

STATE OF NEW YORK

S. 60

A. 160

SENATE - ASSEMBLY

(Prefiled)

January 7, 2009

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



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 information 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-



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



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

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

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[,]
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



(i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

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

(a) (1) Every domestic insurance corporation and every foreign or alien insurance corporation, and every life insurance corporation described in paragraph two of subdivision (b) of section fifteen hundred [one] ten of this article, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in a corporate or organized capacity, or of maintaining an office in the metropolitan commuter transportation district, for all or any part of its taxable years commencing on or after January first, nineteen hundred eighty-two, but ending before December thirty-first, two thousand thirteen, except corporations specified in subdivision (c) of section fifteen hundred twelve of this article, shall annually pay, in addition to the [taxes otherwise] tax imposed by section fifteen hundred ten of this article, a tax surcharge on [the taxes imposed under this article] that tax after the deduction of any credits otherwise allowable under this article as allocated to such district. [Such taxes shall be allocated to such district for purposes of computing such tax surcharge upon taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article by applying the methodology, procedures and computations set forth in subdivisions (a) and (b) of section fifteen hundred four of this article, except that references to terms denoting New York premiums, and total wages, salaries, personal service compensation and commissions within New York shall be read as denoting within the metropolitan commuter transportation district and terms denoting total premiums and total wages, salaries, personal service compensation and commissions shall be read as denoting within the state. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in such subdivisions (a) and (b) does not properly reflect the activity, business or income of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by:

(A) excluding one or more factors therein;

(B) including one or more other factors therein, such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or

(C) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(2) Such taxes] The tax imposed by section fifteen hundred ten shall be allocated to such district for purposes of computing such tax surcharge [upon taxpayers subject to tax under section fifteen hundred two-a of this article] pursuant to a fraction, the denominator of which shall be the direct premiums subject to tax under section fifteen hundred ten of this article, and the numerator of which shall be the



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] of a taxpayer within
15 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



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-
55 lege, pay a tax on all gross direct premiums, less return premiums ther-
56 eon, written on risks located or resident in this state. The rate of

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



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 subdi-
34 vision (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



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 subdi-
4 vision 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-



ever is applicable] subdivision (d) of section fifteen hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not taken in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

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

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

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

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

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

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

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

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

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



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, subdivi-
45 sion (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



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 subdivi-
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) [If] 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.



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

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

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

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

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

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

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

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



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

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

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

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

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

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

PART E

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

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

(a) "Claimant" means any state or the United States that enters into a reciprocal agreement under this section or requests application of a vendor payment or an overpayment to a debt.

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

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

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



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



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 subdivi-
15 sion 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

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.



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



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



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,



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

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

external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section.

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

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

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

(j) Credit for purchase of an automated external defibrillator. [A] For taxable years beginning before January first, two thousand nine, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article.

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

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

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

(a) Allowance of credit. [A] For taxable years beginning before January first, two thousand nine, a taxpayer, which is subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter and which is a qualified building owner, shall be allowed a credit against such tax. The amount of the credit allowed under this section shall equal the sum of the number of qualified security officers

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

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. [An] 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

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-



graph and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph (B) of this paragraph.

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

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

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

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



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	<u>[Cost] 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	<u>[Qualified] 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	<u>[Cost] 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



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	[Amount] <u>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



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



1		section two hundred ten
2	Clean heating fuel credit	Amount of credit under
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



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:



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

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

(1) Except as otherwise provided in paragraph two of this subdivision, for taxable years beginning on or after January first, nineteen hundred seventy-six, every taxpayer subject to tax under this article must pay in each year an amount equal to (i) twenty-five percent of the tax imposed under this article for the preceding taxable year if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] forty percent of the tax imposed under this article for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars. If the preceding year's tax exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section fifteen hundred five-a of this article, the taxpayer must also pay an amount equal to (i) twenty-five percent of the tax surcharge imposed under section fifteen hundred five-a for the preceding taxable year if the preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) [thirty] forty percent of the tax surcharge imposed for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars.

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

PART J

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

(3) Filing fees. (A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every [limited liability] partnership [under article eight-B of the partnership law and every foreign limited liability partnership,] which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall, within thirty days after the last day of the taxable



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

[under article eight-B of the partnership law and every foreign limited liability partnership,] which has any income derived from sources within such city, determined in accordance with the applicable rules of section six hundred thirty-one of this chapter as in the case of a state nonresident individual (except that in making that determination any references in section six hundred thirty-one of this chapter to "New York source" or "New York sources" shall be read as references to "New York city source" or "New York city sources" and any references in that section to "this state" or "the state" shall be read as references to "this city" or "the city"), shall within thirty days after the last day of the taxable year make a payment of a filing fee. The amount of the filing fee shall be the amount determined under paragraph three of subsection (c) of section six hundred fifty-eight of this chapter, except that in making that determination any references in that section to "New York source gross income" must be read as reference to "New York city source gross income". Any local law imposing the filing fee authorized by this section shall provide that where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes imposed pursuant to the authority of this article, and for these purposes any reference in the local law imposing those taxes to the taxes imposed by that local law shall be deemed also to refer to the filing fee imposed pursuant to the authority of this section.

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

PART K

Section 1. Section 957 of the general municipal law, as added by chapter 686 of the laws of 1986, subdivisions (b) and (f) as amended and subdivisions (c), (g), (i), (j), (k), and (l) as added by chapter 624 of the laws of 1990, subdivision (d) as amended and subdivision (r) as added by section 1 of part HH of chapter 59 of the laws of 2006, paragraphs (iii), (iv), (v) and (vi) of subdivision (d) as added by section 5 of part A of chapter 63 of the laws of 2005, subdivision (e) as amended and subdivisions (m), (n) and (o) as added by chapter 708 of the laws of 1993, subdivision (h) as amended by chapter 39 of the laws of 2004, subdivision (p) as added by chapter 170 of the laws of 1994, subdivision (q) as amended by chapter 161 of the laws of 2005, subdivisions (s) and (t) as added by section 1 of part V-1 of chapter 109 of the laws of 2006, subdivision (u) as added by chapter 494 of the laws of 2008 and subdivisions (a), (e), (f), (k), and (m) as further amended pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

§ 957. Definitions. As used in this article, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Applicant" shall mean the county, city, town or village submitting an application in the manner authorized by local law for designation of an area as an empire zone.

(b) "Commissioner" shall mean the commissioner of economic development.

(c) "Minority-owned business enterprise" shall [mean a business enterprise, including a sole proprietorship, partnership or corporation, that is:



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



project" shall mean: a manufacturer projecting the creation of fifty or more jobs; or an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more jobs; or a financial or insurance services or distribution center creating three hundred or more jobs; or a clean energy research and development enterprise shall be eligible as a regionally significant project as determined by [the local zone administrative board and] the commissioner. Other projects may be considered by the zone designation board;

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

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

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

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

(e) "Local empire zone administrative board" shall mean the entity designated by the applicant that is responsible for monitoring, evaluating and coordinating all empire zone benefits on behalf of the applicant. Such entity shall consist of at least six members, none of whom shall be the local empire zone certification officer, and shall be representative of local businesses, organized labor, community organizations, financial institutions, local educational institutions and residents of the empire zone.

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

(g) "Women-owned business enterprise" shall [mean a business enterprise, including a sole proprietorship, partnership or corporation, that is:

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

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

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

(iv) an enterprise authorized to do business in this state and independently owned and operated] have the same meaning as provided in section three hundred ten of the executive law.



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



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 (l) 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-



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,



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 munici-
5 pality 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;



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 (d) [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-

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 [(o)] (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



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-



prise fails the cost-benefit analysis described above, the commissioner shall revoke the certification of such business enterprise pursuant to paragraph (ii) of subdivision (a) of this section and as specified herein; provided, however, the commissioner may consider, in his or her sole discretion, other economic, social and environmental factors when evaluating the costs and benefits of a project to the state and whether continued certification is warranted based on such factors. The commissioner shall provide written notification to such business enterprise of his or her determination to revoke the certification, including the reasons therefor. Such notification shall state that the business enterprise may appeal the determination by sending a written notice to the commissioner of such appeal no later than ten business days from the date of the commissioner's revocation notification. Provided that the business enterprise appeals the commissioner's determination within ten business days of the commissioner's revocation notification, the business enterprise may present a written submission to the commissioner no later than sixty days following the date the commissioner's revocation notification was sent to the business enterprise explaining why it failed the cost-benefit analysis. The commissioner shall consider the explanation provided by the business enterprise, but shall not reverse the determination to revoke the business enterprise's certification if the commissioner finds in his or her sole discretion that there was insufficient evidence presented demonstrating that the business enterprise in fact met the requirements of the cost-benefit analysis, or that any extraordinary circumstances occurred which would explain why the business enterprise failed the cost-benefit analysis.

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

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

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

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

(a-1) The empire zones designation board may consider designating empire zone acreage for the following categories of regionally signif-



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.



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

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

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

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

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

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

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

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



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

5 (a) No more than three empire zone capital corporations may be estab-
6 lished in each zone for the purpose of raising funds through private and
7 public grants, donations or investments, to be used in making invest-
8 ments in, and loans to, business firms certified pursuant to subdivision
9 (a) of section nine hundred [sixty-three] fifty-nine of this article for
10 the purpose of encouraging the establishment or expansion of businesses
11 and the provision of additional job opportunities within such area. A
12 zone capital corporation may serve one or more zones within an economic
13 development region or zones within two or more regions. Prior to the
14 establishment of a zone capital corporation, the zone board and the
15 commissioner of the department of economic development shall approve the
16 formation of the proposed zone capital corporation, its board of direc-
17 tors and management, and its procedures for making, servicing and moni-
18 toring investments. In no event, however, shall an empire zone capital
19 corporation acquire an ownership interest in any certified business firm
20 which amounts to more than twenty-five percent of the ownership interest
21 of such certified business firm. No loan to or investment in any busi-
22 ness firm shall be made by an empire zone capital corporation located in
23 a zone within a town with a population of more than twenty-five thou-
24 sand, until such corporation has accumulated at least two hundred thou-
25 sand dollars in capital stock. No loan or investment in any business
26 firm shall be made by an empire zone capital corporation located in a
27 zone within a town with a population of less than twenty-five thousand
28 until such corporation has accumulated at least one hundred thousand
29 dollars in capital stock. A zone capital corporation shall submit to the
30 zone board an annual report on its activities.

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

35 (b) After consultation with the director of the budget [and the
36 commissioner of labor], the commissioner may terminate the designation
37 of an area as an empire zone upon a finding that (1) the applicant has
38 failed substantially to implement the empire zone development plan with-
39 in the time stated therein; (2) there has been no substantial business
40 development or job creation within the area designated as an empire zone
41 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:

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 diolate 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



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 (g) 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.



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.

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-



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



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



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-



tion directly and exclusively in the production of gas, electricity, refrigeration or steam; and (x) shall omit, unless such city elects otherwise, the provision for refund or credit contained in clause six of subdivision (a) or in subdivision (d) of section eleven hundred nineteen of this chapter.

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

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

§ 39. Subdivision (d) of section 1210 of the tax law, as amended by section 12 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) [or providing for the exemptions described in subdivision (z)] of section eleven hundred fifteen of this chapter or repealing any such exemption so provided and a resolution enacted pursuant to the authority of subdivision (k) of this section providing such exemption [or subdivision (l) of this section providing such exemptions] or repealing such exemption [or exemptions] so provided or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent



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



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

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-



tion provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

§ 2. This act shall take effect immediately.

PART M

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

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

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

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

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

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

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

(3) With respect to an individual whose New York adjusted gross income is over one million dollars, an amount equal to the New York itemized deduction of an individual otherwise allowable under subsection (a) of this section, except the portion of the deduction attributable to any charitable contribution allowed under section one hundred seventy of the internal revenue code, multiplied by fifty percent, for taxable years beginning after two thousand eight.

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

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, the tax shown on such return for taxable years beginning in two thousand two shall be the tax calculated as if such years began in two thousand three.



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

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



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.

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:

Investment tax credit Investment credit base
under subsection (a) or qualified
rehabilitation
expenditures under
subdivision twelve of
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

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



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



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	<u>Research expenditures credit</u>	<u>Amount of credit under</u>
29	<u>under subsection (qq)</u>	<u>section thirty</u>

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:



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
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



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

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



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:

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

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

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

§ 7. Section 1261 of the tax law is amended by adding a new subdivision (h) to read as follows:

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

§ 8. In accordance with section 1105-E of the tax law, as added by section three of this act, the legislature intends that the tax on direct-to-home satellite service be imposed at the same total rate as similar services are taxed under article 28 and pursuant to the authority of article 29 of the tax law, and that, consistent with the provisions of section 152 of title 47 of the United States code, the state revenues derived from the tax on direct-to-home satellite service be shared with each locality that imposes the taxes described in subdivision (a) of section 1210 or 1211 of the tax law as provided in this act. However, the legislature further intends that, if the state rate set forth in such section 1105-E is invalidated or reduced by a court of final, competent jurisdiction, revenues from the sales tax imposed on direct-to-home satellite service must be preserved by imposing a uniform state rate of sales tax on that service. Therefore, if a court of final, competent jurisdiction adjudges the state sales tax rate set forth in such section 1105-E to be invalid, the state rate imposed on direct-to-home satellite service will be eight and three-quarters percent and that rate will apply statewide. The taxes, interest and penalties collected or received by the commissioner of taxation and finance from such statewide rate, after reserving an amount for refunds and the reasonable costs of the commissioner will be allocated based on the respective



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.



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

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

1 thousand cigarettes in unstamped or unlawfully stamped packages knowing-
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



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



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-



priations for interest on temporary obligations issued on behalf of the fund or funds to be credited. Notwithstanding any other provision of this section or of any other general or special law, all moneys available and retained on deposit for the payment of lottery prizes may be invested or caused to be invested in obligations by the comptroller as herein provided[, except that] or in obligations other than as provided in this section, provided, however that such other investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and that such other investments may be made by a money manager or other advisor recommended by the division of lottery and approved by the comptroller; and such obligations need not mature or be redeemable at the option of the holder within seven years of the date of such investment. Income received from such investments may be used for the payment of prizes awarded and made payable in more than one payment, including prizes awarded and made payable throughout the lifetime of the lottery prize winner.

§ 2. This act shall take effect immediately.

PART U

Section 1. Paragraph 30 of subdivision (a) of section 1115 of the tax law, as amended by section 84 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(30) [Clothing] During the seven-day periods each year beginning the Monday immediately preceding the first Sunday of February and ending such Sunday, and beginning August twenty-fifth and ending August thirty-first, clothing and footwear for which the receipt or consideration given or contracted to be given is less than [one] five hundred [ten] dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

§ 2. Subdivision (g) of section 1109 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) Notwithstanding that the sales and compensating use taxes imposed by a city of one million or more located in the metropolitan commuter transportation district exempt clothing and footwear pursuant to the authority of clause (vii) of paragraph four of subdivision (a) of section twelve hundred ten of this article, during the two seven-day periods during which clothing and footwear are exempt from the taxes imposed by this article, such city shall, for purposes of this subdivision, be deemed to have exempted such clothing and footwear pursuant to the authority of paragraph one of subdivision (a) of section twelve hundred ten of this chapter and such city and the state shall be subject to the reimbursement and other provisions of this subdivision.

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

(1) [(i)] Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-



eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided.

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

(ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) and the qualified empire zone enterprise exemptions provided for in subdivision (z) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption or such qualified empire zone enterprise exemptions; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire



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.]

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

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

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

45 § 6. This act shall take effect June 1, 2009, and shall apply in
46 accordance with applicable transitional provisions in sections 1106 and
47 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:



1 (10) Beauty, barbering, hair restoring, manicuring, pedicuring, elec-
2 trolsis, 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:

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

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

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

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

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

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

(8) sales of services described in paragraph ten or eleven of subdivision (c) of section eleven hundred five of this article, unless the purchaser is an exempt organization.

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

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



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



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

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



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-



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



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,



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 fee received 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

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



lottery terminals at certain racetracks, as amended by chapter 140 of the laws of 2008, is amended to read as follows:

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

§ 5. Section 4 of part C of 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, as amended by chapter 286 of the laws of 2008, is amended to read as follows:

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

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

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

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

PART X

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

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

§ 2. Subdivision 3 of section 420 of the tax law, as amended by chapter 94 of the laws of 1934, is amended to read as follows:

3. "Alcoholic beverages" mean and include beers, flavored malt beverages, wines or liquors.

§ 3. Subdivision 5 of section 420 of the tax law, as amended by chapter 237 of the laws of 1956, is amended to read as follows:

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

§ 4. Subdivision 7 of section 420 of the tax law, as amended by chapter 80 of the laws of 1935, is amended to read as follows:

7. "Liquors" mean and include any and all distilled or rectified spirits, alcohol, brandy, cordial (whether the base therefor be wine or liquor), whiskey, rum, gin and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, and also mean and include any alcoholic liquids which would be wines or flavored malt beverages if the alcoholic content thereof were not more than twenty-four per centum by volume.

§ 5. Subdivision 14 of section 420 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

14. "Noncommercial importer" means a person other than a distributor who imports or causes to be imported into this state beers, flavored malt beverages, or wines, except that such person shall not be a noncommercial importer where such person imports or causes to be imported into this state such alcoholic beverages in the quantities and under the



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.



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.



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

12-c. "Flavored malt beverage" means and includes any fermented beverages of any name or description manufactured from malt, or from any substitute therefor, containing flavors and other ingredients derived from liquor or spirits provided that no more than forty-nine percent of the overall alcohol content of the finished product may be derived from the addition of said flavors and other ingredients. For purposes of this chapter, "flavored malt beverages" shall be considered "beer" and may be bought, stored and sold by any person licensed pursuant to this chapter with a license that already contains the privilege to buy, sell or store beer.

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

PART Y

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

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund. Except as provided herein, the board shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this [chapter] article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of



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



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

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-



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



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



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-

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:



(C) Except as provided in clause (D) of this subparagraph, rentals from property situated, and royalties from the use of patents or copyrights, and other similar intangible property within the state, [and receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the state as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, but only to the extent that such receipts are attributable to such transmissions received or exhibited within the state] and

§ 4. Clause (D) of subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law, as amended by chapter 802 of the laws of 1975, is amended to read as follows:

[(D)] (E) all other business receipts earned within the state, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties, [receipts from the sales of rights for closed-circuit and cable television transmissions] receipts from digital products and all other business transactions, whether within or without the state;

§ 5. Subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law is amended by adding new clause (D) to read as follows:

(D) receipts from the sale of, license to use, or granting of remote access to digital products within the state determined according to the hierarchy of methods set forth in this clause in the order stated in subclauses (i) through (iv) of this clause. The taxpayer must exercise due diligence under each method described in this clause before rejecting it and proceeding to the next method in the hierarchy. If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and is considered to be one receipt regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated by this hierarchy.

(i) Receipts allocated to the delivery destination of the digital product. A digital product is deemed delivered within the state if the location from which the purchaser or its authorized user accesses or uses the digital product is in the state. Destination may be demonstrated by internet protocol address or other similar or successor indicator, the geographic location of the equipment to which the digital product is delivered or from which the digital product is accessed, or the delivery destination indicated on a bill of lading or purchase invoice. A digital product accessed or used by the purchaser or its authorized user during the taxpayer's taxable year in multiple locations is delivered within the state to the extent that the digital product is accessed or used in the state;

(ii) the billing address of the purchaser;

(iii) the zip code or other geographic indicator of the purchaser's location; or

(iv) the percentage of the taxpayer's receipts within the state determined pursuant to this subparagraph for the preceding taxable year. However, if the taxpayer was not subject to tax in the preceding taxable year, then the receipts within the state in the current taxable year determined pursuant to this subparagraph.

§ 6. Subparagraph 2 of paragraph (b) of subdivision 2 of section 209-B of the tax law, as amended by section 3 of part K of chapter 63 of the laws of 2000, is amended to read as follows:

(2) services performed within the metropolitan commuter transportation district, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent that such newspapers and periodicals are delivered to points within the metropolitan commuter transportation district, (ii) receipts from an investment company from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in subparagraph six of paragraph (a) of subdivision three of section two hundred ten of this chapter (except that references in such subparagraph six to the state shall be deemed, for purposes of application to this clause, to be references to the metropolitan commuter transportation district), (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the metropolitan commuter transportation district as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the metropolitan commuter transportation district and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the metropolitan commuter transportation district, [and] (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of paragraph (a) of subdivision three of section two hundred ten of this article shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in such subparagraph nine (except that references in such subparagraph nine to the state shall be deemed, for purposes of the application of this clause, to be references to the metropolitan commuter transportation district) and (v) in the case of a taxpayer engaged in the business of broadcasting television or radio programs or otherwise transmitting television or radio programs, receipts arising from sales of advertising on television or radio will be deemed to be receipts from services performed within the metropolitan commuter transportation district based on the ratio of the number of viewers or listeners within the metropolitan commuter transportation district to the total number of viewers or listeners within the state, and (vi) in the case of a taxpayer not described in clause (v) of this subparagraph, receipts arising from sales of advertising that is furnished to, provided or delivered to, or accessed by the viewer or listener through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any combination thereof, will be deemed to be receipts from a service performed within the metropolitan commuter transportation district based on the ratio of the number of viewers or listeners within the metropolitan commuter transportation district to the total number of viewers or listeners within the state,

§ 7. Subparagraph 3 of paragraph (b) of subdivision 2 of section 209-B of the tax law, as amended by chapter 11 of the laws of 1983, is amended to read as follows:

(3) Except as provided in subparagraph four of this paragraph, rentals from property situated and royalties from the use of patents or copyrights and other similar intangible within the metropolitan commuter



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:



(e) (1) When used in this article for the purposes of the taxes imposed by subdivision (g) of section eleven hundred five of this article and by section eleven hundred ten of this article, the term "digital product" means any property or service of whatever nature, delivered to the purchaser through the use of wire, cable, fiber optic, laser, microwave, radio wave, satellite or similar or successor media, or any combination thereof. Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, book or literary work, graphic work, game, information or entertainment service, storage of digital products and computer software. The term "delivered to" includes furnished or provided to or accessed by.

(2) Digital product does not include the following:

(i) any tangible personal property or service that is subject to tax under any provision of this article other than subdivision (g) of section eleven hundred five of this article.

(ii) any service, other than a game or entertainment service, unless that service would otherwise be subject to tax under paragraphs one, seven or eight of subdivision (c) of section eleven hundred five of this article if that service were furnished, provided or delivered in tangible form or as a service to tangible personal property or real property.

(iii) television or radio programming where the purchaser does not select both the content and the time at which the content is displayed.

(iv) purchaser-selected content sold with television programming for a single charge.

(v) computer software that is not pre-written computer software.

§ 11. Section 1105 of the tax law is amended by adding a new subdivision (g) to read as follows:

(g) Receipts from every retail sale of a digital product. Notwithstanding any other provision of law, a digital product is delivered to the location to which the digital product is transmitted to the purchaser or its agent, or from which the purchaser or its agent accesses the digital product. For purposes of determining the jurisdiction or jurisdictions in which the retail sale of a digital product occurs, the following rules apply:

(1) Receipts from the retail sale of digital products, other than pre-written computer software that is not in tangible form, are sourced to the place where delivered to the purchaser. The foregoing rule is amplified, but not limited, by the following special provisions:

(i) if the vendor knows, either by internet protocol address or other similar or successor indicator, the geographic location of the equipment to which the digital product is delivered, the retail sale is sourced to the jurisdiction or jurisdictions in which that equipment is located;

(ii) if the geographic location of the equipment described in subparagraph (i) of this paragraph is unknown, the retail sale is sourced to the jurisdiction or jurisdictions in which the billing address of the purchaser associated with the method of payment for the digital product is located;

(iii) if the geographic location of the equipment described in subparagraph (i) and the billing address described in subparagraph (ii) of this paragraph are unknown, the retail sale is sourced to the residential or business street address of the purchaser, as applicable, provided that the use of that address does not constitute bad faith.

(2) Receipts from the retail sale of pre-written computer software that is not in tangible form are sourced as follows:

(i) if the receipt from the retail sale of the software is less than 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



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



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:

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.



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;

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,

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

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-



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.

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.



(3) Where a sale of tangible personal property, a digital product or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the tangible personal property or digital product sold, the tangible personal property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser[,] the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the tangible personal property or of the service by the purchaser and, for a digital product, delivery will be determined in accordance with the rules in subdivision (g) of section eleven hundred five of this part.

(4) The provisions of section twelve hundred fourteen of this chapter shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) [hereof] of this section.

(5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property, a digital product or any of the services subject to sales or compensating use tax, if the use of such tangible personal property, digital product or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. For purposes of this subdivision, a payment to the [tax commission] commissioner of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

§ 32. Subdivision (c) of section 1109 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(c) Deliveries outside the district; deliveries within the district of property sold or serviced elsewhere. Where a sale of tangible personal property, a digital product or services, including an agreement therefor, is made in the district in which the taxes imposed by this section apply, but the tangible personal property or digital product sold, the tangible personal property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by this section. However, if delivery occurs or will occur in the district where the tax imposed by this section applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section, delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the tangible personal property or of the service by the purchaser and, for a digital product, delivery will be determined in accordance with the rules in subdivision (g) of section eleven hundred five of this part. The provisions of section twelve hundred fourteen of this chapter shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city, county or school district shall mean the additional taxes imposed by this section.

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

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property or digital product purchased at retail, (B) of any tangible personal property or digital product (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property or digital product are offered for sale by him or her in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs [(1), (7) and (8)] one, seven and eight of subdivision (c) of section eleven hundred five of this part, (D) of any tangible personal property or digital product, however acquired, where not acquired for purposes of resale, upon which any of the services described in paragraphs [(2), (3) and (7)] two, three and seven of subdivision (c) of section eleven hundred five of this part have been performed, (E) of any telephone answering service described in subdivision (b) of section eleven hundred five of this part, (F) of any computer software or digital product written or otherwise created by the user if the user offers software or a digital product of a similar kind for sale as such or as a component part of other property in the regular course of business, (G) of any prepaid telephone calling service, and (H) of any gas or electricity described in subdivision (b) of section eleven hundred five of this part.

§ 34. Subdivision (b) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for such tangible personal property or digital product, or for the use of such tangible personal property or digital product, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this article, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

§ 35. Subdivision (c) of section 1110 of the tax law, as amended by section 1 of part E of chapter 407 of the laws of 1999, is amended to read as follows:

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the price at which items of the same kind of tangible personal property or digital product are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property or a digital product by the person who manufactured, processed or assembled such property or digital product shall not be deemed a taxable use by [him] that person; provided, however, that if the user uses such an item itself on its own premises (not including making a gift of such tangible personal property or digital product), solely in the conduct of the



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:



(b) Tangible personal property or a digital product, which has been purchased by a resident of New York state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the tangible personal property or digital product was used outside [such] this state by him or her for more than six months prior to its use within this state, [such] the tangible personal property or digital product shall be taxed on the basis of current market value of the tangible personal property or digital product at the time of its first use within this state. The value of [such] the tangible personal property or digital product, for compensating use tax purposes, may not exceed its cost.

(2) That the compensating use tax on such tangible personal property or digital product brought into this state (other than for complete consumption or for incorporation into real property located in this state) and used in the performance of a contract or sub-contract within this state by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such tangible personal property or digital product for the period of use within this state.

§ 41. Subdivision (1) of section 1111 of the tax law, as added by section 10 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(1) (1) Receipts from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications services." Such term shall mean any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include property [and], services and digital products that are ancillary to the provision of commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service [and], property or digital product provided therewith.

(2) With respect to services [or], property or digital products described in subparagraph (B) of paragraph one of this subdivision, internet access service, any mobile telecommunications service which the mobile telecommunications customer originates in a foreign country to the extent included in the fixed periodic charge, any interstate or international telephony or telegraphy or telephone or telegraph service of whatever nature which is not a voice service, and any property, digital product or service which is not telephony or telegraphy or telephone or telegraph service of whatever nature, a home service provider shall collect and pay over tax, and a mobile telecommunications customer shall pay such tax, on receipts from any charge that is aggregated with and not separately stated from other charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells any such property, digital product or service, then the charge for such property, digital product or service shall be based upon the price for such property, digital product or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not

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.



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:

(28) Computer software designed and developed by the author or creator to the specifications of a specific purchaser which is transferred directly or indirectly to a corporation which is a member of an affiliated group of corporations [within the meaning of subparagraph six of paragraph (b) of subdivision seventeen of section two hundred eight of this chapter except for clauses (ii) and (iii) of such subparagraph] that includes such purchaser, or to a partnership in which such purchaser and other members of such affiliated group have at least a fifty percent capital or profits interest (but only if the transfer is not in pursuance of a plan having as its principal purpose the avoidance or evasion of tax under this article), but in no case including computer software which is pre-written, as defined in paragraph six of subdivision (b) of section eleven hundred one of this article and available to be sold to customers in the ordinary course of the seller's business. "Affiliated group" has the same meaning that term has in section 1504 of the internal revenue code, except that references to "at least eight percent" in that section must be read as "more than fifty percent."

§ 52. Paragraph 35 of subdivision (a) of section 1115 of the tax law, as amended by section 1 of part HH of chapter 407 of the laws of 1999, is amended to read as follows:

(35) Computer system hardware used or consumed directly and predominantly in designing and developing computer software or digital products for sale or in providing the service, for sale, of designing and developing internet websites.

§ 53. Paragraph 38 of subdivision (a) of section 1115 of the tax law, as added by section 1 of part T of chapter 63 of the laws of 2000, is amended to read as follows:

(38) (A) Machinery or equipment or other tangible personal property (including parts, tools and supplies) or a digital product for use or consumption by a broadcaster directly and predominantly in the production (including post-production) of live or recorded programs which are used or consumed by a broadcaster predominantly for the purpose of broadcast over-the-air by such broadcaster or transmission through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property or a digital product, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the production (including post-production) of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(B) Machinery or equipment or other tangible personal property (including parts, tools and supplies) or a digital product for use or consumption by a broadcaster directly and predominantly in the transmission of live or recorded programs over-the-air or through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property or a digital product, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the transmission of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(C) For purposes of this paragraph: (i) the term "broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network or a cable tele-

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 (1) 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 (1) 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



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

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-



cle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

§ 62. Paragraph 1 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services, digital products or property of a kind not ordinarily sold by private persons;

§ 63. Paragraph 2 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services, digital products or property of a kind not ordinarily sold by private persons;

§ 64. Paragraph 3 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services, digital products or property of a kind not ordinarily sold by private persons;

§ 65. Paragraph 9 of subdivision (a) of section 1116 of the tax law, as amended by chapter 591 of the laws of 2005, is amended to read as follows:

(9) A credit union, as defined in subdivision nine of section two of the banking law, where it is the purchaser, user, or consumer, or where it is a vendor of services, digital products or property of a kind not ordinarily sold by private persons.

§ 66. Subdivision (b) of section 1116 of the tax law, as amended by chapter 888 of the laws of 1983, paragraph 1 as amended by section 1 of part KK-1 of chapter 57 of the laws of 2008, paragraph 5 as amended by chapter 619 of the laws of 1995, paragraph 6 as added by chapter 2 of the laws of 1995 and paragraph 7 as added by chapter 387 of the laws of 1996, is amended to read as follows:

(b) Nothing in this section shall exempt:

(1) (i) retail sales of tangible personal property or digital products by any shop or store operated by an organization described in paragraph [(4), (5) or (6)] four, five or six of subdivision (a) of this section; (ii) sales, other than for resale, of services described in subdivision (b) or paragraph five of subdivision (c) of section eleven hundred five of this article by that organization, whether or not at a shop or store; (iii) retail sales of tangible personal property or digital products and sales, other than for resale, of those services by that organization, made with a degree of regularity, frequency, and continuity by remote means, such as by telephone, the internet, mail order or otherwise; or (iv) retail sales of tangible personal property or digital products by



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.



§ 67. Subdivision 2 of section 1118 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(2) In respect to the use of tangible personal property, digital products or services purchased by the user while a nonresident of this state, except in the case of tangible personal property or services which the user, in the performance of a contract, incorporates into real property located in the state. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of tangible personal property, digital products or services in such employment, trade, business or profession.

§ 68. Subdivision 3 of section 1118 of the tax law, as amended by chapter 286 of the laws of 1985, is amended to read as follows:

(3) In respect to the use of tangible personal property, digital products or services upon the sale of which the purchaser would be expressly exempt from the taxes imposed under subdivision (a), (b) [or], (c) or (g) of section eleven hundred five of this article. In respect to the use of tangible personal property to the extent that it is exempt from the sales tax under subdivision (g) of section eleven hundred eleven of this article.

§ 69. Subdivision 4 of section 1118 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(4) In respect to the use of tangible personal property or a digital product which is converted into or becomes a component part of a product produced for sale by the purchaser.

§ 70. Paragraph (a) of subdivision 7 of section 1118 of the tax law, as amended by chapter 300 of the laws of 1967, is amended to read as follows:

(a) In respect to the use of tangible personal property, a digital product or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property, digital products or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this [chapter] article shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

§ 71. Section 1118 of the tax law is amended by adding a new subdivision 13 to read as follows:

(13) In respect to the use in this state of a digital product, other than computer software described in paragraph eleven of this subdivision, before the effective date of a chapter of the laws of two thousand nine that added this subdivision.

§ 72. Subdivision (a) of section 1119 of the tax law, as amended by chapter 686 of the laws of 1986 and as further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or section eleven hundred ten of this article (1) on the sale or use of tangible personal property if the purchaser or user, in the performance of a contract, later incorporates

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 subdi-
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



1 property as required in [clause (1) above] paragraph one of this subdi-
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)]

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[,] 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



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.



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 certifi-
37 cate 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



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,

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



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



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



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 (1) 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



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.



(c) For purposes of this section, a payment to the [tax commission] commissioner of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

§ 95. Subdivision (a) of section 1251 of the tax law, as amended by chapter 155 of the laws of 1982, is amended to read as follows:

(a) Every person required to collect any of the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A of this article shall file a return as required by subdivision (a) of section eleven hundred thirty-six of this chapter with the [tax commission] commissioner, except that return for the quarterly period ending August thirty-first, nineteen hundred sixty-five shall only cover the month of August, nineteen hundred sixty-five. The return of a vendor of tangible personal property, digital products or services shall show his or her receipts from sales and also the aggregate value of tangible personal property, digital products and services sold by him or her, the use of which is subject to a tax imposed under the authority of this article and the amount of taxes required to be collected with respect to such sales and use. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. Every person required to file a part-quarterly return pursuant to subdivision (a) of section eleven hundred thirty-six of this chapter shall file a return for the same periods for the taxes imposed pursuant to this article. Provided, however, where a part-quarterly return described in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six of this chapter is filed for purposes of complying with this section and section eleven hundred thirty-seven-A of this chapter, on such returns separate amounts due for the taxes imposed by each county, city or school district, pursuant to the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A of this article, need not be shown. Rather, such returns shall only show the aggregate amount of all such local taxes calculated in the manner provided for in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six of this chapter except that in the case of a short-form, part-quarterly return, where a county, city or school district did not impose a tax in the comparable quarter of the immediately preceding year, the tax for that locality shall be calculated on such basis as the [tax commission] commissioner shall by regulation prescribe.

§ 96. Section 1252 of the tax law, as added by chapter 93 of the laws of 1965, subdivision (a) as amended by chapter 89 of the laws of 1976 and subdivision (b) as amended by chapter 169 of the laws of 1970, is amended to read as follows:

§ 1252. Payment of tax. (a) Every person required to file a return or returns under subdivision (a) of the preceding section shall, at the time of filing such return or returns, pay to the [state tax commission] commissioner the amount which section eleven hundred thirty-seven or section eleven hundred thirty-seven-A of [article twenty-eight] this chapter requires to be paid with respect to local taxes imposed pursuant to this article. The amount so required to be paid for the period for which a return or returns is required to be filed shall be due and payable to the [state tax commission] commissioner on the date limited for the filing of the return or returns for such period, without regard to whether a return is filed or whether the return which is filed clearly

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



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



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.



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.



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:



8. To issue replacement certificates of registration or decals at such times as the commissioner may deem necessary for the proper and efficient enforcement of the provisions of this article, but not more often than once every year and to require the surrender of the then outstanding certificates of registration and decals. All of the provisions of this article with respect to certificates of registration and decals shall be applicable to replacement certificates of registration and decals issued hereunder, except that the replacement certificate of registration or decal shall be issued upon payment of a fee of four dollars for each motor vehicle and two dollars for any trailer, semi-trailer, dolly or other device drawn thereby for which a certificate of registration or decal is required to be issued under this article;

§ 4. Paragraph (e) of subdivision 1 of section 512 of the tax law, as added by section 8 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

(e) In addition to any other penalty imposed by this chapter, any person who fails to obtain a certificate of registration or decal as required under this article shall, after due notice and an opportunity for a hearing, for a first violation be liable for a civil fine not less than five hundred dollars but not to exceed two thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine not less than one thousand dollars but not to exceed three thousand five hundred dollars.

§ 5. Clause (i) of subparagraph (A) of paragraph 1 of subdivision (a) of section 1815 of the tax law, as amended by section 10 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

(i) Use or cause or permit to be used, any public highway in this state for the operation of a motor vehicle subject to the provisions of article twenty-one of this chapter without first applying for and obtaining the certificate of registration required under such article or a decal that has been suspended or revoked or that was issued for a motor vehicle other than the one on which affixed. The operation of any motor vehicle on any public highway of this state without a decal required under such article shall be presumptive evidence that a certificate of registration or decal has not been obtained for such motor vehicle;

§ 6. This act shall take effect immediately.

PART FF

Section 1. Clauses (G) and (H) of subparagraph (i) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as amended by chapter 61 of the laws of 1989 and as relettered by chapter 190 of the laws of 1990, are amended and a new clause (I) is added to read as follows:

(G) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this article, who may be authorized by the commissioner of taxation and finance to collect such tax by part IV of this article; [and]

(H) The state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions when such entity sells services or property of a kind ordinarily sold by private persons[.]; and

(I) A seller of tangible personal property or services, the use of which is taxed by this article if either (I) an affiliated person that is a vendor as otherwise defined in this paragraph uses in the state



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:

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

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

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

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

§ 3. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as separately amended by chapters 140 and 286 of the laws of 2008, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester [or], Queens or Nassau; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of [this] subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale



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



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 subdi-
27 visions 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:



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



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



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-



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



(vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-1 of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 2. The tax law is amended by adding a new section 1105-D to read as follows:

§ 1105-D. Additional state sales and compensating use taxes on certain beverage products. Notwithstanding any law to the contrary:

(a) Imposition of additional taxes. (1) In addition to the sales and compensating use taxes imposed by subdivision (a) of section eleven hundred five and clauses (A) and (B) of subdivision (a) of section eleven hundred ten of this part, there are hereby imposed and there shall be paid additional sales and compensating use taxes, at the rate of eighteen percent, on (i) fruit drinks that contain less than seventy percent of natural fruit juice and (ii) soft drinks, sodas, and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa), whether or not the item is sold in liquid form, which except as otherwise provided in this section shall be identical to the taxes imposed by such subdivision (a) of section eleven hundred five and clauses (A) and (B) of subdivision (a) of section eleven hundred ten of this part.

(2) In addition to the sales taxes imposed by subdivision (d) and paragraph three of subdivision (f) of section eleven hundred five of this part, there are hereby imposed and there shall be paid additional sales taxes, at the rate of eighteen percent, on (i) fruit drinks which contain less than seventy percent of natural fruit juice and (ii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa), whether or not the item is sold in liquid form, which except as otherwise provided in this section shall be identical to the taxes imposed by such subdivision (d) and paragraph three of subdivision (f) of section eleven hundred five of this part.

(b) Special rules for computing receipts and consideration. (1) If a vendor sells, or a recipient charges for, a drink, soda or beverage subject to the additional taxes imposed by this section together with other property or with services (for example, as part of a meal or a special promotion, or mixed with an alcoholic or other beverage) or together with a cover, minimum, entertainment or other charge or together with other charges of a roof garden, cabaret or other similar place, for a single price or charge, and the vendor also separately sells, or the recipient also separately charges for, such a drink, soda or beverage in the same form and condition, quantities, and packaging, then the tax imposed by this section shall apply to the amount at which that vendor or recipient separately sells or charges for such drink, soda or beverage in the same form and condition, quantity, and packaging.

(2) If a vendor sells, or a recipient charges for, a drink, soda, or beverage subject to the additional taxes imposed by this section together with other property or with services (for example, as part of a meal or a special promotion, or mixed with an alcoholic or other beverage) or together with a cover, minimum, entertainment or other charge or together with other charges of a roof garden, cabaret or other similar place, for a single price or charge, but the vendor does not separately sell, or the recipient does not separately charge for, such a drink, soda or beverage in the same form and condition, quantities, and packaging, then the tax imposed by this section shall be computed on five hundred percent of the vendor's or recipient's cost for such drink, soda or



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 subdi-
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



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 O 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

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



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;



(B) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then not less than twenty-five percent of the gross sales must result from sales of food;

(ii) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(iii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the percentage of food sales or the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(C) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph]; or

§ 3. This act shall take effect immediately.

PART JJ

Section 1. Section 1617 of the tax law, as added by section 3 of part D of chapter 383 of the laws of 2001, is amended to read as follows:

§ 1617. Joint, multi-jurisdiction, and out-of-state lottery. The director may enter into an agreement with a government-authorized group of one or more other jurisdictions providing for the operation and administration of a joint, multi-jurisdiction, and out-of-state lottery[, except the director may not agree to participate in the games of more than one such group at any single time]. Such a joint, multi-jurisdiction, and out-of-state lottery game or games may include a combined drawing, a combined prize pool, the transfer of sales and prize monies to other jurisdictions as may be necessary, and such other cooperative arrangements as the director deems necessary or desirable.

§ 2. This act shall take effect immediately.

PART KK

Section 1. The alcoholic beverage control law is amended by adding a new section 79-e to read as follows:

§ 79-e. Grocery or drug store wine license. 1. Any person may apply to the authority for a license to sell from the licensed premises wine in sealed containers for consumption off such premises.

2. No such license shall be issued, however, to any person for any premises other than a grocery store, as defined in subdivision thirteen of section three of this chapter, or a drug store, as defined in subdivision twelve of section three of this chapter.



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:

<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>



1	<u>30,000-39,999</u>	<u>\$132,000</u>
2	<u>40,000 and greater</u>	<u>\$495,000</u>

3 Within sixty days after such licensee shall have been in business for
4 twelve months, such licensee shall submit to the authority, in accord-
5 ance with the rules of the authority, a statement showing its actual
6 total gross sales for the first twelve months of operation and the fran-
7 chise fee due pursuant to paragraph (a) of this subdivision. In the
8 event the franchise fee determined pursuant to such paragraph exceeds
9 the amount paid pursuant to this paragraph, the licensee shall remit
10 payment for the balance of the required franchise fee within such
11 sixty-day period. Failure to remit payment within such sixty-day period
12 shall be grounds for cancellation or revocation of such license. In the
13 event that the franchise fee due pursuant to paragraph (a) of this
14 subdivision is less than the amount paid pursuant to this paragraph, the
15 licensee shall be entitled to a refund equal to the difference between
16 the franchise fee paid pursuant to this paragraph and the amount due
17 pursuant to paragraph (a) of this subdivision.

18 (c) No license shall be issued pursuant to this section until the
19 franchise fee or estimated franchise fee under this subdivision required
20 by either paragraph (a) or (b) of this subdivision has been paid in
21 full.

22 (d) The franchise fee shall be deposited and disposed of in the same
23 manner as any license fee as provided in section one hundred twenty-five
24 of this chapter.

25 10. The state liquor authority may make such rules as it deems neces-
26 sary to carry out the provisions of this section.

27 § 2. Section 83 of the alcoholic beverage control law is amended by
28 adding a new subdivision 8 to read as follows:

29 8. The annual fee for a grocery or drug store wine license pursuant to
30 section seventy-nine-e of this article shall be one hundred ten dollars.
31 Where, however, the applicant is the holder of two or more such
32 licenses, the annual fee for each additional license shall be double the
33 amount hereinabove set forth.

34 § 3. Subdivision 2-a of section 100 of the alcoholic beverage control
35 law, as amended by chapter 249 of the laws of 2002, is amended to read
36 as follows:

37 2-a. No retailer shall employ, or permit to be employed, or shall
38 suffer to work, on any premises licensed for retail sale hereunder, any
39 person under the age of eighteen years, as a hostess, waitress, waiter,
40 or in any other capacity where the duties of such person require or
41 permit such person to sell, dispense or handle alcoholic beverages;
42 except that: (1) any person under the age of eighteen years and employed
43 by any person holding a grocery or drug store beer license shall be
44 permitted to handle and deliver beer and wine products for such licen-
45 see, (2) any person under the age of eighteen employed as a cashier by a
46 person holding a grocery or drug store beer license shall be permitted
47 to record and receive payment for beer and wine product sales when in
48 the presence of and under the direct supervision of a person eighteen
49 years of age or over, (2-a) any person under the age of eighteen years
50 and employed by a person holding a grocery store or drug store beer
51 license as either a cashier or in any other position to which handling
52 of containers which may have held alcoholic beverages is necessary,
53 shall be permitted to handle the containers if such have been presented
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



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 by 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



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



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



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.

16 PART OO

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.



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 pools] 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.



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



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

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.

36 PART PP

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.



(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph: (A) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed as the initial finished floor covering in new construction or a new addition to or total reconstruction of existing construction shall constitute [an addition or] a capital improvement [to real property, property or land]; and

(B) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed other than as described in clause (A) of this subparagraph shall not constitute [an addition or] a capital improvement [to real property, property or land].

§ 2. Subparagraph (iii) of paragraph 3 of subdivision (c) of section 1105 of the tax law, as separately amended by chapters 103 and 471 of the laws of 1981, is amended to read as follows:

(iii) for installing property which, when installed, will constitute [an addition or] a capital improvement [to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter]; and

§ 3. Paragraph 5 of subdivision (c) of section 1105 of the tax law, as amended by chapter 321 of the laws of 2005, is amended to read as follows:

(5) Maintaining, servicing or repairing real property[, property or land, as such terms are defined in the real property tax law], whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property[, property or land,] by a capital improvement [as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article], but excluding (i) services rendered by an individual who is not in a regular trade or business offering his services to the public, (ii) services rendered directly with respect to real property[, property or land] used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii) services rendered with respect to real property[, property or land] used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and (iv) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

§ 4. Subdivision (e) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(e) Notwithstanding the foregoing[,] provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of [an addition or] a capital improvement [to real property, property or land, as the terms real property, property or land are defined in the real property tax law], over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and



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]



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
52 section.



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

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

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



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:



(g) Willful failure to collect and pay over tax.-- Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the sum of (i) the total amount of the tax evaded, or not collected, or not accounted for and paid over, (ii) the interest that has accrued on the total amount of tax evaded on the date this penalty is first imposed until this penalty is paid with interest thereon, and (iii) the addition to tax provided by subsection (a) of this section. No addition to tax under subsections (b) or (e) of this section shall be imposed for any offense to which this subsection applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

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

SUBPART E

Section 1. Paragraph (d) of subdivision 1 of section 289-b of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(d) If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties and interest provided for in paragraphs (a) and (b) of this subdivision, there shall be added to the tax (i) a penalty of [fifty per centum of] three times the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid[, plus (iii) for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty per centum of the interest payable under subparagraph (ii) of this paragraph on that portion of the unpaid tax which is attributable to fraud].

§ 2. Subdivision 1 of section 289-b of the tax law is amended by adding a new paragraph (e-1) to read as follows:

(e-1) In addition to any other penalties that may be imposed by law, any of the following penalties may be imposed.

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

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

(iii) Any person who fails to file a complete informational return must pay a penalty of fifteen hundred dollars for the first violation



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



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.



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



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 subdivi-
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



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



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
40 the 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



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



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



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:

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



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:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] or eighteen hundred six of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds twenty-five thousand dollars; or

§ 9. Subdivision 1 of section 470.24 of the penal law, as added by section 18 of part A of chapter 1 of the laws of 2004, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] or eighteen hundred six of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds seventy-five thousand dollars.

§ 10. Subdivision 5 of section 480-a of the tax law, as amended by chapter 760 of the laws of 1992 and as renumbered by chapter 629 of the laws of 1996, is amended to read as follows:

5. Except for subdivision [(k)] (i) of section eighteen hundred fourteen of this chapter, the criminal penalties set forth in article thirty-seven of this chapter shall not apply to a violation of this section.



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



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.



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

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 (c)] 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.

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 knowing-
47 ly 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
55 this chapter shall constitute a misdemeanor.



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.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(4) Any person who willfully issues an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate in order to claim an exemption from taxes imposed with respect to diesel motor fuel or residual petroleum product by article thirteen-A of this chapter which he does not believe to be true and correct as to any material matter shall be guilty of a misdemeanor.

(5) Any person who willfully accepts an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate with respect to claiming exemption from the taxes imposed with respect to diesel motor fuel or residual petroleum product by article thirteen-A of this chapter which he does not believe to be true and correct as to any material matter shall be guilty of a misdemeanor.

[(d)] (b) Any willful act or omission, other than those described in section eighteen hundred one of this article or subdivision (a) [, (b)] or (c) of this section, by any person which constitutes a violation of any provision of article thirteen-A of this chapter shall constitute a misdemeanor.

[(e) Any person who duly is subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with a matter arising under article thirteen-A of this chapter, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers and who (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers in his possession or under his control which constitute material and proper evidence shall be guilty of a misdemeanor.

(f) (c) Any person who willfully makes a movement tracking document required pursuant to subdivision (b) of section three hundred fifteen of this chapter, which he does not believe to be true and correct as to every material matter or who willfully produces any such document for inspection as required under subdivision (b) of section three hundred fifteen of this chapter which he knows to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor; provided, however, that if the tax liability under article thirteen-A of this chapter with respect to the product being transported, is equal to or greater than one thousand dollars, such person shall be guilty of a class E felony.

§ 27. Section 1813 of the tax law, as added by chapter 65 of the laws of 1985, subdivisions (h), (i) and (j) as added by chapter 508 of the laws of 1993, is amended to read as follows:

§ 1813. Alcoholic beverage tax.--(a) [Attempt to evade or defeat tax.--Any person who willfully attempts in any manner to evade or defeat any tax imposed by article eighteen of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

(b) Willful failure to file a return or report, or pay tax.--Any person required under article eighteen of this chapter to pay or make a return or report, who willfully fails to pay such tax or make such

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)[,] or
35 (b)[, (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-

tionally imports or causes to be imported into this state, for sale or use therein, more than three hundred sixty liters of liquors into this state in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within this state in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred sixty liters of liquors in a one-year period to be removed from a warehouse in this state, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into this state or the production, distillation, manufacture, compounding, mixing or fermenting in this state of more than ninety liters of such liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

[(i)] (f) Person not registered as a distributor for city purposes.

(1) Any person required to be registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into such city, for sale or use therein, any liquors or, who, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly produces, distills, manufactures, compounds, mixes or ferments in such city any such liquors for sale, or who, as a purchaser of a warehouse receipt, causes liquors covered by such receipt to be removed from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years shall be guilty of a class E felony for any subsequent violation of this paragraph.

(2) Any person who, while not registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into such city, for sale or use therein, more than three hundred sixty liters of liquors into such city in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within such city in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred sixty liters of liquors in a one-year period to be removed from a warehouse in this [store] state, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into such city or the production, distillation, manufacture, compounding, mixing or fermenting in such city of more than ninety liters of liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

[(j)] (g) Any person, other than the distributor registered under article eighteen of this chapter which imported or caused the liquors to be imported into this state, who shall willfully and knowingly have in



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.



(d)] Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony.

[(e)] (c) (1) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class E felony.

(2) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class D felony.

[(f)] (d) For the purposes of this section, the possession or transportation within this state by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one of this chapter. With respect to such possession or transportation any provisions of article twenty of this chapter providing for a time period during which a use tax imposed by such article may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by article twenty of this chapter.

[(g)] (e) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, or lawfully transporting or storing tobacco products, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes or possession or control of tobacco products, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

[(h)] (f) Any willful act or omission, other than those described in section eighteen hundred one of this article or subdivision (a), (b), (c), (d), (e), [(f)], (g), (h) or (i) [(or (j))] of this section, by any



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-

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 [(k)] (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



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 (c)] 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



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.



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.

1 [(1) 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
56 included.

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), (q) 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:

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.



(j) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the underpayment rate set by the commissioner pursuant to section six hundred ninety-seven of this part, or if no rate is set, at the rate of [six per cent] seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

§ 3. Paragraph 1 of subsection (c) of section 685 of the tax law, as amended by section 7 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Addition to the tax.--Except as otherwise provided in this subsection and subsection (d) of this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the underpayment rate established under subsection (j) of section six hundred ninety-seven of this part, or if no rate is set, at the rate of [six] seven and one-half percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

§ 4. Paragraph 1 of subsection (j) of section 697 of the tax law, as amended by section 2 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant to sections six hundred eighty-four, six hundred eighty-five and six hundred eighty-eight of this part, but if no such rates of interest are set, such [rates] overpayment rate shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such rates shall be the rates prescribed in paragraphs two and four of this subsection, but the underpayment rate shall not be less than [six] seven and one-half percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

§ 5. Paragraph 2 of subsection (j) of section 697 of the tax law, as amended by section 10 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subsection shall be the [sum of (i) the] federal short-term rate as provided under paragraph three of this subsection[, plus (ii) two percentage points].

(B) Underpayment rate. The underpayment rate of interest set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) [four] five and one-half percentage points.



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-



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



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

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.



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,

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



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



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



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 subdivi-
45 sion 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.



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.

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.



1

SUBPART O

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-



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.



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



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



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 assign-
5 nor, 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.

