the laws of 2005, subparagraph (i) of para-  
47 graph 1 as amended by section 4 of part SS1 of chapter 57 of the laws of  
48 2008 and subparagraph (ii) of paragraph 1 as amended by chapter 144 of  
49 the laws of 2006, is amended to read as follows:

50 (1) [~~(i)~~] Either, all of the taxes described in article twenty-eight  
51 of this chapter, at the same uniform rate, as to which taxes all  
52 provisions of the local laws, ordinances or resolutions imposing such  
53 taxes shall be identical, except as to rate and except as otherwise  
54 provided, with the corresponding provisions in such article twenty-  
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1 eight, including the definition and exemption provisions of such arti-  
2 cle, so far as the provisions of such article twenty-eight can be made  
3 applicable to the taxes imposed by such city or county and with such  
4 limitations and special provisions as are set forth in this article. The  
5 taxes authorized under this subdivision may not be imposed by a city or  
6 county unless the local law, ordinance or resolution imposes such taxes  
7 so as to include all portions and all types of receipts, charges or  
8 rents, subject to state tax under sections eleven hundred five and elev-  
9 en hundred ten of this chapter, except as otherwise provided.

10 (i) Any local law, ordinance or resolution enacted by any city of less  
11 than one million or by any county or school district, imposing the taxes  
12 authorized by this subdivision, shall, notwithstanding any provision of  
13 law to the contrary, exclude from the operation of such local taxes all  
14 sales of tangible personal property for use or consumption directly and  
15 predominantly in the production of tangible personal property, gas,  
16 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
17 essing, generating, assembly, refining, mining or extracting; and all  
18 sales of tangible personal property for use or consumption predominantly  
19 either in the production of tangible personal property, for sale, by  
20 farming or in a commercial horse boarding operation, or in both; and,  
21 unless such city, county or school district elects otherwise, shall omit  
22 the provision for credit or refund contained in clause six of subdivi-  
23 sion (a) of section eleven hundred nineteen of this chapter.

24 (ii) Any local law, ordinance or resolution enacted by any city, coun-  
25 ty or school district, imposing the taxes authorized by this subdivi-  
26 sion, shall omit the residential solar energy systems equipment  
27 exemption provided for in subdivision (ee), the clothing and footwear  
28 exemption provided for in paragraph thirty of subdivision (a) and the  
29 qualified empire zone enterprise exemptions provided for in subdivision  
30 (z) of section eleven hundred fifteen of this chapter, unless such city,  
31 county or school district elects otherwise as to either such residential  
32 solar energy systems equipment exemption or such clothing and footwear  
33 exemption or such qualified empire zone enterprise exemptions[~~;~~ ~~provided~~  
34 ~~that if such a city having a population of one million or more in which~~  
35 ~~the taxes imposed by section eleven hundred seven of this chapter are in~~  
36 ~~effect enacts the resolution described in subdivision (k) of this~~  
37 ~~section or repeals such resolution or enacts the resolution described in~~  
38 ~~subdivision (l) of this section or repeals such resolution or enacts the~~  
39 ~~resolution described in subdivision (n) of this section or repeals such~~  
40 ~~resolution, such resolution or repeal shall also be deemed to amend any~~  
41 ~~local law, ordinance or resolution enacted by such a city imposing such~~  
42 ~~taxes pursuant to the authority of this subdivision, whether or not such~~

~~43 taxes are suspended at the time such city enacts its resolution pursuant  
44 to subdivision (k), (l) or (n) of this section or at the time of any  
45 such repeal; provided, further, that any such local law, ordinance or  
46 resolution and section eleven hundred seven of this chapter, as deemed  
47 to be amended in the event a city of one million or more enacts a resolu-  
48 tion pursuant to the authority of subdivision (k), (l) or (n) of this  
49 section, shall be further amended, as provided in section twelve hundred  
50 eighteen of this subpart, so that the residential solar energy systems  
51 equipment exemption or the clothing and footwear exemption or the quali-  
52 fied empire zone enterprise exemptions in any such local law, ordinance  
53 or resolution or in such section eleven hundred seven are the same, as  
54 the case may be, as the residential solar energy systems equipment  
55 exemption provided for in subdivision (ee), the clothing and footwear  
56 exemption in paragraph thirty of subdivision (a) or the qualified empire~~

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~~1 zone enterprise exemptions in subdivision (z) of section eleven hundred  
2 fifteen of this chapter.~~

~~3 (ii) Notwithstanding any other provision of the law to the contrary,  
4 any county, imposing the taxes authorized by this subdivision, having a  
5 population of not less than one hundred thirty-nine thousand and not  
6 more than one hundred forty thousand, determined in accordance with the  
7 two thousand decennial federal census, may by local law, ordinance or  
8 resolution elect to exempt from such local sales and compensating use  
9 taxes clothing and footwear, as defined in paragraph fifteen of subdivi-  
10 sion (b) of section eleven hundred one of this chapter, for which the  
11 receipt or consideration given or contracted to be given is less than  
12 one hundred ten dollars per article of clothing, per pair of shoes or  
13 other articles of footwear or per item used or consumed to make or  
14 repair such clothing and which becomes a physical component part of such  
15 clothing. Every such county shall comply with the provisions of subdivi-  
16 sions (d) and (e) of this section, including such provisions applicable  
17 to providing or repealing the exemption described in paragraph thirty of  
18 subdivision (a) of section eleven hundred fifteen of this chapter.]~~

§ 4. Subdivision (k) of section 1210 of the tax law is REPEALED.

§ 5. Notwithstanding any provision of state or local law, ordinance or resolution to the contrary: (a) Every local law, ordinance or resolution or part of it providing for an exemption of clothing and footwear described in paragraph 30 of subdivision (a) of section 1115 of the tax law elected by a county or city (other than a city of one million or more) pursuant to the authority of article 29 of the tax law that is in effect on the day before this act shall have become a law or was elected prior to such date to take effect at a later date is REPEALED.

(b) A county or city (other than a city of one million or more) that imposes sales and compensating use taxes pursuant to the authority of paragraph 1 of subdivision (a) of section 1210 of the tax law, acting through its local legislative body, is authorized to adopt a resolution to take effect August 1, 2009, to elect the exemption for clothing and footwear described in paragraph 30 of subdivision (a) of section 1115 of the tax law, as amended by section one of this act. For the resolution to be effective, the county or city must: (i) adopt the resolution in exactly the form prepared by the commissioner of taxation and finance, on or before July 1, 2009; and (ii) mail a certified copy of it by that date to the commissioner of taxation and finance otherwise in accordance with the provisions of subdivision (d) of section 1210 of the tax law; and (iii) the county or city must also comply with the provisions of subdivision (e) of such section 1210. Such resolution shall, if properly adopted pursuant to this section, be deemed to amend the county's or city's local law, ordinance or resolution imposing its sales and use taxes to provide this exemption.

§ 6. This act shall take effect June 1, 2009, and shall apply in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law, provided that a county or city that imposes sales

48 and compensating use taxes pursuant to the authority of subdivision (a)  
49 of section 1210 of the tax law (other than a city of one million or  
50 more) shall be authorized to adopt a resolution described in section  
51 five of this act on or after the date this act becomes a law.

52

PART V

53 Section 1. Subdivision (c) of section 1105 of the tax law is amended  
54 by adding two new paragraphs 10 and 11 to read as follows:

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1 (10) Beauty, barbering, hair restoring, manicuring, pedicuring, elec-  
2 trolysis, massage services and similar services, and every service sold  
3 by weight control salons, health salons, gymnasiums, turkish and sauna  
4 bath and similar establishments and every charge for the use of those  
5 facilities, whether or not any tangible personal property is transferred  
6 in conjunction therewith; but excluding services rendered by a physi-  
7 cian, osteopath, dentist, nurse, physiotherapist, chiropractor, podia-  
8 trist, optometrist, ophthalmic dispenser or a person performing similar  
9 services licensed under title eight of the education law, as amended,  
10 and excluding those services when performed on pets and other animals. A  
11 sale of tangible personal property to a person for use by the person in  
12 performing a service subject to the tax imposed by this paragraph is not  
13 a purchase for resale.

14 (11) Credit rating and credit reporting services, including, but not  
15 limited to, those services provided by mercantile and consumer credit  
16 rating or reporting bureaus or agencies and credit adjustment or  
17 collection bureaus or agencies, whether rendered in written or oral form  
18 or in any other manner, except to the extent otherwise taxable under  
19 other provisions of this section. A sale of tangible personal property  
20 to a person for use by the person in performing a service subject to the  
21 tax imposed by this paragraph is not a purchase for resale. However, a  
22 refund or credit equal to the amount of the sales or compensating use  
23 tax imposed by subdivision (a) of this section or section eleven hundred  
24 ten of this part and paid on the sale or use of tangible personal prop-  
25 erty which is later used by such purchaser in performing a service  
26 subject to tax under this paragraph will be allowed that purchaser  
27 against the tax imposed by this paragraph and collected by that person  
28 on the sale of that service if that property has become a physical  
29 component part of the property upon which the service is performed or  
30 has been transferred to the purchaser of the service in conjunction with  
31 the performance of the service subject to tax, in the manner prescribed  
32 by subdivision (c) of section eleven hundred nineteen of this article.

33 § 2. The closing paragraph of subdivision (c) of section 1105 of the  
34 tax law, as amended by chapter 190 of the laws of 1990, is amended to  
35 read as follows:

36 Wages, salaries and other compensation paid by an employer to an  
37 employee for performing as an employee the services described in [~~para-~~  
38 ~~graphs (1) through (9) of~~] this subdivision [~~(c)~~] are not receipts  
39 subject to the taxes imposed [~~under such~~] by this subdivision.

40 § 3. Section 1106 of the tax law is amended by adding a new subdivi-  
41 sion (k) to read as follows:

42 (k) The taxes imposed by paragraphs ten and eleven of subdivision (c)  
43 of section eleven hundred five of this part must be paid with respect to  
44 receipts from all sales of services on or after the effective date of  
45 such taxes although rendered or agreed to be rendered under a prior  
46 contract. Where a service is sold on a monthly, quarterly, yearly or  
47 other term basis, the charge for the service will be subject to the tax  
48 imposed by those paragraphs to the extent that the charge is applicable  
49 to any period on or after the date the tax becomes effective, and the  
50 charge shall be apportioned on the basis of the ratio of the number of  
51 days falling within the period to the total number of days in the full  
52 term or period.

53 § 4. Subdivision (a) of section 1110 of the tax law, as amended by  
54 section 28 of part Y of chapter 63 of the laws of 2000, is amended to  
55 read as follows:

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1 (a) Except to the extent that property or services have already been  
2 or will be subject to the sales tax under this article, there is hereby  
3 imposed on every person a use tax for the use within this state on and  
4 after June first, nineteen hundred seventy-one except as otherwise  
5 exempted under this article, (A) of any tangible personal property  
6 purchased at retail, (B) of any tangible personal property (other than  
7 computer software used by the author or other creator) manufactured,  
8 processed or assembled by the user, (i) if items of the same kind of  
9 tangible personal property are offered for sale by him in the regular  
10 course of business or (ii) if items are used as such or incorporated  
11 into a structure, building or real property by a contractor, subcontrac-  
12 tor or repairman in erecting structures or buildings, or building on, or  
13 otherwise adding to, altering, improving, maintaining, servicing or  
14 repairing real property, property or land, as the terms real property,  
15 property or land are defined in the real property tax law, if items of  
16 the same kind are not offered for sale as such by such contractor,  
17 subcontractor or repairman or other user in the regular course of busi-  
18 ness, (C) of any of the services described in paragraphs (1), (7) ~~[and]~~,  
19 (8) and (11) of subdivision (c) of section eleven hundred five of this  
20 part, (D) of any tangible personal property, however acquired, where not  
21 acquired for purposes of resale, upon which any of the services  
22 described in paragraphs (2), (3) and (7) of subdivision (c) of section  
23 eleven hundred five of this part have been performed, (E) of any tele-  
24 phone answering service described in subdivision (b) of section eleven  
25 hundred five of this part, (F) of any computer software written or  
26 otherwise created by the user if the user offers software of a similar  
27 kind for sale as such or as a component part of other property in the  
28 regular course of business, (G) of any prepaid telephone calling  
29 service, and (H) of any gas or electricity described in subdivision (b)  
30 of section eleven hundred five of this part.

31 § 5. Subdivision (d) of section 1115 of the tax law, as amended by  
32 chapter 190 of the laws of 1990, is amended to read as follows:

33 (d) Services otherwise taxable under paragraph (1), (2), (3), (7)  
34 ~~[or]~~, (8) or (11) of subdivision (c) of section eleven hundred five of  
35 this article shall be exempt from tax under this article if the tangible  
36 property upon which the services were performed is delivered to the  
37 purchaser outside this state for use outside this state.

38 § 6. Subdivision (z) of section 1115 of the tax law is amended by  
39 adding a new paragraph 4 to read as follows:

40 (4) The exemptions provided in this subdivision shall not apply to the  
41 tax imposed by paragraph ten of subdivision (c) of section eleven  
42 hundred five of this article or to similar taxes imposed pursuant to the  
43 authority of article twenty-nine of this chapter.

44 § 7. Subdivision (b) of section 1116 of the tax law is amended by  
45 adding a new paragraph 8 to read as follows:

46 (8) sales of services described in paragraph ten or eleven of subdivi-  
47 sion (c) of section eleven hundred five of this article, unless the  
48 purchaser is an exempt organization.

49 § 8. Subdivision 4 of section 1131 of the tax law, as amended by  
50 section 34 of part Y of chapter 63 of the laws of 2000, is amended to  
51 read as follows:

52 (4) "Property and services the use of which is subject to tax" shall  
53 include: (a) all property sold to a person within the state, whether or  
54 not the sale is made within the state, the use of which property is  
55 subject to tax under section eleven hundred ten of this article or will  
56 become subject to tax when such property is received by or comes into

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1 the possession or control of such person within the state; (b) all  
2 information services, protective and detective services [~~and~~], interior  
3 decorating and design services, and credit rating and reporting services  
4 as such services are described in subdivision (c) of section eleven  
5 hundred five of this article, rendered to a person within the state,  
6 whether or not such services are rendered from or at a location within  
7 the state; (c) all services rendered to a person within the state,  
8 whether or not such services are performed within the state, upon tangi-  
9 ble personal property the use of which is subject to tax under section  
10 eleven hundred ten of this article or will become subject to tax when  
11 such property is received by or comes into possession or control of such  
12 person within the state; (d) all property sold by a person making sales  
13 described in clause (F) of subparagraph (i) of paragraph eight of subdi-  
14 vision (b) of section eleven hundred one of this article to a person  
15 described in such clause (F) who purchases such property at retail,  
16 whether or not the sale is made within the state; (e) all telephone  
17 answering service rendered to a person within the state, whether or not  
18 such services are performed within the state, the use of which is  
19 subject to tax under section eleven hundred ten of this article or will  
20 become subject to tax when such service is received by or comes into  
21 possession or control of such person within the state; (f) all prepaid  
22 telephone calling services sold to a person within the state, whether or  
23 not the sale is made within the state, the use of which services are  
24 subject to tax under section eleven hundred ten of this article or will  
25 become subject to tax when such services are received by or come into  
26 the possession or control of such person within the state, and whether  
27 or not such services are rendered from or at a location within the  
28 state; and (g) all gas or electricity sold to a person within the state,  
29 whether or not the sale is made within the state, the use of which is  
30 subject to tax under section eleven hundred ten of this article or will  
31 become subject to tax when it is received by or comes into the  
32 possession or control of such person within the state, and whether or  
33 not it is rendered from or at a location within the state.

34 § 9. Paragraphs 2 and 3 of subdivision (a) of section 1212-A of the  
35 tax law, paragraph 2 as amended by chapter 190 of the laws of 1990 and  
36 paragraph 3 as amended by chapter 525 of the laws of 2008, are amended  
37 to read as follows:

38 (2) [~~a tax, at the same uniform rate, but at a rate not to exceed four~~  
39 ~~per centum, in multiples of one-half of one per centum, on the receipts~~  
40 ~~from every sale of the following services: beauty, barbering, hair~~  
41 ~~restoring, manicuring, pedicuring, electrolysis, massage services and~~  
42 ~~similar services, and every sale of services by weight control salons,~~  
43 ~~health salons, gymnasiums, turkish and sauna bath and similar establish-~~  
44 ~~ments and every charge for the use of such facilities, whether or not~~  
45 ~~any tangible personal property is transferred in conjunction therewith,~~  
46 ~~but excluding services rendered by a physician, osteopath, dentist,~~  
47 ~~nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalm-~~  
48 ~~ic dispenser or a person performing similar services licensed under~~  
49 ~~title VIII of the education law, as amended, and excluding such services~~  
50 ~~when performed on pets and other animals.~~

51 (3) [~~for a period beginning no earlier than January first, nineteen~~  
52 ~~hundred ninety and ending December thirty first, two thousand eleven,~~] a  
53 tax, at the same uniform rate, but at a rate not to exceed four per  
54 centum, in multiples of one-half of one per centum, on the receipts from  
55 every sale of any or all of the following services in whole or in part:  
56 [~~credit rating, credit reporting,~~] credit adjustment and collection

1 services, including, but not limited to, those services provided by  
2 mercantile and consumer credit rating or reporting bureaus or agencies  
3 and credit adjustment or collection bureaus or agencies, whether  
4 rendered in written or oral form or in any other manner, except to the  
5 extent otherwise taxable under article twenty-eight of this chapter;

6 notwithstanding the foregoing, collection services shall not include  
7 those services performed by a law office or a law and collection office,  
8 the maintenance or conduct of which constitutes the practice of law, if  
9 the services are performed by an attorney at law who has been duly  
10 licensed and admitted to practice law in this state. The local law  
11 imposing the taxes authorized by this paragraph may provide for exclu-  
12 sions and exemptions in addition to those provided for in such para-  
13 graph.

14 § 10. Paragraphs 1 and 2 of subdivision (b) of section 1212-A of the  
15 tax law, as amended by chapter 190 of the laws of 1990, are amended to  
16 read as follows:

17 (1) All provisions set forth in article twenty-eight of this chapter  
18 applicable to the taxes imposed under section eleven hundred five of  
19 this chapter, including the definition and exemption provisions of such  
20 article, shall apply in respect to a tax imposed under the authority of  
21 subdivision (a) of this section, except as to rate and except as other-  
22 wise provided herein. A sale of tangible personal property to a person  
23 for use by [~~him~~] such person in performing a service subject to the tax  
24 imposed under the authority of paragraph two [~~or three~~] of subdivision  
25 (a) of this section shall not be deemed a purchase for resale for  
26 purposes of the taxes imposed by article twenty-eight of this chapter or  
27 pursuant to the authority of this article.

28 (2) However, with respect to a tax imposed under the authority of  
29 paragraph [~~three~~] two of subdivision (a) of this section a refund or  
30 credit equal to the amount of the sale or compensating use tax imposed  
31 by section eleven hundred seven of this chapter and paid on the sale or  
32 use of tangible personal property which is later used by such purchaser  
33 in performing a service subject to tax under such paragraph shall be  
34 allowed such purchaser against the tax imposed pursuant to such para-  
35 graph and collected by such person on the sale of such service if such  
36 property has become a physical component part of the property upon which  
37 the service is performed or has been transferred to the purchaser of the  
38 service in conjunction with the performance of the service subject to  
39 tax.

40 § 11. Section 11-2002 of the administrative code of the city of New  
41 York is REPEALED.

42 § 12. Subchapter 3 of chapter 20 of title 11 of the administrative  
43 code of the city of New York is REPEALED.

44 § 13. This act shall take effect June 1, 2009.

45

#### PART W

46 Section 1. Subdivision b of section 1612 of the tax law, as amended by  
47 chapter 140 of the laws of 2008, clauses (D) and (F) of subparagraph  
48 (ii) and subparagraph (iii) of paragraph 1 and paragraph 2 as separately  
49 amended by chapter 286 of the laws of 2008 and clause (G) of subpara-  
50 graph (ii) of paragraph 1 as added and clause (H) of subparagraph (ii)  
51 of paragraph 1 as amended by chapter 286 of the laws of 2008, is amended  
52 to read as follows:

53 b. 1. Notwithstanding section one hundred twenty-one of the state  
54 finance law, on or before the twentieth day of each month, the division  
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1 shall pay into the state treasury, to the credit of the state lottery  
2 fund created by section ninety-two-c of the state finance law, not less  
3 than forty-five percent of the total amount for which tickets have been  
4 sold for games defined in paragraph four of subdivision a of this  
5 section during the preceding month, not less than thirty-five percent of  
6 the total amount for which tickets have been sold for games defined in  
7 paragraph three of subdivision a of this section during the preceding  
8 month, not less than twenty percent of the total amount for which tick-  
9 ets have been sold for games defined in paragraph two of subdivision a  
10 of this section during the preceding month, provided however that for

11 games with a prize payout of seventy-five percent of the total amount  
12 for which tickets have been sold, the division shall pay not less than  
13 ten percent of sales into the state treasury and not less than twenty-  
14 five percent of the total amount for which tickets have been sold for  
15 games defined in paragraph one of subdivision a of this section during  
16 the preceding month; and the balance of the total revenue after payout  
17 for prizes for games known as "video lottery gaming," (i) less ten  
18 percent of the total revenue wagered after payout for prizes to be  
19 retained by the division for operation, administration, and procurement  
20 purposes; (ii) less a vendor's fee the amount of which is to be paid for  
21 serving as a lottery agent to the track operator of a vendor track:

22 (A) having fewer than one thousand one hundred video gaming machines,  
23 at a rate of thirty-six percent for the first fifty million dollars  
24 annually, twenty-nine percent for the next hundred million dollars annu-  
25 ally, and twenty-six percent thereafter of the total revenue wagered at  
26 the vendor track after payout for prizes pursuant to this chapter;

27 (B) having one thousand one hundred or more video gaming machines, at  
28 a rate of thirty-two percent of the total revenue wagered at the vendor  
29 track after payout for prizes pursuant to this chapter, except for such  
30 facility located in the county of Westchester, in which case the rate  
31 shall be thirty-four percent of the total revenue wagered at the vendor  
32 track after payout for prizes pursuant to this chapter, for a period of  
33 twenty-four months effective beginning April first, two thousand eight;  
34 provided, however, that in the event that the vendor track located in  
35 Westchester county completes a successful restructuring prior to March  
36 thirty-first, two thousand ten, the vendor fee will be reduced to thir-  
37 ty-two percent ninety days following the completion of the successful  
38 restructuring. A successful restructuring is defined as a restructuring  
39 of the existing debt obligations of such vendor track located in West-  
40 chester county that meets the following two conditions:

41 (i) it requires no more than twenty million dollars of additional  
42 equity invested in such track; and

43 (ii) results in average net interest costs of less than nine percent.

44 Notwithstanding the foregoing, the vendor fee at such track will  
45 become thirty-one percent effective April first, two thousand ten and  
46 remain at that level for a period equal to two times the period of time  
47 (measured in days) that the vendor fee was thirty-four percent or until  
48 March thirty-first, two thousand twelve, whichever is later. Notwith-  
49 standing the foregoing, not later than April first, two thousand twelve,  
50 the vendor fee shall become thirty-two percent and remain at that level  
51 thereafter; and except for Aqueduct racetrack, in which case the vendor  
52 fee shall be thirty-eight percent of the total revenue wagered at the  
53 vendor track after payout for prizes pursuant to this chapter;

54 (C) notwithstanding clauses (A) and (B) of this subparagraph, when the  
55 vendor track is located in an area with a population of less than one  
56 million within the forty mile radius around such track, at a rate of  
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1 forty percent for the first fifty million dollars annually, twenty-nine  
2 percent for the next hundred million dollars annually, and twenty-six  
3 percent thereafter of the total revenue wagered at the vendor track  
4 after payout for prizes pursuant to this chapter;

5 (D) notwithstanding clauses (A), (B) and (C) of this subparagraph,  
6 when the vendor track is located within fifteen miles of a Native Ameri-  
7 can class III gaming facility [~~or, for a period of five years effective~~  
8 ~~beginning April first, two thousand eight when the vendor track is~~  
9 ~~located within Sullivan county and within sixty miles from any gaming~~  
10 ~~facility in a contiguous state,~~] at a rate of forty-two percent of the  
11 total revenue wagered at the vendor track after payout for prizes pursu-  
12 ant to this chapter [~~unless such vendor track relocates outside the~~  
13 ~~specified geographic area sooner, in which case such rate shall be as~~  
14 ~~for all other tracks in the applicable clause of this subparagraph~~];

15 [~~(D) notwithstanding clauses (A), (B) and (C) of this subparagraph,~~

16 ~~when the vendor track is within fifteen miles of a Native American~~  
17 ~~gaming facility, at a rate of forty-two percent of the total revenue~~  
18 ~~wagered at the vendor track after payout for prizes pursuant to this~~  
19 ~~chapter;]~~

20 (E) notwithstanding clauses (A), (B), (C) and (D) of this subpara-  
21 graph, when a Native American class III gaming facility is established,  
22 after the effective date of this subparagraph, within fifteen miles of  
23 the vendor track, at a rate of forty-two percent of the total revenue  
24 wagered after payout for prizes pursuant to this chapter;

25 ~~[(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this~~  
26 ~~subparagraph, the track operator of a vendor track shall be eligible for~~  
27 ~~a vendor's capital award of up to four percent of the total revenue~~  
28 ~~wagered at the vendor track after payout for prizes pursuant to this~~  
29 ~~chapter, which shall be used exclusively for capital project investments~~  
30 ~~to improve the facilities of the vendor track which promote or encourage~~  
31 ~~increased attendance at the video lottery gaming facility including, but~~  
32 ~~not limited to hotels, other lodging facilities, entertainment facili-~~  
33 ~~ties, retail facilities, dining facilities, events arenas, parking~~  
34 ~~garages and other improvements that enhance facility amenities; provided~~  
35 ~~that such capital investments shall be approved by the division, in~~  
36 ~~consultation with the state racing and wagering board, and that such~~  
37 ~~vendor track demonstrates that such capital expenditures will increase~~  
38 ~~patronage at such vendor track's facilities and increase the amount of~~  
39 ~~revenue generated to support state education programs. The annual amount~~  
40 ~~of such vendor's capital awards that a vendor track shall be eligible to~~  
41 ~~receive shall be limited to two million five hundred thousand dollars,~~  
42 ~~except for Aqueduct racetrack, for which there shall be no vendor's~~  
43 ~~capital awards. Except for tracks having less than one thousand one~~  
44 ~~hundred video gaming machines, each track operator shall be required to~~  
45 ~~co-invest an amount of capital expenditure equal to its cumulative~~  
46 ~~vendor's capital awards. For all tracks, except for Aqueduct racetrack,~~  
47 ~~the amount of any vendor's capital award that is not used during any one~~  
48 ~~year period may be carried over into subsequent years ending before~~  
49 ~~April first, two thousand thirteen. Any amount attributable to a capital~~  
50 ~~expenditure approved prior to April first, two thousand thirteen and~~  
51 ~~completed before April first, two thousand fifteen shall be eligible to~~  
52 ~~receive the vendor's capital award. In the event that a vendor track's~~  
53 ~~capital expenditures, approved by the division prior to April first, two~~  
54 ~~thousand thirteen and completed prior to April first, two thousand~~  
55 ~~fifteen, exceed the vendor track's cumulative capital award during the~~  
56 ~~five year period ending April first, two thousand thirteen, the vendor~~  
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1 ~~shall continue to receive the capital award after April first, two thou-~~  
2 ~~sand thirteen until such approved capital expenditures are paid to the~~  
3 ~~vendor track subject to any required co-investment. In no event shall~~  
4 ~~such track facility located in Sullivan county and within sixty miles~~  
5 ~~from any gaming facility in a contiguous state be eligible for a~~  
6 ~~vendor's capital award under this section, unless it shall have moved~~  
7 ~~from such location or the five year period commencing on April first,~~  
8 ~~two thousand eight has expired, whichever comes first. Any operator of a~~  
9 ~~vendor track which has received a vendor's capital award, choosing to~~  
10 ~~divest the capital improvement toward which the award was applied, prior~~  
11 ~~to reaching the forty year straightline depreciation value of the~~  
12 ~~improvement, shall reimburse the state in amounts equal to the total of~~  
13 ~~any such awards. Any capital award not approved for a capital expendi-~~  
14 ~~ture at a video lottery gaming facility by April first, two thousand~~  
15 ~~thirteen shall be deposited in the state lottery fund for education aid;~~  
16 ~~and]~~

17 (E-1) for purposes of this subdivision, the term "class III gaming"  
18 shall have the meaning defined in 25 U.S.C. § 2703(8).

19 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-  
20 agraph, when a vendor track, is located in Sullivan county and within

21 sixty miles from any gaming facility in a contiguous state such vendor  
22 fee shall, for a period of five years commencing April first, two thou-  
23 sand eight, be at a rate of forty-two percent of the total revenue  
24 wagered at the vendor track after payout for prizes pursuant to this  
25 chapter, after which time such rate shall be as for all tracks in clause  
26 (C) of this subparagraph.

27 ~~[(G) For purposes of this subdivision, the term "class III gaming"~~  
28 ~~shall have the meaning defined in 25 U.S.C. § 2703(8).]~~

29 (G) notwithstanding any other provisions of this section, when a relo-  
30 cated vendor track at which a qualified capital investment has been made  
31 and no fewer than two thousand full-time, permanent employees have been  
32 newly hired, is located in Sullivan county and is within sixty miles  
33 from any gaming facility in a contiguous state, then for a period of  
34 forty years the division shall pay into the state treasury, to the cred-  
35 it of the state lottery fund created by section ninety-two-c of the  
36 state finance law the greater of (i) twenty-five percent of total reven-  
37 ue after payout for prizes for "video lottery games" or (ii) for the  
38 first eight years of operation thirty-eight million dollars, and begin-  
39 ning in the ninth year of operation such amount shall increase annually  
40 by the lesser of the increase in the consumer price index or two percent  
41 plus the division shall retain an amount equal to all actual expenses  
42 related to operations, administration and procurement of the video  
43 lottery terminal operation at the relocated vendor track, provided,  
44 however, such amount retained by the division shall not exceed seven  
45 percent of total revenue after payout of prizes. In addition, in the  
46 event the division makes a payment pursuant to subclause (i) of this  
47 clause, the division shall pay to the credit of the state lottery fund  
48 created by section ninety-two-c of the state finance law 11.11 percent  
49 of the amount by which total revenue after payout for prizes exceeds two  
50 hundred fifteen million dollars, but in no event shall such payment  
51 exceed five million dollars.

52 The balance shall be paid as a vendor's fee to the track operator of  
53 the relocated vendor track for serving as a lottery agent under this  
54 chapter.

55 Provided, however, that in the case of a relocated vendor track with a  
56 qualified capital investment, if at any time after July first, two thou-  
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1 sand ten the vendor track experiences an employment shortfall, then the  
2 recapture amount shall apply, for only such period as the shortfall  
3 exists.

4 For the purposes of this section "qualified capital investment" shall  
5 mean an investment of a minimum of one billion dollars as reflected by  
6 audited financial statements of which not less than three hundred  
7 million dollars shall be comprised of equity and/or mezzanine financing  
8 as an initial investment in a county where twelve percent of the popu-  
9 lation is below the federal poverty level as measured by the most recent  
10 Bureau of Census Statistics prior to the qualified capital investment  
11 commencing that results in the construction, development or improvement  
12 of at least one eighteen hole golf course, and the construction and  
13 issuance of certificates of occupancy for hotels, lodging, convention  
14 centers, spas, dining, retail and entertainment venues, parking garages  
15 and other capital improvements at or adjacent to the licensed video  
16 gaming facility or licensed vendor track which promote or encourage  
17 increased attendance at such facilities.

18 For the purposes of this section, "full-time, permanent employee"  
19 shall mean an employee who has worked at the vendor track or related and  
20 adjacent facilities for a minimum of thirty-five hours per week for not  
21 less than four consecutive weeks and who is entitled to receive the  
22 usual and customary fringe benefits extended to other employees with  
23 comparable rank and duties; or two part-time employees who have worked  
24 at the vendor track or related and adjacent facilities for a combined  
25 minimum of thirty-five hours per week for not less than four consecutive

26 weeks and who are entitled to receive the usual and customary fringe  
27 benefits extended to other employees with comparable rank and duties.

28 For the purpose of this section "employment goal" shall mean two thou-  
29 sand full-time permanent employees.

30 For the purpose of this section "employment shortfall" shall mean a  
31 level of employment that falls below the employment goal, as certified  
32 annually by vendor's certified accountants and the chairman of the  
33 empire state development corporation.

34 For the purposes of this section "recapture amount" shall mean the  
35 difference between the amount of the vendor's fee paid to a vendor track  
36 with a qualified capital investment, and the vendor fee otherwise paya-  
37 ble to a vendor track pursuant to clause (F) of this subparagraph, that  
38 is reimbursable by the vendor track to the division for payment into the  
39 state treasury, to the credit of the state lottery fund created by  
40 section ninety-two-c of the state finance law, due to an employment  
41 shortfall pursuant to the following schedule only for the period of the  
42 employment shortfall:

43 (i) sixty-six percent of the recapture amount if the employment short-  
44 fall is greater than fifty percent of the employment goal;

45 (ii) sixty percent of the recapture amount if the employment shortfall  
46 is greater than forty percent of the employment goal;

47 (iii) forty-five percent of the recapture amount if the employment  
48 shortfall is greater than thirty percent of the employment goal;

49 (iv) twenty percent of the recapture amount if the employment short-  
50 fall is greater than twenty percent of the employment goal;

51 (v) ten percent of the recapture amount if the employment shortfall is  
52 greater than ten percent of the employment goal.

53 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of  
54 this subparagraph, the track operator of a vendor track shall be eligi-  
55 ble for a vendor's capital award of up to four percent of the total  
56 revenue wagered at the vendor track after payout for prizes pursuant to  
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1 this chapter, which shall be used exclusively for capital project  
2 investments to improve the facilities of the vendor track which promote  
3 or encourage increased attendance at the video lottery gaming facility  
4 including, but not limited to hotels, other lodging facilities, enter-  
5 tainment facilities, retail facilities, dining facilities, events  
6 arenas, parking garages and other improvements that enhance facility  
7 amenities; provided that such capital investments shall be approved by  
8 the division, in consultation with the state racing and wagering board,  
9 and that such vendor track demonstrates that such capital expenditures  
10 will increase patronage at such vendor track's facilities and increase  
11 the amount of revenue generated to support state education programs. The  
12 annual amount of such vendor's capital awards that a vendor track shall  
13 be eligible to receive shall be limited to two million five hundred  
14 thousand dollars, except for Aqueduct racetrack, for which there shall  
15 be no vendor's capital awards. Except for tracks having less than one  
16 thousand one hundred video gaming machines, each track operator shall be  
17 required to co-invest an amount of capital expenditure equal to its  
18 cumulative vendor's capital award. For all tracks, except for Aqueduct  
19 racetrack, the amount of any vendor's capital award that is not used  
20 during any one year period may be carried over into subsequent years  
21 ending before April first, two thousand thirteen. Any amount attribut-  
22 able to a capital expenditure approved prior to April first, two thou-  
23 sand thirteen and completed before April first, two thousand fifteen  
24 shall be eligible to receive the vendor's capital award. In the event  
25 that a vendor track's capital expenditures, approved by the division  
26 prior to April first, two thousand thirteen and completed prior to April  
27 first, two thousand fifteen, exceed the vendor track's cumulative capi-  
28 tal award during the five year period ending April first, two thousand  
29 thirteen, the vendor shall continue to receive the capital award after  
30 April first, two thousand thirteen until such approved capital expendi-

31 tures are paid to the vendor track subject to any required co-invest-  
32 ment. In no event shall any vendor track that receives a vendor fee  
33 pursuant to clause (F) or (G) of this [~~paragraph~~] subparagraph be eligi-  
34 ble for a vendor's capital award under this section. Any operator of a  
35 vendor track which has received a vendor's capital award, choosing to  
36 divest the capital improvement toward which the award was applied, prior  
37 to [~~reaching the forty year straightline depreciation value of the~~  
38 ~~improvement~~] the full depreciation of the capital improvement in accord-  
39 ance with generally accepted accounting principles, shall reimburse the  
40 state in amounts equal to the total of any such awards. Any capital  
41 award not approved for a capital expenditure at a video lottery gaming  
42 facility by April first, two thousand thirteen shall be deposited into  
43 the state lottery fund for education aid; and

44 (iii) less an additional vendor's marketing allowance at a rate of ten  
45 percent for the first one hundred million dollars annually and eight  
46 percent thereafter of the total revenue wagered at the vendor track  
47 after payout for prizes to be used by the vendor track for the marketing  
48 and promotion and associated costs of its video lottery gaming oper-  
49 ations and pari-mutuel horse racing operations, as long as any such  
50 costs associated with pari-mutuel horse racing operations simultaneously  
51 encourage increased attendance at such vendor's video lottery gaming  
52 facilities, consistent with the customary manner of marketing comparable  
53 operations in the industry and subject to the overall supervision of the  
54 division; provided, however, that the additional vendor's marketing  
55 allowance shall not exceed eight percent in any year for any operator of  
56 a racetrack located in the county of Westchester or Queens; provided,  
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1 however, a vendor track that receives a vendor fee pursuant to clause  
2 (G) of [~~this~~] subparagraph (ii) of this paragraph shall not receive the  
3 additional vendor's marketing allowance. In establishing the vendor fee,  
4 the division shall ensure the maximum lottery support for education  
5 while also ensuring the effective implementation of section sixteen  
6 hundred seventeen-a of this article through the provision of reasonable  
7 reimbursements and compensation to vendor tracks for participation in  
8 such program. Within twenty days after any award of lottery prizes, the  
9 division shall pay into the state treasury, to the credit of the state  
10 lottery fund, the balance of all moneys received from the sale of all  
11 tickets for the lottery in which such prizes were awarded remaining  
12 after provision for the payment of prizes as herein provided. Any reven-  
13 ues derived from the sale of advertising on lottery tickets shall be  
14 deposited in the state lottery fund.

15 2. As consideration for the operation of a video lottery gaming facil-  
16 ity, the division, shall cause the investment in the racing industry of  
17 a portion of the vendor feereceived pursuant to paragraph one of this  
18 subdivision in the manner set forth in this subdivision. With the excep-  
19 tion of Aqueduct racetrack, each such track shall dedicate a portion of  
20 its vendor fees, received pursuant to clause (A), (B), (C), (D), (E),  
21 (F), or (G) of subparagraph (ii) of paragraph one of this subdivision,  
22 solely for the purpose of enhancing purses at such track, in an amount  
23 equal to eight and three-quarters percent of the total revenue wagered  
24 at the vendor track after pay out for prizes. In addition, with the  
25 exception of Aqueduct racetrack, one and one-quarter percent of total  
26 revenue wagered at the vendor track after pay out for prizes, received  
27 pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph  
28 (ii) of paragraph one of this subdivision, shall be distributed to the  
29 appropriate breeding fund for the manner of racing conducted by such  
30 track.

31 Provided, further, that nothing in this paragraph shall prevent each  
32 track from entering into an agreement, not to exceed five years, with  
33 the organization authorized to represent its horsemen to increase or  
34 decrease the portion of its vendor fee dedicated to enhancing purses at  
35 such track during the years of participation by such track, or to race

36 fewer dates than required herein.

37 3. Nothing in paragraph two of this subdivision shall affect any  
38 agreement in effect on or before the effective date of this paragraph.

39 § 2. Subdivisions a and b of section 1617-a of the tax law, as amended  
40 by section 2 of part Z3 of chapter 62 of the laws of 2003 and paragraph  
41 3 of subdivision a as amended by chapter 18 of the laws of 2008, are  
42 amended to read as follows:

43 a. The division of the lottery is hereby authorized to license, pursu-  
44 ant to rules and regulations to be promulgated by the division of the  
45 lottery, the operation of video lottery gaming at Aqueduct, Monticello,  
46 Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other  
47 racetrack licensed pursuant to article three of the racing, pari-mutuel  
48 wagering and breeding law that are located in a county or counties in  
49 which video lottery gaming has been authorized pursuant to local law,  
50 excluding the licensed racetrack commonly referred to in article three  
51 of the racing, pari-mutuel wagering and breeding law as the "New York  
52 state exposition" held in Onondaga county and the racetracks of the  
53 non-profit racing association known as Belmont Park racetrack and the  
54 Saratoga thoroughbred racetrack. Such rules and regulations shall  
55 provide, as a condition of licensure, that racetracks to be licensed are  
56 certified to be in compliance with all state and local fire and safety  
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1 codes, that the division is afforded adequate space, infrastructure, and  
2 amenities consistent with industry standards for such video gaming oper-  
3 ations as found at racetracks in other states, that racetrack employees  
4 involved in the operation of video lottery gaming pursuant to this  
5 section are licensed by the racing and wagering board, and such other  
6 terms and conditions of licensure as the division may establish.  
7 Notwithstanding any inconsistent provision of law, video lottery gaming  
8 at a racetrack pursuant to this section shall be deemed an approved  
9 activity for such racetrack under the relevant city, county, town, or  
10 village land use or zoning ordinances, rules, or regulations. No [~~race-~~  
11 ~~track~~] entity licensed by the division operating video lottery gaming  
12 pursuant to this section may house such gaming activity in a structure  
13 deemed or approved by the division as "temporary" for a duration of  
14 longer than eighteen-months. Nothing in this section shall prohibit the  
15 division from licensing an entity to operate video lottery gaming as  
16 authorized in this subdivision that does not hold a license pursuant to  
17 article two or three of the racing, pari-mutuel wagering and breeding  
18 law.

19 The division, in consultation with the racing and wagering board,  
20 shall establish standards for approval of the temporary and permanent  
21 physical layout and construction of any facility or building devoted to  
22 a video lottery gaming operation. In reviewing such application for the  
23 construction or reconstruction of facilities related or devoted to the  
24 operation or housing of video lottery gaming operations, the division,  
25 in consultation with the racing and wagering board, shall ensure that  
26 such facility:

27 (1) possesses superior consumer amenities and conveniences to encour-  
28 age and attract the patronage of tourists and other visitors from across  
29 the region, state, and nation.

30 (2) has adequate motor vehicle parking facilities to satisfy patron  
31 requirements.

32 (3) has a physical layout and location that facilitates access to and  
33 from the horse racing track portion of such facility to encourage patro-  
34 nage of live horse racing events that are conducted at such track.

35 b. [~~Video~~] The hours of operation of video lottery gaming shall only  
36 be permitted [~~for no more than sixteen consecutive hours per day and on~~  
37 ~~no day shall such operation be conducted past 2:00 a.m~~] as prescribed by  
38 the division of the lottery.

39 § 3. Section 1617-a of the tax law is amended by adding a new subdivi-  
40 sion e to read as follows:

41 e. The division shall not approve the construction or alteration of  
42 any facility or building devoted to the operation or housing of video  
43 lottery gaming until the person or entity selected to operate such video  
44 lottery gaming shall have submitted to the division a statement of the  
45 location of the proposed facility or building, together with a plan of  
46 such racetrack, and plans of all existing buildings, seating stands and  
47 other structures on the grounds of such racetrack, in such form as the  
48 division may prescribe, and such plans shall have been approved by the  
49 division. The division, at the expense of the applicant, may order such  
50 engineering examination thereof as the division may deem necessary.  
51 Such construction or alteration may be made only with the approval of  
52 the division and after examination and inspection of the plans thereof  
53 and the issuance of a permit therefor by the division.

54 § 4. Section 4 of part C of chapter 383 of the laws of 2001, amending  
55 the tax law and other laws relating to authorizing the division of the  
56 lottery to conduct a pilot program involving the operation of video  
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1 lottery terminals at certain racetracks, as amended by chapter 140 of  
2 the laws of 2008, is amended to read as follows:

3 § 4. This act shall take effect immediately[ ~~, provided, however, that~~  
4 ~~the provisions of this act shall expire and be deemed repealed December~~  
5 ~~31, 2033]~~.

6 § 5. Section 4 of part C of chapter 383 of the laws of 2001, amending  
7 the tax law and other laws relating to authorizing the division of the  
8 lottery to conduct a pilot program involving the operation of video  
9 lottery terminals at certain racetracks, as amended by chapter 286 of  
10 the laws of 2008, is amended to read as follows:

11 § 4. This act shall take effect immediately[ ~~, provided, however, that~~  
12 ~~the provisions of this act shall expire and be deemed repealed December~~  
13 ~~31, 2050]~~.

14 § 6. Subdivision a of section 1617-a of the tax law, as amended by  
15 chapter 140 of the laws of 2008, is REPEALED.

16 § 7. Subdivision a of section 1617-a of the tax law, as amended by  
17 chapter 286 of the laws of 2008, is REPEALED.

18 § 8. This act shall take effect immediately and shall be deemed to  
19 have been in full force and effect on and after April 1, 2008.

20 PART X

21 Section 1. Section 420 of the tax law is amended by adding a new  
22 subdivision 17 to read as follows:

23 17. "Flavored malt beverages" means alcoholic products manufactured  
24 from malt that also contain liquor and that contain more than one-half  
25 of one percent but not more than twenty-four percent of alcohol by  
26 volume.

27 § 2. Subdivision 3 of section 420 of the tax law, as amended by chap-  
28 ter 94 of the laws of 1934, is amended to read as follows:

29 3. "Alcoholic beverages" mean and include beers, flavored malt bever-  
30 ages, wines or liquors.

31 § 3. Subdivision 5 of section 420 of the tax law, as amended by chap-  
32 ter 237 of the laws of 1956, is amended to read as follows:

33 5. "Beers" mean and include all alcoholic beer, lager beer, ale,  
34 porter, and stout, and all other fermented beverages of any name or  
35 description manufactured from malt, wholly or in part, or from any  
36 substitute therefor containing one-half of one per centum, or more, of  
37 alcohol by volume, but not including any flavored malt beverages.

38 § 4. Subdivision 7 of section 420 of the tax law, as amended by chap-  
39 ter 80 of the laws of 1935, is amended to read as follows:

40 7. "Liquors" mean and include any and all distilled or rectified spir-  
41 its, alcohol, brandy, cordial (whether the base therefor be wine or  
42 liquor), whiskey, rum, gin and all other distilled beverages containing  
43 alcohol, including all dilutions and mixtures of one or more of the

44 foregoing, and also mean and include any alcoholic liquids which would  
45 be wines or flavored malt beverages if the alcoholic content thereof  
46 were not more than twenty-four per centum by volume.

47 § 5. Subdivision 14 of section 420 of the tax law, as amended by chap-  
48 ter 508 of the laws of 1993, is amended to read as follows:

49 14. "Noncommercial importer" means a person other than a distributor  
50 who imports or causes to be imported into this state beers, flavored  
51 malt beverages, or wines, except that such person shall not be a noncom-  
52 mercial importer where such person imports or causes to be imported into  
53 this state such alcoholic beverages in the quantities and under the  
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1 conditions provided by subdivision four of section four hundred twenty-  
2 four of this article. Such term is inapplicable with respect to liquors.

3 § 6. Subdivision 1 of section 424 of the tax law is amended by adding  
4 a new paragraph (e-1) to read as follows:

5 (e-1) Two dollars and fifty-four cents per gallon upon flavored malt  
6 beverages;

7 § 7. The opening paragraph of paragraph (g) of subdivision 1 of  
8 section 424 of the tax law, as amended by chapter 508 of the laws of  
9 1993, is amended to read as follows:

10 For purposes of this chapter, it is presumed that liquors are  
11 possessed for the purpose of sale in this state if the quantity of  
12 liquors possessed in this state, imported or caused to be imported into  
13 this state or produced, distilled, manufactured, compounded, mixed or  
14 fermented in this state exceeds ninety liters. Such presumption may be  
15 rebutted by the introduction of substantial evidence to the contrary. In  
16 any case where the quantity of alcoholic beverages taxable pursuant to  
17 this article is a fractional part of one liter (or one gallon in the  
18 case of beers, flavored malt beverages, and wines) or an amount greater  
19 than a whole multiple of liters (or gallons in the case of beers,  
20 flavored malt beverages and wines), the amount of tax levied and imposed  
21 on such fractional part of one liter (or one gallon in the case of  
22 beers, flavored malt beverages, and wines), or fractional part of a  
23 liter (or gallon) in excess of a whole multiple of liters or gallons  
24 shall be such fractional part of the rate imposed by paragraphs (a)  
25 through (f) of this subdivision.

26 § 8. Section 425 of the tax law, as amended by chapter 508 of the laws  
27 of 1993, is amended to read as follows:

28 § 425. Special provision as to imposition of taxes on certain alcohol-  
29 ic beverages. If a person shall receive any alcoholic beverages from the  
30 distributor with respect thereto, under such circumstances so as to  
31 preclude the collection of the taxes under this article, because this  
32 state was without power to impose such taxes under this article against  
33 such distributor by reason of the constitution or the law of the United  
34 States enacted pursuant thereto or the constitution or laws of this  
35 state, and such person shall thereafter sell or use any such alcoholic  
36 beverages in such manner and under such circumstances as may subject the  
37 same to the taxing power of this state with respect to any sale or use  
38 thereof, such person shall be liable for the tax imposed by section four  
39 hundred twenty-four of this article with respect to such sale or use,  
40 and shall make the same reports and returns, pay the same taxes and be  
41 subject to the other applicable provisions of this article relating to  
42 distributors, except that with respect to beers, flavored malt beverage-  
43 es, and wines such a person shall not be subject to the provisions of  
44 sections four hundred twenty-one and four hundred twenty-two of this  
45 article if such person does not offer such alcoholic beverages for sale  
46 or use such alcoholic beverages for any commercial purpose. Provided,  
47 further, that if the taxing power of this state does not extend to the  
48 imposition of such taxes on, and the requirement of payment of such  
49 taxes by, such person selling or using such beverages, then such person  
50 shall be required to collect such taxes from its purchaser on the sale  
51 of such beverages and to pay over such taxes to the commissioner. In

52 such event, the same reports and returns relating to distributors, along  
53 with remittance, shall be required by such person and all the other  
54 provisions of this article relating to distributors shall apply. If such  
55 taxes are not so collected, then such purchaser shall, along with such  
56 person, be liable for such taxes.

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1 § 9. Section 425-a of the tax law, as added by chapter 508 of the laws  
2 of 1993, is amended to read as follows:

3 § 425-a. Presumption of taxability. For the purpose of the proper  
4 administration of the taxes imposed by this article and to prevent  
5 evasion thereof, it shall be presumed with respect to this chapter that  
6 all alcoholic beverages possessed or found in this state are subject to  
7 the taxes imposed by this article until the contrary is established by  
8 substantial evidence. Except with respect to a purchase at retail of  
9 beers, flavored malt beverages, or wines and a purchase at retail of  
10 ninety liters or less of liquors, no person shall purchase alcoholic  
11 beverages in this state unless the taxes imposed by this article with  
12 respect to such beverages have been assumed by a distributor registered  
13 under this article or paid by such distributor pursuant to and in  
14 accordance with the manner provided herein and evidenced in accordance  
15 with the manner provided herein. In the case of liquors, such taxes  
16 shall be assumed by a distributor in accordance with the invoice  
17 required, and the certification of tax payment included therein, under  
18 section four hundred twenty-seven of this article; in the case of other  
19 alcoholic beverages, the taxes shall be assumed by such distributor  
20 pursuant to and in accordance with the rules or regulations of the  
21 department.

22 § 10. Section 426 of the tax law, as amended by chapter 891 of the  
23 laws of 1986, is amended to read as follows:

24 § 426. Records to be kept by brand owners, distributors, owners and  
25 others. Every brand owner, distributor, owner or other person shall  
26 keep a complete and accurate record of all purchases and sales or other  
27 dispositions of alcoholic beverages, and a complete and accurate record  
28 of the number of gallons of beers, flavored malt beverages, and wines  
29 produced, manufactured, brewed or fermented and liters of all other  
30 alcoholic beverages produced, distilled, manufactured, brewed,  
31 compounded, mixed or fermented. Such records shall be in such form and  
32 contain such other information as the [~~tax commission~~] commissioner  
33 shall prescribe. [~~Said commission~~] The commissioner, by rule or regu-  
34 lation, also may require the delivery of statements to purchasers of  
35 alcoholic beverages, and prescribe the matters to be contained therein.  
36 Such records and statements, unless required by the [~~tax commission~~]  
37 commissioner to be preserved for a longer period, shall be preserved for  
38 a period of [~~one year~~] three years and shall be offered for inspection  
39 at any time upon oral or written demand by the commissioner [~~of taxation~~  
40 ~~and finance~~] or his or her duly authorized agents, and every such  
41 distributor, brand owner, owner or other person shall make such reports  
42 to the department [~~of taxation and finance~~] as may be required by the  
43 [~~tax commission~~] commissioner. Nothing in this section contained shall  
44 be construed to require the keeping of a record of the purchase or  
45 disposition of alcoholic beverages by a consumer thereof, except by a  
46 person who uses the same for commercial purposes, or of the sale of  
47 alcoholic beverages at retail.

48 § 11. Section 429 of the tax law, as amended by chapter 433 of the  
49 laws of 1978, is amended to read as follows:

50 § 429. Payment of tax; returns. 1. Every distributor, noncommercial  
51 importer or other person shall, on or before the twentieth day of each  
52 month, file with the department [~~of taxation and finance~~] a return, on  
53 forms to be prescribed by the [~~tax commission~~] commissioner and  
54 furnished by such department, stating separately the number of gallons,  
55 or lesser quantity, of beers, flavored malt beverages, and wines, and  
56 the number of liters, or lesser quantity, of [~~wines and~~] liquors sold or

1 used by such distributor, noncommercial importer or other person in this  
 2 state during the preceding calendar month, except that the [~~tax commis-~~  
 3 ~~sion~~] commissioner may, if [~~it~~] he or she deems it necessary in order to  
 4 insure the payment of the tax imposed by this article, require returns  
 5 to be made at such times and covering such periods as [~~it~~] he or she may  
 6 deem necessary. Such return shall contain such further information as  
 7 the [~~tax commission~~] commissioner shall require. The fact that the name  
 8 of the distributor, noncommercial importer or other person is signed to  
 9 a filed return shall be prima facie evidence for all purposes that the  
 10 return was actually signed by such distributor, noncommercial importer  
 11 or other person.

12 2. Each such distributor, noncommercial importer or other person shall  
 13 pay to such department with the filing of such return, the tax imposed  
 14 by this article, on each gallon, or lesser quantity, of beers, flavored  
 15 malt beverages, and wines and on each liter, or lesser quantity of all  
 16 other alcoholic beverages sold or used by such distributor, noncommer-  
 17 cial importer or other person in this state, as so reported, during the  
 18 period covered by such return, except that, where a distributor has  
 19 purchased alcoholic beverages prior to the expiration of the period  
 20 covered by the return, upon which the taxes imposed by this article have  
 21 been or are required to be paid by another distributor, a credit shall  
 22 be allowed for the amount of such taxes.

23 3. All alcoholic beverages which have come into the possession of a  
 24 distributor shall be deemed to have been sold or used by such distribu-  
 25 tor unless it shall be proved to the satisfaction of the [~~tax commis-~~  
 26 ~~sion~~] commissioner that such alcoholic beverages have not been sold or  
 27 used.

28 4. A distributor entitled to a refund under the provisions of section  
 29 four hundred thirty-four of this [~~chapter~~] article, in lieu of such  
 30 refund, may take credit therefor on a return filed pursuant to this  
 31 section, unless the [~~tax commission~~] commissioner shall withdraw such  
 32 privilege.

33 § 12. Subdivision 1 of section 445 of the tax law, as amended by chap-  
 34 ter 433 of the laws of 1978, is amended to read as follows:

35 1. Any city in this state having a population of one million or more,  
 36 acting through its local legislative body, is hereby authorized and  
 37 empowered to adopt and amend local laws imposing in any such city excise  
 38 taxes on a distributor and a noncommercial importer at the following  
 39 rates:

- 40 (a) Twelve cents per gallon upon beers [~~and~~];  
 41 (b) Twenty-six and four-tenths cents per liter on the liquors  
 42 described in paragraph (f) of subdivision one of section four hundred  
 43 twenty-four of this article; and  
 44 (c) Thirty-nine cents per gallon upon flavored malt beverages, when  
 45 sold or used in such city.

46 Such local law shall provide that if prior to the date upon which the  
 47 taxes go into effect, a contract of sale of any beer or other alcoholic  
 48 beverages described above was made, and delivery thereof pursuant to  
 49 such contract is made within the city imposing such taxes on or after  
 50 the effective date thereof, the vendor shall be deemed a distributor,  
 51 and such beer and other alcoholic beverages shall be deemed to be sold,  
 52 and shall be subject to the tax at the time of such delivery. The city  
 53 has the option of imposing tax on beers and liquors or on beers,  
 54 liquors, and flavored malt beverages.

55 § 13. (a) If a contract for the sale of flavored malt beverages was  
 56 entered into prior to April 1, 2009 and delivery under that contract is

1 made within the state on or after April 1, 2009, the flavored malt  
 2 beverages sold under that contract will be subject to tax under article  
 3 18 of the tax law, as amended by this act, at the time of delivery.

4 (b) In order to subject flavored malt beverages in this state on April  
5 1, 2009 to the increased taxes imposed by section six of this act, a  
6 special floor tax is imposed on each wholesaler or retailer (as defined  
7 in the alcoholic beverage control law) or other sellers of flavored malt  
8 beverages, other than those registered as distributors under article 18  
9 of the tax law, at the rate of two dollars and forty-three cents per  
10 gallon on all flavored malt beverages in the possession or under the  
11 control on April 1, 2009 of those wholesalers, retailers and other sell-  
12 ers of flavored malt beverages for purposes of sale in the state. Addi-  
13 tionally, any person who is a distributor or manufacturer under article  
14 18 of the tax law is subject to this special floor tax on any flavored  
15 malt beverages in his or her possession or under his or her control on  
16 which the tax under article 18 of the tax law was already imposed at the  
17 beer rate prior to April 1, 2009. The first 25 gallons of all flavored  
18 malt beverages on April 1, 2009 in the possession or under the control  
19 of any manufacturer, wholesaler, retailer, distributor or any other  
20 seller of flavored malt beverages are exempt from this floor tax. This  
21 floor tax is due and payable to the commissioner of taxation and finance  
22 on or before June 22, 2009.

23 (c) If the city of New York imposes tax on flavored malt beverages  
24 effective April 1, 2009, under the authority of subdivision 1 of section  
25 445 of the tax law, as amended by section twelve of this act, a special  
26 floor tax is imposed on each wholesaler or retailer, as defined in the  
27 alcoholic beverage control law, other than those registered as distribu-  
28 tors under article 18 of the tax law, at the rate of twenty-seven cents  
29 per gallon on all flavored malt beverages in the possession or under the  
30 control on April 1, 2009 of wholesalers, retailers, or all other sellers  
31 of flavored malt beverages, for purposes of sale in that city and the  
32 floor tax authorized by subdivision 2 of section 445 of the tax law does  
33 not apply. Additionally, any person who is a distributor or manufacturer  
34 under article 18 of the tax law is subject to the same special floor tax  
35 on any flavored malt beverages in his or her possession or under his or  
36 her control on which the tax under article 18 of the tax law was already  
37 imposed at the beer rate prior to April 1, 2009. The special city floor  
38 tax authorized by this subdivision must be administered, collected and  
39 enforced jointly with, and under the same terms as, the special floor  
40 tax imposed by subdivision (b) of this section with respect to the  
41 increased taxes imposed by section six of this act. If such city imposes  
42 a tax on flavored malt beverages that is not effective on April 1, 2009,  
43 the provisions of subdivision 2 of section 445 of the tax law do not  
44 apply to the increased taxes authorized by section twelve of this act.

45 (d) Except as provided in this section, all the provisions of articles  
46 18 and 37 of the tax law will apply to taxes imposed by this section.

47 (e) The commissioner of taxation and finance is authorized to  
48 prescribe any terms and conditions such commissioner deems advisable and  
49 require any reports such commissioner deems necessary to effectuate the  
50 provisions of this section.

51 (f) The commissioner of taxation and finance may request from the  
52 state liquor authority, and the state liquor authority is authorized and  
53 directed to provide, any cooperation and assistance, including data,  
54 that will enable such commissioner to carry out the imposition of the  
55 flavored malt beverages tax rate and the implementation of the floor  
56 tax.

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1 § 14. Subdivision 12-c of section 3 of the alcoholic beverage control  
2 law, as renumbered by chapter 366 of the laws of 1992, is renumbered  
3 subdivision 12-d and a new subdivision 12-c is added to read as follows:

4 12-c. "Flavored malt beverage" means and includes any fermented bever-  
5 ages of any name or description manufactured from malt, or from any  
6 substitute therefor, containing flavors and other ingredients derived  
7 from liquor or spirits provided that no more than forty-nine percent of  
8 the overall alcohol content of the finished product may be derived from

9 the addition of said flavors and other ingredients. For purposes of this  
10 chapter, "flavored malt beverages" shall be considered "beer" and may be  
11 bought, stored and sold by any person licensed pursuant to this chapter  
12 with a license that already contains the privilege to buy, sell or store  
13 beer.

14 § 15. This act shall take effect April 1, 2009.

15 PART Y

16 Section 1. Paragraph (a) of subdivision 1 of section 1003 of the  
17 racing, pari-mutuel wagering and breeding law, as amended by chapter 18  
18 of the laws of 2008, is amended to read as follows:

19 (a) Any racing association or corporation or regional off-track  
20 betting corporation, authorized to conduct pari-mutuel wagering under  
21 this chapter, desiring to display the simulcast of horse races on which  
22 pari-mutuel betting shall be permitted in the manner and subject to the  
23 conditions provided for in this article may apply to the board for a  
24 license so to do. Applications for licenses shall be in such form as may  
25 be prescribed by the board and shall contain such information or other  
26 material or evidence as the board may require. No license shall be  
27 issued by the board authorizing the simulcast transmission of thorough-  
28 bred races from a track located in Suffolk county. The fee for such  
29 licenses shall be five hundred dollars per simulcast facility per year  
30 payable by the licensee to the board for deposit into the general fund.  
31 Except as provided herein, the board shall not approve any application  
32 to conduct simulcasting into individual or group residences, homes or  
33 other areas for the purposes of or in connection with pari-mutuel wager-  
34 ing. The board may approve simulcasting into residences, homes or other  
35 areas to be conducted jointly by one or more regional off-track betting  
36 corporations and one or more of the following: a franchised corporation,  
37 thoroughbred racing corporation or a harness racing corporation or asso-  
38 ciation; provided (i) the simulcasting consists only of those races on  
39 which pari-mutuel betting is authorized by this chapter at one or more  
40 simulcast facilities for each of the contracting off-track betting  
41 corporations which shall include wagers made in accordance with section  
42 one thousand fifteen, one thousand sixteen and one thousand seventeen of  
43 this [~~chapter~~ article; provided further that the contract provisions or  
44 other simulcast arrangements for such simulcast facility shall be no  
45 less favorable than those in effect on January first, two thousand five;  
46 (ii) that each off-track betting corporation having within its geograph-  
47 ic boundaries such residences, homes or other areas technically capable  
48 of receiving the simulcast signal shall be a contracting party; (iii)  
49 the distribution of revenues shall be subject to contractual agreement  
50 of the parties except that statutory payments to non-contracting  
51 parties, if any, may not be reduced; provided, however, that nothing  
52 herein to the contrary shall prevent a track from televising its races  
53 on an irregular basis primarily for promotional or marketing purposes as  
54 found by the board. For purposes of this paragraph, the provisions of  
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1 section one thousand thirteen of this article shall not apply. Any  
2 agreement authorizing an in-home simulcasting experiment commencing  
3 prior to May fifteenth, nineteen hundred ninety-five, may, and all its  
4 terms, be extended until June thirtieth, two thousand [~~nine~~ ten;  
5 provided, however, that any party to such agreement may elect to termi-  
6 nate such agreement upon conveying written notice to all other parties  
7 of such agreement at least forty-five days prior to the effective date  
8 of the termination, via registered mail. Any party to an agreement  
9 receiving such notice of an intent to terminate, may request the board  
10 to mediate between the parties new terms and conditions in a replacement  
11 agreement between the parties as will permit continuation of an in-home  
12 experiment until June thirtieth, two thousand [~~nine~~ ten; and (iv) no  
13 in-home simulcasting in the thoroughbred special betting district shall

14 occur without the approval of the regional thoroughbred track.

15 § 2. Subparagraph (iii) of paragraph d of subdivision 3 of section  
16 1007 of the racing, pari-mutuel wagering and breeding law, as amended by  
17 chapter 18 of the laws of 2008, is amended to read as follows:

18 (iii) Of the sums retained by a receiving track located in Westchester  
19 county on races received from a franchised corporation, for the period  
20 commencing January first, two thousand eight and continuing through June  
21 thirtieth, two thousand [~~nine~~] ten, the amount used exclusively for  
22 purses to be awarded at races conducted by such receiving track shall be  
23 computed as follows: of the sums so retained, two and one-half percent  
24 of the total pools. Such amount shall be increased or decreased in the  
25 amount of fifty percent of the difference in total commissions deter-  
26 mined by comparing the total commissions available after July twenty-  
27 first, nineteen hundred ninety-five to the total commissions that would  
28 have been available to such track prior to July twenty-first, nineteen  
29 hundred ninety-five.

30 § 3. The opening paragraph of subdivision 1 of section 1014 of the  
31 racing, pari-mutuel wagering and breeding law, as amended by chapter 18  
32 of the laws of 2008, is amended to read as follows:

33 The provisions of this section shall govern the simulcasting of races  
34 conducted at thoroughbred tracks located in another state or country on  
35 any day during which a franchised corporation is conducting a race meet-  
36 ing in Saratoga county at Saratoga thoroughbred racetrack until June  
37 thirtieth, two thousand [~~nine~~] ten and on any day regardless of whether  
38 or not a franchised corporation is conducting a race meeting in Saratoga  
39 county at Saratoga thoroughbred racetrack after June thirtieth, two  
40 thousand [~~nine~~] ten. On any day on which a franchised corporation has  
41 not scheduled a racing program but a thoroughbred racing corporation  
42 located within the state is conducting racing, every off-track betting  
43 corporation branch office and every simulcasting facility licensed in  
44 accordance with section one thousand seven (that have entered into a  
45 written agreement with such facility's representative horsemen's organ-  
46 ization, as approved by the board), one thousand eight, or one thousand  
47 nine of this article shall be authorized to accept wagers and display  
48 the live simulcast signal from thoroughbred tracks located in another  
49 state or foreign country subject to the following provisions:

50 § 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering  
51 and breeding law, as amended by chapter 18 of the laws of 2008, is  
52 amended to read as follows:

53 1. The provisions of this section shall govern the simulcasting of  
54 races conducted at harness tracks located in another state or country  
55 during the period July first, nineteen hundred ninety-four through June  
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1 thirtieth, two thousand [~~nine~~] ten. This section shall supersede all  
2 inconsistent provisions of this chapter.

3 § 5. The opening paragraph of subdivision 1 of section 1016 of the  
4 racing, pari-mutuel wagering and breeding law, as amended by chapter 18  
5 of the laws of 2008, is amended to read as follows:

6 The provisions of this section shall govern the simulcasting of races  
7 conducted at thoroughbred tracks located in another state or country on  
8 any day during which a franchised corporation is not conducting a race  
9 meeting in Saratoga county at Saratoga thoroughbred racetrack until June  
10 thirtieth, two thousand [~~nine~~] ten. Every off-track betting corporation  
11 branch office and every simulcasting facility licensed in accordance  
12 with section one thousand seven that have entered into a written agree-  
13 ment with such facility's representative horsemen's organization as  
14 approved by the board, one thousand eight or one thousand nine of this  
15 article shall be authorized to accept wagers and display the live full-  
16 card simulcast signal of thoroughbred tracks (which may include quarter  
17 horse or mixed meetings provided that all such wagering on such races  
18 shall be construed to be thoroughbred races) located in another state or  
19 foreign country, subject to the following provisions; provided, however,

20 no such written agreement shall be required of a franchised corporation  
21 licensed in accordance with section one thousand seven of this article:

22 § 6. The opening paragraph of section 1018 of the racing, pari-mutuel  
23 wagering and breeding law, as amended by chapter 18 of the laws of 2008,  
24 is amended to read as follows:

25 Notwithstanding any other provision of this chapter, for the period  
26 July twenty-fifth, two thousand one through September [~~ninth~~] eighth,  
27 two thousand [~~eight~~] nine, when a franchised corporation is conducting a  
28 race meeting within the state at Saratoga Race Course, every off-track  
29 betting corporation branch office and every simulcasting facility  
30 licensed in accordance with section one thousand seven (that has entered  
31 into a written agreement with such facility's representative horsemen's  
32 organization as approved by the board), one thousand eight or one thou-  
33 sand nine of this article shall be authorized to accept wagers and  
34 display the live simulcast signal from thoroughbred tracks located in  
35 another state, provided that such facility shall accept wagers on races  
36 run at all in-state thoroughbred tracks which are conducting racing  
37 programs subject to the following provisions; provided, however, no such  
38 written agreement shall be required of a franchised corporation licensed  
39 in accordance with section one thousand seven of this article.

40 § 7. Section 32 of chapter 281 of the laws of 1994, amending the  
41 racing, pari-mutuel wagering and breeding law and other laws relating to  
42 simulcasting, as amended by chapter 18 of the laws of 2008, is amended  
43 to read as follows:

44 § 32. This act shall take effect immediately and the pari-mutuel tax  
45 reductions in section six of this act shall expire and be deemed  
46 repealed on July 1, [~~2009~~] 2010; provided, however, that nothing  
47 contained herein shall be deemed to affect the application, qualifica-  
48 tion, expiration, or repeal of any provision of law amended by any  
49 section of this act, and such provisions shall be applied or qualified  
50 or shall expire or be deemed repealed in the same manner, to the same  
51 extent and on the same date as the case may be as otherwise provided by  
52 law; provided further, however, that sections twenty-three and twenty-  
53 five of this act shall remain in full force and effect only until May 1,  
54 1997 and at such time shall be deemed to be repealed.

55 § 8. Section 54 of chapter 346 of the laws of 1990, amending the  
56 racing, pari-mutuel wagering and breeding law and other laws relating to  
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1 simulcasting and the imposition of certain taxes, as amended by chapter  
2 18 of the laws of 2008, is amended to read as follows:

3 § 54. This act shall take effect immediately; provided, however,  
4 sections three through twelve of this act shall take effect on January  
5 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-  
6 ing law, as added by section thirty-eight of this act, shall expire and  
7 be deemed repealed on July 1, [~~2009~~] 2010; and section eighteen of this  
8 act shall take effect on July 1, 2008 and sections fifty-one and fifty-  
9 two of this act shall take effect as of the same date as chapter 772 of  
10 the laws of 1989 took effect.

11 § 9. Paragraph (a) of subdivision 1 of section 238 of the racing,  
12 pari-mutuel wagering and breeding law, as amended by chapter 115 of the  
13 laws of 2008, is amended to read as follows:

14 (a) The franchised corporation authorized under this chapter to  
15 conduct pari-mutuel betting at a race meeting or races run thereat shall  
16 distribute all sums deposited in any pari-mutuel pool to the holders of  
17 winning tickets therein, provided such tickets be presented for payment  
18 before April first of the year following the year of their purchase,  
19 less an amount which shall be established and retained by such fran-  
20 chised corporation of between sixteen to seventeen per centum of the  
21 total deposits in pools resulting from on-track regular bets, and eigh-  
22 teen and one-half to twenty-one per centum of the total deposits in  
23 pools resulting from on-track multiple bets and twenty-six per centum of  
24 the total deposits in pools resulting from on-track exotic bets and

25 sixteen to thirty-six per centum of the total deposits in pools result-  
26 ing from on-track super exotic bets, and twenty-six to thirty-six per  
27 centum when such on-track super exotic betting pools are carried  
28 forward, plus the breaks. The retention rate to be established is  
29 subject to the prior approval of the racing and wagering board. Such  
30 rate may not be changed more than once per calendar quarter to be effec-  
31 tive on the first day of the calendar quarter. "Exotic bets" and  
32 "multiple bets" shall have the meanings set forth in section five  
33 hundred nineteen of this chapter. "Super exotic bets" shall have the  
34 meaning set forth in section three hundred one of this chapter. For  
35 purposes of this section, a "pick six bet" shall mean a single bet or  
36 wager on the outcomes of six races. The breaks are hereby defined as the  
37 odd cents over any multiple of five for payoffs greater than one dollar  
38 five cents but less than five dollars, over any multiple of ten for  
39 payoffs greater than five dollars but less than twenty-five dollars,  
40 over any multiple of twenty-five for payoffs greater than twenty-five  
41 dollars but less than two hundred fifty dollars, or over any multiple of  
42 fifty for payoffs over two hundred fifty dollars. Out of the amount so  
43 retained there shall be paid by such franchised corporation to the  
44 commissioner of taxation and finance, as a reasonable tax by the state  
45 for the privilege of conducting pari-mutuel betting on the races run at  
46 the race meetings held by such franchised corporation, the following  
47 percentages of the total pool for regular and multiple bets five per  
48 centum of regular bets and four per centum of multiple bets plus twenty  
49 per centum of the breaks; for exotic wagers seven and one-half per  
50 centum plus twenty per centum of the breaks, and for super exotic bets  
51 seven and one-half per centum plus fifty per centum of the breaks. For  
52 the period June first, nineteen hundred ninety-five through September  
53 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be  
54 three per centum and such tax on multiple wagers shall be two and one-  
55 half per centum, plus twenty per centum of the breaks. For the period  
56 September tenth, nineteen hundred ninety-nine through March thirty-  
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1 first, two thousand one, such tax on all wagers shall be two and six-  
2 tenths per centum and for the period April first, two thousand one  
3 through December thirty-first, two thousand ~~nine~~ ten, such tax on all  
4 wagers shall be one and six-tenths per centum, plus, in each such peri-  
5 od, twenty per centum of the breaks. Payment to the New York state  
6 thoroughbred breeding and development fund by such franchised corpo-  
7 ration shall be one-half of one per centum of total daily on-track pari-  
8 mutuel pools resulting from regular, multiple and exotic bets and three  
9 per centum of super exotic bets provided, however, that for the period  
10 September tenth, nineteen hundred ninety-nine through March thirty-  
11 first, two thousand one, such payment shall be six-tenths of one per  
12 centum of regular, multiple and exotic pools and for the period April  
13 first, two thousand one through December thirty-first, two thousand  
14 ~~nine~~ ten, such payment shall be seven-tenths of one per centum of such  
15 pools.

16 § 10. Paragraph (a) of subdivision 1 of section 238 of the racing,  
17 pari-mutuel wagering and breeding law, as amended by chapter 18 of the  
18 laws of 2008, is amended to read as follows:

19 (a) The franchised corporation authorized under this chapter to  
20 conduct pari-mutuel betting at a race meeting or races run thereat shall  
21 distribute all sums deposited in any pari-mutuel pool to the holders of  
22 winning tickets therein, provided such tickets be presented for payment  
23 before April first of the year following the year of their purchase,  
24 less an amount which shall be established and retained by such fran-  
25 chised corporation of between twelve to seventeen per centum of the  
26 total deposits in pools resulting from on-track regular bets, and four-  
27 teen to twenty-one per centum of the total deposits in pools resulting  
28 from on-track multiple bets and fifteen to twenty-five per centum of the  
29 total deposits in pools resulting from on-track exotic bets and fifteen

30 to thirty-six per centum of the total deposits in pools resulting from  
31 on-track super exotic bets, plus the breaks. The retention rate to be  
32 established is subject to the prior approval of the racing and wagering  
33 board. Such rate may not be changed more than once per calendar quarter  
34 to be effective on the first day of the calendar quarter. "Exotic bets"  
35 and "multiple bets" shall have the meanings set forth in section five  
36 hundred nineteen of this chapter. "Super exotic bets" shall have the  
37 meaning set forth in section three hundred one of this chapter. For  
38 purposes of this section, a "pick six bet" shall mean a single bet or  
39 wager on the outcomes of six races. The breaks are hereby defined as the  
40 odd cents over any multiple of five for payoffs greater than one dollar  
41 five cents but less than five dollars, over any multiple of ten for  
42 payoffs greater than five dollars but less than twenty-five dollars,  
43 over any multiple of twenty-five for payoffs greater than twenty-five  
44 dollars but less than two hundred fifty dollars, or over any multiple of  
45 fifty for payoffs over two hundred fifty dollars. Out of the amount so  
46 retained there shall be paid by such franchised corporation to the  
47 commissioner of taxation and finance, as a reasonable tax by the state  
48 for the privilege of conducting pari-mutuel betting on the races run at  
49 the race meetings held by such franchised corporation, the following  
50 percentages of the total pool for regular and multiple bets five per  
51 centum of regular bets and four per centum of multiple bets plus twenty  
52 per centum of the breaks; for exotic wagers seven and one-half per  
53 centum plus twenty per centum of the breaks, and for super exotic bets  
54 seven and one-half per centum plus fifty per centum of the breaks. For  
55 the period June first, nineteen hundred ninety-five through September  
56 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be  
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1 three per centum and such tax on multiple wagers shall be two and one-  
2 half per centum, plus twenty per centum of the breaks. For the period  
3 September tenth, nineteen hundred ninety-nine through March thirty-  
4 first, two thousand one, such tax on all wagers shall be two and six-  
5 tenths per centum and for the period April first, two thousand one  
6 through December thirty-first, two thousand ~~nine~~ ten, such tax on all  
7 wagers shall be one and six-tenths per centum, plus, in each such peri-  
8 od, twenty per centum of the breaks. Payment to the New York state  
9 thoroughbred breeding and development fund by such franchised corpo-  
10 ration shall be one-half of one per centum of total daily on-track pari-  
11 mutuel pools resulting from regular, multiple and exotic bets and three  
12 per centum of super exotic bets provided, however, that for the period  
13 September tenth, nineteen hundred ninety-nine through March thirty-  
14 first, two thousand one, such payment shall be six-tenths of one per  
15 centum of regular, multiple and exotic pools and for the period April  
16 first, two thousand one through December thirty-first, two thousand  
17 ~~eight~~ ten, such payment shall be seven-tenths of one per centum of  
18 such pools.

19 § 11. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-  
20 ing and breeding law, as amended by chapter 18 of the laws of 2008, is  
21 amended to read as follows:

22 5. The provisions of this section shall expire and be of no further  
23 force and effect after June thirtieth, two thousand ~~nine~~ ten.

24 § 12. This act shall take effect immediately, provided that the amend-  
25 ments to paragraph (a) of subdivision 1 of section 238 of the racing,  
26 pari-mutuel wagering and breeding law made by section nine of this act  
27 shall be subject to the expiration and reversion of such paragraph  
28 pursuant to section 32 of chapter 115 of the laws of 2008, as amended,  
29 when upon such date the provisions of section ten of this act shall take  
30 effect.

31 PART Z

32 Section 1. Paragraph 1 of subdivision (j) of section 1111 of the tax

33 law, as amended by section 1 of part E of chapter 85 of the laws of  
34 2002, is amended to read as follows:

35 (1) The tax required to be prepaid pursuant to section eleven hundred  
36 three of this article shall be computed by multiplying the base retail  
37 price by a tax rate of [~~seven~~ eight] percent and rounding the result  
38 thereof to the nearest whole cent per package.

39 § 2. This act shall take effect June 1, 2009; and shall apply to sales  
40 made and uses occurring on or after that date in accordance with appli-  
41 cable transitional provisions in article 28 of the tax law.

42 PART AA

43 Section 1. Paragraph 17 of subdivision (b) of section 1101 of the tax  
44 law, as added by chapter 309 of the laws of 1996, is amended to read as  
45 follows:

46 (17) Commercial aircraft. Aircraft used primarily (i) to transport  
47 persons or property, for hire, (ii) by the purchaser of the aircraft  
48 [~~primarily~~] to transport such person's tangible personal property in the  
49 conduct of such person's business, or (iii) for both such purposes.  
50 Transporting persons for hire does not include transporting agents,  
51 employees, officers, members, partners, managers or directors of affil-  
52 iated persons. Persons are affiliated persons with respect to each other

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1 where one of the persons has an ownership interest of more than five  
2 percent, whether direct or indirect, in the other, or where an ownership  
3 interest of more than five percent, whether direct or indirect, is held  
4 in each of the persons by another person or by a group of other persons  
5 that are affiliated persons with respect to each other.

6 § 2. Subdivision 2 of section 1118 of the tax law, as amended by chap-  
7 ter 651 of the laws of 1999, is amended to read as follows:

8 (2) In respect to the use of property or services purchased by the  
9 user while a nonresident of this state, except in the case of tangible  
10 personal property or services which the user, in the performance of a  
11 contract, incorporates into real property located in the state. A person  
12 while engaged in any manner in carrying on in this state any employment,  
13 trade, business or profession, shall not be deemed a nonresident with  
14 respect to the use in this state of property or services in such employ-  
15 ment, trade, business or profession. This exemption does not apply to  
16 the use of qualified property where the qualified property is purchased  
17 primarily to carry individuals, whether or not for hire, who are agents,  
18 employees, officers, shareholders, members, managers, partners, or  
19 directors of (A) the purchaser, where any of those individuals was a  
20 resident of this state when the qualified property was purchased or (B)  
21 any affiliated person that was a resident when the qualified property  
22 was purchased. For purposes of this subdivision: (i) persons are affil-  
23 iated persons with respect to each other where one of the persons has an  
24 ownership interest of more than five percent, whether direct or indi-  
25 rect, in the other, or where an ownership interest of more than five  
26 percent, whether direct or indirect, is held in each of the persons by  
27 another person or by a group of other persons that are affiliated  
28 persons with respect to each other; (ii) "qualified property" means  
29 aircraft, vessels and motor vehicles; and (iii) "carry" means to take  
30 any person from one point to another, whether for the business purposes  
31 or pleasure of that person.

32 § 3. This act shall take effect on June 1, 2009, and shall apply to  
33 sales made and uses occurring on or after such date in accordance with  
34 the applicable transitional provisions in sections 1106 and 1217 of the  
35 tax law.

36 PART BB

37 Section 1. Subdivision (e-1) of section 1132 of the tax law is

38 REPEALED.

39 § 2. This act shall take effect on June 1, 2009.

40 PART CC

41 Section 1. Section 208 of the tax law is amended by adding a new  
42 subdivision 20 to read as follows:

43 20. The term "digital product" means any property or service, or  
44 combination thereof, of whatever nature delivered to the purchaser  
45 through the use of wire, cable, fiber-optic, laser, microwave, radio  
46 wave, satellite or similar successor media, or any combination thereof.  
47 Digital product includes, but is not limited to, an audio work, audi-  
48 ovisual work, visual work, book or literary work, graphic work, game,  
49 information or entertainment service, storage of digital products and  
50 computer software by whatever means delivered. The term "delivered to"  
51 includes furnished or provided to or accessed by. For purposes of para-  
52 graph (a) of subdivision two of section two hundred nine-B of this arti-  
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1 cle, subparagraph one of paragraph (a) of subdivision three of section  
2 two hundred ten of this article and subdivisions twelve, twelve-B and  
3 thirty-three of section two hundred ten of this article, digital  
4 products will be deemed intangible property. A digital product does not  
5 include legal, medical, accounting, architectural or engineering  
6 services.

7 § 2. Clause (B) of subparagraph 2 of paragraph (a) of subdivision 3 of  
8 section 210 of the tax law, as separately amended by section 1 of part K  
9 and section 13 of part Y of chapter 63 of the laws of 2000, is amended  
10 to read as follows:

11 (B) services performed within the state, provided, however, that (i)  
12 in the case of a taxpayer engaged in the business of publishing newspa-  
13 pers or periodicals, receipts arising from sales of advertising  
14 contained in such newspapers and periodicals shall be deemed to arise  
15 from services performed within the state to the extent that such newspa-  
16 pers and periodicals are delivered to points within the state, (ii)  
17 receipts from an investment company arising from the sale of management,  
18 administration or distribution services to such investment company shall  
19 be deemed to arise from services performed within the state to the  
20 extent set forth in subparagraph six of this paragraph, (iii) in the  
21 case of taxpayers principally engaged in the activity of air freight  
22 forwarding acting as principal and like indirect air carriage receipts  
23 arising from such activity shall arise from services performed within  
24 the state as follows: one hundred percent of such receipts if both the  
25 pickup and delivery associated with such receipts are made in this state  
26 and fifty percent of such receipts if either the pickup or delivery  
27 associated with such receipts is made in this state and (iv) in the case  
28 of a taxpayer which is a registered securities or commodities broker or  
29 dealer, the receipts specified in subparagraph nine of this paragraph  
30 shall be deemed to arise from services performed within the state to the  
31 extent set forth in such subparagraph nine, [~~and (iv)~~] (v) in the case  
32 of a taxpayer engaged in the business of broadcasting television or  
33 radio programs or otherwise transmitting television or radio programs,  
34 receipts arising from sales of advertising on television or radio will  
35 be deemed to be receipts from services performed within the state based  
36 on the ratio of the number of viewers or listeners within the state to  
37 the total number of viewers or listeners within and without the state,  
38 and (vi) in the case of a taxpayer not described in subclause (v) of  
39 this clause, receipts arising from sales of advertising that is  
40 furnished, provided or delivered to, or accessed by the viewer or  
41 listener through the use of wire, cable, fiber-optic, laser, microwave,  
42 radio wave, satellite or similar successor media or any combination  
43 thereof, will be deemed to be receipts from a service performed within  
44 the state based on the ratio or the number of viewers or listeners with-

45 in the state to the total number of viewers or listeners within and  
46 without the state, and (vii) in the case of receipts arising from the  
47 transportation or transmission of gas through pipes, the portion of such  
48 receipts which constitute receipts from services performed within the  
49 state shall be the product of (I) the total of such receipts and (II) a  
50 fraction, the numerator of which is the taxpayer's transportation units  
51 within the state and the denominator of which is the taxpayer's trans-  
52 portation units within and without the state. A transportation unit is  
53 the transportation of one cubic foot of gas over a distance of one mile,  
54 § 3. Clause (C) of subparagraph 2 of paragraph (a) of subdivision 3 of  
55 section 210 of the tax law, as amended by chapter 802 of the laws of  
56 1975, is amended to read as follows:

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1 (C) Except as provided in clause (D) of this subparagraph, rentals  
2 from property situated, and royalties from the use of patents or copy-  
3 rights, and other similar intangible property within the state, [~~and~~  
4 ~~receipts from the sales of rights for closed circuit and cable tele-~~  
5 ~~vision transmissions of an event (other than events occurring on a regu-~~  
6 ~~larly scheduled basis) taking place within the state as a result of the~~  
7 ~~rendition of services by employees of the corporation, as athletes,~~  
8 ~~entertainers or performing artists, but only to the extent that such~~  
9 ~~receipts are attributable to such transmissions received or exhibited~~  
10 ~~within the state]~~ and

11 § 4. Clause (D) of subparagraph 2 of paragraph (a) of subdivision 3 of  
12 section 210 of the tax law, as amended by chapter 802 of the laws of  
13 1975, is amended to read as follows:

14 [~~(D)~~ (E) all other business receipts earned within the state, bear to  
15 the total amount of the taxpayer's receipts, similarly computed, arising  
16 during such period from all sales of its tangible personal property,  
17 services, rentals, royalties, [~~receipts from the sales of rights for~~  
18 ~~closed circuit and cable television transmissions]~~ receipts from digital  
19 products and all other business transactions, whether within or without  
20 the state;

21 § 5. Subparagraph 2 of paragraph (a) of subdivision 3 of section 210  
22 of the tax law is amended by adding new clause (D) to read as follows:

23 (D) receipts from the sale of, license to use, or granting of remote  
24 access to digital products within the state determined according to the  
25 hierarchy of methods set forth in this clause in the order stated in  
26 subclauses (i) through (iv) of this clause. The taxpayer must exercise  
27 due diligence under each method described in this clause before reject-  
28 ing it and proceeding to the next method in the hierarchy. If the  
29 receipt for a digital product is comprised of a combination of property  
30 and services, it cannot be divided into separate components and is  
31 considered to be one receipt regardless of whether it is separately  
32 stated for billing purposes. The entire receipt must be allocated by  
33 this hierarchy.

34 (i) Receipts allocated to the delivery destination of the digital  
35 product. A digital product is deemed delivered within the state if the  
36 location from which the purchaser or its authorized user accesses or  
37 uses the digital product is in the state. Destination may be demon-  
38 strated by internet protocol address or other similar or successor indi-  
39 cator, the geographic location of the equipment to which the digital  
40 product is delivered or from which the digital product is accessed, or  
41 the delivery destination indicated on a bill of lading or purchase  
42 invoice. A digital product accessed or used by the purchaser or its  
43 authorized user during the taxpayer's taxable year in multiple locations  
44 is delivered within the state to the extent that the digital product is  
45 accessed or used in the state;

46 (ii) the billing address of the purchaser;

47 (iii) the zip code or other geographic indicator of the purchaser's  
48 location; or

49 (iv) the percentage of the taxpayer's receipts within the state deter-

50 mined pursuant to this subparagraph for the preceding taxable year.  
51 However, if the taxpayer was not subject to tax in the preceding taxable  
52 year, then the receipts within the state in the current taxable year  
53 determined pursuant to this subparagraph.

54 § 6. Subparagraph 2 of paragraph (b) of subdivision 2 of section 209-B  
55 of the tax law, as amended by section 3 of part K of chapter 63 of the  
56 laws of 2000, is amended to read as follows:

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1 (2) services performed within the metropolitan commuter transportation  
2 district, provided, however, that (i) in the case of a taxpayer engaged  
3 in the business of publishing newspapers or periodicals, receipts aris-  
4 ing from sales of advertising contained in such newspapers and period-  
5 icals shall be deemed to arise from services performed within the metro-  
6 politan commuter transportation district to the extent that such  
7 newspapers and periodicals are delivered to points within the metropol-  
8 itan commuter transportation district, (ii) receipts from an investment  
9 company from the sale of management, administration or distribution  
10 services to such investment company shall be deemed to arise from  
11 services performed within the metropolitan commuter transportation  
12 district to the extent set forth in subparagraph six of paragraph (a) of  
13 subdivision three of section two hundred ten of this chapter (except  
14 that references in such subparagraph six to the state shall be deemed,  
15 for purposes of application to this clause, to be references to the  
16 metropolitan commuter transportation district), (iii) in the case of  
17 taxpayers principally engaged in the activity of air freight forwarding  
18 acting as principal and like indirect air carriage receipts arising from  
19 such activity shall arise from services performed within the metropol-  
20 itan commuter transportation district as follows: one hundred percent of  
21 such receipts if both the pickup and delivery associated with such  
22 receipts are made in the metropolitan commuter transportation district  
23 and fifty percent of such receipts if either the pickup or delivery  
24 associated with such receipts is made in the metropolitan commuter  
25 transportation district, ~~and~~ (iv) in the case of a taxpayer which is a  
26 registered securities or commodities broker or dealer, the receipts  
27 specified in subparagraph nine of paragraph (a) of subdivision three of  
28 section two hundred ten of this article shall be deemed to arise from  
29 services performed within the metropolitan commuter transportation  
30 district to the extent set forth in such subparagraph nine (except that  
31 references in such subparagraph nine to the state shall be deemed, for  
32 purposes of the application of this clause, to be references to the  
33 metropolitan commuter transportation district) and (v) in the case of a  
34 taxpayer engaged in the business of broadcasting television or radio  
35 programs or otherwise transmitting television or radio programs,  
36 receipts arising from sales of advertising on television or radio will  
37 be deemed to be receipts from services performed within the metropolitan  
38 commuter transportation district based on the ratio of the number of  
39 viewers or listeners within the metropolitan commuter transportation  
40 district to the total number of viewers or listeners within the state,  
41 and (vi) in the case of a taxpayer not described in clause (v) of this  
42 subparagraph, receipts arising from sales of advertising that is  
43 furnished to, provided or delivered to, or accessed by the viewer or  
44 listener through the use of wire, cable, fiber-optic, laser, microwave,  
45 radio wave, satellite or similar successor media or any combination  
46 thereof, will be deemed to be receipts from a service performed within  
47 the metropolitan commuter transportation district based on the ratio of  
48 the number of viewers or listeners within the metropolitan commuter  
49 transportation district to the total number of viewers or listeners  
50 within the state,

51 § 7. Subparagraph 3 of paragraph (b) of subdivision 2 of section 209-B  
52 of the tax law, as amended by chapter 11 of the laws of 1983, is amended  
53 to read as follows:

54 (3) Except as provided in subparagraph four of this paragraph, rentals

1 transportation district, [~~and receipts from the sales of rights for~~  
2 ~~closed-circuit and cable television transmissions of an event (other~~  
3 ~~than events occurring on a regularly scheduled basis) taking place with-~~  
4 ~~in the metropolitan commuter transportation district as a result of the~~  
5 ~~rendition of services by employees of the corporation, as athletes,~~  
6 ~~entertainers or performing artists, but only to the extent that such~~  
7 ~~receipts are attributable to such transmissions received or exhibited~~  
8 ~~within the metropolitan commuter transportation district,]~~ and

9 § 8. Subparagraph 4 of paragraph (b) of subdivision 2 of section 209-B  
10 of the tax law, as amended by chapter 11 of the laws of 1983, is amended  
11 to read as follows:

12 [~~(4)~~] (5) all other business receipts earned within the metropolitan  
13 commuter transportation district, bear to the total amount of the  
14 taxpayer's receipts, similarly computed, arising during such period from  
15 all sales of its tangible personal property, services, rentals, royal-  
16 ties, [~~receipts from the sales of rights for closed-circuit and cable~~  
17 ~~television transmissions]~~ receipts from digital products and all other  
18 business transactions, within the state;

19 § 9. Paragraph (b) of subdivision 2 of section 209-B of the tax law is  
20 amended by adding a new subparagraph 4 to read as follows:

21 (4) receipts from the sale of, license to use, or granting of remote  
22 access to digital products within the metropolitan commuter transporta-  
23 tion district determined according to the hierarchy of methods set forth  
24 in this subparagraph in the order stated in clauses (i) through (iv) of  
25 this subparagraph. The taxpayer must exercise due diligence under each  
26 method described in this subparagraph before rejecting it and proceeding  
27 to the next method in the hierarchy. If the receipt for a digital prod-  
28 uct is comprised of a combination of property and services, it cannot be  
29 divided into separate components and is considered to be one receipt  
30 regardless of whether it is separately stated for billing purposes. The  
31 entire receipt must be allocated by this hierarchy.

32 (i) Receipts allocated to the delivery destination of the digital  
33 product. A digital product is deemed delivered within the metropolitan  
34 commuter transportation district if the location from which the purchas-  
35 er or its authorized user accesses or uses the digital product is in the  
36 metropolitan commuter transportation district. Destination may be demon-  
37 strated by internet protocol address or other similar or successor indi-  
38 cator, the geographic location of the equipment to which the digital  
39 product is delivered or from which the digital product is accessed, the  
40 delivery destination indicated on a bill of lading or purchase invoice.  
41 A digital product accessed or used by the purchaser or its authorized  
42 user during the taxpayer's taxable year in multiple locations is deliv-  
43 ered within the metropolitan commuter transportation district to the  
44 extent that the digital product is accessed or used in the metropolitan  
45 commuter transportation district;

46 (ii) the billing address of the purchaser;

47 (iii) the zip code or other geographic indicator of the purchaser's  
48 location; or

49 (iv) the percentage of the taxpayer's receipts within the metropolitan  
50 commuter transportation district determined pursuant to this paragraph  
51 for the preceding taxable year. However, if the taxpayer was not subject  
52 to tax in the preceding taxable year, then the receipts within the  
53 metropolitan commuter transportation district in the current taxable  
54 year determined pursuant to this paragraph.

55 § 10. Section 1101 of the tax law is amended by adding a new subdivi-  
56 sion (e) to read as follows:

1 (e) (1) When used in this article for the purposes of the taxes

2 imposed by subdivision (g) of section eleven hundred five of this arti-  
3 cle and by section eleven hundred ten of this article, the term "digital  
4 product" means any property or service of whatever nature, delivered to  
5 the purchaser through the use of wire, cable, fiber optic, laser, micro-  
6 wave, radio wave, satellite or similar or successor media, or any combi-  
7 nation thereof. Digital product includes, but is not limited to, an  
8 audio work, audiovisual work, visual work, book or literary work, graph-  
9 ic work, game, information or entertainment service, storage of digital  
10 products and computer software. The term "delivered to" includes  
11 furnished or provided to or accessed by.

12 (2) Digital product does not include the following:

13 (i) any tangible personal property or service that is subject to tax  
14 under any provision of this article other than subdivision (g) of  
15 section eleven hundred five of this article.

16 (ii) any service, other than a game or entertainment service, unless  
17 that service would otherwise be subject to tax under paragraphs one,  
18 seven or eight of subdivision (c) of section eleven hundred five of this  
19 article if that service were furnished, provided or delivered in tangi-  
20 ble form or as a service to tangible personal property or real property.

21 (iii) television or radio programming where the purchaser does not  
22 select both the content and the time at which the content is displayed.

23 (iv) purchaser-selected content sold with television programming for a  
24 single charge.

25 (v) computer software that is not pre-written computer software.

26 § 11. Section 1105 of the tax law is amended by adding a new subdivi-  
27 sion (g) to read as follows:

28 (g) Receipts from every retail sale of a digital product. Notwith-  
29 standing any other provision of law, a digital product is delivered to  
30 the location to which the digital product is transmitted to the purchas-  
31 er or its agent, or from which the purchaser or its agent accesses the  
32 digital product. For purposes of determining the jurisdiction or juris-  
33 dictions in which the retail sale of a digital product occurs, the  
34 following rules apply:

35 (1) Receipts from the retail sale of digital products, other than  
36 pre-written computer software that is not in tangible form, are sourced  
37 to the place where delivered to the purchaser. The foregoing rule is  
38 amplified, but not limited, by the following special provisions:

39 (i) if the vendor knows, either by internet protocol address or other  
40 similar or successor indicator, the geographic location of the equipment  
41 to which the digital product is delivered, the retail sale is sourced to  
42 the jurisdiction or jurisdictions in which that equipment is located;

43 (ii) if the geographic location of the equipment described in subpara-  
44 graph (i) of this paragraph is unknown, the retail sale is sourced to  
45 the jurisdiction or jurisdictions in which the billing address of the  
46 purchaser associated with the method of payment for the digital product  
47 is located;

48 (iii) if the geographic location of the equipment described in subpar-  
49 agraph (i) and the billing address described in subparagraph (ii) of  
50 this paragraph are unknown, the retail sale is sourced to the residen-  
51 tial or business street address of the purchaser, as applicable,  
52 provided that the use of that address does not constitute bad faith.

53 (2) Receipts from the retail sale of pre-written computer software  
54 that is not in tangible form are sourced as follows:

55 (i) if the receipt from the retail sale of the software is less than  
56 one thousand dollars, or the retail sale of the software includes fewer

1 than ten site licenses, or both, the retail sale of the software is  
2 sourced in accordance with the provisions of paragraph one of this  
3 subdivision;

4 (ii) if the receipt from the retail sale of the software is one thou-  
5 sand dollars or more, or the software includes ten or more site  
6 licenses, the retail sale of the software is sourced in accordance with

7 the provisions of paragraph one of this subdivision, unless the vendor  
8 has timely received from the purchaser a properly completed multiple  
9 points of use certificate in accordance with the provisions of subdivi-  
10 sion (c) of section eleven hundred thirty-two of this article.

11 § 12. Subdivision (c) of section 1132 of the tax law, as amended by  
12 chapter 2 of the laws of 1995, is amended to read as follows:

13 (c) (1) For the purpose of the proper administration of this article  
14 and to prevent evasion of the tax hereby imposed, it shall be presumed  
15 that all receipts for property, digital products or services of any type  
16 mentioned in subdivisions (a), (b), (c) [~~and~~], (d) and (g) of section  
17 eleven hundred five of this article, all rents for occupancy of the type  
18 mentioned in subdivision (e) of [~~said~~] such section, and all amusement  
19 charges of any type mentioned in subdivision (f) of [~~said~~] such section,  
20 are subject to tax until the contrary is established, and the burden of  
21 proving that any receipt, amusement charge or rent is not taxable here-  
22 under shall be upon the person required to collect tax or the customer.  
23 Except as provided in subdivision (h) or (k) of this section, unless (i)  
24 a vendor, not later than ninety days after delivery of the property or  
25 digital product, or the rendition of the service, shall have taken from  
26 the purchaser a resale or exemption certificate in such form as the  
27 commissioner may prescribe, signed by the purchaser and setting forth  
28 the purchaser's name and address and, except as otherwise provided by  
29 regulation of the commissioner, the number of the purchaser's certif-  
30 icate of authority, together with such other information as the commis-  
31 sioner may require, to the effect that the property, digital product or  
32 service was purchased for resale or for some use by reason of which the  
33 sale is exempt from tax under the provisions of section eleven hundred  
34 fifteen of this article, and, where such resale or exemption certificate  
35 requires the inclusion of the purchaser's certificate of authority  
36 number or other identification number required by regulations of the  
37 commissioner, that the purchaser's certificate of authority has not been  
38 suspended or revoked and has not expired as provided in section eleven  
39 hundred thirty-four of this part, or (ii) the purchaser, not later than  
40 ninety days after delivery of the property or digital product or the  
41 rendition of the service, furnishes to the vendor: any affidavit, state-  
42 ment or additional evidence, documentary or otherwise, which the commis-  
43 sioner may require demonstrating that the purchaser is an exempt organ-  
44 ization described in section eleven hundred sixteen of this article, the  
45 sale shall be deemed a taxable sale at retail. Where a resale or  
46 exemption certificate or an affidavit, statement or additional evidence  
47 referred to in the previous sentence is received within the time limit  
48 set forth therein, but is deficient in some material manner, and where  
49 such deficiency is thereafter removed, the receipt of such resale or  
50 exemption certificate or such affidavit, statement or additional  
51 evidence shall be deemed to have satisfied all of the requirements of  
52 the preceding sentence. Where such a resale or exemption certificate or  
53 such an affidavit, statement or additional evidence has been furnished  
54 to the vendor, the burden of proving that the receipt, amusement charge  
55 or rent is not taxable hereunder shall be solely upon the customer. The  
56 vendor shall not be required to collect tax from purchasers who furnish  
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1 a resale or exemption certificate, or such an affidavit, statement or  
2 additional evidence in proper form, unless, in the case of a resale or  
3 exemption certificate described in [~~clause~~] subparagraph (i) [~~of the~~  
4 ~~second sentence~~] of this paragraph whereon the purchaser's certificate  
5 of authority number, or other identification number required by regu-  
6 lation of the commissioner, is required to be included, such purchaser's  
7 certificate of authority is invalid because it has been suspended or  
8 revoked as provided in section eleven hundred thirty-four of this part,  
9 and the commissioner has furnished registered vendors with information  
10 identifying those persons whose certificates of authority have been  
11 suspended or revoked, or unless such purchaser's certificate of authori-

12 ty is invalid because it has expired, and the commissioner has provided  
13 registered vendors with a means of determining whether such expiration  
14 has occurred. Where the vendor accepts such a resale or exemption  
15 certificate from a person identified by the commissioner as one whose  
16 certificate of authority has been suspended or revoked or from a person  
17 whose certificate of authority has been identified as having expired,  
18 the receipt, amusement charge or rent from such transaction shall be  
19 deemed to be a taxable sale at retail.

20 (2) Notwithstanding paragraph one of this subdivision or any other law  
21 to the contrary, the commissioner may authorize a purchaser, who  
22 acquires tangible personal property, digital products or services under  
23 circumstances which make it impossible at the time of acquisition to  
24 determine the manner in which the tangible personal property, digital  
25 products or services will be used, to pay the tax directly to the  
26 commissioner and waive the collection of the tax by the vendor. Subject  
27 to such reasonable conditions as the commissioner may require, the  
28 commissioner shall authorize an omnibus carrier described in subdivision  
29 (b) of section eleven hundred nineteen of this article to pay the tax on  
30 the purchase or use of an omnibus directly to the commissioner and waive  
31 the collection of the tax by the vendor. No such authority shall be  
32 granted or exercised except upon application to the commissioner, and  
33 the issuance by the commissioner, in the commissioner's discretion, of a  
34 direct payment permit. If a direct payment permit is granted, its use  
35 shall be subject to conditions specified by the commissioner, and the  
36 payment of tax on all acquisitions pursuant to the permit shall be made  
37 directly to the commissioner by the permit holder. The commissioner may  
38 suspend or revoke a direct payment permit where the permit holder fails  
39 to comply with any of the provisions of this article or any rule promul-  
40 gated by the commissioner with respect to this article. The notice and  
41 hearing provisions applicable to the revocation and suspension of  
42 certificates of authority under section eleven hundred thirty-four of  
43 this part shall apply to the suspension and revocation of direct payment  
44 permits. A vendor shall not be required to collect tax from a purchaser  
45 who furnishes a direct payment permit in proper form, unless such  
46 purchaser's direct payment permit has been suspended or revoked by the  
47 commissioner and the commissioner has provided registered vendors with  
48 information identifying those persons whose direct payment permits have  
49 been suspended or revoked. Where a vendor accepts a direct payment  
50 permit from a person whose direct payment permit has been suspended or  
51 revoked, and the commissioner has provided registered vendors with  
52 information identifying those persons whose direct payment permits have  
53 been suspended or revoked, the receipt, amusement charge or rent from  
54 such transaction shall be deemed to be subject to tax.

55 (3) Notwithstanding any other provision of law to the contrary, if a  
56 vendor of pre-written computer software described in clause (ii) of

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1 paragraph two of subdivision (g) of section eleven hundred five of this  
2 article has, not later than ninety days after the delivery of the pre-  
3 written computer software, taken from the purchaser a properly completed  
4 multiple points of use certificate that sets forth the jurisdiction or  
5 jurisdictions in which the software is delivered, the sale of the soft-  
6 ware must be sourced, and the vendor must allocate, collect, and remit  
7 the taxes imposed by this article and pursuant to the authority of arti-  
8 cle twenty-nine of this chapter, based on the jurisdiction or jurisdic-  
9 tions within New York state in which each user is located, as indicated  
10 by the purchaser in the certificate. The multiple points of use certif-  
11 icate shall be in the form the commissioner may prescribe, signed by the  
12 purchaser, shall set forth the purchaser's name and address and, except  
13 as otherwise provided by regulation of the commissioner, state the  
14 number of the purchaser's certificate of authority, together with any  
15 other information the commissioner may require. When a properly  
16 completed multiple points of use certificate has been furnished to the

17 vendor, the burden of proving the jurisdiction or jurisdictions to which  
18 the pre-written computer software was delivered will be solely upon the  
19 purchaser. When a multiple points of use certificate is timely received  
20 by the vendor but is deficient in some material way, and the deficiency  
21 is later removed, the receipt of the certificate will be deemed to have  
22 satisfied all of the requirements of this paragraph.

23 (4) A multiple points of use certificate is not valid if the purchas-  
24 er's certificate of authority has been suspended or revoked and the  
25 commissioner has furnished registered vendors with information identify-  
26 ing those persons whose certificates of authority have been suspended or  
27 revoked, or the purchaser's certificate of authority is invalid because  
28 it has expired as provided in section eleven hundred thirty-four of this  
29 part and the commissioner has provided registered vendors with a means  
30 of determining that the purchaser's certificate of authority has  
31 expired. The vendor will not be required to collect tax allocable to the  
32 portion of the receipt that the properly completed multiple points of  
33 use certificate indicates is attributable to use of the software outside  
34 New York state.

35 § 13. Paragraph (i) of subdivision (d) of section 12 of the tax law,  
36 as added by chapter 615 of the laws of 1998, is amended to read as  
37 follows:

38 (i) Except as provided in clause (B) of subparagraph (ii) of paragraph  
39 eight of subdivision (b) of section eleven hundred one of this chapter,  
40 a person selling telecommunication services or an Internet access  
41 service shall not be deemed to be a vendor, for purposes of article  
42 twenty-eight or twenty-nine of this chapter, of tangible personal prop-  
43 erty, digital products or services sold by the purchaser of such tele-  
44 communication services or Internet access service solely because such  
45 purchaser uses such telecommunication services or Internet access  
46 service as a means to sell such tangible personal property, digital  
47 products or services.

48 § 14. The opening paragraph of subdivision (b) of section 1101 of the  
49 tax law, as added by chapter 93 of the laws of 1965, is amended to read  
50 as follows:

51 When used in this article for the purposes of the taxes imposed by  
52 subdivisions (a), (b), (c) ~~and~~, (d) and (g) of section eleven hundred  
53 five and by section eleven hundred ten of this article, the following  
54 terms shall mean:

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1 § 15. Paragraph 2 of subdivision (b) of section 1101 of the tax law,  
2 as amended by section 7 of part S of chapter 85 of the laws of 2002, is  
3 amended to read as follows:

4 (2) Purchaser. A person who purchases property or a digital product or  
5 to whom are rendered services, the receipts from which are taxable under  
6 this article, including a mobile telecommunications customer.

7 § 16. Paragraph 3 of subdivision (b) of section 1101 of the tax law,  
8 as amended by section 21 of part Y of chapter 63 of the laws of 2000, is  
9 amended to read as follows:

10 (3) Receipt. The amount of the sale price of any property or digital  
11 product and the charge for any service taxable under this article,  
12 including gas and gas service and electricity and electric service of  
13 whatever nature, valued in money, whether received in money or other-  
14 wise, including any amount for which credit is allowed by the vendor to  
15 the purchaser, without any deduction for expenses or early payment  
16 discounts and also including any charges by the vendor to the purchaser  
17 for shipping or delivery, and, with respect to gas and gas service and  
18 electricity and electric service, any charges by the vendor for trans-  
19 portation, transmission or distribution, regardless of whether such  
20 charges are separately stated in the written contract, if any, or on the  
21 bill rendered to such purchaser and regardless of whether such shipping  
22 or delivery or transportation, transmission, or distribution is provided  
23 by such vendor or a third party, but excluding any credit for tangible

24 personal property accepted in part payment and intended for resale. For  
25 special rules governing computation of receipts, see section eleven  
26 hundred eleven of this article.

27 § 17. Subparagraph (i) of paragraph 4 of subdivision (b) of section  
28 1101 of the tax law, as amended by chapter 190 of the laws of 1990, is  
29 amended to read as follows:

30 (i) A sale of tangible personal property or a digital product to any  
31 person for any purpose, other than (A) for resale as such or as a phys-  
32 ical component part of tangible personal property or, in the case of a  
33 digital product, as a component part of tangible personal property, or  
34 (B) for use by that person in performing the services subject to tax  
35 under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of  
36 section eleven hundred five of this article where the tangible personal  
37 property so sold becomes a physical component part or the digital prod-  
38 uct becomes a component part of the property upon which the services are  
39 performed or where the property so sold is later actually transferred to  
40 the purchaser of the service in conjunction with the performance of the  
41 service subject to tax. Notwithstanding the preceding provisions of  
42 this subparagraph, a sale of any tangible personal property to a  
43 contractor, subcontractor or repairman for use or consumption in erect-  
44 ing structures or buildings, or building on, or otherwise adding to,  
45 altering, improving, maintaining, servicing or repairing real property,  
46 property or land, as the terms real property, property or land are  
47 defined in the real property tax law, is deemed to be a retail sale  
48 regardless of whether the tangible personal property is to be resold as  
49 such before it is so used or consumed, except that a sale of a new  
50 mobile home to a contractor, subcontractor or repairman who, in such  
51 capacity, installs such property is not a retail sale. Notwithstanding  
52 the preceding provisions of this subparagraph, the purchase of a truck,  
53 trailer or tractor-trailer combination for rental or lease to an author-  
54 ized carrier, as described in paragraph twenty-two of subdivision (a) of  
55 section eleven hundred fifteen of this article, shall be deemed a retail  
56 sale.

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1 § 18. Clause (A) of subparagraph (iv) of paragraph 4 of subdivision  
2 (b) of section 1101 of the tax law, as added by chapter 93 of the laws  
3 of 1965 and such subparagraph as renumbered by chapter 2 of the laws of  
4 1995, is amended to read as follows:

5 (A) The transfer of tangible personal property or a digital product to  
6 a corporation, solely in consideration for the issuance of its stock,  
7 pursuant to a merger or consolidation effected under the law of New York  
8 or any other jurisdiction.

9 § 19. Paragraph 6 of subdivision (b) of section 1101 of the tax law,  
10 as amended by chapter 498 of the laws of 1994, is amended to read as  
11 follows:

12 (6) Tangible personal property. Corporeal personal property of any  
13 nature. However, except for purposes of the tax imposed by subdivision  
14 (b) of section eleven hundred five, such term shall not include gas,  
15 electricity, refrigeration and steam. Such term shall also include pre-  
16 written computer software, whether sold as part of a package, as a sepa-  
17 rate component, or otherwise, [~~and regardless of the medium by means of  
18 which such software is conveyed to a purchaser. Such term shall also  
19 include newspapers and periodicals where the vendor ships or delivers  
20 the entire edition or issue of the newspaper or periodical, with or  
21 without the advertising included in the paper edition or issue, but not  
22 including anything, other than advertising, not in such paper edition or  
23 issue, to the purchaser by means of telephony or telegraphy or other  
24 electronic media, but only where the amount of the sale price to such  
25 purchaser of such newspaper or magazine or the subscription price, in  
26 the case of a subscription to a newspaper or periodical, including any  
27 charge by such vendor for shipping or delivery to the purchaser, is  
28 separately stated to such purchaser~~] when delivered to the purchaser in

29 tangible form.

30 § 20. Paragraph 7 of subdivision (b) of section 1101 of the tax law,  
31 as amended by chapter 651 of the laws of 1999, is amended to read as  
32 follows:

33 (7) Use. The exercise of any right or power over tangible personal  
34 property or a digital product, or over any of the services which are  
35 subject to tax under section eleven hundred ten of this article or  
36 pursuant to the authority of article twenty-nine of this chapter, by the  
37 purchaser thereof, and includes, but is not limited to, the receiving,  
38 storage or any keeping or retention for any length of time, withdrawal  
39 from storage, any installation, any affixation to real or personal prop-  
40 erty, or any consumption of such property or digital product or of any  
41 such service subject to tax under such section eleven hundred ten or  
42 pursuant to the authority of such article twenty-nine. Without limiting  
43 the foregoing, use also [~~shall include~~] includes the accessing of a  
44 digital product from a location within the state, regardless of where  
45 the digital product is installed or resides on a server or other equip-  
46 ment, and the distribution of [only] tangible personal property or  
47 digital products, such as promotional materials, or of any such service  
48 subject to tax under such section eleven hundred ten of this article or  
49 pursuant to the authority of such article twenty-nine of this chapter.

50 § 21. Subparagraph (i) of paragraph 8 of subdivision (b) of section  
51 1101 of the tax law, as amended by chapter 61 of the laws of 1989,  
52 clause (F) as added and clauses (G) and (H) as relettered by chapter 190  
53 of the laws of 1990, is amended to read as follows:

54 (i) The term "vendor" includes:

55 (A) A person making sales of tangible personal property, digital  
56 products or services, the receipts from which are taxed by this article;

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1 (B) A person maintaining a place of business in the state and making  
2 sales, whether at such place of business or elsewhere, to persons within  
3 the state of tangible personal property, digital products or services,  
4 the use of which is taxed by this article;

5 (C) A person who solicits business either:

6 (I) by employees, independent contractors, agents or other represen-  
7 tatives; or

8 (II) by distribution of catalogs or other advertising matter, without  
9 regard to whether such distribution is the result of regular or system-  
10 atic solicitation, if such person has some additional connection with  
11 the state which satisfies the nexus requirement of the United States  
12 constitution;

13 and by reason thereof makes sales to persons within the state of tangi-  
14 ble personal property, digital products or services, the use of which is  
15 taxed by this article;

16 (D) A person who makes sales of tangible personal property or  
17 services, the use of which is taxed by this article, and who regularly  
18 or systematically delivers such property or services in this state by  
19 means other than the United States mail or common carrier;

20 (E) A person who regularly or systematically solicits business in this  
21 state by the distribution, without regard to the location from which  
22 such distribution originated, of catalogs, advertising flyers or  
23 letters, or by any other means of solicitation of business, to persons  
24 in this state and by reason thereof makes sales to persons within the  
25 state of tangible personal property, the use of which is taxed by this  
26 article, if such solicitation satisfies the nexus requirement of the  
27 United States constitution;

28 (F) A person making sales of tangible personal property, the use of  
29 which is taxed by this article, where such person retains an ownership  
30 interest in such property and where such property is brought into this  
31 state by the person to whom such property is sold and the person to whom  
32 such property is sold becomes or is a resident or uses such property in  
33 any manner in carrying on in this state any employment, trade, business

34 or profession;

35 (G) Any other person making sales to persons within the state of  
36 tangible personal property, digital products or services, the use of  
37 which is taxed by this article, who may be authorized by the commission-  
38 er [~~of taxation and finance~~] to collect such tax by part [~~IV~~] four of  
39 this article; and

40 (H) The state of New York, any of its agencies, instrumentalities,  
41 public corporations (including a public corporation created pursuant to  
42 agreement or compact with another state or Canada) or political subdivi-  
43 sions when such entity sells services [~~or~~], property or digital products  
44 of a kind ordinarily sold by private persons.

45 § 22. Subparagraph (ii) of paragraph 8 of subdivision (b) of section  
46 1101 of the tax law, as amended by chapter 190 of the laws of 1990,  
47 clause (A) as amended by chapter 75 of the laws of 1998, is amended to  
48 read as follows:

49 (ii) (A) In addition, when in the opinion of the commissioner it is  
50 necessary for the efficient administration of this article to treat any  
51 salesman, representative, peddler or canvasser as the agent of the  
52 vendor, distributor, supervisor or employer under whom he or she oper-  
53 ates or from whom he or she obtains tangible personal property or  
54 digital products sold by him or her, or for whom he or she solicits  
55 business, the commissioner may, in his or her discretion, treat such  
56 agent as the vendor jointly responsible with his or her principal,  
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1 distributor, supervisor or employer for the collection and payment over  
2 of the tax. An unaffiliated person providing fulfillment services to a  
3 purchaser shall not be treated as a vendor by the commissioner under  
4 this paragraph with respect to such activity. For purposes of this  
5 clause, persons are affiliated persons with respect to each other where  
6 one of such persons has an ownership interest of more than five percent,  
7 whether direct or indirect, in the other, or where an ownership interest  
8 of more than five percent, whether direct or indirect, is held in each  
9 of such persons by another person or by a group of other persons which  
10 are affiliated persons with respect to each other.

11 (B) A person shall be deemed a vendor of [~~the services enumerated in~~  
12 ~~paragraph nine of subdivision (c)~~] a digital product subject to tax  
13 under subdivision (g) of section eleven hundred five of this article,  
14 liable for all the obligations of a vendor, including the collection,  
15 reporting and remittance of the tax imposed under this article and  
16 possessing all the rights of a vendor including the right to an exclu-  
17 sion or a credit or refund of tax as provided in subdivision (e) of  
18 section eleven hundred thirty-two of this article, with respect to [~~such~~  
19 ~~services~~] the digital products which are provided by a vendor thereof  
20 and are subject to taxation under this article, where such person, its  
21 affiliate or agent bills, on behalf of such vendor, either (I) as part  
22 of, or as a schedule to, the statement of such person to its purchasers  
23 or (II) separately (without regard to whether or not such person has  
24 customers of its own), [~~such enumerated services~~] a digital product  
25 provided by such vendor. For the purpose of this paragraph, "affiliate"  
26 means an entity which directly, indirectly or constructively controls a  
27 vendor of [~~such enumerated services~~] digital products or is controlled  
28 by such vendor or is under the control of, along with such vendor, a  
29 common parent. Provided, however, the provisions of this clause shall  
30 not in any way be construed to otherwise limit or remove the obligations  
31 and liabilities of any person with respect to the tax imposed by this  
32 article.

33 § 23. Clause (B) of subparagraph (v) of paragraph 8 of subdivision (b)  
34 of section 1101 of the tax law, as amended by chapter 75 of the laws of  
35 1998, is amended to read as follows:

36 (B) a person who is not otherwise a vendor who owns tangible personal  
37 property or a digital product located on the premises of an unaffiliated  
38 person performing fulfillment services for such person.

39 For purposes of this subparagraph, persons are affiliated persons with  
40 respect to each other where one of such persons has an ownership inter-  
41 est of more than five percent, whether direct or indirect, in the other,  
42 or where an ownership interest of more than five percent, whether direct  
43 or indirect, is held in each of such persons by another person or by a  
44 group of other persons which are affiliated persons with respect to each  
45 other.

46 § 24. Subparagraph (vi) of paragraph 8 of subdivision (b) of section  
47 1101 of the tax law, as added by section 1 of part 00-1 of chapter 57 of  
48 the laws of 2008, is amended to read as follows:

49 (vi) For purposes of subclause (I) of clause (C) of subparagraph (i)  
50 of this paragraph, a person making sales of tangible personal property,  
51 digital products or services taxable under this article ("seller") shall  
52 be presumed to be soliciting business through an independent contractor  
53 or other representative if the seller enters into an agreement with a  
54 resident of this state under which the resident, for a commission or  
55 other consideration, directly or indirectly refers potential customers,  
56 whether by a link on an internet website or otherwise, to the seller, if  
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1 the cumulative gross receipts from sales by the seller to customers in  
2 the state who are referred to the seller by all residents with this type  
3 of an agreement with the seller is in excess of ten thousand dollars  
4 during the preceding four quarterly periods ending on the last day of  
5 February, May, August, and November. This presumption may be rebutted by  
6 proof that the resident with whom the seller has an agreement did not  
7 engage in any solicitation in the state on behalf of the seller that  
8 would satisfy the nexus requirement of the United States constitution  
9 during the four quarterly periods in question. Nothing in this subpara-  
10 graph shall be construed to narrow the scope of the terms independent  
11 contractor or other representative for purposes of subclause (I) of  
12 clause (C) of subparagraph (i) of this paragraph.

13 § 25. Paragraph 12 of subdivision (b) of section 1101 of the tax law,  
14 as amended by chapter 220 of the laws of 2000, is amended to read as  
15 follows:

16 (12) Promotional materials. Any advertising literature, other related  
17 tangible personal property or digital products (whether or not personal-  
18 ized by the recipient's name or other information uniquely related to  
19 such person) and envelopes used exclusively to deliver the same. Such  
20 other related tangible personal property [~~includes~~] and digital products  
21 include, but [~~is~~] are not limited to, free gifts, complimentary maps or  
22 other items given to travel club members, applications, order forms and  
23 return envelopes with respect to such advertising literature, annual  
24 reports, prospectuses, promotional displays and Cheshire labels but does  
25 not include invoices, statements and the like. Promotional materials  
26 shall also include paper or ink furnished to a printer for use in  
27 providing the services of producing, printing or imprinting promotional  
28 materials or in producing, printing or imprinting promotional materials,  
29 where such paper and ink become a physical component part of the promo-  
30 tional materials and such printer sells such services or such promo-  
31 tional materials to the person who furnished the paper and ink to such  
32 printer.

33 § 26. Paragraph 2 of subdivision (d) of section 1103 of the tax law,  
34 as added by chapter 2 of the laws of 1995, is amended to read as  
35 follows:

36 (2) On or before the twelfth day of each month, after reserving such  
37 amount for such refunds and such costs, the commissioner shall determine  
38 the amount of all revenues so received during the prior month as a  
39 result of the taxes, interest and penalties so imposed and, in addition,  
40 on or before the last day of June and December the commissioner shall  
41 determine in like manner the amount of such moneys received during and  
42 including the first twenty-five days of said months. The commissioner  
43 shall determine the proportion of revenues attributable to receipts for

44 the period for which the determination is made pursuant to the preceding  
45 sentence from taxes on sales and uses of tangible personal property,  
46 digital products and services and rent and amusement charges imposed by  
47 this article and pursuant to the authority of article twenty-nine of  
48 this chapter and administered by the commissioner which is payable to  
49 each jurisdiction determined without regard to this section. The amount  
50 of revenues so determined pursuant to this section shall be deposited  
51 and distributed by the comptroller in accordance with the same percent-  
52 age amount to which a jurisdiction is entitled determined without regard  
53 to this section. Where the amount so determined in any distribution from  
54 such taxes (other than the tax imposed by this section) is more or less  
55 than the amount due, the amount of the overpayment or underpayment shall  
56 be determined as soon after the discovery of the overpayment or under-  
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1 payment as is reasonably possible and subsequent determinations shall be  
2 adjusted by subtracting the amount of any such overpayment from or by  
3 adding the amount of any such underpayment to such number of subsequent  
4 payments as the comptroller and the commissioner shall consider reason-  
5 able in view of the amount of the overpayment or underpayment and all  
6 other pertinent facts and circumstances. The commissioner shall not be  
7 liable for any overestimate or underestimate of the amount of the  
8 distribution. Nor shall the commissioner be liable for any inaccuracy in  
9 any determination with respect to the amount of the distribution or any  
10 required adjustment with respect to the distribution, but the commis-  
11 sioner shall as soon as practicable after discovery of any error adjust  
12 the next determination under this section to reflect any such error.

13 § 27. Paragraph 9 of subdivision (c) of section 1105 of the tax law,  
14 as amended by chapter 170 of the laws of 1994, is amended to read as  
15 follows:

16 (9) [~~(i) The furnishing or provision of an entertainment service or of~~  
17 ~~an information service (but not an information service subject to tax~~  
18 ~~under paragraph one of this subdivision), which is furnished, provided,~~  
19 ~~or delivered by means of telephony or telegraphy or telephone or tele-~~  
20 ~~graph service (whether intrastate or interstate) of whatever nature,~~  
21 ~~such as entertainment or information services provided through 800 or~~  
22 ~~900 numbers or mass announcement services or interactive information~~  
23 ~~network services. Provided, however, that in no event (i) shall the~~  
24 ~~furnishing or provision of an information service be taxed under this~~  
25 ~~paragraph unless it would otherwise be subject to taxation under para-~~  
26 ~~graph one of this subdivision if it were furnished by printed, mimeo-~~  
27 ~~graphed or multigraphed matter or by duplicating written or printed~~  
28 ~~matter in any other manner nor (ii) shall the provision of cable tele-~~  
29 ~~vision service to customers be taxed under this paragraph.~~

30 (ii)] Notwithstanding the rate and date set forth in the opening  
31 undesignated paragraph of this section and notwithstanding the opening  
32 undesignated paragraph of this subdivision, [~~on and after September~~  
33 ~~first, nineteen hundred ninety-three,~~] in addition to any other tax  
34 imposed under this section, and in addition to any other tax or fee  
35 imposed under any other provision of law, there is hereby imposed and  
36 there shall be paid an additional tax at the rate of five percent upon  
37 the receipts [~~which are subject to tax under subparagraph (i) of this~~  
38 ~~paragraph on the] from the furnishing or provision of an entertainment  
39 or information service (but not an information service subject to tax  
40 under paragraph one of this subdivision), which is furnished, provided,  
41 or delivered by means of telephony or telegraphy or telephone or tele-  
42 graph service (whether intrastate or interstate) of whatever nature,  
43 such as entertainment or information services provided through 800 or  
44 900 numbers or mass announcement services or interactive information  
45 network services, and which is received by the customer exclusively in  
46 an aural manner. Provided, however, that in no event (i) shall the  
47 furnishing or provision of an information service be taxed under this  
48 paragraph unless it would otherwise be subject to taxation under para-~~

49 graph one of this subdivision if it were furnished by printed, mimeo-  
50 graphed or multigraphed matter or by duplicating written or printed  
51 matter in any other manner nor (ii) shall the provision of cable tele-  
52 vision service to customers be taxed under this paragraph. Such addi-  
53 tional tax shall not be imposed by section eleven hundred seven, eleven  
54 hundred eight or eleven hundred nine of this [article] part and shall  
55 not be included among the taxes authorized to be imposed pursuant to the  
56 authority of article twenty-nine of this chapter.  
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1 § 28. The closing paragraph of subdivision (c) of section 1105 of the  
2 tax law, as amended by chapter 190 of the laws of 1990, is amended to  
3 read as follows:

4 Wages, salaries and other compensation paid by an employer to an  
5 employee for performing as an employee the services described in [~~para-~~  
6 ~~graphs (1) through (9) of this subdivision]~~ subdivisions (c) and (g) of  
7 this section are not receipts subject to the taxes imposed under such  
8 [~~subdivision]~~ subdivisions.

9 § 29. Clause 3 of subdivision (b) of section 1107 of the tax law, as  
10 amended by chapter 651 of the laws of 1999, is amended to read as  
11 follows:

12 (3) Where a sale of tangible personal property, a digital product or  
13 services, including an agreement therefor, is made in a city in which  
14 the taxes imposed by subdivision (a) of this section apply, but the  
15 tangible personal property or digital product sold, the tangible  
16 personal property upon which the services were performed or such service  
17 is or will be delivered to the purchaser elsewhere, such sale will not  
18 be subject to taxes imposed by such subdivision (a). However, if deliv-  
19 ery occurs or will occur in any city where the tax imposed by such  
20 subdivision (a) applies, a vendor will be required to collect from the  
21 purchaser the sales or compensating use taxes imposed by this section.  
22 For the purposes of this section delivery shall be deemed to include  
23 transfer of possession to the purchaser and the receiving of the tangi-  
24 ble personal property or of the service by the purchaser and, for a  
25 digital product, delivery will be determined in accordance with the  
26 rules in subdivision (g) of section eleven hundred five of this part.

27 § 30. Clause 5 of subdivision (b) of section 1107 of the tax law, as  
28 amended by chapter 376 of the laws of 1989, is amended to read as  
29 follows:

30 (5) Where a retail sales tax or a compensating use tax was legally due  
31 and paid to any municipal corporation in this state, without any right  
32 to a refund or credit thereof, with respect to the sale or use of tangi-  
33 ble personal property, a digital product or any of the services subject  
34 to sales or compensating use tax, if the use of such property, digital  
35 product or services is then subject to the compensating use tax imposed  
36 by this section and such tax is at a higher rate than the rate of tax  
37 imposed by such municipal corporation, the tax imposed by this section  
38 shall also apply but only to the extent of the difference in such rates.

39 § 31. Subdivision (b) of section 1108 of the tax law, as added by  
40 chapter 168 of the laws of 1975, paragraph 1 as separately amended by  
41 section 4 of part B and section 4 of part S of chapter 63 of the laws of  
42 2000 and paragraph 3 as amended by chapter 651 of the laws of 1999, is  
43 amended to read as follows:

44 (b) Exceptions. (1) Notwithstanding any provision of law to the  
45 contrary, the receipts from the following shall be exempt from the tax  
46 on retail sales and the compensating use tax imposed by this section:  
47 All sales of tangible personal property or digital products for use or  
48 consumption directly and predominantly in the production of tangible  
49 personal property, digital products, gas, electricity, refrigeration or  
50 steam, for sale, by manufacturing, processing, generating, assembling,  
51 refining, mining or extracting; and all sales of tangible personal prop-  
52 erty or digital products for use or consumption predominantly either in  
53 the production of tangible personal property, for sale, by farming or in

54 a commercial horse boarding operation, or in both.

55 (2) The transitional provisions contained in section eleven hundred  
56 six of this part shall not apply to the taxes imposed by this section.

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1 (3) Where a sale of tangible personal property, a digital product or  
2 services, including an agreement therefor, is made in a city in which  
3 the taxes imposed by subdivision (a) of this section apply, but the  
4 tangible personal property or digital product sold, the tangible  
5 personal property upon which the services were performed or such service  
6 is or will be delivered to the purchaser elsewhere, such sale will not  
7 be subject to taxes imposed by such subdivision (a). However, if deliv-  
8 ery occurs or will occur in any city where the tax imposed by such  
9 subdivision (a) applies, a vendor will be required to collect from the  
10 purchaser[~~r~~] the sales or compensating use taxes imposed by this  
11 section. For the purposes of this section delivery shall be deemed to  
12 include transfer of possession to the purchaser and the receiving of the  
13 tangible personal property or of the service by the purchaser and, for a  
14 digital product, delivery will be determined in accordance with the  
15 rules in subdivision (g) of section eleven hundred five of this part.

16 (4) The provisions of section twelve hundred fourteen of this chapter  
17 shall be applicable to this section, but any reference in that section  
18 to a local sales or use tax imposed by a city shall mean the additional  
19 taxes imposed by subdivision (a) [~~hereof~~] of this section.

20 (5) Where a retail sales tax or a compensating use tax was legally due  
21 and paid to any municipal corporation in this state, without any right  
22 to a refund or credit thereof, with respect to the sale or use of tangi-  
23 ble personal property, a digital product or any of the services subject  
24 to sales or compensating use tax, if the use of such tangible personal  
25 property, digital product or services is then subject to the compensat-  
26 ing use tax imposed by this section and such tax is at a higher rate  
27 than the rate of tax imposed by such municipal corporation, the tax  
28 imposed by this section shall also apply but only to the extent of the  
29 difference in such rates. For purposes of this subdivision, a payment to  
30 the [~~tax commission~~] commissioner of a tax imposed by a municipal corpo-  
31 ration shall be deemed a payment to such municipal corporation.

32 § 32. Subdivision (c) of section 1109 of the tax law, as amended by  
33 chapter 651 of the laws of 1999, is amended to read as follows:

34 (c) Deliveries outside the district; deliveries within the district of  
35 property sold or serviced elsewhere. Where a sale of tangible personal  
36 property, a digital product or services, including an agreement there-  
37 for, is made in the district in which the taxes imposed by this section  
38 apply, but the tangible personal property or digital product sold, the  
39 tangible personal property upon which the services were performed or  
40 such service is or will be delivered to the purchaser elsewhere, such  
41 sale will not be subject to taxes imposed by this section. However, if  
42 delivery occurs or will occur in the district where the tax imposed by  
43 this section applies, a vendor will be required to collect from the  
44 purchaser the sales or compensating use taxes imposed by this section.  
45 For the purposes of this section, delivery shall be deemed to include  
46 transfer of possession to the purchaser and the receiving of the tangi-  
47 ble personal property or of the service by the purchaser and, for a  
48 digital product, delivery will be determined in accordance with the  
49 rules in subdivision (g) of section eleven hundred five of this part.

50 The provisions of section twelve hundred fourteen of this chapter shall  
51 be applicable to this section, but any reference in that section to a  
52 local sales or use tax imposed by a city, county or school district  
53 shall mean the additional taxes imposed by this section.

54 § 33. Subdivision (a) of section 1110 of the tax law, as amended by  
55 section 28 of part Y of chapter 63 of the laws of 2000, is amended to  
56 read as follows:

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1 (a) Except to the extent that property or services have already been  
2 or will be subject to the sales tax under this article, there is hereby  
3 imposed on every person a use tax for the use within this state on and  
4 after June first, nineteen hundred seventy-one except as otherwise  
5 exempted under this article, (A) of any tangible personal property or  
6 digital product purchased at retail, (B) of any tangible personal prop-  
7 erty or digital product (other than computer software used by the author  
8 or other creator) manufactured, processed or assembled by the user, (i)  
9 if items of the same kind of tangible personal property or digital prod-  
10 uct are offered for sale by him or her in the regular course of business  
11 or (ii) if items are used as such or incorporated into a structure,  
12 building or real property by a contractor, subcontractor or repairman in  
13 erecting structures or buildings, or building on, or otherwise adding  
14 to, altering, improving, maintaining, servicing or repairing real prop-  
15 erty, property or land, as the terms real property, property or land are  
16 defined in the real property tax law, if items of the same kind are not  
17 offered for sale as such by such contractor, subcontractor or repairman  
18 or other user in the regular course of business, (C) of any of the  
19 services described in paragraphs [~~(1), (7) and (8)~~] one, seven and eight  
20 of subdivision (c) of section eleven hundred five of this part, (D) of  
21 any tangible personal property or digital product, however acquired,  
22 where not acquired for purposes of resale, upon which any of the  
23 services described in paragraphs [~~(2), (3) and (7)~~] two, three and seven  
24 of subdivision (c) of section eleven hundred five of this part have been  
25 performed, (E) of any telephone answering service described in subdivi-  
26 sion (b) of section eleven hundred five of this part, (F) of any comput-  
27 er software or digital product written or otherwise created by the user  
28 if the user offers software or a digital product of a similar kind for  
29 sale as such or as a component part of other property in the regular  
30 course of business, (G) of any prepaid telephone calling service, and  
31 (H) of any gas or electricity described in subdivision (b) of section  
32 eleven hundred five of this part.

33 § 34. Subdivision (b) of section 1110 of the tax law, as separately  
34 amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991,  
35 is amended to read as follows:

36 (b) For purposes of clause (A) of subdivision (a) of this section, the  
37 tax shall be at the rate of four percent of the consideration given or  
38 contracted to be given for such tangible personal property or digital  
39 product, or for the use of such tangible personal property or digital  
40 product, including any charges for shipping or delivery as described in  
41 paragraph three of subdivision (b) of section eleven hundred one of this  
42 article, but excluding any credit for tangible personal property  
43 accepted in part payment and intended for resale.

44 § 35. Subdivision (c) of section 1110 of the tax law, as amended by  
45 section 1 of part E of chapter 407 of the laws of 1999, is amended to  
46 read as follows:

47 (c) For purposes of subclause (i) of clause (B) of subdivision (a) of  
48 this section, the tax shall be at the rate of four percent of the price  
49 at which items of the same kind of tangible personal property or digital  
50 product are offered for sale by the user, and the mere storage, keeping,  
51 retention or withdrawal from storage of tangible personal property or a  
52 digital product by the person who manufactured, processed or assembled  
53 such property or digital product shall not be deemed a taxable use by  
54 [~~him~~] that person; provided, however, that if the user uses such an item  
55 itself on its own premises (not including making a gift of such tangible  
56 personal property or digital product), solely in the conduct of the

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1 user's own business operations, and the item retains its characteristic  
2 as either tangible personal property or a digital product when so used,  
3 the tax shall be at the rate, and on the consideration, described in  
4 subdivision (d) of this section.

5 § 36. Subdivision (f) of section 1110 of the tax law, as separately

6 amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991,  
7 is amended to read as follows:

8 (f) For purposes of clauses (C), (D), and (E) of subdivision (a) of  
9 this section, the tax shall be at the rate of four percent of the  
10 consideration given or contracted to be given for the service, including  
11 the consideration for any tangible personal property or digital product  
12 transferred in conjunction with the performance of the service and also  
13 including any charges for shipping and delivery of the property so  
14 transferred and of the tangible personal property or digital product  
15 upon which the service was performed as such charges are described in  
16 paragraph three of subdivision (b) of section eleven hundred one of this  
17 article.

18 § 37. Subdivision (g) of section 1110 of the tax law, as separately  
19 amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991,  
20 is amended to read as follows:

21 (g) For purposes of clause (F) of subdivision (a) of this section, the  
22 tax shall be at the rate of four percent of the consideration given or  
23 contracted to be given for the tangible personal property which consti-  
24 tutes the blank medium, such as disks or tapes, used in conjunction with  
25 the software or digital product, or for the use of such property, and  
26 the mere storage, keeping, retention or withdrawal from storage of  
27 computer software or digital products described in such clause (F) by  
28 its author or other creator shall not be deemed a taxable use by such  
29 person.

30 § 38. Subdivision (h) of section 1110 of the tax law, as added by  
31 chapter 651 of the laws of 1999, is amended to read as follows:

32 (h) For purposes of clause (G) of subdivision (a) of this section, the  
33 tax shall be at the rate of four percent of the consideration given or  
34 contracted to be given for the service, including the consideration for  
35 any tangible personal property or digital products transferred in  
36 conjunction with the service and also including any charges for shipping  
37 and delivery of the tangible personal property or digital product so  
38 transferred as such charges are described in paragraph three of subdivi-  
39 sion (b) of section eleven hundred one of this article; provided that,  
40 if the user offers like services for sale in the regular course of busi-  
41 ness, the tax shall be at the rate of four percent of the price at which  
42 the user offers such like services for sale.

43 § 39. Subdivision (a) of section 1111 of the tax law, as amended by  
44 chapter 473 of the laws of 1969, is amended to read as follows:

45 (a) The retail sales tax imposed under subdivision (a) of section  
46 eleven hundred five and the compensating use tax imposed under section  
47 eleven hundred ten of this part, when computed in respect to tangible  
48 personal property or a digital product wherever manufactured, processed  
49 or assembled and used by such manufacturer, processor or assembler in  
50 the regular course of business within this state, shall be based on the  
51 price at which items of the same kind of tangible personal property or  
52 digital product are offered for sale by him or her, except to the extent  
53 otherwise provided in section eleven hundred ten of this [~~chapter~~] part.

54 § 40. Subdivision (b) of section 1111 of the tax law, as added by  
55 chapter 93 of the laws of 1965, is amended to read as follows:

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1 (b) Tangible personal property or a digital product, which has been  
2 purchased by a resident of New York state outside of this state for use  
3 outside of this state and subsequently becomes subject to the compensat-  
4 ing use tax imposed under this article, shall be taxed on the basis of  
5 the purchase price of such property, provided, however:

6 (1) That where a taxpayer affirmatively shows that the tangible  
7 personal property or digital product was used outside [~~such~~] this state  
8 by him or her for more than six months prior to its use within this  
9 state, [~~such~~] the tangible personal property or digital product shall be  
10 taxed on the basis of current market value of the tangible personal  
11 property or digital product at the time of its first use within this

12 state. The value of [~~such~~] the tangible personal property or digital  
13 product, for compensating use tax purposes, may not exceed its cost.

14 (2) That the compensating use tax on such tangible personal property  
15 or digital product brought into this state (other than for complete  
16 consumption or for incorporation into real property located in this  
17 state) and used in the performance of a contract or sub-contract within  
18 this state by a purchaser or user for a period of less than six months  
19 may be based, at the option of the taxpayer, on the fair rental value of  
20 such tangible personal property or digital product for the period of use  
21 within this state.

22 § 41. Subdivision (1) of section 1111 of the tax law, as added by  
23 section 10 of part S of chapter 85 of the laws of 2002, is amended to  
24 read as follows:

25 (1) (1) Receipts from the sale of mobile telecommunications service  
26 provided by a home service provider shall include "charges for mobile  
27 telecommunications services." Such term shall mean any charge by a home  
28 service provider to its mobile telecommunications customer for (A)  
29 commercial mobile radio service, and shall include property [~~and~~],  
30 services and digital products that are ancillary to the provision of  
31 commercial mobile radio service (such as dial tone, voice service,  
32 directory information, call forwarding, caller-identification and call-  
33 waiting), and (B) any service [~~and~~], property or digital product  
34 provided therewith.

35 (2) With respect to services [~~or~~], property or digital products  
36 described in subparagraph (B) of paragraph one of this subdivision,  
37 internet access service, any mobile telecommunications service which the  
38 mobile telecommunications customer originates in a foreign country to  
39 the extent included in the fixed periodic charge, any interstate or  
40 international telephony or telegraphy or telephone or telegraph service  
41 of whatever nature which is not a voice service, and any property,  
42 digital product or service which is not telephony or telegraphy or tele-  
43 phone or telegraph service of whatever nature, a home service provider  
44 shall collect and pay over tax, and a mobile telecommunications customer  
45 shall pay such tax, on receipts from any charge that is aggregated with  
46 and not separately stated from other charges for mobile telecommuni-  
47 cations service. Provided, however, if such home service provider uses  
48 an objective, reasonable and verifiable standard for identifying each of  
49 the components of the charge for mobile telecommunications service, then  
50 such home service provider may separately account for and quantify the  
51 amount of each such component charge. If a home service provider chooses  
52 to so separately account for and quantify and separately sells any such  
53 property, digital product or service, then the charge for such property,  
54 digital product or service shall be based upon the price for such prop-  
55 erty, digital product or service as separately sold. If a home service  
56 provider chooses to so separately account for and quantify and does not

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1 separately sell such property, digital product or service, then the  
2 charge for such property, digital product or service shall be based upon  
3 the prevailing retail price of comparable property, digital product or  
4 service sold separately by other home service providers. In any case,  
5 the charge for such property, digital product or service shall be  
6 reasonable and proportionate to the total charge to the mobile telecom-  
7 munications customer. Such charges for such services [~~or~~], property or  
8 digital products, as the case may be, will not constitute receipts from  
9 charges for mobile telecommunications services subject to tax under  
10 subdivision (b) of section eleven hundred five of this article. Nothing  
11 herein shall be construed to exempt from tax or subject to tax any such  
12 service [~~or~~], property or digital product otherwise subject to tax or  
13 exempt from tax under this article.

14 (3) (A) Any charge for a service [~~or~~], property or digital product  
15 billed by or for a mobile telecommunications customer's home service  
16 provider shall be deemed to be provided by such mobile telecommuni-

17 cations customer's home service provider.

18 (B) Charges for mobile telecommunications service that are provided or  
19 deemed to be provided by a mobile telecommunications customer's home  
20 service provider shall be sourced to the taxing jurisdiction where the  
21 mobile telecommunications customer's place of primary use is located,  
22 regardless of where the mobile telecommunications service originates,  
23 terminates or passes through.

24 § 42. Subdivision (a) of section 1112 of the tax law, as added by  
25 section 6 of part K of chapter 61 of the laws of 2005, is amended to  
26 read as follows:

27 (a) Where tangible personal property, digital products or services  
28 subject to sales or compensating use tax have been purchased on or from  
29 a qualified Indian reservation, as defined in section four hundred  
30 seventy of this chapter, the purchaser shall not be relieved of his or  
31 her liability to pay the tax due. Such tax due and not collected shall  
32 be paid by the purchaser directly to the department.

33 § 43. The opening paragraph of subdivision (a) of section 1115 of the  
34 tax law, as added by chapter 93 of the laws of 1965, is amended to read  
35 as follows:

36 Receipts from the following shall be exempt from the tax on retail  
37 sales imposed under [~~subdivision~~] subdivisions (a) and (g) of section  
38 eleven hundred five of this article and the compensating use tax imposed  
39 under section eleven hundred ten of this article:

40 § 44. Clause (A) of paragraph 6 of subdivision (a) of section 1115 of  
41 the tax law, as amended by section 5 of part B of chapter 63 of the laws  
42 of 2000, is amended to read as follows:

43 (A) Tangible personal property or a digital product, whether or not  
44 incorporated in a building or structure, for use or consumption predomi-  
45 nantly either in the production for sale of tangible personal property  
46 by farming or in a commercial horse boarding operation, or in both.

47 § 45. Paragraph 7 of subdivision (a) of section 1115 of the tax law,  
48 as added by chapter 93 of the laws of 1965, is amended to read as  
49 follows:

50 (7) Tangible personal property or a digital product sold by a mortici-  
51 cian, undertaker or funeral director. However, all tangible personal  
52 property or digital products sold to a mortician, undertaker or funeral  
53 director for use in the conducting of funerals shall not be deemed a  
54 sale for resale within the meaning of paragraph [~~(4)~~] four of subdivi-  
55 sion (b) of section eleven hundred one of this [~~chapter~~] article and  
56 shall not be exempt from the retail sales tax.

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1 § 46. Paragraph 8 of subdivision (a) of section 1115 of the tax law,  
2 as added by chapter 93 of the laws of 1965, is amended to read as  
3 follows:

4 (8) Commercial vessels primarily engaged in interstate or foreign  
5 commerce and tangible personal property or digital products used by or  
6 purchased for the use of such vessels for fuel, provisions, supplies,  
7 maintenance and repairs (other than articles purchased for the original  
8 equipping of a new ship).

9 § 47. Paragraph 10 of subdivision (a) of section 1115 of the tax law,  
10 as amended by chapter 851 of the laws of 1974, is amended to read as  
11 follows:

12 (10) Tangible personal property or a digital product purchased for use  
13 or consumption directly and predominantly in research and development in  
14 the experimental or laboratory sense. Such research and development  
15 shall not be deemed to include the ordinary testing or inspection of  
16 materials or products for quality control, efficiency surveys, manage-  
17 ment studies, consumer surveys, advertising, promotions or research in  
18 connection with literary, historical or similar projects.

19 § 48. Paragraph 12-a of subdivision (a) of section 1115 of the tax  
20 law, as added by section 7 of part S of chapter 63 of the laws of 2000,  
21 is amended to read as follows:

22 (12-a) Tangible personal property or a digital product for use or  
23 consumption directly and predominantly in the receiving, initiating,  
24 amplifying, processing, transmitting, retransmitting, switching or moni-  
25 toring of switching of telecommunications services for sale or internet  
26 access services for sale or any combination thereof. Such tangible  
27 personal property or a digital product exempt under this subdivision  
28 shall include, but not be limited to, tangible personal property or a  
29 digital product used or consumed to upgrade systems to allow for the  
30 receiving, initiating, amplifying, processing, transmitting, retransmit-  
31 ting, switching or monitoring of switching of telecommunications  
32 services for sale or internet access services for sale or any combina-  
33 tion thereof. As used in this paragraph, the term "telecommunications  
34 services" shall have the same meaning as defined in paragraph (g) of  
35 subdivision one of section one hundred eighty-six-e of this chapter.

36 § 49. Paragraph 21 of subdivision (a) of section 1115 of the tax law,  
37 as added by chapter 773 of the laws of 1978, is amended to read as  
38 follows:

39 (21) Commercial aircraft primarily engaged in intrastate, interstate  
40 or foreign commerce, machinery or equipment to be installed on such  
41 aircraft and property or a digital products used by or purchased for the  
42 use of such aircraft for maintenance and repairs and flight simulators  
43 purchased by commercial airlines.

44 § 50. Paragraph 24 of subdivision (a) of section 1115 of the tax law,  
45 as added by chapter 799 of the laws of 1985, is amended to read as  
46 follows:

47 (24) Fishing vessels used directly and predominantly in the harvesting  
48 of fish for sale, and property or digital products used by or purchased  
49 for the use of such vessels for fuel, provisions, supplies, maintenance  
50 and repairs. For the purpose of this paragraph the term fishing vessel  
51 shall not include any vessel used predominantly for sport fishing  
52 purposes.

53 § 51. Paragraph 28 of subdivision (a) of section 1115 of the tax law,  
54 as added by chapter 166 of the laws of 1991, is amended to read as  
55 follows:

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1 (28) Computer software designed and developed by the author or creator  
2 to the specifications of a specific purchaser which is transferred  
3 directly or indirectly to a corporation which is a member of an affil-  
4 iated group of corporations [~~within the meaning of subparagraph six of~~  
5 ~~paragraph (b) of subdivision seventeen of section two hundred eight of~~  
6 ~~this chapter except for clauses (ii) and (iii) of such subparagraph]~~  
7 that includes such purchaser, or to a partnership in which such purchas-  
8 er and other members of such affiliated group have at least a fifty  
9 percent capital or profits interest (but only if the transfer is not in  
10 pursuance of a plan having as its principal purpose the avoidance or  
11 evasion of tax under this article), but in no case including computer  
12 software which is pre-written, as defined in paragraph six of subdivi-  
13 sion (b) of section eleven hundred one of this article and available to  
14 be sold to customers in the ordinary course of the seller's business.  
15 "Affiliated group" has the same meaning that term has in section 1504 of  
16 the internal revenue code, except that references to "at least eight  
17 percent" in that section must be read as "more than fifty percent."

18 § 52. Paragraph 35 of subdivision (a) of section 1115 of the tax law,  
19 as amended by section 1 of part HH of chapter 407 of the laws of 1999,  
20 is amended to read as follows:

21 (35) Computer system hardware used or consumed directly and predomi-  
22 nantly in designing and developing computer software or digital products  
23 for sale or in providing the service, for sale, of designing and devel-  
24 oping internet websites.

25 § 53. Paragraph 38 of subdivision (a) of section 1115 of the tax law,  
26 as added by section 1 of part T of chapter 63 of the laws of 2000, is  
27 amended to read as follows:

28 (38) (A) Machinery or equipment or other tangible personal property  
29 (including parts, tools and supplies) or a digital product for use or  
30 consumption by a broadcaster directly and predominantly in the  
31 production (including post-production) of live or recorded programs  
32 which are used or consumed by a broadcaster predominantly for the  
33 purpose of broadcast over-the-air by such broadcaster or transmission  
34 through a cable television or direct broadcast satellite system by such  
35 broadcaster. Tangible personal property or a digital product, which is  
36 described in the preceding sentence, and which is leased by a broadcast-  
37 er to another person for that person's use or consumption directly and  
38 predominantly in the production (including post-production) of such live  
39 or recorded programs by such person, shall be deemed to be used or  
40 consumed by the lessor for purposes of applying the directly and predom-  
41 inantly requirement of this subparagraph.

42 (B) Machinery or equipment or other tangible personal property  
43 (including parts, tools and supplies) or a digital product for use or  
44 consumption by a broadcaster directly and predominantly in the trans-  
45 mission of live or recorded programs over-the-air or through a cable  
46 television or direct broadcast satellite system by such broadcaster.  
47 Tangible personal property or a digital product, which is described in  
48 the preceding sentence, and which is leased by a broadcaster to another  
49 person for that person's use or consumption directly and predominantly  
50 in the transmission of such live or recorded programs by such person,  
51 shall be deemed to be used or consumed by the lessor for purposes of  
52 applying the directly and predominantly requirement of this subpara-  
53 graph.

54 (C) For purposes of this paragraph: (i) the term "broadcaster" means a  
55 television or radio station licensed by the federal communications  
56 commission, a television or radio broadcast network or a cable tele-  
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1 vision network. The term "television or radio broadcast network" means  
2 an organization which produces and/or purchases programs intended for  
3 transmission by affiliated television or radio stations licensed by the  
4 federal communications commission and which has distribution facilities  
5 or circuits available to such affiliated stations during all or some  
6 portion of one or more days during each week. The term "cable television  
7 network" means an organization which produces and/or purchases programs  
8 intended for transmission either by direct broadcast satellite systems  
9 or by cable systems pursuant to an affiliation or similar agreement and  
10 which has distribution facilities or circuits available to such direct  
11 broadcast satellite systems or such cable systems during all or some  
12 portion of one or more days during each week. For the purpose of  
13 subparagraph (B) of this paragraph, the term "broadcaster" shall not  
14 include cable system operators and direct broadcast satellite system  
15 operators. Provided, however, for the purpose of subparagraph (A) of  
16 this paragraph, such term shall also include a cable system operator or  
17 a direct broadcast satellite system operator solely with respect to  
18 machinery or equipment or other tangible personal property (including  
19 parts, tools and supplies) or a digital product for use or consumption  
20 by it directly and predominantly in the production (including post-pro-  
21 duction) of live or recorded programs intended for transmission to its  
22 viewers over its system; (ii) the term "programs" means any performance,  
23 event, play, story or literary, musical, artistic or other work used for  
24 entertainment or educational purposes, including but not limited to  
25 news, news specials, sporting events, game shows, talk shows and commer-  
26 cials; and (iii) the term "recorded programs" means any program  
27 contained on film, tape, disc or any other ~~physical~~ media.

28 § 54. Paragraph 39 of subdivision (a) of section 1115 of the tax law,  
29 as added by chapter 66 of the laws of 2002, is amended to read as  
30 follows:

31 (39) Tangible personal property or a digital product for use or  
32 consumption directly and predominantly in the production, including

33 editing, dubbing and mixing, of a film for sale regardless of the medium  
34 by means of which the film is conveyed to a purchaser. For purposes of  
35 this paragraph, the term "film" means feature films, documentary films,  
36 shorts, television films, television commercials and similar  
37 productions.

38 § 55. Subdivision (d) of section 1115 of the tax law, as amended by  
39 chapter 190 of the laws of 1990, is amended to read as follows:

40 (d) Services otherwise taxable under paragraph [~~(1), (2), (3), (7)~~ ~~or~~  
41 ~~(8)~~] one, two, three, seven or eight of subdivision (c) of section elev-  
42 en hundred five of this article shall be exempt from tax under this  
43 article if the tangible property or digital product upon which the  
44 services were performed is delivered to the purchaser outside this state  
45 for use outside this state.

46 § 56. Subdivision (l) of section 1115 of the tax law, as added by  
47 chapter 185 of the laws of 1987, is amended to read as follows:

48 (l) Tangible personal property or a digital product manufactured,  
49 processed or assembled and donated by the manufacturer, processor or  
50 assembler to an organization described in subdivision (a) of section  
51 eleven hundred sixteen shall be exempt from tax under this article  
52 provided that the manufacturer, processor or assembler offers the same  
53 kind of tangible personal property or digital product for sale in the  
54 regular course of business and provided further that the manufacturer,  
55 processor or assembler has not made any other use of the tangible  
56 personal property or digital product which is donated. Nothing in this  
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1 subdivision shall be construed to allow a refund or credit of tax prop-  
2 erly paid pursuant to this article.

3 § 57. Paragraph 7 of subdivision (n) of section 1115 of the tax law,  
4 as added by chapter 220 of the laws of 2000, is amended to read as  
5 follows:

6 (7) Mechanicals, layouts, artwork, photographs, color separations and  
7 like property, whether or not in tangible form, shall be exempt from tax  
8 under this article where such property is purchased, manufactured, proc-  
9 essed or assembled by a person who furnishes such property to a printer  
10 and the printer uses such property directly and predominantly in the  
11 production of promotional materials exempt under paragraph four of this  
12 subdivision, or in performing services exempt under paragraph five of  
13 this subdivision, for sale by such printer to the person who furnished  
14 such property to the printer.

15 § 58. Paragraph 8 of subdivision (n) of section 1115 of the tax law,  
16 as added by chapter 309 of the laws of 1996 and as renumbered by chapter  
17 220 of the laws of 2000, is amended to read as follows:

18 (8) Nothing in this subdivision shall be construed to exempt tangible  
19 personal property or a digital product (i) purchased by a person (other  
20 than exempt promotional materials described in paragraph four of this  
21 subdivision) or (ii) manufactured, processed or assembled by the  
22 manufacturer, processor or assembler, who furnishes such tangible  
23 personal property or digital product to the vendor of promotional mate-  
24 rials exempt under paragraph one or four of this subdivision to be  
25 included as free gifts with such exempt promotional materials to be  
26 mailed or shipped to such purchaser's or such manufacturer's, process-  
27 or's or assembler's customers or prospective customers or who otherwise  
28 uses such tangible personal property or digital product in this state,  
29 for example, by giving or donating the property as free gifts to another  
30 person, unless such tangible personal property or digital product is  
31 mailed, shipped or otherwise distributed from a point within this state  
32 to such customers or prospective customers located outside this state  
33 for use outside this state.

34 § 59. Subdivision (o) of section 1115 of the tax law, as added by  
35 chapter 166 of the laws of 1991, is amended to read as follows:

36 (o) Services otherwise taxable under subdivision (c) of section eleven  
37 hundred five or under section eleven hundred ten of this article shall

38 be exempt from tax under this article where performed on computer soft-  
39 ware of any nature; provided, however, that where such services are  
40 provided to a customer in conjunction with the sale of tangible personal  
41 property or a digital product, any charge for such services shall be  
42 exempt only when such charge is reasonable and separately stated on an  
43 invoice or other statement of the price given to the purchaser.

44 § 60. Subdivision (x) of section 1115 of the tax law, as added by  
45 section 3 of part C of chapter 407 of the laws of 1999, is amended to  
46 read as follows:

47 (x) Receipts from every sale of, and consideration given or contracted  
48 to be given for, or for the use of, the following tangible personal  
49 property, digital products and services shall be exempt from the taxes  
50 imposed by this article:

51 (1) Tangible personal property or a digital product for use or  
52 consumption directly and predominantly in production of live dramatic or  
53 musical arts performances in a theater or other similar place of assem-  
54 bly (but not including a roof garden, cabaret or other similar place),  
55 with a seating capacity of one hundred or more chairs that are rigidly  
56 anchored to the construction or fixed in place so as to prevent movement

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1 in any direction, but only where it can be shown at the time [~~such~~] the  
2 tangible personal property or digital product is purchased that such  
3 performances are to be presented to the public in such theater or other  
4 similar place on a regular basis of at least five performances per week  
5 for a period of at least two consecutive weeks, the content of each such  
6 performance shall be the same and a charge is or is to be made for  
7 admission to the place where such performances occur. For purposes of  
8 this subdivision, the term "place of assembly" shall mean a place of  
9 assembly with a stage in which scenery and scenic elements are used, as  
10 described in section 27-232 and subdivision (a) of section 27-255 of the  
11 administrative code of the city of New York (as such section and subdi-  
12 vision [~~exist~~] existed on January first, nineteen hundred ninety-eight),  
13 and for which an approved seating plan is required to be kept, as  
14 described in section 27-528 of the administrative code of the city of  
15 New York (as such section [~~exists~~] existed on January first, nineteen  
16 hundred ninety-eight), whether or not such theater or other similar  
17 place is located in such city. Nothing in this paragraph shall be  
18 construed to exempt tangible personal property which is permanently  
19 affixed to, or becomes an integral component part of, a structure,  
20 building, or real property.

21 (2) Services described in paragraph two or three of subdivision (c) of  
22 section eleven hundred five of this article when rendered with respect  
23 to tangible personal property or a digital product exempt under para-  
24 graph one of this subdivision.

25 § 61. Paragraph 1 of subdivision (z) of section 1115 of the tax law,  
26 as amended by section 17 of part CC of chapter 85 of the laws of 2002,  
27 is amended to read as follows:

28 (1) Receipts from the retail sale of tangible personal property  
29 described in subdivision (a) of section eleven hundred five of this  
30 article, receipts from every sale of services described in subdivisions  
31 (b) and (c) of such section [~~eleven hundred five~~], receipts from the  
32 retail sale of pre-written computer software, whether subject to tax  
33 under subdivision (a) or (g) of such section, and consideration given or  
34 contracted to be given for, or for the use of, such tangible personal  
35 property [~~or~~], services [~~shall be~~] or pre-written computer software are  
36 exempt from the taxes imposed by this article where such tangible  
37 personal property [~~or~~], services or pre-written computer software are  
38 sold to a qualified empire zone enterprise, provided that (i) such  
39 tangible personal property or tangible personal property upon which such  
40 a service has been performed, or such service (other than a service  
41 described in subdivision (b) of section eleven hundred five of this  
42 article) or the pre-written computer software is directly and predomi-

43 nantly, or such a service described in clause (A) or (D) of paragraph  
44 one of such subdivision (b) of section eleven hundred five is directly  
45 and exclusively, used or consumed by such enterprise in an area desig-  
46 nated as an empire zone pursuant to article eighteen-B of the general  
47 municipal law with respect to which such enterprise is certified pursu-  
48 ant to such article eighteen-B, or (ii) such a service described in  
49 clause (B) or (C) of paragraph one of such subdivision (b) of section  
50 eleven hundred five is delivered and billed to such enterprise at an  
51 address in such empire zone; provided, further, that, in order for a  
52 motor vehicle, as defined in subdivision (c) of section eleven hundred  
53 seventeen of this ~~article~~ part, or tangible personal property related  
54 to such a motor vehicle to be found to be used predominantly in such a  
55 zone, at least fifty percent of such motor vehicle's use shall be exclu-  
56 sively within such zone or at least fifty percent of such motor vehi-  
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1 cle's use shall be in activities originating or terminating in such  
2 zone, or both; and either or both such usages shall be computed either  
3 on the basis of mileage or hours of use, at the discretion of such  
4 enterprise. For purposes of this subdivision, tangible personal property  
5 related to such a motor vehicle shall include a battery, diesel motor  
6 fuel, an engine, engine components, motor fuel, a muffler, tires and  
7 similar tangible personal property used in or on such a motor vehicle.

8 § 62. Paragraph 1 of subdivision (a) of section 1116 of the tax law,  
9 as amended by chapter 530 of the laws of 1976, is amended to read as  
10 follows:

11 (1) The state of New York, or any of its agencies, instrumentalities,  
12 public corporations (including a public corporation created pursuant to  
13 agreement or compact with another state or Canada) or political subdivi-  
14 sions where it is the purchaser, user or consumer, or where it is a  
15 vendor of services, digital products or property of a kind not ordinar-  
16 ily sold by private persons;

17 § 63. Paragraph 2 of subdivision (a) of section 1116 of the tax law,  
18 as amended by chapter 530 of the laws of 1976, is amended to read as  
19 follows:

20 (2) The United States of America, and any of its agencies and instru-  
21 mentalities, insofar as it is immune from taxation where it is the  
22 purchaser, user or consumer, or where it sells services, digital  
23 products or property of a kind not ordinarily sold by private persons;

24 § 64. Paragraph 3 of subdivision (a) of section 1116 of the tax law,  
25 as amended by chapter 530 of the laws of 1976, is amended to read as  
26 follows:

27 (3) The United Nations or any international organization of which the  
28 United States of America is a member where it is the purchaser, user or  
29 consumer, or where it sellsservices, digital products or property of a  
30 kind not ordinarily sold by private persons;

31 § 65. Paragraph 9 of subdivision (a) of section 1116 of the tax law,  
32 as amended by chapter 591 of the laws of 2005, is amended to read as  
33 follows:

34 (9) A credit union, as defined in subdivision nine of section two of  
35 the banking law, where it is the purchaser, user, or consumer, or where  
36 it is a vendor of services, digital products or property of a kind not  
37 ordinarily sold by private persons.

38 § 66. Subdivision (b) of section 1116 of the tax law, as amended by  
39 chapter 888 of the laws of 1983, paragraph 1 as amended by section 1 of  
40 part KK-1 of chapter 57 of the laws of 2008, paragraph 5 as amended by  
41 chapter 619 of the laws of 1995, paragraph 6 as added by chapter 2 of  
42 the laws of 1995 and paragraph 7 as added by chapter 387 of the laws of  
43 1996, is amended to read as follows:

44 (b) Nothing in this section shall exempt:

45 (1) (i) retail sales of tangible personal property or digital products  
46 by any shop or store operated by an organization described in paragraph  
47 [~~(4), (5) or (6)~~] four, five or six of subdivision (a) of this section;

48 (ii) sales, other than for resale, of services described in subdivision  
49 (b) or paragraph five of subdivision (c) of section eleven hundred five  
50 of this article by that organization, whether or not at a shop or store;  
51 (iii) retail sales of tangible personal property or digital products and  
52 sales, other than for resale, of those services by that organization,  
53 made with a degree of regularity, frequency, and continuity by remote  
54 means, such as by telephone, the internet, mail order or otherwise; or  
55 (iv) retail sales of tangible personal property or digital products by  
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1 lease or rental by that organization as lessor, whether or not at a shop  
2 or store;

3 (2) sales of food or drink in or by a restaurant, tavern or other  
4 establishment operated by an organization described in paragraph [~~1~~]  
5 one, paragraph [~~4~~] four, paragraph [~~5~~] five or paragraph [~~6~~] six  
6 of subdivision (a) of this section, other than sales exempt under para-  
7 graph (ii) of subdivision (d) of section eleven hundred five of this  
8 article, from the taxes imposed hereunder, unless the purchaser is an  
9 organization exempt under this section;

10 (3) sales of the service of providing parking, garaging or storing for  
11 motor vehicles by an organization described in paragraph [~~4~~] four or  
12 paragraph [~~5~~] five of subdivision (a) of this section operating a  
13 garage (other than a garage which is part of premises occupied solely as  
14 a private one or two family dwelling), parking lot or other place of  
15 business engaged in providing parking, garaging or storing for motor  
16 vehicles; [~~or~~]

17 (4) sales of tangible personal property, digital products or services  
18 by cooperative and foreign corporations doing business in this state  
19 pursuant to the rural electric cooperative law, unless the purchaser is  
20 an organization exempt under this section[~~;~~];

21 (5) purchases of motor fuel or diesel motor fuel from the tax required  
22 to be prepaid pursuant to section eleven hundred two of this article and  
23 retail sales of motor fuel or diesel motor fuel subject to the tax  
24 imposed by sections eleven hundred five and eleven hundred ten of this  
25 article, except that purchases of such fuel by an organization described  
26 in paragraph one or two of subdivision (a) of this section for its own  
27 use or consumption, purchases of motor fuel by a hospital included in  
28 the organizations described in paragraph four of such subdivision for  
29 its own use and consumption, purchases of motor fuel and diesel motor  
30 fuel by a fire company or fire department, as defined in section three  
31 of the volunteer firefighters' benefit law or a voluntary ambulance  
32 service, as defined in section three thousand one of the public health  
33 law, for such department, company or service's own use and consumption  
34 for use in firefighting vehicles, apparatus or equipment, or emergency  
35 rescue or first aid response vehicles, apparatus or equipment, owned and  
36 operated by such department, company or service if such company, depart-  
37 ment or service qualifies as an exempt organization pursuant to the  
38 provisions of paragraph four of subdivision (a) of this section and  
39 purchases of diesel motor fuel by an organization described in paragraph  
40 four of such subdivision for its own heating use and consumption shall  
41 be exempt from such tax required to be prepaid and from retail sales and  
42 use taxes on such fuel[~~;~~];

43 (6) purchases of cigarettes from the tax required to be prepaid pursu-  
44 ant to section eleven hundred three of this article, except that no  
45 prepayment of tax shall be required on sales of cigarettes sold under  
46 such circumstances that this state is without power to impose such tax  
47 or sold to the United States or sold to or by a voluntary unincorporated  
48 organization of the armed forces of the United States operating a place  
49 for sale of goods pursuant to regulations promulgated by the appropriate  
50 executive agency of the United States, to the extent provided in such  
51 regulations and written policy statements of such agency applicable to  
52 such sales[~~;~~]; or

53 (7) rent received by a hotel operated by a college or university,

54 where such hotel offers one hundred or more rooms for occupancy, and  
55 where the individual paying said rent is not doing business on behalf of  
56 any organization exempted pursuant to subdivision (a) of this section.  
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1 § 67. Subdivision 2 of section 1118 of the tax law, as amended by  
2 chapter 651 of the laws of 1999, is amended to read as follows:

3 (2) In respect to the use of tangible personal property, digital  
4 products or services purchased by the user while a nonresident of this  
5 state, except in the case of tangible personal property or services  
6 which the user, in the performance of a contract, incorporates into real  
7 property located in the state. A person while engaged in any manner in  
8 carrying on in this state any employment, trade, business or profession,  
9 shall not be deemed a nonresident with respect to the use in this state  
10 of tangible personal property, digital products or services in such  
11 employment, trade, business or profession.

12 § 68. Subdivision 3 of section 1118 of the tax law, as amended by  
13 chapter 286 of the laws of 1985, is amended to read as follows:

14 (3) In respect to the use of tangible personal property, digital  
15 products or services upon the sale of which the purchaser would be  
16 expressly exempt from the taxes imposed under subdivision (a), (b) [~~or~~],  
17 (c) or (g) of section eleven hundred five of this article. In respect  
18 to the use of tangible personal property to the extent that it is exempt  
19 from the sales tax under subdivision (g) of section eleven hundred elev-  
20 en of this article.

21 § 69. Subdivision 4 of section 1118 of the tax law, as added by chap-  
22 ter 93 of the laws of 1965, is amended to read as follows:

23 (4) In respect to the use of tangible personal property or a digital  
24 product which is converted into or becomes a component part of a product  
25 produced for sale by the purchaser.

26 § 70. Paragraph (a) of subdivision 7 of section 1118 of the tax law,  
27 as amended by chapter 300 of the laws of 1967, is amended to read as  
28 follows:

29 (a) In respect to the use of tangible personal property, a digital  
30 product or services to the extent that a retail sales or use tax was  
31 legally due and paid thereon, without any right to a refund or credit  
32 thereof, to any other state or jurisdiction within any other state but  
33 only when it is shown that such other state or jurisdiction allows a  
34 corresponding exemption with respect to the sale or use of tangible  
35 personal property, digital products or services upon which such a sales  
36 tax or compensating use tax was paid to this state. To the extent that  
37 the tax imposed by this article is at a higher rate than the rate of tax  
38 in the first taxing jurisdiction, this exemption shall be inapplicable  
39 and the tax imposed by section eleven hundred ten of this [~~chapter~~]  
40 article shall apply to the extent of the difference in such rates,  
41 except as provided in paragraph (b) of this subdivision.

42 § 71. Section 1118 of the tax law is amended by adding a new subdivi-  
43 sion 13 to read as follows:

44 (13) In respect to the use in this state of a digital product, other  
45 than computer software described in paragraph eleven of this subdivi-  
46 sion, before the effective date of a chapter of the laws of two thousand  
47 nine that added this subdivision.

48 § 72. Subdivision (a) of section 1119 of the tax law, as amended by  
49 chapter 686 of the laws of 1986 and as further amended by section 15 of  
50 part GG of chapter 63 of the laws of 2000, is amended to read as  
51 follows:

52 (a) Subject to the conditions and limitations provided for herein, a  
53 refund or credit shall be allowed for a tax paid pursuant to subdivision  
54 (a) of section eleven hundred five or section eleven hundred ten of this  
55 article (1) on the sale or use of tangible personal property if the  
56 purchaser or user, in the performance of a contract, later incorporates

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1 that tangible personal property into real property located outside this  
2 state, (2) on the sale or use of tangible personal property or digital  
3 products purchased in bulk, or any portion thereof, which is stored and  
4 not used by the purchaser or user within this state if that property is  
5 subsequently reshipped by such purchaser or user to a point outside this  
6 state for use outside this state, (3) on the sale to or use by a  
7 contractor or subcontractor of tangible personal property or digital  
8 products if that tangible personal property or digital product is used  
9 by him or her solely in the performance of a pre-existing lump sum or  
10 unit price construction contract, (4) on the sale or use within this  
11 state of tangible personal property, not purchased for resale, if the  
12 use of such property in this state is restricted to fabricating such  
13 property (including incorporating it into or assembling it with other  
14 tangible personal property), processing, printing or imprinting such  
15 property and such property is then shipped to a point outside this state  
16 for use outside this state, (5) on the sale to or use by a veterinarian  
17 of drugs or medicine if such drugs or medicine are used by such veteri-  
18 narian in rendering services, which are exempt pursuant to subdivision  
19 (f) of section eleven hundred fifteen of this ~~chapter~~ part, to live-  
20 stock or poultry used in the production for sale of tangible personal  
21 property by farming or if such drugs or medicine are sold to a person  
22 qualifying for the exemption provided for in paragraph ~~(6)~~ six of  
23 subdivision (a) of section eleven hundred fifteen of this ~~chapter~~ part  
24 for use by such person on such livestock or poultry, or (6) on the sale  
25 of tangible personal property purchased for use in constructing, expand-  
26 ing or rehabilitating industrial or commercial real property (other than  
27 property used or to be used exclusively by one or more registered  
28 vendors primarily engaged in the retail sale of tangible personal prop-  
29 erty) located in an area designated as an empire zone pursuant to arti-  
30 cle eighteen-B of the general municipal law, but only to the extent that  
31 such property becomes an integral component part of the real property.  
32 (For the purpose of ~~[clause (3) of the preceding sentence]~~ paragraph  
33 three of this subdivision, the term "pre-existing lump sum or unit price  
34 construction contract" shall mean a contract for the construction of  
35 improvements to real property under which the amount payable to the  
36 contractor or subcontractor is fixed without regard to the costs  
37 incurred by him in the performance thereof, and which (i) was irrevoca-  
38 bly entered into prior to the date of the enactment of this article or  
39 the enactment of a law increasing the rate of tax imposed under this  
40 article, or (ii) resulted from the acceptance by a governmental agency  
41 of a bid accompanied by a bond or other performance guaranty which was  
42 irrevocably submitted prior to such date.) Where the tax on the sale or  
43 use of such tangible personal property or digital product has been paid  
44 to the vendor, to qualify for such refund or credit, such tangible  
45 personal property or digital product must be incorporated into real  
46 property as required in ~~[clause (1) above]~~ paragraph one of this subdivi-  
47 vision, reshipped as required in ~~[clause (2) above]~~ paragraph two of  
48 this subdivision, used in the manner described in ~~[clauses (3), (4), (5)~~  
49 ~~and (6) above]~~ paragraphs three, four, five and six of this subdivision  
50 within three years after the date such tax was payable to the ~~[tax~~  
51 ~~commission]~~ commissioner by the vendor pursuant to section eleven  
52 hundred thirty-seven of this article. Where the tax on the sale or use  
53 of such tangible personal property or digital product was paid by the  
54 applicant for the credit or refund directly to the ~~[tax commission]~~  
55 commissioner, to qualify for such refund or credit, such tangible  
56 personal property or digital product must be incorporated into real  
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1 property as required in ~~[clause (1) above]~~ paragraph one of this subdivi-  
2 vision, reshipped as required in ~~[clause (2) above]~~ paragraph two of  
3 this subdivision, used in the manner described in ~~[clauses (3), (4), (5)~~  
4 ~~and (6) above]~~ paragraphs three, four, five and six of this subdivision  
5 within three years after the date such tax was payable to the ~~[tax~~

6 ~~commission~~] commissioner by such applicant pursuant to this article. An  
7 application for a refund or credit pursuant to this section must be  
8 filed with [~~such commission~~] the commissioner within the time provided  
9 by subdivision (a) of section eleven hundred thirty-nine of this  
10 article. Such application shall be in such form as the [~~tax commission~~]  
11 commissioner may prescribe. Where an application for credit has been  
12 filed, the applicant may immediately take such credit on the return  
13 which is due coincident with or immediately subsequent to the time that  
14 [~~he~~] the applicant files [~~his~~] the application for credit. However, the  
15 taking of the credit on the return shall be deemed to be part of the  
16 application for credit and shall be subject to the provisions in respect  
17 to applications for credit in section eleven hundred thirty-nine of this  
18 article as provided in subdivision (e) of such section. With respect to  
19 a sale or use described in [~~clause (3) above~~] paragraph three of this  
20 subdivision where a pre-existing lump sum or unit price construction  
21 contract was irrevocably entered into prior to the date of the enactment  
22 of this article or the bid accompanied by the performance guaranty was  
23 irrevocably submitted to the governmental agency prior to such date, the  
24 purchaser or user shall be entitled to a refund or credit only of the  
25 amount by which the tax on such sale or use imposed under this article  
26 plus any tax imposed under the authority of article twenty-nine of this  
27 chapter exceeds the amount computed by applying against such sale or use  
28 the local rate of tax, if any, in effect at the time such contract was  
29 entered into or such bid was submitted.

30 In the case of the enactment of a law increasing the rate of tax  
31 imposed by this article, the purchaser or user shall be entitled only to  
32 a refund or credit of the amount by which the increased tax on such sale  
33 or use imposed under this article plus any tax imposed under the author-  
34 ity of article twenty-nine of this chapter exceeds the amount computed  
35 by applying against such sale or use the state and local rates of tax in  
36 effect at the time such contract was entered into or such bid was  
37 submitted.

38 § 73. Subdivision (c) of section 1119 of the tax law, as amended by  
39 chapter 760 of the laws of 1992, is amended to read as follows:

40 (c) A refund or credit equal to the amount of sales or compensating  
41 use tax imposed by this article and pursuant to the authority of article  
42 twenty-nine of this chapter, and paid on the sale or use of tangible  
43 personal property or a digital product, shall be allowed the purchaser  
44 where [~~such~~] the tangible personal property or digital product is later  
45 used by the purchaser in performing a service subject to tax under para-  
46 graph [~~(1), (2), (3), (5), (7) or (8)~~] one, two, three, five, seven or  
47 eight of subdivision (c) of section eleven hundred five or under section  
48 eleven hundred ten of this article and such tangible personal property  
49 has become a physical component part or, in the case of a digital prod-  
50 uct, a component part, of the property upon which the service is  
51 performed or has been transferred to the purchaser of the service in  
52 conjunction with the performance of the service subject to tax or if a  
53 contractor, subcontractor or repairman purchases tangible personal prop-  
54 erty and later makes a retail sale of such tangible personal property,  
55 the acquisition of which would not have been a sale at retail to him but  
56 for the second to last sentence of subparagraph (i) of paragraph [~~(4)~~]  
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1 four of subdivision (b) of section eleven hundred one of this article.  
2 An application for the refund or credit provided for herein must be  
3 filed with the commissioner [~~of taxation and finance~~] within the time  
4 provided by subdivision (a) of section eleven hundred thirty-nine of  
5 this article. Such application shall be in such form as the commissioner  
6 may prescribe. Where an application for credit has been filed, the  
7 applicant may immediately take such credit on the return which is due  
8 coincident with or immediately subsequent to the time that [~~he~~] the  
9 applicant files [~~his~~] the application for credit. However, the taking of  
10 the credit on the return shall be deemed to be part of the application

11 for credit. The procedure for granting or denying such applications for  
12 refund or credit and review of such determinations shall be as provided  
13 in subdivision (e) of section eleven hundred thirty-nine of this  
14 article.

15 § 74. Subdivision 1 of section 1131 of the tax law, as amended by  
16 chapter 576 of the laws of 1994, is amended to read as follows:

17 (1) "Persons required to collect tax" or "person required to collect  
18 any tax imposed by this article" shall include: every vendor of tangible  
19 personal property, digital products or services; every recipient of  
20 amusement charges; and every operator of a hotel. Said terms shall also  
21 include any officer, director or employee of a corporation or of a  
22 dissolved corporation, any employee of a partnership, any employee or  
23 manager of a limited liability company, or any employee of an individual  
24 proprietorship who as such officer, director, employee or manager is  
25 under a duty to act for such corporation, partnership, limited liability  
26 company or individual proprietorship in complying with any requirement  
27 of this article; and any member of a partnership or limited liability  
28 company. Provided, however, that any person who is a vendor solely by  
29 reason of clause (D) or (E) of subparagraph (i) of paragraph ~~[(8)]~~ eight  
30 of subdivision (b) of section eleven hundred one of this article shall  
31 not be a "person required to collect any tax imposed by this article"  
32 until twenty days after the date by which such person is required to  
33 file a certificate of registration pursuant to section eleven hundred  
34 thirty-four of this part.

35 § 75. Subdivision 2 of section 1131 of the tax law, as added by chap-  
36 ter 93 of the laws of 1965, is amended to read as follows:

37 (2) "Customer" shall include: every purchaser of tangible personal  
38 property, digital products or services; every patron paying or liable  
39 for the payment of any amusement charge; and every occupant of a room or  
40 rooms in a hotel.

41 § 76. Subdivision 3 of section 1131 of the tax law, as amended by  
42 chapter 621 of the laws of 1967, is amended to read as follows:

43 (3) "Tax" shall include any tax imposed by sections eleven hundred  
44 five~~[7]~~ or eleven hundred ten of this article, and any amount payable to  
45 the ~~[tax-commission]~~ commissioner by a person required to file a return,  
46 as provided in section eleven hundred thirty-seven of this part.

47 § 77. Paragraphs (a), (c), and (d) of subdivision 4 of section 1131 of  
48 the tax law, as amended by section 34 of part Y of chapter 63 of the  
49 laws of 2000, is amended to read as follows:

50 (a) all property and digital products sold to a person within the  
51 state, whether or not the sale is made within the state, the use of  
52 which property ~~[is]~~ or digital products are subject to tax under section  
53 eleven hundred ten of this article or will become subject to tax when  
54 such property ~~[is]~~ or digital products are received by or ~~[comes]~~ come  
55 into the possession or control of such person within the state; (c) all  
56 services rendered to a person within the state, whether or not such  
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1 services are performed within the state, upon tangible personal property  
2 or digital products the use of which is subject to tax under section  
3 eleven hundred ten of this article or will become subject to tax when  
4 ~~[such]~~ the tangible personal property or digital product is received by  
5 or comes into possession or control of such person within the state; (d)  
6 all tangible personal property or digital products sold by a person  
7 making sales described in clause (F) of subparagraph (i) of paragraph  
8 eight of subdivision (b) of section eleven hundred one of this article  
9 to a person described in such clause (F) who purchases ~~[such]~~ the tangi-  
10 ble personal property or digital product at retail, whether or not the  
11 sale is made within the state;

12 § 78. Subdivision 11 of section 1131 of the tax law, as added by chap-  
13 ter 170 of the laws of 1994, is amended to read as follows:

14 (11) "Temporary vendor" shall include any person who makes sales of  
15 tangible personal property, digital products or services subject to tax

16 (other than at a show or entertainment event) in not more than two  
17 consecutive quarterly periods in any twelve month period, as such quar-  
18 terly periods are described in subdivision (b) of section eleven hundred  
19 thirty-six of this [article] part.

20 § 79. Subdivision (e) of section 1132 of the tax law, as amended by  
21 section 2-d of part M-1 of chapter 109 of the laws of 2006, is amended  
22 to read as follows:

23 (e) The commissioner may provide, by regulation, for the exclusion  
24 from taxable receipts, gallons of motor fuel or diesel motor fuel sold,  
25 amusement charges or rents of amounts representing sales where the  
26 contract of sale has been cancelled, the property or digital product  
27 returned or the receipt, charge or rent has been ascertained to be  
28 uncollectible or, in case the tax has been paid upon such receipt,  
29 gallons, charge or rent, for refund of or credit for the tax so paid.  
30 Where the commissioner provides for a credit for the tax so paid, he or  
31 she shall require an application for credit to be filed, but he or she  
32 may also allow the applicant to immediately take the credit on the  
33 return which is due coincident with or immediately subsequent to the  
34 time the applicant files his or her application for credit. However, the  
35 taking of the credit on the return shall be deemed to be part of the  
36 application for credit and shall be subject to the provisions in respect  
37 to applications for credit in section eleven hundred thirty-nine of this  
38 part as provided in subdivision (e) of such section.

39 § 80. Paragraph 2 of subdivision (e-1) of section 1132 of the tax law,  
40 as added by chapter 664 of the laws of 2006, is amended to read as  
41 follows:

42 (2) A vendor shall be considered the vendor of the tangible personal  
43 property, digital product or services giving rise to a worthless account  
44 even though the tangible personal property, digital product or services  
45 are sold by a leased department or concession provided all the following  
46 conditions are met:

47 (i) the leased department or concession accounts for and pays over all  
48 of its receipts to the lessor-vendor;

49 (ii) the lessor-vendor reports and remits to the department the tax on  
50 all of the leased department or concession's receipts; and

51 (iii) the transfer of all the receivables from the leased department  
52 or concession to the lessor-vendor is made without any discount for any  
53 credit transactions which involve the lessor-vendor's receivables and  
54 without recourse to the leased department or concession.

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1 § 81. Paragraph 1 of subdivision (a) of section 1134 of the tax law,  
2 as amended by section 160 of part A of chapter 389 of the laws of 1997,  
3 is amended to read as follows:

4 (1) (i) Every person required to collect any tax imposed by this arti-  
5 cle, other than a person who is a vendor solely by reason of clause (D),  
6 (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of  
7 section eleven hundred one of this article, commencing business or open-  
8 ing a new place of business, (ii) every person purchasing or selling  
9 tangible personal property or digital products for resale commencing  
10 business or opening a new place of business, (iii) every person selling  
11 automotive fuel including persons who or which are not distributors,  
12 (iv) every person described in this subdivision who takes possession of  
13 or pays for business assets under circumstances requiring notification  
14 by such person to the commissioner pursuant to subdivision (c) of  
15 section eleven hundred forty-one of this [chapter] part, (v) every  
16 person selling cigarettes including persons who or which are not agents,  
17 and (vi) every person described in subparagraph (i), (ii), (iii), (iv)  
18 or (v) of this paragraph or every person who is a vendor solely by  
19 reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight  
20 of subdivision (b) of section eleven hundred one of this article who or  
21 which has had its certificate of authority revoked under paragraph four  
22 of this subdivision, shall file with the commissioner a certificate of

23 registration, in a form prescribed by the commissioner, at least twenty  
24 days prior to commencing business or opening a new place of business or  
25 such purchasing, selling or taking of possession or payment, whichever  
26 comes first. Every person who is a vendor solely by reason of clause (D)  
27 of subparagraph (i) of paragraph eight of subdivision (b) of section  
28 eleven hundred one of this article shall file with the commissioner a  
29 certificate of registration, in a form prescribed by such commissioner,  
30 within thirty days after the day on which the cumulative total number of  
31 occasions that such person came into the state to deliver property or  
32 services, for the immediately preceding four quarterly periods ending on  
33 the last day of February, May, August and November, exceeds twelve.  
34 Every person who is a vendor solely by reason of clause (E) of subpara-  
35 graph (i) of paragraph eight of subdivision (b) of section eleven  
36 hundred one of this article shall file with the commissioner a certif-  
37 icate of registration, in a form prescribed by such commissioner, within  
38 thirty days after the day on which the cumulative total, for the imme-  
39 diately preceding four quarterly periods ending on the last day of  
40 February, May, August and November, of such person's gross receipts from  
41 sales of property delivered in this state exceeds three hundred thousand  
42 dollars and number of such sales exceeds one hundred. Every person who  
43 is a vendor solely by reason of clause (F) of subparagraph (i) of para-  
44 graph eight of subdivision (b) of section eleven hundred one of this  
45 article shall file with the commissioner a certificate of registration,  
46 in a form prescribed by such commissioner, within thirty days after the  
47 day on which tangible personal property in which such person retains an  
48 ownership interest is brought into this state by the person to whom such  
49 property is sold, where the person to whom such property is sold becomes  
50 or is a resident or uses such property in any manner in carrying on in  
51 this state any employment, trade, business or profession. Information  
52 with respect to the notice requirements of a purchaser, transferee or  
53 assignee and such person's liability pursuant to the provisions of  
54 subdivision (c) of section eleven hundred forty-one of this [~~chapter~~  
55 part] shall be included in or accompany the certificate of registration  
56 form furnished the applicant. The commissioner shall also include with  
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1 such information furnished to each applicant general information about  
2 the tax imposed under this article including information on records to  
3 be kept, returns and payments, notification requirements and forms. Such  
4 certificate of registration may be amended in accordance with rules  
5 promulgated by the commissioner.

6 § 82. Paragraph 3 of subdivision (a) of section 1134 of the tax law,  
7 as amended by chapter 2 of the laws of 1995, is amended to read as  
8 follows:

9 (3) A person, other than one described in clauses (A), (B), and (C) of  
10 subparagraph (i) of paragraph [~~(8)~~] eight of subdivision (b) of section  
11 eleven hundred one of this article, and other than one described in  
12 clause (D), (E) or (F) of such subparagraph who is required to file a  
13 certificate of registration with the commissioner, but who makes sales  
14 to persons within the state of tangible personal property, digital  
15 products or services, the use of which is subject to tax under this  
16 article, may if such person so elects file a certificate of registration  
17 with the commissioner who may, in the commissioner's discretion and  
18 subject to such conditions as the commissioner may impose, issue to such  
19 person a certificate of authority to collect the compensating use tax  
20 imposed by this article.

21 § 83. Paragraph 3 of subdivision (a) of section 1136 of the tax law,  
22 as amended by chapter 2 of the laws of 1995, is amended to read as  
23 follows:

24 (3) However, a person required to register with the commissioner as  
25 provided in section eleven hundred thirty-four of this part only because  
26 such person is purchasing or selling tangible personal property or  
27 digital products for resale, and who is not required to collect any tax

28 or pay any tax directly to the commissioner under this article, shall  
29 file an information return annually in such form as the commissioner may  
30 prescribe. Likewise, a person, who is required to register and who is  
31 selling automotive fuel who is not a distributor of motor fuel, shall  
32 file an information return quarterly or, if the commissioner deems  
33 necessary, monthly, in such form as the commissioner shall prescribe.

34 § 84. Paragraph 4 of subdivision (a) of section 1136 of the tax law,  
35 as amended by section 2-e of part M-1 of chapter 109 of the laws of  
36 2006, is amended to read as follows:

37 (4) The return of a vendor of tangible personal property, digital  
38 products or services shall show such vendor's receipts from sales and  
39 the number of gallons of any motor fuel or diesel motor fuel sold and  
40 also the aggregate value of tangible personal property, digital products  
41 and services and number of gallons of such fuels sold by the vendor, the  
42 use of which is subject to tax under this article, and the amount of tax  
43 payable thereon pursuant to the provisions of section eleven hundred  
44 thirty-seven of this part. The return of a recipient of amusement charg-  
45 es shall show all such charges and the amount of tax thereon, and the  
46 return of an operator required to collect tax on rents shall show all  
47 rents received or charged and the amount of tax thereon.

48 § 85. Subdivision (a) of section 1137 of the tax law, as amended by  
49 section 2-f of part M-1 of chapter 109 of the laws of 2006, is amended  
50 to read as follows:

51 (a) Every person required to file a return under the preceding section  
52 whose total taxable receipts (as "taxable receipts" are described in  
53 subdivision (a) of such section), amusement charges and rents are  
54 subject to the tax imposed pursuant to subdivisions (a), (c), (d), (e)  
55 [~~and~~], (f) and (g) of section eleven hundred five of this article shall,

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1 at the time of filing such return, pay to the commissioner the total of  
2 the following:

3 (i) Four percent of the total of all receipts, amusement charges and  
4 rents subject to tax under this article, and if any of such receipts,  
5 amusement charges and rents are subject to local tax imposed pursuant to  
6 article twenty-nine of this chapter, an additional percentage of the  
7 total thereof equal to the percentage rate of such local tax;

8 (ii) All taxes imposed by section eleven hundred ten of this article  
9 or pursuant to article twenty-nine of this chapter upon such person's  
10 use of tangible personal property, digital products or services;

11 (iii) All moneys collected by such person, purportedly as tax imposed  
12 by this article or pursuant to article twenty-nine of this chapter, with  
13 respect to any receipt, gallon of motor fuel or diesel motor fuel sold,  
14 amusement charge or rent not subject to tax, and all moneys collected  
15 with respect to any receipt, gallon of such fuel, amusement charge or  
16 rent subject to tax, purportedly in accordance with a schedule  
17 prescribed by the commissioner but actually in excess of the amount  
18 stated in such schedule as the amount to be collected; and

19 (iv) The correct number of cents per gallon of motor fuel and diesel  
20 motor fuel sold subject to tax under this article, and, if any of such  
21 gallons sold are subject to local tax imposed pursuant to article twen-  
22 ty-nine of this chapter, an additional number of cents per gallon sold  
23 subject to such local taxes equal to the rates of such taxes.

24 § 86. Paragraph (ii) of subdivision (b) of section 1137 of the tax  
25 law, as amended by section 2-f of part M-1 of chapter 109 of the laws of  
26 2006, is amended to read as follows:

27 (ii) All taxes imposed by section eleven hundred ten of this article  
28 or pursuant to article twenty-nine of this chapter upon such person's  
29 use of tangible personal property, digital products or services;

30 § 87. Paragraph 1 of subdivision (e) of section 1137 of the tax law,  
31 as amended by chapter 95 of the laws of 1976 and such subdivision as  
32 relettered by chapter 89 of the laws of 1976, is amended to read as  
33 follows:

34 (1) The amount so payable to the [~~tax-commission~~] commissioner for the  
35 period for which a return is required to be filed shall be due and paya-  
36 ble to the [~~tax-commission~~] commissioner on the date limited for the  
37 filing of the return for such period, without regard to whether a return  
38 is filed or whether the return which is filed correctly shows the amount  
39 of receipts, amusement charges or rents or the value of property,  
40 digital products or services sold or purchased or the taxes due thereon.

41 § 88. Subparagraph (B) of paragraph 3 of subdivision (a) of section  
42 1138 of the tax law, as amended by chapter 456 of the laws of 1998, is  
43 amended to read as follows:

44 (B) The liability, pursuant to subdivision (a) of section eleven  
45 hundred thirty-three of this article, of any officer, director or  
46 employee of a corporation or of a dissolved corporation, member or  
47 employee of a partnership or employee of an individual proprietorship  
48 who as such officer, director, employee or member is under a duty to act  
49 for such corporation, partnership or individual proprietorship in  
50 complying with any requirement of this article for the tax imposed,  
51 collected or required to be collected, or for the tax required to be  
52 paid or paid over to the [~~tax-commission~~] commissioner under this arti-  
53 cle, and the amount of such tax liability (whether or not a return is  
54 filed under this article, whether or not such return when filed is  
55 incorrect or insufficient, or where the tax shown to be due on the  
56 return filed under this article has not been paid or has not been paid

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1 in full) shall be determined by the [~~tax-commission~~] commissioner in the  
2 manner provided for in paragraphs one and two of this subdivision. Such  
3 determination shall be an assessment of the tax and liability for the  
4 tax with respect to such person unless such person, within ninety days  
5 after the giving of notice of such determination, shall apply to the  
6 division of tax appeals for a hearing. If such determination is identi-  
7 cal to or arises out of a previously issued determination of tax of the  
8 corporation, dissolved corporation, partnership or individual proprie-  
9 torship for which such person is under a duty to act, an application  
10 filed with the division of tax appeals on behalf of the corporation,  
11 dissolved corporation, partnership or individual proprietorship shall be  
12 deemed to include any and all subsequently issued personal determi-  
13 nations and a separate application to the division of tax appeals for a  
14 hearing shall not be required. The [~~tax-commission~~] commissioner may,  
15 nevertheless, [~~of its~~] on his or her own motion, redetermine such deter-  
16 mination of tax or liability for tax. Where the [~~tax-commission~~] commis-  
17 sioner determines or redetermines that the amount of tax claimed to be  
18 due from a vendor of tangible personal property, digital products or  
19 services, a recipient of amusement charges, or an operator of a hotel is  
20 erroneous or excessive in whole or in part, [~~it~~] the commissioner shall  
21 redetermine the amount of tax properly due from any such person as a  
22 person required to collect tax with respect to such vendor, recipient,  
23 or operator, and if such amount is less than the amount of tax for which  
24 such person would have been liable in the absence of such determination  
25 or redetermination, [~~it~~] the commissioner shall reduce such liability  
26 accordingly. Furthermore, the [~~tax-commission~~] commissioner may, [~~of~~  
27 ~~its~~] on his or her own motion, abate on behalf of any such person, any  
28 part of the tax determined to be erroneous or excessive whether or not  
29 such tax had become finally and irrevocably fixed with respect to such  
30 person but no claim for abatement may be filed by any such person. The  
31 provisions of this paragraph shall not be construed to limit in any  
32 manner the powers of the attorney general under subdivision (a) of  
33 section eleven hundred forty-one of this part or the powers of the [~~tax~~  
34 ~~commission~~] commissioner to issue a warrant under subdivision (b) of  
35 such section against any person whose liability has become finally and  
36 irrevocably fixed.

37 § 89. Subparagraph (i) of paragraph 3 of subdivision (a) of section  
38 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is

39 amended to read as follows:

40 (i) Any person required to obtain a certificate of authority under  
41 section eleven hundred thirty-four of this part who, without possessing  
42 a valid certificate of authority, (A) sells tangible personal property,  
43 digital products or services subject to tax, receives amusement charges  
44 or operates a hotel, (B) purchases or sells tangible personal property  
45 or digital products for resale, (C) sells automotive fuel, or (D) sells  
46 cigarettes shall, in addition to any other penalty imposed by this chap-  
47 ter, be subject to a penalty in an amount not exceeding five hundred  
48 dollars for the first day on which such sales or purchases are made,  
49 plus an amount not exceeding two hundred dollars for each subsequent day  
50 on which such sales or purchases are made, not to exceed ten thousand  
51 dollars in the aggregate.

52 § 90. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
53 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57  
54 of the laws of 2008, is amended to read as follows:

55 (i) Either, all of the taxes described in article twenty-eight of this  
56 chapter, at the same uniform rate, as to which taxes all provisions of  
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1 the local laws, ordinances or resolutions imposing such taxes shall be  
2 identical, except as to rate and except as otherwise provided, with the  
3 corresponding provisions in such article twenty-eight, including the  
4 definition and exemption provisions of such article, so far as the  
5 provisions of such article twenty-eight can be made applicable to the  
6 taxes imposed by such city or county and with such limitations and  
7 special provisions as are set forth in this article. The taxes author-  
8 ized under this subdivision may not be imposed by a city or county  
9 unless the local law, ordinance or resolution imposes such taxes so as  
10 to include all portions and all types of receipts, charges or rents,  
11 subject to state tax under sections eleven hundred five and eleven  
12 hundred ten of this chapter, except as otherwise provided. Any local  
13 law, ordinance or resolution enacted by any city of less than one  
14 million or by any county or school district, imposing the taxes author-  
15 ized by this subdivision, shall, notwithstanding any provision of law to  
16 the contrary, exclude from the operation of such local taxes all sales  
17 of tangible personal property or digital products for use or consumption  
18 directly and predominantly in the production of tangible personal prop-  
19 erty, gas, electricity, refrigeration or steam, for sale, by manufactur-  
20 ing, processing, generating, assembly, refining, mining or extracting;  
21 and all sales of tangible personal property or digital products for use  
22 or consumption predominantly either in the production of tangible  
23 personal property, for sale, by farming or in a commercial horse board-  
24 ing operation, or in both; and, unless such city, county or school  
25 district elects otherwise, shall omit the provision for credit or refund  
26 contained in clause six of subdivision (a) of section eleven hundred  
27 nineteen of this chapter. Any local law, ordinance or resolution enacted  
28 by any city, county or school district, imposing the taxes authorized by  
29 this subdivision, shall omit the residential solar energy systems equip-  
30 ment exemption provided for in subdivision (ee), the clothing and foot-  
31 wear exemption provided for in paragraph thirty of subdivision (a) and  
32 the qualified empire zone enterprise exemptions provided for in subdivi-  
33 sion (z) of section eleven hundred fifteen of this chapter, unless such  
34 city, county or school district elects otherwise as to either such resi-  
35 dential solar energy systems equipment exemption or such clothing and  
36 footwear exemption or such qualified empire zone enterprise exemptions;  
37 provided that if such a city having a population of one million or more  
38 in which the taxes imposed by section eleven hundred seven of this chap-  
39 ter are in effect enacts the resolution described in subdivision (k) of  
40 this section or repeals such resolution or enacts the resolution  
41 described in subdivision (l) of this section or repeals such resolution  
42 or enacts the resolution described in subdivision (n) of this section or  
43 repeals such resolution, such resolution or repeal shall also be deemed

44 to amend any local law, ordinance or resolution enacted by such a city  
45 imposing such taxes pursuant to the authority of this subdivision,  
46 whether or not such taxes are suspended at the time such city enacts its  
47 resolution pursuant to subdivision (k), (l) or (n) of this section or at  
48 the time of any such repeal; provided, further, that any such local law,  
49 ordinance or resolution and section eleven hundred seven of this chap-  
50 ter, as deemed to be amended in the event a city of one million or more  
51 enacts a resolution pursuant to the authority of subdivision (k), (l) or  
52 (n) of this section, shall be further amended, as provided in section  
53 twelve hundred eighteen of this subpart, so that the residential solar  
54 energy systems equipment exemption or the clothing and footwear  
55 exemption or the qualified empire zone enterprise exemptions in any such  
56 local law, ordinance or resolution or in such section eleven hundred  
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1 seven are the same, as the case may be, as the residential solar energy  
2 systems equipment exemption provided for in subdivision (ee), the cloth-  
3 ing and footwear exemption in paragraph thirty of subdivision (a) or the  
4 qualified empire zone enterprise exemptions in subdivision (z) of  
5 section eleven hundred fifteen of this chapter.

6 § 91. Paragraph 2 of subdivision (l) of section 1210 of the tax law,  
7 as amended by section 13 of part GG of chapter 63 of the laws of 2000,  
8 is amended to read as follows:

9 (2) Form of Resolution: Be it enacted by the (insert proper title of  
10 local legislative body) as follows:

11 Section one. Receipts from sales of and consideration given or  
12 contracted to be given for, or for the use of, property, pre-written  
13 computer software and services exempt from state sales and compensating  
14 use taxes pursuant to subdivision (z) of section 1115 of the tax law  
15 shall also be exempt from sales and compensating use taxes imposed in  
16 this jurisdiction.

17 Section two. This resolution shall take effect March 1, (insert the  
18 year, but not earlier than the year 2001) and shall apply to sales made,  
19 services rendered and uses occurring on and after that date in accord-  
20 ance with the applicable transitional provisions in sections 1106, 1216  
21 and 1217 of the New York tax law.

22 § 92. Paragraph 2 of subdivision (b) of section 1212-A of the tax law,  
23 as amended by chapter 190 of the laws of 1990, is amended to read as  
24 follows:

25 (2) However, with respect to a tax imposed under the authority of  
26 paragraph three of subdivision (a) of this section a refund or credit  
27 equal to the amount of the sale or compensating use tax imposed by  
28 section eleven hundred seven of this chapter and paid on the sale or use  
29 of tangible personal property or a digital product which is later used  
30 by such purchaser in performing a service subject to tax under such  
31 paragraph shall be allowed such purchaser against the tax imposed pursu-  
32 ant to such paragraph and collected by such person on the sale of such  
33 service if such property or digital product has become a physical compo-  
34 nent part of the property upon which the service is performed or has  
35 been transferred to the purchaser of the service in conjunction with the  
36 performance of the service subject to tax.

37 § 93. Section 1213 of the tax law, as amended by chapter 651 of the  
38 laws of 1999, is amended to read as follows:

39 § 1213. Deliveries outside the jurisdiction where sale is made. Where  
40 a sale of tangible personal property, a digital product or services,  
41 including prepaid telephone calling services, but not including other  
42 services described in subdivision (b) of section eleven hundred five of  
43 this chapter, including an agreement therefor, is made in any city,  
44 county or school district, but the tangible personal property or digital  
45 product sold, the property upon which the services were performed or  
46 prepaid telephone calling or other service is or will be delivered to  
47 the purchaser elsewhere, such sale shall not be subject to tax by such  
48 city, county or school district. However, if delivery occurs or will

49 occur in a city, county or school district imposing a tax on the sale or  
50 use of such property, digital product, prepaid telephone calling or  
51 other services, the vendor shall be required to collect from the  
52 purchaser, as provided in section twelve hundred fifty-four of this  
53 article, the aggregate sales or compensating use taxes imposed by the  
54 city, if any, county and school district in which delivery occurs or  
55 will occur, for distribution by the commissioner to such taxing juris-  
56 diction or jurisdictions. For the purposes of this section delivery  
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1 shall be deemed to include transfer of possession to the purchaser and  
2 the receiving of the tangible personal property or of the service,  
3 including prepaid telephone calling service, by the purchaser and, for a  
4 digital product, delivery will be determined in accordance with the  
5 rules in subdivision (g) of section eleven hundred five of this chapter.

6 § 94. Section 1235 of the tax law, as amended by chapter 459 of the  
7 laws of 1968, is amended to read as follows:

8 § 1235. Taxes paid to other jurisdictions. (a) With respect to taxes  
9 imposed pursuant to subdivision (a) of section twelve hundred ten of  
10 this article and pursuant to section twelve hundred eleven of this arti-  
11 cle, the use of tangible personal property or a digital product  
12 purchased at retail and of any of the services subject to the sales tax  
13 shall be exempt from the compensating use tax authorized under subdivi-  
14 sion (a) of such section twelve hundred ten and under section twelve  
15 hundred eleven of this article, to the extent that a retail sales tax or  
16 a compensating use tax was legally due and paid thereon, without any  
17 right to a refund or credit thereof, to (1) any municipal corporation in  
18 this state or (2) any other state or jurisdiction within any other  
19 state, but only when it is shown that such other state or jurisdiction  
20 allows a corresponding exemption with respect to the sale or use of  
21 tangible personal property, a digital product or of any of the services  
22 upon which such a sale or compensating use tax was paid to this state  
23 and any of its municipal corporations, except as provided in subdivision  
24 (b) of this section.

25 (b) To the extent that a compensating use tax imposed pursuant to this  
26 article and the compensating use tax imposed by article twenty-eight of  
27 this chapter are at a higher aggregate rate than the rate of tax imposed  
28 in any other state or jurisdiction within any other state, the exemption  
29 provided in subdivision (a) of this section shall be inapplicable and  
30 the taxes imposed pursuant to this article and by article twenty-eight  
31 of this chapter shall apply to the extent of the difference between such  
32 aggregate rate and the rate paid in such other state or jurisdiction.  
33 In such event, the amount payable shall be allocated between the tax  
34 imposed pursuant to this article and the tax imposed by article twenty-  
35 eight of this chapter in proportion to the respective rates of such  
36 taxes. Where a retail sales tax or a compensating use tax was legally  
37 due and paid to any municipal corporation in this state, without any  
38 right to a refund or credit thereof, with respect to the sale or use of  
39 tangible personal property, a digital product or any of the services  
40 subject to sales or compensating use tax, if the use of such property,  
41 digital product or services is then subject to a compensating use tax  
42 imposed by any other municipal corporation in this state and such tax is  
43 at a higher rate than the rate of tax imposed by the first municipal  
44 corporation, the tax of the municipal corporation with the higher rate  
45 shall also apply but only to the extent of the difference in such rates  
46 and such tax shall be distributable to such municipal corporation,  
47 pursuant to section twelve hundred sixty-one of this article, without  
48 allocation as hereinabove provided. Where a retail sales tax or a  
49 compensating use tax was legally due and paid to this state only, with  
50 respect to the sale or use of tangible personal property, a digital  
51 product or any of the services subject to sales or compensating use tax,  
52 if the use of such property, digital product or services is then subject  
53 to a compensating use tax imposed by a municipal corporation in this

54 state, such tax shall be distributable to the municipal corporation,  
55 pursuant to section twelve hundred sixty-one of this article, without  
56 allocation as hereinabove provided.

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1 (c) For purposes of this section, a payment to the [~~tax-commission~~  
2 commissioner] of a tax imposed by a municipal corporation shall be deemed  
3 a payment to such municipal corporation.

4 § 95. Subdivision (a) of section 1251 of the tax law, as amended by  
5 chapter 155 of the laws of 1982, is amended to read as follows:

6 (a) Every person required to collect any of the taxes imposed under  
7 the authority of section twelve hundred ten, twelve hundred eleven,  
8 twelve hundred twelve or twelve hundred twelve-A of this article shall  
9 file a return as required by subdivision (a) of section eleven hundred  
10 thirty-six of this chapter with the [~~tax-commission~~] commissioner,  
11 except that return for the quarterly period ending August thirty-first,  
12 nineteen hundred sixty-five shall only cover the month of August, nine-  
13 teen hundred sixty-five. The return of a vendor of tangible personal  
14 property, digital products or services shall show his or her receipts  
15 from sales and also the aggregate value of tangible personal property,  
16 digital products and services sold by him or her, the use of which is  
17 subject to a tax imposed under the authority of this article and the  
18 amount of taxes required to be collected with respect to such sales and  
19 use. The return of a recipient of amusement charges shall show all such  
20 charges and the amount of tax thereon, and the return of an operator  
21 required to collect tax on rents shall show all rents received or  
22 charged and the amount of tax thereon. Every person required to file a  
23 part-quarterly return pursuant to subdivision (a) of section eleven  
24 hundred thirty-six of this chapter shall file a return for the same  
25 periods for the taxes imposed pursuant to this article. Provided, howev-  
26 er, where a part-quarterly return described in paragraph (i) or (ii) of  
27 subdivision (a) of section eleven hundred thirty-six of this chapter is  
28 filed for purposes of complying with this section and section eleven  
29 hundred thirty-six or subdivision (a) or (b) of section eleven hundred  
30 thirty-seven-A of this chapter, on such returns separate amounts due for  
31 the taxes imposed by each county, city or school district, pursuant to  
32 the authority of section twelve hundred ten, twelve hundred eleven,  
33 twelve hundred twelve or twelve hundred twelve-A of this article, need  
34 not be shown. Rather, such returns shall only show the aggregate amount  
35 of all such local taxes calculated in the manner provided for in para-  
36 graph (i) or (ii) of subdivision (a) of section eleven hundred thirty-  
37 six of this chapter except that in the case of a short-form, part-quar-  
38 terly return, where a county, city or school district did not impose a  
39 tax in the comparable quarter of the immediately preceding year, the tax  
40 for that locality shall be calculated on such basis as the [~~tax-commis-~~  
41 sion] commissioner shall by regulation prescribe.

42 § 96. Section 1252 of the tax law, as added by chapter 93 of the laws  
43 of 1965, subdivision (a) as amended by chapter 89 of the laws of 1976  
44 and subdivision (b) as amended by chapter 169 of the laws of 1970, is  
45 amended to read as follows:

46 § 1252. Payment of tax. (a) Every person required to file a return or  
47 returns under subdivision (a) of the preceding section shall, at the  
48 time of filing such return or returns, pay to the [~~state-tax-commission~~  
49 commissioner] the amount which section eleven hundred thirty-seven or  
50 section eleven hundred thirty-seven-A of [~~article twenty-eight~~] this  
51 chapter requires to be paid with respect to local taxes imposed pursuant  
52 to this article. The amount so required to be paid for the period for  
53 which a return or returns is required to be filed shall be due and paya-  
54 ble to the [~~state-tax-commission~~] commissioner on the date limited for  
55 the filing of the return or returns for such period, without regard to  
56 whether a return is filed or whether the return which is filed clearly

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1 shows the amount of receipts, amusement charges or returns or the value  
2 of property, digital products or services sold or purchased or the taxes  
3 due thereon. Where the [~~state tax commission~~] commissioner, in [~~its~~]  
4 his or her discretion, deems it necessary to protect the revenues to be  
5 obtained under this article, [~~it~~] the commissioner shall have the power  
6 to require a bond, cash or other security under procedures which are set  
7 forth in section eleven hundred thirty-seven of this chapter.

8 (b) The [~~tax commission~~] commissioner, in [~~its~~] his or her discretion,  
9 may require or permit any or all persons liable for any tax or required  
10 to collect any tax authorized under section twelve hundred ten, twelve  
11 hundred eleven, twelve hundred twelve or twelve hundred twelve-A of this  
12 article to make payment to such banks, banking houses or trust companies  
13 designated by the [~~tax commission~~] commissioner and to file returns with  
14 such banks, banking houses or trust companies, as agent of the [~~state~~  
15 ~~tax commission~~] commissioner, in lieu of paying the taxes imposed under  
16 the authority of section twelve hundred ten, twelve hundred eleven,  
17 twelve hundred twelve or twelve hundred twelve-A directly to the [~~state~~  
18 ~~tax commission~~] commissioner. However, the [~~tax commission~~] commission-  
19 er can only designate such banks, banking houses and trust companies  
20 which are already designated by the comptroller as depositories pursuant  
21 to section eleven hundred forty-eight of this chapter.

22 § 97. Subdivision (b) of section 1254 of the tax law, as amended by  
23 chapter 169 of the laws of 1970, is amended to read as follows:

24 (b) Where the state of New York, any of its agencies, instrumentali-  
25 ties, public corporations (including a public corporation created pursu-  
26 ant to agreement or compact with another state or Canada) or political  
27 subdivisions sells services [~~or~~], property or digital products of a kind  
28 ordinarily sold by private persons it shall be considered a vendor for  
29 purposes of the taxes imposed under the authority of sections twelve  
30 hundred ten, twelve hundred eleven, twelve hundred twelve and twelve  
31 hundred twelve-A of this article and shall be required to collect the  
32 taxes imposed by cities, counties and school districts under the author-  
33 ity of such sections.

34 § 98. Subdivision (d) of section 1817 of the tax law, as added by  
35 chapter 65 of the laws of 1985, is amended to read as follows:

36 (d) Any person required to obtain a certificate of authority under  
37 section eleven hundred thirty-four of this chapter who, without possess-  
38 ing a valid certificate of authority, willfully (1) sells tangible  
39 personal property, a digital product or services subject to tax,  
40 receives amusement charges or operates a hotel, (2) purchases or sells  
41 tangible personal property or a digital product for resale, or (3) sells  
42 automotive fuel; and any person who fails to surrender a certificate of  
43 authority as required by such article shall be guilty of a misdemeanor.

44 § 99. Subdivision (e) of section 1817 of the tax law, as amended by  
45 chapter 765 of the laws of 1985, is amended to read as follows:

46 (e) Any person required to obtain a certificate of authority under  
47 section eleven hundred thirty-four of this chapter who within five years  
48 after a determination by the [~~tax commission~~] commissioner, pursuant to  
49 such section, to suspend, revoke or refuse to issue a certificate of  
50 authority has become final, and without possession of a valid certifi-  
51 cate of authority (1) sells tangible personal property, a digital prod-  
52 uct or services subject to tax, receives amusement charges or operates a  
53 hotel, (2) purchases or sells tangible personal property or a digital  
54 product for resale, or (3) sells automotive fuel, shall be guilty of a  
55 misdemeanor. It shall be an affirmative defense that such person  
56 performed the acts described in this subdivision without knowledge of

1 such determination. Any person who violates a provision of this subdivi-  
2 sion, upon conviction, shall be subject to a fine in any amount author-  
3 ized by this article, but not less than five hundred dollars, in addi-  
4 tion to any other penalty provided by law.

5 § 100. Section 66 of the rural electric cooperative law, as amended by

6 chapter 888 of the laws of 1983, is amended to read as follows:

7 § 66. License fee in lieu of all franchise, excise, income, corpo-  
8 ration and sales and compensating use taxes. Each cooperative and  
9 foreign corporation doing business in this state pursuant to this chap-  
10 ter shall pay annually, on or before the first day of July, to the  
11 [~~state tax commission~~] commissioner of taxation and finance, a fee of  
12 ten dollars, but shall be exempt from all other franchise, excise,  
13 income, corporation and sales and compensating use taxes whatsoever. The  
14 exemption from the sales and compensating use taxes provided by this  
15 section shall not apply to the taxes imposed pursuant to section eleven  
16 hundred seven or eleven hundred eight of the tax law. Nothing contained  
17 in this section shall be deemed to exempt such corporations from  
18 collecting and paying over sales and compensating use taxes on retail  
19 sales of tangible personal property, digital products and services made  
20 by such corporations to purchasers required to pay such taxes imposed  
21 pursuant to article twenty-eight or authorized pursuant to the authority  
22 of article twenty-nine of the tax law.

23 § 101. This act shall take effect immediately; provided however, that:

24 1. sections one through nine of this act shall apply to taxable years  
25 beginning on and after January 1, 2010; and

26 2. sections ten through one hundred of this act shall take effect June  
27 1, 2009 and shall apply to sales or uses occurring on or after that date  
28 in accordance with applicable transitional provisions in sections 1106  
29 and 1217 of the tax law.

30 PART DD

31 Section 1. Subdivision (b) of section 523 of the tax law, as amended  
32 by section 7 of part M-1 of chapter 109 of the laws of 2006, is amended  
33 to read as follows:

34 (b) Rate of tax. The tax imposed by this section shall be at a compos-  
35 ite rate determined by adding together (1) a fuel tax component which  
36 shall be equal to the applicable rate per gallon in effect under the  
37 taxes on motor fuel and diesel motor fuel imposed by article twelve-A of  
38 this chapter and (2) a sales tax component, which shall be equal to [~~the~~  
39 ~~sum of (A) a state sales and compensating use tax subcomponent, equal~~  
40 ~~to~~] the [applicable] rate per gallon applicable to the receipts from the  
41 sale of a gallon of motor fuel or diesel motor fuel in effect under the  
42 sales and compensating use taxes [~~on motor fuel and diesel motor fuel~~]  
43 imposed by sections eleven hundred five and eleven hundred ten of this  
44 chapter [~~as described in subdivision (m) of section eleven hundred elev-~~  
45 ~~en of this chapter~~] plus [~~(B) a local sales and compensating use tax~~  
46 ~~subcomponent, which shall be the lower of (i) the lowest applicable rate~~  
47 ~~per gallon in effect under the sales and compensating use taxes on such~~  
48 ~~fuels in effect in any county of this state imposing a local sales and~~  
49 ~~compensating use tax on a cents per gallon basis pursuant to the author-~~  
50 ~~ity of subpart B of part one of article twenty-nine of this chapter, or~~  
51 ~~(ii) the equivalent rate per gallon based on~~] the highest rate applica-  
52 ble to the receipts from the sale of a gallon of motor fuel or diesel  
53 motor fuel in effect in any locality of this state imposing a local  
54 sales and compensating use tax on [~~a percentage rate basis on~~] the sale  
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1 of motor fuel and diesel motor fuel pursuant to the authority of subpart  
2 B of part one of article twenty-nine of this chapter. Provided, however,  
3 that the total rate per gallon applicable to the receipts from the sale  
4 of a gallon of such fuels imposed under [~~clause (ii) of subparagraph (B)~~  
5 ~~of~~] paragraph two of this subdivision shall not exceed [~~three~~] seven  
6 percent. Such total equivalent rate per gallon under [~~clause (ii) of~~  
7 ~~subparagraph B of~~] paragraph two of this subdivision shall be determined  
8 as provided in subdivision (d) [~~or (m)~~] of section eleven hundred eleven  
9 of this chapter and the schedules prescribed by the commissioner pursu-  
10 ant to such subdivision (d), and shall be based on the average price per

11 gallon (including all federal and state and any local taxes included in  
12 such price or imposed on the use or consumption of such fuels upon which  
13 the state and local sales and compensating use taxes are computed but  
14 determined without the inclusion of any state or local sales tax on  
15 receipts from sales of such fuels) paid by the carrier during the  
16 reporting period for all motor fuel and diesel motor fuel purchased for  
17 use in its operations either within or without this state. [~~For purposes~~  
18 ~~of clause (ii) of subparagraph (B) of paragraph two of this subdivision,~~  
19 ~~the~~] The price for motor fuel and diesel motor fuel purchased by such  
20 carrier shall be deemed to be the prevailing price for motor fuel and  
21 diesel motor fuel, as established by the commissioner each calendar  
22 quarter pursuant to this section, applicable to the reporting period.  
23 The commissioner shall for each calendar quarter establish a prevailing  
24 price for motor fuel and diesel motor fuel based on the prices being  
25 charged on any given day during the first fifteen days of the previous  
26 calendar quarter at a minimum of ten selected truck stops widely scat-  
27 tered throughout the state. The tax imposed by this section shall be  
28 computed by multiplying such composite rate by the amount of motor fuel  
29 or diesel motor fuel, as the case may be, used by a carrier in its oper-  
30 ations within this state during each reporting period. The amount of  
31 motor fuel and diesel motor fuel used in the operations of any carrier  
32 within this state shall be determined by dividing the number of miles  
33 traveled in this state subject to tax under this section by the average  
34 miles per gallon for the type of fuel. Where the records of any carrier  
35 are inadequate or incomplete, the qualified motor vehicles of a carrier  
36 filing returns shall be deemed to have consumed, on the average, one  
37 gallon of diesel motor fuel for every four miles traveled or one gallon  
38 of motor fuel for every three miles traveled unless substantial evidence  
39 discloses that a different amount was consumed; provided, however, that  
40 if the commissioner enters into a cooperative agreement pursuant to  
41 section five hundred twenty-eight of this article and such agreement  
42 prescribes a different average miles per gallon deemed to be consumed,  
43 the commissioner shall prescribe such different average.

44 § 2. Subdivision (c) of section 524 of the tax law, as amended by  
45 section 8 of part M-1 of chapter 109 of the laws of 2006, is amended to  
46 read as follows:

47 (c) Actual price. Every carrier which can substantiate that its aver-  
48 age price paid per gallon (including all federal and state and any local  
49 taxes included in such price or imposed on the use or consumption of  
50 such fuels upon which the state and local sales and compensating use  
51 taxes are computed but determined [~~with out~~] without the inclusion of  
52 any state or local sales tax on receipts from sales of such fuels)  
53 during a reporting period is less than the prevailing price determined  
54 for such period pursuant to subdivision (b) of section five hundred  
55 twenty-three of this article[~~, if such calculation was based upon an~~  
56 ~~amount determined under clause (ii) of subparagraph (B) of paragraph two~~  
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1 ~~of subdivision (b) of section five hundred twenty-three of this arti-~~  
2 ~~cle,~~] may apply for a refund of the difference between the tax paid  
3 relating to the sales tax component computed based upon such prevailing  
4 price for such period and the tax relating to the sales tax component  
5 computed based upon the carrier's actual average purchase price for such  
6 period. Such refund must be applied for on or before the last day of the  
7 month immediately following the four-year period commencing with the end  
8 of the reporting period which gave rise to the refund.

9 § 3. Subdivision (n) of section 1111 of the tax law, as amended by  
10 section 10 of part W-1 of chapter 109 of the laws of 2006, is amended to  
11 read as follows:

12 (n) The sales and compensating use taxes imposed by this article and  
13 pursuant to the authority of article twenty-nine of this chapter on B20  
14 shall be imposed [~~at eighty percent of the rate of the cents per gallon~~  
15 ~~taxes described in subdivision (m) of this section. However, if a county~~

16 ~~or city does not make the cents per gallon election authorized by such~~  
17 ~~subdivision (m), the taxes of such county or city imposed pursuant to~~  
18 ~~the authority of such article twenty nine or the taxes imposed in a city~~  
19 ~~of one million or more by section eleven hundred seven of this article~~  
20 ~~shall be imposed]~~ on eighty percent of the receipts from the retail sale  
21 of or the consideration given or contracted to be given for, or for the  
22 use of, such B20.

23 § 4. Paragraph 7 of subdivision (a) of section 1136 of the tax law, as  
24 amended by section 2-e of part M-1 of chapter 109 of the laws of 2006,  
25 is amended to read as follows:

26 (7) Taxable receipts as used in this section shall include taxable  
27 receipts from the sale of automotive fuel and cigarettes and any  
28 receipts from the sale of motor fuel or diesel motor fuel or cigarettes  
29 in this state whether or not such receipts are subject to the taxes  
30 imposed by section eleven hundred two, eleven hundred three, eleven  
31 hundred five or eleven hundred ten of this article and regardless of  
32 whether the provisions of section eleven hundred twenty or eleven  
33 hundred twenty-one of this article are applicable to the taxes imposed  
34 in respect of such receipts [~~or numbers of gallons of motor fuel or~~  
35 ~~diesel motor fuel sold~~].

36 § 5. Section 8 of part A of chapter 35 of the laws of 2006 amending  
37 the tax law relating to computing sales and compensating use tax on  
38 motor fuel and diesel motor fuel and amending the tax law and the gener-  
39 al business law relating to requiring retail dealers of motor fuel and  
40 diesel motor fuel to reduce prices for such fuel, is amended to read as  
41 follows:

42 § 8. This act shall take effect immediately, provided that sections  
43 one through five of this act shall take effect June 1, 2006; provided  
44 that this act shall expire June 1, 2009, in accordance with the applica-  
45 ble transitional provisions of articles 28 and 29 of the tax law, when  
46 upon such date the provisions of this act shall be deemed repealed and  
47 any local law, ordinance or resolution enacted pursuant to this act or  
48 pursuant to provisions of the tax law as added or amended by this act  
49 shall be deemed to be repealed therewith; provided, however, that all  
50 provisions of state or local law, ordinance or resolution and of regu-  
51 lations adopted thereunder, in respect of assessment, payment, determi-  
52 nation, collection, credit and refund of taxes imposed thereunder, the  
53 keeping of records and the filing of returns for the purposes of such  
54 taxes, the secrecy of returns, and disposition of revenues and net  
55 collections, shall continue in effect with respect to all such taxes  
56 accrued through and including May 31, 2009.

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1 § 6. Section 14 of part M-1 of chapter 109 of the laws of 2006 amend-  
2 ing the tax law and other laws relating to the sales tax imposed on  
3 motor fuel and diesel motor fuel, is amended to read as follows:

4 § 14. This act shall take effect immediately; provided that:

5 (a) sections one through ten of this act shall take effect on the same  
6 date and in the same manner as part A of chapter 35 of the laws of 2006,  
7 takes effect; provided that sections one through two-d, two-f, three,  
8 three-b through six, nine, and ten of this act shall expire June 1,  
9 2009, in accordance with the applicable transitional provisions of arti-  
10 cles 28 and 29 of the tax law, when upon such date such sections of this  
11 act shall be deemed repealed and any local law, ordinance or resolution  
12 enacted pursuant to this act or pursuant to provisions of the tax law as  
13 added or amended by this act shall be deemed to be repealed therewith;  
14 provided, however, that all provisions of state or local law, ordinance  
15 or resolution and of regulations adopted thereunder, in respect of  
16 assessment, payment, determination, collection, credit and refund of  
17 taxes imposed thereunder, the keeping of records and the filing of  
18 returns for the purposes of such taxes, the secrecy of returns, and  
19 disposition of revenues and net collections, shall continue in effect  
20 with respect to all such taxes accrued through and including May 31,

21 2009; and

22 (b) sections eleven, twelve and thirteen of this act shall take effect  
23 on the same date and in the same manner as part B of chapter 35 of the  
24 laws of 2006, takes effect.

25 § 7. The repeal of any provision of state or local law, ordinance or  
26 resolution by this act shall not be construed to take away, impair or  
27 affect any right or remedy acquired or given by the provisions hereby  
28 repealed; and all existing suits or proceedings may be continued and  
29 completed; and all offenses committed or penalties or forfeitures  
30 incurred shall continue and remain in force with the same effect as  
31 though this act had not become law.

32 § 8. Notwithstanding any other provision of law: (a) The commissioner  
33 of taxation and finance may prescribe the schedules of regional average  
34 retail sales prices pursuant to paragraph 3 of subdivision (e) of  
35 section 1111 of the tax law, as restored by this act, any date after  
36 this act becomes a law and that action will be timely for the period  
37 beginning June 1, 2009, if it is taken after the date this act becomes a  
38 law and prior to June 1, 2009, and the notice prescribed by subparagraph  
39 (iii) of such paragraph 3 is filed after the date this act becomes a law  
40 and prior to June 1, 2009.

41 (b) The commissioner of taxation and finance is authorized on any date  
42 after this act becomes a law to adopt regulations by emergency action to  
43 set forth the methodology to determine the regional average retail sell-  
44 ing prices and to establish the sales tax components and the motor fuel  
45 and diesel motor fuel composite rates for the fuel use taxes imposed by  
46 article 21-A of the tax law for the quarter including the effective date  
47 of this act and the next calendar quarter.

48 § 9. This act shall take effect immediately; provided however that  
49 sections one, two, three, four, five, six and seven of this act shall  
50 take effect June 1, 2009, and shall apply in accordance with applicable  
51 transitional provisions in articles 28 and 29 of the tax law; provided  
52 however that the amendment to subdivision (n) of section 1111 of the tax  
53 law made by section three of this act shall not affect the repeal of  
54 such subdivision and shall be deemed repealed therewith.

55

PART EE

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1 Section 1. Section 502 of the tax law is amended by adding a new  
2 subdivision 6 to read as follows:

3 6. a. The commissioner may require the use of decals as evidence that  
4 a carrier has a valid certificate of registration for each motor vehicle  
5 operated or to be operated on the public highways of this state as  
6 required by paragraph a of subdivision one of this section. If the  
7 commissioner requires the use of decals, the commissioner shall issue  
8 for each motor vehicle with a valid certificate of registration a decal  
9 that shall be of a size and design and containing such information as  
10 the commissioner prescribes. The fee for any decal issued pursuant to  
11 this paragraph is four dollars. In the case of the loss, mutilation, or  
12 destruction of a decal, the commissioner shall issue a new decal upon  
13 proof of the facts and payment of four dollars. The decal shall be firm-  
14 ly and conspicuously affixed upon the motor vehicle for which it is  
15 issued as closely as practical to the registration or license plates and  
16 at all times be visible and legible. No decal is transferable. A decal  
17 shall be valid until it expires or is revoked, suspended, or surren-  
18 dered.

19 b. The commissioner may require the use of special decals as evidence  
20 that an automotive fuel carrier has a valid special certificate of  
21 registration for each motor vehicle operated or to be operated on the  
22 public highways of this state to transport automotive fuel as required  
23 by paragraph b of subdivision one of this section. If the commissioner  
24 requires the use of special decals, the commissioner shall issue for  
25 each motor vehicle with a valid special certificate of registration a

26 special decal that shall be distinctively colored and of a size and  
27 design and containing such information as the commissioner prescribes.  
28 The fee for any special decal issued pursuant to this paragraph is four  
29 dollars. In the case of the loss, mutilation, or destruction of a  
30 special decal, the commissioner shall issue a new special decal upon  
31 proof of the facts and payment of four dollars. The special decal shall  
32 be firmly and conspicuously affixed upon the motor vehicle for which it  
33 is issued pursuant to the rules and regulations prescribed by the  
34 commissioner to enable the easy identification of the automotive fuel  
35 carrier certificate of registration number and at all times be visible  
36 and legible. No special decal is transferable and shall be valid until  
37 it expires or is revoked, suspended, or surrendered.

38 c. The suspension or revocation of any certificate of registration  
39 issued under this article shall be deemed to include the suspension and  
40 revocation of any decal issued under this subdivision.

41 § 2. Subdivision 5-a of section 509 of the tax law, as amended by  
42 section 4 of part E of chapter 60 of the laws of 2007, is amended to  
43 read as follows:

44 5-a. To take possession of any certificate of registration which has  
45 been suspended or revoked under the provisions of this article and any  
46 decal issued in conjunction therewith, and any certificate of registra-  
47 tion which is being used for a motor vehicle other than the one for  
48 which it was issued and any decal that is on a motor vehicle other than  
49 the one for which it was issued, or to direct any peace officer, acting  
50 pursuant to his or her special duties, or any police officer or any  
51 employee of the department to take possession thereof and return the  
52 same to the commissioner.

53 § 3. Subdivision 8 of section 509 of the tax law, as amended by  
54 section 5 of part E of chapter 60 of the laws of 2007, is amended to  
55 read as follows:

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1 8. To issue replacement certificates of registration or decals at such  
2 times as the commissioner may deem necessary for the proper and effi-  
3 cient enforcement of the provisions of this article, but not more often  
4 than once every year and to require the surrender of the then outstand-  
5 ing certificates of registration and decals. All of the provisions of  
6 this article with respect to certificates of registration and decals  
7 shall be applicable to replacement certificates of registration and  
8 decals issued hereunder, except that the replacement certificate of  
9 registration or decal shall be issued upon payment of a fee of four  
10 dollars for each motor vehicle and two dollars for any trailer, semi-  
11 trailer, dolly or other device drawn thereby for which a certificate of  
12 registration or decal is required to be issued under this article;

13 § 4. Paragraph (e) of subdivision 1 of section 512 of the tax law, as  
14 added by section 8 of part E of chapter 60 of the laws of 2007, is  
15 amended to read as follows:

16 (e) In addition to any other penalty imposed by this chapter, any  
17 person who fails to obtain a certificate of registration or decal as  
18 required under this article shall, after due notice and an opportunity  
19 for a hearing, for a first violation be liable for a civil fine not less  
20 than five hundred dollars but not to exceed two thousand dollars and for  
21 a second or subsequent violation within three years following a prior  
22 finding of violation be liable for a civil fine not less than one thou-  
23 sand dollars but not to exceed three thousand five hundred dollars.

24 § 5. Clause (i) of subparagraph (A) of paragraph 1 of subdivision (a)  
25 of section 1815 of the tax law, as amended by section 10 of part E of  
26 chapter 60 of the laws of 2007, is amended to read as follows:

27 (i) Use or cause or permit to be used, any public highway in this  
28 state for the operation of a motor vehicle subject to the provisions of  
29 article twenty-one of this chapter without first applying for and  
30 obtaining the certificate of registration required under such article or  
31 a decal that has been suspended or revoked or that was issued for a

32 motor vehicle other than the one on which affixed. The operation of any  
33 motor vehicle on any public highway of this state without a decal  
34 required under such article shall be presumptive evidence that a certif-  
35 icate of registration or decal has not been obtained for such motor  
36 vehicle;

37 § 6. This act shall take effect immediately.

38 PART FF

39 Section 1. Clauses (G) and (H) of subparagraph (i) of paragraph 8 of  
40 subdivision (b) of section 1101 of the tax law, as amended by chapter 61  
41 of the laws of 1989 and as relettered by chapter 190 of the laws of  
42 1990, are amended and a new clause (I) is added to read as follows:

43 (G) Any other person making sales to persons within the state of  
44 tangible personal property or services, the use of which is taxed by  
45 this article, who may be authorized by the commissioner of taxation and  
46 finance to collect such tax by part IV of this article; ~~and~~

47 (H) The state of New York, any of its agencies, instrumentalities,  
48 public corporations (including a public corporation created pursuant to  
49 agreement or compact with another state or Canada) or political subdivi-  
50 sions when such entity sells services or property of a kind ordinarily  
51 sold by private persons~~[-]~~; and

52 (I) A seller of tangible personal property or services, the use of  
53 which is taxed by this article if either (I) an affiliated person that  
54 is a vendor as otherwise defined in this paragraph uses in the state

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1 trademarks, service marks, or trade names that are the same as those the  
2 seller uses; or (II) an affiliated person engages in activities in the  
3 state that inure to the benefit of the seller, in its development or  
4 maintenance of a market for its goods or services in the state, to the  
5 extent that those activities of the affiliate are sufficient to satisfy  
6 the nexus requirement of the United States constitution. For purposes of  
7 this clause, "affiliated person" has the same meaning as in clause (B)  
8 of subparagraph (v) of this paragraph. Nothing in this clause shall be  
9 construed to narrow the scope of any other provision in this paragraph.

10 § 2. This act shall take effect June 1, 2009 and shall apply to sales  
11 made or uses occurring on or after such date in accordance with the  
12 applicable transitional provisions of sections 1106 and 1217 of the tax  
13 law.

14 PART GG

15 Section 1. Subdivision 6 of section 212 of the racing, pari-mutuel  
16 wagering and breeding law, as added by chapter 18 of the laws of 2008,  
17 is amended and a new subdivision 7-a is added to read as follows:

18 6. Within thirty days following the appointment of the members of the  
19 franchise oversight board, the members of the oversight board shall  
20 establish a local advisory board for each racing operation comprised of  
21 the following members to meet at least twice yearly:

22 a. The local advisory board for the Saratoga racetrack facility shall  
23 be comprised of fifteen members and include five designees from each of  
24 the following: the board of supervisors, the mayor of the city of Sara-  
25 toga and the franchised corporation.

26 b. The local advisory board for the Aqueduct racetrack facility shall  
27 be comprised of fifteen members, nine of whom shall be designees of New  
28 York City Queens Community Board Ten, three designees of the franchised  
29 corporation and three designees of the video lottery gaming operator.

30 c. The local advisory board of Belmont Park shall consist of fifteen  
31 persons, two of whom shall be designees of the New York City Queens  
32 Community Board Thirteen, four of whom shall be designees of the County  
33 Executive of the county of Nassau, three of whom shall be designees of  
34 the supervisor of the town of Hempstead, three designees of the fran-

35 chised corporation and three designees of the video lottery gaming oper-  
36 ator.

37 The members of the local advisory boards shall serve for a period of  
38 two years. In the event of a vacancy occurring during a term of appoint-  
39 ment by reason of death, resignation, disqualification or otherwise such  
40 vacancy shall be filled for the unexpired term in the same manner as the  
41 original appointment. The members of the local advisory board shall  
42 serve without compensation, except that each member shall be allowed the  
43 necessary and actual expenses incurred in the performance of his or her  
44 duties pursuant to this section.

45 7-a. The local advisory board of Belmont Park shall, after conducting  
46 public hearings within the unincorporated hamlet of Elmont and the  
47 affected communities, develop a strategic master plan for the revitali-  
48 zation of Belmont Park racetrack, the development of a video lottery  
49 terminal gaming facility and redevelopment of the unincorporated hamlet  
50 of Elmont and the affected communities.

51 § 2. Clause (B) of subparagraph (ii) of paragraph 1 of subdivision b  
52 of section 1612 of the tax law, as amended by chapter 140 of the laws of  
53 2008, is amended to read as follows:

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1 (B) having one thousand one hundred or more video gaming machines, at  
2 a rate of thirty-two percent of the total revenue wagered at the vendor  
3 track after payout for prizes pursuant to this chapter, except for such  
4 facility located in the county of Westchester, in which case the rate  
5 shall be thirty-four percent of the total revenue wagered at the vendor  
6 track after payout for prizes pursuant to this chapter, for a period of  
7 twenty-four months effective beginning April first, two thousand eight;  
8 provided, however, that in the event that the vendor track located in  
9 Westchester county completes a successful restructuring prior to March  
10 thirty-first, two thousand ten, the vendor fee will be reduced to thir-  
11 ty-two percent ninety days following the completion of the successful  
12 restructuring. A successful restructuring is defined as a restructuring  
13 of the existing debt obligations of such vendor track located in West-  
14 chester county that meets the following two conditions:

15 (i) it requires no more than twenty million dollars of additional  
16 equity invested in such track; and

17 (ii) results in average net interest costs of less than nine percent.

18 Notwithstanding the foregoing, the vendor fee at such track will  
19 become thirty-one percent effective April first, two thousand ten and  
20 remain at that level for a period equal to two times the period of time  
21 (measured in days) that the vendor fee was thirty-four percent or until  
22 March thirty-first, two thousand twelve, whichever is later. Notwith-  
23 standing the foregoing, not later than April first, two thousand twelve,  
24 the vendor fee shall become thirty-two percent and remain at that level  
25 thereafter; and except for Aqueduct racetrack, in which case the vendor  
26 fee shall be thirty-eight percent of the total revenue wagered at the  
27 vendor track after payout for prizes pursuant to this chapter; and  
28 except for Belmont racetrack, in which case the vendor fee shall be  
29 thirty-six and one-half percent of the total revenue wagered at the  
30 vendor track after payout for prizes pursuant to this chapter;

31 § 3. Subparagraph (iii) of paragraph 1 of subdivision b of section  
32 1612 of the tax law, as separately amended by chapters 140 and 286 of  
33 the laws of 2008, is amended to read as follows:

34 (iii) less an additional vendor's marketing allowance at a rate of ten  
35 percent for the first one hundred million dollars annually and eight  
36 percent thereafter of the total revenue wagered at the vendor track  
37 after payout for prizes to be used by the vendor track for the marketing  
38 and promotion and associated costs of its video lottery gaming oper-  
39 ations and pari-mutuel horse racing operations, as long as any such  
40 costs associated with pari-mutuel horse racing operations simultaneously  
41 encourage increased attendance at such vendor's video lottery gaming  
42 facilities, consistent with the customary manner of marketing comparable

43 operations in the industry and subject to the overall supervision of the  
44 division; provided, however, that the additional vendor's marketing  
45 allowance shall not exceed eight percent in any year for any operator of  
46 a racetrack located in the county of Westchester [~~or~~], Queens or Nassau;  
47 provided, however, a vendor track that receives a vendor fee pursuant to  
48 clause (G) of [~~this~~] subparagraph (ii) of this paragraph shall not  
49 receive the additional vendor's marketing allowance. In establishing the  
50 vendor fee, the division shall ensure the maximum lottery support for  
51 education while also ensuring the effective implementation of section  
52 sixteen hundred seventeen-a of this article through the provision of  
53 reasonable reimbursements and compensation to vendor tracks for partic-  
54 ipation in such program. Within twenty days after any award of lottery  
55 prizes, the division shall pay into the state treasury, to the credit of  
56 the state lottery fund, the balance of all moneys received from the sale  
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1 of all tickets for the lottery in which such prizes were awarded remain-  
2 ing after provision for the payment of prizes as herein provided. Any  
3 revenues derived from the sale of advertising on lottery tickets shall  
4 be deposited in the state lottery fund.

5 § 4. Clause (F) of subparagraph (ii) of paragraph 1 of subdivision b  
6 of section 1612 of the tax law, as amended by chapter 140 of the laws of  
7 2008, is amended to read as follows:

8 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-  
9 agraph, the track operator of a vendor track shall be eligible for a  
10 vendor's capital award of up to four percent of the total revenue  
11 wagered at the vendor track after payout for prizes pursuant to this  
12 chapter, which shall be used exclusively for capital project investments  
13 to improve the facilities of the vendor track which promote or encourage  
14 increased attendance at the video lottery gaming facility including, but  
15 not limited to hotels, other lodging facilities, entertainment facili-  
16 ties, retail facilities, dining facilities, events arenas, parking  
17 garages and other improvements that enhance facility amenities; provided  
18 that such capital investments shall be approved by the division, in  
19 consultation with the state racing and wagering board, and that such  
20 vendor track demonstrates that such capital expenditures will increase  
21 patronage at such vendor track's facilities and increase the amount of  
22 revenue generated to support state education programs. The annual amount  
23 of such vendor's capital awards that a vendor track shall be eligible to  
24 receive shall be limited to two million five hundred thousand dollars,  
25 except for Aqueduct [~~racetrack~~] and Belmont racetracks, for which there  
26 shall be no vendor's capital awards. Except for tracks having less than  
27 one thousand one hundred video gaming machines, each track operator  
28 shall be required to co-invest an amount of capital expenditure equal to  
29 its cumulative vendor's capital awards. For all tracks, except for Aque-  
30 duct [~~racetrack~~] and Belmont racetracks, the amount of any vendor's  
31 capital award that is not used during any one year period may be carried  
32 over into subsequent years ending before April first, two thousand thir-  
33 teen. Any amount attributable to a capital expenditure approved prior to  
34 April first, two thousand thirteen and completed before April first, two  
35 thousand fifteen shall be eligible to receive the vendor's capital  
36 award. In the event that a vendor track's capital expenditures, approved  
37 by the division prior to April first, two thousand thirteen and  
38 completed prior to April first, two thousand fifteen, exceed the vendor  
39 track's cumulative capital award during the five year period ending  
40 April first, two thousand thirteen, the vendor shall continue to receive  
41 the capital award after April first, two thousand thirteen until such  
42 approved capital expenditures are paid to the vendor track subject to  
43 any required co-investment. In no event shall such track facility  
44 located in Sullivan county and within sixty miles from any gaming facil-  
45 ity in a contiguous state be eligible for a vendor's capital award under  
46 this section, unless it shall have moved from such location or the five  
47 year period commencing on April first, two thousand eight has expired,

48 whichever comes first. Any operator of a vendor track which has received  
49 a vendor's capital award, choosing to divest the capital improvement  
50 toward which the award was applied, prior to reaching the forty year  
51 straightline depreciation value of the improvement, shall reimburse the  
52 state in amounts equal to the total of any such awards. Any capital  
53 award not approved for a capital expenditure at a video lottery gaming  
54 facility by April first, two thousand thirteen shall be deposited in the  
55 state lottery fund for education aid; and  
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1 § 5. Paragraph 2 of subdivision b of section 1612 of the tax law, as  
2 separately amended by chapters 140 and 286 of the laws of 2008, is  
3 amended to read as follows:

4 2. As consideration for the operation of a video lottery gaming facil-  
5 ity, the division, shall cause the investment in the racing industry of  
6 a portion of the vendor fee received pursuant to paragraph one of this  
7 subdivision in the manner set forth in this subdivision. With the excep-  
8 tion of Aqueduct [~~racetrack~~] and Belmont racetracks, each such track  
9 shall dedicate a portion of its vendor fees, received pursuant to clause  
10 (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph  
11 one of this subdivision, solely for the purpose of enhancing purses at  
12 such track, in an amount equal to eight and three-quarters percent of  
13 the total revenue wagered at the vendor track after pay out for prizes.  
14 In addition, with the exception of the Aqueduct and Belmont racetracks,  
15 one and one-quarter percent of total revenue wagered at the vendor track  
16 after pay out for prizes, received pursuant to clause (A), (B), (C),  
17 (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this  
18 subdivision, shall be distributed to the appropriate breeding fund for  
19 the manner of racing conducted by such track.

20 Provided, further, that nothing in this paragraph shall prevent each  
21 track from entering into an agreement, not to exceed five years, with  
22 the organization authorized to represent its horsemen to increase or  
23 decrease the portion of its vendor fee dedicated to enhancing purses at  
24 such track during the years of participation by such track, or to race  
25 fewer dates than required herein.

26 § 6. Section 1612 of the tax law is amended by adding three new subdivi-  
27 sions h, i and j to read as follows:

28 h. The video lottery gaming operator selected to operate a video  
29 lottery terminal facility at Belmont will be subject to a memorandum of  
30 understanding between the governor, temporary president of the senate  
31 and the speaker of the assembly. Notwithstanding subparagraph (i) of  
32 paragraph a of subdivision eight of section two hundred twelve of the  
33 racing, pari-mutuel wagering and breeding law, the state, pursuant to an  
34 agreement with the video lottery gaming operator to operate a video  
35 lottery terminal facility at Belmont, may authorize, as part of such  
36 agreement or in conjunction with such agreement at the time it is  
37 executed, additional development at the Belmont racing facility. The  
38 selection shall be made in consultation with the franchised corporation,  
39 but is not subject to such corporation's approval. The franchised corpo-  
40 ration shall not be eligible to compete to operate or to operate a video  
41 lottery terminal facility at Belmont. The state will use its best  
42 efforts to ensure that the video lottery terminal facility at Belmont is  
43 opened as soon as is practicable and will, if practicable, pursue the  
44 construction of a temporary video lottery terminal facility at Belmont  
45 subject to staying within an agreed budget for such video lottery termi-  
46 nal facility and subject to such temporary facility not having an  
47 adverse impact on opening of the permanent facility at Belmont.

48 i. In consideration of its licensure and participation in this  
49 program, the video lottery gaming operator at Belmont racetrack shall  
50 reinvest in the racing industry a percentage of the vendor fee received  
51 pursuant to subdivision b of this section in the manner set forth in  
52 this subdivision. The video lottery gaming operator at Belmont racetrack  
53 shall provide the following percentages of its vendor fee to the fran-

54 chised corporation established pursuant to section two hundred six of  
55 the racing, pari-mutuel wagering and breeding law, as follows:

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1 1. Three and three-quarters percent of the total wagered after payout  
2 of prizes for the purpose of enhancing purses at Aqueduct racetrack,  
3 Belmont Park racetrack and Saratoga race course.

4 2. Three-quarters percent of the total wagered after payout of prizes  
5 for an appropriate breeding fund for the manner of racing conducted at  
6 Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

7 3. Two percent of the total revenue wagered after payout of prizes to  
8 be deposited into an account of the franchised corporation established  
9 pursuant to section two hundred six of the racing, pari-mutuel wagering  
10 and breeding law to be used for capital expenditures in maintaining and  
11 upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race  
12 course.

13 4. One and one-half percent of the total revenue wagered after payout  
14 for prizes to be deposited into an account of the franchised corporation  
15 established pursuant to section two hundred six of the racing, pari-mu-  
16 tuel wagering and breeding law to be used for general thoroughbred  
17 racing operations at Aqueduct racetrack, Belmont Park racetrack and  
18 Saratoga race course.

19 5. Paragraphs one, two, three and four of this subdivision shall be  
20 known collectively as the "Belmont racing support payments".

21 j. Notwithstanding any provision of subdivision b or f of this section  
22 to the contrary, upon commencement of the operation of video lottery  
23 gaming at Belmont racetrack, the vendor fee to be paid for serving as a  
24 lottery agent to the track operator of Aqueduct racetrack, shall be  
25 thirty-seven and one-quarter percent of the total revenue wagered at the  
26 vendor track after payout for prizes pursuant to this article for the  
27 first year of operation of video lottery gaming at Aqueduct racetrack,  
28 thirty-six and eight hundred seventy-five-thousandths percent of the  
29 total revenue wagered at the vendor track after payout for prizes pursu-  
30 ant to this article for the second year of operation of video lottery  
31 gaming at Aqueduct racetrack, and thirty-six and one-half percent of the  
32 total revenue wagered at the vendor track after payout for prizes pursu-  
33 ant to this article for the third year of operation of video lottery  
34 gaming at Aqueduct racetrack and thereafter. As consideration for the  
35 operation of the video lottery gaming facility at Aqueduct racetrack,  
36 the division shall cause the investment in the racing industry of the  
37 following percentages of the vendor fee described in this subdivision to  
38 be deposited or paid, as follows:

39 1. Three and one-quarter percent of the total wagered after payout of  
40 prizes for the first year of operation of video lottery gaming at Aque-  
41 duct racetrack, three and one-half percent of the total wagered after  
42 payout of prizes for the second year of operation, and three and three-  
43 quarters percent of the total wagered after payout of prizes for the  
44 third year of operation and thereafter, for the purpose of enhancing  
45 purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race  
46 course.

47 2. One-half percent of the total wagered after payout of prizes for  
48 the first year of operation of video lottery gaming at Aqueduct race-  
49 track, six hundred twenty-five thousandths percent of the total wagered  
50 after payout of prizes for the second year of operation, and three-quar-  
51 ters percent of the total wagered after payout of prizes for the third  
52 year of operation and thereafter, for an appropriate breeding fund for  
53 the manner of racing conducted at Aqueduct racetrack, Belmont Park race-  
54 track and Saratoga race course.

55 3. Two percent of the total revenue wagered after payout of prizes to  
56 be deposited into an account of the franchised corporation established

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1 pursuant to section two hundred six of the racing, pari-mutuel wagering

2 and breeding law to be used for capital expenditures in maintaining and  
3 upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race  
4 course.

5 4. One and one-half percent of the total revenue wagered after payout  
6 for prizes to be deposited into an account of the franchised corporation  
7 established pursuant to section two hundred six of the racing, pari-mu-  
8 tuel wagering and breeding law to be used for general thoroughbred  
9 racing operations at Aqueduct racetrack, Belmont Park racetrack and  
10 Saratoga race course.

11 5. Paragraphs one, two, three and four of this subdivision shall be  
12 known collectively as the "Aqueduct racing support payments".

13 § 7. The opening paragraph of subdivision a of section 1617-a of the  
14 tax law, as amended by section 2 of part Z3 of chapter 62 of the laws of  
15 2003, is amended to read as follows:

16 The division of the lottery is hereby authorized to license, pursuant  
17 to rules and regulations to be promulgated by the division of the  
18 lottery, the operation of video lottery gaming at Aqueduct and Belmont,  
19 Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at  
20 any other racetrack licensed pursuant to article three of the racing,  
21 pari-mutuel wagering and breeding law that are located in a county or  
22 counties in which video lottery gaming has been authorized pursuant to  
23 local law, excluding the licensed racetrack commonly referred to in  
24 article three of the racing, pari-mutuel wagering and breeding law as  
25 the "New York state exposition" held in Onondaga county and the [~~race-~~  
26 ~~tracks~~] racetrack of the [~~non-profit racing association~~] franchised  
27 corporation known as [~~Belmont Park racetrack and~~] the Saratoga thorough-  
28 bred racetrack. Such rules and regulations shall provide, as a condi-  
29 tion of licensure, that racetracks to be licensed are certified to be in  
30 compliance with all state and local fire and safety codes, that the  
31 division is afforded adequate space, infrastructure, and amenities  
32 consistent with industry standards for such video gaming operations as  
33 found at racetracks in other states, that racetrack employees involved  
34 in the operation of video lottery gaming pursuant to this section are  
35 licensed by the racing and wagering board, and such other terms and  
36 conditions of licensure as the division may establish. Notwithstanding  
37 any inconsistent provision of law, video lottery gaming at a racetrack  
38 pursuant to this section shall be deemed an approved activity for such  
39 racetrack under the relevant city, county, town, or village land use or  
40 zoning ordinances, rules, or regulations. No racetrack operating video  
41 lottery gaming pursuant to this section may house such gaming activity  
42 in a structure deemed or approved by the division as "temporary" for a  
43 duration of longer than eighteen-months.

44 § 8. The opening paragraph of subdivision a of section 1617-a of the  
45 tax law, as amended by chapter 140 of the laws of 2008, is amended to  
46 read as follows:

47 The division of the lottery is hereby authorized to license, pursuant  
48 to rules and regulations to be promulgated by the division of the  
49 lottery, the operation of video lottery gaming at Aqueduct [~~racetrack~~]  
50 and Belmont racetracks. Such rules and regulations shall provide, as a  
51 condition of licensure, that [~~such racetrack is~~] racetracks to be  
52 licensed are certified to be in compliance with all state and local fire  
53 and safety codes, that the division is afforded adequate space, infras-  
54 tructure, and amenities consistent with industry standards for such  
55 video gaming operations as found at racetracks in other states, that  
56 racetrack employees involved in the operation of video lottery gaming  
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1 pursuant to this section are licensed by the racing and wagering board,  
2 and such other terms and conditions of licensure as the division may  
3 establish. Notwithstanding any inconsistent provision of law, video  
4 lottery gaming at a racetrack pursuant to this section shall be deemed  
5 an approved activity for such racetrack under the relevant city, county,  
6 town, or village land use or zoning ordinances, rules, or regulations.

7 No racetrack operating video lottery gaming pursuant to this section may  
8 house such gaming activity in a structure deemed or approved by the  
9 division as "temporary" for a duration of longer than eighteen-months.  
10 § 9. This act shall take effect immediately; provided, that section  
11 eight of this act shall take effect on the same date and in the same  
12 manner as section 13 of chapter 140 of the laws of 2008 when upon such  
13 date the provisions of section seven of this act, shall expire and be  
14 deemed repealed; provided, further, that the amendments to section  
15 1617-a of the tax law, made by sections seven and eight of this act,  
16 shall not affect the expiration and repeal of such section, and shall  
17 expire and be deemed repealed therewith; and provided further that the  
18 amendments to section 212 of the racing, pari-mutuel wagering and breed-  
19 ing law, made by section one of this act shall take effect on the same  
20 date and in the same manner as such section takes effect pursuant to  
21 chapter 18 of the laws of 2008.

22

PART HH

23 Section 1. Subdivision 1 of section 171-a of the tax law, as amended  
24 by section 1 of part R of chapter 60 of the laws of 2004, is amended to  
25 read as follows:

26 1. All taxes, interest, penalties and fees collected or received by  
27 the commissioner or the commissioner's duly authorized agent under arti-  
28 cles nine (except section one hundred eighty-two-a thereof and except as  
29 otherwise provided in section two hundred five thereof), nine-A,  
30 twelve-A (except as otherwise provided in section two hundred eighty-  
31 four-d thereof), thirteen, thirteen-A (except as otherwise provided in  
32 section three hundred twelve thereof), eighteen, nineteen, twenty  
33 (except as otherwise provided in section four hundred eighty-two there-  
34 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight  
35 (except as otherwise provided in section eleven hundred two ~~or~~, eleven  
36 hundred three or eleven hundred five-D thereof), twenty-eight-A, thir-  
37 ty-one (except as otherwise provided in section fourteen hundred twen-  
38 ty-one thereof), thirty-two, thirty-three and thirty-three-A of this  
39 chapter shall be deposited daily in one account with such responsible  
40 banks, banking houses or trust companies as may be designated by the  
41 comptroller, to the credit of the comptroller. Such an account may be  
42 established in one or more of such depositories. Such deposits shall be  
43 kept separate and apart from all other money in the possession of the  
44 comptroller. The comptroller shall require adequate security from all  
45 such depositories. Of the total revenue collected or received under such  
46 articles of this chapter, the comptroller shall retain in the comp-  
47 troller's hands such amount as the commissioner may determine to be  
48 necessary for refunds or reimbursements under such articles of this  
49 chapter [~~and article ten thereof~~] out of which amount the comptroller  
50 shall pay any refunds or reimbursements to which taxpayers shall be  
51 entitled under the provisions of such articles of this chapter [~~and~~  
52 ~~article ten thereof~~]. The commissioner and the comptroller shall main-  
53 tain a system of accounts showing the amount of revenue collected or  
54 received from each of the taxes imposed by such articles. The comp-  
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1 troller, after reserving the amount to pay such refunds or reimburse-  
2 ments, shall, on or before the tenth day of each month, pay into the  
3 state treasury to the credit of the general fund all revenue deposited  
4 under this section during the preceding calendar month and remaining to  
5 the comptroller's credit on the last day of such preceding month, (i)  
6 except that the comptroller shall pay to the state department of social  
7 services that amount of overpayments of tax imposed by article twenty-  
8 two of this chapter and the interest on such amount which is certified  
9 to the comptroller by the commissioner as the amount to be credited  
10 against past-due support pursuant to subdivision six of section one  
11 hundred seventy-one-c of this [~~chapter~~] article, (ii) and except that

12 the comptroller shall pay to the New York state higher education  
13 services corporation and the state university of New York or the city  
14 university of New York respectively that amount of overpayments of tax  
15 imposed by article twenty-two of this chapter and the interest on such  
16 amount which is certified to the comptroller by the commissioner as the  
17 amount to be credited against the amount of defaults in repayment of  
18 guaranteed student loans and state university loans or city university  
19 loans pursuant to subdivision five of section one hundred seventy-one-d  
20 and subdivision six of section one hundred seventy-one-e of this [~~chap-~~  
21 ~~ter~~] article, (iii) and except further that, notwithstanding any law,  
22 the comptroller shall credit to the revenue arrearage account, pursuant  
23 to section ninety-one-a of the state finance law, that amount of over-  
24 payment of tax imposed by article nine, nine-A, twenty-two, thirty,  
25 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any  
26 interest thereon, which is certified to the comptroller by the commis-  
27 sioner as the amount to be credited against a past-due legally enforcea-  
28 ble debt owed to a state agency pursuant to paragraph (a) of subdivision  
29 six of section one hundred seventy-one-f of this article, provided,  
30 however, [~~he~~] the comptroller shall credit to the special offset fiduci-  
31 ary account, pursuant to section ninety-one-c of the state finance law,  
32 any such amount creditable as a liability as set forth in paragraph (b)  
33 of subdivision six of section one hundred seventy-one-f of this article,  
34 (iv) and except further that the comptroller shall pay to the city of  
35 New York that amount of overpayment of tax imposed by article nine,  
36 nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-  
37 three of this chapter and any interest thereon that is certified to the  
38 comptroller by the commissioner as the amount to be credited against  
39 city of New York tax warrant judgment debt pursuant to section one  
40 hundred seventy-one-l of this article, (v) and except further that the  
41 comptroller shall pay to a non-obligated spouse that amount of overpay-  
42 ment of tax imposed by article twenty-two of this chapter and the inter-  
43 est on such amount which has been credited pursuant to section one  
44 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-  
45 one-e, one hundred seventy-one-f or one hundred seventy-one-l of this  
46 article and which is certified to the comptroller by the commissioner as  
47 the amount due such non-obligated spouse pursuant to paragraph six of  
48 subsection (b) of section six hundred fifty-one of this chapter; and  
49 (vi) the comptroller shall deduct a like amount which the comptroller  
50 shall pay into the treasury to the credit of the general fund from  
51 amounts subsequently payable to the department of social services, the  
52 state university of New York, the city university of New York, or the  
53 higher education services corporation, or the revenue arrearage account  
54 or special offset fiduciary account pursuant to section ninety-one-a or  
55 ninety-one-c of the state finance law, as the case may be, whichever had  
56 been credited the amount originally withheld from such overpayment, and  
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1 (vii) with respect to amounts originally withheld from such overpayment  
2 pursuant to section one hundred seventy-one-l of this article and paid  
3 to the city of New York, the comptroller shall collect a like amount  
4 from the city of New York.

5 § 2. The tax law is amended by adding a new section 1105-D to read as  
6 follows:

7 § 1105-D. Additional state sales and compensating use taxes on certain  
8 beverage products. Notwithstanding any law to the contrary:

9 (a) Imposition of additional taxes. (1) In addition to the sales and  
10 compensating use taxes imposed by subdivision (a) of section eleven  
11 hundred five and clauses (A) and (B) of subdivision (a) of section elev-  
12 en hundred ten of this part, there are hereby imposed and there shall be  
13 paid additional sales and compensating use taxes, at the rate of eigh-  
14 teen percent, on (i) fruit drinks that contain less than seventy percent  
15 of natural fruit juice and (ii) soft drinks, sodas, and beverages such  
16 as are ordinarily dispensed at soda fountains or in connection therewith

17 (other than coffee, tea and cocoa), whether or not the item is sold in  
18 liquid form, which except as otherwise provided in this section shall be  
19 identical to the taxes imposed by such subdivision (a) of section eleven  
20 hundred five and clauses (A) and (B) of subdivision (a) of section elev-  
21 en hundred ten of this part.

22 (2) In addition to the sales taxes imposed by subdivision (d) and  
23 paragraph three of subdivision (f) of section eleven hundred five of  
24 this part, there are hereby imposed and there shall be paid additional  
25 sales taxes, at the rate of eighteen percent, on (i) fruit drinks which  
26 contain less than seventy percent of natural fruit juice and (ii) soft  
27 drinks, sodas and beverages such as are ordinarily dispensed at soda  
28 fountains or in connection therewith (other than coffee, tea and cocoa),  
29 whether or not the item is sold in liquid form, which except as other-  
30 wise provided in this section shall be identical to the taxes imposed by  
31 such subdivision (d) and paragraph three of subdivision (f) of section  
32 eleven hundred five of this part.

33 (b) Special rules for computing receipts and consideration. (1) If a  
34 vendor sells, or a recipient charges for, a drink, soda or beverage  
35 subject to the additional taxes imposed by this section together with  
36 other property or with services (for example, as part of a meal or a  
37 special promotion, or mixed with an alcoholic or other beverage) or  
38 together with a cover, minimum, entertainment or other charge or togeth-  
39 er with other charges of a roof garden, cabaret or other similar place,  
40 for a single price or charge, and the vendor also separately sells, or  
41 the recipient also separately charges for, such a drink, soda or bever-  
42 age in the same form and condition, quantities, and packaging, then the  
43 tax imposed by this section shall apply to the amount at which that  
44 vendor or recipient separately sells or charges for such drink, soda or  
45 beverage in the same form and condition, quantity, and packaging.

46 (2) If a vendor sells, or a recipient charges for, a drink, soda, or  
47 beverage subject to the additional taxes imposed by this section togeth-  
48 er with other property or with services (for example, as part of a meal  
49 or a special promotion, or mixed with an alcoholic or other beverage) or  
50 together with a cover, minimum, entertainment or other charge or togeth-  
51 er with other charges of a roof garden, cabaret or other similar place,  
52 for a single price or charge, but the vendor does not separately sell,  
53 or the recipient does not separately charge for, such a drink, soda or  
54 beverage in the same form and condition, quantities, and packaging, then  
55 the tax imposed by this section shall be computed on five hundred  
56 percent of the vendor's or recipient's cost for such drink, soda or

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1 beverage. For purposes of this paragraph, "cost" means the consideration  
2 given or contracted to be given for such property, or for the use of  
3 such property, including any charges for shipping or delivery as  
4 described in paragraph three of subdivision (b) of section eleven  
5 hundred one of this article, but excluding any credit for tangible  
6 personal property accepted in part payment and intended for resale.

7 (3) The additional compensating use tax imposed by paragraph one of  
8 subdivision (a) of this section shall be computed in the same manner as  
9 the additional sales tax is computed under paragraph one or two of this  
10 subdivision in like circumstances.

11 (c) Applicability of certain exemptions and exclusions from tax. (1)  
12 The exemptions for provisions and other property in paragraphs eight,  
13 twenty-four and forty-three of subdivision (a) and in subdivision (z) of  
14 section eleven hundred fifteen of this article shall not apply to the  
15 taxes imposed by paragraph one of subdivision (a) of this section.

16 (2) The exclusion from tax in subparagraph (B) of paragraph (ii) of  
17 subdivision (d) of section eleven hundred five of this part shall not  
18 apply to the tax imposed by paragraph two of subdivision (a) of this  
19 section.

20 (3) Sales of drink in or by a restaurant, tavern, or other establish-  
21 ment operated by an organization described in paragraph one, four, five

22 or six of subdivision (a) of section eleven hundred sixteen of this  
23 article, including sales otherwise exempt under paragraph (ii) of subdivi-  
24 vision (d) of section eleven hundred five of this part, shall be subject  
25 to the taxes imposed by paragraph two of subdivision (a) of this  
26 section, unless the purchaser is an organization described in subdivi-  
27 sion (a) of section eleven hundred sixteen of this article.

28 (4) Nothing in this section shall be construed to impose any tax on  
29 food exempt from tax pursuant to subdivision (k) of section eleven  
30 hundred fifteen of this article.

31 (d) Tax filers under section ten of this chapter for the months of  
32 February and March, two thousand nine. If a person is required to  
33 collect or pay or pay over any tax imposed by this section and that  
34 person is required to make payments of tax in accord with section ten of  
35 this chapter, that person shall, for purposes of payments required to be  
36 made under section ten of this chapter during the months of February and  
37 March, two thousand nine, include in the payments for each of those  
38 months the amount described in subclause (II) of clause (i) of subpara-  
39 graph (A) of paragraph one of subdivision (c) of section ten of this  
40 chapter with respect to the liability for the taxes imposed by this  
41 section for such months, together with any other amounts required by  
42 section ten of this chapter for those months.

43 (e) Separate statement of tax. Every person required to collect the  
44 tax imposed by this section shall state, charge, and show that tax sepa-  
45 rately from the price or charge, and also separately from any other tax  
46 imposed by this article or other law on any sales slip, invoice, receipt  
47 or other statement or memorandum of the price or charge, paid or paya-  
48 ble, given to the customer.

49 (f) Vendor collection credit not to include tax imposed by this  
50 section. The taxes imposed by, and collected or paid or paid over under,  
51 this section shall not be included or considered in computing the credit  
52 allowed by subdivision (f) of section eleven hundred thirty-seven of  
53 this article.

54 (g) Incorporation of other provisions of this article. Except as  
55 otherwise provided in this section, sections eleven hundred five and  
56 eleven hundred ten and the other sections of this article, including the  
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1 definition and exemption provisions, shall apply for purposes of the  
2 taxes imposed by this section in the same manner and with the same force  
3 and effect as if the language of those sections had been incorporated in  
4 full into this section and had expressly referred to the taxes imposed  
5 by this section.

6 (h) Taxes to be in addition to any other. The taxes imposed by this  
7 section shall be in addition to any other tax imposed or authorized to  
8 be imposed by this chapter or other law.

9 (i) Taxes not to apply to other impositions. The taxes imposed by this  
10 section shall not apply to the taxes imposed by section eleven hundred  
11 seven, eleven hundred eight, or eleven hundred nine of this part or to  
12 taxes authorized to be imposed by article twenty-nine of this chapter.

13 (j) Deposit and disposition of revenue. All taxes, fees, interest, and  
14 penalties collected or received by the commissioner under this section  
15 shall be deposited and disposed of pursuant to the provisions of section  
16 one hundred seventy-one-a of this chapter. However, all of those taxes,  
17 interest and penalties shall be deposited to the credit of the tobacco  
18 control and insurance initiatives pool to be established and distributed  
19 by the commissioner of health in accordance with section twenty-eight  
20 hundred seven-v of the public health law. To effect the deposit and  
21 disposition of revenues arising from the taxes imposed by this section  
22 during periods for which the commissioner does not have adequate data,  
23 the commissioner is authorized to estimate the amount of those taxes for  
24 any period and to certify such amounts as required based on such esti-  
25 mates. These estimates may be based on information available to the  
26 commissioner at the time distributions shall be made under this subdivi-

27 sion and may be estimated on the basis of respective state and local  
28 sales and compensating use tax rates, percentages, or other indices  
29 calculated from returns, reports, or distributions from prior periods  
30 for these or other periods or with respect to sales and compensating use  
31 taxes imposed by counties and cities that impose taxes pursuant to  
32 subdivision (a) of section twelve hundred ten of this chapter. The  
33 commissioner is authorized to require whatever information the commis-  
34 sioner deems necessary to comply with the requirements of this subdivi-  
35 sion from persons required to file returns, reports, or schedules under  
36 this section. If estimated distributions are made under this section,  
37 they must be reconciled based on tax returns as soon as is practicable.  
38 Neither the commissioner nor the comptroller shall be held liable for  
39 any inaccuracy in the determinations and certifications made pursuant to  
40 this subdivision. Any overpayment or underpayment shall be adjusted in  
41 the manner described in subdivision (c) of section twelve hundred  
42 sixty-one of this chapter, provided that no interest is to be paid on  
43 any overpayment or underpayment.

44 (k) This section shall not apply to diet soda or to water products.  
45 "Diet soda" means non-alcoholic carbonated beverage that does not  
46 contain sugar and is sweetened with artificial sweetener. "Water  
47 products" means plain water, plain water to which only carbonation has  
48 been added, and plain water, carbonated or not, with mere natural  
49 flavorings added, but not including any carbonated water that contains  
50 sugar, fruit juice, or other additives or flavorings.

51 § 3. Paragraph 1 of subdivision (a) of section 1115 of the tax law, as  
52 amended by section 1 of part 0 of chapter 63 of the laws of 2000, is  
53 amended to read as follows:

54 (1) Food, food products, beverages, dietary foods and health supple-  
55 ments, sold for human consumption but not including (i) candy and  
56 confectionery, (ii) fruit drinks which contain less than seventy percent  
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1 of natural fruit juice, (iii) soft drinks, sodas and beverages such as  
2 are ordinarily dispensed at soda fountains or in connection therewith  
3 (other than coffee, tea and cocoa) and (iv) beer, wine or other alcohol-  
4 ic beverages, all of which shall be subject to the retail sales and  
5 compensating use taxes, whether or not the item is sold in liquid form.  
6 The food [~~and drink~~] excluded from the exemption provided by this para-  
7 graph under [~~subparagraphs~~] subparagraph (i)[~~, (ii) and (iii)~~] of this  
8 paragraph shall be exempt under this paragraph when sold for seventy-  
9 five cents or less through any vending machine activated by the use of  
10 coin, currency, credit card or debit card. With the exception of the  
11 provision in this paragraph providing for an exemption for certain food  
12 [~~or drink~~] sold for seventy-five cents or less through vending machines,  
13 nothing herein shall be construed as exempting food or drink from the  
14 tax imposed under subdivision (d) of section eleven hundred five of this  
15 article.

16 § 4. Subparagraph 15 of paragraph j of subdivision 1 of section 54 of  
17 the state finance law, as added by chapter 430 of the laws of 1997, is  
18 amended to read as follows:

19 (15) article twenty-eight of the tax law, except taxes, penalties and  
20 interest imposed by section eleven hundred five-D of the tax law;

21 § 5. Subdivisions (g) and (k) of section 1817 of the tax law, subdivi-  
22 sion (g) as amended by chapter 412 of the laws of 1986 and subdivision  
23 (k) as amended by chapter 3 of the laws of 2004, are amended to read as  
24 follows:

25 (g) Any person (1) who willfully fails to charge separately [~~the~~] any  
26 tax or taxes imposed under article twenty-eight of this chapter or to  
27 state [~~such~~] any such tax or taxes separately on any bill, statement,  
28 memorandum or receipt issued or employed by [~~him~~] such person upon which  
29 the tax is required to be stated separately as provided in subdivision  
30 (a) of section eleven hundred thirty-two or section eleven hundred  
31 five-D of this chapter; or (2) who shall refer or cause reference to be

32 made to any such tax or taxes in a form or manner other than that  
33 required by such article twenty-eight, shall be guilty of a misdemeanor.

34 (k) The penalties provided for in this section shall not preclude  
35 prosecution pursuant to the penal law with respect to the willful fail-  
36 ure of any person to pay over to the state any sales tax imposed by  
37 section eleven hundred four, eleven hundred five, eleven hundred five-D,  
38 eleven hundred seven, eleven hundred eight or eleven hundred nine of  
39 this chapter or by any local law adopted by any city or county pursuant  
40 to article twenty-nine of this chapter, whenever such person has been  
41 required to collect and has collected any such sales tax. In any such  
42 prosecution under the penal law, a person who has been required to  
43 collect and has collected any such tax shall be deemed to have acted in  
44 a fiduciary character with respect to the state or a political subdivi-  
45 sion thereof, and the tax or taxes collected shall be deemed to have  
46 been entrusted to such person by the state or a political subdivision  
47 thereof.

48 § 6. Subdivisions (a) and (b) of section 92-dd of the state finance  
49 law, as added by section 89 of part B of chapter 58 of the laws of 2005,  
50 are amended to read as follows:

51 (a) On and after April first, two thousand five, such fund shall  
52 consist of the revenues heretofore and hereafter collected or required  
53 to be deposited pursuant to paragraph (a) of subdivision eighteen of  
54 section twenty-eight hundred seven-c, and sections twenty-eight hundred  
55 seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t  
56 of the public health law, [~~section~~] sections four hundred eighty-two and  
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1 eleven hundred five-D of the tax law and required to be credited to the  
2 tobacco control and insurance initiatives pool, subparagraph (O) of  
3 paragraph four of subsection (j) of section four thousand three hundred  
4 one of the insurance law, section twenty-seven of part A of chapter one  
5 of the laws of two thousand two and all other moneys credited or trans-  
6 ferred thereto from any other fund or source pursuant to law.

7 (b) The pool administrator under contract with the commissioner of  
8 health pursuant to section twenty-eight hundred seven-y of the public  
9 health law shall continue to collect moneys required to be collected or  
10 deposited pursuant to paragraph (a) of subdivision eighteen of section  
11 twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j,  
12 twenty-eight hundred seven-s and twenty-eight hundred seven-t of the  
13 public health law, and shall deposit such moneys in the HCRA resources  
14 fund. The comptroller shall deposit moneys collected or required to be  
15 deposited pursuant to [~~section~~] sections four hundred eighty-two and  
16 eleven hundred five-D of the tax law and required to be credited to the  
17 tobacco control and insurance initiatives pool, subparagraph (O) of  
18 paragraph four of subsection (j) of section four thousand three hundred  
19 one of the insurance law, section twenty-seven of part A of chapter one  
20 of the laws of two thousand two and all other moneys credited or trans-  
21 ferred thereto from any other fund or source pursuant to law in the HCRA  
22 resources fund.

23 § 7. This act shall take effect June 1, 2009, and shall apply to sales  
24 and charges made, uses occurring and services rendered on and after such  
25 date, in accordance with applicable transitional provisions in section  
26 1106 of the tax law.

27 PART II

28 Section 1. Section 1 of part J of chapter 405 of the laws of 1999,  
29 amending the real property tax law relating to improving the adminis-  
30 tration of the school tax relief (STAR) program, as amended by section 3  
31 of part PP-1 of chapter 57 of the laws of 2008, is amended to read as  
32 follows:

33 Section 1. Notwithstanding the provisions of article 5 of the general  
34 construction law, the provisions of the tax law amended by sections

35 94-a, 94-d and 94-g of chapter 2 of the laws of 1995 are hereby revived  
36 and shall continue in full force and effect as they existed on March 31,  
37 1999 [~~through May 31, 2010, when upon such date they shall expire and be~~  
38 ~~repealed~~]. Sections 1, 2, 3, 4, and 5, and such part of section 10 of  
39 chapter 336 of the laws of 1999 as relates to providing for the effec-  
40 tiveness of such sections 1, 2, 3, 4 and 5 shall be nullified in effect  
41 on the effective date of this section, except that the amendments made  
42 to: paragraph (2) of subdivision a of section 1612 of the tax law by  
43 such section 1; and subdivision b of section 1612 of the tax law by such  
44 section 2; and the repeal of section 152 of chapter 166 of the laws of  
45 1991 made by such section 5 shall continue to remain in effect.

46 § 2. Paragraph 1 of subdivision a of section 1612 of the tax law, as  
47 amended by chapter 336 of the laws of 1999, is amended to read as  
48 follows:

49 (1) sixty percent of the total amount for which tickets have been sold  
50 for a lawful lottery game introduced on or after the effective date of  
51 this paragraph[~~, subject to the following provisions:~~

52 ~~(A) drawings in such game shall be held during no more than thirteen~~  
53 ~~hours each day, no more than eight hours of which shall be consecutive;~~

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1 ~~(B) such game shall be available only on premises occupied by licensed~~  
2 ~~lottery sales agents, subject to the following provisions:~~

3 ~~(i) if the licensee holds a license issued pursuant to the alcoholic~~  
4 ~~beverage control law to sell alcoholic beverages for consumption on the~~  
5 ~~premises, then not less than twenty five percent of the gross sales must~~  
6 ~~result from sales of food;~~

7 ~~(ii) if the licensee does not hold a license issued pursuant to the~~  
8 ~~alcoholic beverage control law to sell alcoholic beverages for consump-~~  
9 ~~tion on the premises, then the premises must have a minimum square~~  
10 ~~footage greater than two thousand five hundred square feet;~~

11 ~~(iii) notwithstanding the foregoing provisions, television equipment~~  
12 ~~that automatically displays the results of such drawings may be~~  
13 ~~installed and used without regard to the percentage of food sales or the~~  
14 ~~square footage if such premises are used as:~~

15 ~~(I) a commercial bowling establishment, or~~

16 ~~(II) a facility authorized under the racing, pari-mutuel wagering and~~  
17 ~~breeding law to accept pari-mutuel wagers;~~

18 ~~(C) the rules for the operation of such game shall be as prescribed by~~  
19 ~~regulations promulgated and adopted by the division, provided however,~~  
20 ~~that such rules shall provide that no person under the age of twenty one~~  
21 ~~may participate in such games on the premises of a licensee who holds a~~  
22 ~~license issued pursuant to the alcoholic beverage control law to sell~~  
23 ~~alcoholic beverages for consumption on the premises; and, provided,~~  
24 ~~further, that such regulations may be revised on an emergency basis not~~  
25 ~~later than ninety days after the enactment of this paragraph in order to~~  
26 ~~conform such regulations to the requirements of this paragraph]; or~~

27 § 3. This act shall take effect immediately.

28

PART JJ

29 Section 1. Section 1617 of the tax law, as added by section 3 of part  
30 D of chapter 383 of the laws of 2001, is amended to read as follows:

31 § 1617. Joint, multi-jurisdiction, and out-of-state lottery. The  
32 director may enter into an agreement with a government-authorized group  
33 of one or more other jurisdictions providing for the operation and  
34 administration of a joint, multi-jurisdiction, and out-of-state  
35 lottery[~~, except the director may not agree to participate in the games~~  
36 ~~of more than one such group at any single time]. Such a joint, multi-~~  
37 ~~jurisdiction, and out-of-state lottery game or games may include a~~  
38 ~~combined drawing, a combined prize pool, the transfer of sales and prize~~  
39 ~~monies to other jurisdictions as may be necessary, and such other coop-~~  
40 ~~erative arrangements as the director deems necessary or desirable.~~

41 § 2. This act shall take effect immediately.

42 PART KK

43 Section 1. The alcoholic beverage control law is amended by adding a  
44 new section 79-e to read as follows:

45 § 79-e. Grocery or drug store wine license. 1. Any person may apply  
46 to the authority for a license to sell from the licensed premises wine  
47 in sealed containers for consumption off such premises.

48 2. No such license shall be issued, however, to any person for any  
49 premises other than a grocery store, as defined in subdivision thirteen  
50 of section three of this chapter, or a drug store, as defined in subdivi-  
51 vision twelve of section three of this chapter.

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1 3. (a) Notwithstanding any other provision of this chapter, except for  
2 good cause shown, the authority shall issue a grocery store or drug  
3 store wine license to the holder of a license to sell beer at retail for  
4 consumption off the premises pursuant to section fifty-four of this  
5 chapter, or beer and wine products at retail for consumption off the  
6 premises pursuant to section fifty-four-a of this chapter, at the  
7 request of such licensee.

8 (b) For the purposes of this subdivision, the premises of the grocery  
9 store or drug store wine licensee shall be the same as the premises  
10 licensed under section fifty-four or fifty-four-a of this chapter.

11 (c) Notwithstanding any other provisions of this chapter, any license  
12 issued pursuant to this section shall run concurrently with the underly-  
13 ing license under section fifty-four or fifty-four-a of this chapter,  
14 and shall be deemed expired at such time as the underlying license  
15 expires.

16 4. Notwithstanding any other provision of this chapter, the authority  
17 may issue a license under this section to the holder of a license to  
18 sell wine at retail for consumption off the premises pursuant to section  
19 seventy-nine of this article, provided that: (a) the licensee meets the  
20 requirements of subdivision two of this section; and (b) upon issuance  
21 of a license, the licensee under this section surrenders the license  
22 certificate issued pursuant to such section seventy-nine.

23 5. Such application shall be in such form and shall contain such  
24 information as shall be required by the rules of the authority and shall  
25 be accompanied by a check or draft in the amount required by this arti-  
26 cle for such license.

27 6. Notwithstanding any other provisions of this chapter, any person  
28 receiving a license pursuant to this section shall not be subject to the  
29 provisions of subdivision two, three or four of section seventy-nine of  
30 this article.

31 7. Notwithstanding any other provisions of this chapter, any person  
32 receiving a license pursuant to this section shall not be subject to the  
33 provisions of section eighty of this article.

34 8. Notwithstanding any other provisions of this chapter, any person  
35 receiving a license pursuant to this section shall not be subject to the  
36 provisions of subdivision two, paragraph (a) of subdivision three, para-  
37 graph (b) of subdivision ten, or paragraph (c) of subdivision ten of  
38 section one hundred five of this chapter.

39 9. (a) A one-time franchise fee shall be paid for by each retail  
40 outlet to the state liquor authority. This franchise fee is hereby  
41 imposed at a rate of 0.46 of one percent of the total gross sales of the  
42 licensee in the previous year.

43 (b) In the event an applicant has been in business for less than  
44 twelve months prior to the filing of the application for this license,  
45 such applicant shall, in accordance with the rules of the authority,  
46 remit an estimate of its franchise fee based on square footage at a  
47 licensee's location pursuant to the following schedule:

48 

<u>Square Footage at</u>	<u>Franchise Fee</u>
--------------------------	----------------------

<u>Licensee's Location</u>	<u>Per Location</u>
<u>0-999</u>	<u>\$825</u>
<u>1,000-1,999</u>	<u>\$1,650</u>
<u>2,000-3,999</u>	<u>\$3,300</u>
<u>4,000-9,999</u>	<u>\$8,250</u>
<u>10,000-19,999</u>	<u>\$16,500</u>
<u>20,000-24,999</u>	<u>\$33,000</u>
<u>25,000-29,999</u>	<u>\$82,500</u>

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<u>30,000-39,999</u>	<u>\$132,000</u>
<u>40,000 and greater</u>	<u>\$495,000</u>

1 Within sixty days after such licensee shall have been in business for  
2 twelve months, such licensee shall submit to the authority, in accord-  
3 ance with the rules of the authority, a statement showing its actual  
4 total gross sales for the first twelve months of operation and the fran-  
5 chise fee due pursuant to paragraph (a) of this subdivision. In the  
6 event the franchise fee determined pursuant to such paragraph exceeds  
7 the amount paid pursuant to this paragraph, the licensee shall remit  
8 payment for the balance of the required franchise fee within such  
9 sixty-day period. Failure to remit payment within such sixty-day period  
10 shall be grounds for cancellation or revocation of such license. In the  
11 event that the franchise fee due pursuant to paragraph (a) of this  
12 subdivision is less than the amount paid pursuant to this paragraph, the  
13 licensee shall be entitled to a refund equal to the difference between  
14 the franchise fee paid pursuant to this paragraph and the amount due  
15 pursuant to paragraph (a) of this subdivision.

16 (c) No license shall be issued pursuant to this section until the  
17 franchise fee or estimated franchise fee under this subdivision required  
18 by either paragraph (a) or (b) of this subdivision has been paid in  
19 full.

20 (d) The franchise fee shall be deposited and disposed of in the same  
21 manner as any license fee as provided in section one hundred twenty-five  
22 of this chapter.

23 10. The state liquor authority may make such rules as it deems neces-  
24 sary to carry out the provisions of this section.

25 § 2. Section 83 of the alcoholic beverage control law is amended by  
26 adding a new subdivision 8 to read as follows:

27 8. The annual fee for a grocery or drug store wine license pursuant to  
28 section seventy-nine-e of this article shall be one hundred ten dollars.  
29 Where, however, the applicant is the holder of two or more such  
30 licenses, the annual fee for each additional license shall be double the  
31 amount hereinabove set forth.

32 § 3. Subdivision 2-a of section 100 of the alcoholic beverage control  
33 law, as amended by chapter 249 of the laws of 2002, is amended to read  
34 as follows:

35 2-a. No retailer shall employ, or permit to be employed, or shall  
36 suffer to work, on any premises licensed for retail sale hereunder, any  
37 person under the age of eighteen years, as a hostess, waitress, waiter,  
38 or in any other capacity where the duties of such person require or  
39 permit such person to sell, dispense or handle alcoholic beverages;  
40 except that: (1) any person under the age of eighteen years and employed  
41 by any person holding a grocery or drug store beer license shall be  
42 permitted to handle and deliver beer and wine products for such licen-  
43 see, (2) any person under the age of eighteen employed as a cashier by a  
44 person holding a grocery or drug store beer license shall be permitted  
45 to record and receive payment for beer and wine product sales when in  
46 the presence of and under the direct supervision of a person eighteen  
47 years of age or over, (2-a) any person under the age of eighteen years  
48 and employed by a person holding a grocery store or drug store beer  
49 license as either a cashier or in any other position to which handling  
50 of containers which may have held alcoholic beverages is necessary,  
51 shall be permitted to handle the containers if such have been presented  
52

54 for redemption in accordance with the provisions of title ten of article  
55 twenty-seven of the environmental conservation law, [~~and~~] (3) any person  
56 under the age of eighteen years employed as a dishwasher, busboy, or  
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1 other such position as to which handling of containers which may have  
2 held alcoholic beverages is necessary shall be permitted to do so under  
3 the direct supervision of a person of legal age to purchase alcoholic  
4 beverages in the state, (4) any person under the age of eighteen years  
5 and employed by any person holding a grocery or drug store wine license  
6 shall be permitted to handle and deliver wine for such licensee, and (5)  
7 any person under the age of eighteen employed as a cashier, and a person  
8 holding a grocery or drug store wine license shall be permitted to  
9 record and receive payment for wine when in the presence of and under  
10 the direct supervision of a person eighteen years of age or over.

11 § 4. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law.

13 PART LL

14 Section 1. Paragraphs (a), (b), (c), and (d) of subdivision 1 of  
15 section 424 of the tax law, paragraph (a) as amended by section 1 of  
16 part V of chapter 63 of the laws of 2000, paragraph (b) as amended by  
17 chapter 490 of the laws of 1993, and paragraphs (c) and (d) as amended  
18 by chapter 170 of the laws of 1994, are amended to read as follows:

19 (a) [~~Eleven~~] Twenty-four cents per gallon upon beers;

20 (b) [~~Eighteen and ninety-three hundredths~~] Fifty-one cents per gallon  
21 upon still wines, except cider containing more than three and two-tenths  
22 per centum of alcohol by volume, upon which the tax shall be three and  
23 seventy-nine hundredths cents per gallon;

24 (c) [~~Eighteen and ninety-three hundredths~~] Fifty-one cents per gallon  
25 upon artificially carbonated sparkling wines, except artificially carbo-  
26 nated sparkling cider containing more than three and two-tenths per  
27 centum of alcohol by volume, upon which the tax shall be three and  
28 seventy-nine hundredths cents per gallon;

29 (d) [~~Eighteen and ninety-three hundredths~~] Fifty-one cents per gallon  
30 upon natural sparkling wines, except natural sparkling cider containing  
31 more than three and two-tenths per centum of alcohol by volume, upon  
32 which the tax shall be three and seventy-nine hundredths cents per  
33 gallon;

34 § 2. (a) If a contract for the sale of beer and wines was entered into  
35 prior to April 1, 2009 and delivery under that contract is made within  
36 the state on or after April 1, 2009, the beer and wines sold under that  
37 contract will be subject to tax under article 18 of the tax law, as  
38 amended by this act, at the time of delivery.

39 (b) In order to subject beer and wines in this state on April 1, 2009  
40 to the increased taxes imposed by section one of this act, a special  
41 floor tax is imposed on each wholesaler or retailer (as defined in the  
42 alcoholic beverage control law) or other sellers of beer and wine, other  
43 than those registered as distributors under article 18 of the tax law,  
44 at the rates shown below with respect to all beer and wines in the  
45 possession or under the control on April 1, 2009 of those wholesalers,  
46 retailers and other sellers of beer and wines for purposes of sale in  
47 the state. Additionally, any person who is a distributor or manufacturer  
48 under article 18 of the tax law is subject to this special floor tax on  
49 any beer and wines in his or her possession or under his or her control  
50 on which the tax under article 18 of the tax law was already imposed.  
51 The rate of the floor tax will be:

52 (1) On beer, thirteen cents per gallon; and

53 (2) On wines, thirty-two and seven hundredths cents per gallon.

1 This floor tax will be due and payable to the commissioner of taxation

2 and finance on or before June 22, 2009.

3 (c) Except as provided in this section, all the provisions of articles  
4 18 and 37 of the tax law will apply to floor taxes imposed by this  
5 section.

6 (d) The commissioner of taxation and finance is authorized to  
7 prescribe any terms and conditions the commissioner deems advisable and  
8 require any reports the commissioner deems necessary to effectuate the  
9 provisions of this section.

10 (e) The commissioner of taxation and finance may request from the  
11 state liquor authority, and the state liquor authority is authorized and  
12 directed to provide, any cooperation and assistance, including data,  
13 that will enable the commissioner to carry out the imposition and imple-  
14 mentation of the floor tax.

15 § 3. This act shall take effect April 1, 2009.

16 PART MM

17 Section 1. Paragraph 1 of subdivision (a) of section 1160 of the tax  
18 law, as added by chapter 190 of the laws of 1990, is amended to read as  
19 follows:

20 (1) [~~On and after June first, nineteen hundred ninety, in~~] In addition  
21 to any tax imposed under any other article of this chapter, there is  
22 hereby imposed and there shall be paid a tax of [~~five~~] six percent upon  
23 the receipts from every rental of a passenger car which is a retail sale  
24 of such passenger car.

25 § 2. Paragraph 2 of subdivision (a) of section 1160 of the tax law, as  
26 amended by chapter 166 of the laws of 1991, is amended to read as  
27 follows:

28 (2) Except to the extent that a passenger car rental described in  
29 paragraph one of this subdivision has already been or will be subject to  
30 the tax imposed under such paragraph and except as otherwise exempted  
31 under this article, there is hereby imposed on every person and there  
32 shall be paid a use tax for the use within this state [~~on and after June~~  
33 ~~first, nineteen hundred ninety~~] of any passenger car rented by the user,  
34 which is a purchase at retail of such passenger car, but not including  
35 any lease of a passenger car to which subdivision (i) of section eleven  
36 hundred eleven of this chapter applies. For purposes of this paragraph,  
37 the tax shall be at the rate of [~~five~~] six percent of the consideration  
38 given or contracted to be given for such property, or for the use of  
39 such property, including any charges for shipping or delivery as  
40 described in paragraph three of subdivision (b) of section eleven  
41 hundred one of this chapter, but excluding any credit for tangible  
42 personal property accepted in part payment and intended for resale.

43 § 3. This act shall take effect June 1, 2009, and shall apply to sales  
44 made or uses occurring on or after such date in accordance with applica-  
45 ble transitional provisions in sections 1106 and 1217 of the tax law.

46 PART NN

47 Section 1. Subdivision (b) of section 1101 of the tax law is amended  
48 by adding a new paragraph 34 to read as follows:

49 (34) "Transportation service" shall mean the service of transporting,  
50 carrying or conveying a person or persons by any means, including but  
51 not limited to (i) taxicab, charter, black car, limousine, coach, for-  
52 hire vehicle, commuter van, or other vehicle service, (ii) horse-drawn  
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1 cab or coach service, and pedicab service, (iii) intra-state charter  
2 bus, vessel, train, and plane service, (iv) charter fishing service, and  
3 (v) sightseeing service regardless of whether scheduled or the means of  
4 conveyance; whether one-way or round-trip; whether to a single destina-  
5 tion or to multiple destinations; and whether the compensation paid by  
6 or on behalf of the passenger is based on mileage, trip, time consumed

7 or any other basis. A service that begins and ends in this state is  
8 deemed intra-state even if it passes outside this state during a portion  
9 of the trip. However, transportation service does not include (i)  
10 "commuter service" consisting of mass transportation service, local  
11 transit service, subway or commuter rail service, and other scheduled  
12 service; (ii) vessel or ferry service described in subdivision (b) of  
13 section eleven hundred nineteen or paragraph forty-three of subdivision  
14 (a) of section eleven hundred fifteen of this article, (iii) the trans-  
15 portation of children to and from schools and day camps operated by an  
16 entity or organization described in paragraph one, two, three, four, or  
17 six of subdivision (a) of section eleven hundred sixteen of this arti-  
18 cle, (iv) transportation of persons in connection with funerals, or (v)  
19 ambulance, ambulette, or emergency service transportation, whether  
20 ground, water, or air. Transportation service includes transporting,  
21 carrying, or conveying property of the person being transported, whether  
22 owned by or in the care of such person. In addition to what is included  
23 in the definition of "receipt" in paragraph three of this subdivision,  
24 receipts from the sale of transportation service subject to tax include  
25 any handling, carrying, baggage, booking service, administrative or  
26 other charge, of any nature, made in conjunction with the transportation  
27 service.

28 § 2. Subdivision (c) of section 1105 of the tax law is amended by  
29 adding a new paragraph 13 to read as follows:

30 (13) Transportation service, whether or not any tangible personal  
31 property is transferred in conjunction therewith, and regardless of  
32 whether the charge is paid in this state or out of state so long as the  
33 service is provided in this state.

34 § 3. Section 1106 of the tax law is amended by adding a new subdivi-  
35 sion (1) to read as follows:

36 (1) The tax imposed by paragraph thirteen of subdivision (c) of  
37 section eleven hundred five of this part must be paid with respect to  
38 receipts from all sales of services on or after the effective date of  
39 such paragraph although rendered or agreed to be rendered under a prior  
40 contract. Where a service is sold on a monthly, quarterly, yearly, or  
41 other term basis, the charge for the service will be subject to the tax  
42 imposed by that paragraph to the extent that the charge is applicable to  
43 any period on or after the date the tax becomes effective, and the  
44 charge must be apportioned on the basis of the ratio of the number of  
45 days falling within the period to the total number of days in the full  
46 term or period.

47 § 4. Section 1111 of the tax law is amended by adding a new subdivi-  
48 sion (o) to read as follows:

49 (o) (1) If a transportation service subject to tax under paragraph  
50 thirteen of subdivision (c) of section eleven hundred five of this part  
51 is provided by taxicab, black car, limousine or other vehicle, and the  
52 owner or lessor of the vehicle leases or rents the vehicle to an unre-  
53 lated person who provides the transportation service, such as a taxicab  
54 driver who drives a taxicab owned by another person, then (i) the owner  
55 or lessor is deemed to provide the transportation service during the day  
56 or other period that the unrelated person uses the vehicle to provide

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1 the service, (ii) the owner or lessor is deemed to be the vendor of the  
2 service provided by the unrelated person, (iii) the tax imposed by such  
3 paragraph thirteen is deemed to be imposed on the unrelated person,  
4 (iv) the owner or lessor, as vendor, must collect the tax from the unre-  
5 lated person, based on the local jurisdiction where the driver takes  
6 delivery of the vehicle and pay over such tax required to be collected  
7 with its returns required to be filed under this article, and (v) the  
8 receipts subject to the tax equal two hundred percent of the amount that  
9 the owner or lessor charges the unrelated person for the use of the  
10 vehicle during the day or other period, including any charge related to  
11 insurance, maintenance, repairs, fuel, the use, rental or economic value

12 of any taxicab or other license or medallion, and any other charge made  
13 by the owner or lessor to the unrelated person for the day or other  
14 period, regardless of whether the unrelated person transported, carried  
15 or conveyed any person or earned any fares with that vehicle during that  
16 day or other period.

17 (2) Notwithstanding any law to the contrary:

18 (i) Any municipality or public corporation that establishes or regu-  
19 lates taxicab, black car, limousine or other vehicle service fares must  
20 adjust those fares to include therein the tax imposed by paragraph thir-  
21 teen of subdivision (c) of section eleven hundred five of this part and  
22 the taxes imposed by other sections of this part and pursuant to the  
23 authority of article twenty-nine of this chapter on the services taxed  
24 by such paragraph thirteen and must require that any meters or other  
25 devices in the vehicles or otherwise that measure fares be adjusted to  
26 include these taxes, as the same are from time to time imposed and as  
27 the rates of those taxes may change.

28 (ii) Any person that sells the services described in paragraph one of  
29 this subdivision must adjust any meters or other devices in the vehicles  
30 or otherwise that measure fares so that they timely reflect any change  
31 in the rates of the taxes described in subparagraph (i) of this para-  
32 graph. Neither the failure of a municipal or other public corporation to  
33 adjust fares nor the failure of any person to adjust the meters or  
34 devices will relieve any person from the obligation to collect such  
35 taxes timely, at the correct combined rate.

36 (3) For purposes of this subdivision, "unrelated person" means a  
37 person other than a related person as defined for purposes of section  
38 fourteen of this chapter.

39 § 5. Subdivision (z) of section 1115 of the tax law is amended by  
40 adding a new paragraph 5 to read as follows:

41 (5) The exemptions provided in this subdivision shall not apply to the  
42 tax imposed by paragraph thirteen of subdivision (c) of section eleven  
43 hundred five of this article or to similar taxes imposed pursuant to the  
44 authority of article twenty-nine of this chapter.

45 § 6. Section 1213 of the tax law, as amended by chapter 651 of the  
46 laws of 1999, is amended to read as follows:

47 § 1213. Deliveries outside the jurisdiction where sale is made. Where  
48 a sale of tangible personal property or services, including prepaid  
49 telephone calling services, but not including other services described  
50 in subdivision (b) of section eleven hundred five of this chapter,  
51 including an agreement therefor, is made in any city, county or school  
52 district, but the property sold, the property upon which the services  
53 were performed or prepaid telephone calling or other service is or will  
54 be delivered to the purchaser elsewhere, such sale shall not be subject  
55 to tax by such city, county or school district. However, if delivery  
56 occurs or will occur in a city, county or school district imposing a tax

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1 on the sale or use of such property, prepaid telephone calling or other  
2 services, the vendor shall be required to collect from the purchaser, as  
3 provided in section twelve hundred fifty-four of this article, the  
4 aggregate sales or compensating use taxes imposed by the city, if any,  
5 county and school district in which delivery occurs or will occur, for  
6 distribution by the commissioner to such taxing jurisdiction or juris-  
7 dictions. For the purposes of this section delivery shall be deemed to  
8 include transfer of possession to the purchaser and the receiving of the  
9 property or of the service, including prepaid telephone calling service,  
10 by the purchaser. Notwithstanding the foregoing, where a transportation  
11 service described in paragraph thirteen of subdivision (c) of section  
12 eleven hundred five of this chapter begins in one jurisdiction but ends  
13 in another jurisdiction, any tax imposed by this article shall be due  
14 the jurisdiction or jurisdictions where the service commenced.

15 § 7. This act shall take effect June 1, 2009.

17 Section 1. Paragraph 2 of subdivision (d) of section 1101 of the tax  
18 law, as added by chapter 93 of the laws of 1965, is amended to read as  
19 follows:

20 (2) Admission charge. The amount paid for admission, including any  
21 dues (other than dues paid to a club described in paragraph thirteen of  
22 this subdivision), membership fee, participation fee, usage fee, or  
23 service charge, and any charge for entertainment [or], amusement, or  
24 sports, and any amount paid for the use of any devices, rides, games,  
25 equipment, apparatus, or any other facilities therefor at a place of  
26 amusement other than lawfully operated video lottery terminals.

27 § 2. Paragraph 4 of subdivision (d) of section 1101 of the tax law, as  
28 added by chapter 93 of the laws of 1965, is amended to read as follows:

29 (4) Charge of a roof garden, cabaret or other similar place. Any  
30 charge made for admission, refreshment, service, or merchandise or for  
31 the use of any facilities for entertainment or amusement at a roof  
32 garden, cabaret or other similar place.

33 § 3. Paragraph 6 of subdivision (d) of section 1101 of the tax law, as  
34 amended by chapter 470 of the laws of 1979, is amended to read as  
35 follows:

36 (6) Dues. Any dues or membership fee including any assessment, irre-  
37 spective of the purpose for which made, and any charges for social,  
38 athletic or sports privileges or facilities~~[, except charges for sports~~  
39 ~~privileges or facilities offered to members' guests which would other-~~  
40 ~~wise be exempt if paid directly by such guests]~~, and for the use of  
41 other facilities furnished or leased by a club to its members or guests.

42 § 4. Paragraph 10 of subdivision (d) of section 1101 of the tax law,  
43 as added by chapter 93 of the laws of 1965, is amended to read as  
44 follows:

45 (10) Place of amusement. Any place where a performance is given, a  
46 motion picture or other theater, fair, race track, exhibition, circus,  
47 golf course, athletic field, sporting arena, club (other than a club  
48 described in paragraph thirteen of this subdivision), gymnasium, bowling  
49 alley, shooting gallery, swimming pool, beach, skating rink, skiing  
50 mountain or facility, campground, park and any other place where any  
51 equipment, apparatus, exhibit, display, or other facilities for enter-  
52 tainment, amusement, or sports are provided, including amusement devices  
53 or rides and games of chance or skill, whether or not contained in an  
54 enclosure and whether or not coin-operated.

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1 § 5. Paragraph 12 of subdivision (d) of section 1101 of the tax law,  
2 as amended by chapter 609 of the laws of 1986, is amended to read as  
3 follows:

4 (12) Roof garden, cabaret or other similar place. Any roof garden,  
5 cabaret or other similar place which furnishes a public performance for  
6 profit, including any hotel, restaurant, hall or other public place  
7 where music and dancing privileges or any other entertainment, except  
8 instrumental or mechanical music alone, are afforded to patrons in  
9 conjunction with the serving or selling of food, refreshment or merchan-  
10 dise, but not including a place where merely live dramatic or musical  
11 arts performances are offered in conjunction with the serving or selling  
12 of food, refreshment or merchandise, so long as such serving or selling  
13 of food, refreshment or merchandise is merely incidental to such  
14 performances. A performance will be regarded as being furnished for  
15 profit even though the charge made for admission, refreshment, service  
16 or merchandise is not increased by reason of the furnishing of that  
17 performance.

18 § 6. Paragraph 13 of subdivision (d) of section 1101 of the tax law,  
19 as added by chapter 93 of the laws of 1965, is amended to read as  
20 follows:

21 (13) Social ~~[or]~~, athletic, or sporting club. Any club or organization

22 of which a material purpose or activity is social [~~or~~], athletic or  
23 sporting, or any combination of those purposes or activities.

24 § 7. The opening paragraph of paragraph (i) of subdivision (d) of  
25 section 1105 of the tax law, as amended by chapter 405 of the laws of  
26 1971, is amended to read as follows:

27 The receipts from every sale of beer, wine or other alcoholic beverag-  
28 es or any other drink of any nature, or from every sale of food and  
29 drink of any nature or of food alone, when sold in or by restaurants,  
30 taverns or other establishments in this state, or by caterers, including  
31 in the amount of such receipts any cover, minimum, entertainment, admis-  
32 sion, or other charge made to patrons or customers (except those  
33 receipts taxed pursuant to subdivision (f) of this section):

34 § 8. Paragraph 1 of subdivision (f) of section 1105 of the tax law, as  
35 amended by section 100 of part A of chapter 389 of the laws of 1997, is  
36 amended to read as follows:

37 (1) Any admission charge [~~where such admission charge is in excess of~~  
38 ~~ten cents~~] to or for the use of any place of amusement in the state[~~,~~  
39 ~~except charges for admission to race tracks, boxing, sparring or wrestl-~~  
40 ~~ing matches or exhibitions which charges are taxed under any other law~~  
41 ~~of this state, or dramatic or musical arts performances, or live circus~~  
42 ~~performances, or motion picture theaters, and except charges to a patron~~  
43 ~~for admission to, or use of, facilities for sporting activities in which~~  
44 ~~such patron is to be a participant, such as bowling alleys and swimming~~  
45 ~~poools] or to or for the use of any equipment, apparatus, devices, rides,  
46 games, or other facilities at that place of amusement, other than a  
47 lawfully operated video lottery terminal, regardless of whether the  
48 charge is paid in this state or out of state so long as the place of  
49 amusement is in this state. For any person having the permanent use or  
50 possession of a box or seat or a lease or a license, other than a season  
51 ticket, for the use of a box or seat at a place of amusement, the tax  
52 shall be upon the amount for which a similar box or seat is sold for  
53 each performance or exhibition at which the box or seat is used or  
54 reserved by the holder, licensee or lessee, and shall be paid by the  
55 holder, licensee or lessee.~~

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1 § 9. Paragraph 2 of subdivision (f) of section 1105 of the tax law, as  
2 amended by chapter 673 of the laws of 1995, is amended to read as  
3 follows:

4 (2) (i) The dues paid to any social [~~or~~], athletic or sporting club in  
5 this state if the dues of an active annual member, exclusive of the  
6 initiation fee, are in excess of ten dollars per year, and on the initi-  
7 ation fee alone, regardless of the amount of dues, if such initiation  
8 fee is in excess of ten dollars, regardless of whether the dues or  
9 initiation fee is paid in this state or out of this state so long as the  
10 club is in this state. Where the tax on dues applies to any such social  
11 [~~or~~], athletic or sporting club, the tax shall be paid by all members,  
12 other than honorary members, thereof regardless of the amount of their  
13 dues, and shall be paid on all dues or initiation fees [~~for a period~~  
14 ~~commencing on or after August first, nineteen hundred sixty five~~]. In  
15 the case of a life membership, the tax shall be upon the amount paid as  
16 life membership dues, however, a life member, other than an honorary  
17 member, paying an annual sales tax, based on the dues of an active annu-  
18 al member, shall continue such payments until the total amount of such  
19 tax paid is equal to the amount of tax that would have otherwise been  
20 due had the tax been imposed at the time such paid life membership has  
21 been purchased and at the then applicable rate.

22 (ii) Dues and initiation fees paid to the following shall not be  
23 subject to the tax imposed by this paragraph:

24 (A) A fraternal society, order or association operating under the  
25 lodge system; or

26 (B) Any fraternal association of students of a college or university[~~,~~

27 ~~(C) A homeowners association. For purposes of this subparagraph, a~~

28 ~~homeowners association is an association (including a cooperative hous-~~  
29 ~~ing or apartment corporation) (I) the membership of which is comprised~~  
30 ~~exclusively of owners or residents of residential dwelling units,~~  
31 ~~including owners of units in a condominium, and including shareholders~~  
32 ~~in a cooperative housing or apartment corporation, where such units are~~  
33 ~~located in a defined geographical area such as a housing development or~~  
34 ~~subdivision and (II) which operates social or athletic facilities~~  
35 ~~located in such area for use (whether or not exclusive) by such owners~~  
36 ~~or residents].~~

37 § 10. Paragraph 3 of subdivision (f) of section 1105 of the tax law,  
38 as amended by chapter 72 of the laws of 1971, is amended to read as  
39 follows:

40 (3) The amount paid as charges of a roof garden, cabaret or other  
41 similar place in the state, regardless of whether paid in this state or  
42 out of state so long as the place is in this state.

43 § 11. Section 1122 of the tax law is REPEALED.

44 § 12. Section 1123 of the tax law is REPEALED.

45 § 13. Paragraph 4 of subdivision (a) of section 1210 of the tax law,  
46 as amended by section 5 of part SS-1 of chapter 57 of the laws of 2008,  
47 is amended to read as follows:

48 (4) Notwithstanding any other provision of law to the contrary, any  
49 local law enacted by any city of one million or more that imposes the  
50 taxes authorized by this subdivision (i) may omit the exception provided  
51 in subparagraph (ii) of paragraph three of subdivision (c) of section  
52 eleven hundred five of this chapter for receipts from laundering, dry-  
53 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;  
54 (ii) may impose the tax described in paragraph six of subdivision (c) of  
55 section eleven hundred five of this chapter at a rate in addition to the  
56 rate prescribed by this section not to exceed two percent in multiples  
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1 of one-half of one percent; (iii) shall provide that the tax described  
2 in paragraph six of subdivision (c) of section eleven hundred five of  
3 this chapter does not apply to facilities owned and operated by the city  
4 or an agency or instrumentality of the city or a public corporation the  
5 majority of whose members are appointed by the chief executive officer  
6 of the city or the legislative body of the city or both of them; (iv)  
7 shall not include any tax on receipts from, or the use of, the services  
8 described in paragraph seven of subdivision (c) of section eleven  
9 hundred five of this chapter; (v) shall provide that, for purposes of  
10 the tax described in subdivision (e) of section eleven hundred five of  
11 this chapter, "permanent resident" means any occupant of any room or  
12 rooms in a hotel for at least one hundred eighty consecutive days with  
13 regard to the period of such occupancy; [~~(vi) may omit the exception~~  
14 ~~provided in paragraph one of subdivision (f) of section eleven hundred~~  
15 ~~five of this chapter for charges to a patron for admission to, or use~~  
16 ~~of, facilities for sporting activities in which the patron is to be a~~  
17 ~~participant, such as bowling alleys and swimming pools;]~~ (vii) shall not  
18 provide the clothing and footwear exemption in paragraph thirty of  
19 subdivision (a) of section eleven hundred fifteen of this chapter but  
20 must exempt clothing and footwear and any item used or consumed to make  
21 or repair exempt clothing and which becomes a physical component part of  
22 that exempt clothing; (viii) shall omit the exemption provided in para-  
23 graph forty-one of subdivision (a) of section eleven hundred fifteen of  
24 this chapter; (ix) shall omit the exemption provided in subdivision (c)  
25 of section eleven hundred fifteen of this chapter insofar as it applies  
26 to fuel, gas, electricity, refrigeration and steam, and gas, electric,  
27 refrigeration and steam service of whatever nature for use or consump-  
28 tion directly and exclusively in the production of gas, electricity,  
29 refrigeration or steam; and (x) shall omit, unless such city elects  
30 otherwise, the provision for refund or credit contained in clause six of  
31 subdivision (a) of section eleven hundred nineteen of this chapter.

32 § 14. Paragraph 2 of subdivision (b) of section 1210 of the tax law,

33 as amended by section 36 of part Y of chapter 63 of the laws of 2000, is  
34 amended to read as follows:

35 (2) In respect to the taxes described in such subdivisions (b), (d),  
36 (e) and (f) of section eleven hundred five of this chapter and in such  
37 clauses (E), (G) and (H) of subdivision (a) of section eleven hundred  
38 ten of this chapter and the transitional provisions in such section  
39 eleven hundred six covering those taxes, all provisions of a local law  
40 imposing any such tax, except as to rate and except as otherwise  
41 provided herein, shall be identical with the corresponding provisions in  
42 such article twenty-eight of this chapter, including the definition and  
43 exemption provisions of such article, so far as the provisions of such  
44 article twenty-eight of this chapter can be made applicable to the taxes  
45 imposed by such city or county and with such limitations and special  
46 provisions as are set forth in this article; provided, however, that any  
47 local law enacted by any city of one million or more, imposing the taxes  
48 authorized by this subdivision, shall omit the exemption provided in  
49 subdivision (c) of section eleven hundred fifteen of this chapter [~~and  
50 may omit the exception provided in paragraph (1) of subdivision (f) of  
51 section eleven hundred five of this chapter for charges to a patron for  
52 admission to, or use of, facilities for sporting activities in which  
53 such patron is to be a participant, such as bowling alleys and swimming  
54 pools. The transitional provisions contained in subdivision (d) of  
55 section eleven hundred six of this chapter shall apply in the same  
56 manner and to the same extent to a tax imposed by omitting the exception~~

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1 ~~in paragraph (1) of subdivision (f) of section eleven hundred five of~~  
2 ~~this chapter, as described in the preceding sentence, except that an~~  
3 ~~equivalent date shall be substituted to accord with the date when the~~  
4 ~~tax so imposed becomes effective].~~ The tax described in any one of such  
5 subdivisions (b), (d), (e) and (f) of section eleven hundred five of  
6 this chapter, including the related transitional provisions in [~~such~~  
7 section eleven hundred six of this chapter, and the taxes described in  
8 clauses (E), (G) and (H) of subdivision (a) of section eleven hundred  
9 ten of this chapter where the tax described in such subdivision (b) of  
10 section eleven hundred five of this chapter is imposed, may not be  
11 imposed by a city or county unless the local law, ordinance or resol-  
12 ution imposes such tax so as to include all portions and all types of  
13 receipts, charges or rents, as the case may be, subject to state tax  
14 under the applicable subdivision of section eleven hundred five of this  
15 chapter and uses subject to tax under the applicable provisions of  
16 section eleven hundred ten of this chapter where the tax described in  
17 subdivision (b) of section eleven hundred five of this chapter is  
18 imposed.

19 § 15. Subdivision (h) of section 1210 of the tax law, as added by  
20 chapter 168 of the laws of 1975, is amended to read as follows:

21 (h) Notwithstanding the provisions of subdivision (f) of this section,  
22 any city having a population of one million or more in which a municipal  
23 assistance corporation is created under article ten of the public  
24 authorities law shall continue to be authorized and empowered to adopt  
25 and amend local laws, imposing taxes, at a rate not to exceed four  
26 percent on the receipts of sales from the services of laundering, dry-  
27 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shin-  
28 ing[~~, and charges to a patron for admission to, or use of, facilities~~  
29 ~~for sporting activities in which such patron is to be a participant such~~  
30 ~~as bowling alleys and swimming pools].~~ Such taxes shall be administered,  
31 collected and distributed by the [~~state tax commission~~] commissioner as  
32 provided in subpart B of part III and in part IV of this article.

33 § 16. This act shall take effect June 1, 2009, and shall apply in  
34 accordance with applicable transitional provisions in sections 1106 and  
35 1217 of the tax law.

37 Section 1. Paragraph 9 of subdivision (b) of section 1101 of the tax  
38 law, as amended by chapter 61 of the laws of 1989, is amended to read as  
39 follows:

40 (9) Capital improvement. (i) An addition or alteration to real proper-  
41 ty which:

42 (A) Substantially adds to the value of the real property, or appre-  
43 ciably prolongs ~~[the]~~ its useful life ~~[of the real property]~~; and

44 (B) Becomes part of the real property or is permanently affixed to  
45 ~~[the real property]~~ it so that removal would cause material damage to  
46 ~~[the property]~~ it or to the article itself; and

47 (C) Is intended to become a permanent installation; and

48 (D) In the case of a building or other structure, constitutes new  
49 construction or a new addition to or total reconstruction of existing  
50 construction.

51 (ii) A mobile home shall not constitute ~~[an addition or]~~ a capital  
52 improvement ~~[to real property, property or land]~~, regardless of the  
53 nature of its installation.

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1 (iii) Notwithstanding the provisions of subparagraph (i) of this para-  
2 graph: (A) Floor covering, such as carpet, carpet padding, linoleum and  
3 vinyl roll flooring, carpet tile, linoleum tile and vinyl tile,  
4 installed as the initial finished floor covering in new construction or  
5 a new addition to or total reconstruction of existing construction shall  
6 constitute ~~[an addition or]~~ a capital improvement ~~[to real property,~~  
7 ~~property or land]~~; and

8 (B) Floor covering, such as carpet, carpet padding, linoleum and vinyl  
9 roll flooring, carpet tile, linoleum tile and vinyl tile, installed  
10 other than as described in clause (A) of this subparagraph shall not  
11 constitute ~~[an addition or]~~ a capital improvement ~~[to real property,~~  
12 ~~property or land]~~.

13 § 2. Subparagraph (iii) of paragraph 3 of subdivision (c) of section  
14 1105 of the tax law, as separately amended by chapters 103 and 471 of  
15 the laws of 1981, is amended to read as follows:

16 (iii) for installing property which, when installed, will constitute  
17 ~~[an addition or]~~ a capital improvement ~~[to real property, property or~~  
18 ~~land, as the terms real property, property or land are defined in the~~  
19 ~~real property tax law as such term capital improvement is defined in~~  
20 ~~paragraph nine of subdivision (b) of section eleven hundred one of this~~  
21 ~~chapter]~~; and

22 § 3. Paragraph 5 of subdivision (c) of section 1105 of the tax law, as  
23 amended by chapter 321 of the laws of 2005, is amended to read as  
24 follows:

25 (5) Maintaining, servicing or repairing real property~~[, property or~~  
26 ~~land, as such terms are defined in the real property tax law]~~, whether  
27 the services are performed in or outside of a building, as distinguished  
28 from adding to or improving such real property~~[, property or land,]~~ by a  
29 capital improvement ~~[as such term capital improvement is defined in~~  
30 ~~paragraph nine of subdivision (b) of section eleven hundred one of this~~  
31 ~~article]~~, but excluding (i) services rendered by an individual who is  
32 not in a regular trade or business offering his services to the public,  
33 (ii) services rendered directly with respect to real property~~[, property~~  
34 ~~or land]~~ used or consumed directly and predominantly in the production  
35 for sale of gas or oil by manufacturing, processing, generating, assem-  
36 bling, refining, mining, or extracting, (iii) services rendered with  
37 respect to real property~~[, property or land]~~ used or consumed predomi-  
38 nantly either in the production of tangible personal property, for sale,  
39 by farming or in a commercial horse boarding operation, or in both and  
40 (iv) services of removal of waste material from a facility regulated as  
41 a transfer station or construction and demolition debris processing  
42 facility by the department of environmental conservation, provided that  
43 the waste material to be removed was not generated by the facility.

44 § 4. Subdivision (e) of section 1110 of the tax law, as separately  
45 amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991,  
46 is amended to read as follows:

47 (e) Notwithstanding the foregoing[7] provisions of this section, for  
48 purposes of clause (B) of subdivision (a) of this section, there shall  
49 be no tax on any portion of such price which represents the value added  
50 by the user to tangible personal property which he fabricates and  
51 installs to the specifications of [~~an addition or~~] a capital improvement  
52 [~~to real property, property or land, as the terms real property, proper-~~  
53 ~~ty or land are defined in the real property tax law~~], over and above the  
54 prevailing normal purchase price prior to such fabrication of such  
55 tangible personal property which a manufacturer, producer or assembler  
56 would charge an unrelated contractor who similarly fabricated and  
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1 installed such tangible personal property to the specifications of [~~an~~  
2 ~~addition or~~] a capital improvement [~~to such real property, property or~~  
3 ~~land~~].

4 § 5. Paragraph 17 of subdivision (a) of section 1115 of the tax law,  
5 as amended by chapter 221 of the laws of 1971, is amended to read as  
6 follows:

7 (17) Tangible personal property sold by a contractor, subcontractor or  
8 [~~repairman~~] repairperson to a person other than an organization  
9 described in subdivision (a) of section eleven hundred sixteen of this  
10 part, for whom [~~he~~] the contractor, subcontractor or repairperson is  
11 [~~adding to, or improving real property, property or land by~~] performing  
12 or is about to perform a capital improvement, [~~or for whom he is about~~  
13 ~~to do any of the foregoing,~~] if such tangible personal property is to  
14 become an integral component part of [~~such structure, building or~~] the  
15 real property [~~;~~ ~~provided, however, that if such sale is made pursuant~~  
16 ~~to a contract irrevocably entered into before September first, nineteen~~  
17 ~~hundred sixty nine, no exemption shall exist under this paragraph~~] upon  
18 which the capital improvement is or will be performed.

19 § 6. Subparagraph (iii) of paragraph 37 of subdivision (a) of section  
20 1115 of the tax law, as added by section 1 of part C of chapter 63 of  
21 the laws of 2000, is amended to read as follows:

22 (iii) Receipts from the retail sale of the tangible personal property  
23 exempt pursuant to subparagraph (i) of this paragraph if purchased by an  
24 operator of an internet data center, shall be exempt when purchased by a  
25 contractor, subcontractor or [~~repairman~~] repairperson for use as  
26 described in such subparagraph (i), where such property is to become [~~a~~]  
27 an integral component part of real property described in such subpara-  
28 graph (i) of this paragraph upon which the capital improvement [~~to real~~  
29 ~~property~~] is to be performed.

30 § 7. Subparagraph (iii) of paragraph 1 of subdivision (aa) of section  
31 1115 of the tax law, as added by section 2 of part T of chapter 63 of  
32 the laws of 2000, is amended to read as follows:

33 (iii) The services described in paragraph five of subdivision (c) of  
34 section eleven hundred five of this article when performed on property  
35 described in paragraph thirty-eight of subdivision (a) of this section  
36 which subsequent to its installation has become [~~an addition or~~] a capi-  
37 tal improvement [~~to real property, property or land, as such terms are~~  
38 ~~defined in the real property tax law~~].

39 § 8. This act shall take effect June 1, 2009, and shall apply in  
40 accordance with applicable transitional provisions in sections 1106 and  
41 1217 of the tax law.

42 PART QQ

43 Section 1. Subdivision 8 of section 509 of the tax law, as amended by  
44 section 5 of part E of chapter 60 of the laws of 2007, is amended to  
45 read as follows:

46 8. To issue replacement certificates of registration at such times as

47 the commissioner may deem necessary for the proper and efficient  
48 enforcement of the provisions of this article, but not more often than  
49 once every year and to require the surrender of the then outstanding  
50 certificates of registration. All of the provisions of this article with  
51 respect to certificates of registration shall be applicable to replace-  
52 ment certificates of registration issued hereunder, except that the  
53 replacement certificate of registration shall be issued upon payment of  
54 a fee of [~~four~~] fifteen dollars for each motor vehicle and [~~two dollars~~]  
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1 for any trailer, semi-trailer, dolly or other device drawn thereby for  
2 which a certificate of registration is required to be issued under this  
3 article;

4 § 2. This act shall take effect immediately.

5 PART RR

6 Section 1. The tax law is amended by adding a new section 1105-F to  
7 read as follows:

8 § 1105-F. Additional state sales and compensating use tax on certain  
9 luxury property. (a) Definitions. For purposes of the tax imposed by  
10 this section, the following terms mean:

11 (1) Passenger motor vehicle. A motor vehicle as defined in section one  
12 hundred twenty-five of the vehicle and traffic law, with a gross vehicle  
13 weight of ten thousand pounds or less, but not including a vehicle  
14 purchased exclusively for use in the active conduct of a trade or busi-  
15 ness of transporting persons or property for compensation or hire, and  
16 not including a demonstrator vehicle.

17 (2) Vessel. A vessel, as defined in section twenty-two hundred fifty  
18 of the vehicle and traffic law, but not including a commercial vessel,  
19 as defined in paragraph sixteen of subdivision (b) of section eleven  
20 hundred one of this article, and not including a demonstrator vessel.

21 (3) Aircraft. Any aircraft that is propelled by a motor or engine and  
22 is capable of carrying one or more individuals, but not including  
23 commercial aircraft as defined in paragraph seventeen of subdivision (b)  
24 of section eleven hundred one of this article, and not including a  
25 demonstrator aircraft.

26 (4) Jewelry. All articles commonly or commercially known as jewelry,  
27 whether real or imitation, including but not limited to rings, earrings,  
28 necklaces, bracelets and watches, and also including loose pearls and  
29 precious and semi-precious stones.

30 (5) Fur clothing and footwear. Clothing and footwear made, in whole or  
31 in part, of any animal skin or part thereof with hair, fleece, or fur  
32 fibers attached thereto, in either its raw or processed state, but not  
33 including skins that are converted into leather or that in processing  
34 have had the hair, fleece, or fur fiber completely removed.

35 (b) Imposition of additional taxes. Notwithstanding any other law to  
36 the contrary, in addition to the sales and compensating use taxes  
37 imposed by subdivision (a) of section eleven hundred five and subdivi-  
38 sion (a) of section eleven hundred ten of this part, there are hereby  
39 imposed and there shall be paid additional sales and compensating use  
40 taxes, at the rate of five percent, on the retail sale or use within the  
41 state of the following:

42 (1) A passenger motor vehicle to the extent that the sale price  
43 exceeds sixty thousand dollars;

44 (2) A vessel to the extent that the sale price exceeds two hundred  
45 thousand dollars;

46 (3) An aircraft to the extent that the sale price exceeds five hundred  
47 thousand dollars;

48 (4) Jewelry or fur clothing and footwear to the extent that the sale  
49 price per item of jewelry or fur clothing and footwear exceeds twenty  
50 thousand dollars. An item that is ordinarily sold as a pair, such as  
51 earrings or gloves, are considered to be one item for purposes of this

1 (c) Special rules for computing receipts and consideration. Notwith-  
2 standing any contrary provision of this article or other law, for  
3 purposes of this section:

4 (1) Sale price has the same definition as receipt, but without any  
5 deduction for tangible personal property accepted in part payment and  
6 intended for resale. Sale price also includes the price of any property  
7 installed on a passenger motor vehicle, vessel, or aircraft by the  
8 vendor of that vehicle, vessel or aircraft within six months of the sale  
9 of the vehicle, vessel or aircraft, plus any charge for installing that  
10 property, but does not include the sale price of any property installed  
11 on a passenger motor vehicle to make it adaptable for use by a hand-  
12 icapped person, or the replacement of damaged, defective, or malfunc-  
13 tioning property, or any charge for installing that property.

14 (2) With respect to any lease of a passenger motor vehicle, vessel, or  
15 aircraft for a term of one year or more, sale price means the manufac-  
16 turer's suggested retail price for that vehicle, vessel, or aircraft,  
17 without any deduction for tangible personal property accepted in part  
18 payment and intended for resale. The tax due under this section must be  
19 collected at the time the first payment is made under the lease, option  
20 to renew, or similar provision or combination of them, or as of the date  
21 of registration with the commissioner of motor vehicles, whichever is  
22 earlier.

23 (d) Incorporation of other provisions of this article. Except as  
24 otherwise provided in this section, the taxes imposed by this section  
25 will be identical to, and administered and collected in a like manner  
26 as, the taxes imposed by sections eleven hundred five and eleven hundred  
27 ten of this part. All the provisions of this article, including the  
28 definition and exemption provisions and the provisions relating or  
29 applicable to the administration, collection, and disposition of the  
30 taxes imposed by those sections will apply to the tax imposed by this  
31 section so far as those provisions can be made applicable to the tax  
32 imposed by this section, with such modifications as may be necessary in  
33 order to adapt the language of those provisions to the tax imposed by  
34 this section. Those provisions will apply with the same force and effect  
35 as if the language of those provisions had been set forth in full in  
36 this section, except to the extent that any of those provisions are  
37 either inconsistent with a provision of this section or are not relevant  
38 to the tax imposed by this section. For purposes of this section, any  
39 reference to receipt or consideration will be read as sale price as  
40 defined by this section and any reference in this chapter to a tax or  
41 the taxes imposed by section eleven hundred five or eleven hundred ten  
42 of this part will be deemed also to refer to the tax imposed by this  
43 section unless a different meaning is clearly required.

44 (e) Separate statement of tax. Every person required to collect the  
45 tax imposed by this section shall state, charge, and show that tax sepa-  
46 rately from the price or charge, and also separately from any other tax  
47 imposed by this article or other law on any sales slip, invoice,  
48 receipt, or other statement or memorandum of the price or charge, paid  
49 or payable, given to the customer.

50 (f) Vendor collection credit not to include tax imposed by this  
51 section. The taxes imposed by, and collected or paid over under, this  
52 section shall not be included or considered in computing the credit  
53 allowed by subdivision (f) of section eleven hundred thirty-seven of  
54 this article.

1 (g) Taxes to be in addition to any other. The taxes imposed by this  
2 section shall be in addition to any other tax imposed or authorized to  
3 be imposed by this chapter or other law.

4 (h) Taxes not to apply to other impositions. The taxes imposed by this

5 section shall not apply to the taxes imposed by section eleven hundred  
6 seven, eleven hundred eight, or eleven hundred nine of this part or to  
7 taxes authorized to be imposed by article twenty-nine of this chapter.

8 § 2. This act shall take effect June 1, 2009, and shall apply to sales  
9 made or uses occurring on or after such date in accordance with applica-  
10 ble transitional provisions in section 1106 of the tax law.

11 PART SS

12 Section 1. This act enacts into law major components of legislation  
13 which are necessary to implement the state fiscal plan for the 2009-2010  
14 state fiscal year. Each component is wholly contained within a Subpart  
15 identified as Subparts A through P. The effective date for each partic-  
16 ular provision contained within such Subpart is set forth in the last  
17 section of such Subpart. Any provision in any section contained within a  
18 Subpart, including the effective date of the Subpart, which makes a  
19 reference to a section "of this act", when used in connection with that  
20 particular component, shall be deemed to mean and refer to the corre-  
21 sponding section of the Subpart in which it is found. Section three of  
22 this Part sets forth the general effective date of this Part.

23 SUBPART A

24 Section 1. The tax law is amended by adding a new section 1703 to read  
25 as follows:

26 § 1703. Information return relating to deposits and bank settlements.

27 1. Definitions. For purposes of this section, the following terms shall  
28 have the following meanings:

29 (a) "Account" means any account with a bank and includes, without  
30 limitation, a checking, time, interest, savings, or brokerage account.

31 (b) "Bank" means a financial institution as defined in paragraph (c)  
32 of subdivision one of section seventeen hundred one of this article.

33 (c) "Cash" means currency authorized or adopted as a medium of  
34 exchange by a domestic or foreign government.

35 (d) "Check" means a negotiable instrument drawn on a bank and payable  
36 on demand.

37 (e) "Reportable settlement" means a final payment deposited into an  
38 account holder's account, by any bank, association of banks, or other  
39 payors regularly clearing items, as payment for transactions in which  
40 the account holder accepted something other than a check or cash as  
41 payment for goods sold or services provided.

42 2. The department shall supply each bank with a list of all regis-  
43 tered sales tax vendors by December thirty-first of each year. Each bank  
44 shall make an information return for each calendar year setting forth:

45 (a) the name, address, and taxpayer identification number of each  
46 account holder which is a registered sales tax vendor based on the list  
47 supplied by the department for that calendar year; (b) the gross amount  
48 of that account holder's reportable settlements during the calendar  
49 year; and (c) the gross amounts, designated as such, of each of the  
50 following: cash, checks and other funds deposited into that account  
51 holder's account during the calendar year. That information return shall

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1 be filed electronically with the department on or before January thir-  
2 ty-first of the following year.

3 3. (a) Any bank failing to file an information return required by  
4 subdivision two of this section within the time prescribed or failing to  
5 include correct information in that return shall, in addition to any  
6 other penalty provided in this chapter or otherwise imposed by law, be  
7 subject to a penalty of fifty dollars for each failure, but the total  
8 amount imposed on any such bank for such failures during any calendar  
9 year shall not exceed two hundred fifty thousand dollars.

10 (b) The commissioner may waive all or any portion of any penalty

11 imposed by this subdivision with respect to any violation if: (i) the  
12 commissioner determines that failure to provide information or to  
13 include true and correct information in a return required to be filed,  
14 or to timely file a return, was due to reasonable cause and not due to  
15 willful neglect; or (ii) rescinding the penalty would promote compliance  
16 with the requirements of this chapter and effective tax administration.

17 § 2. This act shall take effect immediately; provided however that  
18 information returns required to be filed by January 31, 2010 shall  
19 include information regarding reportable settlements and deposits that  
20 were made on and after January 1, 2009.

21 SUBPART B

22 Section 1. Section 1142 of the tax law is amended by adding a new  
23 subdivision 6-a to read as follows:

24 6-a. (a) To use generally accepted statistical sampling techniques to  
25 determine the amount of tax due under this article. Any such determi-  
26 nation will not be deemed to be an estimate based on an external index  
27 and will not be precluded by any provision of section eleven hundred  
28 thirty-eight of this part or any other law. The commissioner is not  
29 authorized under this subdivision to use these sampling techniques to  
30 determine tax due in the case of a person whose "gross receipts or  
31 sales", as that term is used for federal income tax reporting purposes,  
32 are less than one million dollars in each of the three taxable years for  
33 federal income tax purposes immediately preceding the calendar year in  
34 which the audit is commenced, or, if that information is not available  
35 for those years, in the three most recent of those years (or a lesser  
36 number of years if only the lesser number of years is available) for  
37 which that information is available, unless the person consents in writ-  
38 ing that the commissioner may use these techniques to determine tax.

39 (b) The techniques to determine tax authorized by this subdivision  
40 will be in addition to other methods authorized by law, and nothing in  
41 this subdivision may be construed to limit the use of those other meth-  
42 ods. Nor may anything in this subdivision or other provision of law be  
43 construed to limit the commissioner's authority and power to use gener-  
44 ally accepted statistical sampling techniques to examine records  
45 required to be kept by this article and returns and reports required to  
46 be filed or submitted by this article. No such examination by statis-  
47 tical sampling techniques or the results thereof will be deemed to be an  
48 estimate based on an external index or precluded by any provision of  
49 section eleven hundred thirty-eight of this part or other law.

50 § 2. This act shall take effect immediately; provided, however, that  
51 the provisions of this act shall, with respect to the determination of  
52 tax due under article 28 of the tax law or under or pursuant to the  
53 authority of other provisions of the tax law which incorporate or make  
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1 reference to such article 28, apply to any tax due that has not been  
2 assessed on the date this act becomes a law.

3 SUBPART C

4 Section 1. Section 1135 of the tax law is amended by adding a new  
5 subdivision (h) to read as follows:

6 (h) Notwithstanding the provisions of section three hundred five and  
7 three hundred nine of the state technology law or any other law, the  
8 commissioner may require any person who has elected to maintain in an  
9 electronic format any portion of the records required to be maintained  
10 by that person under this article, to make the electronic records avail-  
11 able and accessible to the commissioner, notwithstanding that the  
12 records are also maintained in a hard copy format.

13 § 2. Section 1145 of the tax law is amended by adding a new subdivi-  
14 sion (i) to read as follows:

15 (i) Any person required to make or maintain records under this article  
16 (but not including the records required under section eleven hundred  
17 forty-two-A of this part) who fails to make or maintain or make avail-  
18 able to the commissioner these records is subject to a penalty of one  
19 thousand dollars for the first quarter or part thereof for which the  
20 failure occurs and five thousand dollars for each additional quarterly  
21 period or part thereof for which the failure occurs. This penalty is in  
22 addition to any other penalty provided for in this article but may not  
23 be imposed and collected more than once for failures for the same quar-  
24 terly period or part thereof. If the commissioner determines that a  
25 failure to make or maintain or make available records in any quarter was  
26 entirely due to reasonable cause and not to willful neglect, the commis-  
27 sioner must remit the penalty imposed for that quarter. These penalties  
28 will be paid and disposed of in the same manner as other revenues from  
29 this article. These penalties will be determined, assessed, collected,  
30 paid and enforced in the same manner as the tax imposed by this article,  
31 and all the provisions of this article relating to tax will be deemed  
32 also to apply to the penalties imposed by this subdivision. For purposes  
33 of the penalty imposed by this subdivision, a person will be considered  
34 to have failed to make or maintain the required records when the records  
35 made or maintained by that person for a quarterly period make it virtu-  
36 ally impossible to verify sales receipts or the taxability of those  
37 receipts and to conduct a complete audit.

38 § 3. Section 1145 of the tax law is amended by adding a new subdivi-  
39 sion (j) to read as follows:

40 (j) Any person required to make or maintain records under this article  
41 who fails to present and make available these records in an auditable  
42 form is subject to a penalty of one thousand dollars for each quarterly  
43 period or part thereof for which records maintained by that person are  
44 not presented and made available by that person in auditable form, even  
45 if these records are adequate to verify credits, receipts, and the taxa-  
46 bility thereof and to perform a complete audit. This penalty is in addi-  
47 tion to any other penalty provided for in this article, but will not be  
48 imposed and collected more than once for these failures for the same  
49 quarterly period or part thereof. If the commissioner determines that  
50 any failure described in this subdivision for a quarterly period was  
51 entirely due to reasonable cause and not to willful neglect, the commis-  
52 sioner must remit the penalty imposed for that quarter. The penalties  
53 imposed by this subdivision will be paid and disposed of in the same  
54 manner as other revenues from this article. These penalties will be

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1 determined, assessed, collected, paid and enforced in the same manner as  
2 the tax imposed by this article, and all the provisions of this article  
3 relating to tax will be deemed also to apply to the penalties imposed by  
4 this subdivision. For purposes of the penalty imposed by this subdivi-  
5 sion, a person will be considered to have failed to present and make  
6 records available in auditable form when the records presented by that  
7 person for that quarter lack sufficient organization, such as by date,  
8 invoice number, sales receipts, or sequential numbering, or are other-  
9 wise inadequate (without reorganizing, reordering or otherwise rearrang-  
10 ing the records into an auditable form) to permit direct reconciliation  
11 of the receipts, invoices or other source documents with the entries for  
12 the quarterly period in the books and records and on the returns of that  
13 person.

14 § 4. Section 1145 of the tax law is amended by adding a new subdivi-  
15 sion (k) to read as follows:

16 (k) Any person who, having elected to maintain in an electronic format  
17 any portion or all of the records he or she is required to make and  
18 maintain by this article, fails to present and make these records avail-  
19 able and accessible to the commissioner in electronic format, is subject  
20 to a penalty of five thousand dollars for each quarterly period or part  
21 thereof for which these electronic records are not presented and made

22 available and accessible upon request, notwithstanding that the records  
23 may also be maintained and available in hard copy format. This penalty  
24 is in addition to any other penalty provided for in this article, but  
25 may not be imposed and collected more than once for a failure for the  
26 same quarterly period or part thereof. Provided, however, nothing in  
27 this subdivision will prevent the separate imposition, if applicable, of  
28 any penalty imposed by subdivision (i) or (j) of this section for the  
29 same quarterly period or part thereof. If the commissioner determines  
30 that the failure to present and make electronically maintained records  
31 available and accessible for a quarterly period was entirely due to  
32 reasonable cause and not to willful neglect, the commissioner must remit  
33 the penalty imposed for that quarter. These penalties will be paid and  
34 disposed of in the same manner as other revenues from this article.  
35 These penalties will be determined, assessed, collected, paid and  
36 enforced in the same manner as the tax imposed by this article, and all  
37 the provision of this article relating to tax will be deemed also to  
38 apply to the penalty imposed by this subdivision. For purposes of the  
39 penalty imposed by this subdivision, a failure to present and make  
40 available and accessible a record maintained in electronic format  
41 includes not only the denial of access to the requested records that  
42 were maintained electronically, but also the failure to make available  
43 to the commissioner the information, knowledge, or means necessary to  
44 access and otherwise use the electronically maintained records in the  
45 inspection and examination of these records.

46 § 5. This act shall take effect immediately and apply to failures  
47 occurring on and after such date, except that subdivision (i) of section  
48 1145 of the tax law, as added by section two of this act, shall only  
49 apply for records required to be made and maintained for sales tax quar-  
50 terly periods commencing on or after such date.

51 SUBPART D

52 Section 1. Subsection (g) of section 685 of the tax law, as amended by  
53 chapter 9 of the laws of 1976, is amended to read as follows:  
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1 (g) Willful failure to collect and pay over tax.-- Any person required  
2 to collect, truthfully account for, and pay over the tax imposed by this  
3 article who willfully fails to collect such tax or truthfully account  
4 for and pay over such tax or willfully attempts in any manner to evade  
5 or defeat the tax or the payment thereof, shall, in addition to other  
6 penalties provided by law, be liable to a penalty equal to the sum of  
7 (i) the total amount of the tax evaded, or not collected, or not  
8 accounted for and paid over, (ii) the interest that has accrued on the  
9 total amount of tax evaded on the date this penalty is first imposed  
10 until this penalty is paid with interest thereon, and (iii) the addition  
11 to tax provided by subsection (a) of this section. No addition to tax  
12 under subsections (b) or (e) of this section shall be imposed for any  
13 offense to which this subsection applies. The tax commission shall have  
14 the power, in its discretion, to waive, reduce or compromise any penalty  
15 under this subsection.

16 § 2. This act shall take effect immediately and shall apply to taxable  
17 years beginning on or after January 1, 2009.

18 SUBPART E

19 Section 1. Paragraph (d) of subdivision 1 of section 289-b of the tax  
20 law, as amended by chapter 61 of the laws of 1989, is amended to read as  
21 follows:

22 (d) If the failure to pay any tax within the time required by or  
23 pursuant to this article is due to fraud, in lieu of the penalties and  
24 interest provided for in paragraphs (a) and (b) of this subdivision,  
25 there shall be added to the tax (i) a penalty of [~~fifty per centum of~~]

26 three times the amount of tax due, plus (ii) interest on such unpaid tax  
27 at the underpayment rate set by the commissioner of taxation and finance  
28 pursuant to subdivision twenty-sixth of section one hundred seventy-one  
29 of this chapter for the period beginning on the last day prescribed by  
30 this article for the payment of such tax (determined without regard to  
31 any extension of time for paying) and ending on the day on which such  
32 tax is paid[~~, plus (iii) for the period beginning on the last day~~  
33 ~~prescribed by this article for the payment of such tax (determined with-~~  
34 ~~out regard to any extension of time for paying) and ending on the day~~  
35 ~~the amount of tax due is finally determined or, if earlier, on the day~~  
36 ~~on which such tax is paid, an amount equal to fifty per centum of the~~  
37 ~~interest payable under subparagraph (ii) of this paragraph on that~~  
38 ~~portion of the unpaid tax which is attributable to fraud].~~

39 § 2. Subdivision 1 of section 289-b of the tax law is amended by  
40 adding a new paragraph (e-1) to read as follows:

41 (e-1) In addition to any other penalties that may be imposed by law,  
42 any of the following penalties may be imposed.

43 (i) Any person who fails to file an informational return under this  
44 article on or before the prescribed date, must pay a penalty of fifteen  
45 hundred dollars for the first violation and a penalty of three thousand  
46 dollars for each subsequent violation, unless it can be shown that such  
47 failure is due to reasonable cause and not willful neglect.

48 (ii) Any person who fails to file an informational return within sixty  
49 days of the date prescribed for filing must pay a penalty of two thou-  
50 sand dollars for the first violation and a penalty of four thousand  
51 dollars for each subsequent violation, unless it can be shown that such  
52 failure is due to reasonable cause and not willful neglect.

53 (iii) Any person who fails to file a complete informational return  
54 must pay a penalty of fifteen hundred dollars for the first violation

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1 and a penalty of three thousand dollars for each subsequent violation,  
2 unless it can be shown that such failure is due to reasonable cause and  
3 not willful neglect.

4 (iv) If any person makes a statement on an informational return and,  
5 as of the time of the statement, there was no reasonable basis for that  
6 statement, that person must pay a penalty of two thousand dollars for  
7 the first violation and a penalty of four thousand dollars for each  
8 subsequent violation.

9 § 3. Paragraph (d) of subdivision 1 of section 433 of the tax law, as  
10 amended by chapter 61 of the laws of 1989, is amended to read as  
11 follows:

12 (d) If the failure to pay any tax within the time required by or  
13 pursuant to this article is due to fraud, in lieu of the penalties and  
14 interest provided for in paragraphs (a) and (b) of this subdivision,  
15 there shall be added to the tax (i) a penalty of [~~fifty per centum of~~  
16 three times the amount of tax due, plus (ii) interest on such unpaid tax  
17 at the underpayment rate set by the commissioner of taxation and finance  
18 pursuant to subdivision twenty-sixth of section one hundred seventy-one  
19 of this chapter for the period beginning on the last day prescribed by  
20 this article for the payment of such tax (determined without regard to  
21 any extension of time for paying) and ending on the day on which such  
22 tax is paid[~~, plus (iii) for the period beginning on the last day~~  
23 ~~prescribed by this article for the payment of such tax (determined with-~~  
24 ~~out regard to any extension of time for paying) and ending on the day~~  
25 ~~the amount of tax due is finally determined or, if earlier, on the day~~  
26 ~~on which such tax is paid, an amount equal to fifty per centum of the~~  
27 ~~interest payable under subparagraph (ii) of this paragraph on that~~  
28 ~~portion of the unpaid tax which is attributable to fraud].~~

29 § 4. Subparagraph (iv) of paragraph (a) of subdivision 1 of section  
30 481 of the tax law, as amended by chapter 61 of the laws of 1989, is  
31 amended to read as follows:

32 (iv) If the failure to pay any tax within the time required by or

33 pursuant to this article is due to fraud, in lieu of the penalties and  
34 interest provided for in subparagraphs (i) and (ii) of this paragraph,  
35 there shall be added to the tax (A) a penalty of [~~fifty per centum of~~  
36 three times the amount of tax due, plus (B) interest on such unpaid tax  
37 at the underpayment rate set by the commissioner of taxation and finance  
38 pursuant to subdivision twenty-sixth of section one hundred seventy-one  
39 of this chapter for the period beginning on the last day prescribed by  
40 this article for the payment of such tax (determined without regard to  
41 any extension of time for paying) and ending on the day on which such  
42 tax is paid[~~, plus (C) for the period beginning on the last day~~  
43 ~~prescribed by this article for the payment of such tax (determined with-~~  
44 ~~out regard to any extension of time for paying) and ending on the day~~  
45 ~~the amount of tax due is finally determined or, if earlier, on the day~~  
46 ~~on which such tax is paid, an amount equal to fifty per centum of the~~  
47 ~~interest payable under clause (B) of this subparagraph on that portion~~  
48 ~~of the unpaid tax which is attributable to fraud].~~

49 § 5. Paragraph (d) of subdivision 1 of section 512 of the tax law, as  
50 amended by chapter 61 of the laws of 1989, is amended to read as  
51 follows:

52 (d) If the failure to pay any tax within the time required by or  
53 pursuant to this article is due to fraud, in lieu of the penalties and  
54 interest provided for in paragraphs (a) and (b) of this subdivision,  
55 there shall be added to the tax (i) a penalty of [~~fifty per centum of~~  
56 three times the amount of tax due, plus (ii) interest on such unpaid tax  
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1 at the underpayment rate set by the commissioner of taxation and finance  
2 pursuant to subdivision twenty-sixth of section one hundred seventy-one  
3 of this chapter for the period beginning on the last day prescribed by  
4 this article for the payment of such tax (determined without regard to  
5 any extension of time for paying) and ending on the day on which such  
6 tax is paid[~~, plus (iii) for the period beginning on the last day~~  
7 ~~prescribed by this article for the payment of such tax (determined with-~~  
8 ~~out regard to any extension of time for paying) and ending on the day~~  
9 ~~the amount of tax due is finally determined or, if earlier, on the day~~  
10 ~~on which such tax is paid, an amount equal to fifty per centum of the~~  
11 ~~interest payable under subparagraph (ii) of this paragraph on that~~  
12 ~~portion of the unpaid tax which is attributable to fraud].~~

13 § 6. Subdivision (d) of section 527 of the tax law, as added by chap-  
14 ter 170 of the laws of 1994, is amended to read as follows:

15 (d) Fraud. If the failure to pay any tax within the time required by  
16 or pursuant to this article is due to fraud, in lieu of the penalties  
17 provided for in subdivision (b) of this section, there shall be added to  
18 the tax (1) a penalty of [~~fifty percent of~~ three times the amount of  
19 tax due[~~, plus (2) for the period beginning on the last day prescribed~~  
20 ~~by this article for the payment of such tax (determined without regard~~  
21 ~~to any extension of time for paying) and ending on the day the amount of~~  
22 ~~tax due is finally determined or, if earlier, on the day on which such~~  
23 ~~tax is paid, an interest penalty equal to fifty percent of the interest~~  
24 ~~payable under subdivision (a) of this section on that portion of the~~  
25 ~~unpaid tax which is attributable to fraud].~~

26 § 7. Paragraph 1 of subsection (e) of section 685 of the tax law, as  
27 amended by chapter 65 of the laws of 1985, is amended to read as  
28 follows:

29 (1) If any part of a deficiency is due to fraud, there shall be added  
30 to the tax an amount equal to [~~fifty percent of~~ three times the defi-  
31 ciency.

32 § 8. Paragraph 2 of subsection (e) of section 685 of the tax law is  
33 REPEALED and paragraphs 3 and 4 are renumbered paragraphs 2 and 3.

34 § 9. Subsection (q) of section 685 of the tax law, as added by chapter  
35 65 of the laws of 1985, is amended to read as follows:

36 (q) Frivolous tax returns and specified frivolous submissions.-- (1)  
37 If any individual files what purports to be a return of any tax imposed

38 by this article but which does not contain information on which the  
39 substantial correctness of the self-assessment may be judged, or  
40 contains information that on its face indicates that the self-assessment  
41 is substantially incorrect; and such conduct is due to a position which  
42 is frivolous, including a position identified as frivolous under para-  
43 graph three of this subsection, or an intent [~~which appears on the~~  
44 ~~purported return~~] to delay or impede the administration of this arti-  
45 cle, then such individual shall pay a penalty not exceeding five  
46 [~~hundred~~] thousand dollars. This penalty shall be in addition to any  
47 other penalty provided by law.

48 (2) Penalty for specified frivolous submissions. (A) Any person who  
49 submits a specified frivolous submission shall pay a penalty of five  
50 thousand dollars. This penalty shall be in addition to any other penalty  
51 provided by law.

52 (B) The term "specified frivolous submission" means a specified  
53 submission if any portion of that submission (i) is based on a position  
54 that the commissioner has identified as frivolous under paragraph three  
55 of this subdivision, or (ii) reflects a desire to delay or impede the  
56 administration of this chapter.

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1 (C) The term "specified submission" means a request for conciliation  
2 conference, a petition to the division of tax appeals, an application  
3 for an installment payment agreement, or an offer in compromise.

4 (D) If the commissioner provides an individual with notice that a  
5 submission is a specified frivolous submission and that person withdraws  
6 the submission within thirty days after such notice, the penalty imposed  
7 under this paragraph will not apply with respect to that submission.

8 (3) Listing of frivolous positions. The commissioner will prescribe  
9 (and periodically revise) a list of positions that the commissioner has  
10 identified as frivolous for purposes of this subsection.

11 (4) Reduction of penalty. The commissioner may reduce the amount of  
12 any penalty imposed under this section if the commissioner determines  
13 that such a reduction would promote compliance with and administration  
14 of this chapter.

15 § 10. Section 685 of the tax law is amended by adding a new subsection  
16 (cc) to read as follows:

17 (cc) False or fraudulent document penalty. Any taxpayer that submits a  
18 false or fraudulent document to the department will be subject to a  
19 penalty of one hundred dollars per document submitted, or five hundred  
20 dollars per tax return submitted. This penalty will be in addition to  
21 any other penalty or addition provided by law.

22 § 11. Paragraph 1 of subsection (f) of section 1085 of the tax law, as  
23 amended by chapter 65 of the laws of 1985, is amended to read as  
24 follows:

25 (1) If any part of a deficiency is due to fraud, there shall be added  
26 to the tax an amount equal to [~~fifty percent of~~] three times the defi-  
27 ciency.

28 § 12. Paragraph 2 of subsection (f) of section 1085 of the tax law is  
29 REPEALED and paragraph 3 is renumbered paragraph 2.

30 § 13. Section 1085 of the tax law is amended by adding a new  
31 subsection (u) to read as follows:

32 (u) False or fraudulent document penalty. Any taxpayer that submits a  
33 false or fraudulent document to the department will be subject to a  
34 penalty of one hundred dollars per document submitted, or five hundred  
35 dollars per tax return submitted. This penalty will be in addition to  
36 any other penalty or addition provided by law.

37 § 14. Paragraph 2 of subdivision (a) of section 1145 of the tax law,  
38 as amended by section 12 of part R of chapter 85 of the laws of 2002, is  
39 amended to read as follows:

40 (2) If the failure to pay or pay over any tax to the commissioner  
41 within the time required by this article is due to fraud, in lieu of the  
42 penalties and interest provided for in subparagraphs (i) and (ii) of

43 paragraph one of this subdivision, there shall be added to the tax (i) a  
44 penalty of [~~fifty percent of~~] three times the amount of the tax due,  
45 plus (ii) interest on such unpaid tax at the rate of fourteen percent  
46 per annum or the underpayment rate of interest set by the commissioner  
47 pursuant to section eleven hundred forty-two of this part, whichever is  
48 greater, for the period beginning on the last day prescribed by this  
49 article for the payment of such tax (determined without regard to any  
50 extension of time for paying) and ending on the day on which such tax is  
51 paid[~~, plus (iii) for the period beginning on the last day prescribed by~~  
52 ~~this article for the payment of such tax (determined without regard to~~  
53 ~~any extension of time for paying) and ending on the day the amount of~~  
54 ~~tax due is finally determined or, if earlier, on the day on which such~~  
55 ~~tax is paid, an amount equal to fifty percent of the interest payable~~  
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1 ~~under subparagraph (ii) of this paragraph, on that portion of the unpaid~~  
2 ~~tax which is attributable to fraud].~~

3 § 15. Section 1145 of the tax law is amended by adding two new subdi-  
4 visions (i) and (j) to read as follows:

5 (i) Aiding or assisting in the giving of fraudulent returns, reports,  
6 statements or other documents. Any person who, with the intent that tax  
7 be evaded, for a fee or other compensation or as an incident to the  
8 performance of other services for which that person receives compen-  
9 sation, aids or assists in, or procures, counsels, or advises the prepa-  
10 ration or presentation under this article, or in connection with any  
11 matter arising under this article, of any return, report, declaration,  
12 statement or other document that is fraudulent or false as to any mate-  
13 rial matter, or supplies any false or fraudulent information, whether or  
14 not such falsity or fraud is with the knowledge or consent of the person  
15 authorized or required to present that return, report, declaration,  
16 statement or other document, will pay a penalty not exceeding five thou-  
17 sand dollars. The definitions in subsection (1) of section ten hundred  
18 eighty-five of this chapter apply for the purposes of this penalty.

19 (j) False or fraudulent document penalty. Any taxpayer that submits a  
20 false or fraudulent document to the department will be subject to a  
21 penalty of one hundred dollars per document submitted, or five hundred  
22 dollars per tax return submitted. This penalty will be in addition to  
23 any other penalty provided by law.

24 § 16. Subdivision (iii) of section 12 of part N of chapter 61 of the  
25 laws of 2005 amending the tax law relating to certain transactions and  
26 related information, as amended by section 1 of part DD-1 of chapter 57  
27 of the laws of 2008, is amended to read as follows:

28 (iii) provided, further, that the provisions of this act, except  
29 section five of this act, shall expire and be deemed repealed July 1,  
30 2011. The commissioner of taxation and finance shall cause to be  
31 prepared a written report on the tax shelter law. Notwithstanding any  
32 other provision of law to the contrary, such report shall include, but  
33 not be limited to, statistical information regarding the listed and  
34 reportable transactions and avoidance transactions under this act. A  
35 copy of such report shall be delivered to the governor, the temporary  
36 president of the senate, and the speaker of the assembly no later than  
37 April 1, 2007; provided, that, such expiration and repeal shall not  
38 affect any requirement imposed pursuant to this act.

39 § 17. This act shall take effect immediately and apply to returns and  
40 other documents filed or required to be filed and actions taken and  
41 omissions occurring on or after the date this act becomes a law;  
42 provided however, that sections seven through thirteen of this act shall  
43 apply to taxable years beginning on or after January 1, 2009.

44 SUBPART F

45 Section 1. Paragraphs (b) and (e) of subdivision 3-a of section 170 of  
46 the tax law, as added by chapter 282 of the laws of 1986, are amended to

47 read as follows:

48 (b) A request for a conciliation conference shall be applied for in  
49 the manner as set forth by regulation of the commissioner and, notwith-  
50 standing any provision of law to the contrary, shall suspend the running  
51 of the period of limitations for the filing of a petition protesting  
52 such notice and requesting a hearing, except that the recipient of a  
53 written notice described in paragraph (h) of this subdivision will have  
54 thirty days from the time such request of discontinuance is made to  
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1 petition the division of tax appeals for a hearing. [~~To discontinue the~~  
2 ~~conciliation proceeding, the recipient of the notice shall make a~~  
3 ~~request in writing and such person shall have ninety days from the time~~  
4 ~~such request of discontinuance is made to petition the division of tax~~  
5 ~~appeals for a hearing.~~] The commissioner shall notify the division of  
6 tax appeals when any person requests a conference or requests to discon-  
7 tinue such conference.

8 (e) A conciliation order shall be rendered within thirty days after  
9 the proceeding is concluded and such order shall, in the absence of a  
10 showing of fraud, malfeasance or misrepresentation of a material fact,  
11 be binding upon the department and the person who requested the confer-  
12 ence, except such order shall not be binding on such person if such  
13 person petitions for the hearing provided for under this chapter within  
14 ninety days after the conciliation order is issued, or, for a concil-  
15 iation order affirming a written notice described in paragraph (h) of  
16 this subdivision, within thirty days after the conciliation order is  
17 issued, notwithstanding any other provision of law to the contrary.

18 § 2. Subdivision 3-a of section 170 the tax law is amended by adding a  
19 new paragraph (h) to read as follows:

20 (h) Notwithstanding any provision of law to the contrary, any person  
21 who seeks review by the bureau of conciliation and mediation services of  
22 a written notice that advises that person of (i) the proposed cancella-  
23 tion, revocation, or suspension of a license, permit, registration, or  
24 other credential issued under the authority of this chapter, (ii) the  
25 denial of an application for a license, permit, registration, or other  
26 credential issued under the authority of this chapter, (iii) the imposi-  
27 tion of a penalty under subdivision (r) of section six hundred eighty-  
28 five of this chapter, or (iv) the imposition of a penalty under subdivi-  
29 sion (1) of section one thousand eighty-five of this chapter, must  
30 request a conciliation conference within thirty days of receipt of that  
31 notice.

32 § 3. Section 2008 of the tax law, as amended by chapter 401 of the  
33 laws of 1987, is amended to read as follows:

34 § 2008. Commencement of proceedings. 1. All proceedings in the divi-  
35 sion of tax appeals shall be commenced by the filing of a petition with  
36 the division of tax appeals protesting any written notice of the divi-  
37 sion of taxation which has advised the petitioner of a tax deficiency, a  
38 determination of tax due, a denial of a refund or credit application, a  
39 cancellation, revocation or suspension of a license, permit or registra-  
40 tion, a denial of an application for a license, permit or registration  
41 or any other notice which gives a person the right to a hearing in the  
42 division of tax appeals under this chapter or other law.

43 2. Expedited hearings. (a) Notwithstanding any provision law to the  
44 contrary, any person who receives a written notice that advises that  
45 person of (i) the proposed cancellation, revocation, or suspension of a  
46 license, permit, registration, or other credential issued under the  
47 authority of this chapter, (ii) the denial of an application for a  
48 license, permit, registration, or other credential issued under the  
49 authority of this chapter, (iii) the imposition of a penalty under  
50 subdivision (r) of section six hundred eighty-five of this chapter, or  
51 (iv) the imposition of a penalty under subdivision (1) of section one  
52 thousand eighty-five of this chapter, must file a petition with the  
53 division of tax appeals within thirty days of receipt of that notice

54 (unless that person has requested a conciliation conference as provided  
55 in subdivision three-a of section one hundred seventy of this chapter),  
56 or the cancellation, revocation, suspension, denial, or penalty will be  
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1 permanently and irrevocably fixed. An expedited hearing must be sched-  
2 uled within ten business days of receipt of the petition.

3 (b) In the case of any expedited hearing provided for under this  
4 subdivision, the administrative law judge must render a decision within  
5 thirty days from receipt of the petition. When exception is taken to an  
6 administrative law judge's determination, the tax appeals tribunal must  
7 issue its decision within three months from receipt of the petition. Any  
8 request by the petitioner that delays the expedited hearing process will  
9 extend the time limitations imposed on the tribunal or the administra-  
10 tive law judge to issue a decision or determination. The tribunal or  
11 administrative law judge may not approve any postponement or other delay  
12 without a showing of exigent circumstances by the moving party and must  
13 render a default determination or decision against the dilatory party  
14 for any unwarranted delay.

15 (c) In any case where an expedited hearing is required under this  
16 subdivision, if the commissioner believes that the collection of any tax  
17 or the public safety will be jeopardized by delay, he or she may imme-  
18 diately cancel, revoke, or suspend a license, permit, registration, or  
19 other credential issued under the authority of this chapter before the  
20 commencement of those proceedings. Written notice of the cancellation,  
21 revocation, or suspension must be given to the licensee, permittee,  
22 registrant, or otherwise credentialed person by registered or certified  
23 mail or personal service as provided by the civil practice law and  
24 rules. The license, permit, registration, or other credential will be  
25 permanently and irrevocably cancelled, revoked, or suspended, unless the  
26 licensee, permittee, registrant, or otherwise credentialed person, with-  
27 in thirty days of receipt of the written notice, files a petition with  
28 the division of tax appeals to review the cancellation, revocation, or  
29 suspension. An expedited hearing must be scheduled within ten business  
30 days of receipt of the petition.

31 § 4. This act shall take effect immediately and shall apply to notices  
32 issued on and after such date.

33 SUBPART G

34 Section 1. The tax law is amended by adding a new section 1702 to read  
35 as follows:

36 § 1702. Claims for awards for information relating to noncompliance  
37 with the tax law. 1. The commissioner, pursuant to standards set forth  
38 in regulations, is authorized to award such sums as he or she deems  
39 appropriate, for information reported to the commissioner that leads to the  
40 determination of substantial underpayments of tax or leads to the  
41 prosecution and conviction of persons guilty of violating, attempting to  
42 violate, or conspiring to violate provisions of this chapter or the  
43 penal law that relate to the underpayment of taxes, the filing of false  
44 or fraudulent tax documents or any registration or licensing requirement  
45 of this chapter. The commissioner shall promulgate regulations to speci-  
46 fy the award values, including minimum and maximum award levels. The  
47 procedures for providing information and claiming awards may be set  
48 forth in forms and instructions.

49 2. All awards paid pursuant to this section shall be paid, subject to  
50 the availability of appropriation authority, from the general fund of  
51 the state upon certification by the commissioner.

52 3. The award determined by the commissioner to be payable under this  
53 section shall be either a prescribed percentage of the amount of tax  
54 (but not penalty or interest) collected by the department as a result of

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1 the information provided, or a lump sum award. The commissioner is  
2 authorized to prescribe by regulation the circumstances when a lump sum  
3 award would be payable and the amounts. In no event may a lump sum  
4 award exceed one thousand dollars.

5 4. To be eligible for an award other than in instances where a lump  
6 sum award is authorized, the amount of tax evaded or unpaid as a result  
7 of the actions being reported pursuant to this section must be at least  
8 five thousand dollars if the tax at issue is the personal income tax and  
9 thirty thousand dollars for all other taxes. A person is ineligible for  
10 an award if that person has been convicted of a crime relating to the  
11 actions being reported under this section, or participated in that crime  
12 even if not charged, or if that person planned and initiated the actions  
13 that are being reported pursuant to this section.

14 5. The identity of a claimant for an award made pursuant to the  
15 provisions of this section cannot be disclosed. A claim for an award may  
16 be submitted by the executor, administrator, or other legal represen-  
17 tative on behalf of a deceased informant. An employee or officer of the  
18 department, or immediate family member of an employee or officer of the  
19 department, is not eligible for any award available pursuant to the  
20 provisions of this section. If, at the time a person came into  
21 possession of information otherwise eligible for an award, that person  
22 was an employee or officer of the department, or an immediate family  
23 member of an employee or officer of the department, that information is  
24 ineligible for an award.

25 § 2. This act shall take effect immediately.

26 SUBPART H

27 Section 1. Subparagraph (A) of paragraph (4) of subdivision (a) of  
28 section 674 of the tax law, as amended by chapter 477 of the laws of  
29 1998, is amended to read as follows:

30 (4)(A) All employers described in paragraph one of subsection (a) of  
31 section six hundred seventy-one of this part, including those whose  
32 wages paid are not sufficient to require the withholding of tax from the  
33 wages of any of their employees, all employers required to provide the  
34 wage reporting information for the employees described in subdivision  
35 one of section one hundred seventy-one-a of this chapter, and all  
36 employers liable for unemployment insurance contributions or for  
37 payments in lieu of such contributions pursuant to article eighteen of  
38 the labor law, shall file a quarterly combined withholding, wage report-  
39 ing and unemployment insurance return detailing the preceding calendar  
40 quarter's withholding tax transactions, such quarter's wage reporting  
41 information, such quarter's unemployment insurance contributions, and  
42 such other related information as the commissioner of taxation and  
43 finance or the commissioner of labor, as applicable, may prescribe. In  
44 addition, the return covering the last calendar quarter of each year  
45 shall also include withholding reconciliation information for such  
46 calendar year. Such returns shall be filed no later than the last day of  
47 the month following the last day of each calendar quarter[ ~~, provided,~~  
48  ~~however, that an employer may provide the wage reporting information~~  
49  ~~covering the last calendar quarter of each year, and the withholding~~  
50  ~~reconciliation information for such year no later than February twenty-~~  
51  ~~eighth of the succeeding year].~~

52 § 2. This act shall take effect immediately.

53 SUBPART I

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1 Section 1. The tax law is amended by adding a new section 179-a to  
2 read as follows:

3 § 179-a. Tax levies upon a branch or separate office of a bank.  
4 Notwithstanding section 4-106 of the uniform commercial code, any other  
5 provisions of article three or four of the uniform commercial code, or

6 any other law or ruling to the contrary, a branch or separate office of  
7 a bank is not a separate bank for the purpose of the receipt of notice  
8 of and compliance with a tax levy served on any branch or office of the  
9 same bank located within the state.

10 § 2. This act shall take effect immediately.

11 SUBPART J

12 Section 1. Subdivision 4 of section 20.40 of the criminal procedure  
13 law is amended by adding a new paragraph (m) to read as follows:

14 (m) An offense under the tax law or the penal law of filing a false or  
15 fraudulent return, report, document, declaration, statement, or filing,  
16 or of tax evasion, fraud, or larceny resulting from the filing of a  
17 false or fraudulent return, report, document, declaration, or filing in  
18 connection with the payment of taxes to the state or a political subdi-  
19 vision of the state, may be prosecuted in any county in which an under-  
20 lying transaction reflected, reported or required to be reflected or  
21 reported, in whole or part, on such return, report, document, declara-  
22 tion, statement, or filing occurred.

23 § 2. Subdivision 1 of section 470.05 of the penal law, as added by  
24 chapter 489 of the laws of 2000, is amended to read as follows:

25 1. Knowing that the property involved in one or more financial trans-  
26 actions represents the proceeds of criminal conduct:

27 (a) he or she conducts one or more such financial transactions which  
28 in fact involve the proceeds of specified criminal conduct:

29 (i) With intent to:

30 (A) promote the carrying on of criminal conduct; or

31 (B) engage in conduct constituting a felony as set forth in section  
32 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
33 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
34 ~~eight~~] or eighteen hundred six of the tax law; or

35 (ii) Knowing that the transaction or transactions in whole or in part  
36 are designed to:

37 (A) conceal or disguise the nature, the location, the source, the  
38 ownership or the control of the proceeds of criminal conduct; or

39 (B) avoid any transaction reporting requirement imposed by law; and

40 (b) The total value of the property involved in such financial trans-  
41 action or transactions exceeds five thousand dollars; or

42 § 3. Subdivision 1 of section 470.10 of the penal law, as added by  
43 chapter 489 of the laws of 2000, is amended to read as follows:

44 1. Knowing that the property involved in one or more financial trans-  
45 actions represents:

46 (a) the proceeds of the criminal sale of a controlled substance, he or  
47 she conducts one or more such financial transactions which in fact  
48 involve the proceeds of the criminal sale of a controlled substance:

49 (i) With intent to:

50 (A) promote the carrying on of specified criminal conduct; or

51 (B) engage in conduct constituting a felony as set forth in section  
52 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
53 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
54 ~~eight~~] or eighteen hundred six of the tax law; or

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1 (ii) Knowing that the transaction or transactions in whole or in part  
2 are designed to:

3 (A) conceal or disguise the nature, the location, the source, the  
4 ownership or the control of the proceeds of specified criminal conduct;  
5 or

6 (B) avoid any transaction reporting requirement imposed by law; and

7 (iii) The total value of the property involved in such financial tran-  
8 saction or transactions exceeds ten thousand dollars; or

9 (b) the proceeds of criminal conduct, he or she conducts one or more  
10 such financial transactions which in fact involve the proceeds of speci-

11 fied criminal conduct:

12 (i) With intent to:

13 (A) promote the carrying on of criminal conduct; or

14 (B) engage in conduct constituting a felony as set forth in section  
15 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
16 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
17 ~~eight~~] or eighteen hundred six of the tax law; or

18 (ii) knowing that the transaction or transactions in whole or in part  
19 are designed to:

20 (A) conceal or disguise the nature, the location, the source, the  
21 ownership or the control of the proceeds of criminal conduct; or

22 (B) avoid any transaction reporting requirement imposed by law; and

23 (iii) The total value of the property involved in such financial tran-  
24 saction or transactions exceeds fifty thousand dollars; or

25 § 4. Subdivision 1 of section 470.15 of the penal law, as added by  
26 chapter 489 of the laws of 2000, is amended to read as follows:

27 1. Knowing that the property involved in one or more financial trans-  
28 actions represents:

29 (a) the proceeds of the criminal sale of a controlled substance, he or  
30 she conducts one or more such financial transactions which in fact  
31 involve the proceeds of the criminal sale of a controlled substance:

32 (i) With intent to:

33 (A) promote the carrying on of specified criminal conduct; or

34 (B) engage in conduct constituting a felony as set forth in section  
35 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
36 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
37 ~~eight~~] or eighteen hundred six of the tax law; or

38 (ii) Knowing that the transaction or transactions in whole or in part  
39 are designed to:

40 (A) conceal or disguise the nature, the location, the source, the  
41 ownership or the control of the proceeds of specified criminal conduct;  
42 or

43 (B) avoid any transaction reporting requirement imposed by law; and

44 (iii) The total value of the property involved in such financial tran-  
45 saction or transactions exceeds fifty thousand dollars; or

46 (b) the proceeds of specified criminal conduct, he or she conducts one  
47 or more such financial transactions which in fact involve the proceeds  
48 of specified criminal conduct:

49 (i) With intent to:

50 (A) promote the carrying on of specified criminal conduct; or

51 (B) engage in conduct constituting a felony as set forth in section  
52 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
53 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
54 ~~eight~~] or eighteen hundred six of the tax law; or

55 (ii) Knowing that the transaction or transactions in whole or in part  
56 are designed to:

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1 (A) conceal or disguise the nature, the location, the source, the  
2 ownership or the control of the proceeds of specified criminal conduct;  
3 or

4 (B) avoid any transaction reporting requirement imposed by law; and

5 (iii) The total value of the property involved in such financial tran-  
6 saction or transactions exceeds one hundred thousand dollars; or

7 § 5. Subdivision 1 of section 470.20 of the penal law, as added by  
8 chapter 489 of the laws of 2000, is amended to read as follows:

9 1. Knowing that the property involved in one or more financial trans-  
10 actions represents:

11 (a) the proceeds of the criminal sale of a controlled substance, he or  
12 she conducts one or more such financial transactions which in fact  
13 involve the proceeds of the criminal sale of a controlled substance:

14 (i) With intent to:

15 (A) promote the carrying on of specified criminal conduct; or

16 (B) engage in conduct constituting a felony as set forth in section  
17 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
18 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
19 ~~eight~~] or eighteen hundred six of the tax law; or

20 (ii) Knowing that the transaction or transactions in whole or in part  
21 are designed to:

22 (A) conceal or disguise the nature, the location, the source, the  
23 ownership or the control of the proceeds of specified criminal conduct;  
24 or

25 (B) avoid any transaction reporting requirement imposed by law; and

26 (iii) The total value of the property involved in such financial tran-  
27 saction or transactions exceeds five hundred thousand dollars; or

28 (b) the proceeds of a class A, B or C felony, or of a crime in any  
29 other jurisdiction that is or would be a class A, B or C felony under  
30 the laws of this state, he or she conducts one or more such financial  
31 transactions which in fact involve the proceeds of any such felony:

32 (i) With intent to:

33 (A) promote the carrying on of specified criminal conduct; or

34 (B) engage in conduct constituting a felony as set forth in section  
35 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
36 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
37 ~~eight~~] eighteen hundred six of the tax law; or

38 (ii) Knowing that the transaction or transactions in whole or in part  
39 are designed to:

40 (A) conceal or disguise the nature, the location, the source, the  
41 ownership or the control of the proceeds of specified criminal conduct;  
42 or

43 (B) avoid any transaction reporting requirement imposed by law; and

44 (iii) The total value of the property involved in such financial tran-  
45 saction or transactions exceeds one million dollars.

46 § 6. Subdivision 1 of section 470.21 of the penal law, as added by  
47 section 18 of part A of chapter 1 of the laws of 2004, is amended to  
48 read as follows:

49 1. Knowing that the property involved in one or more financial trans-  
50 actions represents either the proceeds of an act of terrorism as defined  
51 in subdivision one of section 490.05 of this part, or a monetary instru-  
52 ment given, received or intended to be used to support a violation of  
53 article four hundred ninety of this part:

54 (a) he or she conducts one or more such financial transactions which  
55 in fact involve either the proceeds of an act of terrorism as defined in  
56 subdivision one of section 490.05 of this part, or a monetary instrument

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1 given, received or intended to be used to support a violation of article  
2 four hundred ninety of this part:

3 (i) With intent to:

4 (A) promote the carrying on of criminal conduct; or

5 (B) engage in conduct constituting a felony as set forth in section  
6 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
7 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
8 ~~eight~~] or eighteen hundred six of the tax law; or

9 (ii) Knowing that the transaction or transactions in whole or in part  
10 are designed to:

11 (A) conceal or disguise the nature, the location, the source, the  
12 ownership or the control of either the proceeds of an act of terrorism  
13 as defined in subdivision one of section 490.05 of this part, or a mone-  
14 tary instrument given, received or intended to be used to support a  
15 violation of article four hundred ninety of this part; or

16 (B) avoid any transaction reporting requirement imposed by law; and

17 (b) the total value of the property involved in such financial trans-  
18 action or transactions exceeds one thousand dollars; or

19 § 7. Subdivision 1 of section 470.22 of the penal law, as added by  
20 section 18 of part A of chapter 1 of the laws of 2004, is amended to

21 read as follows:

22 1. Knowing that the property involved in one or more financial trans-  
23 actions represents either the proceeds of an act of terrorism as defined  
24 in subdivision one of section 490.05 of this part, or a monetary instru-  
25 ment given, received or intended to be used to support a violation of  
26 article four hundred ninety of this part:

27 (a) he or she conducts one or more such financial transactions which  
28 in fact involve either the proceeds of an act of terrorism as defined in  
29 subdivision one of section 490.05 of this part, or a monetary instrument  
30 given, received or intended to be used to support a violation of article  
31 four hundred ninety of this part:

32 (i) With intent to:

33 (A) promote the carrying on of specified criminal conduct; or

34 (B) engage in conduct constituting a felony as set forth in section  
35 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
36 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
37 ~~eight~~] or eighteen hundred six of the tax law; or

38 (ii) Knowing that the transaction or transactions in whole or in part  
39 are designed to:

40 (A) conceal or disguise the nature, the location, the source, the  
41 ownership or the control of either the proceeds of an act of terrorism  
42 as defined in subdivision one of section 490.05 of this part, or a mone-  
43 tary instrument given, received or intended to be used to support a  
44 violation of article four hundred ninety of this part; or

45 (B) avoid any transaction reporting requirement imposed by law; and

46 (b) the total value of the property involved in such financial trans-  
47 action or transactions exceeds five thousand dollars; or

48 § 8. Subdivision 1 of section 470.23 of the penal law, as added by  
49 section 18 of part A of chapter 1 of the laws of 2004, is amended to  
50 read as follows:

51 1. Knowing that the property involved in one or more financial trans-  
52 actions represents either the proceeds of an act of terrorism as defined  
53 in subdivision one of section 490.05 of this part, or a monetary instru-  
54 ment given, received or intended to be used to support a violation of  
55 article four hundred ninety of this part:

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1 (a) he or she conducts one or more such financial transactions which  
2 in fact involve either the proceeds of an act of terrorism as defined in  
3 subdivision one of section 490.05 of this part, or a monetary instrument  
4 given, received or intended to be used to support a violation of article  
5 four hundred ninety of this part:

6 (i) With intent to:

7 (A) promote the carrying on of specified criminal conduct; or

8 (B) engage in conduct constituting a felony as set forth in section  
9 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
10 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
11 ~~eight~~] or eighteen hundred six of the tax law; or

12 (ii) Knowing that the transaction or transactions in whole or in part  
13 are designed to:

14 (A) conceal or disguise the nature, the location, the source, the  
15 ownership or the control of either the proceeds of an act of terrorism  
16 as defined in subdivision one of section 490.05 of this part, or a mone-  
17 tary instrument given, received or intended to be used to support a  
18 violation of article four hundred ninety of this part; or

19 (B) avoid any transaction reporting requirement imposed by law; and

20 (b) the total value of the property involved in such financial trans-  
21 action or transactions exceeds twenty-five thousand dollars; or

22 § 9. Subdivision 1 of section 470.24 of the penal law, as added by  
23 section 18 of part A of chapter 1 of the laws of 2004, is amended to  
24 read as follows:

25 1. Knowing that the property involved in one or more financial trans-  
26 actions represents either the proceeds of an act of terrorism as defined

27 in subdivision one of section 490.05 of this part, or a monetary instru-  
28 ment given, received or intended to be used to support a violation of  
29 article four hundred ninety of this part:

30 (a) he or she conducts one or more financial transactions which in  
31 fact involve either the proceeds of an act of terrorism as defined in  
32 subdivision one of section 490.05 of this part, or a monetary instrument  
33 given, received or intended to be used to support a violation of article  
34 four hundred ninety of this part:

35 (i) With intent to:

36 (A) promote the carrying on of specified criminal conduct; or

37 (B) engage in conduct constituting a felony as set forth in section  
38 [~~eighteen hundred two,~~] eighteen hundred three, eighteen hundred four,  
39 eighteen hundred five, [~~eighteen hundred seven or eighteen hundred~~  
40 ~~eight~~] or eighteen hundred six of the tax law; or

41 (ii) Knowing that the transaction or transactions in whole or in part  
42 are designed to:

43 (A) conceal or disguise the nature, the location, the source, the  
44 ownership or the control of the proceeds of either the proceeds of an  
45 act of terrorism as defined in subdivision one of section 490.05 of this  
46 part, or a monetary instrument given, received or intended to be used to  
47 support a violation of article four hundred ninety of this part; or

48 (B) avoid any transaction reporting requirement imposed by law; and

49 (iii) The total value of the property involved in such financial tran-  
50 saction or transactions exceeds seventy-five thousand dollars.

51 § 10. Subdivision 5 of section 480-a of the tax law, as amended by  
52 chapter 760 of the laws of 1992 and as renumbered by chapter 629 of the  
53 laws of 1996, is amended to read as follows:

54 5. Except for subdivision [~~(k)~~] (i) of section eighteen hundred four-  
55 teen of this chapter, the criminal penalties set forth in article thir-  
56 ty-seven of this chapter shall not apply to a violation of this section.  
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1 § 11. Paragraph 7 of subdivision (m) of section 1111 of the tax law,  
2 as added by section 1 of part M1 of chapter 109 of the laws of 2006, is  
3 amended to read as follows:

4 (7) Notwithstanding any foregoing provision of this subdivision or  
5 other law to the contrary, this subdivision, subdivision (h) of section  
6 eleven hundred nine of this part and subdivision [~~(t)~~] (n) of section  
7 eighteen hundred seventeen of this chapter, section three hundred nine-  
8 ty-two-i of the general business law and other provisions of law which  
9 refer or relate to this subdivision shall apply only to (A) motor fuel  
10 or diesel motor fuel sold for use directly and exclusively in the engine  
11 of a motor vehicle and (B) motor fuel or diesel motor fuel, other than  
12 water-white kerosene sold exclusively for heating purposes in containers  
13 of no more than twenty gallons, sold by a retail gas station. For  
14 purposes of this subdivision and such other provisions of law, "retail  
15 gas station" shall mean a filling station where such fuel is stored  
16 primarily for sale by delivery directly into the ordinary fuel tank  
17 connected with the engine of a motor vehicle to be consumed in the oper-  
18 ation of such motor vehicle or where such fuel is stored primarily for  
19 sale by delivery directly into the ordinary fuel tank connected with the  
20 engine of a vessel to be consumed in the operation of such vessel. The  
21 commissioner is hereby authorized to require the use of certificates or  
22 other documents, and procedures related thereto, to effect the purposes  
23 of this subdivision; and any such certificate or other document so  
24 required by the commissioner for a purchaser to tender to a vendor to  
25 purchase such fuel subject to tax on the reduced base established by or  
26 pursuant to this subdivision is hereby deemed to be an exemption certif-  
27 icate as such term is used in subdivision (c) of section eleven hundred  
28 thirty-two of this article and as if the provisions of such subdivision  
29 (c) referred to such a certificate or document required pursuant to this  
30 subdivision.

31 § 12. Paragraph 5 of subdivision (f) of section 1137 of the tax law,

32 as added by chapter 170 of the laws of 1994, is amended to read as  
33 follows:

34 (5) (i) Where a person takes a credit pursuant to this subdivision in  
35 an amount greater than allowed or under circumstances where the credit  
36 is not authorized, or (ii) where a person takes a credit pursuant to  
37 this subdivision at the time of filing a return for a quarterly or long-  
38 er period and such person later becomes subject to a penalty imposed  
39 under subparagraph (vi) of paragraph one of subdivision (a) or under  
40 paragraph two of subdivision (a) of section eleven hundred forty-five of  
41 this ~~article~~ part or is later found guilty of a crime or offense under  
42 section eighteen hundred three, eighteen hundred four, eighteen hundred  
43 five, eighteen hundred six, or eighteen hundred seventeen of this chap-  
44 ter, relating to the period for which the return was filed, the amount  
45 of such credit taken in such greater amount, under such circumstances or  
46 for such period shall be disallowed and the person shall be required to  
47 pay, as tax, an amount equal to the credit so taken, at such time and in  
48 such manner as prescribed by the commissioner; provided, however, that  
49 such amount shall be paid and disposed of in the same manner as other  
50 revenues from this article, and may be determined, assessed, collected  
51 and enforced in the same manner as the tax imposed by this article.

52 § 13. Subdivision (c) of section 1800 of the tax law, as added by  
53 chapter 65 of the laws of 1985, is amended to read as follows:

54 (c) As used in this article, the term "felony" and the term "misdemea-  
55 nor" shall have the same meaning as they have in the penal law, and the  
56 disposition of such offenses and the sentences imposed therefor shall be  
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1 as provided in such law except; (1) notwithstanding the provisions of  
2 paragraph a of subdivision one of section 80.00 and paragraph (a) of  
3 subdivision one of section 80.10 of the penal law relating to the fine  
4 for a felony, the court may impose a fine not to exceed the greater of  
5 double the amount of the underpaid tax liability resulting from the  
6 commission of the crime or fifty thousand dollars, ~~[except that]~~ or, in  
7 the case of a corporation the fine may not exceed the greater of double  
8 the amount of the underpaid tax liability resulting from the commission  
9 of the crime or two hundred fifty thousand dollars and (2) notwithstand-  
10 ing the provisions of subdivision one of section 80.05 and paragraph (b)  
11 of subdivision one of section 80.10 of the penal law relating to the  
12 fine for a class A misdemeanor, the court may impose a fine not to  
13 exceed ten thousand dollars, except that in the case of a corporation  
14 the fine may not exceed twenty thousand dollars.

15 § 14. The part heading of part 2 of article 37 of the tax law, as  
16 added by chapter 65 of the laws of 1985, is amended to read as follows:

17 PART II-~~[INCOME, EARNINGS AND CORPORATE TAXES]~~ TAX FRAUD ACTS AND  
18 PENALTIES

19 § 15. Section 1801 of the tax law is REPEALED and a new section 1801  
20 is added to read as follows:

21 § 1801. Tax fraud acts. (a) As used in this article, "tax fraud act"  
22 means willfully engaging in an act or acts or willfully causing another  
23 to engage in an act or acts pursuant to which a person:

24 (1) fails to make, render, sign, certify, or file any return or report  
25 required under this chapter or any regulation promulgated under this  
26 chapter within the time required by or under the provisions of this  
27 chapter or such regulation;

28 (2) knowing that a return, report, statement or other document under  
29 this chapter contains any false or fraudulent information, or omits any  
30 material information, files or submits that return, report, statement or  
31 document with the state or any political subdivision of the state, or  
32 with any public office or public officer of the state or any political  
33 subdivision of the state;

34 (3) knowingly supplies or submits false or fraudulent information in  
35 connection with any return, audit, investigation, or proceeding or fails  
36 to supply information within the time required by or under the

37 provisions of this chapter or any regulation promulgated under this  
38 chapter;

39 (4) engages in any scheme to defraud the state or a political subdivi-  
40 sion of the state or a government instrumentality within the state by  
41 false or fraudulent pretenses, representations or promises in connection  
42 with any tax imposed under this chapter or any matter under this chap-  
43 ter;

44 (5) fails to remit any tax collected in the name of the state or on  
45 behalf of the state or any political subdivision of the state when such  
46 collection is required under this chapter;

47 (6) fails to collect any tax required to be collected under articles  
48 twelve-A, eighteen, twenty, twenty-two or twenty-eight of this chapter,  
49 or pursuant to the authority of article twenty-nine of this chapter;

50 (7) with intent to evade any tax fails to pay that tax; or

51 (8) issues an exemption certificate, interdistributor sales certif-  
52 icate, resale certificate, or any other document capable of evidencing a  
53 claim that taxes do not apply to a transaction, which he or she does not  
54 believe to be true and correct as to any material matter, which omits  
55 any material information, or which is false, fraudulent, or counterfeit.

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1 (b) For purposes of this subdivision, "this chapter" includes any  
2 "related statute" or any "related income or earnings tax statute", as  
3 defined in section eighteen hundred of this article.

4 § 16. Section 1802 of the tax law is REPEALED and a new section 1802  
5 is added to read as follows:

6 § 1802. Criminal tax fraud in the fifth degree. A person commits crim-  
7 inal tax fraud in the fifth degree when he or she commits a tax fraud  
8 act. Criminal tax fraud in the fifth degree is a class A misdemeanor.

9 § 17. Section 1803 of the tax law is REPEALED and a new section 1803  
10 is added to read as follows:

11 § 1803. Criminal tax fraud in the fourth degree. A person commits  
12 criminal tax fraud in the fourth degree when he or she commits a tax  
13 fraud act or acts and, with the intent to evade any tax due under this  
14 chapter, or to defraud the state or any subdivision thereof, the person  
15 pays the state and/or a political subdivision of the state (whether by  
16 means of underpayment or receipt of refund or both) in excess of one  
17 thousand dollars less than the tax liability that is due. Criminal tax  
18 fraud in the fourth degree is a class E felony.

19 § 18. Section 1804 of the tax law is REPEALED and a new section 1804  
20 is added to read as follows:

21 § 1804. Criminal tax fraud in the third degree. A person commits crim-  
22 inal tax fraud in the third degree when he or she commits a tax fraud  
23 act or acts and, with the intent to evade any tax due under this chap-  
24 ter, or to defraud the state or any political subdivision of the state,  
25 the person pays the state and/or a political subdivision of the state  
26 (whether by means of underpayment or receipt of refund or both) in  
27 excess of three thousand dollars less than the tax liability that is  
28 due. Criminal tax fraud in the third degree is a class D felony.

29 § 19. Section 1805 of the tax law is REPEALED and a new section 1805  
30 is added to read as follows:

31 § 1805. Criminal tax fraud in the second degree. A person commits  
32 criminal tax fraud in the second degree when he or she commits a tax  
33 fraud act or acts and, with the intent to evade any tax due under this  
34 chapter, or to defraud the state or any subdivision of the state, the  
35 person pays the state and/or a political subdivision of the state  
36 (whether by means of underpayment or receipt of refund or both) in  
37 excess of fifty thousand dollars less than the tax liability that is  
38 due. Criminal tax fraud in the second degree is a class C felony.

39 § 20. Section 1806 of the tax law is REPEALED and a new section 1806  
40 is added to read as follows:

41 § 1806. Criminal tax fraud in the first degree. A person commits crim-  
42 inal tax fraud in the first degree when he or she commits a tax fraud

43 act or acts and, with the intent to evade any tax due under this chap-  
44 ter, or to defraud the state or any subdivision of the state, the person  
45 pays the state and/or a political subdivision of the state (whether by  
46 means of underpayment or receipt of refund or both) in excess of one  
47 million dollars less than the tax liability that is due. Criminal tax  
48 fraud in the first degree is a class B felony.

49 § 21. Section 1807 of the tax law is REPEALED and a new section 1807  
50 is added to read as follows:

51 § 1807. Aggregation. For purposes of this article, the payments due  
52 and not paid under article one of this chapter pursuant to a common  
53 scheme or plan, or due and not paid continuously over consecutive peri-  
54 ods may be charged as a continuing crime in a single count, and the  
55 amount of underpaid tax liability may be aggregated over all tax periods

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1 encompassed by the scheme to defraud or over the consecutive years of  
2 underpayment.

3 § 22. Section 1808 of the tax law is REPEALED.

4 § 23. Sections 1809 and 1810 of the tax law are REPEALED.

5 § 24. Section 1811 of the tax law, as amended by section 116, subdivi-  
6 sions (a) and (b) as separately amended by section 145 of chapter 190 of  
7 the laws of 1990, is amended to read as follows:

8 § 1811. Estate, gift and transfer taxes. [~~(a) Failure to file a~~  
9 ~~return or report, or pay tax.--Any person required under article twen-~~  
10 ~~ty-six, twenty-six-A or twenty-six-B of this chapter to pay tax, or make~~  
11 ~~a return or report, who, with intent to evade tax or any requirement of~~  
12 ~~such articles, fails to pay such tax or make such return or report, at~~  
13 ~~the time or times so required, shall be guilty of a misdemeanor.~~

14 ~~(b) Fraudulent returns, reports, statements or other documents.--(1)~~  
15 ~~Any person who, with intent to evade the tax or any requirement of arti-~~  
16 ~~cle twenty-six, twenty-six-A or twenty-six-B of this chapter or any~~  
17 ~~lawful requirement of the commissioner of taxation and finance there-~~  
18 ~~under, makes and subscribes any return, report, statement or other docu-~~  
19 ~~ment which is required to be filed with or furnished to the commissioner~~  
20 ~~or to any person, pursuant to or under the provisions of such articles,~~  
21 ~~which he does not believe to be true and correct as to every material~~  
22 ~~matter shall be guilty of a misdemeanor.~~

23 ~~(2) Any person who, with intent to evade the tax or any requirement of~~  
24 ~~article twenty-six, twenty-six-A or twenty-six-B of this chapter or any~~  
25 ~~lawful requirement of the commissioner of taxation and finance there-~~  
26 ~~under, who delivers or discloses to the commissioner or to any person,~~  
27 ~~pursuant to or under the provisions of such articles, any list, return,~~  
28 ~~report, account, statement or other document known by him to be fraudu-~~  
29 ~~lent or to be false as to any material matter shall be guilty of a~~  
30 ~~misdemeanor.~~

31 ~~(3) For purposes of this section, the omission by any person of any~~  
32 ~~material matter with intent to deceive shall constitute the delivery or~~  
33 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
34 ~~to any material matter.~~

35 ~~(e)] Wrongful entry into safe deposit box.--Any person who enters a~~  
36 ~~safe deposit box of a decedent, or a box standing in the joint names of~~  
37 ~~such a decedent and one or more persons, with knowledge of the death of~~  
38 ~~the lessee of such box, which entry results in an evasion of the tax~~  
39 ~~imposed by article twenty-six of this chapter shall be guilty of a~~  
40 ~~misdemeanor.~~

41 § 25. Section 1812 of the tax law, as added by chapter 65 of the laws  
42 of 1985, paragraphs 4 and 5 of subdivision (c) as added and subdivision  
43 (d) as amended by chapter 261 of the laws of 1988 and subdivisions (g)  
44 and (h) as added by chapter 276 of the laws of 1986, is amended to read  
45 as follows:

46 § 1812. Motor fuel taxes.--(a) Attempt to evade or defeat tax.--Any  
47 person who willfully attempts in any manner to evade or defeat any tax  
48 imposed by article twelve-A of this chapter or the payment thereof

49 shall, in addition to other penalties provided by law, be guilty of a  
50 class E felony.

51 ~~(b) [Willful failure to file a return or report, or pay tax. Any~~  
52 ~~person required under article twelve A of this chapter to pay tax, or~~  
53 ~~make a return or report, who willfully fails to pay such tax or make~~  
54 ~~such return or report, at the time or times so required, shall be guilty~~  
55 ~~of a misdemeanor.~~

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1 ~~(c) Fraudulent returns, reports, statements or other documents. (1)~~  
2 ~~Any person who willfully makes and subscribes any return, report, state-~~  
3 ~~ment or other document which is required to be filed with or furnished~~  
4 ~~to the tax commission or to any person, pursuant to the provisions of~~  
5 ~~article twelve A of this chapter, which he does not believe to be true~~  
6 ~~and correct as to every material matter shall be guilty of a class E~~  
7 ~~felony.~~

8 ~~(2) Any person who willfully delivers or discloses to the tax commis-~~  
9 ~~sion or to any person, pursuant to the provisions of article twelve A of~~  
10 ~~this chapter, any list, return, report, account, statement or other~~  
11 ~~document known by him to be fraudulent or to be false as to any material~~  
12 ~~matter shall be guilty of a misdemeanor.~~

13 ~~(3) For purposes of this section, the omission by any person of any~~  
14 ~~material matter with intent to deceive shall constitute the delivery or~~  
15 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
16 ~~to any material matter.~~

17 ~~(4) Any person who willfully issues an exempt transaction certificate~~  
18 ~~(or similar document which has been prescribed by the commissioner of~~  
19 ~~taxation and finance) or interdistributor sale certificate in order to~~  
20 ~~claim an exemption from the taxes imposed on Diesel motor fuel by arti-~~  
21 ~~cle twelve A of this chapter which he does not believe to be true and~~  
22 ~~correct as to any material matter shall, in addition to any other penal-~~  
23 ~~ty provided by law, be guilty of a misdemeanor.~~

24 ~~(5)~~ Any person who willfully accepts an exempt transaction certif-  
25 icate (or similar document which has been prescribed by the commissioner  
26 [~~of taxation and finance~~]) or interdistributor sale certificate with  
27 respect to claiming exemption from the taxes imposed on Diesel motor  
28 fuel by article twelve-A of this chapter which he does not believe to be  
29 true and correct as to any material matter shall, in addition to any  
30 other penalty provided by law, be guilty of a misdemeanor.

31 ~~[(d)]~~ (c) Any owner of a filling station who shall willfully and know-  
32 ingly have in his custody, possession or under his control any motor  
33 fuel or Diesel motor fuel on which (1) the taxes imposed by or pursuant  
34 to the authority of such article have not been assumed or paid by a  
35 distributor registered as such under such article or (2) the taxes  
36 imposed by or pursuant to the authority of such article have not been  
37 included in the cost to him of such fuel where such taxes were required  
38 to have been passed through to him and included in the cost to him of  
39 such fuel, shall in either case, be guilty of a class E felony. For  
40 purposes of this subdivision, such owner shall willfully and knowingly  
41 have in his custody, possession or under his control any motor fuel or  
42 Diesel motor fuel on which such taxes have not been assumed or paid by a  
43 distributor registered as such where such owner has knowledge of the  
44 requirement that such taxes be paid and where, to his knowledge, such  
45 taxes have not been assumed or paid by a registered distributor on such  
46 motor fuel or Diesel motor fuel. Such owner shall willfully and know-  
47 ingly have in his custody, possession or under his control any motor fuel  
48 or Diesel motor fuel on which such taxes are required to have been  
49 passed through to him and have not been included in his cost where such  
50 owner has knowledge of the requirement that such taxes be passed through  
51 and where to his knowledge such taxes have not been so included.

52 ~~[(e)]~~ (d) Any willful act or omission, other than those described in  
53 subdivision (a), (b), or (c) [~~or (d)~~] of this section, by any person  
54 which constitutes a violation of any provision of article twelve-A of

1 ~~[(f)]~~ (e) The provisions of this section shall apply for purposes of  
2 the tax imposed pursuant to the authority of section two hundred eight-  
3 y-four-b of this chapter.

4 ~~[(g) Any person who, being duly subpoenaed, pursuant to section one~~  
5 ~~hundred seventy four of this chapter or the provisions of the civil~~  
6 ~~practice law and rules, in connection with a matter arising under arti-~~  
7 ~~cle twelve-A of this chapter, to attend as a witness or to produce~~  
8 ~~books, accounts, records, memoranda, documents or other papers who (i)~~  
9 ~~fails or refuses to attend without lawful excuse, (ii) refuses to be~~  
10 ~~sworn, (iii) refuses to answer any material and proper question, or (iv)~~  
11 ~~refuses, after reasonable notice, to produce books, accounts, records,~~  
12 ~~memoranda, documents or other papers in his possession or under his~~  
13 ~~control which constitute material and proper evidence shall be guilty of~~  
14 ~~a misdemeanor.~~

15 (h)] (f) Any person who willfully makes a manifest required by section  
16 two hundred eighty-six-b of this chapter which he does not believe to be  
17 true and correct as to every material matter or who willfully produces  
18 any manifest for inspection as required under section two hundred eight-  
19 y-six-b of this chapter which is known to be fraudulent or to be false  
20 as to any material matter shall be guilty of a class E felony.

21 § 26. Section 1812-f of the tax law, as added by chapter 190 of the  
22 laws of 1990, is amended to read as follows:

23 § 1812-f. Article thirteen-A tax. (a) ~~[Attempt to evade or defeat tax.~~  
24 ~~Any person who willfully attempts in any manner to evade or defeat any~~  
25 ~~tax imposed by article thirteen-A of this chapter or the payment thereof~~  
26 ~~shall be guilty of a misdemeanor; provided, however, that if the tax~~  
27 ~~liability evaded or defeated as a result of such conduct is equal to or~~  
28 ~~greater than one thousand dollars, such person shall be guilty of class~~  
29 ~~E felony.~~

30 (b) ~~Willful failure to file a return or report, or pay tax. Any person~~  
31 ~~required under article thirteen-A of this chapter to pay tax, or make a~~  
32 ~~return or report, who willfully fails to pay such tax or make such~~  
33 ~~return or report, at the time or times so required, shall be guilty of a~~  
34 ~~misdemeanor.~~

35 (c) ~~Fraudulent returns, reports, statements or other documents. (1)~~  
36 ~~Any person who willfully makes and subscribes any return, report, state-~~  
37 ~~ment or other document which is required to be filed with or furnished~~  
38 ~~to the commissioner of taxation and finance or to any person, pursuant~~  
39 ~~to the provisions of article thirteen-A of this chapter, which he does~~  
40 ~~not believe to be true and correct as to every material matter shall be~~  
41 ~~guilty of a misdemeanor. Provided, however, where such person substan-~~  
42 ~~tially understates on such return, report, statement, or other document~~  
43 ~~his tax liability under such article, such person shall be guilty of a~~  
44 ~~class E felony. For purposes of this subdivision, the term "substantial-~~  
45 ~~ly understates" refers to the excess amount of the tax required to be~~  
46 ~~shown on the return or report for the taxable period over the amount of~~  
47 ~~the tax imposed which is shown on the return, report, statement, or~~  
48 ~~other document, provided that the excess is one thousand dollars or~~  
49 ~~more, and provided that the taxpayer, acting without reasonable ground~~  
50 ~~for believing that his conduct is lawful, intended to evade at least the~~  
51 ~~amount of such excess.~~

52 (2) ~~Any person who willfully delivers or discloses to the commissioner~~  
53 ~~of taxation and finance or to any person, pursuant to the provisions of~~  
54 ~~article thirteen-A of this chapter, any list, return, report, account,~~  
55 ~~statement or other document known by him to be fraudulent or to be false~~  
56 ~~as to any material matter shall be guilty of a misdemeanor.~~

1 (3) ~~For purposes of this section, the omission by any person of any~~  
2 ~~material matter with intent to deceive shall constitute the delivery or~~

3 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
4 ~~to any material matter.~~

5 ~~(4) Any person who willfully issues an exempt transaction certificate~~  
6 ~~(or similar document which has been prescribed by the commissioner of~~  
7 ~~taxation and finance) or interdistributor sale certificate in order to~~  
8 ~~claim an exemption from taxes imposed with respect to diesel motor fuel~~  
9 ~~or residual petroleum product by article thirteen-A of this chapter~~  
10 ~~which he does not believe to be true and correct as to any material~~  
11 ~~matter shall be guilty of a misdemeanor.~~

12 (5) Any person who willfully accepts an exempt transaction certif-  
13 icate (or similar document which has been prescribed by the commissioner  
14 of taxation and finance) or interdistributor sale certificate with  
15 respect to claiming exemption from the taxes imposed with respect to  
16 diesel motor fuel or residual petroleum product by article thirteen-A of  
17 this chapter which he does not believe to be true and correct as to any  
18 material matter shall be guilty of a misdemeanor.

19 [(d)] (b) Any willful act or omission, other than those described in  
20 section eighteen hundred one of this article or subdivision (a)[, (b)]  
21 or (c) of this section, by any person which constitutes a violation of  
22 any provision of article thirteen-A of this chapter shall constitute a  
23 misdemeanor.

24 [(e) Any person who duly is subpoenaed, pursuant to section one  
25 hundred seventy four of this chapter or the provisions of the civil  
26 practice law and rules, in connection with a matter arising under arti-  
27 cle thirteen-A of this chapter, to attend as a witness or to produce  
28 books, accounts, records, memoranda, documents or other papers and who  
29 (i) fails or refuses to attend without lawful excuse, (ii) refuses to be  
30 sworn, (iii) refuses to answer any material and proper question, or (iv)  
31 refuses, after reasonable notice, to produce books, accounts, records,  
32 memoranda, documents or other papers in his possession or under his  
33 control which constitute material and proper evidence shall be guilty of  
34 a misdemeanor.

35 (f) (c) Any person who willfully makes a movement tracking document  
36 required pursuant to subdivision (b) of section three hundred fifteen of  
37 this chapter, which he does not believe to be true and correct as to  
38 every material matter or who willfully produces any such document for  
39 inspection as required under subdivision (b) of section three hundred  
40 fifteen of this chapter which he knows to be fraudulent or to be false  
41 as to any material matter shall be guilty of a misdemeanor; provided,  
42 however, that if the tax liability under article thirteen-A of this  
43 chapter with respect to the product being transported, is equal to or  
44 greater than one thousand dollars, such person shall be guilty of a  
45 class E felony.

46 § 27. Section 1813 of the tax law, as added by chapter 65 of the laws  
47 of 1985, subdivisions (h), (i) and (j) as added by chapter 508 of the  
48 laws of 1993, is amended to read as follows:

49 § 1813. Alcoholic beverage tax.--(a) [~~Attempt to evade or defeat tax.--~~  
50 ~~Any person who willfully attempts in any manner to evade or defeat any~~  
51 ~~tax imposed by article eighteen of this chapter or the payment thereof~~  
52 ~~shall, in addition to other penalties provided by law, be guilty of a~~  
53 ~~misdemeanor.~~

54 (b) ~~Willful failure to file a return or report, or pay tax. Any~~  
55 ~~person required under article eighteen of this chapter to pay or make a~~  
56 ~~return or report, who willfully fails to pay such tax or make such~~

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1 ~~return or report at the time or times so required, shall be guilty of a~~  
2 ~~misdemeanor.~~

3 (c) ~~Fraudulent returns, reports, statements or other documents.--(1)~~  
4 ~~Any person who willfully makes and subscribes any return, report, state-~~  
5 ~~ment or other document which is required to be filed with or furnished~~  
6 ~~to the tax commission or to any person, pursuant to article eighteen of~~  
7 ~~this chapter, which he does not believe to be true and correct as to~~

8 ~~every material matter shall be guilty of a class E felony.~~

9 ~~(2) Any person who willfully delivers or discloses to the tax commis-~~  
10 ~~sion or to any person, pursuant to article eighteen of this chapter, any~~  
11 ~~list, return, report, account, statement or other document known by him~~  
12 ~~to be fraudulent or to be false as to any material matter shall be guil-~~  
13 ~~ty of a misdemeanor.~~

14 ~~(3) For purposes of this section, the omission by any person of any~~  
15 ~~material matter with intent to deceive shall constitute the delivery or~~  
16 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
17 ~~to any material matter.~~

18 ~~(d)]~~ Unlawful use of stamps.--Any person who shall counterfeit stamps  
19 prescribed by section four hundred thirty-eight of this chapter or who  
20 shall willfully remove or alter or knowingly permit to be removed or  
21 altered, the cancellation or defacing marks required to be placed upon  
22 any stamp under provisions of article eighteen of this chapter with  
23 intent to use such stamp, or who shall willfully open any container of  
24 alcoholic beverages without first destroying the stamp affixed thereto  
25 or who shall knowingly or willfully buy, prepare for use, use, have in  
26 his possession or suffer to be used any washed, restored or counterfeit  
27 stamp shall be guilty of a misdemeanor.

28 ~~[(e)]~~ (b) Unlawful use of alcoholic beverages.--Any person who shall  
29 willfully sell or use any alcoholic beverages upon which tax has not  
30 been paid by the affixation of stamps as prescribed pursuant to section  
31 four hundred thirty-eight of this chapter shall be guilty of a misdemea-  
32 nor.

33 ~~[(f)]~~ (c) Any willful act or omission, other than those described in  
34 section eighteen hundred one of this article or subdivision (a)[~~7~~] or  
35 (b)[~~7~~, ~~(c)~~, ~~(d)~~ or ~~(e)~~] of this section, by any person which constitutes  
36 a violation of any provision of article eighteen of this chapter shall  
37 constitute a misdemeanor.

38 ~~[(g)]~~ (d) The provisions of this section shall apply for purposes of  
39 any tax imposed pursuant to the authority of section four hundred  
40 forty-five of this chapter.

41 ~~[(h)]~~ (e) Person not registered as a distributor. (1) Any person  
42 required to be registered as a distributor pursuant to the provisions of  
43 article eighteen of this chapter who, while not so registered, knowingly  
44 imports or causes to be imported into the state, for sale or use there-  
45 in, any liquors or, who, except in accordance with clause (i) or (ii) of  
46 paragraph (b) of subdivision four of section four hundred twenty of this  
47 chapter, knowingly produces, distills, manufactures, compounds, mixes or  
48 ferments in this state any such liquors for sale, or who, as a purchaser  
49 of a warehouse receipt, knowingly causes liquors covered by such receipt  
50 to be removed from a warehouse in this state, shall be guilty of a class  
51 A misdemeanor. Provided, however, that any person who has twice been  
52 convicted under this section within the preceding five years, shall be  
53 guilty of a class E felony for any subsequent violation of this para-  
54 graph.

55 (2) Any person who, while not registered as a distributor pursuant to  
56 the provisions of article eighteen of this chapter, knowingly and inten-  
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1 tionally imports or causes to be imported into this state, for sale or  
2 use therein, more than three hundred sixty liters of liquors into this  
3 state in a one-year period or, except in accordance with clause (i) or  
4 (ii) of paragraph (b) of subdivision four of section four hundred twenty  
5 of this chapter, knowingly and intentionally produces, distills, manu-  
6 factures, compounds, mixes or ferments for sale more than three hundred  
7 sixty liters of such liquors within this state in a one-year period, or,  
8 as a purchaser of a warehouse receipt, knowingly and intentionally caus-  
9 es more than three hundred sixty liters of liquors in a one-year period  
10 to be removed from a warehouse in this state, shall be guilty of a class  
11 E felony.

12 (3) For purposes of this subdivision, it shall be presumed that the

13 importation or the causing to be imported into this state or the  
14 production, distillation, manufacture, compounding, mixing or fermenting  
15 in this state of more than ninety liters of such liquors by any person  
16 in a one-year period is for purposes of sale. Such presumption may be  
17 rebutted by the introduction of substantial evidence to the contrary.

18 [~~i~~] (f) Person not registered as a distributor for city purposes.  
19 (1) Any person required to be registered as a distributor for city  
20 purposes pursuant to the provisions of section four hundred forty-five  
21 of article eighteen of this chapter who, while not so registered, know-  
22 ingly imports or causes to be imported into such city, for sale or use  
23 therein, any liquors or, who, except in accordance with clause (i) or  
24 (ii) of paragraph (b) of subdivision four of section four hundred twenty  
25 of this chapter as incorporated into such section four hundred forty-  
26 five, knowingly produces, distills, manufactures, compounds, mixes or  
27 ferments in such city any such liquors for sale, or who, as a purchaser  
28 of a warehouse receipt, causes liquors covered by such receipt to be  
29 removed from a warehouse in this state, shall be guilty of a class A  
30 misdemeanor. Provided, however, that any person who has twice been  
31 convicted under this section within the preceding five years shall be  
32 guilty of a class E felony for any subsequent violation of this para-  
33 graph.

34 (2) Any person who, while not registered as a distributor for city  
35 purposes pursuant to the provisions of section four hundred forty-five  
36 of article eighteen of this chapter, knowingly and intentionally imports  
37 or causes to be imported into such city, for sale or use therein, more  
38 than three hundred sixty liters of liquors into such city in a one-year  
39 period or, except in accordance with clause (i) or (ii) of paragraph (b)  
40 of subdivision four of section four hundred twenty of this chapter as  
41 incorporated into such section four hundred forty-five, knowingly and  
42 intentionally produces, distills, manufactures, compounds, mixes or  
43 ferments for sale more than three hundred sixty liters of such liquors  
44 within such city in a one-year period, or, as a purchaser of a warehouse  
45 receipt, knowingly and intentionally causes more than three hundred  
46 sixty liters of liquors in a one-year period to be removed from a ware-  
47 house in this ~~store~~ state, shall be guilty of a class E felony.

48 (3) For purposes of this subdivision, it shall be presumed that the  
49 importation or the causing to be imported into such city or the  
50 production, distillation, manufacture, compounding, mixing or fermenting  
51 in such city of more than ninety liters of liquors by any person in a  
52 one-year period is for purposes of sale. Such presumption may be  
53 rebutted by the introduction of substantial evidence to the contrary.

54 [~~j~~] (g) Any person, other than the distributor registered under  
55 article eighteen of this chapter which imported or caused the liquors to  
56 be imported into this state, who shall willfully and knowingly have in  
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1 his custody, possession or under his control liquors with respect to  
2 which the taxes imposed by or pursuant to the authority of article eigh-  
3 teen of this chapter have not been assumed or paid by a distributor  
4 registered as such under such article, shall be guilty of a class B  
5 misdemeanor; if such person shall willfully and knowingly have more than  
6 ninety liters of such liquors in his custody or possession or under his  
7 control, such person shall be guilty of a class A misdemeanor; or if  
8 such person shall knowingly and intentionally have more than three  
9 hundred sixty liters of such liquors in his custody or possession or  
10 under his control, such person shall be guilty of a class E felony. For  
11 purposes of this subdivision, such person shall willfully and knowingly  
12 have in his custody, possession or under his control any liquors with  
13 respect to which such taxes have not been assumed or paid by a distribu-  
14 tor registered as such where such person has knowledge of the require-  
15 ment of such taxes and where, to his knowledge, such taxes have not been  
16 assumed or paid by a registered distributor with respect to such  
17 liquors.

18 § 28. Section 1814 of the tax law, as added by chapter 65 of the laws  
19 of 1985, the section heading and subdivisions (c), (g) and (h) as  
20 amended and subdivision (j) as added by chapter 61 of the laws of 1989,  
21 paragraph 2 of subdivision (a) and paragraph 1 of subdivision (e) as  
22 amended by chapter 508 of the laws of 2004, subdivisions (d) and (e) as  
23 amended by chapter 262 of the laws of 2000 and subdivision (k) as added  
24 by chapter 190 of the laws of 1990, is amended to read as follows:

25 § 1814. Cigarette and tobacco products tax.--(a) [~~Attempt to evade or~~  
26 ~~defeat tax.--(1) Any person who willfully attempts in any manner to~~  
27 ~~evade or defeat any tax imposed by article twenty of this chapter or the~~  
28 ~~payment thereof shall, in addition to other penalties provided by law,~~  
29 ~~be guilty of a misdemeanor.~~

30 (2)] Any person who willfully attempts in any manner to evade or  
31 defeat the taxes imposed by article twenty of this chapter or payment  
32 thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand  
33 cigars or more, or (iii) four hundred forty pounds of tobacco or more or  
34 has previously been convicted two or more times of a violation of para-  
35 graph one of this subdivision shall be guilty of a class E felony.

36 (b) [~~Willful failure to file a return or report, or pay tax.--Any~~  
37 ~~person required under article twenty of this chapter to pay or make a~~  
38 ~~return or report, who willfully fails to pay such tax or make such~~  
39 ~~return or report, at the time or times so required, shall be guilty of a~~  
40 ~~misdemeanor.~~

41 (c) [~~Fraudulent returns, reports, statements or other documents.--(1)~~  
42 ~~Any person who willfully makes and subscribes any return, report, state-~~  
43 ~~ment or other document which is required to be filed with or furnished~~  
44 ~~to the commissioner of taxation and finance or to any person, pursuant~~  
45 ~~to article twenty of this chapter, which he does not believe to be true~~  
46 ~~and correct as to every material matter shall be guilty of a misdemea-~~  
47 ~~nor.~~

48 (2) [~~Any person who willfully delivers or discloses to the commissioner~~  
49 ~~of taxation and finance or to any person, pursuant to article twenty of~~  
50 ~~this chapter, any list, return, report, account, statement or other~~  
51 ~~document known by him to be fraudulent or to be false as to any material~~  
52 ~~matter shall be guilty of a misdemeanor.~~

53 (3) [~~For purposes of this section, the omission by any person of any~~  
54 ~~material matter with intent to deceive shall constitute the delivery or~~  
55 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
56 ~~to any material matter.~~

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1 (d)] Any person, other than an agent licensed by the commissioner, who  
2 possesses or transports for the purpose of sale any unstamped or unlaw-  
3 fully stamped packages of cigarettes subject to tax imposed by section  
4 four hundred seventy-one of this chapter, or who sells or offers for  
5 sale unstamped or unlawfully stamped packages of cigarettes in violation  
6 of the provisions of article twenty of this chapter shall be guilty of a  
7 misdemeanor. Any person who violates the provisions of this subdivision  
8 after having previously been convicted of a violation of this subdivi-  
9 sion within the preceding five years shall be guilty of a class E felo-  
10 ny.

11 [(e)] (c) (1) Any person, other than an agent licensed by the commis-  
12 sioner, who willfully possesses or transports for the purpose of sale  
13 ten thousand or more cigarettes subject to the tax imposed by section  
14 four hundred seventy-one of this chapter in any unstamped or unlawfully  
15 stamped packages or who willfully sells or offers for sale ten thousand  
16 or more cigarettes in any unstamped or unlawfully stamped packages in  
17 violation of article twenty of this chapter shall be guilty of a class E  
18 felony.

19 (2) Any person, other than an agent licensed by the commissioner, who  
20 willfully possesses or transports for the purpose of sale thirty thou-  
21 sand or more cigarettes subject to the tax imposed by section four  
22 hundred seventy-one of this chapter in any unstamped or unlawfully

23 stamped packages or who willfully sells or offers for sale thirty thou-  
24 sand or more cigarettes in any unstamped or unlawfully stamped packages  
25 in violation of article twenty of this chapter shall be guilty of a  
26 class D felony.

27 [~~(f)~~] (d) For the purposes of this section, the possession or trans-  
28 portation within this state by any person, other than an agent, at any  
29 one time of five thousand or more cigarettes in unstamped or unlawfully  
30 stamped packages shall be presumptive evidence that such cigarettes are  
31 possessed or transported for the purpose of sale and are subject to the  
32 tax imposed by section four hundred seventy-one of this chapter. With  
33 respect to such possession or transportation any provisions of article  
34 twenty of this chapter providing for a time period during which a use  
35 tax imposed by such article may be paid on unstamped cigarettes or  
36 unlawfully or improperly stamped cigarettes or during which such ciga-  
37 rettes may be returned to an agent shall not apply. The possession with-  
38 in this state of more than four hundred cigarettes in unstamped or  
39 unlawfully stamped packages by any person other than an agent at any one  
40 time shall be presumptive evidence that such cigarettes are subject to  
41 tax as provided by article twenty of this chapter.

42 [~~(g)~~] (e) Nothing in this section shall apply to common or contract  
43 carriers or warehousemen while engaged in lawfully transporting or stor-  
44 ing unstamped packages of cigarettes as merchandise, or lawfully trans-  
45 porting or storing tobacco products, nor to any employee of such carrier  
46 or warehouseman acting within the scope of his employment, nor to public  
47 officers or employees in the performance of their official duties  
48 requiring possession or control of unstamped or unlawfully stamped pack-  
49 ages of cigarettes or possession or control of tobacco products, nor to  
50 temporary incidental possession by employees or agents of persons  
51 lawfully entitled to possession, nor to persons whose possession is for  
52 the purpose of aiding police officers in performing their duties.

53 [~~(h)~~] (f) Any willful act or omission, other than those described in  
54 section eighteen hundred one of this article or subdivision (a), (b),  
55 (c), (d), (e), [~~(f)~~], (g), (h) or (i) [~~or (j)~~] of this section, by any  
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1 person which constitutes a violation of any provision of article twenty  
2 of this chapter shall constitute a misdemeanor.

3 [~~(i)~~] (g) Any person who falsely or fraudulently makes, alters or  
4 counterfeits any stamp prescribed by the tax commission under the  
5 provisions of article twenty of this chapter, or causes or procures to  
6 be falsely or fraudulently made, altered or counterfeited any such  
7 stamp, or knowingly and willfully utters, purchases, passes or tenders  
8 as true any such false, altered or counterfeited stamp, or knowingly and  
9 willfully possesses any cigarettes in packages bearing any such false,  
10 altered or counterfeited stamp, and any person who knowingly and will-  
11 fully makes, causes to be made, purchases or receives any device for  
12 forging or counterfeiting any stamp, prescribed by the tax commission  
13 under the provisions of article twenty of this chapter, or who knowingly  
14 and willfully possesses any such device, shall be guilty of a class E  
15 felony. For the purposes of this subdivision, the words "stamp  
16 prescribed by the tax commission" shall include a stamp, impression or  
17 imprint made by a metering machine, the design of which has been  
18 approved by such commission.

19 [~~(j)~~] (h) (1) Any dealer, other than a distributor appointed by the  
20 commissioner of taxation and finance under article twenty of this chap-  
21 ter, who shall knowingly transport or have in his custody, possession or  
22 under his control more than ten pounds of tobacco or more than five  
23 hundred cigars upon which the taxes imposed by article twenty of this  
24 chapter have not been assumed or paid by a distributor appointed by the  
25 commissioner of taxation and finance under article twenty of this chap-  
26 ter, or other person treated as a distributor pursuant to section four  
27 hundred seventy-one-d of this chapter, shall be guilty of a misdemeanor  
28 punishable by a fine of not more than five thousand dollars or by a term

29 of imprisonment not to exceed thirty days.

30 (2) Any person, other than a dealer or a distributor appointed by the  
31 commissioner [~~of taxation and finance~~] under article twenty of this  
32 chapter, who shall knowingly transport or have in his custody,  
33 possession or under his control more than fifteen pounds of tobacco or  
34 more than seven hundred fifty cigars upon which the taxes imposed by  
35 article twenty of this chapter have not been assumed or paid by a  
36 distributor appointed by the commissioner [~~of taxation and finance~~]  
37 under article twenty of this chapter, or other person treated as a  
38 distributor pursuant to section four hundred seventy-one-d of this chap-  
39 ter shall be guilty of a misdemeanor punishable by a fine of not more  
40 than five thousand dollars or by a term of imprisonment not to exceed  
41 thirty days.

42 (3) Any person, other than a distributor appointed by the commissioner  
43 [~~of taxation and finance~~] under article twenty of this chapter, who  
44 shall knowingly transport or have in his custody, possession or under  
45 his control twenty-five hundred or more cigars or fifty or more pounds  
46 of tobacco upon which the taxes imposed by article twenty of this chap-  
47 ter have not been assumed or paid by a distributor appointed by the  
48 commissioner [~~of taxation and finance~~] under article twenty of this  
49 chapter, or other person treated as a distributor pursuant to section  
50 four hundred seventy-one-d of this chapter shall be guilty of a misde-  
51 meanor. Provided further, that any person who has twice been convicted  
52 under this subdivision shall be guilty of a class E felony for any  
53 subsequent violation of this section, regardless of the amount of tobac-  
54 co products involved in such violation.

55 (4) For purposes of this subdivision, such person shall knowingly  
56 transport or have in his custody, possession or under his control tobac-  
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1 co or cigars on which such taxes have not been assumed or paid by a  
2 distributor appointed by the commissioner [~~of taxation and finance~~]  
3 where such person has knowledge of the requirement of the tax on tobacco  
4 products and, where to his knowledge, such taxes have not been assumed  
5 or paid on such tobacco products by a distributor appointed by the  
6 commissioner of taxation and finance.

7 [~~(\*)~~] (i) Any person who falsely or fraudulently makes, alters or  
8 counterfeits a registration certificate or sticker required under the  
9 provisions of section four hundred eighty-a of this chapter, or causes  
10 or procures to be falsely or fraudulently made, altered or counterfeited  
11 any such registration certificate or sticker, or knowingly and willfully  
12 utters, purchases, passes or tenders as true any such false, altered or  
13 counterfeited registration certificate or sticker, and any person who  
14 knowingly and willfully makes, causes to be made, purchases or receives  
15 any device for forging or counterfeiting any registration certificate or  
16 sticker required under the provisions of such section, or who knowingly  
17 and willfully possesses any such device, shall be guilty of a class B  
18 misdemeanor.

19 § 29. Section 1815 of the tax law, as amended by chapter 170 of the  
20 laws of 1994, clause (i) of subparagraph (A) of paragraph 1 of subdivi-  
21 sion (a) as amended by section 10, subparagraph (B) of paragraph 1 of  
22 subdivision (a) as amended by section 11 and subparagraph (C) of para-  
23 graph 1 of subdivision (a) as amended by section 12 of part E of chapter  
24 60 of the laws of 2007, is amended to read as follows:

25 § 1815. Highway use and fuel use taxes. - (a) Violations. (1) It shall  
26 be unlawful for any person to:

27 (A) (i) Use or cause or permit to be used, any public highway in this  
28 state for the operation of a motor vehicle subject to the provisions of  
29 article twenty-one of this chapter without first applying for and  
30 obtaining the certificate of registration required under such article;

31 (ii) Use or cause or permit to be used, any public highway in this  
32 state for the operation of a qualified motor vehicle subject to the  
33 provisions of article twenty-one-A of this chapter without first obtain-

34 ing the license and decal required pursuant to such article or to carry  
35 or cause or permit to be carried upon any qualified motor vehicle a  
36 license or decal which has been suspended or revoked or which was issued  
37 for a qualified motor vehicle other than the one on which carried. The  
38 operation of any qualified motor vehicle on any public highway of this  
39 state without carrying thereon the license or decal required under such  
40 article shall be presumptive evidence that a license or decal has not  
41 been obtained for such qualified motor vehicle;

42 (B) Operate, or cause or permit to be operated, on any public highway  
43 any motor vehicle subject to the provisions of article twenty-one of  
44 this chapter having an actual gross or unloaded weight in excess of the  
45 gross or unloaded weight set forth on the certificate of registration  
46 issued for such motor vehicle;

47 (C) Fail to deliver or surrender, pursuant to the provisions of arti-  
48 cle twenty-one or twenty-one-A of this chapter or any rule or regulation  
49 promulgated by the commissioner, a certificate of registration or  
50 license or decal to such commissioner, or any person directed by such  
51 commissioner to take possession thereof;

52 (D) Fail [~~to make any return under article twenty-one or twenty-one-A~~  
53 ~~of this chapter or~~] to keep records of operations of motor vehicles or  
54 qualified motor vehicles as the commissioner shall prescribe;

55 (E) [~~Make any false return; or~~

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1 ~~(F)~~] Violate any other provision of article twenty-one or twenty-one-A  
2 of this chapter or any rule or regulation promulgated thereunder.

3 (2) Any person who violates any provision of this subdivision, upon a  
4 first conviction shall be subject to a fine of not less than one hundred  
5 dollars or more than two hundred fifty dollars; and upon a second or  
6 subsequent conviction to a fine of not less than two hundred fifty  
7 dollars or more than five hundred dollars or by imprisonment for not  
8 more than ten days. Except as otherwise provided by law such a violation  
9 shall not be a crime and the penalty or punishment imposed therefor  
10 shall not be deemed for any purpose a penal or criminal penalty or  
11 punishment and shall not impose any disability upon or affect or impair  
12 the credibility as a witness, or otherwise, of any person convicted  
13 thereof.

14 (3) For the purposes of conferring jurisdiction upon courts and police  
15 officers, and on the officers specified in subdivision four of section  
16 2.10 of the criminal procedure law and on judicial officers generally,  
17 such violations shall be deemed traffic infractions and for such purpose  
18 only all provisions of law relating to traffic infractions shall apply  
19 to such violations; provided, however, that the commissioner of motor  
20 vehicles, any hearing officer appointed by him, or any administrative  
21 tribunal authorized to hear and determine any charges or offenses which  
22 are traffic infractions shall not have jurisdiction of such infractions.

23 (4) Upon the conviction of any person for a violation of any of the  
24 provisions of this subdivision, the trial court or the clerk thereof  
25 shall within forty-eight hours certify the facts of the case to the  
26 commissioner and such certificate shall be presumptive evidence of the  
27 facts recited therein. If any such conviction shall be reversed upon  
28 appeal therefrom, the person whose conviction has been so reversed may  
29 serve upon the commissioner a certified copy of the order of reversal  
30 and the commissioner shall thereupon record the same.

31 (b) [~~Felonies. Any person who files or causes to be filed any return,~~  
32 ~~affidavit or statement required or permitted by article twenty-one or~~  
33 ~~twenty-one-A of this chapter which is willfully false or fraudulent or~~  
34 ~~who willfully fails to file a return with intent to evade the tax is~~  
35 ~~guilty of a class E felony.~~

36 ~~(e)~~] An official weigh slip or ticket issued and certified by any  
37 truck weigher in the employ of the department of transportation or by  
38 any duly licensed weight master shall constitute prima facie evidence of  
39 the information therein set forth and of the operation of the vehicle

40 therein described upon a public highway and shall be admissible before  
41 any court in any violation proceeding or criminal proceeding.

42 § 30. Section 1817 of the tax law, as added by chapter 65 of the laws  
43 of 1985, paragraph 1 of subdivision (c) as amended by chapter 411 of the  
44 laws of 1986, subdivision (e) as amended by chapter 765 of the laws of  
45 1985, subdivision (g) as amended by chapter 412 of the laws of 1986,  
46 subdivision (h) as amended by chapter 275 of the laws of 1986, subdivi-  
47 sion (i) as amended by chapter 261 of the laws of 1988, subdivision (k)  
48 as amended by chapter 3 of the laws of 2004, subdivisions (l) and (s) as  
49 amended and subdivisions (q) and (r) as added by chapter 2 of the laws  
50 of 1995, subdivision (o) as added by chapter 61 of the laws of 1989,  
51 subdivision (p) as added by chapter 810 of the laws of 1992 and subdivi-  
52 sion (t) as added by section 3 of part A of chapter 35 of the laws of  
53 2006, is amended to read as follows:

54 § 1817. Sales and compensating use taxes.--(a) [~~Willful failure to~~  
55 ~~file a return or report.--Any person required under article twenty-eight~~  
56 ~~of this chapter to make a return or report (other than a return of~~  
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1 ~~compensating use tax), who willfully fails to make such return or~~  
2 ~~report, at the time or times so required, shall be guilty of a misdemea-~~  
3 ~~nor.~~

4 ~~(b) Fraudulent returns, reports, statements or other documents.--(1)~~  
5 ~~Any person who willfully makes and subscribes any return, report, state-~~  
6 ~~ment or other document which is required to be filed with or furnished~~  
7 ~~to the tax commission or to any person, pursuant to the provisions of~~  
8 ~~article twenty-eight of this chapter, which he does not believe to be~~  
9 ~~true and correct as to every material matter shall be guilty of a misde-~~  
10 ~~meanor.~~

11 ~~(2) Any person who willfully delivers or discloses to the tax commis-~~  
12 ~~sion or to any person, pursuant to the provisions of article twenty-~~  
13 ~~eight of this chapter, any list, return, report, account, statement or~~  
14 ~~other document known by him to be fraudulent or to be false as to any~~  
15 ~~material matter shall be guilty of a misdemeanor.~~

16 ~~(3) For purposes of this section, the omission by any person of any~~  
17 ~~material matter with intent to deceive shall constitute the delivery or~~  
18 ~~disclosure of a document known by him to be fraudulent or to be false as~~  
19 ~~to any material matter.~~

20 ~~(c) Failure to collect tax.--(1) Any person who willfully fails to~~  
21 ~~collect the tax imposed under article twenty-eight of this chapter from~~  
22 ~~a customer shall, in addition to other penalties provided by law, be~~  
23 ~~guilty of a misdemeanor.~~

24 ~~(2) A person is guilty of failure to collect sales tax when he fails~~  
25 ~~to collect a sales tax required to be collected by article twenty-eight~~  
26 ~~of this chapter and when (a) he does so with intent to defraud the state~~  
27 ~~or a political subdivision thereof and thereby deprives the state or a~~  
28 ~~political subdivision thereof, or both together, of ten thousand dollars~~  
29 ~~or more, or (b) he does so with intent to defraud the state or a poli-~~  
30 ~~tical subdivision thereof through a common scheme or plan consisting of~~  
31 ~~ten or more failures to collect the required tax on sales in the amount~~  
32 ~~of one hundred dollars or more each. Failure to collect sales tax under~~  
33 ~~this paragraph is a class E felony.~~

34 ~~(d)] Any person required to obtain a certificate of authority under~~  
35 ~~section eleven hundred thirty-four of this chapter who, without possess-~~  
36 ~~ing a valid certificate of authority, willfully (1) sells tangible~~  
37 ~~personal property or services subject to tax, receives amusement charges~~  
38 ~~or operates a hotel, (2) purchases or sells tangible personal property~~  
39 ~~for resale, or (3) sells automotive fuel; and any person who fails to~~  
40 ~~surrender a certificate of authority as required by such article shall~~  
41 ~~be guilty of a misdemeanor.~~

42 ~~[(e)] (b) Any person required to obtain a certificate of authority~~  
43 ~~under section eleven hundred thirty-four of this chapter who within five~~  
44 ~~years after a determination by the tax commission, pursuant to such~~

45 section, to suspend, revoke or refuse to issue a certificate of authori-  
46 ty has become final, and without possession of a valid certificate of  
47 authority (1) sells tangible personal property or services subject to  
48 tax, receives amusement charges or operates a hotel, (2) purchases or  
49 sells tangible personal property for resale, or (3) sells automotive  
50 fuel, shall be guilty of a misdemeanor. It shall be an affirmative  
51 defense that such person performed the acts described in this subdivi-  
52 sion without knowledge of such determination. Any person who violates a  
53 provision of this subdivision, upon conviction, shall be subject to a  
54 fine in any amount authorized by this article, but not less than five  
55 hundred dollars, in addition to any other penalty provided by law.

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1 ~~(f)~~ (c) Any person who willfully fails to file a notice of a show as  
2 required by article twenty-eight of this chapter or who willfully rents,  
3 leases or grants a license to use space for a show or operates a show  
4 without obtaining a permit pursuant to paragraph two of subdivision (b)  
5 of section eleven hundred thirty-four of this chapter shall be guilty of  
6 a misdemeanor.

7 ~~(g)~~ (d) Any person (1) who willfully fails to charge separately the  
8 tax imposed under article twenty-eight of this chapter or to state such  
9 tax separately on any bill, statement, memorandum or receipt issued or  
10 employed by him upon which the tax is required to be stated separately  
11 as provided in subdivision (a) of section eleven hundred thirty-two of  
12 this chapter; or (2) who shall refer or cause reference to be made to  
13 such tax in a form or manner other than that required by such article  
14 twenty-eight, shall be guilty of a misdemeanor.

15 ~~(h)~~ (e) Any person willfully failing to file a bond or other securi-  
16 ty or deposit taxes in any banking institution where such filing or  
17 deposit is required pursuant to the provisions of paragraph two or three  
18 of subdivision (e) of section eleven hundred thirty-seven of this chap-  
19 ter shall be guilty of a misdemeanor.

20 ~~(i)~~ (f) Any owner of a filling station who shall willfully and know-  
21 ingly have in his custody, possession or under his control any motor  
22 fuel or diesel motor fuel on which (1) the prepaid tax imposed by  
23 section eleven hundred two of this chapter has not been assumed or paid  
24 by a distributor registered as such under article twelve-A of this chap-  
25 ter or (2) the prepaid tax imposed by section eleven hundred two of this  
26 chapter was required to have been passed through to him and has not been  
27 included in the cost of such fuel to him, shall in either case, be guil-  
28 ty of a class E felony. For purposes of this subdivision, such owner  
29 shall willfully and knowingly have in his custody, possession or under  
30 his control any motor fuel or diesel motor fuel on which such tax has  
31 not been assumed or paid by a distributor registered as such where such  
32 owner has knowledge of the requirement that such tax be paid and where,  
33 to his knowledge, such tax has not been assumed or paid by such regis-  
34 tered distributor on such motor fuel or diesel motor fuel. Such owner  
35 shall willfully and knowingly have in his custody, possession or under  
36 his control motor fuel or diesel motor fuel on which such tax is  
37 required to have been passed through to him and has not been included in  
38 the cost to him where such owner has knowledge of the requirement that  
39 such tax be passed through and where to his knowledge such tax has not  
40 been so included.

41 ~~(j)~~ (g) Any person who willfully fails to keep any records required  
42 by article twenty-eight of this chapter shall be guilty of a misdemea-  
43 nor.

44 ~~(k)~~ (h) The penalties provided for in this section shall not  
45 preclude prosecution pursuant to the penal law with respect to the will-  
46 ful failure of any person to pay over to the state any sales tax imposed  
47 by section eleven hundred four, eleven hundred five, eleven hundred  
48 seven, eleven hundred eight or eleven hundred nine of this chapter or by  
49 any local law adopted by any city or county pursuant to article twenty-  
50 nine of this chapter, whenever such person has been required to collect

51 and has collected any such sales tax. In any such prosecution under the  
52 penal law, a person who has been required to collect and has collected  
53 any such tax shall be deemed to have acted in a fiduciary character with  
54 respect to the state or a political subdivision thereof, and the tax  
55 collected shall be deemed to have been entrusted to such person by the  
56 state or a political subdivision thereof.

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1 ~~[(l) Any person who willfully fails to pay sales or compensating use~~  
2 ~~tax, or to file a return of compensating use tax imposed by or pursuant~~  
3 ~~to the authority of article twenty-eight or twenty-nine of this chapter,~~  
4 ~~with respect to the purchase or use of automotive fuel or cigarettes~~  
5 ~~shall be guilty of a misdemeanor.~~

6 ~~(m) Any person who willfully issues a false or fraudulent resale or~~  
7 ~~other exemption certificate or document with intent to evade tax shall~~  
8 ~~be guilty of a misdemeanor.~~

9 ~~(n) Any person who, being duly subpoenaed, pursuant to section one~~  
10 ~~hundred seventy-four of this chapter or the provisions of the civil~~  
11 ~~practice law and rules, in connection with a matter arising under arti-~~  
12 ~~cle twenty-eight of this chapter, to attend as a witness or to produce~~  
13 ~~books, accounts, records, memoranda, documents or other papers who (i)~~  
14 ~~fails or refuses to attend without lawful excuse, (ii) refuses to be~~  
15 ~~sworn, (iii) refuses to answer any material and proper question, or (iv)~~  
16 ~~refuses, after reasonable notice, to produce books, accounts, records,~~  
17 ~~memoranda, documents or other papers in his possession or under his~~  
18 ~~control which constitute material and proper evidence shall be guilty of~~  
19 ~~a misdemeanor.~~

20 ~~(o)]~~ (i) Any entertainment promoter who willfully authorizes an enter-  
21 tainment vendor, to whom such promoter has either directly or indirectly  
22 rented, leased, granted a license to use or under any other arrangement  
23 made space available in order for such vendor to make taxable sales of  
24 tangible personal property at an entertainment event, without first  
25 requiring such vendor to obtain a certificate of authority or who will-  
26 fully fails to obtain an entertainment promoter certificate as required  
27 under article twenty-eight of this chapter shall be guilty of a misde-  
28 meanor.

29 ~~[(p)]~~ (j) Any person described in subdivision (a) of section eleven  
30 hundred forty-two-A of this chapter who willfully fails to include all  
31 information required under such section on a ticket or other memorandum  
32 as described in such section shall be guilty of a misdemeanor.

33 ~~[(q)]~~ (k) Any owner of a place of business selling cigarettes at  
34 retail who shall willfully and knowingly have in such owner's custody or  
35 possession or under such owner's control any cigarettes on which (1) the  
36 prepaid tax imposed by section eleven hundred three of this chapter has  
37 not been assumed or paid by an agent licensed as such under article  
38 twenty of this chapter or (2) the prepaid tax imposed by section eleven  
39 hundred three of this chapter was required to have been passed through  
40 to such owner and has not been included in the cost of such cigarettes  
41 to such owner shall, in either case, be guilty of a misdemeanor.  
42 Provided, however, if the amount of cigarettes is twenty thousand or  
43 more, such owner shall be guilty of a class E felony. For purposes of  
44 this subdivision, such owner shall willfully and knowingly have in such  
45 owner's custody or possession or under such owner's control any ciga-  
46 rettes on which such tax has not been assumed or paid by an agent  
47 licensed as such under such article twenty where such owner has know-  
48 ledge of the requirement that such tax be assumed or paid and where, to  
49 such owner's knowledge, such tax has not been assumed or paid by such an  
50 agent on such cigarettes. Such owner shall willfully and knowingly have  
51 in such owner's custody or possession or under such owner's control  
52 cigarettes on which such tax is required to have been passed through to  
53 such owner and has not been included in the cost to such owner where  
54 such owner has knowledge of the requirement that such tax be passed  
55 through and where to such owner's knowledge such tax has not been so

1 [~~(r)~~] (l) Any person who falsely or fraudulently makes, alters or  
2 counterfeits any stamp prescribed by the commissioner under the  
3 provisions of article twenty-eight or pursuant to the authority of arti-  
4 cle twenty-nine of this chapter, or causes or procures to be falsely or  
5 fraudulently made, altered or counterfeited any such stamp, or knowingly  
6 and willfully utters, purchases, passes or tenders as true any such  
7 false, altered or counterfeited stamp, or knowingly and willfully  
8 possesses any cigarettes in packages bearing any such false, altered or  
9 counterfeited stamp, and any person who knowingly and willfully makes,  
10 causes to be made, purchases or receives any device for forging or coun-  
11 terfeiting any stamp prescribed by the commissioner under the provisions  
12 of article twenty-eight or pursuant to the authority of article twenty-  
13 nine of this chapter, or who knowingly and willfully possesses any such  
14 device, shall be guilty of a class E felony. For the purposes of this  
15 subdivision, the words "stamp prescribed by the commissioner" shall  
16 include a stamp, impression or imprint made by a metering machine, the  
17 design of which has been approved by the commissioner.

18 [~~(s)~~] (m) All of the provisions of this section shall apply for  
19 purposes of any taxes administered by the commissioner and imposed  
20 pursuant to the authority of article twenty-nine of this chapter and for  
21 the purposes of any taxes imposed by article twenty-eight-A of this  
22 chapter. References in subdivisions [~~(i)~~, ~~(l)~~, ~~(g)~~ and ~~(r)~~] (f), (k),  
23 and (l) of this section to taxes imposed by or pursuant to the authority  
24 of article twenty-eight or twenty-nine of this chapter include the taxes  
25 required to be prepaid pursuant to section eleven hundred two or eleven  
26 hundred three of this chapter.

27 [~~(t)~~] (n) (1) Every person engaged in the retail sale of motor fuel  
28 and/or diesel motor fuel or a distributor of such fuels, as defined in  
29 article twelve-A of this chapter, shall comply with the provisions of  
30 section three hundred ninety-two-i of the general business law by reduc-  
31 ing the prices charged for motor fuel and diesel motor fuel in an amount  
32 equal to any reduction in taxes prepaid by the distributor or imposed on  
33 retail customers resulting from computing sales and compensating use  
34 taxes at a cents per gallon rate pursuant to the provisions of paragraph  
35 two of subdivision (e) and subdivision (m) of section one thousand one  
36 hundred eleven of this chapter.

37 (2) The commissioner, in cooperation with the state consumer  
38 protection board, shall monitor the prices charged by persons engaged in  
39 the retail sale or distribution of motor fuel and diesel motor fuel.

40 (3) Upon a finding by the commissioner that a person engaged in the  
41 retail sale of motor fuel and/or diesel motor fuel or in the distrib-  
42 ution of such fuels has violated the provisions of section three hundred  
43 ninety-two-i of the general business law, the commissioner shall provide  
44 notice of such violation to such person and hold a hearing on such  
45 violation, with an opportunity for the accused to be heard, not less  
46 than ten days after notice is provided. A violation of section three  
47 hundred ninety-two-i of the general business law shall subject the  
48 person violating such section to a civil penalty of up to five thousand  
49 dollars for each day such violation occurs.

50 § 31. Section 1818 of the tax law, as added by chapter 65 of the laws  
51 of 1985, is amended to read as follows:

52 § 1818. Real estate transfer tax.--Any willful act or omission, by any  
53 person which constitutes a violation of any provision of article thir-  
54 ty-one of this chapter [~~or any willful attempt to evade or defeat the~~  
55 ~~tax imposed by such article~~] shall constitute a misdemeanor.

1 § 32. Section 1820 of the tax law, as added by chapter 833 of the laws  
2 of 1987, is amended to read as follows:

3 § 1820. Boxing and wrestling exhibitions tax. Any willful act or omis-

4 sion by any person which constitutes a violation of any provision of  
5 article nineteen of this chapter [~~or any willful attempt to evade or~~  
6 ~~defeat the tax imposed by such article~~] shall constitute a misdemeanor.

7 § 33. The tax law is amended by adding three new sections 1831, 1832  
8 and 1833 to read as follows:

9 § 1831. Failure to obey subpoenas. Any person who is duly subpoenaed,  
10 pursuant to section one hundred seventy-four of this chapter or the  
11 provisions of the civil practice law and rules, in connection with any  
12 matter arising under this chapter, or any related income or earnings tax  
13 statute, to attend as a witness or to produce books, accounts, records,  
14 memoranda, documents or other papers, and who (1) fails or refuses to  
15 attend without lawful excuse, (2) refuses to be sworn, (3) without  
16 asserting a valid legal privilege refuses to answer any material and  
17 proper question, or (4) without asserting a valid legal privilege  
18 refuses, after reasonable notice, to produce books, accounts, records,  
19 memoranda, documents or other papers that constitute material and proper  
20 evidence in his or her possession or under his or her control, shall be  
21 guilty of a misdemeanor.

22 § 1832. Non-preemption; penal law anticipatory offenses and accesso-  
23 rial liability apply. (a) Unless expressly stated otherwise, the penal-  
24 ties provided in this chapter shall not preclude prosecution for any  
25 offense under the penal law or any other criminal statute.

26 (b) The offenses specified in title G of the penal law and the  
27 provisions of article twenty of the penal law are applicable to all  
28 offenses defined in this chapter.

29 § 1833. Tax preparer registration. A commercial tax return preparer,  
30 as defined by paragraph three of subdivision (a) of section thirty-two  
31 of this chapter, who willfully and with the intent to evade the require-  
32 ments of section thirty-two of this chapter, fails to sign his or her  
33 name to any tax return that requires a signature or fails to register as  
34 required by such section thirty-two, will be guilty of a class A misde-  
35 meanor.

36 § 34. This act shall take effect immediately and apply to offenses  
37 committed on and after such effective date.

38 SUBPART K

39 Section 1. Section 702 of the county law is amended by adding a new  
40 subdivision 7 to read as follows:

41 7. Notwithstanding any provision of law with respect to the require-  
42 ments of residence, a district attorney may appoint one or more attor-  
43 neys employed by the department of taxation and finance as special  
44 assistant district attorneys with respect to any investigation or prose-  
45 cution concerning, in whole or part, a violation of article thirty-seven  
46 of the tax law or of the penal law as it applies to the enforcement of  
47 any provision of the tax law.

48 § 2. This act shall take effect immediately.

49 SUBPART L

50 Section 1. Subdivision 4 of section 1700 of the tax law, as added by  
51 section 1 of part CC1 of chapter 57 of the laws of 2008, is amended to  
52 read as follows:

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1 4. To participate in the voluntary disclosure and compliance program,  
2 an eligible taxpayer must apply by submitting a disclosure statement in  
3 the form and manner prescribed by the commissioner. The disclosure  
4 statement shall contain all the information the commissioner reasonably  
5 deems necessary to effectively administer the program. As long as all  
6 the requirements of the voluntary disclosure and compliance program are  
7 met, no application shall be denied solely because the taxpayer has  
8 admitted that the delinquency was the result of willful or fraudulent

9 conduct. Except in instances where the taxpayer has failed to comply  
10 with the terms of a voluntary disclosure and compliance agreement, the  
11 commissioner shall not use the taxpayer's disclosure as evidence in any  
12 proceeding brought against the taxpayer or reveal the contents of the  
13 disclosure to any law enforcement or other agency. However, the disclo-  
14 sure of any returns or reports filed under this program with the secre-  
15 tary of the treasury of the United States, his or her delegates, or the  
16 proper tax officer of any state or city is permitted as otherwise  
17 provided for in this chapter.

18 § 2. This act shall take effect immediately.

19 SUBPART M

20 Section 1. Paragraph a of subdivision twenty-sixth of section 171 of  
21 the tax law, as amended by section 1 of part M3 of chapter 62 of the  
22 laws of 2003, is amended to read as follows:

23 a. Set the overpayment and underpayment rates of interest for purposes  
24 of articles twelve-A, eighteen, twenty and twenty-one of this chapter.  
25 Such rates shall be the overpayment and underpayment rates of interest  
26 set pursuant to subsection (e) of section one thousand ninety-six of  
27 this chapter, but the underpayment rate shall not be less than [~~six~~]  
28 seven and one-half percent per annum. Any such rates set by such commis-  
29 sioner shall apply to taxes, or any portion thereof, which remain or  
30 become due or overpaid (other than overpayments under such article twen-  
31 ty and not including reimbursements, if any, under any of such articles)  
32 on or after the date on which such rates become effective and shall  
33 apply only with respect to interest computed or computable for periods  
34 or portions of periods occurring in the period during which such rates  
35 are in effect. In computing the amount of any interest required to be  
36 paid under such articles by such commissioner or by the taxpayer, or any  
37 other amount determined by reference to such amount of interest, such  
38 interest and such amount shall be compounded daily.

39 § 2. Subsections (a) and (j) of section 684 of the tax law, as amended  
40 by section 6 of part R of chapter 85 of the laws of 2002, are amended to  
41 read as follows:

42 (a) General.--If any amount of income tax is not paid on or before the  
43 last date prescribed in this article for payment, interest on such  
44 amount at the underpayment rate set by the commissioner pursuant to  
45 section six hundred ninety-seven of this part, or if no rate is set, at  
46 the rate of [~~six per cent~~] seven and one-half percent per annum shall be  
47 paid for the period from such last date to the date paid, whether or not  
48 any extension of time for payment was granted. Interest under this  
49 subsection shall not be paid if the amount thereof is less than one  
50 dollar. If the time for filing of a return of tax withheld by an employ-  
51 er is extended, the employer shall pay interest for the period for which  
52 the extension is granted and may not charge such interest to the employ-  
53 ee.

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1 (j) Interest on erroneous refund.--Any portion of tax or other amount  
2 which has been erroneously refunded, and which is recoverable by the  
3 commissioner, shall bear interest at the underpayment rate set by the  
4 commissioner pursuant to section six hundred ninety-seven of this part,  
5 or if no rate is set, at the rate of [~~six per cent~~] seven and one-half  
6 percent per annum from the date of the payment of the refund, but only  
7 if it appears that any part of the refund was induced by fraud or a  
8 misrepresentation of a material fact.

9 § 3. Paragraph 1 of subsection (c) of section 685 of the tax law, as  
10 amended by section 7 of part R of chapter 85 of the laws of 2002, is  
11 amended to read as follows:

12 (1) Addition to the tax.--Except as otherwise provided in this  
13 subsection and subsection (d) of this section, in the case of any under-  
14 payment of estimated tax by an individual, there shall be added to the

15 tax under this article for the taxable year an amount determined by  
16 applying the underpayment rate established under subsection (j) of  
17 section six hundred ninety-seven of this part, or if no rate is set, at  
18 the rate of [~~six~~] seven and one-half percent per annum, to the amount of  
19 the underpayment for the period of the underpayment. Such period shall  
20 run from the due date for the required installment to the earlier of the  
21 fifteenth day of the fourth month following the close of the taxable  
22 year or, with respect to any portion of the underpayment, the date on  
23 which such portion is paid. For purposes of determining such date, a  
24 payment of estimated tax shall be credited against unpaid required  
25 installments in the order in which such installments are required to be  
26 paid. There shall be four required installments for each taxable year,  
27 due on April fifteenth, June fifteenth and September fifteenth of such  
28 taxable year and on January fifteenth of the following taxable year.

29 § 4. Paragraph 1 of subsection (j) of section 697 of the tax law, as  
30 amended by section 2 of part M3 of chapter 62 of the laws of 2003, is  
31 amended to read as follows:

32 (1) The commissioner shall set the overpayment and underpayment rates  
33 of interest to be paid pursuant to sections six hundred eighty-four, six  
34 hundred eighty-five and six hundred eighty-eight of this part, but if no  
35 such rates of interest are set, such [~~rates~~] overpayment rate shall be  
36 deemed to be set at six percent per annum and such underpayment rate  
37 shall be deemed to be set at seven and one-half percent per annum. Such  
38 rates shall be the rates prescribed in paragraphs two and four of this  
39 subsection, but the underpayment rate shall not be less than [~~six~~] seven  
40 and one-half percent per annum. Any such rates set by the commissioner  
41 shall apply to taxes, or any portion thereof, which remain or become due  
42 or overpaid on or after the date on which such rates become effective  
43 and shall apply only with respect to interest computed or computable for  
44 periods or portions of periods occurring in the period during which such  
45 rates are in effect.

46 § 5. Paragraph 2 of subsection (j) of section 697 of the tax law, as  
47 amended by section 10 of part R of chapter 85 of the laws of 2002, is  
48 amended to read as follows:

49 (2) Rates of interest. (A) Overpayment rate. The overpayment rate of  
50 interest set under this subsection shall be the [~~sum of (i) the~~] federal  
51 short-term rate as provided under paragraph three of this subsection[~~,~~  
52 ~~plus (ii) two percentage points~~].

53 (B) Underpayment rate. The underpayment rate of interest set under  
54 this subsection shall be the sum of (i) the federal short-term rate as  
55 provided under paragraph three of this subsection, plus (ii) [~~four~~] five  
56 and one-half percentage points.

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1 § 6. Subsections (a) and (j) of section 1084 of the tax law, as  
2 amended by section 123 and subsection (j) as relettered by section 148  
3 of chapter 61 of the laws of 1989, are amended to read as follows:

4 (a) General.--If any amount of tax is not paid on or before the last  
5 date prescribed in article nine or nine-a of this chapter for payment,  
6 interest on such amount at the underpayment rate set by the commissioner  
7 [~~of taxation and finance~~] pursuant to section one thousand ninety-six of  
8 this article, or if no rate is set, at the rate of [~~six~~] seven and one-  
9 half percent per annum shall be paid for the period from such last date  
10 to the date paid, whether or not any extension of time for payment was  
11 granted. Interest under this subsection shall not be paid if the amount  
12 thereof is less than one dollar.

13 (j) Interest on erroneous refund.--Any portion of tax or other amount  
14 which has been erroneously refunded, and which is recoverable by the  
15 commissioner [~~of taxation and finance~~], shall bear interest at the  
16 underpayment rate set by the commissioner pursuant to section one thou-  
17 sand ninety-six of this article, or if no rate is set, at the rate of  
18 [~~six~~] seven and one-half percent per annum from the date of the payment  
19 of the refund, but only if it appears that any part of the refund was

20 induced by fraud or a misrepresentation of a material fact.

21 § 7. Paragraph 1 of subsection (c) of section 1085 of the tax law, as  
22 amended by chapter 57 of the laws of 1993, is amended to read as  
23 follows:

24 (1) If any taxpayer fails to file a declaration of estimated tax under  
25 article nine-A of this chapter, or fails to pay all or any part of an  
26 amount which is applied as an installment against such estimated tax, it  
27 shall be deemed to have made an underpayment of estimated tax. There  
28 shall be added to the tax for the taxable year an amount at the under-  
29 payment rate set by the commissioner pursuant to section one thousand  
30 ninety-six of this article, or if no rate is set, at the rate of [~~six~~]  
31 seven and one-half percent per annum upon the amount of the underpayment  
32 for the period of the underpayment but not beyond the fifteenth day of  
33 the third month following the close of the taxable year. The amount of  
34 the underpayment shall be, with respect to any installment of estimated  
35 tax computed on the basis of the preceding year's tax, the excess of the  
36 amount required to be paid over the amount, if any, paid on or before  
37 the last day prescribed for such payment or, with respect to any other  
38 installment of estimated tax, the excess of the amount of the install-  
39 ment which would be required to be paid if the estimated tax were equal  
40 to ninety-one percent of the tax shown on the return for the taxable  
41 year (or if no return was filed, ninety-one percent of the tax for such  
42 year) over the amount, if any, of the installment paid on or before the  
43 last day prescribed for such payment. In any case in which there would  
44 be no underpayment if "eighty percent" were substituted for "ninety-one  
45 percent" each place it appears in this subsection, the addition to the  
46 tax shall be equal to seventy-five percent of the amount otherwise  
47 determined. No underpayment shall be deemed to exist with respect to a  
48 declaration or installment otherwise due on or after the termination of  
49 existence of the taxpayer.

50 § 8. Paragraph 1 of subsection (e) of section 1096 of the tax law, as  
51 amended by section 3 of part M3 of chapter 62 of the laws of 2003, is  
52 amended to read as follows:

53 (1) Authority to set interest rates.---The commissioner shall set the  
54 overpayment and underpayment rates of interest to be paid pursuant to  
55 sections two hundred thirteen, two hundred thirteen-b, two hundred  
56 fifty-eight, two hundred sixty-three, two hundred ninety-four, one thou-  
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1 sand eighty-four, one thousand eighty-five, one thousand eighty-eight,  
2 fourteen hundred sixty-one and fourteen hundred sixty-three of this  
3 chapter, but if no such rate or rates of interest are set, such overpay-  
4 ment rate [~~or rates~~] shall be deemed to be set at six percent per annum  
5 and such underpayment rate shall be deemed to be set at seven and one-  
6 half percent per annum. Such overpayment and underpayment rates shall be  
7 the rates prescribed in paragraph two of this subsection, but the under-  
8 payment rate shall not be less than [~~six~~] seven and one-half percent per  
9 annum. Any such rates set by the commissioner shall apply to taxes, or  
10 any portion thereof, which remain or become due or overpaid on or after  
11 the date on which such rates become effective and shall apply only with  
12 respect to interest computed or computable for periods or portions of  
13 periods occurring in the period during which such rates are in effect.

14 § 9. Paragraph 2 of subsection (e) of section 1096 of the tax law, as  
15 amended by chapter 61 of the laws of 1989 and subparagraph (B) as  
16 amended by section 11 of part R of chapter 85 of the laws of 2002, is  
17 amended to read as follows:

18 (2) General rule. (A) Overpayment rate. The overpayment rate set under  
19 this subsection shall be the [~~sum of (i) the~~] federal short-term rate as  
20 provided under paragraph three of this subsection[~~, plus (ii) two~~  
21 ~~percentage points~~].

22 (B) Underpayment rate. The underpayment rate set under this subsection  
23 shall be the sum of (i) the federal short-term rate as provided under  
24 paragraph three of this subsection, plus (ii) [~~five~~] seven percentage

25 points.

26 § 10. Subdivision (d) of section 1139 of the tax law, as amended by  
27 chapter 61 of the laws of 1989, is amended to read as follows:

28 (d) (1) Except in respect to an overpayment made on a return described  
29 in paragraph [~~(ii)~~] two of subdivision (a) of section eleven hundred  
30 thirty-six [~~hereof~~] of this part or on a return described in subdivision  
31 (c) of section eleven hundred thirty-seven-A of this part, interest  
32 shall be allowed and paid upon any refund made or credit allowed pursu-  
33 ant to this section except as otherwise provided in paragraph two of  
34 this subdivision or subdivision (e) of this section and except that no  
35 interest shall be allowed or paid if the amount thereof would be less  
36 than one dollar. Such interest shall be at the overpayment rate set by  
37 the commissioner [~~of taxation and finance~~] pursuant to section eleven  
38 hundred forty-two of this part, or if no rate is set, at the rate of six  
39 [~~per cent~~] percent per annum from the date when the tax, penalty or  
40 interest refunded or credited was paid to a date preceding the date of  
41 the refund check by not more than thirty days, provided, however, that  
42 for the purposes of this subdivision any tax paid before the last day  
43 prescribed for its payment shall be deemed to have been paid on such  
44 last day. In the case of a refund or credit claimed on a return of tax  
45 which is filed after the last date prescribed for filing such return  
46 (determined with regard to extensions), or claimed on an application for  
47 refund or credit, no interest shall be allowed or paid for any day  
48 before the date on which the return or application is filed. For  
49 purposes of this subdivision, a return or application for refund or  
50 credit shall not be treated as filed until it is filed in processible  
51 form. A return or application is in a processible form if [~~such return~~]  
52 it is filed on a permitted form, and [~~such return~~] contains the taxpay-  
53 er's name, address and identifying number and the required signatures,  
54 and sufficient required information (whether on the return or applica-  
55 tion or on required attachments) to permit the mathematical verification  
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1 of tax liability shown on the return or refund or credit claimed on the  
2 application.

3 (2) If a refund is made or a credit is allowed within three months  
4 after the last date prescribed or permitted by extension of time for  
5 filing a return on which the refund or credit was claimed or within  
6 three months after the return was filed, whichever is later, or within  
7 three months after an application for refund or credit is filed on which  
8 that refund or credit was claimed, no interest will be allowed or paid  
9 on that refund or credit.

10 § 11. Subdivision 9 of section 1142 of the tax law, as amended by  
11 section 4 of part M3 of chapter 62 of the laws of 2003, is amended to  
12 read as follows:

13 9. To set the overpayment and underpayment rates of interest for  
14 purposes of sections eleven hundred thirty-nine and eleven hundred  
15 forty-five of this part. Such rates shall be the overpayment and under-  
16 payment rates of interest set pursuant to subsection (e) of section one  
17 thousand ninety-six of this chapter, but the underpayment rate shall not  
18 be less than [~~six~~] seven and one-half percent per annum. Any such rates  
19 set by the commissioner shall apply to taxes, or any portion thereof,  
20 which remain or become due or overpaid on or after the date on which  
21 such rates become effective and shall apply only with respect to inter-  
22 est computed or computable for periods or portions of periods occurring  
23 in the period during which such rates are in effect. In computing the  
24 amount of any interest required to be paid under this article by the  
25 commissioner or by the taxpayer, or any other amount determined by  
26 reference to such amount of interest, such interest and such amount  
27 shall be compounded daily. The preceding sentence shall not apply for  
28 purposes of computing the amount of any interest for failure to pay  
29 estimated tax under subparagraph (iv) of paragraph one of subdivision  
30 (a) of section [~~one thousand one~~] eleven hundred forty-five of this

31 [~~article~~] part.

32 § 12. Subparagraph (ii) of paragraph 1 and paragraph 2 of subdivision  
33 (a) of section 1145 of the tax law, as amended by section 12 of part R  
34 of chapter 85 of the laws of 2002, are amended to read as follows:

35 (ii) If any amount of tax is not paid on or before the last date  
36 prescribed in this article for payment, interest on such amount at the  
37 rate of fourteen and one-half percent per annum or at the underpayment  
38 rate set by the commissioner pursuant to section eleven hundred forty-  
39 two of this part, whichever is greater, shall be paid for the period  
40 from such last date to the date paid, whether or not any extension of  
41 time for payment was granted. Interest under this subparagraph shall  
42 not be paid if the amount thereof is less than one dollar.

43 (2) If the failure to pay or pay over any tax to the commissioner  
44 within the time required by this article is due to fraud, in lieu of the  
45 penalties and interest provided for in subparagraphs (i) and (ii) of  
46 paragraph one of this subdivision, there shall be added to the tax (i) a  
47 penalty of fifty percent of the amount of the tax due, plus (ii) inter-  
48 est on such unpaid tax at the rate of fourteen and one-half percent per  
49 annum or the underpayment rate of interest set by the commissioner  
50 pursuant to section eleven hundred forty-two of this part, whichever is  
51 greater, for the period beginning on the last day prescribed by this  
52 article for the payment of such tax (determined without regard to any  
53 extension of time for paying) and ending on the day on which such tax is  
54 paid, plus (iii) for the period beginning on the last day prescribed by  
55 this article for the payment of such tax (determined without regard to  
56 any extension of time for paying) and ending on the day the amount of

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1 tax due is finally determined or, if earlier, on the day on which such  
2 tax is paid, an amount equal to fifty percent of the interest payable  
3 under subparagraph (ii) of this paragraph, on that portion of the unpaid  
4 tax which is attributable to fraud.

5 § 13. Paragraph (a) of subdivision 1 of section 1405 of the abandoned  
6 property law, as amended by section 13 of part R of chapter 85 of the  
7 laws of 2002, is amended to read as follows:

8 (a) Notwithstanding any other provision of law, no owner of abandoned  
9 property shall be entitled to receive interest on account of such aban-  
10 doned property from and after the date a payment of such abandoned prop-  
11 erty is hereafter made to the state comptroller pursuant to this chapter  
12 or any law relating to abandoned property, whether or not he or she was  
13 entitled to interest on such property prior to such date, except that  
14 interest at the overpayment rate set by the commissioner of taxation and  
15 finance pursuant to subsection (j) of section six hundred ninety-seven  
16 of the tax law, [~~less~~] plus one percentage point, shall accrue to aban-  
17 doned property hereafter paid to the state comptroller under the follow-  
18 ing provisions of this chapter, for the first five years such property  
19 is held by him or her:

20 (i) paragraph (a) of subdivision one of section three hundred of this  
21 chapter; or

22 (ii) subdivision one of section four hundred of this chapter; or

23 (iii) paragraph (a) of subdivision one of section six hundred of this  
24 chapter; or

25 (iv) subdivision one of section [~~ten hundred~~] one thousand of this  
26 chapter.

27 § 14. Subdivision 6 of section 72-0201 of the environmental conserva-  
28 tion law, as amended by section 14 of part R of chapter 85 of the laws  
29 of 2002, is amended to read as follows:

30 6. In addition to any penalty that may be assessed pursuant to subdi-  
31 vision five of this section, there shall be collected interest upon the  
32 unpaid amount at the underpayment rate set by the commissioner of taxa-  
33 tion and finance pursuant to section one thousand ninety-six of the tax  
34 law, minus [~~two~~] four percentage points. Such interest shall accrue  
35 thirty days from the date prescribed for fee payment until payment is

36 actually made to the department.

37 § 15. Subparagraph (iii) of paragraph 2 of subsection (a) of section  
38 1112 of the insurance law, as amended by section 15 of part R of chapter  
39 85 of the laws of 2002, is amended to read as follows:

40 (iii) If any insurer fails to pay all or any part of the initial  
41 payment or estimated payment due pursuant to subparagraph (i) or (ii) of  
42 this paragraph, it shall be deemed to have made an underpayment. There  
43 shall be added to the amount due pursuant to paragraph one of this  
44 subsection, an amount at the rate set for underpayments by the commis-  
45 sioner of taxation and finance pursuant to section one thousand ninety-  
46 six of the tax law, minus [~~two~~] four percentage points, or if no rate is  
47 set, at the rate of six percent per annum upon the amount of the under-  
48 payment for the period of the underpayment. In computing the amount of  
49 any interest required to be paid, such interest shall not be compounded.  
50 The amount of the underpayment shall be, with respect to the initial  
51 payment or any estimated payment, the excess of the amount required to  
52 be paid over the amount, if any, paid on or before the last day  
53 prescribed for such payment. If the superintendent demands payment of  
54 the initial payment or any estimated payment, and if such amount is paid  
55 within ten days after the date of such demand, interest on the amount so  
56 paid shall not be imposed for the period after the date of such demand.

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1 No portion of the interest imposed pursuant to this subparagraph may be  
2 waived.

3 § 16. Subparagraph (iv) of paragraph 2 of subsection (a) of section  
4 1112 of the insurance law, as amended by chapter 61 of the laws of 1989,  
5 is amended to read as follows:

6 (iv) Notwithstanding the provisions of section sixteen of the state  
7 finance law, interest shall be allowed and paid at the rate set for  
8 overpayments, plus two percentage points, by the commissioner of taxa-  
9 tion and finance pursuant to section one thousand ninety-six of the tax  
10 law, or if no rate is set, at the rate of six percent per annum upon any  
11 overpayment, from the date payment was due to a date (to be determined  
12 by the superintendent) preceding the date of a refund check by not more  
13 than thirty days. In the case of a payment which is made after the last  
14 date prescribed for payment of such payment, no interest shall be  
15 allowed or paid for any day before the date on which the payment was  
16 made. In computing the amount of interest required to be paid, such  
17 interest shall not be compounded. No interest shall be allowed or paid  
18 if the amount thereof is less than one dollar.

19 § 17. Paragraph (a) of subsection 4 of section 9110 of the insurance  
20 law, as amended by section 16 of part R of chapter 85 of the laws of  
21 2002, is amended to read as follows:

22 (a) Interest. If any amount of tax is not paid on or before the date  
23 prescribed for payment thereof in subsection two of this section, inter-  
24 est on such amount of tax at the underpayment rate set by the commis-  
25 sioner of taxation and finance pursuant to section one thousand ninety-  
26 six of the tax law, plus [~~three~~] one percentage [~~points~~] point, shall be  
27 paid to the superintendent for the period from the date prescribed for  
28 payment until the date paid.

29 § 18. Paragraph (a) of subsection 4 of section 9111 of the insurance  
30 law, as amended by section 17 of part R of chapter 85 of the laws of  
31 2002, is amended to read as follows:

32 (a) Interest. If any amount of tax is not paid on or before the date  
33 prescribed for payment thereof in subsection two of this section, inter-  
34 est on such amount of tax at the underpayment rate set by the commis-  
35 sioner of taxation and finance pursuant to section one thousand ninety-  
36 six of the tax law, plus [~~three~~] one percentage [~~points~~] point, shall be  
37 paid to the superintendent for the period from the date prescribed for  
38 payment until the date paid.

39 § 19. Paragraph 1 of subsection (d) of section 9111-a of the insurance  
40 law, as amended by section 18 of part R of chapter 85 of the laws of

41 2002, is amended to read as follows:

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

49 § 20. Paragraph 1 of subsection (d) of section 9111-b of the insurance  
50 law, as amended by section 19 of part R of chapter 85 of the laws of  
51 2002, is amended to read as follows:

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

3 § 21. Paragraph 1 of subsection (d) of section 9111-c of the insurance  
4 law, as amended by section 20 of part R of chapter 85 of the laws of  
5 2002, is amended to read as follows:

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

13 § 22. Subparagraph (i) of paragraph (a) of subdivision 3 of section 77  
14 of the lien law, as amended by section 21 of part R of chapter 85 of the  
15 laws of 2002, is amended to read as follows:

16 (i) Relief to compel an interim or final accounting by the trustee; to  
17 identify and recover trust assets in the hands of any person together  
18 with interest accrued thereon from the time of the diversion. Interest  
19 shall be computed at the rate equal to the underpayment rate set by the  
20 commissioner of taxation and finance pursuant to subsection (e) of  
21 section one thousand ninety-six of the tax law, minus [~~two~~] four  
22 percentage points; to set aside as a diversion any unauthorized payment,  
23 assignment or other transfer, whether voluntary or involuntary; to  
24 enjoin a diversion; to recover damages for breach of trust or partic-  
25 ipation therein;

26 § 23. Paragraph (a) of subdivision 8 of section 43.04 of the mental  
27 hygiene law, as amended by section 22 of part R of chapter 85 of the  
28 laws of 2002, is amended to read as follows:

29 (a) If an estimated payment made for a month to which an assessment  
30 applies is less than ninety percent of the actual amount due for such  
31 month, interest shall be due and payable to the commissioner of the  
32 office of mental retardation and developmental disabilities on the  
33 difference between the amount paid and the amount due from the day of  
34 the month the estimated payment was due until the date of payment. The  
35 rate of interest shall be twelve percent per annum or at the rate of  
36 interest set by the commissioner of taxation and finance with respect to  
37 underpayments of tax pursuant to subsection (e) of section one thousand  
38 ninety-six of the tax law minus [~~two~~] four percentage points. Interest  
39 under this paragraph shall not be paid if the amount thereof is less  
40 than one dollar. Interest, if not paid by the due date of the following  
41 month's estimated payment, may be collected by the commissioner of the  
42 office of mental retardation and developmental disabilities pursuant to  
43 paragraph (c) of subdivision six of this section in the same manner as  
44 an assessment pursuant to subdivision two of this section.

45 § 24. Paragraph (a) of subdivision 8 of section 43.06 of the mental

46 hygiene law, as amended by section 23 of part R of chapter 85 of the  
47 laws of 2002, is amended to read as follows:

48 (a) If an estimated payment made for a month to which an assessment  
49 applies is less than ninety percent of the actual amount due for such  
50 month, interest shall be due and payable to the commissioner on the  
51 difference between the amount paid and the amount due from the day of  
52 the month the estimated payment was due until the date of payment. The  
53 rate of interest shall be twelve percent per annum or at the rate of  
54 interest set by the commissioner of taxation and finance with respect to  
55 underpayments of tax pursuant to subsection (e) of section one thousand  
56 ninety-six of the tax law minus [~~two~~ four] percentage points. Interest  
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1 under this paragraph shall not be paid if the amount thereof is less  
2 than one dollar. Interest, if not paid by the due date of the following  
3 month's estimated payment, may be collected by the commissioner pursuant  
4 to paragraph (c) of subdivision six of this section in the same manner  
5 as an assessment pursuant to subdivision two of this section.

6 § 25. Subparagraph (i) of paragraph (c) of subdivision 20 of section  
7 2807-c of the public health law, as amended by section 24 of part R of  
8 chapter 85 of the laws of 2002, is amended to read as follows:

9 (i) Interest shall be due and payable to the commissioner by a general  
10 hospital or by a payor paying directly to a pool on the difference  
11 between the amount paid to a pool and the amount due to such pool by the  
12 hospital or payor from the day of the month the payment was due until  
13 the date of payment. The rate of interest shall be twelve percent per  
14 annum or at the rate of interest set by the commissioner of taxation and  
15 finance with respect to underpayments of tax pursuant to subsection (e)  
16 of section one thousand ninety-six of the tax law minus [~~two~~ four]  
17 percentage points. Interest under this paragraph shall not be paid if  
18 the amount thereof is less than one dollar. Interest may be collected by  
19 the commissioner in the same manner as an arrearage pursuant to this  
20 subdivision.

21 § 26. Paragraph (a) of subdivision 8 of section 2807-d of the public  
22 health law, as amended by section 25 of part R of chapter 85 of the laws  
23 of 2002, is amended to read as follows:

24 (a) If an estimated payment made for a month to which an assessment  
25 applies is less than ninety percent of the actual amount due for such  
26 month, interest shall be due and payable to the commissioner on the  
27 difference between the amount paid and the amount due from the day of  
28 the month the estimated payment was due until the date of payment. The  
29 rate of interest shall be twelve percent per annum or at the rate of  
30 interest set by the commissioner of taxation and finance with respect to  
31 underpayments of tax pursuant to subsection (e) of section one thousand  
32 ninety-six of the tax law minus [~~two~~ four] percentage points. Interest  
33 under this paragraph shall not be paid if the amount thereof is less  
34 than one dollar. Interest, if not paid by the due date of the following  
35 month's estimated payment, may be collected by the commissioner pursuant  
36 to paragraph (c) of subdivision six of this section in the same manner  
37 as an assessment pursuant to subdivision two of this section.

38 § 27. Subparagraph (i) of paragraph (c) of subdivision 4 of section  
39 2807-f of the public health law, as amended by section 26 of part R of  
40 chapter 85 of the laws of 2002, is amended to read as follows:

41 (i) If a payment made for a month to which a payment factor applies is  
42 less than ninety percent of the actual amount due for such month, inter-  
43 est shall be due and payable to the commissioner by a health maintenance  
44 organization on the difference between the amount paid and the amount  
45 due from the day of the month the payment was due until the date of  
46 payment. The rate of interest shall be twelve percent per annum or, if  
47 greater, at the rate of interest set by the commissioner of taxation and  
48 finance with respect to underpayments of tax pursuant to subsection (e)  
49 of section one thousand ninety-six of the tax law minus [~~two~~ four]  
50 percentage points. Interest under this paragraph shall not be paid if

51 the amount thereof is less than one dollar.

52 § 28. Paragraph (a) of subdivision 8 of section 2807-j of the public  
53 health law, as amended by section 27 of part R of chapter 85 of the laws  
54 of 2002, is amended to read as follows:

55 (a) If a payment made pursuant to this section or to section twenty-  
56 eight hundred seven-s or twenty-eight hundred seven-t of this article  
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1 for a month to which an allowance applies is less than ninety percent of  
2 the amount due or which the commissioner estimates, based on available  
3 financial and statistical data, is due for such month, interest shall be  
4 due and payable to the commissioner by a designated provider of  
5 services, or by a third-party payor, other than a state governmental  
6 agency, that has elected to pay an allowance directly, on the difference  
7 between the amount paid and the amount due or estimated to be due from  
8 the day of the month the payment was due until the date of payment. The  
9 rate of interest shall be twelve percent per annum or, if greater, at  
10 the rate of interest set by the commissioner of taxation and finance  
11 with respect to underpayments of tax pursuant to subsection (e) of  
12 section one thousand ninety-six of the tax law minus [~~two~~] four percent-  
13 age points. Interest under this paragraph shall not be paid if the  
14 amount thereof is less than one dollar. Interest due from a designated  
15 provider of services, if not paid by the due date of the following  
16 month's payment, may be collected by the commissioner pursuant to para-  
17 graph (c) of subdivision six of this section in the same manner as an  
18 allowance pursuant to subdivision two of this section.

19 § 29. Paragraph (a) of subdivision 8 of section 3614-a of the public  
20 health law, as amended by section 28 of part R of chapter 85 of the laws  
21 of 2002, is amended to read as follows:

22 (a) If an estimated payment made for a month to which an assessment  
23 applies is less than ninety percent of the actual amount due for such  
24 month, interest shall be due and payable to the commissioner on the  
25 difference between the amount paid and the amount due from the day of  
26 the month the estimated payment was due until the date of payment. The  
27 rate of interest shall be twelve percent per annum or at the rate of  
28 interest set by the commissioner of taxation and finance with respect to  
29 underpayments of tax pursuant to subsection (e) of section one thousand  
30 ninety-six of the tax law minus [~~two~~] four percentage points. Interest  
31 under this paragraph shall not be paid if the amount thereof is less  
32 than one dollar. Interest, if not paid by the due date of the following  
33 month's estimated payment, may be collected by the commissioner pursuant  
34 to paragraph (c) of subdivision six of this section in the same manner  
35 as an assessment pursuant to subdivision two of this section.

36 § 30. Paragraph (a) of subdivision 8 of section 3614-b of the public  
37 health law, as amended by section 29 of part R of chapter 85 of the laws  
38 of 2002, is amended to read as follows:

39 (a) If an estimated payment made for a month to which assessment  
40 applies is less than ninety percent of the actual amount due for such  
41 month, interest shall be due and payable to the commissioner on the  
42 difference between the amount paid and the amount due from the day of  
43 the month the estimated payment was due until the date of the payment.  
44 The rate of interest shall be twelve percent per annum or at the rate of  
45 interest set by the commissioner of taxation and finance with respect to  
46 underpayment of tax pursuant to subsection (e) of section one thousand  
47 ninety-six of the tax law minus [~~two~~] four percentage points. Interest  
48 under this paragraph shall not be paid if the amount thereof is less  
49 than one dollar. Interest, if not paid by the due date of the following  
50 month's estimated payment, may be collected by the commissioner pursuant  
51 to paragraph (c) of subdivision six of this section in the same manner  
52 as an assessment pursuant to subdivision two of this section.

53 § 31. Subdivision 2 of section 726 of the real property tax law, as  
54 amended by section 30 of part R of chapter 85 of the laws of 2002, is  
55 amended to read as follows:

1 2. Interest shall be paid on the amount of any refund made pursuant to  
2 this section, computed from the date of payment of the tax or other levy  
3 or portion thereof refunded; provided, however, that interest on the  
4 amount of any such refund for the period after any final order determin-  
5 ing the assessment reviewed to be excessive, unequal or unlawful, or  
6 determining that real property was misclassified, notwithstanding that  
7 an appeal in the proceeding or from such order may be pending, shall be  
8 paid only from the date that application for audit and payment of such  
9 refund shall have been duly made to the appropriate fiscal officer or  
10 body. Such rate of interest shall be the overpayment rate set by the  
11 commissioner of taxation and finance pursuant to subsection (j) of  
12 section six hundred ninety-seven of the tax law, plus two percentage  
13 points, and such interest rate shall not be greater than nine percent  
14 per annum. Provided, the interest rate of the first calendar quarter  
15 set forth in the first month of the calendar year shall be the annual  
16 interest rate, and shall be the rate of interest prescribed by this  
17 subdivision. If, as a result of an appeal, there shall be an increase in  
18 the amount to be refunded, for the purposes of computing the interest  
19 thereon the determination upon such appeal shall be deemed a determi-  
20 nation only with respect to such increase.

21 § 32. Subdivision 2 of section 924-a of the real property tax law, as  
22 amended by chapter 355 of the laws of 2003, is amended to read as  
23 follows:

24 2. The rate of interest applicable to the third calendar quarter of  
25 each year, as set by the commissioner of taxation and finance pursuant  
26 to subparagraph (A) of paragraph two of subsection (j) of section six  
27 hundred ninety-seven of the tax law, plus two percentage points, shall  
28 be the rate of interest applicable to unpaid real property taxes for  
29 purposes of this section. Such commissioner shall set such rate on or  
30 before the fifteenth day of July in each year. Such rate shall be effec-  
31 tive for all warrants issued for a collection period commencing on or  
32 after the first day of September next succeeding the date the rate of  
33 interest is set. Provided, however, the rate of interest prescribed by  
34 this subdivision shall in no event be less than twelve per centum per  
35 annum. The state board shall inform each affected municipality of any  
36 change in the rate established pursuant to this subdivision.

37 § 33. Paragraph (a) of subdivision 7 of section 367-i of the social  
38 services law, as amended by section 32 of part R of chapter 85 of the  
39 laws of 2002, is amended to read as follows:

40 (a) If an estimated payment made for a month to which an assessment  
41 applies is less than ninety percent of the actual amount due for such  
42 month, interest shall be due and payable to the commissioner of health  
43 on the difference between the amount paid and the amount due from the  
44 day of the month the estimated payment was due until the date of  
45 payment. The rate of interest shall be twelve percent per annum or at  
46 the rate of interest set by the commissioner of taxation and finance  
47 with respect to underpayments of tax pursuant to subsection (e) of  
48 section one thousand ninety-six of the tax law minus [~~two~~] four percent-  
49 age points. Interest under this paragraph shall not be paid if the  
50 amount thereof is less than one dollar. Interest, if not paid by the due  
51 date of the following month's estimated payment, may be collected by the  
52 commissioner of health pursuant to paragraph (c) of subdivision five of  
53 this section in the same manner as an assessment pursuant to subdivision  
54 two of this section.

1 § 34. Subdivision 4 of section 18 of the state finance law, as amended  
2 by section 33 of part R of chapter 85 of the laws of 2002, is amended to  
3 read as follows:

4 4. Unless provided otherwise by contract, statute or regulation, a  
5 debtor that fails to make payment of a debt within the period set forth

6 in subdivision three of this section shall pay, in addition to the  
7 amount of debt, the greater of: (a) interest on the outstanding balance  
8 of the debt, accruing on the date on which the receipt of the first  
9 billing invoice or first notice occurs, computed at the underpayment  
10 rate which is in effect on the date which the receipt of the first bill-  
11 ing invoice or first billing notice occurs; or (b) a late payment charge  
12 of ten dollars. For the purposes of this section, the underpayment rate  
13 shall be that rate set by the commissioner of taxation and finance and  
14 published in the state register pursuant to subsection (e) of section  
15 one thousand ninety-six of the tax law minus [~~two~~] four percentage  
16 points. With respect to specific classes of debt collected by a state  
17 agency, the director of the budget or official of a state agency so  
18 designated by the director of the budget may approve the assessment of  
19 interest or late payment charges at a date later than the thirtieth day  
20 following such debtor's receipt of any billing invoice or notice sent by  
21 the state agency.

22 § 35. Subdivisions (a) and (j) of section 11-1784 of the administra-  
23 tive code of the city of New York, as amended by section 34 of part R of  
24 chapter 85 of the laws of 2002, are amended to read as follows:

25 (a) General. If any amount of income tax is not paid on or before the  
26 last date prescribed in this chapter for payment, interest on such  
27 amount at the underpayment rate set by the commissioner of taxation and  
28 finance pursuant to section 11-1797 of this subchapter, or if no rate is  
29 set, at the rate of [~~six~~] seven and one-half percent per annum shall be  
30 paid for the period from such last date to the date paid, whether or not  
31 any extension of time for payment was granted. Interest under this  
32 subdivision shall not be paid if the amount thereof is less than one  
33 dollar. If the time for filing of a return of tax withheld by an employ-  
34 er is extended, the employer shall pay interest for the period for which  
35 the extension is granted and may not charge such interest to the employ-  
36 ee.

37 (j) Interest on erroneous refund. Any portion of tax or other amount  
38 which has been erroneously refunded, and which is recoverable by the  
39 commissioner of taxation and finance, shall bear interest at the under-  
40 payment rate set by such commissioner pursuant to section 11-1797 of  
41 this subchapter, or if no rate is set, at the rate of [~~six~~] seven and  
42 one-half percent per annum from the date of the payment of the refund,  
43 but only if it appears that any part of the refund was induced by fraud  
44 or a misrepresentation of a material fact.

45 § 36. Paragraph 1 of subdivision (c) of section 11-1785 of the admin-  
46 istrative code of the city of New York, as amended by section 35 of part  
47 R of chapter 85 of the laws of 2002, is amended to read as follows:

48 (1) Addition to the tax. Except as otherwise provided in this subdivi-  
49 sion and subdivision (d) of this section, in the case of any underpay-  
50 ment of estimated tax by an individual, there shall be added to the tax  
51 under this chapter for the taxable year an amount determined by applying  
52 the underpayment rate established under section 11-1797 of this subchap-  
53 ter, or if no rate is set, at the rate of [~~six~~] seven and one-half  
54 percent per annum, to the amount of the underpayment for the period of  
55 the underpayment. Such period shall run from the due date for the  
56 required installment to the earlier of the fifteenth day of the fourth  
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1 month following the close of the taxable year or, with respect to any  
2 portion of the underpayment, the date on which such portion is paid. For  
3 purposes of determining such date, a payment of estimated tax shall be  
4 credited against unpaid required installments in the order in which such  
5 installments are required to be paid. There shall be four required  
6 installments for each taxable year, due on April fifteenth, June  
7 fifteenth and September fifteenth of such taxable year and on January  
8 fifteenth of the following taxable year.

9 § 37. Paragraph 1 of subdivision (j) of section 11-1797 of the admin-  
10 istrative code of the city of New York, as amended by section 5 of part

11 M3 of chapter 62 of the laws of 2003, is amended to read as follows:

12 (1) Authority to set interest rates. The commissioner of taxation and  
13 finance shall set the overpayment and underpayment rates of interest to  
14 be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this  
15 subchapter, but if no such rates of interest are set, such [~~rates~~] over-  
16 payment rate shall be deemed to be set at six percent per annum and the  
17 underpayment rate shall be deemed to be set at seven and one-half  
18 percent per annum. Such rates shall be the rates prescribed by para-  
19 graphs two and four of this subdivision, but the underpayment rate shall  
20 not be less than [~~six~~] seven and one-half percent per annum. Any such  
21 rates set by such commissioner shall apply to taxes, or any portion  
22 thereof, which remain or become due or overpaid on or after the date on  
23 which such rates become effective and shall apply only with respect to  
24 interest computed or computable for periods or portions of periods  
25 occurring in the period during which such rates are in effect.

26 § 38. Paragraph 2 of subdivision (j) of section 11-1797 of the admin-  
27 istrative code of the city of New York, as amended by section 37 of part  
28 R of chapter 85 of the laws of 2002, is amended to read as follows:

29 (2) Rates of interest. (A) Overpayment rate. The overpayment rate of  
30 interest set under this subdivision shall be the [~~sum of (i) the~~] feder-  
31 al short-term rate as provided under paragraph three of this subdivi-  
32 sion[~~, plus (ii) two percentage points~~].

33 (B) Underpayment rate. The underpayment rate of interest set under  
34 this subdivision shall be the sum of (i) the federal short-term rate as  
35 provided under paragraph three of this subdivision, plus (ii) [~~four~~]  
36 five and one-half percentage points.

37 § 39. This act shall take effect immediately, and shall apply to the  
38 interest chargeable or due on taxes or on any other amounts, or any  
39 portion thereof, that remain or become due or overpaid on that day,  
40 except that:

41 (a) Section ten of this act shall take effect on June 1, 2009, and  
42 shall apply to refunds or credits claimed on returns or applications for  
43 refund or credit filed on or after that date;

44 (b) Provided, however, that the amendments to paragraph (a) of subdi-  
45 vision 8 of section 2807-j of the public health law made by section  
46 twenty-eight of this act shall not affect the expiration of such section  
47 and shall be deemed to expire therewith; and

48 (c) Notwithstanding any other provision of law, for the calendar quar-  
49 ter in which this act becomes a law, the department of taxation and  
50 finance may provide appropriate general notice of the new interest rates  
51 for that calendar quarter within twenty days after the date this act has  
52 become a law, without needing to have notice of the rates published in  
53 advance in the State Register, and shall cause such a notice to be  
54 published in the State Register as soon as is practicable.

55 SUBPART N  
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1 Section 1. Section 1136 of the tax law is amended by adding a new  
2 subdivision (i) to read as follows:

3 (i) (1) The following persons must file, in addition to any other  
4 return required by this chapter, annual information returns with the  
5 commissioner providing the information specified below about their tran-  
6 sactions with vendors, hotel operators, and recipients of amusement  
7 charges:

8 (A) Every insurer licensed to issue motor vehicle physical damage or  
9 motor vehicle property damage liability insurance for motor vehicles  
10 registered in this state if, during the period covered by the return, it  
11 has paid consideration or an amount under an insurance contract for the  
12 servicing or repair of a motor vehicle on behalf of an insured. For each  
13 person to whom the insurer has paid the consideration or amount  
14 described in the preceding sentence, the return must report the total  
15 amount paid for that period, along with the other information required

16 by paragraph two of this subdivision.

17 (B) Every franchisor, as defined by section six hundred eighty-one of  
18 the general business law, that has at least one franchisee, as defined  
19 by subdivision four of section six hundred eighty-one of the general  
20 business law, that is required to be registered under section eleven  
21 hundred thirty-four of this part. For each franchisee, the return must  
22 include the gross sales of the franchisee in this state reported by the  
23 franchisee to the franchisor, the total amount of sales by the franchi-  
24 sor to the franchisee, and any income reported to the franchisor by each  
25 franchisee, along with the information required by paragraph two of this  
26 subdivision.

27 (C) Every wholesaler, as defined by section three of the alcoholic  
28 beverage control law, if it has made a sale of an alcoholic beverage, as  
29 defined by section four hundred twenty of this chapter, without collect-  
30 ing sales or use tax during the period covered by the return, except (i)  
31 a sale to a person that has furnished an exempt organization certificate  
32 to the wholesaler for that sale; or (ii) a sale to another wholesaler  
33 whose license under the alcoholic beverage control law does not allow it  
34 to make retail sales of the alcoholic beverage. For each vendor, opera-  
35 tor, or recipient to whom the wholesaler has made a sale without  
36 collecting sales or compensating use tax, the return must include the  
37 total value of those sales made during the period covered by the return  
38 (excepting the sales described in clauses (i) and (ii) of this subpara-  
39 graph) and the vendor's, operator's or recipient's state liquor authori-  
40 ty license number, along with the information required by paragraph two  
41 of this subdivision.

42 (2) The returns required by paragraph one of this subdivision must  
43 also include, for each vendor, operator, or recipient about whom infor-  
44 mation is required to be reported under such paragraph, the name and  
45 address, and the certificate of authority or federal identification  
46 number, and any other information required by the commissioner. The  
47 commissioner may, in the commissioner's discretion, require the report-  
48 ing of less than all the information otherwise required to be reported  
49 by this paragraph and paragraph one of this subdivision.

50 (3) The returns required by paragraph one of this subdivision must be  
51 filed annually on or before March twentieth and must cover the four  
52 sales tax quarterly periods immediately preceding such date. Notwith-  
53 standing section three hundred five of the state technology law or any  
54 other law to the contrary, the returns must be filed electronically in  
55 the manner prescribed by the commissioner.

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1 (4) Any person required to file a return under paragraph one of this  
2 subdivision must, on or before March twentieth, give to each vendor,  
3 operator, or recipient about whom information is required to be reported  
4 in the return the information pertaining to that person. The commission-  
5 er may prescribe a form to be used to provide the information required  
6 to be given by this paragraph.

7 (5) Nothing in this subdivision is to be construed to limit the  
8 persons from whom the commissioner can secure information or the infor-  
9 mation the commissioner can require from those persons pursuant to the  
10 commissioner's authority under section eleven hundred forty-three of  
11 this part or any other provision of law.

12 § 2. Section 1145 of the tax law is amended by adding a new subdivi-  
13 sion (i) to read as follows:

14 (i)(1) Every person required to file an information return by subdivi-  
15 sion (i) of section eleven hundred thirty-six of this part who (A) fails  
16 to provide any of the information required by paragraph one or two of  
17 subdivision (i) of section eleven hundred thirty-six of this part for a  
18 vendor, operator, or recipient, or who fails to include any such infor-  
19 mation that is true and correct (whether or not such a report is filed)  
20 for a vendor, operator, or recipient, or (B) fails to provide the infor-  
21 mation required by paragraph four of subdivision (i) of section eleven

22 hundred thirty-six of this part to a vendor, operator, or recipient  
23 specified in paragraph four of subdivision (i) of section eleven hundred  
24 thirty-six of this part, will, in addition to any other penalty provided  
25 in this article or otherwise imposed by law, be subject to a penalty of  
26 five hundred dollars for ten or fewer failures, and up to fifty dollars  
27 for each additional failure.

28 (2) Every person failing to file an information return required by  
29 subdivision (i) of section eleven hundred thirty-six of this part within  
30 the time required by subdivision (i) of section eleven hundred thirty-  
31 six of this part will, in addition to any other penalty provided for in  
32 this article or otherwise imposed by law, be subject to a penalty in an  
33 amount not to exceed two thousand dollars for each such failure,  
34 provided that the minimum penalty under this paragraph is five hundred  
35 dollars.

36 (3) In no event will the penalty imposed by paragraph one, or the  
37 aggregate of the penalties imposed under paragraphs one and two of this  
38 subdivision, exceed ten thousand dollars for any annual filing period as  
39 described by paragraph three of subdivision (i) of section eleven  
40 hundred thirty-six of this part.

41 (4) If the commissioner determines that any of the failures that are  
42 subject to penalty under this subdivision was entirely due to reasonable  
43 cause and not due to willful neglect, the commissioner must remit the  
44 penalty imposed under this subdivision. These penalties will be deter-  
45 mined, assessed, collected, paid, disposed of and enforced in the same  
46 manner as taxes imposed by this article and all the provisions of this  
47 article relating thereto will be deemed also to refer to these penal-  
48 ties.

49 § 3. This act shall take effect immediately, provided that the first  
50 return required by subdivision (i) of section 1136 of the tax law, as  
51 added by section one of this act, shall be due on or before September  
52 20, 2009 and shall cover the period March 1, 2009 through August 31,  
53 2009; provided, further, that the returns required to be filed by such  
54 subdivision on or before March 20, 2010, shall cover the period from  
55 September 1, 2009 to February 28, 2010.

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SUBPART 0

2 Section 1. Section 6 of the tax law is REPEALED and a new section 6 is  
3 added to read as follows:

4 § 6. Filing of tax warrants and related records in the department of  
5 state. (a) Definitions. As used in this section:

6 (1) "date of filing" means the date on which the department of state  
7 enters the complete data received from the department regarding a  
8 warrant or related record into the department of state database for tax  
9 warrants and related records for filing;

10 (2) "electronic" has the same meaning given such term by subdivision  
11 one of section three hundred two of the state technology law;

12 (3) "related records" means one or more of the following: satisfac-  
13 tion-piece, vacatur of a warrant, amended warrant, release of lien, or  
14 other document authorized by applicable law, related to a warrant, other  
15 than a warrant;

16 (4) "related statute" means any law, ordinance or resolution enacted  
17 pursuant to the authority of this chapter, the environmental conserva-  
18 tion law, the racing, pari-mutuel wagering and breeding law, or any  
19 other law, that imposes a tax;

20 (5) "tax" means any tax, special assessment, fee, addition to tax,  
21 penalty, interest, or other imposition that is administered by the  
22 commissioner, as well as child support and combined child and spousal  
23 support arrears collected by the commissioner pursuant to the provisions  
24 of section one hundred seventy one-i of this chapter; and

25 (6) "warrant" means a warrant issued by the commissioner to collect  
26 any tax.

27 (b) Filing in the department of state. (1) Filing of tax warrants.  
28 Notwithstanding any provision of this chapter or a related statute to  
29 the contrary, all warrants must be filed by the department solely in the  
30 department of state. No fee will be required to be paid for these  
31 filings. On the date of filing of a warrant:

32 (1) the amount of the tax stated in the warrant will become a lien  
33 upon the title to and interest in all real, personal or other property  
34 located in the state, owned by the person or persons named in the  
35 warrant. The lien so created will

36 (A) attach to all real property and rights to real property located in  
37 the state that is owned by the person or persons named in the warrant at  
38 any time during the period of the lien, including any real property or  
39 rights to real property located in the state that is acquired by the  
40 person or persons after the lien arises; and

41 (B) apply to all personal or other property and rights to personal or  
42 other property located in the state that is owned by the person or  
43 persons named in the warrant at any time during the period of the lien,  
44 including any personal or other property or rights to personal or other  
45 property located in the state that is acquired by the person or persons  
46 after the lien arises.

47 (2) the commissioner will, in the right of the people of the state of  
48 New York, be deemed to have obtained a judgment against the person or  
49 persons named in the warrant for the amount of the tax stated in the  
50 warrant.

51 (c) If the department filed a warrant in a county clerk's office  
52 before October first, two thousand nine, then, as of October first, two  
53 thousand nine and thereafter, the department will be deemed to have  
54 filed that warrant in the county clerk's office in every other county of  
55 the state, and the commissioner will be deemed to have obtained a judg-

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1 ment in every other county of the state against the person or persons  
2 named in that warrant for the amount of the tax stated in that warrant.  
3 By October first, two thousand nine, the commissioner must provide  
4 notice, in a form prescribed by the commissioner, to all persons  
5 affected by this subdivision.

6 (d) Enforcement of a judgment obtained pursuant to the provisions of  
7 subdivision (b) or (c) of this section will be as prescribed in article  
8 fifty-two of the civil practice law and rules.

9 (e) Filing of related records. (1) Notwithstanding any provision of  
10 this chapter or a related statute to the contrary, if the department is  
11 filing any related record, the record must be filed solely in the  
12 department of state; provided, however, that any related record filed on  
13 or after October first, two thousand nine that pertains to a warrant  
14 filed prior to October first, two thousand nine, must be filed in the  
15 department of state.

16 (2) No fee will be required to be paid for the filings described in  
17 paragraph one of this subdivision.

18 (f) Manner of filing with the department of state and public notice of  
19 filings. The department must file warrants and related records electron-  
20 ically with the department of state. The department of state will  
21 provide acknowledgement to the department of the date of filing of the  
22 warrants and related records. The department of state must also make  
23 information regarding the warrants and related records, including the  
24 date of filing, available to the public. This information must be  
25 searchable electronically by the name of the person or persons listed in  
26 the tax warrant. Warrant and related record information must be made  
27 available to the public electronically.

28 § 2. Subdivision 1 of section 174-a of the tax law, as added by chap-  
29 ter 176 of the laws of 1997, is amended to read as follows:

30 1. General rule. Notwithstanding any provision of law to the contrary,  
31 the provisions of the civil practice law and rules relating to the dura-  
32 tion of a lien of a docketed judgment in and upon real property of a

33 judgment debtor, and the extension of [~~any such~~] that lien, [~~shall~~] will  
34 apply to any warrant filed on behalf of the commissioner against a  
35 taxpayer with [~~the clerk of a county wherein such taxpayer owns or has~~  
36 ~~an interest in real property~~] any recording or filing officer, including  
37 a county clerk or the department of state, whether [~~such~~] the warrant is  
38 being enforced by a sheriff or an officer or employee of the department.

39 § 3. Section 279-b of the tax law is amended by adding a new closing  
40 paragraph to read as follows:

41 Notwithstanding any provision of this section concerning the place of  
42 filing of a tax warrant and the creation thereby of a tax lien and judg-  
43 ment, the provisions of section six of this chapter will govern these  
44 matters for purposes of the taxes imposed by this article.

45 § 4. Section 289 of the tax law is amended by adding a new closing  
46 paragraph to read as follows:

47 Notwithstanding any provision of this section concerning the place of  
48 filing of a tax warrant and the creation thereby of a tax lien and judg-  
49 ment, the provisions of section six of this chapter will govern these  
50 matters for purposes of the taxes imposed by this article.

51 § 5. Section 431 of the tax law is amended by adding a new subdivision  
52 4 to read as follows:

53 4. Notwithstanding any provision of this section concerning the place  
54 of filing of a tax warrant and the creation thereby of a tax lien and  
55 judgment, the provisions of section six of this chapter will govern  
56 these matters for purposes of the taxes imposed by this article.

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1 § 6. Section 479 of the tax law is amended by adding a new closing  
2 paragraph to read as follows:

3 Notwithstanding any provision of this section concerning the place of  
4 filing of a tax warrant and the creation thereby of a tax lien and judg-  
5 ment, the provisions of section six of this chapter will govern these  
6 matters for purposes of the taxes imposed by this article.

7 § 7. Subdivisions 3, 4 and 5 of section 511 of the tax law are renum-  
8 bered subdivisions 4, 5 and 6, and a new subdivision 3 is added to read  
9 as follows:

10 3. Notwithstanding any provision of this section concerning the place  
11 of filing of a tax warrant and the creation thereby of a tax lien and  
12 judgment, the provisions of section six of this chapter will govern  
13 these matters for purposes of the taxes imposed by this article.

14 § 8. Section 692 of the tax law is amended by adding a new subsection  
15 (j) to read as follows:

16 (j) Notwithstanding any provision of this section concerning the place  
17 of filing of a tax warrant and the creation thereby of a tax lien and  
18 judgment, the provisions of section six of this chapter will govern  
19 these matters for purposes of the taxes imposed by this article.

20 § 9. Subsection (j) of section 1092 of the tax law is relettered  
21 subsection (k), and a new subsection (j) is added to read as follows:

22 (j) Notwithstanding any provision of this section concerning the place  
23 of filing of a tax warrant and the creation thereby of a tax lien and  
24 judgment, the provisions of section six of this chapter will govern  
25 these matters for purposes of any tax to which this article applies.

26 § 10. Subdivision (c) of section 1141 of the tax law is relettered  
27 subdivision (d), and a new subdivision (c) is added to read as follows:

28 (c) Notwithstanding any provision of this section concerning the place  
29 of filing of a tax warrant and the creation thereby of a tax lien and  
30 judgment, the provisions of section six of this chapter will govern  
31 these matters for purposes of the taxes imposed by this article.

32 § 11. Section 1414 of the tax law is amended by adding a new subdivi-  
33 sion (c) to read as follows:

34 (c) Notwithstanding any provision of this section concerning the place  
35 of filing of a tax warrant and the creation thereby of a tax lien and  
36 judgment, the provisions of section six of this chapter will govern  
37 these matters for purposes of the taxes imposed by this article.

38 § 12. This act shall take effect October 1, 2009; provided, however,  
39 that:

40 (a) effective immediately, the department of taxation and finance and  
41 the department of state are authorized to take any steps necessary to  
42 implement the provisions of this act on its effective date on or before  
43 such date; and

44 (b) the provisions of this act shall apply to warrants and related  
45 records pertaining to those warrants filed, or deemed to have been  
46 filed, on or after October 1, 2009.

47 SUBPART P

48 Section 1. Subdivision (c) of section 1141 of the tax law, as amended  
49 by chapter 27 of the laws of 1977, the third undesignated paragraph as  
50 added by chapter 706 of the laws of 1980, is amended to read as follows:

51 (c) Whenever a person required to collect tax shall make a sale,  
52 transfer, or assignment in bulk of any part or the whole of his or her  
53 business assets, otherwise than in the ordinary course of business, the  
54 purchaser, transferee or assignee shall at least ten days before taking  
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1 possession of the subject of said sale, transfer or assignment, or  
2 paying therefor, notify the [~~tax commission~~] commissioner by registered  
3 mail of the proposed sale and of the price, terms and conditions thereof  
4 whether or not the seller, transferrer or assignor, has represented to,  
5 or informed the purchaser, transferee or assignee that he or she owes  
6 any tax, penalty, or interest pursuant to this article, and whether or  
7 not the purchaser, transferee, or assignee has knowledge that such  
8 taxes, penalty, or interest are owing, and whether any such taxes,  
9 penalty, or interest are in fact owing.

10 Whenever the purchaser, transferee or assignee shall fail to give  
11 notice to the [~~tax commission~~] commissioner as required by the preceding  
12 paragraph, or whenever the [~~tax commission~~] commissioner shall inform  
13 the purchaser, transferee or assignee that a possible claim for such tax  
14 or taxes, penalty, or interest exists, any sums of money, property or  
15 choses in action, or other consideration, which the purchaser, transfer-  
16 ee or assignee is required to transfer over to the seller, transferrer  
17 or assignor shall be subject to a first priority right and lien for any  
18 such taxes, penalty, or interest theretofore or thereafter determined to  
19 be due from the seller, transferrer or assignor to the state, and the  
20 purchaser, transferee or assignee is forbidden to transfer to the sell-  
21 er, transferrer or assignor any such sums of money, property or choses  
22 in action to the extent of the amount of the state's claim. Within nine-  
23 ty days of receipt of the notice of the sale, transfer, or assignment  
24 from the purchaser, transferee or assignee, the [~~tax commission~~] commis-  
25 sioner shall give notice to the purchaser, transferee or assignee and to  
26 the seller, transferrer, or assignor of the total amount of any tax or  
27 taxes, penalty, or interest which the state claims to be due from the  
28 seller, transferrer, or assignor to the state, and whenever the [~~tax~~  
29 ~~commission~~] commissioner shall fail to give such notice to the purchas-  
30 er, transferee, or assignee and the seller, transferrer, or assignor  
31 within ninety days from receipt of notice of the sale, transfer, or  
32 assignment, such failure will release the purchaser, transferee or  
33 assignee from any further obligation to withhold any sums of money,  
34 property or choses in action, or other consideration, which the purchas-  
35 er, transferee or assignee is required to transfer over to the seller,  
36 transferrer or assignor[~~, except that with respect to pending matters~~  
37 ~~such ninety day periods shall not begin to run until ninety days after~~  
38 ~~the effective date of this provision~~]. For failure to comply with the  
39 provisions of this subdivision the purchaser, transferee or assignee[~~,~~  
40 ~~in addition to being subject to the liabilities and remedies imposed~~  
41 ~~under the provisions of article six of the uniform commercial code,~~  
42 shall be personally liable for the payment to the state of any such

43 taxes, penalty, or interest theretofore or thereafter determined to be  
44 due to the state from the seller, transferrer or assignor, except that  
45 the liability of the purchaser, transferee or assignee shall be limited  
46 to an amount not in excess of the purchase price or fair market value of  
47 the business assets sold, transferred or assigned to such purchaser,  
48 transferee, or assignee, whichever is higher, and such liability may be  
49 assessed and enforced in the same manner as the liability for tax under  
50 this article. Upon receipt within the ninety days as aforesaid of the  
51 notice of the total amount of the state's claim from the [~~tax commis-~~  
52 ~~sion~~] commissioner, and demand for payment thereof, the purchaser,  
53 transferee or assignee may make payment of such claim to the state from  
54 any sums of money, property, or choses in action withheld in accord with  
55 the provisions of this paragraph, except that such payment shall be  
56 limited to an amount not in excess of the purchase price or fair market  
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1 value of the business assets sold, transferred, or assigned to such  
2 purchaser, transferee, or assignee, whichever is higher, and upon making  
3 the payment, such purchaser, transferee, or assignee shall be relieved  
4 of all liability for such amounts to the seller, transferrer, or assignor,  
5 and such amounts paid to the state shall be deemed satisfaction of  
6 the tax liability of the seller, transferrer, or assignor to the extent  
7 of the amount of such payment. Any reference in any provision of law to  
8 the liability of a purchaser, transferee, or assignee for tax under this  
9 subdivision shall include the liability of the purchaser, transferee or  
10 assignee for penalty or interest under this subdivision.

11 Where the liability of a purchaser, transferee or assignee, for the  
12 payment to the state of any such taxes, penalty, or interest determined  
13 to be due from the seller, transferrer or assignor, has been wholly paid  
14 or satisfied or no longer exists, the [~~tax commission~~] commissioner  
15 shall mail to such purchaser, transferee or assignee a notice, addressed  
16 to his last known address, setting forth that such liability has been  
17 wholly paid or satisfied or no longer exists. The [~~tax commission~~]  
18 commissioner shall include in such notice the following additional  
19 information:

20 (1) the name and last known address of the purchaser, transferee or  
21 assignee;

22 (2) the amount of the lien paid, satisfied or vacated; and

23 (3) a statement to the effect that consumer reporting agencies must  
24 delete from a credit file any reference to the particular tax lien with-  
25 in thirty days of receipt from the purchaser, transferee or assignee of  
26 such notice. Provided, however, no order or decree in a bankruptcy  
27 proceeding shall be construed as giving rise to the requirement that the  
28 notice provided for in this paragraph be given.

29 § 2. This act shall take effect June 1, 2009 and shall apply to sales,  
30 transfers, or assignments in bulk occurring on or after that date.

31 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
32 sion, section or part of this act shall be adjudged by any court of  
33 competent jurisdiction to be invalid, such judgment shall not affect,  
34 impair, or invalidate the remainder thereof, but shall be confined in  
35 its operation to the clause, sentence, paragraph, subdivision, section  
36 or part thereof directly involved in the controversy in which such judg-  
37 ment shall have been rendered. It is hereby declared to be the intent of  
38 the legislature that this act would have been enacted even if such  
39 invalid provisions had not been included herein.

40 § 3. This act shall take effect immediately provided, however, that  
41 the applicable effective date of Subparts A through P of this act shall  
42 be as specifically set forth in the last section of such Subparts.

43 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
44 sion, section or part of this act shall be adjudged by any court of  
45 competent jurisdiction to be invalid, such judgment shall not affect,  
46 impair, or invalidate the remainder thereof, but shall be confined in  
47 its operation to the clause, sentence, paragraph, subdivision, section

48 or part thereof directly involved in the controversy in which such judg-  
49 ment shall have been rendered. It is hereby declared to be the intent of  
50 the legislature that this act would have been enacted even if such  
51 invalid provisions had not been included herein.

52 § 3. This act shall take effect immediately provided, however, that  
53 the applicable effective date of Parts A through SS of this act shall be  
54 as specifically set forth in the last section of such Parts.

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