

2010-11 NEW YORK STATE EXECUTIVE BUDGET
REVENUE ARTICLE VII LEGISLATION

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STATE OF NEW YORK

S. 6610

A. 9710

SENATE - ASSEMBLY

January 19, 2010

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, in relation to imposing a tax on the severing of natural gas (Part A); to amend the tax law, in relation to increasing the rate of the cigarette tax under article 20 of the tax law (Part B); to amend the tax law, in relation to imposing tax on beverage syrups and soft drinks (Part C); to amend the tax law, in relation to the statutory limitation on the biofuel production credit and the qualified emerging technology company facilities, operations and training credits (Part D); to amend the tax law, in relation to the inclusion of certain past employment related income in the calculation of the New York source income of nonresidents (Part E); to amend the tax law, in relation to clarifying that certain income constitutes New York source income of nonresident shareholders of an S corporation (Part F); to amend the tax law, in relation to taxation of certain resident trusts; and to repeal subparagraph (D) of paragraph 3 of subdivision (b) of section 605 of such law relating thereto (Part G); to amend the tax law, in relation to information reporting of payments made in settlement of payment card and third party network transactions (Part H); 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 (Part I); to amend the tax law and the administrative code of the city of New York, in relation to the penalties imposed upon tax return preparers failing to electronically file returns and other tax documents when required by law to do so, to authorize reasonable correction periods for electronic tax filings and payments, and to prohibit tax return preparers and software companies from charging separately for electronic filing of New York tax documents (Part J); to amend the tax law, in relation to providing the department of taxation and finance with greater flexibility, and the ability to realize cost savings, by allowing the department to use alternative

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

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means by which tax notices and other tax documents are communicated to addressees (Part K); to amend the tax law, in relation to reforming the offer-in-compromise program (Part L); to direct the department of taxation and finance to complete a report that makes recommendations about reforming and modernizing state and local taxes on communication services (Part M); 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 N); 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; to amend the tax law, in relation to the hours of operation of video lottery gaming and the recapture of the vendor fee at a certain track; and to repeal section 13 of chapter 140 of the laws of 2008 amending the racing, pari-mutuel wagering and breeding law and other laws relating to thoroughbred racing and to repeal section 5 of chapter 286 of the laws of 2008 amending the tax law relating to annual capital improvement credits for video lottery gaming operators, relating thereto (Part O); to amend the tax law and the uniform commercial code, in relation to imposing a recording tax on the filing of financing statements pertaining to cooperative interests in cooperative organizations (Part P); to amend the tax law, in relation to establishing a school tax circuit breaker tax credit; and to amend the state finance law, in relation to establishing a property tax circuit breaker reserve fund and annual spending growth cap, and increasing the rainy day reserve fund; and providing for the repeal of certain provisions upon expiration thereof (Part Q); to amend the tax law and the administrative code of the city of New York, in relation to allowing recognition of marriages performed outside New York state (Part R); to amend the tax law, in relation to narrowing the definition of vendor for purposes of the sales and compensating use taxes (Part S); to amend the alcoholic beverage control law and the state finance law, in relation to enacting the wine industry and liquor store revitalization act; to repeal certain provisions of the alcoholic beverage control law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part T); 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 U); to amend chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, in relation to the empire state film production credit and in relation to the effectiveness of such provisions; and to amend the tax law, in relation to the empire state film production credit (Part V); to amend the economic development law and the tax law, in relation to creating the excelsior jobs program act (Part W); to amend the general municipal law, in relation to the decertification of business entities located in empire zones; to amend the tax law, in relation to a refund or credit provided to certain zone businesses and to a report on empire zone businesses produced by the department of taxation and finance, and to amend chapter 57 of the laws of 2009, amending the general municipal law and the tax law relating to enacting reforms to the empire zones program, in relation to the effectiveness thereof (Part X); to amend chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corpo-



rations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to extend the Gramm-Leach-Bliley transitional provisions under the franchise taxes on banking corporations under the tax law and the administrative code of the city of New York (Part Y); to amend the tax law, in relation to making technical corrections to certain tax enforcement and sales tax avoidance provisions; and to amend chapter 57 of the laws of 2009 amending the criminal procedure law, the penal law, and the tax law relating to creating the offense of "tax fraud act", in relation to the effectiveness thereof (Subpart A); to amend the tax law, in relation to defining certain terms (Subpart B); and to amend the general municipal law and the public authorities law, in relation to statements of industrial agencies and their agents and project operators (Subpart C) (PART Z); 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 AA); to amend the tax law, in relation to the amount of the unified credit against the estate tax (Part BB); and to amend the tax law, the general municipal law, and the administrative code of the city of New York, in relation to the taxicab ride tax imposed in the metropolitan commuter transportation district by article 29-A of the tax law (Part CC)

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 2010-2011
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through CC. 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-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

1

PART A

2 Section 1. Paragraph a of subdivision twenty-sixth of section 171 of
3 the tax law, as amended by section 1 of subpart D of part V-1 of chapter
4 57 of the laws of 2009, is amended to read as follows:

5 a. Set the overpayment and underpayment rates of interest for purposes
6 of articles twelve-A, seventeen, eighteen, twenty and twenty-one of this
7 chapter. Such rates shall be the overpayment and underpayment rates of
8 interest set pursuant to subsection (e) of section one thousand ninety-
9 six of this chapter, but the underpayment rate shall not be less than
10 seven and one-half percent per annum. Any such rates set by such commis-
11 sioner shall apply to taxes, or any portion thereof, which remain or
12 become due or overpaid (other than overpayments under such article twen-
13 ty and not including reimbursements, if any, under any of such articles)
14 on or after the date on which such rates become effective and shall
15 apply only with respect to interest computed or computable for periods
16 or portions of periods occurring in the period during which such rates
17 are in effect. In computing the amount of any interest required to be
18 paid under such articles by such commissioner or by the taxpayer, or any
19 other amount determined by reference to such amount of interest, such
20 interest and such amount shall be compounded daily.

21 § 2. Subdivision 1 of section 171-a of the tax law, as amended by
22 section 1 of part R of chapter 60 of the laws of 2004, is amended to
23 read as follows:

24 1. All taxes, interest, penalties and fees collected or received by
25 the commissioner or the commissioner's duly authorized agent under arti-
26 cles nine (except section one hundred eighty-two-a thereof and except as
27 otherwise provided in section two hundred five thereof), nine-A,
28 twelve-A (except as otherwise provided in section two hundred eighty-
29 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
30 section three hundred twelve thereof), seventeen (except as otherwise
31 provided in section four hundred eight thereof), eighteen, nineteen,
32 twenty (except as otherwise provided in section four hundred eighty-two
33 thereof), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight
34 (except as otherwise provided in section eleven hundred two or eleven
35 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise
36 provided in section fourteen hundred twenty-one thereof), thirty-two,
37 thirty-three and thirty-three-A of this chapter shall be deposited daily
38 in one account with such responsible banks, banking houses or trust
39 companies as may be designated by the comptroller, to the credit of the
40 comptroller. Such an account may be established in one or more of such
41 depositories. Such deposits shall be kept separate and apart from all
42 other money in the possession of the comptroller. The comptroller shall
43 require adequate security from all such depositories. Of the total
44 revenue collected or received under such articles of this chapter, the
45 comptroller shall retain in the comptroller's hands such amount as the
46 commissioner may determine to be necessary for refunds or reimbursements
47 under such articles of this chapter [and article ten thereof] out of
48 which amount the comptroller shall pay any refunds or reimbursements to
49 which taxpayers shall be entitled under the provisions of such articles
50 of this chapter [and article ten thereof]. The commissioner and the
51 comptroller shall maintain a system of accounts showing the amount of
52 revenue collected or received from each of the taxes imposed by such
53 articles. The comptroller, after reserving the amount to pay such
54 refunds or reimbursements, shall, on or before the tenth day of each
55 month, pay into the state treasury to the credit of the general fund all

1 revenue deposited under this section during the preceding calendar month
2 and remaining to the comptroller's credit on the last day of such
3 preceding month, (i) except that the comptroller shall pay to the state
4 department of social services that amount of overpayments of tax imposed
5 by article twenty-two of this chapter and the interest on such amount
6 which is certified to the comptroller by the commissioner as the amount
7 to be credited against past-due support pursuant to subdivision six of
8 section one hundred seventy-one-c of this [chapter] article, (ii) and
9 except that the comptroller shall pay to the New York state higher
10 education services corporation and the state university of New York or
11 the city university of New York respectively that amount of overpayments
12 of tax imposed by article twenty-two of this chapter and the interest on
13 such amount which is certified to the comptroller by the commissioner as
14 the amount to be credited against the amount of defaults in repayment of
15 guaranteed student loans and state university loans or city university
16 loans pursuant to subdivision five of section one hundred seventy-one-d
17 and subdivision six of section one hundred seventy-one-e of this [chap-
18 ter] article, (iii) and except further that, notwithstanding any law,
19 the comptroller shall credit to the revenue arrearage account, pursuant
20 to section ninety-one-a of the state finance law, that amount of over-
21 payment of tax imposed by article nine, nine-A, twenty-two, thirty,
22 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any
23 interest thereon, which is certified to the comptroller by the commis-
24 sioner as the amount to be credited against a past-due legally enforcea-
25 ble debt owed to a state agency pursuant to paragraph (a) of subdivision
26 six of section one hundred seventy-one-f of this article, provided,
27 however, he shall credit to the special offset fiduciary account, pursu-
28 ant to section ninety-one-c of the state finance law, any such amount
29 creditable as a liability as set forth in paragraph (b) of subdivision
30 six of section one hundred seventy-one-f of this article, (iv) and
31 except further that the comptroller shall pay to the city of New York
32 that amount of overpayment of tax imposed by article nine, nine-A, twen-
33 ty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this
34 chapter and any interest thereon that is certified to the comptroller by
35 the commissioner as the amount to be credited against city of New York
36 tax warrant judgment debt pursuant to section one hundred seventy-one-l
37 of this article, (v) and except further that the comptroller shall pay
38 to a non-obligated spouse that amount of overpayment of tax imposed by
39 article twenty-two of this chapter and the interest on such amount which
40 has been credited pursuant to section one hundred seventy-one-c, one
41 hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-
42 one-f or one hundred seventy-one-l of this article and which is certi-
43 fied to the comptroller by the commissioner as the amount due such non-
44 obligated spouse pursuant to paragraph six of subsection (b) of section
45 six hundred fifty-one of this chapter; and (vi) the comptroller shall
46 deduct a like amount which the comptroller shall pay into the treasury
47 to the credit of the general fund from amounts subsequently payable to
48 the [department of social services] office of children and family
49 services and the office of temporary and disability assistance, the
50 state university of New York, the city university of New York, or the
51 higher education services corporation, or the revenue arrearage account
52 or special offset fiduciary account pursuant to section ninety-one-a or
53 ninety-one-c of the state finance law, as the case may be, whichever had
54 been credited the amount originally withheld from such overpayment, and
55 (vii) with respect to amounts originally withheld from such overpayment
56 pursuant to section one hundred seventy-one-l of this article and paid

1 to the city of New York, the comptroller shall collect a like amount
2 from the city of New York.

3 § 3. The tax law is amended by adding a new article 17 to read as
4 follows:

5 ARTICLE 17

6 TAX ON SEVERING NATURAL GAS

7 Section 400. General definitions.

8 401. Imposition of tax.

9 402. Registration of producers.

10 403. Records to be kept by producers.

11 404. Payment of tax; returns.

12 405. Determination of tax.

13 406. Penalties and interest.

14 407. Mailing rules; holidays.

15 408. Deposit and disposition of revenue.

16 409. Refunds.

17 410. Secrecy.

18 411. Liability for other taxes not affected.

19 § 400. General definitions. As used in this article:

20 1. "Person" includes an individual, partnership, limited liability
21 company, society, association, joint stock company, corporation, estate,
22 receiver, trustee, assignee, referee, and any other person acting in a
23 fiduciary or representative capacity, whether appointed by a court or
24 otherwise, and any combination of the foregoing.

25 2. "Producer" means any person who severs natural gas from a gas pool
26 in the Marcellus or Utica shale formation using a horizontal well.

27 3. "Purchaser" means any person, consignor, agent, or other dealer, by
28 whatever name called, who or which acquires title outright or condi-
29 tionally to any interest in severed natural gas.

30 4. "Market value," when used in reference to the rate of severance tax
31 on natural gas, means the producer's actual cash receipts from the sale
32 of natural gas to the first purchaser. In a transaction involving
33 related parties (as that term is described in section 267(b) or section
34 707(b) of the Internal Revenue Code), market value cannot be less than
35 the fair market value for natural gas of similar grade and quality. In
36 the absence of a sale, market value is the fair market value for natural
37 gas of similar grade and quality. "Fair market value" is the midpoint
38 price of natural gas at the Dominion, South Point market center as
39 published in Platts Gas Daily or, if that price is unattainable, the
40 fair market price of natural gas at a similar market center as published
41 by a similar industry organization.

42 5. "Sever", "severed", or "severing" means, in relation to natural
43 gas, taking or removing for commercial purposes from the soil or water
44 by a well whose surface hole is located within this state. However,
45 "sever", "severed", or "severing" does not apply to any natural gas
46 returned to any formation, in recycling, repressuring, pressure mainte-
47 nance operation, or other operation, for the production of oil or any
48 other liquid hydrocarbon.

49 6. "Completion" or "completed" means the act of making a well capable
50 of producing natural gas.

51 7. "McF" equals one thousand cubic feet.

52 § 401. Imposition of tax. There is hereby imposed upon every producer,
53 for the privilege of severing natural gas from any oil or gas well from
54 a gas pool in the Marcellus or the Utica shale formation using a hori-
55 zontal well, a tax of three percent of the market value of the natural
56 gas.

1 § 402. Registration of producers. 1. The department, upon the applica-
2 tion of a person, shall register that person as a producer under this
3 article if that person has obtained all permits required by the depart-
4 ment of environmental conservation to sever natural gas from a gas pool
5 in the Marcellus or Utica shale formation using a horizontal well. The
6 application shall be in a form and contain such data as the department
7 prescribes. No producer, unless so registered, may sever natural gas.

8 2. The commissioner may require a producer to file with the depart-
9 ment a bond issued by a surety company that is approved by the super-
10 intendent of insurance as to solvency and responsibility and authorized
11 to transact business in this state or another security acceptable to the
12 commissioner, in an amount fixed by the commissioner to secure the
13 payment of any sums due from such producer pursuant to this article. The
14 commissioner may require that the bond or other security be filed before
15 a producer is registered, and the amount thereof may be increased at any
16 time when, in his or her judgment, the increase is necessary as a
17 protection to the revenues under this article. Securities deposited
18 under this subdivision will be kept in the joint custody of the comp-
19 troller and the commissioner and may be sold by the commissioner if a
20 sale becomes necessary to recover any sums due from the producer pursu-
21 ant to this article, but no sale will be held until after the producer
22 has an opportunity to litigate the validity of any tax. After any sale
23 of such securities, the amount, if any, above the sums due under this
24 article shall be returned to the producer. The department, when author-
25 ized by the producer, may furnish information regarding the producer's
26 registration and any other information that the producer authorizes the
27 department to disclose.

28 3. (a) The registration of any producer may be cancelled or suspended
29 by the commissioner when the producer (i) fails to file a bond or other
30 security when required or the amount thereof is increased, or (ii) fails
31 to continue to maintain in full force and effect at all times the
32 required bond or other security filed with the commissioner.

33 (b) Notwithstanding any other provision to the contrary:

34 (i) In the event that the commissioner determines that an increase in
35 the amount of the bond or other security filed by a registrant is
36 required to secure the liability of such registrant, that bond increase
37 or other security increase shall be filed by the registrant within thir-
38 ty days from the day the notice and demand therefor has been given by
39 the commissioner. If the registrant fails to: (1) file that increase in
40 the amount of bond or other security within the thirty day period, or
41 (2) make timely application for a hearing with respect to the amount of
42 the increase of the bond or other security, the commissioner shall
43 cancel or suspend the registration of such registrant.

44 (ii) The registrant may apply to the division of tax appeals for a
45 hearing to review an increase in the amount of the bond or other securi-
46 ty required to be filed by making application therefor within seven days
47 of the day that the notice and demand for an increase is given by the
48 commissioner, provided, the division of tax appeals may, by regulation,
49 for the causes stated therein, extend the period to a period not exceed-
50 ing fifteen days from the day that notice and demand is given. If the
51 registrant timely applies for a hearing to review the increase, the
52 hearing shall be held, unless extended by the division of tax appeals
53 for good cause, no less than seven days and no more than ten days after
54 the application for a hearing is received by the division of tax
55 appeals. Within fifteen days of the receipt of the application for a
56 hearing, unless extended by the division of tax appeals, the administra-

1 tive law judge shall render a determination with respect to the increase
2 in the amount of the bond or other security and, if the amount of the
3 bond or other security is determined to be due, the increase shall be
4 filed within seven days from the day the administrative law judge gives
5 notice of the determination, or, if later, thirty days from the day the
6 notice and demand for the increase had been given by the commissioner.
7 Notwithstanding that the registrant takes exception to the administra-
8 tive law judge's determination that an increased bond or other security
9 is due, if the increased bond or other security is not filed within such
10 time, the commissioner shall cancel or suspend the registration of the
11 registrant. Where the administrative law judge determines that an
12 increased bond or other security is not due but that determination is
13 reversed by the tax appeals tribunal, if the increased bond or other
14 security is not filed within seven days from the day the tax appeals
15 tribunal gives notice of its decision, then notwithstanding any judicial
16 review of such decision of the tax appeals tribunal, the commissioner
17 shall cancel or suspend the registration of the registrant.

18 4. The registration granted to a producer by the commissioner cannot
19 be transferred to any other person without the prior written approval of
20 the commissioner, and any transfer without approval constitutes grounds
21 for the immediate cancellation or suspension of the registration. The
22 commissioner may establish by rule or regulation a specific procedure
23 for the review of an application for registration in those instances
24 where there has been a proposed transfer of registration. The commis-
25 sioner, in making his or her determination with respect to the approval
26 of a proposed transfer, will review the application as any other appli-
27 cation for registration is reviewed under this section and will make his
28 or her determination in accordance with the criteria set forth in this
29 section. Provided further, the commissioner shall issue a determination,
30 with respect to an application for a proposed transfer of registration,
31 within seventy-five days after the day of the receipt of a properly
32 completed application containing such information as the commissioner
33 may require. If the commissioner fails to issue a determination within
34 such time, the commissioner will be required to register the proposed
35 transferee.

36 § 403. Records to be kept by producers. 1. Every person who severs
37 natural gas from a gas pool in the Marcellus or Utica shale formation
38 using a horizontal well in this state shall keep a complete and accurate
39 record of the gross quantity of natural gas severed and the market value
40 thereof, the amount of tax due, and any other information that the
41 commissioner may require for the proper enforcement of the provisions of
42 this article. Such records shall be in the form and contain whatever
43 other information the commissioner may prescribe. Such records, unless
44 required by the commissioner to be preserved for a longer period, shall
45 be preserved for a period of three years and shall be offered for
46 inspection at any time upon oral or written demand by the commissioner
47 or the commissioner's duly authorized agents. The commissioner is hereby
48 further authorized to examine the equipment of any person pertaining to
49 the severance of natural gas and the stock of such natural gas in the
50 possession or control of any person. To verify the amount of tax due
51 under this article, each person is hereby directed and required to give
52 to the commissioner or the commissioner's duly authorized represen-
53 tatives the means, facilities, and opportunity for such examinations as
54 are herein provided for and required.

55 2. The commissioner may, by regulation, provide for the filing of
56 monthly information returns by every person required to maintain records



1 as prescribed in subdivision one of this section. These returns shall in
2 all material respects reflect the information required to be contained
3 in those records. These returns shall be in the form and contain all
4 other information the commissioner may require.

5 § 404. Payment of tax; returns. 1. On or before the twentieth day
6 after the end of the second calendar month following a reporting period,
7 every producer shall file with the department a return in the form
8 prescribed by the commissioner that states the gross quantity of natural
9 gas severed and the market value thereof, the amount of tax due, and any
10 other information that the commissioner may require for the proper
11 enforcement of the provisions of this article. The commissioner may
12 require these returns to be filed electronically. The commissioner shall
13 prescribe the reporting period by regulation and may permit the filing
14 of returns by producers on a monthly, quarterly, semi-annual, or annual
15 basis. The commissioner may waive the filing of returns by a producer
16 for such time and upon such terms as he or she may deem proper if satis-
17 fied that no tax imposed by this article is or will be payable by the
18 producer during the time for which returns are waived. The fact that a
19 producer's name is signed to a filed return is prima facie evidence for
20 all purposes that the return was actually signed by that producer. Each
21 such producer shall pay to the department with the filing of the return,
22 the taxes imposed by this article during the period covered by the
23 return. The commissioner may require that those payments be made elec-
24 tronically.

25 2. A producer who is entitled to a refund under the provisions of
26 section four hundred nine of this article, may take credit therefor on a
27 return filed pursuant to this section in lieu of such refund, unless the
28 commissioner withdraws that privilege.

29 § 405. Determination of tax. 1. Except as otherwise provided in this
30 section, if a producer files a return under this article, but that
31 return is incorrect or insufficient, the commissioner may determine the
32 amount of tax due at any time within three years after the return was
33 filed (whether or not such return was filed on or after the due date),
34 and give written notice of that determination to the producer.

35 2. The commissioner may determine the amount of tax due at any time if
36 a producer (a) has not registered as required by this article, (b) fails
37 to file a return, or (c) willfully delivers or discloses to the commis-
38 sioner any list, return, report, account, statement, or other document
39 known by the producer to be fraudulent or to be false as to any material
40 matter, or omits any material matter with intent to deceive.

41 3. Notwithstanding any of the foregoing provisions of this section,
42 where, before the expiration of the time prescribed in this section for
43 the determination of tax, both the commissioner and the producer have
44 consented in writing to its determination after such time, the tax may
45 be determined at any time prior to the expiration of the period agreed
46 upon. The period so agreed upon may be extended by subsequent agreements
47 made in writing before the expiration of the period previously agreed
48 upon.

49 4. Any determination made pursuant to this section will finally and
50 irrevocably fix the tax unless the producer against whom it is assessed,
51 within ninety days after the giving of notice of such determination,
52 petitions the division of tax appeals for a hearing, or unless the
53 commissioner on his or her own motion, re-determines the same. After
54 such hearing, the division of tax appeals will give notice of the deter-
55 mination of the administrative law judge to the producer liable for the
56 tax and to the commissioner. That determination may be reviewed by the

1 tax appeals tribunal as provided in article forty of this chapter. The
2 decision of the tax appeals tribunal may be reviewed as provided in
3 section two thousand sixteen of this chapter, but the proceeding may not
4 be commenced unless the amount of tax stated or referred to in the deci-
5 sion, with penalties and interest thereon, if any, and the amount of any
6 other penalty stated or referred to in the decision, is first deposited
7 with the commissioner.

8 5. The remedy provided by this section for review of a decision of the
9 tax appeals tribunal is the exclusive remedy available to any taxpayer
10 for judicial determination of the liability of the taxpayer for taxes
11 under this article.

12 § 406. Penalties and interest. 1. (a) A producer or other person who
13 or which fails to file a return or to pay any tax within the time
14 required by this article (determined with regard to any extension of
15 time for filing or paying) will be subject to a penalty of ten per
16 centum of the amount of tax determined to be due as provided in this
17 article plus one per centum of such amount for each month or fraction
18 thereof during which the failure continues after the expiration of the
19 first month during which that return was required to be filed or such
20 tax became due, not exceeding thirty per centum in the aggregate.
21 Provided, however, in the case of a failure to file a return within
22 sixty days of the date prescribed for filing of a return by this article
23 (determined with regard to any extension of time for filing), the penal-
24 ty imposed by this paragraph will not be less than the lesser of one
25 hundred dollars or one hundred per centum of the amount required to be
26 shown as tax on that return. For the purpose of the preceding sentence,
27 the amount of tax required to be shown on the return will be reduced by
28 the amount of any part of the tax that is paid on or before the date
29 prescribed for payment of the tax.

30 (b) If any amount of tax is not paid on or before the last date
31 prescribed in this article for payment, interest on such amount at the
32 underpayment rate set by the commissioner pursuant to subdivision twen-
33 ty-sixth of section one hundred seventy-one of this chapter shall be
34 paid for the period from that last date to the date paid, whether or not
35 any extension of time for payment was granted. Interest under this
36 paragraph will not be owed if the amount thereof is less than one
37 dollar.

38 (c) If the commissioner determines that such failure or delay was due
39 to reasonable cause (as determined under regulations of the commission-
40 er) and not due to willful neglect, he or she shall abate all or part of
41 such penalty.

42 (d) If the failure to pay any tax within the time required by or
43 pursuant to this article is due to fraud, in lieu of the penalties
44 provided for in paragraphs (a) and (b) of this subdivision, there will
45 be added to the tax (i) a penalty of two times the amount of tax due,
46 plus (ii) interest on such unpaid tax at the underpayment rate set by
47 the commissioner pursuant to subdivision twenty-sixth of section one
48 hundred seventy-one of this chapter for the period beginning on the last
49 day prescribed by this article for the payment of such tax (determined
50 without regard to any extension of time for paying) and ending on the
51 day on which such tax is paid.

52 (e) The penalties and interest provided for in this section will be
53 determined, assessed, collected and paid in the same manner as the taxes
54 imposed by this article and will be disposed of as hereinafter provided
55 with respect to moneys derived from the tax.

1 2. For purposes of this chapter, the failure to do any act required by
2 this article will be deemed an act committed in part at the office of
3 the department in Albany. For purposes of this chapter, the certificate
4 of the department to the effect that a tax has not been paid, that a
5 return has not been filed, or that information has not been supplied, as
6 required by or under the provisions of this article, or that a claim for
7 refund has been filed, will be prima facie evidence that the tax has not
8 been paid, the return has not been filed, the information has not been
9 supplied, or the claim has been filed.

10 3. Cross-reference: For criminal penalties, see article thirty-seven
11 of this chapter.

12 § 407. Mailing rules; holidays. The rules set forth in section two
13 hundred eighty-nine-d of this chapter apply to this article.

14 § 408. Deposit and disposition of revenue. All taxes, interest and
15 penalties collected or received by the commissioner under the taxes
16 imposed by this article will be deposited and disposed of pursuant to
17 the provisions of section three hundred twelve of this chapter.

18 § 409. Refunds. 1. In the manner provided in this section, the commis-
19 sioner will refund or credit any tax, penalty, or interest erroneously,
20 illegally or unconstitutionally collected or paid if application there-
21 for is filed with the commissioner within three years after the date
22 when the tax, penalty, or interest was paid under this article. The
23 application shall be in a form prescribed by the commissioner.

24 2. If an application for refund or credit is filed with the commis-
25 sioner as provided in subdivision one of this section, the commissioner
26 shall grant or deny that application in whole or in part within six
27 months of receipt of the application in a form that is able to be proc-
28 essed and shall notify the applicant by mail accordingly. That determi-
29 nation will be final and irrevocable unless the applicant, within ninety
30 days after the mailing of notice of such determination, petitions the
31 division of tax appeals for a hearing. After the hearing, the division
32 of tax appeals will mail notice of the determination of the administra-
33 tive law judge to the applicant and to the commissioner. That determi-
34 nation may be reviewed by the tax appeals tribunal as provided in arti-
35 cle forty of this chapter. The decision of the tax appeals tribunal may
36 be reviewed as provided in section two thousand sixteen of this chapter.

37 3. Upon receipt of a claim for refund or credit in processible form,
38 interest will be allowed and paid at the overpayment rate set by the
39 commissioner pursuant to subdivision twenty-sixth of section one hundred
40 seventy-one of this chapter, or if no rate is set, at the rate of seven
41 and one-half percent per annum calculated from the date the claim is
42 filed to the date immediately preceding the date of the refund check
43 except no interest will be allowed or paid if the refund check is mailed
44 within thirty days of such receipt or if the amount thereof would be
45 less than one dollar. For purposes of this subdivision, a claim will not
46 be treated as filed until it is filed in processible form. A claim is in
47 a processible form if the claim is filed on a permitted form, and
48 contains the taxpayer's name, address and identifying number and the
49 required signatures, and sufficient required information (whether on the
50 claim or on required attachments) to permit the mathematical verifica-
51 tion of refund shown on the claim.

52 § 410. Secrecy. 1. For purposes of this article, the secrecy
53 provisions set forth in section three hundred fourteen of this chapter
54 will apply.

55 2. Notwithstanding any other provision of this section: (a) Upon
56 agreement with the head of the department of environmental conservation

1 or the United States environmental protection agency, the commissioner
2 may disclose to that agency the name, address, employer identification
3 number, application status information, and other appropriate identify-
4 ing and application information, of (i) persons whose application for
5 registration under this article is pending; (ii) persons holding a valid
6 registration under this article; (iii) persons whose registration under
7 this article has been cancelled or suspended; and (iv) persons whose
8 registration application under this article has been denied, for the
9 purposes of improving the safety and security oversight of the natural
10 gas industry and coordinating and streamlining the credentialing process
11 for such industry administered by such agencies.

12 (b) Any information disclosed by the commissioner pursuant to para-
13 graph (a) of this subdivision may, pursuant to such agreement, be redis-
14 closed by and among the heads of such agencies and may also be redis-
15 closed to the heads of comparable agencies of any other state, the
16 District of Columbia or any province or territory of Canada in further-
17 ance of the purposes specified in this subdivision.

18 3. The commissioner may request from the New York state department of
19 environmental conservation and the New York state department of environ-
20 mental conservation is authorized and directed to provide, any cooper-
21 ation and assistance, including the provision of relevant information,
22 that will enable the commissioner to administer the tax imposed by this
23 article.

24 § 411. Liability for other taxes not affected. Payment of the tax
25 imposed by this article by a producer does not affect the requirement of
26 that producer to pay any other state, local, or other tax imposed upon
27 the producer's real or personal property or the producer's operations.

28 § 4. The tax law is amended by adding a new section 1812-g to read as
29 follows:

30 § 1812-g. Article seventeen tax. 1. Any person who willfully attempts
31 in any manner to evade or defeat any tax imposed by article seventeen of
32 this chapter or the payment thereof shall be guilty of a misdemeanor;
33 provided, however, that if the tax liability evaded or defeated as a
34 result of such conduct is equal to or greater than one thousand dollars,
35 such person shall be guilty of a class E felony.

36 2. Any willful act or omission, other than those described in section
37 eighteen hundred one of this article or subdivision one of this section,
38 by any person that amounts to a violation of any provision of article
39 seventeen of this chapter constitutes a misdemeanor.

40 § 5. This act shall take effect September 1, 2010; provided, however,
41 that persons currently severing natural gas in this state and any other
42 person who is or will be subject to the requirements of this act on
43 September 1, 2010 may begin submitting their certification that they are
44 not required to register or their applications to register as producers
45 on July 1, 2010.

46

PART B

47 Section 1. Subdivision 1 of section 471 of the tax law, as amended by
48 section 1 of part RR-1 of chapter 57 of the laws of 2008, is amended to
49 read as follows:

50 1. There is hereby imposed and shall be paid a tax on all cigarettes
51 possessed in the state by any person for sale, except that no tax shall
52 be imposed on cigarettes sold under such circumstances that this state
53 is without power to impose such tax or sold to the United States or sold
54 to or by a voluntary unincorporated organization of the armed forces of

1 the United States operating a place for the sale of goods pursuant to
2 regulations promulgated by the appropriate executive agency of the
3 United States, to the extent provided in such regulations and policy
4 statements of such an agency applicable to such sales. Such tax on ciga-
5 rettes shall be at the rate of [two] three dollars and seventy-five
6 cents for each twenty cigarettes or fraction thereof, provided, however,
7 that if a package of cigarettes contains more than twenty cigarettes,
8 the rate of tax on the cigarettes in such package in excess of twenty
9 shall be [sixty-eight] ninety-three and three-quarters cents for each
10 five cigarettes or fraction thereof. Such tax is intended to be imposed
11 upon only one sale of the same package of cigarettes. It shall be
12 presumed that all cigarettes within the state are subject to tax until
13 the contrary is established, and the burden of proof that any cigarettes
14 are not taxable hereunder shall be upon the person in possession there-
15 of.

16 § 2. Section 471-a of the tax law, as amended by section 2 of part
17 RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

18 § 471-a. Use tax on cigarettes. There is hereby imposed and shall be
19 paid a tax on all cigarettes used in the state by any person, except
20 that no tax shall be imposed (1) if the tax provided in section four
21 hundred seventy-one of this article is paid, (2) on the use of ciga-
22 rettes which are exempt from the tax imposed by said section, or (3) on
23 the use of four hundred or less cigarettes, brought into the state on,
24 or in the possession of, any person. Such tax on cigarettes shall be at
25 the rate of [two] three dollars and seventy-five cents for each twenty
26 cigarettes or fraction thereof, provided, however, that if a package of
27 cigarettes contains more than twenty cigarettes, the rate of tax on the
28 cigarettes in such package in excess of twenty shall be [sixty-eight]
29 ninety-three and three-quarters cents for each five cigarettes or frac-
30 tion thereof. Within twenty-four hours after liability for the tax
31 accrues, each such person shall file with the commissioner a return in
32 such form as the commissioner may prescribe together with a remittance
33 of the tax shown to be due thereon. For purposes of this article, the
34 word "use" means the exercise of any right or power actual or construc-
35 tive and shall include but is not limited to the receipt, storage or any
36 keeping or retention for any length of time, but shall not include
37 possession for sale. All other provisions of this article if not incon-
38 sistent shall apply to the administration and enforcement of the tax
39 imposed by this section in the same manner as if the language of said
40 provisions had been incorporated in full into this section.

41 § 3. Section 482 of the tax law, as amended by section 125-b of part C
42 of chapter 58 of the laws of 2009, is amended to read as follows:

43 § 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
44 est and penalties collected or received by the commissioner under this
45 article and article twenty-A of this chapter shall be deposited and
46 disposed of pursuant to the provisions of section one hundred seventy-
47 one-a of this chapter. (b) From the taxes, interest and penalties
48 collected or received by the commissioner under sections four hundred
49 seventy-one and four hundred seventy-one-a of this article, effective on
50 and after March first, two thousand, forty-nine and fifty-five
51 hundredths, and effective on and after February first, two thousand two,
52 forty-three and seventy hundredths; and effective on and after May
53 first, two thousand two, sixty-four and fifty-five hundredths; and
54 effective on and after April first, two thousand three, sixty-one and
55 twenty-two hundredths percent; and effective on and after June third,
56 two thousand eight, seventy and sixty-three hundredths percent; and

1 effective on and after June first, two thousand ten, seventy-five
2 percent collected or received under those sections must be deposited to
3 the credit of the tobacco control and insurance initiatives pool to be
4 established and distributed by the commissioner of health in accordance
5 with section twenty-eight hundred seven-v of the public health law. (c)
6 From the fees collected or received by the commissioner under subdivi-
7 sion two of section four hundred eighty-a of this article, effective on
8 or after September first, two thousand nine, any monies collected or
9 received under that section in excess of three million dollars must be
10 deposited to the credit of the tobacco control and insurance initiatives
11 pool to be distributed by the commissioner of health in accordance with
12 section twenty-eight hundred seven-v of the public health law.

13 § 4. Notwithstanding any other provision of law to the contrary, the
14 tax due on cigarettes possessed in New York state as of the close of
15 business on May 31, 2010 by any person for sale solely attributable to
16 the increase imposed by the amendments to section 471 of the tax law, as
17 amended by section one of this act, shall be paid by August 20, 2010,
18 subject to such terms and conditions as the commissioner of taxation and
19 finance shall prescribe.

20 § 5. This act shall take effect June 2, 2010, and shall apply to all
21 cigarettes possessed in the state by any person for sale and all ciga-
22 rettes used in the state by any person on or after June 2, 2010.

23

PART C

24 Section 1. Paragraph a of subdivision twenty-sixth of section 171 of
25 the tax law, as amended by section 1 of subpart D of part V-1 of chapter
26 57 of the laws of 2009, is amended to read as follows:

27 a. Set the overpayment and underpayment rates of interest for purposes
28 of articles twelve-A, sixteen, eighteen, twenty and twenty-one of this
29 chapter. Such rates shall be the overpayment and underpayment rates of
30 interest set pursuant to subsection (e) of section one thousand ninety-
31 six of this chapter, but the underpayment rate shall not be less than
32 seven and one-half percent per annum. Any such rates set by such commis-
33 sioner shall apply to taxes, or any portion thereof, which remain or
34 become due or overpaid (other than overpayments under such article twen-
35 ty and not including reimbursements, if any, under any of such articles)
36 on or after the date on which such rates become effective and shall
37 apply only with respect to interest computed or computable for periods
38 or portions of periods occurring in the period during which such rates
39 are in effect. In computing the amount of any interest required to be
40 paid under such articles by such commissioner or by the taxpayer, or any
41 other amount determined by reference to such amount of interest, such
42 interest and such amount shall be compounded daily.

43 § 2. Subdivision 1 of section 171-a of the tax law, as amended by
44 section 1 of part R of chapter 60 of the laws of 2004, is amended to
45 read as follows:

46 1. All taxes, interest, penalties and fees collected or received by
47 the commissioner or the commissioner's duly authorized agent under arti-
48 cles nine (except section one hundred eighty-two-a thereof and except as
49 otherwise provided in section two hundred five thereof), nine-A,
50 twelve-A (except as otherwise provided in section two hundred eighty-
51 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
52 section three hundred twelve thereof), sixteen (except as otherwise
53 provided in section three hundred sixty-four thereof), eighteen, nine-
54 teen, twenty (except as otherwise provided in section four hundred



1 eighty-two thereof), twenty-one, twenty-two, twenty-six, twenty-six-B,
2 twenty-eight (except as otherwise provided in section eleven hundred two
3 or eleven hundred three thereof), twenty-eight-A, thirty-one (except as
4 otherwise provided in section fourteen hundred twenty-one thereof),
5 thirty-two, thirty-three and thirty-three-A of this chapter shall be
6 deposited daily in one account with such responsible banks, banking
7 houses or trust companies as may be designated by the comptroller, to
8 the credit of the comptroller. Such an account may be established in one
9 or more of such depositories. Such deposits shall be kept separate and
10 apart from all other money in the possession of the comptroller. The
11 comptroller shall require adequate security from all such depositories.
12 Of the total revenue collected or received under such articles of this
13 chapter, the comptroller shall retain in the comptroller's hands such
14 amount as the commissioner may determine to be necessary for refunds or
15 reimbursements under such articles of this chapter [and article ten
16 thereof] out of which amount the comptroller shall pay any refunds or
17 reimbursements to which taxpayers shall be entitled under the provisions
18 of such articles of this chapter [and article ten thereof]. The commis-
19 sioner and the comptroller shall maintain a system of accounts showing
20 the amount of revenue collected or received from each of the taxes
21 imposed by such articles. The comptroller, after reserving the amount to
22 pay such refunds or reimbursements, shall, on or before the tenth day of
23 each month, pay into the state treasury to the credit of the general
24 fund all revenue deposited under this section during the preceding
25 calendar month and remaining to the comptroller's credit on the last day
26 of such preceding month, (i) except that the comptroller shall pay to
27 the state department of social services that amount of overpayments of
28 tax imposed by article twenty-two of this chapter and the interest on
29 such amount which is certified to the comptroller by the commissioner as
30 the amount to be credited against past-due support pursuant to subdivi-
31 sion six of section one hundred seventy-one-c of this [chapter] article,
32 (ii) and except that the comptroller shall pay to the New York state
33 higher education services corporation and the state university of New
34 York or the city university of New York respectively that amount of
35 overpayments of tax imposed by article twenty-two of this chapter and
36 the interest on such amount which is certified to the comptroller by the
37 commissioner as the amount to be credited against the amount of defaults
38 in repayment of guaranteed student loans and state university loans or
39 city university loans pursuant to subdivision five of section one
40 hundred seventy-one-d and subdivision six of section one hundred seven-
41 ty-one-e of this [chapter] article, (iii) and except further that,
42 notwithstanding any law, the comptroller shall credit to the revenue
43 arrearage account, pursuant to section ninety-one-a of the state finance
44 law, that amount of overpayment of tax imposed by article nine, nine-A,
45 twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of
46 this chapter, and any interest thereon, which is certified to the comp-
47 troller by the commissioner as the amount to be credited against a past-
48 due legally enforceable debt owed to a state agency pursuant to para-
49 graph (a) of subdivision six of section one hundred seventy-one-f of
50 this article, provided, however, he or she shall credit to the special
51 offset fiduciary account, pursuant to section ninety-one-c of the state
52 finance law, any such amount creditable as a liability as set forth in
53 paragraph (b) of subdivision six of section one hundred seventy-one-f of
54 this article, (iv) and except further that the comptroller shall pay to
55 the city of New York that amount of overpayment of tax imposed by arti-
56 cle nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or



1 thirty-three of this chapter and any interest thereon that is certified
 2 to the comptroller by the commissioner as the amount to be credited
 3 against city of New York tax warrant judgment debt pursuant to section
 4 one hundred seventy-one-1 of this article, (v) and except further that
 5 the comptroller shall pay to a non-obligated spouse that amount of over-
 6 payment of tax imposed by article twenty-two of this chapter and the
 7 interest on such amount which has been credited pursuant to section one
 8 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-
 9 one-e, one hundred seventy-one-f or one hundred seventy-one-1 of this
 10 article and which is certified to the comptroller by the commissioner as
 11 the amount due such non-obligated spouse pursuant to paragraph six of
 12 subsection (b) of section six hundred fifty-one of this chapter; and
 13 (vi) the comptroller shall deduct a like amount which the comptroller
 14 shall pay into the treasury to the credit of the general fund from
 15 amounts subsequently payable to the department of social services, the
 16 state university of New York, the city university of New York, or the
 17 higher education services corporation, or the revenue arrearage account
 18 or special offset fiduciary account pursuant to section ninety-one-a or
 19 ninety-one-c of the state finance law, as the case may be, whichever had
 20 been credited the amount originally withheld from such overpayment, and
 21 (vii) with respect to amounts originally withheld from such overpayment
 22 pursuant to section one hundred seventy-one-1 of this article and paid
 23 to the city of New York, the comptroller shall collect a like amount
 24 from the city of New York.

25 § 3. The tax law is amended by adding a new article 16 to read as
 26 follows:

27 ARTICLE 16

28 TAX ON BEVERAGE SYRUPS AND SOFT DRINKS

29 Section 350. General definitions.

30 351. Imposition of tax.

31 352. Exemptions.

32 353. Registration of distributors.

33 354. Bonds of distributors.

34 355. Cancellation or suspension of registration of distributors.

35 356. Presumption of taxability.

36 357. Records to be kept by distributors and others; examination.

37 358. Payment of tax; returns.

38 359. Determination of tax.

39 360. Proceedings to recover tax.

40 361. Penalties and interest.

41 362. Refunds.

42 363. Mailing rules; holidays.

43 364. Deposit and disposition of revenue.

44 § 350. General definitions. As used in this article: 1. "Bottle" means
 45 any closed or sealed glass, metal, paper, plastic or other type of
 46 container, regardless of size or shape.

47 2. "Bottled soft drink" means any soft drink contained in a bottle.

48 3. "Dietary aid" means a liquid product that is intended by its
 49 manufacturer for use as (a) a replacement for a daily meal for the
 50 purposes of weight reduction, (b) an oral nutritional therapy where
 51 caloric and dietary nutrients from food cannot be absorbed or metabol-
 52 ized, (c) a source of necessary nutrition due to a medical condition, or
 53 (d) an oral electrolyte solution for infants and children formulated to
 54 prevent dehydration due to diarrhea or vomiting.

55 4. "Distributor" means any person who (a) imports or causes to be
 56 imported into the state, for use, distribution, bottling, storage or

1 sale any (i) syrups or simple syrups, (ii) bottled soft drinks, or (iii)
2 powders or base products, or (b) produces, refines, bottles, manufac-
3 tures, compounds or mixes (i) syrups or simple syrups, (ii) bottled soft
4 drinks, or (iii) powders or base products.

5 5. "Infant formula" means any product, whether sold in liquid or
6 powder form, that is intended by its manufacturer for consumption by
7 infants and that is commonly referred to as infant formula.

8 6. "Milk" means natural liquid milk, regardless of animal source or
9 butterfat content; and natural milk concentrate, whether or not recon-
10 stituted, regardless of animal source or butterfat content; or dehy-
11 drated natural milk, whether or not reconstituted.

12 7. "Milk product" means any liquid that has milk as the predominant
13 ingredient by weight in accordance with the regulations of the United
14 States food and drug administration.

15 8. "Milk substitute" means any liquid that is soy-based and is
16 intended by its manufacturer as a substitute for milk.

17 9. "Natural fruit juice" means the original liquid resulting from the
18 pressing of fruit, the liquid resulting from the reconstitution of fruit
19 juice concentrate or the liquid resulting from the restoration of water
20 to dehydrated fruit juice.

21 10. "Natural vegetable juice" means the original liquid resulting from
22 the pressing of vegetables, the liquid resulting from the reconstitution
23 of vegetable juice concentrate or the liquid resulting from the restora-
24 tion of water to dehydrated vegetable juice.

25 11. "Nonalcoholic beverage" means any beverage not subject to tax
26 under article eighteen of this chapter.

27 12. "Person" includes an individual, partnership, limited liability
28 company, society, association, joint stock company, corporation, estate,
29 receiver, trustee, assignee, referee, and any other person acting in a
30 fiduciary or representative capacity, whether appointed by a court or
31 otherwise, and any combination of the foregoing.

32 13. "Place of business" means any place where (a) syrups or simple
33 syrups (b) bottled soft drinks, or (c) powders or base products are
34 either manufactured or received.

35 14. "Powder or base product" means a solid mixture of basic ingredi-
36 ents used in making, mixing, or compounding soft drinks, by mixing the
37 powder or other base with water, ice, syrup, simple syrup, fruits, vege-
38 tables, fruit juice, vegetable juice or any other product suitable to
39 make a soft drink.

40 15. "Retail dealer" means any person, other than a distributor, who
41 sells or dispenses a soft drink to an ultimate consumer.

42 16. "Sale" means any transfer of title or possession or both, exchange
43 or barter, rental, lease or license to use or consume, conditional or
44 otherwise, in any manner or by any means whatsoever for consideration,
45 or any agreement therefor.

46 17. "Simple syrup" means a mixture of sugar and water.

47 18. "Soft drink" means any nonalcoholic beverage, whether naturally or
48 artificially flavored, whether carbonated or noncarbonated, sold for
49 human consumption, containing more than ten calories per eight ounces,
50 including, but not limited to, (a) soda, water, sports drinks, "energy"
51 drinks, colas, flavored drinks, (b) fruit or vegetable drinks containing
52 less than seventy percent (70%) of natural fruit juice or natural vege-
53 table juice, or a combination of juices, any frozen, freeze-dried, or
54 other concentrate to which water is added to produce a beverage contain-
55 ing less than seventy percent (70%) of natural fruit juice or natural
56 vegetable juice, and (c) coffee and tea bottled as a liquid for sale.

1 19. "Syrup" means the liquid mixture of basic ingredients used in
2 making, mixing or compounding soft drinks, by mixing the syrup with
3 water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable
4 juice or any other product suitable to make a soft drink.

5 20. "Use" means any (a) compounding or mixing of syrups or simple
6 syrups, bottled soft drinks, or powders or base products with other
7 ingredients or other treatment or (b) the actual consumption or
8 possession for consumption of syrups or simple syrups, bottled soft
9 drinks, or powders or base products as a beverage or otherwise.

10 § 351. Imposition of tax. 1. There are levied and imposed taxes at the
11 following rates on:

12 (a) syrups or simple syrups, the tax rate shall be seven dollars and
13 sixty-eight cents per gallon based on one gallon being constituted into
14 seven hundred sixty-eight ounces of soft drink. In the event such gallon
15 of syrup or simple syrup reconstitutes a greater amount of soft drink
16 the rate of tax per gallon shall be increased proportionally to be based
17 on the actual number of fluid ounces of soft drink produced by such
18 gallon of syrup or simple syrup;

19 (b) bottled soft drinks, the tax rate shall be one dollar and twenty-
20 eight cents per gallon; and

21 (c) powders or base products, the tax rate shall be one dollar and
22 twenty-eight cents for each gallon of soft drink that may be produced
23 from each package or container of powders or base products by following
24 the manufacturer's directions.

25 2. The taxes shall be imposed when the (a) syrups or simple syrups,
26 bottled soft drinks, or powders or base products are imported into or
27 caused to be imported into the state for use, distribution, bottling,
28 storage, or sale in the state or (b) upon syrups or simple syrups,
29 bottled soft drinks, or powders or base products which are produced,
30 refined, bottled, manufactured, compounded or mixed by a distributor in
31 the state (which acts shall hereinafter in this subdivision be encom-
32 passed by the phrase "imported or manufactured").

33 3. For purposes of this chapter, it is presumed that syrups and simple
34 syrups are possessed for the purpose of sale in this state. It is also
35 presumed that bottled soft drinks or powders or base products are
36 possessed for the purpose of sale in this state if the quantity of
37 bottled soft drinks or powders or base products possessed in this state,
38 imported or caused to be imported into this state or produced, refined,
39 bottled, manufactured, compounded or mixed in this state exceeds five
40 gallons. Such presumption may be rebutted by the introduction of
41 substantial evidence to the contrary. In any case where the quantity of
42 syrups and simple syrups, bottle soft drinks, or powders or base
43 products taxable pursuant to this article is a fractional part of one
44 gallon or an amount greater than a whole multiple of gallons, the amount
45 of tax levied and imposed on such fractional part of one gallon, or
46 fractional part of a gallon in excess of a whole multiple of gallons
47 shall be such fractional part of the rate imposed by subdivision one of
48 this section.

49 4. When a retailer purchases syrups or simple syrups, bottled soft
50 drinks, or powders or base products from any person not registered as a
51 distributor, the retailer shall be liable for the tax imposed in subdi-
52 vision one of this section.

53 5. Nothing in this article shall be construed to require the payment
54 to the department of the taxes imposed by this article on the same
55 gallon of product more than once.

1 § 352. Exemptions. The following shall be exempt from the tax imposed
2 by this article on:

3 1. Products.

4 (a) Dietary aids.

5 (b) Infant formula.

6 (c) Milk, milk products and milk substitutes.

7 2. Exports. Syrups or simple syrups, bottled soft drinks, or powders
8 or base products imported or caused to be imported into this state or
9 produced, refined, bottled, manufactured, compounded or mixed in this
10 state by a distributor, where such distributor or the immediate purchas-
11 er of such syrups or simple syrups, bottled soft drinks, or powders or
12 base products exports such products from this state for sale or use
13 outside the state. In order to receive this exemption, a distributor
14 shall have to comply with all evidentiary requirements of the commis-
15 sioner.

16 3. Sales to the federal government. Syrups or simple syrups, bottled
17 soft drinks, or powders or base products imported or caused to be
18 imported into this state or produced, refined, bottled, manufactured,
19 compounded or mixed in this state by a distributor, and then sold by
20 such distributor to an organization described in paragraph two of subdi-
21 vision (a) of section eleven hundred sixteen of this chapter where such
22 syrups or simple syrups, bottled soft drinks, or powders or base
23 products are used by such organization for its own use or consumption.

24 4. Importation for personal use and consumption. Bottled soft drinks
25 or powders or base products imported or caused to be imported into this
26 state in the possession of an individual in the amount of one gallon or
27 less per month for such individual's own use and consumption.

28 5. Manufacture for personal use and consumption. Soft drinks manufac-
29 tured for such individual's own use and consumption and not for resale.

30 § 353. Registration of distributors. 1. (a) The commissioner may
31 register persons as distributors under this article as the commissioner
32 shall prescribe. If the commissioner registers distributors, the commis-
33 sioner shall register distributors upon application. The application
34 shall be in a form and contain such data as the commissioner shall
35 prescribe.

36 (b) If the commissioner registers distributors, the following
37 provisions apply. No person, unless so registered, shall import or cause
38 any syrups or simple syrups, bottled soft drinks, or powders or base
39 products to be imported into the state, for use, distribution, storage
40 or sale within the state or shall produce, refine, bottle, manufacture,
41 compound or mix syrups or simple syrups, bottled soft drinks, or powders
42 or base products within the state. No distributor, unless so registered,
43 shall make any sale, transfer, use or other disposition of syrups or
44 simple syrups, bottled soft drinks, or powders or base products within
45 this state, except a sale, transfer, use or disposition, if any, as to
46 which this state cannot impose such condition by reason of the United
47 States constitution and of laws of the United States enacted pursuant
48 thereto. Provided, however, that the commissioner may exclude from the
49 registration requirements, any person who is a distributor of syrups or
50 simple syrups, bottled soft drinks, or powders or base products solely
51 by reason of the importation into this state of no more than five
52 gallons of bottled soft drinks or powders or base products subject to
53 tax by this article each month for such person's personal use and
54 consumption.

1 2. If the commissioner registers distributors, the registration grant-
2 ed to a distributor by the commissioner shall not be assignable or
3 transferable.

4 § 354. Bonds of distributors. 1. If the commissioner registers
5 distributors, the commissioner may also require bonds as provided in
6 this section.

7 2. The commissioner may require a distributor to file with the commis-
8 sioner a bond issued by a surety company approved by the superintendent
9 of insurance as to solvency and responsibility and authorized to trans-
10 act business in this state or another security acceptable to the commis-
11 sioner, in such amount fixed by the commissioner to secure the payment
12 of any sums due from such distributor pursuant to this article.

13 3. The commissioner may require that the bond or other security be
14 filed before a distributor is registered, or at any time when in his or
15 her judgment a bond is necessary for the protection of the revenues
16 under this article.

17 4. The commissioner may require that the amount of a bond or other
18 security be increased at any time when, in his or her judgment, the
19 increase is necessary as a protection to the revenues under this arti-
20 cle.

21 5. If securities are deposited under this section, these securities
22 shall be kept in the joint custody of the comptroller and the commis-
23 sioner and may be sold by the commissioner if a sale becomes necessary
24 to recover any sums due from the distributor pursuant to this article,
25 but no sale shall be held until after the distributor shall have had an
26 opportunity to litigate the validity of any tax. After any sale of the
27 securities, the surplus amount, if any, above the sums due under this
28 article shall be returned to the distributor.

29 § 355. Cancellation or suspension of registration of distributors. If
30 the commissioner registers distributors, the registration of any
31 distributor may be cancelled by the commissioner upon a distributor's
32 failure to file a bond or other security when required, and the regis-
33 tration of a distributor may be cancelled by the commissioner upon a
34 distributor's failure to comply with any of the provisions of this arti-
35 cle or any reasonable requirement, rule or regulation adopted pursuant
36 to this article. All the provisions of subdivisions four through six and
37 eight through ten of section two hundred eighty-three of this chapter
38 relating to registration of distributors of motor fuel shall be applica-
39 ble to the registration of distributors under this article with the same
40 force and effect as if the language of those subdivisions had been
41 incorporated in full in this section and had expressly referred to the
42 registration of distributors under this article and the tax imposed by
43 this article, with such modification as may be necessary in order to
44 adapt the language of such provisions to the provisions of this article,
45 provided, specifically, that the term "motor fuel" shall be read as
46 "syrups or simple syrups, bottled soft drinks, or powders or base
47 products".

48 § 356. Presumption of taxability. 1. No person shall purchase syrups
49 or simple syrups, bottled soft drinks, or powders or base products in
50 this state, excluding a purchase at retail, unless the taxes imposed by
51 this article have been assumed by a distributor in accordance with a
52 certification under subdivision two of this section or paid by such
53 distributor. In addition to any other civil and criminal penalties which
54 may apply, any person who purchases syrups or simple syrups, bottled
55 soft drinks, or powders or base products without having received a
56 certification from the seller in accordance with subdivision two of this



1 section shall be jointly and severally liable to pay the taxes imposed
2 by this article with respect to such syrups or simple syrups, bottled
3 soft drinks, or powders or base products.

4 2. (a) Upon each sale of syrups or simple syrups, bottled soft drinks,
5 or powders or base products, other than a sale at retail, the seller
6 must give to the purchaser and the purchaser shall receive at the time
7 of delivery of such sale of syrups or simple syrups, bottled soft
8 drinks, or powders or base products, a certification containing such
9 information as the commissioner shall require which shall include a
10 statement to the effect that the seller assumed the payment of or paid
11 the taxes imposed by this article.

12 (b) If the certification required by this subdivision has been
13 furnished to the purchaser at delivery and accepted in good faith, the
14 burden of proving that the taxes imposed by this article were assumed or
15 paid by a distributor shall be solely on the seller.

16 (c) Where the certification required under this subdivision is not
17 furnished by the seller at delivery of the syrups or simple syrups,
18 bottled soft drinks, or powders or base products, it shall be presumed
19 that the taxes imposed by this article have not been assumed or paid by
20 a distributor and that the purchaser in such case is jointly and
21 severally liable for such taxes.

22 (d) If, due to the circumstances of delivery, it is not possible to
23 issue a certification required under this subdivision at the time of
24 delivery of syrups or simple syrups, bottled soft drinks, or powders or
25 base products, the commissioner may authorize the delivery of the
26 certification required under this subdivision at a time after the deliv-
27 ery of the syrups or simple syrups, bottled soft drinks, or powders or
28 base products which are the subject of the sale under the limited
29 circumstances he or she shall prescribe and upon such terms and condi-
30 tions he or she shall deem necessary to ensure collection of the taxes
31 imposed by this article.

32 § 357. Records to be kept by distributors and others; examination. 1.
33 Every distributor who imports or causes to be imported into this state,
34 or who produces, refines, bottles, manufactures, compounds or mixes
35 within this state, shall keep a complete and accurate record of all
36 purchases and sales, uses or other dispositions of syrups or simple
37 syrups, bottled soft drinks, or powders or base products, and a complete
38 and accurate record of the number of gallons of syrups or simple syrups,
39 bottled soft drinks, or powders or base products, produced, refined,
40 bottled, manufactured, compounded and mixed. Such records shall be in
41 the form and contain whatever other information the commissioner may
42 prescribe. Such records, unless required by the commissioner to be
43 preserved for a longer period, shall be preserved for a period of three
44 years and shall be offered for inspection at any time upon oral or writ-
45 ten demand by the commissioner or the commissioner's duly authorized
46 agents, and every such distributor shall make such reports to the
47 commissioner as may be required by the commissioner. To verify the
48 amount of tax due under this article, each person is hereby directed and
49 required to give to the commissioner or the commissioner's duly author-
50 ized representatives the means, facilities, and opportunity for such
51 examinations as are herein provided for and required.

52 2. Every person who shall possess or transport any syrups or simple
53 syrups, bottled soft drinks, or powders or base products upon the public
54 highways, roads or streets of the state, shall be required to have in
55 his or her actual possession invoices or delivery tickets for such
56 syrups or simple syrups, bottled soft drinks, or powders or base

1 products. Such invoices or delivery tickets shall show the name and
2 address of the consignor or seller, the name and address of the
3 consignee or purchaser, the quantity and brands of the syrups or simple
4 syrups, bottled soft drinks, or powders or base products transported,
5 and the name and address of the person who has or shall assume the
6 payment of the tax. The absence of such invoices or delivery tickets
7 shall be prima facie evidence that such person is a distributor of
8 syrups or simple syrups, bottled soft drinks, or powders or base
9 products. Nothing contained in this section shall be construed to
10 require the keeping of a record of purchase or disposition of syrups or
11 simple syrups, bottled soft drinks, or powders or base products by a
12 consumer thereof, except by a person who uses the same for commercial
13 purposes, or of the sale of syrups or simple syrups, bottled soft
14 drinks, or powders or base products at retail.

15 3. The commissioner may, by regulation, provide for the filing of
16 monthly information returns by every person required to maintain records
17 as prescribed in subdivision one of this section. These returns shall in
18 all material respects reflect the information required to be contained
19 in those records. These returns shall be in the form and contain all
20 other information the commissioner may require.

21 § 358. Payment of tax; returns. 1. Every distributor shall, on or
22 before the twentieth day of each month, file with the commissioner a
23 return, on forms to be prescribed and furnished by the commissioner,
24 stating the number of gallons of syrups or simple syrups, bottled soft
25 drinks, or powders or base products imported or caused to be imported,
26 produced, refined, bottled, manufactured, compounded or mixed by the
27 distributor in the state during the preceding calendar month and any
28 other information that the commissioner may require for the proper
29 enforcement of the provisions of this article.

30 2. The commissioner may also, if he or she deems it necessary in order
31 to insure the payment of the taxes imposed by this article, require
32 returns to be made at such times and covering such periods as he or she
33 may deem necessary, and, by regulation, may permit the filing of returns
34 by distributors on a quarterly, semi-annual, or annual basis, or may
35 waive the filing of returns by a distributor for such time and upon such
36 terms as he or she may deem proper if satisfied that no tax imposed by
37 this article is or shall be payable by the distributor during the time
38 for which returns are waived. Such returns shall contain such further
39 information as the commissioner shall require.

40 3. The commissioner may require each distributor under this article
41 to:

42 (a) electronically pay over to the commissioner all taxes collected;
43 (b) electronically file a return with the commissioner; and
44 (c) electronically file a return indicating that no tax is due if no
45 tax is due.

46 4. The fact that a distributor's name is signed to a filed return
47 shall be prima facie evidence for all purposes that the return was actu-
48 ally signed by that distributor. Each such distributor shall pay to the
49 commissioner with the filing of the return, the taxes imposed by this
50 article during the period covered by the return.

51 5. A distributor who is entitled to a refund under the provisions of
52 section three hundred sixty-two of this article, in lieu of such refund,
53 may take credit therefor on a return filed pursuant to this section,
54 unless the commissioner withdraws that privilege.

55 § 359. Determination of tax. 1. Except as otherwise provided in this
56 section, if a distributor files a return under this article, but that

1 return is incorrect or insufficient, the commissioner shall determine
2 the amount of tax due at any time within three years after the return
3 was filed (whether or not such return was filed on or after the due
4 date), and give written notice of that determination to the distributor.
5 For the purposes of this section the term distributor shall also include
6 any other person liable for the taxes imposed by this article.

7 2. The commissioner shall determine the amount of tax due at any time
8 if a distributor (a) has not registered as required by this article, (b)
9 fails to file a return, or (c) willfully delivers or discloses to the
10 commissioner any list, return, report, account, statement, or other
11 document known by the distributor to be fraudulent or to be false as to
12 any material matter, or omits any material matter with intent to
13 deceive.

14 3. Notwithstanding any of the foregoing provisions of this section,
15 where, before the expiration of the time prescribed in this section for
16 the determination of tax, both the commissioner and the distributor have
17 consented in writing to its determination after such time, the tax may
18 be determined at any time prior to the expiration of the period agreed
19 upon. The period so agreed upon may be extended by subsequent agreements
20 in writing made before the expiration of the period previously agreed
21 upon.

22 4. Any determination made pursuant to this section will finally and
23 irrevocably fix the tax unless the distributor against whom it is
24 assessed, within ninety days after the giving of notice of such determi-
25 nation, petitions the division of tax appeals for a hearing, or unless
26 the commissioner, on his or her own motion, re-determines the same.
27 After such hearing, the division of tax appeals shall give notice of the
28 determination of the administrative law judge to the distributor liable
29 for the tax and to the commissioner. That determination may be reviewed
30 by the tax appeals tribunal as provided in article forty of this chap-
31 ter. The decision of the tax appeals tribunal may be reviewed as
32 provided in section two thousand sixteen of this chapter, but the
33 proceeding may not be commenced unless the amount of tax stated or
34 referred to in the decision, with penalties and interest thereon, if
35 any, and the amount of any other penalty stated or referred to in the
36 decision, is first deposited with the commissioner.

37 5. The remedy provided by this section for review of a decision of the
38 tax appeals tribunal is the exclusive remedy available to any taxpayer
39 for judicial determination of the liability of the taxpayer for taxes
40 under this article.

41 § 360. Proceedings to recover tax. Whenever any distributor shall fail
42 to pay, within the time limited herein, any tax which he or she is
43 required to pay under the provisions of this article, the attorney
44 general shall, upon the request of the department, enforce payment of
45 such tax by civil action in the supreme court, in the name of the people
46 of the state, against such distributor for the amount of such tax, with
47 interest. The proceeds of the judgment, if any, shall be paid to the
48 department.

49 Whenever any distributor shall fail to pay, within the time limited
50 herein, any tax which he or she is required to pay under the provisions
51 of this article, the commissioner may issue a warrant under his or her
52 official seal, directed to the sheriff of any county of the state,
53 commanding him or her to levy upon and sell the real and personal prop-
54 erty of such distributor, found within his or her county, for the
55 payment of the amount thereof, with the added penalties, interest and
56 the cost of executing the warrant, and to return such warrant to the



1 department and to pay to it the money collected by virtue thereof within
2 sixty days after the receipt of such warrant. The sheriff shall, within
3 five days after the receipt of the warrant, file with the clerk of his
4 or her county a copy thereof, and thereupon the clerk shall enter in the
5 judgment docket the name of the distributor mentioned in the warrant,
6 and the amount of the tax, penalties and interest for which the warrant
7 is issued and the date when such copy is filed, and thereupon the amount
8 of such warrant so docketed shall become a lien upon the title to, and
9 interest in, real and personal property of the distributor against whom
10 the warrant is issued. Such lien shall not apply to personal property
11 unless such warrant is also filed in the department of state. The said
12 sheriff shall thereupon proceed upon the warrant in all respects, with
13 like effect, and in the same manner prescribed by law in respect to
14 executions issued against property upon judgments of a court of record,
15 and shall be entitled to the same fees for his or her services in
16 executing the warrant, to be collected in the same manner. In the
17 discretion of the commissioner a warrant of like terms, force and effect
18 may be issued and directed to any officer or employee of the department,
19 and in the execution thereof such officer or employee shall have all the
20 powers conferred by law upon sheriffs, but shall be entitled to no fee
21 or compensation in excess of actual expenses paid in the performance of
22 such duty. Upon such filing of a copy of a warrant, the commissioner
23 shall have the same remedies to enforce the claim for taxes, penalties
24 and interest against the distributor as if the people of the state had
25 recovered judgment against such distributor for the amount of the tax.

26 § 361. Penalties and interest. 1. (a) (i) A distributor or other person
27 who or which fails to file a return or to pay any tax within the time
28 required by this article (determined with regard to any extension of
29 time for filing or paying) shall be subject to a penalty of ten per
30 centum of the amount of tax determined to be due as provided in this
31 article plus one per centum of such amount for each month or fraction
32 thereof during which the failure continues after the expiration of the
33 first month during which that return was required to be filed or such
34 tax became due, not exceeding thirty per centum in the aggregate.

35 (ii) In the case of a failure to file a return within sixty days of
36 the date prescribed for filing a return by this article (determined with
37 regard to any extension of time for filing), the penalty imposed by this
38 paragraph shall not be less than the lesser of one hundred dollars or
39 one hundred per centum of the amount required to be shown as tax on that
40 return. For the purpose of the preceding sentence, the amount of tax
41 required to be shown on the return shall be reduced by the amount of any
42 part of the tax that is paid on or before the date prescribed for
43 payment of the tax.

44 (b) If any amount of tax is not paid on or before the last date
45 prescribed in this article for payment, interest on such amount at the
46 underpayment rate set by the commissioner pursuant to subdivision twen-
47 ty-sixth of section one hundred seventy-one of this chapter shall be
48 paid for the period from that last date to the date paid, whether or not
49 any extension of time for payment was granted. Interest under this
50 paragraph shall not be owed if the amount thereof is less than one
51 dollar.

52 (c) If the commissioner determines that such failure was due to
53 reasonable cause (as determined under regulations of the commissioner)
54 and not due to willful neglect, he or she shall abate all or part of
55 such penalty.

1 (d) If the failure to pay any tax within the time required by or
2 pursuant to this article is due to fraud, in lieu of the penalties and
3 interest provided for in paragraphs (a) and (b) of this subdivision,
4 there shall be added to the tax (i) a penalty of two times the amount of
5 tax due, plus (ii) interest on such unpaid tax at the underpayment rate
6 set by the commissioner pursuant to subdivision twenty-sixth of section
7 one hundred seventy-one of this chapter for the period beginning on the
8 last day prescribed by this article for the payment of such tax (deter-
9 mined without regard to any extension of time for paying) and ending on
10 the day on which such tax is paid.

11 (e) The penalties and interest provided for in this section shall be
12 determined, assessed, collected and paid in the same manner as the taxes
13 imposed by this article and shall be disposed of as hereinafter provided
14 with respect to monies derived from the tax. Unpaid penalties and inter-
15 est under this subdivision may be recovered by the attorney general in
16 an action brought pursuant to section three hundred sixty of this arti-
17 cle. Interest under this subdivision shall be compounded daily.

18 2. For purposes of this chapter, the failure to do any act required by
19 this article shall be deemed an act committed in part at the office of
20 the commissioner in Albany. For purposes of this chapter, the certif-
21 icate of the commissioner to the effect that a tax has not been paid,
22 that a return has not been filed, or that information has not been
23 supplied, as required by or under the provisions of this article, or
24 that a claim for refund has been filed, shall be prima facie evidence
25 that the tax has not been paid, the return has not been filed, the
26 information has not been supplied, or the claim has not been filed.

27 3. For criminal penalties, see article thirty-seven of this chapter.

28 § 362. Refunds. 1. In the manner provided in this section, the commis-
29 sioner shall refund or credit any tax, penalty, or interest erroneously,
30 illegally or unconstitutionally collected or paid if an application is
31 filed with the commissioner within three years after the date when the
32 tax, penalty, or interest was paid under this article. The application
33 shall be in a form prescribed by the commissioner.

34 2. With respect to syrups or simple syrups, bottled soft drinks, or
35 powders or base products imported, manufactured or sold or purchased in
36 this state, a distributor shall be allowed a refund or credit of the tax
37 required to be paid pursuant to this article upon such syrups or simple
38 syrups, bottled soft drinks, or powders or base products in the amount
39 of such tax paid if such syrups or simple syrups, bottled soft drinks,
40 or powders or base products were exported from this state for sale or
41 use outside this state. The distributor must file an application for
42 such refund or credit and comply with all requirements and rules and
43 regulations of the commissioner, including any and all evidentiary
44 requirements. Upon receipt of a claim for refund in processible form,
45 interest shall be allowed and paid at the overpayment rate set by the
46 commissioner pursuant to subdivision twenty-sixth of section one hundred
47 seventy-one of this chapter from the due date of the return to the date
48 immediately preceding the date of the refund check except no such inter-
49 est shall be allowed or paid if the refund check is mailed within thirty
50 days of such receipt and except no interest shall be allowed or paid if
51 the amount thereof would be less than one dollar. For purposes of this
52 subdivision, a claim shall not be treated as filed until it is filed in
53 processable form. A claim is in a processible form if the claim is filed
54 on a permitted form, and contains the taxpayer's name, address and iden-
55 tifying number and the required signatures, and sufficient required



1 information (whether on the claim or on required attachments) to permit
2 the mathematical verification of refund shown on the claim.

3 3. If an application for refund or credit is filed with the commis-
4 sioner as provided in subdivision one of this section, the commissioner
5 shall grant or deny that application in whole or in part within six
6 months of receipt of the application in a form that is able to be proc-
7 essed and shall notify the applicant by mail accordingly. That determi-
8 nation shall be final and irrevocable unless the applicant, within nine-
9 ty days after the mailing of notice of such determination, petitions the
10 division of tax appeals for a hearing. After the hearing, the division
11 of tax appeals shall mail notice of the determination of the administra-
12 tive law judge to the applicant and to the commissioner. That determi-
13 nation may be reviewed by the tax appeals tribunal as provided in arti-
14 cle forty of this chapter. The decision of the tax appeals tribunal may
15 be reviewed as provided in section two thousand sixteen of this chapter.

16 4. A subsequent purchaser shall be eligible for reimbursement of tax
17 imposed under this section with respect to any syrups or simple syrups,
18 bottled soft drinks, or powders or base products purchased by such
19 subsequent purchaser to which an exemption under subdivisions one, two
20 or three of section three hundred fifty-two of this article would have
21 applied. This reimbursement may be claimed only where (a) the tax
22 imposed pursuant to this article has been paid with respect to syrups or
23 simple syrups, bottled soft drinks, or powders or base products, and the
24 entire amount of such tax has been absorbed by such purchaser, and (b)
25 such purchaser possesses documentary proof satisfactory to the commis-
26 sioner evidencing the absorption by it of the entire amount of the tax
27 imposed pursuant to this article. Provided, however, that the commis-
28 sioner shall require such documentary proof to qualify for any
29 reimbursement of tax provided by this section as the commissioner deems
30 appropriate.

31 § 363. Mailing rules; holidays. 1. If any return, claim, statement,
32 notice, application, or other document required to be filed, or any
33 payment required to be made, within a prescribed period or on or before
34 a prescribed date under authority of any provision of this article is,
35 after such period or such date, delivered by United States mail to the
36 commissioner, department, bureau, office, officer or person with which
37 or with whom such document is required to be filed, or to which or to
38 whom such payment is required to be made, the date of the United States
39 postmark stamped on the envelope shall be deemed to be the date of
40 delivery. This subdivision shall apply only if the postmark date falls
41 within the prescribed period or on or before the prescribed date for the
42 filing of such document, or for making the payment, including any exten-
43 sion granted for such filing or payment, and only if such document or
44 payment was deposited in the mail, postage prepaid, properly addressed
45 to the commissioner, department, bureau, office, officer or person with
46 which or with whom the document is required to be filed or to which or
47 to whom such payment is required to be made. If any document is sent by
48 United States registered mail, such registration shall be prima facie
49 evidence that such document was delivered to the commissioner, depart-
50 ment, bureau, office, officer or person to which or to whom addressed.
51 To the extent that the commissioner shall prescribe by regulation,
52 certified mail may be used in lieu of registered mail under this
53 section. This subdivision shall apply in the case of postmarks not made
54 by the United States post office only if and to the extent provided by
55 regulations of the commissioner.



1 2. Any notice authorized or required under this article may be given
2 by mailing it to the person for whom it is intended, in a postpaid
3 envelope addressed to such person at the address given by him or her in
4 his or her application for registration as a distributor or in the last
5 return filed by him or her under this article or, if no application or
6 return has been filed, then to such address as may be obtainable. The
7 mailing of such notice shall be presumptive evidence of its receipt by
8 the person to whom addressed. Any period of time, which is determined
9 according to the provisions of this article, for the giving of notice
10 shall commence to run from the date of mailing of such notice.

11 3. When the last day prescribed under authority of this article
12 (including any extension of time) for performing any act falls on Satur-
13 day, Sunday or a legal holiday in the state of New York, the performance
14 of such act shall be considered timely if it is performed on the next
15 succeeding day which is not a Saturday, Sunday or a legal holiday.

16 4. (a) Any reference in subdivision one of this section to the United
17 States mail shall be treated as including a reference to any delivery
18 service designated by the secretary of the treasury of the United States
19 pursuant to section seventy-five hundred two of the internal revenue
20 code and any reference in subdivision one of this section to a postmark
21 by the United States mail shall be treated as including a reference to
22 any date recorded or marked in the manner described in section seventy-
23 five hundred two of the internal revenue code by a designated delivery
24 service. If the commissioner finds that any delivery service designated
25 by such secretary is inadequate for the needs of the state, the commis-
26 sioner may withdraw such designation for purposes of this article. The
27 commissioner may also designate additional delivery services meeting the
28 criteria of section seventy-five hundred two of the internal revenue
29 code for purposes of this article, or may withdraw any such designation
30 if the commissioner finds that a delivery service so designated is inad-
31 equately for the needs of the state. Any reference in subdivision one of
32 this section to the United States mail shall be treated as including a
33 reference to any delivery service designated by the commissioner and any
34 reference in subdivision one of this section to a postmark by the United
35 States mail shall be treated as including a reference to any date
36 recorded or marked in the manner described in section seventy-five
37 hundred two of the internal revenue code by a delivery service desig-
38 nated by the commissioner.

39 (b) Any equivalent of registered or certified mail designated by the
40 United States secretary of the treasury, or as may be designated by the
41 commissioner pursuant to the same criteria used by such secretary for
42 such designations pursuant to section seventy-five hundred two of the
43 internal revenue code, shall be included within the meaning of regis-
44 tered or certified mail as used in subdivision one of this section. If
45 the commissioner finds that any equivalent of registered or certified
46 mail is inadequate for the needs of the state, the commissioner may
47 withdraw such designation for purposes of this article.

48 § 364. Deposit and disposition of revenue. All taxes, fees, interest
49 and penalties collected or received by the commissioner under the taxes
50 imposed by this article shall be deposited and disposed of pursuant to
51 the provisions of section one hundred seventy-one-a of this chapter.
52 From the taxes and interest and penalties collected or received by the
53 commissioner under section three hundred fifty-one of this article
54 effective on and after September first, two thousand ten, all monies
55 collected or received under such sections shall be deposited to the HCRA



1 Resources Fund as established pursuant to section ninety-two-dd of the
2 state finance law.

3 § 4. The tax law is amended by adding a new section 1812-g to read as
4 follows:

5 § 1812-g. Article sixteen tax. 1. Any person who willfully attempts in
6 any manner to evade or defeat any tax imposed by article sixteen of this
7 chapter or the payment thereof shall be guilty of a misdemeanor;
8 provided, however, that if the tax liability evaded or defeated as a
9 result of such conduct is equal to or greater than one thousand dollars,
10 such person shall be guilty of class E felony.

11 2. Any willful act or omission, other than those described in section
12 eighteen hundred one of this article or subdivision one of this section,
13 by any person that amounts to a violation of any provision of article
14 sixteen of this chapter, constitutes a misdemeanor.

15 § 5. This act shall take effect September 1, 2010.

16

PART D

17 Section 1. Subdivision (a) of section 28 of the tax law, as added by
18 section 1 of part X of chapter 62 of the laws of 2006, is amended to
19 read as follows:

20 (a) General. A taxpayer subject to tax under article nine, nine-A or
21 twenty-two of this chapter shall be allowed a credit against such tax
22 pursuant to the provisions referenced in subdivision (d) of this
23 section. The credit (or pro rata share of earned credit in the case of a
24 partnership) for each gallon of biofuel produced at a biofuel plant on
25 or after January first, two thousand six shall equal fifteen cents per
26 gallon after the production of the first forty thousand gallons per year
27 presented to market. The credit under this section shall be capped at
28 two and one-half million dollars per taxpayer per taxable year for up to
29 no more than four consecutive taxable years per biofuel plant. If the
30 taxpayer is a partner in a partnership or shareholder of a New York S
31 corporation, then the cap imposed by the preceding sentence shall be
32 applied at the entity level, so that the aggregate credit allowed to all
33 the partners or shareholders of each such entity in the taxable year
34 does not exceed two and one-half million dollars.

35 § 2. Paragraph (f) of subdivision 12-G of section 210 of the tax law,
36 as amended by section 1-a of part A of chapter 63 of the laws of 2005,
37 is amended to read as follows:

38 (f) An eligible taxpayer may claim credits under this subdivision for
39 four consecutive taxable years, except, if a taxpayer is located in an
40 academic incubator facility and relocates within New York state to a
41 nonacademic incubator site, then the taxpayer (i) may make a revocable
42 election to defer the credit provided under this subdivision to the
43 first taxable year beginning after the taxpayer relocates from an
44 academic incubator facility, and (ii) shall be eligible for such credit
45 for five consecutive taxable years. In no case shall the credit allowed
46 by this subdivision to a taxpayer exceed two hundred and fifty thousand
47 dollars per year. If the taxpayer is a partner in a partnership or
48 shareholder of a New York S corporation, then the limit imposed by the
49 preceding sentence shall be applied at the entity level, so that the
50 aggregate credit allowed to all the partners or shareholders of each
51 such entity in the taxable year does not exceed two hundred and fifty
52 thousand dollars.



1 § 3. Paragraph 6 of subsection (nn) of section 606 of the tax law, as
2 amended by section 1-a of part A of chapter 63 of the laws of 2005, is
3 amended to read as follows:

4 (6) An eligible taxpayer may claim credits under this subsection for
5 four consecutive taxable years, except, if a taxpayer is located in an
6 academic incubator facility and relocates within New York state to a
7 nonacademic incubator site, then the taxpayer (i) may make a revocable
8 election to defer the credit provided under this subsection to the first
9 taxable year beginning after the taxpayer relocates from an academic
10 incubator facility, and (ii) shall be eligible for such credit for five
11 consecutive years. In no case shall the credit allowed by this
12 subsection to a taxpayer exceed two hundred fifty thousand dollars per
13 year. If the taxpayer is a partner in a partnership or shareholder of a
14 New York S corporation, then the limit imposed by the preceding sentence
15 shall be applied at the entity level, so that the aggregate credit
16 allowed to all the partners or shareholders of each such entity in the
17 taxable year does not exceed two hundred fifty thousand dollars.

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

20

PART E

21 Section 1. Subparagraph (E) of paragraph 1 of subsection (b) of
22 section 631 of the tax law, as added by section 1 of part H of chapter
23 60 of the laws of 2004, is amended and a new subparagraph (F) is added
24 to read as follows:

25 (E) gains from the sale, conveyance or other disposition of shares of
26 stock in a cooperative housing corporation in connection with the grant
27 or transfer of a proprietary leasehold by the owner thereof and subject
28 to the provisions of article thirty-one of this chapter, whether such
29 shares are held by a partnership, trust or otherwise[.]; or

30 (F) income received by nonresidents related to a business, trade,
31 profession or occupation previously carried on in this state, whether or
32 not as an employee, including but not limited to, covenants not to
33 compete and termination agreements. Income received by nonresidents
34 related to a business, trade, profession or occupation previously
35 carried on partly within and partly without the state shall be allocated
36 in accordance with the provisions of subsection (c) of this section.

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

39

PART F

40 Section 1. Legislative findings. The legislature finds that it is
41 necessary to correct a decision of the tax appeals tribunal and a deter-
42 mination of the division of tax appeals that erroneously overturned the
43 longstanding policies of department of taxation and finance that nonres-
44 ident subchapter S shareholders who sell their interest in an S corpo-
45 ration pursuant to an election under section 338(h)(10) or section
46 453(h)(1)(A) of the Internal Revenue Code, respectively, are taxed in
47 accordance with that election and the transaction is treated as an asset
48 sale producing New York source income. Section two of this act is
49 intended to clarify the concept of federal conformity in the personal
50 income tax and is necessary to prevent confusion in the preparation of
51 returns, unintended refunds, and protracted litigation of issues that
52 have been properly administered up to now.



1 § 2. Paragraph 2 of subsection (a) of section 632 of the tax law, as
2 amended by section 65 of part A of chapter 389 of the laws of 1997, is
3 amended to read as follows:

4 (2) In determining New York source income of a nonresident shareholder
5 of an S corporation where the election provided for in subsection (a) of
6 section six hundred sixty of this article is in effect, there shall be
7 included only the portion derived from or connected with New York sour-
8 ces of such shareholder's pro rata share of items of S corporation
9 income, loss and deduction entering into his federal adjusted gross
10 income, increased by reductions for taxes described in paragraphs two
11 and three of subsection (f) of section thirteen hundred sixty-six of the
12 internal revenue code, as such portion shall be determined under regu-
13 lations of the commissioner consistent with the applicable methods and
14 rules for allocation under article nine-A or thirty-two of this chapter,
15 regardless of whether or not such item or reduction is included in
16 entire net income under article nine-A or thirty-two for the tax year.
17 If a nonresident is a shareholder in an S corporation where the election
18 provided for in subsection (a) of section six hundred sixty of this
19 article is in effect, and the S corporation has distributed an install-
20 ment obligation under section 453(h)(1)(A) of the Internal Revenue Code,
21 then any gain recognized on the receipt of payments from the installment
22 obligation for federal income tax purposes will be treated as New York
23 source income allocated in a manner consistent with the applicable meth-
24 ods and rules for allocation under article nine-A or thirty-two of this
25 chapter in the year that the assets were sold. In addition, if the
26 shareholders of the S corporation have made an election under section
27 338(h)(10) of the Internal Revenue Code, then any gain recognized on the
28 deemed asset sale for federal income tax purposes will be treated as New
29 York source income allocated in a manner consistent with the applicable
30 methods and rules for allocation under article nine-A or thirty-two of
31 this chapter in the year that the shareholder made the section
32 338(h)(10) election. For purposes of a section 338(h)(10) election, when
33 a nonresident shareholder exchanges his or her S corporation stock as
34 part of the deemed liquidation, any gain or loss recognized shall be
35 treated as the disposition of an intangible asset and will not increase
36 or offset any gain recognized on the deemed assets sale as a result of
37 the section 338(h)(10) election.

38 § 3. Paragraph 1 of subsection (b) of section 631 of the tax law is
39 amended by adding a new subparagraph (E-1) to read as follows:

40 (E-1) in the case of an S corporation for which an election is in
41 effect pursuant to subsection (a) of section six hundred sixty of this
42 article that terminates its taxable status in New York, any income or
43 gain recognized on the receipt of payments from an installment sale
44 contract entered into when the S corporation was subject to tax in New
45 York, allocated in a manner consistent with the applicable methods and
46 rules for allocation under article nine-A or thirty-two of this chapter,
47 in the year that the S corporation sold its assets.

48 § 4. This act shall take effect immediately; provided however, that
49 section two of this act shall apply to all tax years for which the stat-
50 ute of limitations for seeking a refund or assessing additional tax are
51 still open, and section three of this act shall apply to taxable years
52 beginning on or after January 1, 2010.

1 Section 1. Subparagraph (D) of paragraph 3 of subdivision (b) of
2 section 605 of the tax law is REPEALED.

3 § 2. Section 618 of the tax law, as added by chapter 563 of the laws
4 of 1960, subsection 4 as amended by section 9 of part C of chapter 25 of
5 the laws of 2009 and subsection 5 as added by chapter 384 of the laws of
6 1988, is amended to read as follows:

7 § 618. New York taxable income of a resident estate or trust. (a) (1)
8 The New York taxable income of a resident estate or trust, other than a
9 resident nontestamentary trust with one or more nonresident ascertainable
10 beneficiaries but no income derived from or connected with New York
11 sources, means its federal taxable income as defined in the laws of the
12 United States for the taxable year, with the following modifications:

13 (2) There shall be subtracted the modifications described in para-
14 graphs [(4)] four and [(5)] five of subsection (c) of section six
15 hundred twelve of this part, with respect to gains from the sale or
16 other disposition of property, to the extent such gains are excluded
17 from federal distributable net income of the estate or trust.

18 (3) There shall be added or subtracted (as the case may be) the share
19 of the estate or trust in the New York fiduciary adjustment determined
20 under section six hundred nineteen of this part.

21 (4) There shall be added or subtracted (as the case may be) the
22 modifications described in paragraphs [(6), (10), (17), (18), (19),
23 (20), (21), (22), (23), (24), (25), (26), (27), (29), (38) and (39)]
24 six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two,
25 twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twen-
26 ty-nine, thirty-eight and thirty-nine of subsection (b) and in para-
27 graphs [(11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26)
28 and (28)] eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twen-
29 ty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-
30 eight of subsection (c) of section six hundred twelve of this part.

31 (5) In the case of a trust, there shall be added the amount of any
32 includible gain, reduced by any deductions properly allocable thereto,
33 upon which tax is imposed for the taxable year pursuant to section six
34 hundred forty-four of the internal revenue code.

35 (b) (1) The New York taxable income of a resident nontestamentary
36 trust with one or more nonresident ascertainable beneficiaries but no
37 income derived from or connected with New York sources shall be the
38 product of the New York taxable income base of the trust multiplied by a
39 fraction, the numerator of which is the number of individual ascertainable
40 beneficiaries of the trust who are residents, and the denominator of
41 which is the total number of individual ascertainable beneficiaries.

42 (2) For purposes of this subsection, the New York taxable income base
43 means the trust's federal taxable income as defined in the laws of the
44 United States for the taxable year, with the modifications prescribed in
45 paragraphs two, three, four and five of subsection (a) of this section.

46 (3) For purposes of this section, "derived from or connected with New
47 York sources" has the same meaning as such phrase is used in section six
48 hundred thirty-three of this article in relation to the income of a
49 nonresident trust.

50 (4) For purposes of this section, "ascertainable beneficiary" means a
51 currently living ascertainable beneficiary who has a present or future
52 interest in the trust, including a beneficiary whose interest has not
53 vested because it is in a class subject to open, as defined in section
54 6-4.8 of the estates, powers and trusts law, and a beneficiary whose
55 interest has not yet vested because it is subject to a condition prece-

1 dent, as defined in section 6-4.10 of the estates, powers and trusts
2 law.

3 (5) If a beneficiary of a trust is a partnership (other than a public-
4 ly traded partnership as defined in section 7704 of the federal internal
5 revenue code), subchapter K limited liability company, or S corporation
6 for which an election has been made under subsection (a) of section six
7 hundred sixty of this article, the trust shall, for purposes of deter-
8 mining the number of ascertainable beneficiaries of the trust who are
9 residents, count each partner, member, or shareholder as a separate
10 beneficiary and determine each individual partner's, member's or share-
11 holder's residence separately.

12 § 3. Subsection 4 of section 618 of the tax law, as separately amended
13 by section 5 of part HH-1 of chapter 57 of the laws of 2008 and section
14 9 of part C of chapter 25 of the laws of 2009, as designated paragraph 4
15 of subsection (a) by section two of this act, is amended to read as
16 follows:

17 (4) There shall be added or subtracted (as the case may be) the
18 modifications described in paragraphs [(6), (10), (17), (18), (19),
19 (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (38) and
20 (39)] six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twen-
21 ty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-
22 nine, thirty-eight and thirty-nine of subsection (b) and in paragraphs
23 [(11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and
24 (28)] eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-
25 two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight
26 of subsection (c) of section six hundred twelve of this part.

27 § 4. This act shall take effect immediately and apply to taxable years
28 beginning on or after January 1, 2010; provided that the amendments to
29 paragraph 4 of subsection (a) of section 618 of the tax law made by
30 section two of this act shall be subject to the expiration and reversion
31 of such paragraph and shall be deemed to expire therewith when upon such
32 date the provisions of section three of this act shall take effect.

33

PART H

34 Section 1. The tax law is amended by adding a new section 1703 to read
35 as follows:

36 § 1703. Information returns relating to payments made in settlement of
37 payment card and third party network transactions. 1. (a) Every payment
38 settlement entity, third party settlement organization, electronic
39 payment facilitator or other third party acting on behalf of a payment
40 settlement entity, all as defined in section 6050W of the internal
41 revenue code and referred to herein as "a reporting entity," required to
42 file information returns pursuant to that section shall, within thirty
43 days of the filing thereof, file with the department in such form and
44 manner as prescribed by the commissioner either (i) a duplicate of all
45 such information returns or (ii) a duplicate of such information returns
46 related to participating payees, as defined in section 6050W of the
47 internal revenue code, with a New York state address or New York state
48 taxpayers. The commissioner may require that such returns be filed elec-
49 tronically.

50 (b) To facilitate accurate reporting by the entities required to file
51 information returns pursuant to this section, the department shall
52 provide a list or database of New York state taxpayers no later than
53 forty-five days prior to the information reporting deadline, in such
54 form and manner as prescribed by the commissioner. The information

1 included in such list or database shall not be used by a reporting enti-
2 ty for any purpose other than producing and filing information returns
3 pursuant to this section.

4 (c) Any information received by the department on an information
5 return filed pursuant to this section, concerning a person who is not
6 subject to tax in New York, or is not subject to any requirement imposed
7 by or pursuant to the authority of this chapter, may not be used by the
8 department. The department shall not redisclose any information received
9 on an information return filed pursuant to this section.

10 2. (a) Any reporting entity failing to file an information return
11 required pursuant to subdivision one of this section within the time
12 prescribed will be subject to a penalty of fifty dollars for each fail-
13 ure, if failure is for not more than one month, with an additional fifty
14 dollars for each month or fraction thereof during which each failure
15 continues. However, the total amount of penalty imposed on a reporting
16 entity may not exceed two hundred fifty thousand dollars annually.

17 (b) The commissioner may waive all or any portion of any penalty
18 imposed by this subdivision with respect to any violation if (i) the
19 commissioner determines that the failure to timely file a return, was
20 due to reasonable cause and not due to willful neglect, or (ii) rescind-
21 ing the penalty would promote compliance with the requirements of this
22 chapter and effective tax administration.

23 § 2. This act shall take effect immediately.

24

PART I

25 Section 1. Paragraph 1 of subdivision (a) of section 1138 of the tax
26 law, as amended by chapter 267 of the laws of 1996, is amended to read
27 as follows:

28 (1) If a return required by this article is not filed, or if a return
29 when filed is incorrect or insufficient, the amount of tax due shall be
30 determined by the commissioner from [such information as may be avail-
31 able] the records of the person liable for the tax due if those records
32 are made available to the commissioner and are adequate, including by
33 using generally accepted statistical sampling techniques on those
34 records as authorized by subdivision six-a of section eleven hundred
35 forty-two of this part, unless such person and the commissioner agree to
36 some other method. If [necessary] such person's records are not
37 adequate or are not made available to the commissioner, the tax may be
38 estimated on the basis of such information as may be available, includ-
39 ing external indices, such as stock on hand, purchases, rental paid,
40 number of rooms, location, scale of rents or charges, comparable rents
41 or charges, type of accommodations and service, number of employees or
42 other factors. For the purposes of this paragraph, records are
43 "adequate" only when they are complete and reliable. In the case of
44 retail food stores and other participants approved for participation in
45 the federal food stamp program under or pursuant to the federal food
46 stamp act of nineteen hundred seventy-seven (7 U.S.C. § 2011 et seq.),
47 as amended, whose records are incomplete, unavailable or inadequate to
48 determine tax, the external indices upon which tax may be estimated and
49 determined may also include information contained in applications,
50 updates of applications, redemption certificates, returns and reports
51 which such retail food stores and other participants furnish to or are
52 furnished by the United States government or this state or their agen-
53 cies in order for such retail food stores and other participants to
54 participate in the food stamp program or to redeem coupons issued under

1 or pursuant to such food stamp act and any other available information
2 considered relevant. Notice of such determination shall be mailed to
3 the person or persons liable for the collection or payment of the tax. A
4 notice of determination shall be mailed by certified or registered mail
5 to the person or persons liable for the collection or payment of the tax
6 at his last known address in or out of this state. If such person or
7 persons is deceased or under a legal disability, a notice of determi-
8 nation may be mailed to his last known address in or out of this state,
9 unless the department has received notice of the existence of a fiduci-
10 ary relationship with respect to the taxpayer. After ninety days from
11 the mailing of a notice of determination, such notice shall be an
12 assessment of the amount of tax specified in such notice, together with
13 the interest, additions to tax and penalties stated in such notice,
14 except only for any such tax or other amounts as to which the taxpayer
15 has within such ninety day period applied to the division of tax appeals
16 for a hearing, or unless the commissioner of his own motion shall rede-
17 termine the same. If the notice of determination is addressed to a
18 person outside of the United States, such period shall be one hundred
19 fifty days instead of ninety days.

20 § 2. Section 1142 of the tax law is amended by adding a new subdivi-
21 sion 6-a to read as follows:

22 6-a. (a) To use generally accepted statistical sampling techniques to
23 determine the amount of tax due under section eleven hundred thirty-
24 eight of this part. The commissioner shall not use these sampling tech-
25 niques to determine tax due from a person whose "gross receipts or
26 sales", as that term is used for federal income tax reporting purposes,
27 are less than one million dollars in each of the three taxable years for
28 federal income tax purposes immediately preceding the calendar year in
29 which the audit is commenced, or, if that information is not available
30 for those years, in each of the three most recent of those years (or a
31 lesser number of years if only the lesser number of years is available)
32 for which that information is available, unless the person consents in
33 writing that the commissioner may use these techniques to determine tax
34 due from that person. Within a reasonable amount of time after the
35 commissioner decides to determine tax due using statistical sampling
36 techniques, the commissioner shall notify a person for whom the amount
37 of tax due is to be determined using such techniques. Such notice shall
38 describe the sampling technique to be used, including the general design
39 and size of the sample.

40 (b) The commissioner's authority to use the sampling techniques
41 authorized by this subdivision shall be in addition to any other methods
42 authorized by law, and nothing in this subdivision may be construed to
43 limit the use of any other method. Nor may anything in this subdivision
44 or other provision of law be construed to limit the commissioner's
45 authority to use generally accepted statistical sampling techniques for
46 purposes other than determining tax due, such as examining records
47 required to be kept by this article or returns and reports required to
48 be filed or submitted by this article. Statistical sampling techniques
49 and any results therefrom shall not be deemed to be an estimate based on
50 an external index.

51 § 3. This act shall take effect immediately; provided, however, that
52 the provisions of this act shall apply, with respect to the determi-
53 nation of tax due under article 28 of the tax law or under or pursuant
54 to the authority of other provisions of the tax law which incorporate or
55 make reference to such article 28, to any tax due that has not been
56 assessed on the date this act becomes a law.

1

PART J

2 Section 1. Paragraph 1 of subdivision (e) of section 29 of the tax
3 law, as added by section 1 of part UU-1 of chapter 57 of the laws of
4 2008, is amended to read as follows:

5 (1) If a tax return preparer is required to file authorized tax docu-
6 ments electronically pursuant to subdivision (b) of this section, and
7 that preparer fails to file one or more of those documents electron-
8 ically, then that preparer will be subject to a penalty of fifty dollars
9 for each failure to electronically file an authorized tax document,
10 unless it is shown that the failure is due to reasonable cause and not
11 due to willful neglect. [For purposes of this paragraph, reasonable
12 cause shall include, but not be limited to, a taxpayer's election not to
13 electronically file the authorized tax document.]

14 § 2. The tax law is amended by adding a new section 33 to read as
15 follows:

16 § 33. Correction periods for electronic tax documents and payments.

17 (a) For purposes of this section, the following terms have the specified
18 meanings:

19 (1) "Electronic funds withdrawal" means the process by which the
20 department, with a taxpayer's permission, originates an electronic order
21 from its bank to the taxpayer's bank to withdraw funds from the taxpay-
22 er's bank account so that the taxpayer may pay a tax liability associ-
23 ated with a tax document.

24 (2) "Electronic postmark" means a record of the date and time (in a
25 particular time zone) that an authorized electronic transmitter receives
26 the transmission of a taxpayer's electronically filed tax document on
27 its host system.

28 (3) "Electronic transmitter" means a person or entity that is author-
29 ized to submit electronic tax documents directly to the department or
30 directly to the internal revenue service for forwarding to the depart-
31 ment.

32 (4) "Reject" or "rejected" means that an electronically filed tax
33 document or an authorization for an electronic funds withdrawal is not
34 accepted for processing.

35 (5) "Submit" or "submitted" means the date of the electronic postmark
36 assigned by an electronic transmitter to an electronically filed tax
37 document or authorization for an electronic funds withdrawal. However,
38 if an electronic transmitter does not assign an electronic postmark,
39 then an electronically filed tax document or authorization for an elec-
40 tronic funds withdrawal shall be deemed submitted on the earlier of the
41 date the internal revenue service receives the electronically filed tax
42 document or authorization for an electronic funds withdrawal, or the
43 date the department receives the electronically filed tax document or
44 authorization for an electronic funds withdrawal. In any of the afore-
45 mentioned cases, if the taxpayer can establish that the time of
46 submission, adjusted for the taxpayer's time zone, was timely, the time
47 of submission shall be based on the taxpayer's time zone.

48 (6) "Tax" means any tax, fee, special assessment or other imposition
49 administered by the commissioner.

50 (7) "Tax document" means any return, report or other document relating
51 to a tax.

52 (b) If a tax document is required or permitted to be filed with the
53 department electronically (whether directly, directly through a return
54 transmitter or through the internal revenue service), the tax document
55 is submitted electronically on or before the due date for such document

1 (including any extension of time), and the electronically filed tax
2 document is rejected, then the commissioner may, by instruction, provide
3 for a reasonable period of time during which the tax document may be
4 corrected and re-submitted. If the corrected tax document is re-submit-
5 ted on or before the expiration date of the extended time period, and
6 such document is accepted by the department for processing, then the
7 re-submitted tax document shall be deemed to have been timely filed even
8 though the department receives it after the applicable due date (includ-
9 ing any extension of time).

10 (c) (1) If a taxpayer has submitted an authorization for an electronic
11 funds withdrawal on or before the due date for payment (including any
12 extension of time), and such authorization is rejected by the depart-
13 ment, then the commissioner may, by instruction, provide for a reason-
14 able period of time, commencing from the date of rejection, for the
15 taxpayer to re-submit the authorization for the electronic funds with-
16 drawal. If the authorization for the electronic funds withdrawal is
17 re-submitted on or before the expiration date of the extended time peri-
18 od, then the electronic funds withdrawal shall be deemed to have been
19 timely paid even though the department receives it after the applicable
20 due date (including any extension of time).

21 (2) Any reasonable period of time provided for by the commissioner for
22 re-submission of an authorization for an electronic funds withdrawal may
23 differ from the reasonable time period, if any, provided for by the
24 commissioner with respect to the electronically filed tax document with
25 which the taxpayer's electronic funds withdrawal is associated.

26 (3) In lieu of re-submitting an authorization for an electronic funds
27 withdrawal, the commissioner may permit a taxpayer to instead pay by
28 substitute means, as defined by instruction. Any such instruction shall
29 address the timeliness of payment by substitute means.

30 (d) The provisions of this section shall not apply to taxpayers
31 participating in the electronic funds transfer programs prescribed by
32 sections nine and ten of this article.

33 § 3. The tax law is amended by adding a new section 34 to read as
34 follows:

35 § 34. Tax return preparers and software companies not to charge sepa-
36 rately for New York e-file services. (a) For purposes of this section,
37 the following terms have the specified meanings:

38 (1) "Authorized tax document" means a tax document which the commis-
39 sioner has authorized to be filed electronically.

40 (2) "Electronic" means computer technology.

41 (3) "Software company" means a developer of tax software.

42 (4) "Tax" means any tax or other matter administered by the commis-
43 sioner pursuant to this chapter or any other provision of law.

44 (5) "Tax document" means a return, report or any other document relat-
45 ing to a tax or other matter administered by the commissioner.

46 (6) "Tax return preparer" means any person who prepares for compen-
47 sation, or who employs or engages one or more persons to prepare for
48 compensation, any authorized tax document. For purposes of this section,
49 the term "tax return preparer" also includes a payroll service.

50 (7) "Tax software" means any computer software program intended for
51 tax return preparation purposes. For purposes of this section, the term
52 "tax software" includes, but is not limited to, an off-the-shelf soft-
53 ware program loaded onto a tax return preparer's or taxpayer's computer,
54 or an online tax preparation application.

55 (b) It shall be unlawful for a tax return preparer or a software
56 company to charge a separate fee for the electronic filing of authorized

1 tax documents. It shall also be unlawful for a software company to offer
2 a version of its tax software that charges a separate fee for the elec-
3 tronic filing of authorized tax documents and one version of the same
4 tax software that does not.

5 (c) Any tax return preparer or software company violating this section
6 will be liable for a civil penalty of five hundred dollars for the first
7 violation and one thousand dollars for each succeeding violation. The
8 civil penalties imposed by this section shall be paid to the commission-
9 er upon notice and demand, and will be assessed, collected and paid in
10 the same manner as taxes under article twenty-seven of this chapter.

11 § 4. Paragraph 5 of subsection (u) of section 685 of the tax law, as
12 added by section 2 of part Q of chapter 61 of the laws of 2005, is
13 amended to read as follows:

14 (5) Failure to electronically file. If a tax return preparer is
15 required to file returns electronically pursuant to paragraph ten of
16 subsection (g) of section six hundred fifty-eight of this article, and
17 such preparer fails to file one or more of such returns electronically,
18 then such preparer shall be subject to a penalty of fifty dollars for
19 each such failure to electronically file a return, unless it is shown
20 that such failure is due to reasonable cause and not due to willful
21 neglect. [For purposes of this paragraph, reasonable cause shall
22 include, but not be limited to, a taxpayer's election not to electron-
23 ically file his or her return.]

24 § 5. Paragraph 5 of subdivision (t) of section 11-1785 of the adminis-
25 trative code of the city of New York, as added by section 4 of part Q of
26 chapter 61 of the laws of 2005, is amended to read as follows:

27 (5) Failure to electronically file. If a tax return preparer is
28 required to file returns electronically pursuant to paragraph ten of
29 subdivision (g) of section 11-1758, and such preparer fails to file one
30 or more of such returns electronically, then such preparer shall be
31 subject to a penalty of fifty dollars for each such failure to electron-
32 ically file a return, unless it is shown that such failure is due to
33 reasonable cause and not due to willful neglect. [For purposes of this
34 paragraph, reasonable cause shall include, but not be limited to, a
35 taxpayer's election not to electronically file his or her return.]

36 § 6. This act shall take effect immediately, provided, however, that
37 sections one, four and five of this act shall apply to tax returns and
38 other tax documents required to be filed electronically by tax return
39 preparers on or after December 31, 2010, and section two of this act
40 shall apply to electronic returns and payments made for tax years begin-
41 ning after December 31, 2010.

42

PART K

43 Section 1. The tax law is amended by adding a new section 31 to read
44 as follows:

45 § 31. Use of alternative means of communication to provide tax notices
46 and other tax documents. Notwithstanding any other provision of New York
47 state law or regulation requiring a tax notice or other tax document to
48 be mailed by first class mail, certified mail, registered mail, certi-
49 fied mail return receipt requested, or registered mail return receipt
50 requested, or any other specified type of mailing, the department may
51 use any form of communication deemed by the commissioner to be reason-
52 ably calculated, under all the circumstances, to apprise the addressee
53 of the information contained therein, including, but not limited to,
54 e-mail or other form of electronic communication when the department has



1 obtained the addressee's authorization to communicate using electronic
2 means. If the department deems an alternative means of communication to
3 be reasonably calculated, under all the circumstances, to reach the
4 addressee, and then transmits the tax notice or other tax document by
5 such means in accord with its established business rules and processes
6 for that communication method, there shall arise a presumption that the
7 tax notice or other tax document was delivered to and received by the
8 addressee.

9 § 2. This act shall take effect immediately.

10

PART L

11 Section 1. Subdivision fifteenth of section 171 of the tax law, as
12 amended by chapter 513 of the laws of 2002, is amended to read as
13 follows:

14 Fifteenth. Have authority to compromise any taxes or other impositions
15 or any warrant or judgment for taxes or other impositions administered
16 by the commissioner, and the penalties and interest in connection there-
17 with, if the tax debtor has been discharged in bankruptcy, [or] is shown
18 by proofs submitted to be insolvent, [but] or shows by proofs that
19 collection in full would cause the tax debtor undue economic hardship or
20 that there is any other exceptional mitigating circumstance that would
21 render acceptance of the compromise just and appropriate, provided that
22 the amount payable in compromise [shall in no event be less than the
23 amount, if any, recoverable through legal proceedings, and provided that
24 where] reasonably reflects collection potential or is otherwise justi-
25 fied by the proofs offered by the tax debtor. Provided, further, the
26 commissioner shall not accept any amount payable in compromise that
27 would undermine compliance with the taxes or other impositions adminis-
28 tered by the commissioner, nor shall the commissioner enter into any
29 offer of compromise that would be adverse to the best interests of the
30 state. Where the amount owing for taxes or other impositions or the
31 warrant or judgment, exclusive of any penalties and interest, is more
32 than one hundred thousand dollars, such compromise shall be effective
33 only when approved by a justice of the supreme court.

34 § 2. Subdivision eighteenth-a of section 171 of the tax law, as
35 amended by chapter 577 of the laws of 1997, is amended to read as
36 follows:

37 Eighteenth-a. Have authority to compromise civil liability, with such
38 qualifications and limitations as may be established pursuant to such
39 rules and regulations as the commissioner may prescribe, where such
40 liability arises under [this chapter, or under a law enacted pursuant to
41 the authority of this chapter] a tax or other imposition which is admin-
42 istered by the [department, or under a law enacted pursuant to the
43 authority of article two-E of the general city law] commissioner, at any
44 time prior to the time the tax, other imposition or administrative
45 action becomes finally and irrevocably fixed and no longer subject to
46 administrative review. Upon acceptance of an offer in compromise by the
47 commissioner, the matter may not be reopened except upon a showing of
48 fraud, malfeasance or misrepresentation of a material fact. The attorney
49 general may compromise any such liability after reference to the depart-
50 ment of law for prosecution or defense at any time prior to the time the
51 tax, other imposition or administrative action taken by the [department]
52 commissioner is no longer subject to judicial review. Whenever a compro-
53 mise is made by the [department] commissioner of any such liability,
54 there shall be placed on file in the office of the commissioner the

1 opinion of the counsel for such department, with his or her reasons
2 therefor, with a statement of: (a) the amount of tax or other imposition
3 and any other issues which may be the subject of such compromise, (b)
4 the amount of interest, additions to the tax, or penalty imposed by law
5 on the taxpayer or other persons against whom the administrative action
6 was taken by the department, and (c) the amount actually paid in accord-
7 ance with the terms of the compromise. Notwithstanding the preceding
8 sentence, no such opinion shall be required with respect to the compro-
9 mise of any civil liability in which the unpaid amount of tax or other
10 imposition which was the subject of the administrative action (including
11 any interest, additions to tax, or penalty) is less than [twenty-five]
12 fifty thousand dollars.

13 § 3. This act shall take effect immediately.

14

PART M

15 Section 1. Communication services study. On or before the date that is
16 245 days after this act shall have become a law, the commissioner of
17 taxation and finance, in consultation with the department of public
18 service and the office of real property services, shall submit to the
19 governor, the temporary president of the senate, the speaker of the
20 assembly, the minority leaders of the senate and the assembly, the chair
21 and ranking minority member of the senate finance committee, and the
22 chair and ranking minority member of the assembly ways and means commit-
23 tee a written report prepared by the office of tax policy analysis of
24 the department of taxation and finance. The report shall examine statu-
25 tory and policy options designed to achieve the goal of improved taxa-
26 tion of communication services in New York state (including, but not
27 limited to, wireline and wireless telecommunication services, telecommu-
28 nication services using voice over internet protocol, and cable and
29 satellite television services), and the state and local revenue impli-
30 cations of those options. The report shall take into account commonly
31 accepted goals of tax policy (such as fairness, simplicity and effect on
32 the economic climate of this state and its communications industry). The
33 report shall also take into consideration developments of new technolo-
34 gies and business models used in the provision of communication services
35 and the desired goal that this state should formulate an effective
36 communications tax policy. To this end, the report shall recommend tax
37 policies that shall modernize the taxation of communication services.

38 § 2. This act shall take effect immediately.

39

PART N

40 Section 1. Section 1 of part J of chapter 405 of the laws of 1999,
41 amending the real property tax law relating to improving the adminis-
42 tration of the school tax relief (STAR) program, as amended by section 3
43 of part PP-1 of chapter 57 of the laws of 2008, is amended to read as
44 follows:

45 Section 1. Notwithstanding the provisions of article 5 of the general
46 construction law, the provisions of the tax law amended by sections
47 94-a, 94-d and 94-g of chapter 2 of the laws of 1995 are hereby revived
48 and shall continue in full force and effect as they existed on March 31,
49 1999 [through May 31, 2010, when upon such date they shall expire and be
50 repealed]. Sections 1, 2, 3, 4, and 5, and such part of section 10 of
51 chapter 336 of the laws of 1999 as relates to providing for the effec-
52 tiveness of such sections 1, 2, 3, 4 and 5 shall be nullified in effect

1 on the effective date of this section, except that the amendments made
2 to: paragraph (2) of subdivision a of section 1612 of the tax law by
3 such section 1; and subdivision b of section 1612 of the tax law by such
4 section 2; and the repeal of section 152 of chapter 166 of the laws of
5 1991 made by such section 5 shall continue to remain in effect.

6 § 2. Paragraph 1 of subdivision a of section 1612 of the tax law, as
7 amended by chapter 336 of the laws of 1999, is amended to read as
8 follows:

9 (1) sixty percent of the total amount for which tickets have been sold
10 for a lawful lottery game introduced on or after the effective date of
11 this paragraph[, subject to the following provisions:

12 (A) drawings in such game shall be held during no more than thirteen
13 hours each day, no more than eight hours of which shall be consecutive;

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

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

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

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

28 (I) a commercial bowling establishment, or

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

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

40 § 3. This act shall take effect immediately.

41

PART O

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

47 § 4. This act shall take effect immediately[; provided, however, that
48 the provisions of this act shall expire and be deemed repealed December
49 31, 2033].

50 § 2. Section 4 of part C of chapter 383 of the laws of 2001, amending
51 the tax law and other laws relating to authorizing the division of the
52 lottery to conduct a pilot program involving the operation of video
53 lottery terminals at certain racetracks, as amended by chapter 286 of
54 the laws of 2008, is amended to read as follows:

1 § 4. This act shall take effect immediately[; provided, however, that
2 the provisions of this act shall expire and be deemed repealed December
3 31, 2050].

4 § 3. Section 13 of chapter 140 of the laws of 2008 amending the
5 racing, pari-mutuel wagering and breeding law and other laws relating to
6 thoroughbred racing is REPEALED.

7 § 4. Section 5 of chapter 286 of the laws of 2008 amending the tax law
8 relating to annual capital improvement credits for video lottery gaming
9 operators is REPEALED.

10 § 5. Subdivision b of section 1617-a of the tax law, as amended by
11 section 2 of part Z3 of chapter 62 of the laws of 2003, is amended to
12 read as follows:

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

17 § 6. Clause (G) of subparagraph (ii) of paragraph 1 of subdivision b
18 of section 1612 of the tax law, as amended by chapter 342 of the laws of
19 2009, is amended to read as follows:

20 (G) notwithstanding [any other provisions of this section,] clauses
21 (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than
22 one vendor track located in the town of Thompson in Sullivan county at
23 the site of the former Concord Resort at which a qualified capital
24 investment has been made and no fewer than one thousand full-time,
25 permanent employees have been newly hired, is located in Sullivan county
26 and is within sixty miles from any gaming facility in a contiguous
27 state, then for a period of forty years [the division shall pay into the
28 state treasury, to the credit of the state lottery fund created by
29 section ninety-two-c of the state finance law] the vendor's fee shall
30 equal the total revenue wagered at the vendor track after payout of
31 prizes pursuant to this subdivision reduced by the greater of (i) twen-
32 ty-five percent of total revenue after payout for prizes for "video
33 lottery games" or (ii) for the first eight years of operation thirty-
34 eight million dollars, and beginning in the ninth year of operation such
35 amount shall increase annually by the lesser of the increase in the
36 consumer price index or two percent, plus [the division shall retain an
37 amount equal to all actual expenses related to operations, adminis-
38 tration and procurement of the video lottery terminal operation at no
39 more than one vendor track located in the town of Thompson in Sulli-
40 van county at the site of the former Concord Resort, provided, however, such
41 amount retained by the division shall not exceed] seven percent of total
42 revenue after payout of prizes. In addition, in the event the [division
43 makes a payment] vendor fee is calculated pursuant to subclause (i) of
44 this clause, the [division shall pay to the credit of the state lottery
45 fund created by section ninety-two-c of the state finance law] vendor's
46 fee shall be further reduced by 11.11 percent of the amount by which
47 total revenue after payout for prizes exceeds two hundred fifteen
48 million dollars, but in no event shall such [payment] reduction exceed
49 five million dollars.

50 [The balance shall be paid as a vendor's fee to the track operator of
51 no more than one vendor track located in the town of Thompson in Sulli-
52 van county at the site of the former Concord Resort for serving as a
53 lottery agent under this chapter.]

54 Provided, however, that in the case of no more than one vendor track
55 located in the town of Thompson in Sullivan county at the site of the
56 former Concord Resort with a qualified capital investment, and one thou-

1 sand full-time, permanent employees [as of July first, two thousand
2 eleven] if at any time after three years of opening operations of the
3 licensed video gaming facility or licensed vendor track, the vendor
4 track experiences an employment shortfall, then the recapture amount
5 shall apply, for only such period as the shortfall exists.

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

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

31 For the purpose of this section "employment goal" shall mean one thou-
32 sand five hundred full-time permanent employees after three years of
33 opening operations of the licensed video gaming facility or licensed
34 vendor track.

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

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

48 (i) one hundred percent of the recapture amount if the employment
49 shortfall is greater than sixty-six and two-thirds percent of the
50 employment goal;

51 (ii) seventy-five percent of the recapture amount if the employment
52 shortfall is greater than thirty-three and one-third percent of the
53 employment goal;

54 (iii) forty-nine and one-half percent of the recapture amount if the
55 employment shortfall is greater than thirty percent of the employment
56 goal;

- 1 (iv) twenty-two percent of the recapture amount if the employment
2 shortfall is greater than twenty percent of the employment goal;
3 (v) eleven percent of the recapture amount if the employment shortfall
4 is greater than ten percent of the employment goal.
5 § 7. This act shall take effect immediately.

6

PART P

7 Section 1. Section 253 of the tax law is amended by adding a new
8 subdivision 4 to read as follows:

9 4. (a) A tax, measured by the amount of principal debt or obligation
10 which is or under any contingency may be secured at the date of the
11 execution thereof, or at any time thereafter, by a security agreement
12 pertaining to a cooperative interest in a cooperative organization, as
13 evidenced by a financing statement, is imposed on the filing of the
14 financing statement.

15 (b) The rate and incidence of the tax shall be determined pursuant to
16 this section.

17 (c) Except as otherwise provided in this subdivision, all the
18 provisions of this article relating to or applicable to the adminis-
19 tration, collection, determination and distribution of the tax imposed
20 by this section shall apply to the tax imposed under the authority of
21 this subdivision with such modification as may be necessary to adapt
22 such language to the tax so authorized. Any reference to a mortgage will
23 be deemed to be a reference to a financing statement that evidences a
24 security agreement. Such provisions shall apply with the same force and
25 effect as if those provisions had been set forth in this subdivision
26 except to the extent that any provision is either inconsistent with a
27 provision of this subdivision or not relevant to the tax authorized by
28 this subdivision.

29 (d) No remedy otherwise available to a secured party under article
30 nine of the uniform commercial code shall be available to enforce a
31 security agreement pertaining to a cooperative interest in a cooperative
32 organization that is evidenced by a financing statement, unless that
33 financing statement is filed and the tax imposed pursuant to the author-
34 ity of this subdivision has been paid.

35 (e) For the purposes of this subdivision:

36 (1) "cooperative interest" means an ownership interest in a cooper-
37 ative organization, which interest when created, is coupled with posses-
38 sory rights of a proprietary nature in identified physical space belong-
39 ing to the cooperative organization.

40 (2) "cooperative organization" means an organization which has as its
41 principal asset an interest in real property in this state and in which
42 organization all ownership interests are cooperative interests.

43 (3) "financing statement" means a record or records composed of an
44 initial financing statement and any filed record relating to the initial
45 financing statement.

46 (4) "security agreement" means an agreement that creates or provides
47 for a security interest.

48 (f) Counties or cities authorized under this article to impose a tax
49 are authorized and empowered to adopt and amend local laws to impose in
50 such county or city a tax on the filing of financing statements pertain-
51 ing to a cooperative interest in a cooperative organization. Any tax
52 that has been imposed by a county or city under the authority of this
53 article shall be deemed to include the authority to impose and collect
54 the tax on the recording of a financing statement pertaining to a coop-

1 erative interest in a cooperative organization in the same manner as the
2 local mortgage recording tax.

3 § 2. Subdivisions 1 and 2 of section 253-a of the tax law, subdivision
4 1 and paragraph (a) of subdivision 2 as amended by chapter 343 of the
5 laws of 1990 and subdivision 2 as added by chapter 241 of the laws of
6 1989, are amended to read as follows:

7 1. Any city in this state having a population of one million or more,
8 acting through its local legislative body, is hereby authorized and
9 empowered to adopt and amend local laws imposing in any such city (A)
10 prior to February first, nineteen hundred eighty-two a tax of fifty
11 cents, (B) on or after February first, nineteen hundred eighty-two and
12 before July first, nineteen hundred eighty-two with respect to (i) one,
13 two or three-family houses, individual cooperative apartments and indi-
14 vidual residential condominium units, and (ii) real property securing a
15 principal debt or obligation of less than five hundred thousand dollars,
16 a tax of fifty cents, and with respect to all other real property a tax
17 of one dollar and twelve and one-half cents, (C) on and after July
18 first, nineteen hundred eighty-two and before August first, nineteen
19 hundred ninety with respect to real property securing a principal debt
20 or obligation of less than five hundred thousand dollars, a tax of fifty
21 cents, with respect to one, two or three-family houses, individual coop-
22 erative apartments and individual residential condominium units securing
23 a principal debt or obligation of five hundred thousand dollars or more,
24 a tax of sixty-two and one-half cents, and with respect to all other
25 real property a tax of one dollar and twenty-five cents, [and] (D) on
26 and after August first, nineteen hundred ninety with respect to real
27 property securing a principal debt or obligation of less than five
28 hundred thousand dollars, a tax of one dollar, with respect to one, two
29 or three-family houses and individual residential condominium units
30 securing a principal debt or obligation of five hundred thousand dollars
31 or more, a tax of one dollar and twelve and one-half cents, and with
32 respect to all other real property a tax of one dollar and seventy-five
33 cents, for each one hundred dollars and each remaining major fraction
34 thereof of principal debt or obligation which is or under any contingen-
35 cy may be secured at the date of execution thereof, or at any time ther-
36 eafter, by a mortgage on such real property situated within such city
37 and recorded on or after the date upon which such tax takes effect and a
38 tax of one dollar on such mortgage if the principal debt or obligation
39 which is or by any contingency may be secured by such mortgage is less
40 than one hundred dollars. In each instance where the tax imposed pursu-
41 ant to this subdivision is one dollar and twenty-five cents for each one
42 hundred dollars and each remaining major fraction thereof of such prin-
43 cipal debt or obligation, fifty percent of the total amount of such tax,
44 including fifty percent of any interest or penalties thereon, shall be
45 set aside in a special account by the commissioner of finance of such
46 city. In each instance where the tax imposed pursuant to this subdivi-
47 sion is one dollar and seventy-five cents for each one hundred dollars
48 and each remaining major fraction thereof of such principal debt or
49 obligation, thirty-five and seven-tenths percent of the total amount of
50 such tax, including thirty-five and seven-tenths percent of any interest
51 or penalties thereon, shall also be set aside in such special account.
52 Moneys in such account shall be used for payment by such commissioner to
53 the state comptroller for deposit in the urban mass transit operating
54 assistance account of the mass transportation operating assistance fund
55 of any amount of insufficiency certified by the state comptroller pursu-
56 ant to the provisions of subdivision six of section eighty-eight-a of



1 the state finance law, and, on the fifteenth day of each month, such
2 commissioner shall transmit all funds in such account on the last day of
3 the preceding month, except the amount required for the payment of any
4 amount of insufficiency certified by the state comptroller and such
5 amount as he deems necessary for refunds and such other amounts neces-
6 sary to finance the New York city transportation disabled committee and
7 the New York city paratransit system as established by section fifteen-b
8 of the transportation law, provided, however, that such amounts shall
9 not exceed six percent of the total funds in the account but in no event
10 be less than two hundred twenty-five thousand dollars beginning April
11 first, nineteen hundred eighty-six, and further that beginning November
12 fifteenth, nineteen hundred eighty-four and during the entire period
13 prior to operation of such system, the total of such amounts shall not
14 exceed three hundred seventy-five thousand dollars for the administra-
15 tive expenses of such committee and fifty thousand dollars for the
16 expenses of the agency designated pursuant to paragraph b of subdivision
17 five of such section fifteen-b, and other amounts necessary to finance
18 the operating needs of the private bus companies franchised by the city
19 of New York and eligible to receive state operating assistance under
20 section eighteen-b of the transportation law, provided, however, that
21 such amounts shall not exceed four percent of the total funds in the
22 account, to the New York city transit authority for mass transit within
23 the city. The tax imposed under the authority of paragraph (D) of this
24 subdivision is deemed to include a tax imposed on the filing of financ-
25 ing statements evidencing a security agreement pertaining to a cooper-
26 ative interest in a cooperative organization.

27 2. (a) For the purpose of determining whether a mortgage is subject to
28 the tax authorized to be imposed by paragraph (B) or (C) of subdivision
29 one of this section at a rate in excess of fifty cents, or by paragraph
30 (D) of subdivision one of this section at a rate in excess of one
31 dollar, for each one hundred dollars and each remaining major fraction
32 thereof of principal debt or obligation, the principal debt or obli-
33 gation which is or under any contingency may be secured at the date of
34 execution thereof, or at any time thereafter, by such mortgage shall be
35 aggregated with the principal debt or obligation which is or under any
36 contingency may be secured at the date of execution thereof, or at any
37 time thereafter, by any other mortgage, where such mortgages form part
38 of the same or related transactions and have the same or related mortga-
39 gors or related debtors in the case of a financing statement evidencing
40 a security agreement pertaining to a cooperative interest in a cooper-
41 ative organization. If the commissioner of taxation and finance finds
42 that a mortgage transaction or mortgage transactions have been formu-
43 lated for the purpose of avoiding or evading a rate of tax authorized to
44 be imposed under subdivision one of this section in excess of the lowest
45 such authorized rate, rather than solely for an independent business or
46 financial purpose, such commissioner shall treat all of the mortgages
47 forming part of such transaction or transactions as a single mortgage
48 for the purpose of determining the applicable rate of tax. For purposes
49 of this subdivision, there shall be a presumption that all mortgages
50 offered for recording within a period of twelve consecutive months
51 having the same or related mortgagors or related debtors are part of a
52 related transaction, and such presumption may be rebutted only with
53 clear and convincing evidence to the contrary. The commissioner of taxa-
54 tion and finance may require such affidavits and forms, and may
55 prescribe such rules and regulations, as he determines to be necessary
56 to enforce the provisions of this subdivision. Any reference to a mort-

1 gage in this subdivision includes a financing statement evidencing a
2 security agreement pertaining to a cooperative interest in a cooperative
3 organization.

4 (b) The term "related", when used in this subdivision with reference
5 to mortgagors or debtors, shall include, but shall not be limited to,
6 the following relationships:

7 (i) members of a family, including spouses, ancestors, lineal descend-
8 ants, and brothers and sisters (whether by the whole or half blood);

9 (ii) a shareholder and a corporation more than fifty percent of the
10 value of the outstanding stock of which is owned or controlled directly
11 or indirectly by such shareholder;

12 (iii) a partner and a partnership more than fifty percent of the capi-
13 tal or profits interest in which is owned or controlled directly or
14 indirectly by such partner;

15 (iv) a beneficiary and a trust more than fifty percent of the benefi-
16 cial interest in which is owned or controlled directly or indirectly by
17 such beneficiary;

18 (v) two or more corporations, partnerships, associations, or trusts,
19 or any combination thereof, which are owned or controlled, either
20 directly or indirectly, by the same person, corporation or other entity,
21 or interests; and

22 (vi) a grantor of a trust and such trust.

23 § 3. Subsection (e) of section 9--502 of the uniform commercial code,
24 as added by chapter 84 of the laws of 2001, is amended to read as
25 follows:

26 (e) Contents of cooperative addendum. A cooperative addendum shall be
27 filed at the same time as a financing statement and is sufficient only
28 if it satisfies subsection (a) and also:

29 (1) [if not filed simultaneously with the initial financing
30 statement,] identifies, by its file number[, the initial] any
31 previously filed financing statement and cooperative addendum
32 to which the addendum relates;

33 (2) indicates the street address of the cooperative unit;

34 (3) indicates the county in which the cooperative unit is
35 located;

36 (4) indicates the city, town, or village in which the cooperative
37 unit is located;

38 (5) indicates the real property tax designation associated with
39 the real property in which the cooperative unit is located as
40 assigned by the local real property tax assessing authority;
41 [and]

42 (6) indicates the name of the cooperative organization, and

43 (7) specifies the amount of principal debt that is secured by the
44 security agreement evidenced by the financing statement and
45 whether the debt is for the purpose of the initial purchase
46 of the cooperative interest or supplemental financing.

47 § 4. Section 9--601 of the uniform commercial code is amended by
48 adding a new subsection (h) to read as follows:

49 (h) Security interest perfected by financial statement. Notwithstand-
50 ing any provision of law to the contrary, if a secured party's security
51 interest is collateralized by the shares of stock and a proprietary
52 leasehold or either of the foregoing from a cooperative organization and
53 that security interest may be perfected only by the filing of a finan-
54 cial statement under section 9--310(d) of this article, then no enforce-
55 ment procedures shall be available until such tax is paid.

1 § 5. This act shall take effect on the first day of the third month
2 after it shall have become a law and shall apply to financing statements
3 filed on or after such date.

4

PART Q

5 Section 1. Subparagraph (E) of paragraph 1 of subsection (e) of
6 section 606 of the tax law, as amended by chapter 105 of the laws of
7 2006, is amended to read as follows:

8 (E) "Qualifying real property taxes" means all real property taxes,
9 special ad valorem levies and special assessments, exclusive of penal-
10 ties and interest, levied on the residence of a qualified taxpayer and
11 paid during the taxable year [less the credit claimed under subsection
12 (n-1) of this section]. In addition, for taxable years beginning after
13 December thirty-first, nineteen hundred eighty-four, a qualified taxpay-
14 er may elect to include any additional amount that would have been
15 levied in the absence of an exemption from real property taxation pursu-
16 ant to section four hundred sixty-seven of the real property tax law. If
17 tenant-stockholders in a cooperative housing corporation have met the
18 requirements of section two hundred sixteen of the internal revenue code
19 by which they are allowed a deduction for real estate taxes, the amount
20 of taxes so allowable, or which would be allowable if the taxpayer had
21 filed returns on a cash basis, shall be qualifying real property taxes.
22 If a residence is owned by two or more individuals as joint tenants or
23 tenants in common, and one or more than one individual is not a member
24 of the household, qualifying real property taxes is that part of such
25 taxes on the residence which reflects the ownership percentage of the
26 qualified taxpayer and members of his household. If a residence is an
27 integral part of a larger unit, qualifying real property taxes shall be
28 limited to that amount of such taxes paid as may be reasonably appor-
29 tioned to such residence. If a household owns and occupies two or more
30 residences during different periods in the same taxable year, qualifying
31 real property taxes shall be the sum of the prorated qualifying real
32 property taxes attributable to the household during the periods such
33 household occupies each of such residences. If the household owns and
34 occupies a residence for part of the taxable year and rents a residence
35 for part of the same taxable year, it may include both the proration of
36 qualifying real property taxes on the residence owned and the real prop-
37 erty tax equivalent with respect to the months the residence is rented.
38 Provided, however, for purposes of the credit allowed under this
39 subsection, qualifying real property taxes may be included by a quali-
40 fied taxpayer only to the extent that such taxpayer or the spouse of
41 such taxpayer occupying such residence for six months or more of the
42 taxable year owns or has owned the residence and paid such taxes.

43 § 2. Section 606 of the tax law is amended by adding a new subsection
44 (e-2) to read as follows:

45 (e-2) School tax circuit breaker credit. 1. Definitions. For the
46 purposes of this subsection:

47 (A) "Qualified taxpayer" means a resident individual who owns the
48 residential real property in which he or she resides, and has used such
49 residential real property as his or her primary residence for not less
50 than six months of the taxable year.

51 (B) "Household" or "members of the household" shall have the same
52 meaning as set forth in subparagraph (B) of paragraph one of subsection
53 (e) of this section.

1 (C) "Household gross income" shall have the same meaning as set forth
2 in subparagraph (C) of paragraph one of subsection (e) of this section
3 but shall be decreased by modifications in paragraphs sixteen, twenty-
4 two and thirty-seven of subsection (c) and subsection (l) of section six
5 hundred twelve of this article; provided however, that, in calculating
6 household gross income, the amount of any loss from each the following
7 categories or items deducted in determining federal adjusted gross
8 income shall not exceed three thousand dollars:

- 9 (i) partnerships and S corporations,
10 (ii) rental real estate and royalties,
11 (iii) business,
12 (iv) farming,
13 (v) net operating loss, and
14 (vi) real estate mortgage investment conduits.

15 (D) "Residential real property" means a dwelling in this state, owned
16 by a qualified taxpayer and used by the taxpayer as his or her primary
17 residence, and so much of the land abutting it as is reasonably neces-
18 sary for use of the dwelling as a home, and may consist of a part of a
19 multi-dwelling or multi-purpose building including a cooperative or
20 condominium, but not a rented dwelling or rental units within a single
21 dwelling. Residence includes a trailer or mobile home, used exclusively
22 for residential purposes and defined as real property pursuant to para-
23 graph (g) of subdivision twelve of section one hundred two of the real
24 property tax law.

25 (E) "Net school taxes" means the school taxes levied and paid on the
26 residential real property owned and occupied by the qualified taxpayer
27 after any exemption or abatement received pursuant to the real property
28 tax law.

29 2. Credit. (A) Subject in each year to the availability of moneys in
30 the property tax circuit breaker reserve fund established by section
31 ninety-two-gg of the state finance law, a qualified taxpayer shall be
32 allowed a credit against the taxes imposed by this article equal to the
33 excess amount of net school taxes paid over the maximum school tax
34 amount applicable to him or her as set forth in paragraph three of this
35 subsection, multiplied by a fixed percentage, that shall cause, as near-
36 ly as possible the full utilization of the moneys available in such
37 reserve fund. Such fixed percentage shall be determined by the commis-
38 sioner in consultation with the director of the budget for each subpara-
39 graph of paragraph three of this subsection no later than June thirtieth
40 each year. No such credit shall be allowed if the household gross income
41 of a qualified taxpayer residing in the city of New York, or Nassau,
42 Suffolk, Rockland, Westchester, Putnam, Orange or Dutchess county
43 exceeds three hundred thousand dollars, and if the household gross
44 income of a qualified taxpayer residing in any other county of the state
45 exceeds two hundred thousand dollars. In two thousand twelve and there-
46 after, the household gross income limits specified in the previous
47 sentence shall be increased by an amount equal to (i) such household
48 gross income limit, multiplied by (ii) the rate of inflation as deter-
49 mined under subparagraph (F) of paragraph three of this subsection for
50 that year. If any increase is not a multiple of one hundred dollars,
51 such increase shall be rounded to the nearest multiple of one hundred
52 dollars.

53 (B) (i) For tax years two thousand twelve and thereafter, the value of
54 the credit shall be multiplied by an adjustment factor, which is a frac-
55 tion the numerator of which is the change in the cost of living since
56 two thousand eleven, and the denominator of which is the change in the

1 school district tax levy per pupil since two thousand eleven. A sepa-
2 rate adjustment factor shall be determined for each school district.

3 (ii) The numerator of the adjustment factor shall be computed as the
4 product of the gross applicable rates of inflation for all years between
5 two thousand eleven and the current year where:

6 (I) the gross applicable rate of inflation is obtained by computing
7 the annual rate of inflation and taking the lesser of four percent or
8 1.2 times the annual rate of inflation and adding one. For purposes of
9 this paragraph, the annual rate of inflation shall be the percentage (if
10 any) by which the consumer price index for the immediately preceding
11 year exceeds the consumer price index for the prior year. The consumer
12 price index for any year shall be the average of the consumer price
13 index as of the second quarter of that year. The term "consumer price
14 index" means the consumer price index for urban wage earners and cler-
15 ical workers (CPI-W) published by the United States department of labor,
16 bureau of labor statistics.

17 (iii) The denominator of the adjustment factor shall be computed as
18 one plus the percentage by which the per pupil tax levy for the current
19 school year exceeds the per pupil tax levy for the two thousand ten--two
20 thousand eleven school year.

21 (iv) For purposes of this paragraph, the per pupil tax levy for any
22 school year shall be calculated as follows:

23 (I) Determine the total school tax levy in the school district for the
24 current school year, as certified to the office of real property
25 services by the official who computes tax rates for the school district
26 by January thirty-first of that school year.

27 (II) Divide the amount certified in clause (I) of this subparagraph by
28 the resident public school district enrollment for the current year as
29 defined in paragraph n of subdivision one of section thirty-six hundred
30 two of the education law, based on an electronic data file used to
31 produce the school aid computer listing produced by the commissioner on
32 November fifteenth, or such alternative date as may be requested by the
33 director of the budget for the purpose of preparation of the executive
34 budget, pursuant to paragraph b of subdivision twenty-one of section
35 three hundred five of the education law, as certified to the department
36 by the state education department by January thirty-first of that school
37 year.

38 3. Maximum school tax. (A) If the amount available in the property
39 tax circuit breaker reserve fund is at least one hundred million
40 dollars, but less than or equal to five hundred million dollars, the
41 credit allowed by this subparagraph shall not exceed two thousand
42 dollars and the maximum school tax amount is as follows:

43 (i) In the city of New York, and the counties of Nassau, Suffolk,
44 Rockland, Westchester, Putnam, Orange and Dutchess:

| | |
|---------------------------------------|----------------------------------|
| 45 <u>Household gross income</u> | <u>Maximum school tax amount</u> |
| 46 <u>One hundred twenty thousand</u> | <u>six percent of the</u> |
| 47 <u>dollars or less</u> | <u>household gross income</u> |
| 48 <u>More than one hundred</u> | <u>seven percent of</u> |
| 49 <u>twenty thousand</u> | <u>the household</u> |
| 50 <u>dollars, but</u> | <u>gross income</u> |
| 51 <u>less than or equal to</u> | |
| 52 <u>one hundred seventy-five</u> | |
| 53 <u>thousand dollars</u> | |

| | |
|---------------------------------|-------------------------|
| 54 <u>More than one hundred</u> | <u>eight percent of</u> |
| 55 <u>seventy-five thousand</u> | <u>the household</u> |

| | | |
|---|----------------------------------|---------------------|
| 1 | <u>dollars, but less than</u> | <u>gross income</u> |
| 2 | <u>or equal to three hundred</u> | |
| 3 | <u>thousand dollars</u> | |

4 (ii) In all other counties in the state:

| | | |
|---|------------------------|----------------------------------|
| 5 | <u>Household gross</u> | <u>Maximum school tax amount</u> |
| 6 | <u>income</u> | |

| | | |
|----|------------------------------|-------------------------------|
| 7 | <u>Ninety thousand</u> | <u>six percent of the</u> |
| 8 | <u>dollars or less</u> | <u>household gross income</u> |
| 9 | <u>More than ninety</u> | <u>seven percent of</u> |
| 10 | <u>thousand dollars, but</u> | <u>the household</u> |
| 11 | <u>less than or equal to</u> | <u>gross income</u> |
| 12 | <u>one hundred fifty</u> | |
| 13 | <u>thousand dollars</u> | |

| | | |
|----|--------------------------------|-------------------------|
| 14 | <u>More than one hundred</u> | <u>eight percent of</u> |
| 15 | <u>fifty thousand dollars,</u> | <u>the household</u> |
| 16 | <u>but less than or equal</u> | <u>gross income</u> |
| 17 | <u>to two hundred thousand</u> | |
| 18 | <u>dollars</u> | |

19 (B) If the amount available in the property tax circuit breaker
20 reserve fund is more than five hundred million dollars but less than or
21 equal to one billion dollars, the credit allowed by this subparagraph
22 shall not exceed two thousand two hundred fifty dollars and the maximum
23 school tax amount is as follows:

24 (i) In the city of New York, and the counties of Nassau, Suffolk,
25 Rockland, Westchester, Putnam, Orange and Dutchess:

| | | |
|----|------------------------------------|----------------------------------|
| 26 | <u>Household gross income</u> | <u>Maximum school tax amount</u> |
| 27 | <u>One hundred twenty thousand</u> | <u>five percent of the</u> |
| 28 | <u>dollars or less</u> | <u>household gross income</u> |
| 29 | <u>More than one hundred</u> | <u>six percent of</u> |
| 30 | <u>twenty thousand</u> | <u>the household</u> |
| 31 | <u>dollars, but</u> | <u>gross income</u> |
| 32 | <u>less than or equal to</u> | |
| 33 | <u>one hundred seventy-five</u> | |
| 34 | <u>thousand dollars</u> | |

| | | |
|----|----------------------------------|-------------------------|
| 35 | <u>More than one hundred</u> | <u>seven percent of</u> |
| 36 | <u>seventy-five thousand</u> | <u>the household</u> |
| 37 | <u>dollars, but less than</u> | <u>gross income</u> |
| 38 | <u>or equal to three hundred</u> | |
| 39 | <u>thousand dollars</u> | |

40 (ii) In all other counties in the state:

| | | |
|----|------------------------|----------------------------------|
| 41 | <u>Household gross</u> | <u>Maximum school tax amount</u> |
| 42 | <u>income</u> | |

| | | |
|----|------------------------------|-------------------------------|
| 43 | <u>Ninety thousand</u> | <u>five percent of the</u> |
| 44 | <u>dollars or less</u> | <u>household gross income</u> |
| 45 | <u>More than ninety</u> | <u>six percent of</u> |
| 46 | <u>thousand dollars, but</u> | <u>the household</u> |
| 47 | <u>less than or equal to</u> | <u>gross income</u> |
| 48 | <u>one hundred fifty</u> | |
| 49 | <u>thousand dollars</u> | |

| | | |
|----|--------------------------------|-------------------------|
| 50 | <u>More than one hundred</u> | <u>seven percent of</u> |
| 51 | <u>fifty thousand dollars,</u> | <u>the household</u> |

| | | |
|---|--------------------------------|---------------------|
| 1 | <u>but less than or equal</u> | <u>gross income</u> |
| 2 | <u>to two hundred thousand</u> | |
| 3 | <u>dollars</u> | |

4 (C) If the amount available in the property tax circuit breaker
5 reserve fund is more than one billion dollars but less than or equal to
6 one billion five hundred million dollars, the credit allowed by this
7 subparagraph shall not exceed two thousand two hundred fifty dollars and
8 the maximum school tax amount is as follows:

9 (i) In the city of New York, and the counties of Nassau, Suffolk,
10 Rockland, Westchester, Putnam, Orange and Dutchess:

| | | |
|----|------------------------------------|----------------------------------|
| 11 | <u>Household gross income</u> | <u>Maximum school tax amount</u> |
| 12 | <u>One hundred twenty thousand</u> | <u>four percent of the</u> |
| 13 | <u>dollars or less</u> | <u>household gross income</u> |
| 14 | <u>More than one hundred</u> | <u>five percent of</u> |
| 15 | <u>twenty thousand</u> | <u>the household</u> |
| 16 | <u>dollars, but</u> | <u>gross income</u> |
| 17 | <u>less than or equal to</u> | |
| 18 | <u>one hundred seventy-five</u> | |
| 19 | <u>thousand dollars</u> | |

| | | |
|----|----------------------------------|-----------------------|
| 20 | <u>More than one hundred</u> | <u>six percent of</u> |
| 21 | <u>seventy-five thousand</u> | <u>the household</u> |
| 22 | <u>dollars, but less than</u> | <u>gross income</u> |
| 23 | <u>or equal to three hundred</u> | |
| 24 | <u>thousand dollars</u> | |

25 (ii) In all other counties in the state:

| | | |
|----|------------------------------|----------------------------------|
| 26 | <u>Household gross</u> | <u>Maximum school tax amount</u> |
| 27 | <u>income</u> | |
| 28 | <u>Ninety thousand</u> | <u>four percent of the</u> |
| 29 | <u>dollars or less</u> | <u>household gross income</u> |
| 30 | <u>More than ninety</u> | <u>five percent of</u> |
| 31 | <u>thousand dollars, but</u> | <u>the household</u> |
| 32 | <u>less than or equal to</u> | <u>gross income</u> |
| 33 | <u>one hundred fifty</u> | |
| 34 | <u>thousand dollars</u> | |

| | | |
|----|--------------------------------|-----------------------|
| 35 | <u>More than one hundred</u> | <u>six percent of</u> |
| 36 | <u>fifty thousand dollars,</u> | <u>the household</u> |
| 37 | <u>but less than or equal</u> | <u>gross income</u> |
| 38 | <u>to two hundred thousand</u> | |
| 39 | <u>dollars</u> | |

40 (D) If the amount available in the property tax circuit breaker
41 reserve fund is more than one billion five hundred million dollars but
42 less than or equal to two billion dollars, the credit allowed by this
43 subparagraph shall not exceed two thousand five hundred dollars and the
44 maximum school tax amount is as follows:

45 (i) In the city of New York, and the counties of Nassau, Suffolk,
46 Rockland, Westchester, Putnam, Orange and Dutchess:

| | | |
|----|------------------------------------|----------------------------------|
| 47 | <u>Household gross income</u> | <u>Maximum school tax amount</u> |
| 48 | <u>One hundred twenty thousand</u> | <u>three percent of the</u> |
| 49 | <u>dollars or less</u> | <u>household gross income</u> |
| 50 | <u>More than one hundred</u> | <u>four percent of</u> |
| 51 | <u>twenty thousand</u> | <u>the household</u> |
| 52 | <u>dollars, but</u> | <u>gross income</u> |

1 less than or equal to
2 one hundred seventy-five
3 thousand dollars

4 More than one hundred five percent of
5 seventy-five thousand the household
6 dollars, but less than gross income
7 or equal to three hundred
8 thousand dollars

9 (ii) In all other counties in the state:

10 Household gross Maximum school tax amount
11 income

12 Ninety thousand three percent of the
13 dollars or less household gross income

14 More than ninety four percent of
15 thousand dollars, but the household
16 less than or equal to gross income
17 one hundred fifty
18 thousand dollars

19 More than one hundred five percent of
20 fifty thousand dollars, the household
21 but less than or equal gross income
22 to two hundred thousand
23 dollars

24 (E) If the amount available in the property tax circuit breaker
25 reserve fund is more than two billion dollars, the credit allowed by
26 this subparagraph shall not exceed three thousand dollars and the maxi-
27 mum school tax amount is as follows:

28 (i) In the city of New York, and the counties of Nassau, Suffolk,
29 Rockland, Westchester, Putnam, Orange and Dutchess:

30 Household gross income Maximum school tax amount
31 One hundred twenty thousand two and a half percent of the
32 dollars or less household gross income
33 More than one hundred three and a half percent of
34 twenty thousand the household gross income
35 dollars, but
36 less than or equal to
37 one hundred seventy-five
38 thousand dollars

39 More than one hundred four and a half percent of
40 seventy-five thousand the household gross income
41 dollars, but less than
42 or equal to three hundred
43 thousand dollars

44 (ii) In all other counties in the state:

45 Household gross Maximum school tax amount
46 income

47 Ninety thousand two and a half percent of
48 dollars or less the household gross income

49 More than ninety three and a half percent of
50 thousand dollars, but the household gross income
51 less than or equal to

1 one hundred fifty
2 thousand dollars

3 More than one hundred four and a half percent of
4 fifty thousand dollars, the household gross income
5 but less than or equal
6 to two hundred thousand
7 dollars

8 (F) For two thousand twelve and thereafter, the thresholds of house-
9 hold gross income set forth in this paragraph shall be increased by an
10 amount equal to (i) such household gross income threshold, multiplied by
11 (ii) the rate of inflation for that year. If any increase is not a
12 multiple of one hundred dollars, such increase shall be rounded to the
13 nearest multiple of one hundred dollars.

14 The rate of inflation shall be the percentage (if any) by which the
15 consumer price index for the preceding year, exceeds the consumer price
16 index for two thousand eleven. The consumer price index for any year
17 shall be the average of the consumer price index as of the second quar-
18 ter of that year. The term "consumer price index" means the consumer
19 price index for urban wage earners and clerical workers (CPI-W)
20 published by the United States department of labor, bureau of labor
21 statistics.

22 4. If the amount of the credit allowable pursuant to this subsection
23 exceeds a qualified taxpayer's tax for a taxable year, such excess
24 amount shall be treated as an overpayment to be credited or refunded in
25 accordance with the provisions of section six hundred eighty-six of this
26 article; provided, however, that no interest shall be paid thereon. If a
27 qualified taxpayer is not required to file a return pursuant to section
28 six hundred fifty-one of this article, such taxpayer may nevertheless
29 receive as an overpayment the full amount of such credit, without inter-
30 est.

31 5. No credit shall be allowed under this subsection:

32 (A) to an individual with respect to whom a deduction under subsection
33 (c) of section one hundred fifty-one of the internal revenue code is
34 allowable to another taxpayer for the taxable year;

35 (B) with respect to residential real property that is wholly exempted
36 from taxation for school purposes;

37 (C) to an individual who is not a resident individual of the state for
38 the entire taxable year;

39 (D) if the qualified taxpayer claims the real property tax circuit
40 breaker credit, pursuant to subsection (e) of this section, for the
41 taxable year; and

42 (E) if the residential real property is excluded from receiving a STAR
43 exemption under subdivision four-a of section four hundred twenty-five
44 of the real property tax law.

45 6. Paragraphs four, five, six, eight, nine, ten, eleven, twelve, thir-
46 teen and fourteen of subsection (e) of this section shall also apply to
47 this subsection.

48 § 3. The state finance law is amended by adding a new section 92-gg to
49 read as follows:

50 § 92-gg. Property tax circuit breaker reserve fund. 1. There is here-
51 by established in the joint custody of the comptroller and the commis-
52 sioner of taxation and finance a fund to be known as the "property tax
53 circuit breaker reserve fund". Such fund shall be established and
54 accounted for by the comptroller within the general fund.

1 2. At the beginning of each fiscal year, the director of the budget
2 and the commissioner of taxation and finance shall determine the amount
3 of cash surplus remaining in the general fund at the close of the
4 preceding year, after deposits to the tax stabilization reserve fund and
5 rainy day reserve fund. Such remaining amount shall be transferred into
6 the property tax circuit breaker reserve fund.

7 3. Such fund shall also consist of all moneys transferred or credited
8 thereto from any other fund or source pursuant to law.

9 4. Moneys deposited in such fund shall be used only to offset the cost
10 of the tax credits pursuant to subsection (e-2) of section six hundred
11 six of the tax law. At the request of the director of the budget, the
12 comptroller shall transfer from the property tax circuit breaker reserve
13 fund to the general fund an amount equal to the estimated reduction of
14 receipts related to the tax credit. Such transfers shall occur pursuant
15 to a schedule prepared by the director of the budget in consultation
16 with the commissioner of taxation and finance.

17 5. Moneys in the property tax circuit breaker reserve fund may be
18 temporarily loaned to the general fund during any fiscal year in antic-
19 ipation of the receipt of revenues from taxes, fees and other sources
20 required to be paid into the general fund during such fiscal year.
21 Moneys so temporarily loaned shall be repaid in cash during the same
22 fiscal year from revenues received from such taxes, fees and other
23 sources as such revenues are received, to the extent that such revenues
24 are not necessary for current expenditures required to be made from the
25 general fund. Temporary loans pursuant to this subdivision shall be
26 without interest.

27 § 4. Subdivision 2 of section 92-cc of the state finance law, as added
28 by chapter 1 of the laws of 2007, is amended to read as follows:

29 2. Such fund shall have a maximum balance not to exceed [three] ten
30 per centum of the aggregate amount projected to be disbursed from the
31 general fund during the fiscal year immediately following the then-cur-
32 rent fiscal year.

33 § 5. The state finance law is amended by adding a new article 17 to
34 read as follows:

35 ARTICLE 17

36 ANNUAL SPENDING GROWTH CAP ACT

37 Section 244. Definitions.

38 245. Establishment of annual spending growth cap.

39 246. Provisions regarding declaration of emergency.

40 § 244. Definitions. As used in this article, the following terms shall
41 have the following meanings, unless otherwise specified:

42 1. "Annual spending growth cap" shall mean a percentage determined by
43 adding the inflation rates from each of the three calendar years imme-
44 diately prior to the commencement of a given fiscal year and then divid-
45 ing that sum by three.

46 2. "State operating funds spending" shall mean annual disbursements of
47 all governmental fund types included in the cash-basis financial plan of
48 the state, excluding disbursements from federal funds and capital
49 project funds.

50 3. "Inflation rate" shall mean the percentage change in the twelve-
51 month average of the consumer price index for all urban consumers as
52 published by the United States department of labor, bureau of labor
53 statistics or any successor agency for a given calendar year, as
54 compared to the prior calendar year.



1 4. "Executive budget" shall mean the budget submitted annually by the
2 governor pursuant to section one of article VII of the state constitu-
3 tion.

4 5. "State budget as enacted" shall mean the budget acted upon by the
5 legislature in a given fiscal year, as subject to section four of arti-
6 cle VII of the state constitution and section seven of article IV of the
7 state constitution.

8 6. "Emergency" shall mean an extraordinary, unforeseen, or unexpected
9 occurrence, or combination of circumstances, including but not limited
10 to a natural disaster, invasion, terrorist attack, or economic calamity.

11 § 245. Establishment of annual spending growth cap. 1. There is here-
12 by established an annual spending growth cap.

13 2. The governor shall not submit, and the legislature shall not enact,
14 any budget that contains an estimated percentage increase over the prior
15 fiscal year in state operating funds spending which exceeds the annual
16 spending growth cap.

17 3. The governor shall certify in writing that estimated state operat-
18 ing funds spending in the executive budget does not exceed the annual
19 spending growth cap. If final inflation rate data for the prior calendar
20 year is not yet available at the time the governor submits his or her
21 executive budget, he or she shall furnish a reasonable estimate of such
22 prior calendar year inflation rate.

23 4. The director of the budget shall provide, within ten days of action
24 by the legislature upon the budget, a determination as to whether esti-
25 imated state operating funds spending as set forth in the state budget as
26 enacted exceeds the annual spending growth cap.

27 5. If the director of the budget finds that state operating funds
28 spending as set forth in the state budget as enacted exceeds the annual
29 spending growth cap, the governor shall take corrective action to ensure
30 that funding is limited to the amount of the annual spending cap.

31 § 246. Provisions regarding declaration of emergency. 1. Upon a find-
32 ing of an emergency by the governor, he or she may declare an emergency
33 by an executive order which shall set forth the reasons for such decla-
34 ration.

35 2. Based upon such declaration, the governor may submit, and the
36 legislature may approve by an affirmative vote of two-thirds of the
37 members elected to each house, a budget containing a percentage increase
38 over the prior fiscal year in state operating funds spending that
39 exceeds the annual spending growth cap.

40 § 6. This act shall take effect immediately; provided, however, that
41 section two of this act shall apply to tax years beginning on or after
42 January 1, 2011 and further provided that section five of this act shall
43 expire April 1, 2014 when upon such date the provisions of such section
44 shall be deemed repealed.

45

PART R

46 Section 1. Section 2 of the tax law is amended by adding two new
47 subdivisions 12 and 13 to read as follows:

48 12. As used in this chapter, a "state recognized marriage" shall mean
49 a marriage recognized by New York state law, including a marriage
50 outside the state recognized under principles of comity.

51 13. As used in this chapter, "Married," "Spouse," "Husband," "Wife,"
52 "Widow," and other similar terms encompass any individuals in a state
53 recognized marriage, notwithstanding the treatment afforded such
54 marriage under the laws of the United States.



1 § 2. The tax law is amended by adding a new section 31 to read as
2 follows:

3 § 31. Treatment of individuals in any state recognized marriage. (a)
4 For purposes of this chapter, individuals in any state recognized
5 marriage shall be treated as married, and their status as "husband,"
6 "wife," "spouse," "widow" or other similar term indicating marital
7 status as used in this chapter shall be that of similarly-situated indi-
8 viduals in any other marriage recognized under federal and state tax
9 law, notwithstanding the treatment afforded such individuals under the
10 laws of the United States.

11 (b) Tax liability under articles twenty-two, twenty-six, twenty-six-B,
12 thirty, thirty-A, and thirty-B of this chapter shall be computed for any
13 state recognized marriage in the same way liability would be computed in
14 any other marriage recognized under federal and state tax law.

15 § 3. Subsection (b) of section 607 of the tax law, as amended by chap-
16 ter 760 of the laws of 1992, is amended to read as follows:

17 (b) Marital or other status. An individual's marital or other status
18 under section six hundred one, subsection (b) of section six hundred six
19 and section six hundred fourteen shall be the same as his or her marital
20 or other status for purposes of establishing the applicable federal
21 income tax rates; provided however, that individuals in any state recog-
22 nized marriage shall be treated as married and as "husband," "wife,"
23 "spouse," "widow" or other similar term used in this article to indicate
24 marital status to the same extent and in the same way as are individuals
25 in any other legally performed marriage. In applying relevant provisions
26 of the laws of the United States to this article, the terms "married,"
27 "husband," "wife," "spouse," "widow" or other similar term indicating
28 marital status as used in this article shall include any state recog-
29 nized marriage, notwithstanding the treatment afforded such individuals
30 under the laws of the United States.

31 § 4. Subsection (b) of section 651 of the tax law is amended by adding
32 a new paragraph 8 to read as follows:

33 (8) Notwithstanding any other provision of this section, an individual
34 in a state recognized marriage not recognized by federal law shall file
35 a state return using the same filing status that would have been avail-
36 able had such marriage been recognized by federal law.

37 § 5. Subsection (a) of section 951 of the tax law, as amended by
38 section 1 of part A of chapter 407 of the laws of 1999, is amended to
39 read as follows:

40 (a) Dates. For purposes of this article, any reference to the internal
41 revenue code means the United States Internal Revenue Code of 1986, with
42 all amendments enacted on or before July twenty-second, nineteen hundred
43 ninety-eight, and, unless specifically provided otherwise in this arti-
44 cle, any reference to December thirty-first, nineteen hundred seventy-
45 six or January first, nineteen hundred seventy-seven contained in the
46 provisions of such code which are applicable to the determination of the
47 tax imposed by this article shall be read as a reference to June thirti-
48 eth, nineteen hundred seventy-eight or July first, nineteen hundred
49 seventy-eight, respectively. Notwithstanding the foregoing, the unified
50 credit against the estate tax provided in section two thousand ten of
51 the internal revenue code shall, for purposes of this article, be the
52 amount allowed by such section under the applicable federal law in
53 effect on the decedent's date of death. Provided, however, the amount of
54 such credit allowable for purposes of this article shall not exceed the
55 amount allowable as if the federal unified credit did not exceed the tax
56 due under section two thousand one of the internal revenue code on a

1 federal taxable estate of one million dollars. Provided, further, any
2 election to take a qualified terminable interest property deduction made
3 on the return filed under this article shall be treated as if the
4 election had been made on the federal estate tax return.

5 § 6. Section 1-112 of the administrative code of the city of New York
6 is amended by adding a new subdivision 22 to read as follows:

7 22. For purposes of chapter seventeen of title eleven of this code,
8 "married," "spouse," "husband," "wife," "widow," and other similar terms
9 encompass any state recognized marriage notwithstanding the treatment
10 afforded such individuals under the laws of the United States.

11 § 7. Subdivision (b) of section 11-1707 of the administrative code of
12 the city of New York, as amended by chapter 333 of the laws of 1987, is
13 amended to read as follows:

14 (b) Marital or other status. An individual's marital or other status
15 under section 11-1701 and section 11-1714 shall be the same as his or
16 her marital or other status for purposes of establishing the applicable
17 federal income tax rates; provided however, that individuals in any
18 state recognized marriage shall be treated as married and as "husband,"
19 "wife," "spouse," "widow" or other similar term indicating marital
20 status as used in this chapter to the same extent and in the same way as
21 in any other marriage recognized under federal and state tax law. In
22 applying relevant provisions of the laws of the United States to this
23 chapter, the terms "married," "husband," "wife," "spouse," "widow" and
24 other similar terms indicating marital status as used in this chapter
25 shall include individuals in any state recognized marriage, notwith-
26 standing the treatment afforded such individuals under the laws of the
27 United States.

28 § 8. This act shall take effect immediately; provided however, that
29 sections three, four, six and seven of this act shall apply to taxable
30 years beginning on or after January 1, 2010.

31

PART S

32 Section 1. Clause (I) of subparagraph (i) of paragraph 8 of subdivi-
33 sion (b) of section 1101 of the tax law, as added by section 1 of part
34 P-1 of chapter 57 of the laws of 2009, is amended to read as follows:

35 (I) A seller of tangible personal property or services, the use of
36 which is taxed by this article if either (I) an affiliated person that
37 is a vendor as otherwise defined in this paragraph uses in the state
38 trademarks, service marks, or trade names that are the same as those the
39 seller uses; or (II) an affiliated person engages in activities in the
40 state that inure to the benefit of the seller, in its development or
41 maintenance of a market for its goods or services in the state, to the
42 extent that those activities of the affiliate are sufficient to satisfy
43 the nexus requirement of the United States constitution. For purposes of
44 this clause, "affiliated person" has the same meaning as in clause (B)
45 of subparagraph (v) of this paragraph. Nothing in this clause shall be
46 construed to narrow the scope of any other provision in this paragraph.
47 Notwithstanding the provisions of this clause, the activities in the
48 state of an affiliated person in providing accounting or legal services
49 or advice, or in directing the activities of a seller, including, but
50 not limited to, making decisions about (a) strategic planning, (b)
51 marketing, (c) inventory, (d) staffing, (e) distribution, or (f) cash
52 management, will not result in making the seller a vendor under this
53 paragraph.



1 § 2. This act shall take effect immediately and shall be deemed to
2 have been in full force and effect on and after June 1, 2009 and shall
3 apply to sales made or uses occurring on or after such date in accord-
4 ance with the applicable transitional provisions of sections 1106 and
5 1217 of the tax law.

6

PART T

7 Section 1. This act shall be known and may be cited as the "wine
8 industry and liquor store revitalization act".

9 § 2. Subdivisions 4 and 5 of section 63 of the alcoholic beverage
10 control law, subdivision 4 as amended by chapter 603 of the laws of
11 1992, are amended and three new subdivisions 7, 8 and 9 are added to
12 read as follows:

13 4. (a) No licensee under this section shall be engaged in any other
14 business on the licensed premises. The sale of products complementary to
15 the business of the licensed premises shall not constitute engaging in
16 another business within the meaning of this subdivision. Such products
17 shall include but not be limited to the sale of lottery tickets, when
18 duly authorized and lawfully conducted, the sale of corkscrews or the
19 sale of ice or the sale of publications, including prerecorded video
20 and/or audio cassette tapes, designed to help educate consumers in their
21 knowledge and appreciation of wine and wine products, as defined in
22 section three of this chapter, or the sale of [non-carbonated, non-fla-
23 vored mineral waters, spring waters and drinking waters or the sale of
24 glasses designed for the consumption of wine] bottled water, mixers,
25 juice and soda, or the sale of cigars, cigar accessories and related
26 publications designed to help educate consumers in their knowledge and
27 appreciation of cigar products, lighters, newspapers or food and food
28 products typically consumed with alcoholic beverages, including but not
29 limited to snack foods and gourmet foods such as locally produced chees-
30 es and fresh breads, gifts, gift bags and gift baskets, glassware and
31 decanters related to the consumption or storage of wine and/or liquor,
32 racks designed for the storage of wine, and devices designed to minimize
33 oxidation in bottles of wine which have been uncorked[, shall not
34 constitute engaging in another business within the meaning of this
35 subdivision].

36 (b) The installation and operation of automated teller machines shall
37 not constitute engaging in another business within the meaning of this
38 subdivision. For purposes of this subdivision, "automated teller
39 machine" means a device which is linked to the accounts and records of a
40 banking institution and which enables consumers to carry out banking
41 transactions, including, but not limited to, account transfers, depos-
42 its, cash withdrawals, balance inquiries, and loan payments.

43 5. [Not more than one license shall be] Nothing in this section shall
44 be construed to prohibit multiple licenses from being granted to any
45 person under this section.

46 7. Any license under this section includes the privileges to sell
47 liquor to any person licensed under this chapter to sell liquor at
48 retail for consumption on the premises and wine to any person licensed
49 under this chapter to sell wine at retail for consumption on the prem-
50 ises. Such sales shall not be subject to the provisions of section one
51 hundred one-aa or section one hundred one-b of this chapter.

52 8. Every licensee under this section shall have an individual in a
53 position of management and control assigned to it who has been issued a



1 certificate of completion from an approved alcohol training awareness
2 program.

3 9. (a) Except as provided in this subdivision, commencing on the
4 effective date of this subdivision no additional licenses shall be
5 issued pursuant to this section.

6 (b) The provisions of this subdivision shall not apply to (i) the
7 renewal, transfer or continuance of a license pursuant to this chapter;
8 (ii) an application for a license filed before the effective date of
9 this subdivision; (iii) the issuance of a license in accordance with the
10 provisions of paragraph (c) of this subdivision.

11 (c) Each person holding a license issued under this section prior to
12 the effective date of this subdivision shall have the right to apply for
13 one additional license under this section. This right may be exercised
14 by the existing licensee or sold by the licensee to another party. Such
15 a sale shall be subject to sales and compensating use tax as imposed by
16 section eleven hundred five of the tax law. The party exercising the
17 right to apply for the license must file an application with the author-
18 ity and meet all applicable restrictions and requirements.

19 (d) The authority may sell, by auction, the right to apply for any
20 license issued under this section which is canceled or revoked. Prior to
21 the issuance of any license, the person buying such right must file an
22 application with the authority and meet all applicable restrictions and
23 requirements. The amount of the sale shall be subject to sales and
24 compensating use tax as imposed by section eleven hundred five of the
25 tax law.

26 (e) The authority may promulgate such rules and regulations as may be
27 necessary to carry out the provisions of this subdivision.

28 § 3. Subdivision 2 of section 79 of the alcoholic beverage control law
29 is amended and three new subdivisions 5, 6 and 7 are added to read as
30 follows:

31 2. [Not more than one license shall be] Nothing in this section shall
32 be construed to prohibit multiple licenses from being granted to any
33 person under this section.

34 5. Any license under this section includes the privileges to sell
35 wine to any person licensed under this chapter to sell wine at retail
36 for consumption on the premises or any person licensed under section
37 seventy-nine-e of this article, provided that such grocery or drug store
38 wine licensee's premises occupies less than one thousand square feet.
39 Such sales shall not be subject to the provisions of section one hundred
40 one-aa or section one hundred one-b of this chapter.

41 6. Every licensee under this section shall have an individual in a
42 position of management and control assigned to it who has been issued a
43 certificate of completion from an approved alcohol training awareness
44 program.

45 7. (a) Except as provided for in this subdivision, commencing on the
46 effective date of this subdivision, no additional licenses shall be
47 issued pursuant to this section.

48 (b) The provisions of this subdivision shall not apply to (i) the
49 renewal, transfer or continuance of a license pursuant to this chapter;
50 (ii) an application for a license filed before the effective date of
51 this subdivision; (iii) the issuance of a license in accordance with the
52 provisions of paragraph (c) of this subdivision.

53 (c) Each person holding a license issued under this section prior to
54 the effective date of this subdivision shall have the right to apply for
55 one additional license under this section. This right may be exercised
56 by the existing licensee or sold by the licensee to another party. Such

1 a sale shall be subject to sales and compensating use tax as imposed by
2 section eleven hundred five of the tax law. The party exercising the
3 right to apply for the license must file an application with the author-
4 ity and meet all applicable restrictions and requirements.

5 (d) The authority may sell, by auction, the right to apply for any
6 license issued under this section which is canceled or revoked. Prior to
7 the issuance of any license, the person buying such right must file an
8 application with the authority and meet all applicable restrictions and
9 requirements. The amount of the sale shall be subject to sales and
10 compensating use tax as imposed by section eleven hundred five of the
11 tax law.

12 (e) The authority may promulgate such rules and regulations as may be
13 necessary to carry out the provisions of this subdivision.

14 § 4. Section 83 of the alcoholic beverage control law is amended by
15 adding a new subdivision 8 to read as follows:

16 8. The annual fee for a grocery or drug store wine license pursuant to
17 section seventy-nine-e of this article shall be five hundred dollars.
18 Where, however, the applicant is the holder of two or more such
19 licenses, the annual fee for each additional license shall be double the
20 amount hereinabove set forth. Ten percent of the overall fees paid up to
21 one million dollars shall be deposited to the miscellaneous special
22 revenue fund (339) wine industry marketing account for appropriation and
23 allocation to the New York wine marketing program, as established in
24 section three-a of chapter eighty of the laws of nineteen hundred eight-
25 y-five, such section as added by chapter three hundred thirty of the
26 laws of two thousand four.

27 § 4-a. The state finance law is amended by adding a new section
28 97-jjjj to read as follows:

29 § 97-jjjj. New York wine industry marketing and promotion account. 1.
30 There is hereby established in the joint custody of the state comp-
31 troller and the commissioner of taxation and finance an account to be
32 known as the New York wine industry marketing and promotion account.

33 2. Such account shall consist of revenues received from grocery or
34 drug store wine license fees pursuant to subdivision eight of section
35 eighty-three of the alcoholic beverage control law.

36 3. Moneys of the account, following appropriation by the legislature,
37 may be expended in accordance with the provisions of section three-a of
38 chapter eighty of the laws of nineteen hundred eighty-five, as added by
39 chapter three hundred thirty of the laws of two thousand four. Moneys
40 shall be paid out of the account on the audit and warrant of the state
41 comptroller on vouchers certified or approved by the commissioner of
42 agriculture and markets.

43 § 5. Subdivision 2-a of section 100 of the alcoholic beverage control
44 law, as amended by chapter 249 of the laws of 2002, is amended to read
45 as follows:

46 2-a. No retailer shall employ, or permit to be employed, or shall
47 suffer to work, on any premises licensed for retail sale hereunder, any
48 person under the age of eighteen years, as a hostess, waitress, waiter,
49 or in any other capacity where the duties of such person require or
50 permit such person to sell, dispense or handle alcoholic beverages;
51 except that: (1) any person under the age of eighteen years and employed
52 by any person holding a grocery or drug store beer license shall be
53 permitted to handle and deliver beer and wine products for such licen-
54 see, (2) any person under the age of eighteen employed as a cashier by a
55 person holding a grocery or drug store beer license shall be permitted
56 to record and receive payment for beer and wine product sales when in

1 the presence of and under the direct supervision of a person eighteen
2 years of age or over, (2-a) any person under the age of eighteen years
3 and employed by a person holding a grocery store or drug store beer
4 license as either a cashier or in any other position to which handling
5 of containers which may have held alcoholic beverages is necessary,
6 shall be permitted to handle the containers if such have been presented
7 for redemption in accordance with the provisions of title ten of article
8 twenty-seven of the environmental conservation law, [and] (3) any person
9 under the age of eighteen years employed as a dishwasher, busboy, or
10 other such position as to which handling of containers which may have
11 held alcoholic beverages is necessary shall be permitted to do so under
12 the direct supervision of a person of legal age to purchase alcoholic
13 beverages in the state, (4) any person under the age of eighteen years
14 and employed by a person holding a grocery or drug store wine license
15 shall be permitted to handle and deliver wine for such licensee, and (5)
16 any person under the age of eighteen years and employed by a person
17 holding a grocery or drug store wine license shall be permitted to
18 record and receive payment for wine sales when in the presence of and
19 under the direct supervision of a person eighteen years or over.

20 § 6. Section 17 of the alcoholic beverage control law is amended by
21 adding a new subdivision 8-b to read as follows:

22 8-b. On and after January first, two thousand eleven, the report
23 provided for in subdivision eight of this section shall include informa-
24 tion related to the number of licenses applied for, renewals sought and
25 the length of time required for the approval or denial of such retail
26 licenses and renewals applied for pursuant to subdivision two-c of
27 section sixty-one, sections sixty-four, seventy-six, seventy-six-a,
28 seventy-six-c, seventy-six-d and seventy-six-f of this chapter.

29 § 7. Paragraphs (a) and (b) of subdivision 14 of section 105 of the
30 alcoholic beverage control law, paragraph (a) as amended by section 1 of
31 part U of chapter 63 of the laws of 2003 and paragraph (b) as amended by
32 chapter 334 of the laws of 2004, are amended to read as follows:

33 (a) No premises licensed to sell liquor and/or wine for off-premises
34 consumption shall be permitted to [remain open] sell liquor and/or wine:

35 (i) On Sunday before twelve o'clock post meridian and after nine
36 o'clock post meridian.

37 (ii) On any day between midnight and eight o'clock antemeridian.

38 (iii) On the twenty-fifth day of December, known as Christmas day.

39 In any community where daylight saving time is in effect, such time
40 shall be deemed the standard time for the purpose of this subdivision.

41 (b) This subdivision shall only be interpreted to prohibit the sale of
42 liquor and/or wine for off-premises consumption [when it is closed to
43 the public, provided however, retail licensees may undertake all other
44 activities allowed during the course of normal business operations]. A
45 licensee may engage in any other lawful activity allowed on the
46 licensee's premises, including but not limited to:

47 (i) placing orders with or taking deliveries from wholesalers and
48 manufacturers;

49 (ii) meeting with individuals who have valid solicitors permits issued
50 by the liquor authority;

51 (iii) stocking shelves;

52 (iv) filling or building displays; [and]

53 (v) rotating product on store shelves; and

54 (vi) in the case of persons licensed under section seventy-nine-e of
55 this chapter, the sale of other products, including beer and wine



1 products if the person is also licensed under section fifty-four or
2 section fifty-four-a of this chapter.

3 § 8. Section 105 of the alcoholic beverage control law is amended by
4 adding a new subdivision 24 to read as follows:

5 24. Cooperative agreements by licensees to sell at retail for consump-
6 tion off the premises. For the purposes of purchasing only, any two or
7 more persons licensed pursuant to sections sixty-three and/or seventy-
8 nine of this chapter may join in an agreement to make joint purchases of
9 liquor and/or wine in larger quantities than might otherwise be
10 purchased; provided, however, that all such alcoholic beverages
11 purchased pursuant to any such agreement shall be distributed to none
12 other than a licensee who is a party to such agreement. The cooperative
13 agreements, as authorized under this subdivision, shall be void if,
14 within a city with a population of one million or more, the premises
15 operating under the cooperative agreements authorized in this subdivi-
16 sion are located more than one mile from one another. The cooperative
17 agreements, as authorized under this subdivision, shall be void if,
18 outside of a city with a population of one million or more, the premises
19 operating under agreements authorized in this subdivision are located
20 more than fifty miles from one another. The authority may promulgate
21 such rules and regulations as may be necessary to carry out the
22 provisions of this subdivision.

23 § 9. Subdivision 2 of section 105 of the alcoholic beverage control
24 law is REPEALED.

25 § 10. Subdivision 7 of section 105 of the alcoholic beverage control
26 law is REPEALED.

27 § 11. The alcoholic beverage control law is amended by adding a new
28 section 79-e to read as follows:

29 § 79-e. Grocery or drug store wine license. 1. Any person may apply to
30 the authority for a license to sell from the licensed premises wine in
31 sealed containers for consumption off such premises.

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

36 3. (a) Notwithstanding any other provision of this chapter, except for
37 good cause shown, the authority shall issue a grocery or drug store wine
38 license to the holder of a license to sell beer at retail for consump-
39 tion off the premises pursuant to section fifty-four of this chapter, or
40 beer and wine products at retail for consumption off the premises pursu-
41 ant to section fifty-four-a of this chapter, at the request of such
42 licensee.

43 (b) For the purposes of this subdivision, the premises of the grocery
44 or drug store wine licensee shall be the same as the premises licensed
45 under section fifty-four or fifty-four-a of this chapter.

46 (c) Notwithstanding any other provisions of this chapter, any license
47 issued pursuant to this section shall run concurrently with the underly-
48 ing license under section fifty-four or fifty-four-a of this chapter,
49 and shall be deemed expired at such time as the underlying license
50 expires.

51 (d) Wine tasting. Any person licensed to sell wine pursuant to this
52 article shall be permitted to conduct wine tastings. Wine tastings which
53 are conducted under the auspices of an official agent of a farm winery,
54 winery, wholesaler, or importer and where such agent is physically pres-
55 ent at all times during the conduct of the tasting, then, in that event,
56 any liability stemming from a right of action resulting from a wine

1 tasting as authorized pursuant to this section, and in accordance with
 2 the provisions of sections 11-100 and 11-101 of the general obligations
 3 law, shall accrue to the farm winery, winery, wholesaler, or importer.

4 4. Notwithstanding any other provision of this chapter, the authority
 5 may issue a license under this section to the holder of a license to
 6 sell wine at retail for consumption off the premises pursuant to section
 7 seventy-nine of this article, provided that: (a) the licensee meets the
 8 requirements of subdivision two of this section; and (b) upon issuance
 9 of a license, the licensee under this section surrenders the license
 10 certificate issued pursuant to such section seventy-nine.

11 5. Such application shall be in such form and shall contain such
 12 information as shall be required by the rules of the authority and shall
 13 be accompanied by a check or draft in the amount required by this arti-
 14 cle for such license.

15 6. Notwithstanding any other provisions of this chapter, any person
 16 receiving a license pursuant to this section shall not be subject to the
 17 provisions of subdivision two, three or four of section seventy-nine of
 18 this article.

19 7. Notwithstanding any other provisions of this chapter, any person
 20 receiving a license pursuant to this section shall not be subject to the
 21 provisions of paragraph (a) of subdivision three of section one hundred
 22 five of this chapter.

23 8. (a) A one-time franchise fee shall be paid by each retail outlet to
 24 the state liquor authority. This franchise fee is hereby imposed pursu-
 25 ant to the following schedule per location based upon gross sales in the
 26 previous year:

| <u>Annual Sales</u> | <u>Franchise Fee Per Location</u> |
|----------------------------------|---|
| <u>\$0-\$249,999</u> | <u>\$1,000</u> |
| <u>\$250,000-\$999,999</u> | <u>0.40 of one percent of total gross sales</u> |
| <u>\$1,000,000-\$9,999,999</u> | <u>0.42 of one percent of total gross sales</u> |
| <u>\$10,000,000-\$39,999,999</u> | <u>0.46 of one percent of total gross sales</u> |
| <u>\$40,000,000 and greater</u> | <u>0.48 of one percent of total gross sales</u> |
| <u>Warehouse stores</u> | <u>0.50 of one percent of total gross sales</u> |

34 For the purposes of this paragraph, "total gross sales" shall not
 35 include sales resulting from the sale of tobacco as defined by article
 36 twenty of the tax law and motor fuel as defined by article twelve-A of
 37 the tax law. For the purposes of this paragraph, notwithstanding the
 38 gross sales of the applicant, an establishment that charges a membership
 39 fee to its customers shall be deemed a "warehouse store".

40 (b) In the event an applicant has been in business for less than
 41 twelve months prior to the filing of the application for this license,
 42 such applicant shall, in accordance with the rules of the authority,
 43 remit an estimate of its franchise fee based on square footage at a
 44 licensee's location pursuant to the following schedule:

| <u>Square Footage Licensee's Location</u> | <u>Franchise Fee 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> |
| <u>30,000-39,999</u> | <u>\$132,000</u> |
| <u>40,000-79,999</u> | <u>\$250,000</u> |
| <u>80,000 and greater</u> | <u>\$350,000</u> |



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

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

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

23 9. Any person licensed to sell wine pursuant to this article that
24 operates the premises of the grocery or drug store wine licensee that
25 occupies less than one thousand square feet may purchase, agree to
26 purchase or receive any wine from a person licensed under sections
27 sixty-three and seventy-nine of this chapter.

28 10. Every licensee under this section shall have an individual in a
29 position of management and control assigned to it who has been issued a
30 certificate of completion from an approved alcohol training awareness
31 program.

32 11. Notwithstanding subdivision eight of this section, no franchise
33 fee shall be required from an applicant who is purchasing the business
34 of a licensee who has already paid a franchise fee, provided that such
35 applicant continues the business operation at the same geographic
36 location as the licensee. In the event the applicant subsequently
37 removes the business to another location, payment of the appropriate
38 franchise fee shall be required prior to the approval of the removal
39 pursuant to subdivision three of section ninety-nine-d of this chapter.

40 12. The state liquor authority may make such rules as it deems neces-
41 sary to carry out the provisions of this section, however, such rules
42 shall not be construed to place additional limitations upon the holders
43 of licenses issued pursuant to section seventy-nine of this article
44 unrelated to the sale of wine.

45 § 12. Subdivision 10 of section 105 of the alcoholic beverage control
46 law, paragraph (a) as amended by chapter 679 of the laws of 1950, is
47 amended to read as follows:

48 10. [(a)] Each retail licensee of liquor and/or wine for off-premises
49 consumption shall have conspicuously displayed within the interior of
50 the licensed premises where sales are made and where it can be readily
51 inspected by consumers a printed price list of the liquors and/or wines
52 offered for sale therein; and no liquor and/or wine shall be sold except
53 at the price set forth in such list[;

54 (b) No screen, blind, curtain, partition, article or thing shall be
55 permitted in the windows or upon the doors of such licensed premises,

1 which shall prevent a clear view into the interior of such licensed
2 premises from the sidewalk, at all times; and

3 (c) No booth, screen, partition or other obstruction shall be permit-
4 ted in the interior of said licensed premises].

5 § 13. Section 97-a of the alcoholic beverage control law is REPEALED
6 and a new section 97-a is added to read as follows:

7 § 97-a. Temporary retail permit. 1. The authority is hereby authorized
8 to issue a temporary retail permit:

9 (a) to the transferee of a retail license to continue the operations
10 of a retail premises during the period that the transfer application for
11 the license from person to person at the same premises is pending; or

12 (b) to the applicant for a new retail license where the prospective
13 licensed premises is located in a municipality with a population of less
14 than one million during the period that the application is pending.

15 2. Such a permit may be issued if all of the following conditions are
16 met:

17 (a) the applicant for the temporary permit shall have filed with the
18 authority an application for a retail license at such premises, together
19 with all required filing and license fees;

20 (b) the applicant shall have filed with the authority an application
21 for a temporary retail permit, accompanied by a nonrefundable filing fee
22 of one hundred twenty-eight dollars for all retail beer licenses or six
23 hundred forty dollars for all other retail licenses; provided, however,
24 that no temporary retail permit shall be issued to an applicant for a
25 license pursuant to section seventy-nine-e of this chapter until the
26 franchise fee or estimated franchise fee required by either paragraph
27 (a) or (b) of subdivision eight of section seventy-nine-e of this chap-
28 ter has been paid in full. In the event such application is denied, the
29 applicant shall receive a refund of the franchise fee or estimated fran-
30 chise fee;

31 (c) in the case of a transfer application, the premises shall have
32 been operated under a retail license within thirty days of the date of
33 filing the application for a temporary permit;

34 (d) at the time the permit is issued the current license, if any, in
35 effect for said premises shall have been surrendered to, placed into
36 safekeeping with, or otherwise deemed abandoned by the authority;

37 3. A temporary retail permit under paragraph (b) of subdivision one of
38 this section may not be issued for any premises that is subject to the
39 provisions of section sixty-three, paragraph (b) of subdivision seven of
40 section sixty-four, subparagraph (ii) of paragraph (a) of subdivision
41 seven of section sixty-four-a, subparagraph (ii) of paragraph (a) of
42 subdivision eleven of section sixty-four-c, paragraph (b) of subdivision
43 eight of section sixty-four-d, or section seventy-nine of this chapter.

44 4. A temporary retail permit issued by the authority pursuant to this
45 section shall be for a period not to exceed ninety days. A temporary
46 permit may be extended at the discretion of the authority, for an addi-
47 tional thirty day period upon payment of an additional fee of sixty-four
48 dollars for all retail beer licenses and ninety-six dollars for all
49 other temporary permits and upon compliance with all conditions required
50 in this section. The authority may, in its discretion, issue additional
51 thirty day extensions upon payment of the appropriate fee.

52 5. A temporary retail permit is a conditional permit and authorizes
53 the holder thereof:

54 (a) in the case of a transfer application to purchase and sell such
55 alcoholic beverages as would be permitted to be purchased and sold under

1 the privileges of the retail license for which the transfer application
2 has been filed;

3 (b) in the case of all other retail applications, to purchase and sell
4 such alcoholic beverages as would be permitted to be purchased and sold
5 under the privileges of the license applied for; and

6 (c) to sell such alcoholic beverages to consumers only and not for
7 resale.

8 6. The holder of a temporary retail permit shall purchase alcoholic
9 beverages only by payment in currency or check for such alcoholic bever-
10 ages on or before the day such alcoholic beverages are delivered,
11 provided, however, that the holder of a temporary permit issued pursuant
12 to this section who also holds one or more retail licenses and is oper-
13 ating under such retail license or licenses in addition to the temporary
14 retail permit, and who is not delinquent under the provisions of section
15 one hundred one-aa of this chapter as to any retail license under which
16 he operates, may purchase alcoholic beverages on credit under the tempo-
17 rary permit.

18 7. Notwithstanding any other provision of law, a temporary retail
19 permit may be summarily cancelled or suspended at any time if the
20 authority determines that good cause for such cancellation or suspension
21 exists. The authority shall promptly notify the holder of a temporary
22 retail permit in writing of such cancellation or suspension and shall
23 set forth the reasons for such action.

24 8. The application for a temporary permit shall be on such form as the
25 authority shall prescribe.

26 9. Approval of, or extension of, a temporary retail permit shall not
27 be deemed as an approval of the retail application.

28 10. Notwithstanding any inconsistent provision of law to the contrary,
29 the authority may promulgate such rules and regulations as may be neces-
30 sary to carry out the provisions of this section.

31 § 14. Paragraph f of subdivision 1 of section 99-b of the alcoholic
32 beverage control law, as added by chapter 486 of the laws of 1941, is
33 amended to read as follows:

34 f. A licensee who is liquidating or selling [his] its business, or a
35 former licensee whose license [was] has been surrendered, revoked,
36 cancelled or has expired, to sell [his] its entire stock of alcoholic
37 beverages to other licensees, provided, however, that no such permit
38 shall be issued to a licensee or former licensee who is delinquent under
39 the provisions of section one hundred one-aa or section one hundred
40 one-aaa of this chapter. A former licensee whose license has been
41 surrendered, revoked, cancelled, or has expired, may not transfer its
42 stock of alcoholic beverages to any other person unless it obtains such
43 a permit.

44 § 15. Section 3 of the alcoholic beverage control law is amended by
45 adding a new subdivision 30-a to read as follows:

46 30-a. "Transfer" means the administrative processes involved in issu-
47 ing a license to a new applicant for an existing licensed business.
48 Transfer applicants shall be under contract with the existing licensee
49 for purchase of the existing licensed business.

50 § 16. Subdivision 12 of section 17 of the alcoholic beverage control
51 law, as amended by chapter 549 of the laws of 2001, is amended to read
52 as follows:

53 12. To develop and establish minimum criteria for alcohol training
54 awareness programs which may be given and administered by schools; other
55 entities including trade associations whose members are engaged in or
56 involved in the retail sale of alcoholic beverages; national and

1 regional franchisors who have granted at least five franchises in the
2 state which are licensed to sell beer at retail for off-premises
3 consumption; licensees authorized to sell alcoholic beverages at retail
4 for off-premises consumption operating five or more licensed premises;
5 and persons interested, whether as an individual proprietor or partner
6 or officer or member of a limited liability company, in five or more
7 licensees authorized to sell alcoholic beverages at retail for off-prem-
8 ises consumption. The authority shall provide for the issuance of
9 certificates of approval to all certified alcohol training awareness
10 programs. Certificates of approval may be revoked by the authority for
11 failure to adhere to the authority's rules and regulations. Such rules
12 and regulations shall afford those who have been issued a certificate of
13 approval an opportunity for a hearing prior to any determination of
14 whether such certificate should be revoked.

15 No licensee shall be required to apply for any such certificate or
16 renewal certificate and the licensee may voluntarily surrender such a
17 certificate or renewal certificate at any time. A fee in the amount of
18 nine hundred dollars shall be paid to the authority with each applica-
19 tion for a certificate of approval or renewal certificate. The authority
20 shall promptly refund such fee to an applicant whose application was
21 denied. Each certificate of approval and renewal thereof shall be issued
22 for a period of three years. To effectuate the provisions of this subdi-
23 vision, the authority is empowered to require in connection with an
24 application the submission of such information as the authority may
25 direct; to prescribe forms of applications and of all reports which it
26 deems necessary to be made by any applicant or certificate holder; to
27 conduct investigations; to require the maintenance of such books and
28 records as the authority may direct; to revoke, cancel, or suspend for
29 cause any certificate provided for in this subdivision. Each entity
30 authorized to give and administer an alcohol training awareness program
31 shall issue certificates of completion to all licensees and employees
32 who successfully complete such an approved alcohol training awareness
33 program. Such entity shall regularly transmit to the authority the
34 names, addresses and dates of attendance of all the licensees and
35 employees of licensees who successfully complete an approved alcohol
36 training awareness program. Such transmittal shall be in a form and
37 manner prescribed by the authority. The authority shall adopt rules and
38 regulations to effectuate the provisions of this subdivision, including
39 the minimum requirements for the curriculum of each such training
40 program and the regular ongoing training of employees holding certifi-
41 cates of completion or renewal certificates. Such rules and regulations
42 shall include the minimum requirements for a separate curriculum for
43 licensees and their employees authorized to sell alcoholic beverages at
44 retail for off-premises consumption, minimum requirements for a separate
45 curriculum for licensees and their employees authorized to sell alcohol-
46 ic beverages at retail for on-premises consumption, and the form of a
47 certificate of completion or renewal thereof to be issued in respect to
48 each such type of program. A certificate of completion or renewal there-
49 of issued by an entity authorized to give and administer an alcohol
50 training awareness program pursuant to this subdivision to licensees and
51 their employees authorized to sell alcoholic beverages at retail for
52 off-premises consumption shall not be invalidated by a change of employ-
53 ment to another such licensee. A certificate of completion or renewal
54 thereof issued by an entity authorized to give and administer an alcohol
55 training awareness program pursuant to this subdivision to licensees and
56 their employees authorized to sell alcoholic beverages at retail for



1 on-premises consumption shall not be invalidated by a change of employ-
2 ment to another such licensee. Attendance at any course established
3 pursuant to this section shall be in person, through distance learning
4 methods, or through an internet based online program.

5 § 17. Paragraph a of subdivision 1 of section 101-aa of the alcoholic
6 beverage control law, as amended by chapter 84 of the laws of 2004, is
7 amended to read as follows:

8 a. "Credit period" means a period beginning on the date alcoholic
9 beverages are delivered and ending thirty days thereafter, except that
10 with regard to licensees licensed under section sixty-three of this
11 chapter the "credit period" means a period beginning on the date alco-
12 holic beverages are delivered and ending sixty days thereafter.

13 § 18. Paragraph (b) of subdivision 3 of section 101-b of the alcoholic
14 beverage control law, as amended by section 1 of part E of chapter 56 of
15 the laws of 2006, is amended to read as follows:

16 (b) No brand of liquor or wine shall be sold to or purchased by a
17 retailer unless a schedule, as provided by this section, is transmitted
18 to and received by the liquor authority, and is then in effect. Such
19 schedule shall be transmitted to the authority in such form, manner,
20 medium and format as the authority may direct; shall be deemed duly
21 verified by the person submitting such schedule upon its transmission to
22 the authority; and shall contain, with respect to each item, the exact
23 brand or trade name, capacity of package, nature of contents, age and
24 proof where stated on the label, the number of bottles contained in each
25 case, the bottle and case price to retailers, the net bottle and case
26 price paid by the seller, which prices, in each instance, shall be indi-
27 vidual for each item and not in "combination" with any other item, the
28 discounts for quantity, if any, and the discounts for time of payment,
29 if any. Provided however that, for the purposes of this paragraph,
30 different products or different sized bottles from the same manufacturer
31 may be combined. Such brand of liquor or wine shall not be sold to
32 retailers except at the price and discounts then in effect unless prior
33 written permission of the authority is granted for good cause shown and
34 for reasons not inconsistent with the purpose of this chapter. Such
35 schedule shall be transmitted by each manufacturer selling such brand to
36 retailers and by each wholesaler selling such brand to retailers.

37 § 19. Section 101-aa of the alcoholic beverage control law is amended
38 by adding a new subdivision 3-a to read as follows:

39 3-a. Notwithstanding the provisions of subdivision three of this
40 section, the holder of a license to sell liquor and wine at retail for
41 consumption off the premises, pursuant to section sixty-three of this
42 chapter, or a license to sell wine at retail for consumption off the
43 premises pursuant to section seventy-nine of this chapter, who is in
44 default may purchase alcoholic beverages on credit except from the
45 manufacturer or wholesaler who placed such retail licensee in default.

46 § 20. This act shall take effect immediately; provided that:

47 (a) sections two, three, seven, eight, nine, ten, sixteen, seventeen,
48 eighteen, and nineteen of this act shall take effect on the one hundred
49 eightieth day after it shall have become a law; and

50 (b) subdivision 9 of section 63 and subdivision 7 of section 79 of the
51 alcoholic beverage control law, as added by sections two and three of
52 this act, respectively, shall expire three years after such effective
53 date when upon such date the provisions of such subdivisions shall be
54 deemed repealed.



1 Section 1. Subdivision 4 of section 22 of the public housing law, as
2 amended by section 1 of part J-1 of chapter 57 of the laws of 2009, is
3 amended to read as follows:

4 4. Statewide limitation. The aggregate dollar amount of credit which
5 the commissioner may allocate to eligible low-income buildings under
6 this article shall be [twenty-four] twenty-eight million dollars. The
7 limitation provided by this subdivision applies only to allocation of
8 the aggregate dollar amount of credit by the commissioner, and does not
9 apply to allowance to a taxpayer of the credit with respect to an eligi-
10 ble low-income building for each year of the credit period.

11 § 2. This act shall take effect immediately.

12

PART V

13 Section 1. Subdivision (d) of section 7 of part P of chapter 60 of the
14 laws of 2004 amending the tax law relating to the empire state film
15 production credit, as added by section 2 of part Y-1 of chapter 57 of
16 the laws of 2009, is amended to read as follows:

17 (d) Additional pool 1 - The aggregate amount of tax credits allowed in
18 subdivision (a) of this section shall be increased by an additional \$350
19 million in 2009. This additional amount shall be allocated by the gover-
20 nor's office for motion picture and television development among taxpay-
21 ers in accordance with subdivision (a) of this section.

22 § 2. Section 7 of part P of chapter 60 of the laws of 2004 amending
23 the tax law relating to the empire state film production credit is
24 amended by adding a new subdivision (e) to read as follows:

25 (e) Additional pool 2 - The aggregate amount of tax credits allowed in
26 subdivision (a) of this section shall be increased by an additional \$420
27 million in 2010, \$420 million in 2011, \$420 million in 2012, \$420
28 million in 2013 and \$420 million in 2014. This additional amount shall
29 be allocated by the governor's office for motion picture and television
30 development among taxpayers in accordance with subdivision (a) of this
31 section. The governor's office for motion picture and television devel-
32 opment must notify taxpayers of their allocation year and include the
33 allocation year on the certificate of tax credit. Taxpayers eligible to
34 claim a credit must report the allocation year directly on their empire
35 state film production credit tax form for each year a credit is claimed
36 and include a copy of the certificate with their tax return. In the
37 case of a qualified film that receives funds from additional pool 2, no
38 empire state film production credit shall be claimed before the later of
39 (1) the taxable year the production of the qualified film is complete,
40 or (2) the taxable year immediately following the allocation year for
41 which the film has been allocated credit by the governor's office for
42 motion picture and television development.

43 § 3. Paragraph 1 of subdivision (a) of section 24 of the tax law, as
44 added by section 1 of part P of chapter 60 of the laws of 2004, is
45 amended to read as follows:

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



1 § 4. Paragraph 2 of subdivision (a) of section 24 of the tax law, as
2 amended by section 1 of part Y-1 of chapter 57 of the laws of 2009, is
3 amended to read as follows:

4 (2) The amount of the credit shall be the product (or pro rata share
5 of the product, in the case of a member of a partnership) of thirty
6 percent and the qualified production costs paid or incurred in the
7 production of a qualified film, provided that: (i) the qualified
8 production costs (excluding post production costs) paid or incurred
9 which are attributable to the use of tangible property or the perform-
10 ance of services at a qualified film production facility in the
11 production of such qualified film equal or exceed seventy-five percent
12 of the production costs (excluding post production costs) paid or
13 incurred which are attributable to the use of tangible property or the
14 performance of services at any film production facility within and with-
15 out the state in the production of such qualified film, and (ii) except
16 with respect to a qualified independent film production company or
17 pilot, at least ten percent of the total principal photography shooting
18 days spent in the production of such qualified film must be spent at a
19 qualified film production facility. However, if the qualified
20 production costs (excluding post production costs) which are attribut-
21 able to the use of tangible property or the performance of services at a
22 qualified film production facility in the production of such qualified
23 film is less than three million dollars, then the portion of the quali-
24 fied production costs attributable to the use of tangible property or
25 the performance of services in the production of such qualified film
26 outside of a qualified film production facility shall be allowed only if
27 the shooting days spent in New York outside of a film production facili-
28 ty in the production of such qualified film equal or exceed seventy-five
29 percent of the total shooting days spent within and without New York
30 outside of a film production facility in the production of such quali-
31 fied film. The credit shall be allowed for the taxable year in which the
32 production of such qualified film is completed. However, in the case of
33 a qualified film that receives funds from additional pool 2, no credit
34 shall be claimed before the later of (1) the taxable year the production
35 of the qualified film is complete, or (2) the taxable year immediately
36 following the allocation year for which the film has been allocated
37 credit by the governor's office for motion picture and television devel-
38 opment. If the amount of the credit is at least one million dollars but
39 less than five million dollars, the credit shall be claimed over a two
40 year period beginning in the first taxable year in which the [production
41 of the qualified film is completed] credit may be claimed and in the
42 next succeeding taxable year, with one-half of the amount of credit
43 allowed being claimed in each year. If the amount of the credit is at
44 least five million dollars, the credit shall be claimed over a three
45 year period beginning in the first taxable year in which the [production
46 of the qualified film is completed] credit may be claimed and in the
47 next two succeeding taxable years, with one-third of the amount of the
48 credit allowed being claimed in each year.

49 § 5. Subdivision (a) of section 24 of the tax law is amended by adding
50 a new paragraph 4 to read as follows:

51 (4) Notwithstanding the foregoing provisions of this subdivision, a
52 qualified film production company or qualified independent film
53 production company, that has applied for credit under the provisions of
54 this section, agrees as a condition for the granting of the credit: (i)
55 to include in each qualified film distributed by DVD, or other media for
56 the secondary market, a New York promotional video approved by the

1 governor's office of motion picture and television development or to
2 include in the end credits of each qualified film "Filmed With the
3 Support of the New York State Governor's Office of Motion Picture and
4 Television Development" and a logo provided by the governor's office of
5 motion picture and television development, and (ii) to certify that it
6 will purchase taxable tangible property and services, defined as quali-
7 fied production costs pursuant to paragraph one of subdivision (b) of
8 this section, only from companies registered to collect and remit state
9 and local sales and use taxes pursuant to articles twenty-eight and
10 twenty-nine of this chapter.

11 § 6. Paragraph 1 of subdivision (b) of section 24 of the tax law, as
12 added by section 1 of part P of chapter 60 of the laws of 2004, is
13 amended to read as follows:

14 (1) "Qualified production costs" means production costs only to the
15 extent such costs are attributable to the use of tangible property or
16 the performance of services within the state directly and predominantly
17 in the production (including pre-production and post production) of a
18 qualified film, provided, however, that qualified production costs shall
19 not include post production costs unless the portion of the post
20 production costs paid or incurred that is attributable to the use of
21 tangible property or the performance of services in New York in the
22 production of such qualified film equals or exceeds seventy-five percent
23 of the total post production costs spent within and without New York in
24 the production of such qualified film.

25 § 7. Paragraph 4 of subdivision (b) of section 24 of the tax law, as
26 added by section 1 of part P of chapter 60 of the laws of 2004, is
27 amended to read as follows:

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

37 § 8. Paragraph 5 of subdivision (b) of section 24 of the tax law, as
38 added by section 1 of part P of chapter 60 of the laws of 2004, is
39 amended to read as follows:

40 (5) "Qualified film production facility" shall mean a film production
41 facility in the state, which contains at least one sound stage having a
42 minimum of seven thousand square feet of contiguous production space,
43 provided, however, that except with respect to a qualified film
44 production facility being used by a qualified independent film
45 production company: (i) a film production facility in the city of New
46 York must contain at least one sound stage having a minimum of seven
47 thousand square feet of contiguous production space that is sound proof
48 with a Noise Criteria ("NC") of 30 or better, has sufficient heating and
49 air conditioning for shooting without the need for supplemental units,
50 incorporates a permanent grid and sufficient built-in electric service
51 for shooting without the need for generators, and is column-free with a
52 clear height of at least sixteen feet under the permanent grid; and (ii)
53 an armory owned by the state or city of New York located in the city of
54 New York that does not satisfy the criteria of subparagraph (i) of this
55 paragraph shall be treated as a qualified film production facility upon
56 certification by the governor's office of motion picture and television

1 development of a petition submitted to that office by a qualified film
2 production company establishing that no qualified film production facil-
3 ity is available in the city of New York that has stage space available
4 for shooting such company's film. Such petition shall be submitted no
5 later than ninety days prior to the start of principal photography for
6 the qualified film and the governor's office of motion picture and tele-
7 vision development shall have ten days to certify or reject the peti-
8 tion. A stage will be deemed unavailable if consideration has been paid
9 for its use or such stage is currently under an agreement with an option
10 for use and, in either circumstance, such period of use includes the
11 petitioner's estimated start date of principal photography.

12 § 9. Subdivision (b) of section 24 of the tax law is amended by adding
13 a new paragraph 7 to read as follows:

14 (7) "Qualified independent film production company" is a corporation,
15 partnership, limited partnership, or other entity or individual, that or
16 who (i) is principally engaged in the production of a qualified film
17 with a maximum budget of fifteen million dollars, and (ii) controls the
18 qualified film during production, and (iii) either is not a publicly
19 traded entity, or no more than five percent of the beneficial ownership
20 of which is owned, directly or indirectly, by a publicly traded entity.

21 § 10. Section 24 of the tax law is amended by adding a new subdivision
22 (d) to read as follows:

23 (d) Notwithstanding any provision of this chapter, employees and offi-
24 cers of the governor's office of motion picture and television develop-
25 ment and the department shall be allowed and are directed to share and
26 exchange information regarding the credits applied for, allowed, or
27 claimed pursuant to this section and taxpayers who are applying for
28 credits or who are claiming credits, including information contained in
29 or derived from credit claim forms submitted to the department and
30 applications for credit submitted to the governor's office of motion
31 picture and television development.

32 § 11. Section 9 of part P of chapter 60 of the laws of 2004 amending
33 the tax law relating to the empire state film production credit, as
34 amended by section 5 of part WW-1 of chapter 57 of the laws of 2008, is
35 amended to read as follows:

36 § 9. This act shall take effect immediately and shall apply to taxable
37 years beginning on or after January 1, 2004, with respect to "qualified
38 production costs" paid or incurred on or after such effective date,
39 providing final applications are approved on or after the effective
40 date, regardless of whether the initial application relating to such
41 qualified film was first submitted before such date, [provided further
42 that this act shall expire and be deemed repealed January 1, 2014,
43 provided further that the expiration and repeal of this act shall not
44 affect the carry over of any credit allowed pursuant to this act and,
45 subsequent to the expiration and repeal of this act, such carry over
46 credits shall be allowed as provided by and pursuant to the provisions
47 of this act, and] provided further that the IMB credit for energy taxes
48 under subsection (t-1) of section 606 of the tax law contained in
49 section three of this act shall expire on the same date as provided in
50 subdivision (a) of section 49 of part Y of chapter 63 of the laws of
51 2000.

52 § 12. This act shall take effect immediately; provided that sections
53 one through nine of this act shall apply to applications for credit
54 awarded under additional pool 2 authorized by section two of this act.

55

PART W

1 Section 1. The economic development law is amended by adding a new
2 article 17 to read as follows:

3 ARTICLE 17

4 EXCELSIOR JOBS PROGRAM ACT

5 Section 350. Short title.

6 351. Statement of legislative findings and declaration.

7 352. Definitions.

8 353. Eligibility criteria.

9 354. Application and approval process.

10 355. Excelsior jobs program credit.

11 356. Powers and duties of the commissioner.

12 357. Maintenance of records.

13 358. Reporting.

14 359. Cap on tax credit.

15 § 350. Short title. This article shall be known and may be cited as
16 the "excelsior jobs program act".

17 § 351. Statement of legislative findings and declaration. It is here-
18 by found and declared that New York state needs, as a matter of public
19 policy, to create competitive financial incentives for businesses to
20 create jobs in the new economy. The excelsior jobs program act is
21 created to support the growth of the state's traditional economic
22 pillars including the manufacturing and financial industries and to
23 ensure that New York emerges as the leader in the knowledge, technology
24 and innovation based economy. The program will encourage the expansion
25 in and relocation to New York of businesses in growth industries such as
26 clean-tech, broadband, information systems, renewable energy and
27 biotechnology.

28 This legislation creates the excelsior jobs program credit, which has
29 three components: the excelsior jobs tax credit, the excelsior invest-
30 ment tax credit, and the excelsior research and development tax credit.
31 These credits are designed to promote business expansion in New York
32 state and increase jobs in the new economy. At the same time, the
33 program protects state taxpayers' dollars by ensuring that New York
34 provides tax benefits only to businesses that have created the promised
35 jobs.

36 § 352. Definitions. 1. "Certificate of eligibility" means the docu-
37 ment issued by the department to an applicant that has completed an
38 application to be admitted into the excelsior jobs program and has been
39 accepted into the program by the department.

40 2. "Certificate of tax credit" means the document issued to a partic-
41 ipant by the department, after the department has verified that the
42 participant has created its projected number of net new jobs in New York
43 state and has met the other eligibility criteria in this article. The
44 certificate shall be issued annually if such criteria are satisfied and
45 shall specify the exact amount of each of the tax credit components
46 under this article that a participant may claim, pursuant to section
47 three hundred fifty-five of this article, and shall specify the taxable
48 year in which such credit may be claimed.

49 3. "Financial services data centers or financial services customer
50 service centers" means operations that manage the data or accounts of
51 existing customers of financial institutions, including banks, other
52 lenders, securities and commodities brokers and dealers, investment
53 banks, portfolio managers, trust offices, and insurance companies.

54 4. "Internet publishing" means publishing content exclusively on the
55 internet.



1 5. "Manufacturing" means the process of working raw materials into
2 wares suitable for use or which gives new shapes, new quality or new
3 combinations to matter which has already gone through some artificial
4 process by the use of machinery, tools, appliances, or other similar
5 equipment. "Manufacturing" does not include an operation that involves
6 only the assembly of components, other than the assembly of automobiles.

7 6. "Net new jobs" means jobs created in this state that:

8 (a) are new to the state;

9 (b) have not been transferred from another location in this state or
10 from a related business entity in this state;

11 (c) are either full-time jobs or equivalent to a full-time job requir-
12 ing at least thirty-five hours per week; and

13 (d) are filled for more than six months.

14 7. "Participant" means a business entity that:

15 (a) has completed an application prescribed by the department to be
16 admitted into the program;

17 (b) has been issued a certificate of eligibility by the department;

18 (c) has demonstrated that it meets the eligibility criteria in section
19 three hundred fifty-three and subdivision two of section three hundred
20 fifty-four of this article; and

21 (d) has been certified as a participant by the commissioner.

22 8. "Preliminary schedule of benefits" means the maximum aggregate
23 amount of each component of the tax credit that a participant in the
24 excelsior jobs program is eligible to receive pursuant to this article.
25 The schedule shall indicate the annual amount of each component of the
26 credit a participant may claim in each of its five years of eligibility.
27 The preliminary schedule of benefits shall be issued by the department
28 when the department approves the application for admission into the
29 program. The commissioner may amend that schedule, provided that the
30 commissioner complies with the credit caps in section three hundred
31 fifty-nine of this article.

32 9. "Qualified investment" means an investment in tangible property
33 (including a building or a structural component of a building) owned by
34 a business enterprise which:

35 (a) is depreciable pursuant to section one hundred sixty-seven of the
36 internal revenue code;

37 (b) has a useful life of four years or more;

38 (c) is acquired by purchase as defined in section one hundred seven-
39 ty-nine (d) of the internal revenue code;

40 (d) has a situs in this state; and

41 (e) is placed in service in the state on or after the date the certif-
42 icate of eligibility is issued to the business enterprise.

43 10. "Research and development expenditures" mean the expenses of the
44 business enterprise that are qualified research expenses under the
45 federal research and development credit under section forty-one of the
46 internal revenue code and are attributable to activities conducted in
47 the state.

48 11. "Scientific research and development" means conducting research
49 and experimental development in the physical, engineering, and life
50 sciences, including but not limited to agriculture, electronics, envi-
51 ronmental, biology, botany, biotechnology, computers, chemistry, food,
52 fisheries, forests, geology, health, mathematics, medicine, oceanogra-
53 phy, pharmacy, physics, veterinary, and other allied subjects. For the
54 purposes of this article, scientific research and development does not
55 include medical or veterinary laboratory testing facilities.

1 12. "Software development" means the creation of coded computer
2 instructions.

3 § 353. Eligibility criteria. 1. To be a participant in the excelsior
4 jobs program, a business entity shall operate predominantly:

5 (a) as a financial services data center or a financial services
6 customer service center;

7 (b) in internet publishing;

8 (c) in manufacturing;

9 (d) in software development;

10 (e) in scientific research and development; or

11 (f) in an industry with significant potential for private-sector
12 economic growth and development in New York state as established by the
13 commissioner in regulations promulgated pursuant to this article.

14 2. A not-for-profit business entity, a business entity whose primary
15 function is the provision of services including personal services, busi-
16 ness services, or the provision of utilities, and a business entity
17 engaged predominantly in the retail or entertainment industry, are not
18 eligible to receive the tax credit described in this article.

19 3. A business entity must be in substantial compliance with all worker
20 protection and environmental laws and regulations. In addition, a busi-
21 ness entity may not owe past due New York state taxes or local property
22 taxes.

23 4. A business entity must create the net new jobs that it projected in
24 its application for admission into the program and then retain those
25 jobs in subsequent years in order to participate in the program.

26 § 354. Application and approval process. 1. A business enterprise
27 must submit a completed application as prescribed by the commissioner.

28 2. As part of such application, each business enterprise must:

29 (a) Agree to allow the department of taxation and finance to share its
30 tax information with the department. However, any information shared as
31 a result of this agreement shall not be available for disclosure or
32 inspection under the state freedom of information law.

33 (b) Allow the department and its agents access to any and all books
34 and records the department may require to monitor compliance.

35 (c) Voluntarily decertify from the empire zones program if admitted
36 into the excelsior jobs program, effective for the first taxable year
37 that the business enterprise may claim the excelsior jobs program credit
38 and for all subsequent taxable years.

39 (d) Submit the prior three years of federal and New York state income
40 or franchise tax returns and unemployment insurance quarterly returns to
41 the department. If the business entity has been subject to tax in this
42 state for less than three years, it must submit returns for all the
43 years it has been subject to tax.

44 (e) Provide the following information to the department:

45 (i) a plan for no more than two years, outlining the creation of at
46 least fifty net new jobs in New York, including details on job titles
47 and expected salaries for new positions created, and a plan for the
48 subsequent five years, outlining any additional net new jobs (and the
49 details on job titles and expected salaries) that it plans to create in
50 the five years after the business enterprise receives its first certif-
51 icate of tax credit;

52 (ii) the amount and description of projected qualified investments
53 that it plans to make between the time it receives its certificate of
54 eligibility and the last year it would be allowed to claim the tax cred-
55 it; and

1 (iii) an estimate of the portion of any federal research and develop-
2 ment tax credits, attributable to research and development activities
3 conducted in New York state, that it anticipates claiming for the years
4 it expects to claim the state credit.

5 (f) Provide a clear and detailed presentation of all related persons
6 to the applicant, as the term "related person" is defined in subpara-
7 graph (C) of paragraph three of subsection (b) of section four hundred
8 sixty-five of the internal revenue code, to assure the department that
9 jobs are not being shifted within the state.

10 (g) Submit the employer identification or social security numbers for
11 all related persons to the applicant, as the term "related person" is
12 defined in subparagraph (C) of paragraph three of subsection (b) of
13 section four hundred sixty-five of the internal revenue code, including
14 those of any members of a limited liability company or partners in a
15 partnership.

16 (h) Certify, under penalty of perjury, that it is in substantial
17 compliance with all environmental, worker protection, and local, state,
18 and federal tax laws.

19 3. After reviewing a business enterprise's completed application and
20 determining that the business enterprise will meet the conditions set
21 forth in subdivision two of this section, the department may admit the
22 applicant into the program and provide the applicant with a certificate
23 of eligibility and a preliminary schedule of benefits by year based on
24 the applicant's projections as set forth in its application. This
25 preliminary schedule of benefits delineates the maximum possible bene-
26 fits an applicant may receive.

27 4. Receipt of tax benefits. In order to become a participant in the
28 program, an applicant must meet the job projections specified in its
29 application within twenty-four months of the date of the issuance of its
30 certificate of eligibility. An applicant that meets its job projections
31 within that twenty-four month period must submit proof of that job
32 creation to the department and proof of its actual expenditures and
33 other required information as the commissioner may prescribe relating to
34 the excelsior jobs program credit. After reviewing such proof, the
35 department shall certify the applicant as a participant and issue to
36 that participant a certificate of tax credit for one taxable year. To
37 receive a certificate of tax credit for subsequent taxable years, the
38 participant must submit to the department a performance report required
39 by section three hundred fifty-eight of this article, proof that it has
40 created and retained the net new jobs, proof of its actual expenditures
41 for qualified investments contained in its application, and other
42 required information as the commissioner may prescribe relating to the
43 excelsior jobs program credit. A participant's increase in employment,
44 qualified investment, or federal research and development tax credit
45 attributable to research and development activities in New York state
46 above its projections listed in its application shall not result in an
47 increase in tax benefits under this article. However, if the partic-
48 ipant's expenditures are less than the estimated amounts, the credit
49 shall be less than the estimate. If an applicant fails to create its
50 projected number of net new jobs in the first twenty-four months after
51 being admitted to the program, such applicant shall not be certified as
52 a participant.

53 5. A participant may claim tax benefits commencing in the first taxa-
54 ble year that the business enterprise receives a certificate of tax
55 credit or the first taxable year listed on its preliminary schedule of
56 benefits, whichever is later. A participant may claim such benefits for

1 the next four consecutive taxable years, provided that the participant
2 demonstrates to the department that it continues to satisfy the eligi-
3 bility criteria specified in section three hundred fifty-three of this
4 article and subdivision two of this section in each of those taxable
5 years.

6 § 355. Excelsior jobs program credit. 1. Excelsior jobs tax credit
7 component. A participant in the excelsior jobs program shall be eligible
8 to claim a credit equal to at least two thousand five hundred dollars
9 but not more than ten thousand dollars for each net new job it creates
10 in New York state. The amount of such credit per job shall be estab-
11 lished in the sole discretion of the commissioner and shall be based on
12 criteria including salary and benefit levels and location in a census
13 tract designated as distressed by the commissioner.

14 2. Excelsior investment tax credit component. A participant in the
15 excelsior jobs program shall be eligible to claim a credit on qualified
16 investments made during the taxable year. The credit shall be equal to
17 two percent of the federal cost or other basis of the qualified invest-
18 ment. A participant may not claim both the excelsior investment tax
19 credit and the investment tax credit set forth in subdivision twelve of
20 section two hundred ten, subsection (a) of section six hundred six,
21 subsection (i) of section fourteen hundred fifty-six, or subsection (q)
22 of section fifteen hundred eleven of the tax law for the same property
23 in any taxable year. In addition, a taxpayer who or which is qualified
24 to claim the excelsior investment tax credit component and is also qual-
25 ified to claim the brownfield tangible property credit component under
26 section twenty-one of the tax law, as added by chapter one of the laws
27 of two thousand three, may claim either the excelsior investment tax
28 credit component or such tangible property credit component, but not
29 both with regard to a particular piece of property. A credit may not be
30 claimed until a business enterprise has received a certificate of tax
31 credit, provided that qualified investments made on or after the issu-
32 ance of the certificate of eligibility but before the issuance of the
33 certificate of tax credit to the business enterprise, may be claimed in
34 the first taxable year for which the business enterprise is allowed to
35 claim the credit. Expenses incurred prior to the date the certificate of
36 eligibility is issued are not eligible to be included in the calculation
37 of the credit.

38 3. Excelsior research and development tax credit component. A partic-
39 ipant in the excelsior jobs program shall be eligible to claim a credit
40 equal to ten percent of the portion of the participant's federal
41 research and development tax credit that relates to the participant's
42 research and development expenditures during the taxable year.

43 4. Refundability of credits. The tax credit components established in
44 this section shall be refundable as provided in the tax law. If a
45 participant fails to satisfy the eligibility criteria in any one year,
46 it will lose the ability to claim credit for that year. The event of
47 such failure shall not extend the original five-year eligibility period.

48 5. Claim of tax credit. The business enterprise shall be allowed to
49 claim the credit as prescribed in section thirty-one of the tax law.

50 § 356. Powers and duties of the commissioner. 1. The commissioner
51 shall promulgate regulations establishing an application process and
52 selection criteria, that will be applied consistent with the purposes of
53 this article, so as not to exceed the annual cap on tax credits set
54 forth in section three hundred fifty-nine of this article which,
55 notwithstanding any provisions to the contrary in the state administra-
56 tive procedure act, may be adopted on an emergency basis.



1 2. The commissioner shall, in consultation with the department of
 2 taxation and finance, develop a certificate of tax credit that shall be
 3 issued by the commissioner to those participants. Participants must
 4 include the certificate of tax credit with their tax return to receive
 5 any tax benefits under this article.

6 3. The commissioner shall solely determine the eligibility of any
 7 applicant applying for entry into the program and shall remove any
 8 participant from the program for failing to meet any of the requirements
 9 set forth in subdivision two of section three hundred fifty-four of this
 10 article.

11 § 357. Maintenance of records. Each participant shall keep all rele-
 12 vant records for their duration of program participation plus three
 13 years.

14 § 358. Reporting. 1. Each participant must submit a performance
 15 report annually, in such form as the commissioner may require, within
 16 thirty days of the end of their taxable year.

17 2. The commissioner shall annually prepare a program report for post-
 18 ing on the department's web site by December thirty-first. The first
 19 report will be due December thirty-first, two thousand eleven. Such
 20 report shall include, but not be limited to, the following: number of
 21 applicants; number of participants approved; names of participants;
 22 total amount of benefits certified; benefits received per participant;
 23 total number of net new jobs created; number of net new jobs created per
 24 participant; aggregate new investment in the state; new investment per
 25 participant; and such other information as the commissioner determines.

26 § 359. Cap on tax credit. The total amount of tax credits listed on
 27 certificates of tax credit issued by the commissioner for any taxable
 28 year may not exceed the limitations set forth in this section. Any
 29 amount of tax credits not awarded for a particular taxable year may not
 30 be used by the commissioner to award tax credits in another taxable
 31 year.

| | |
|--|------------------------|
| 32 <u>Credit components in the aggregate</u> | <u>With respect to</u> |
| 33 <u>shall not exceed:</u> | <u>taxable years</u> |
| 34 | <u>beginning in:</u> |
| 35 <u>\$ 50 million</u> | <u>2011</u> |
| 36 <u>\$ 100 million</u> | <u>2012</u> |
| 37 <u>\$ 150 million</u> | <u>2013</u> |
| 38 <u>\$ 200 million</u> | <u>2014</u> |
| 39 <u>\$ 250 million</u> | <u>2015</u> |
| 40 <u>\$ 200 million</u> | <u>2016</u> |
| 41 <u>\$ 150 million</u> | <u>2017</u> |
| 42 <u>\$ 100 million</u> | <u>2018</u> |
| 43 <u>\$ 50 million</u> | <u>2019</u> |

44 § 2. The tax law is amended by adding a new section 31 to read as
 45 follows:

46 § 31. Excelsior jobs program tax credit. (a) General. A taxpayer
 47 subject to tax under article nine-A, twenty-two, thirty-two or thirty-
 48 three of this chapter shall be allowed a credit against such tax, pursu-
 49 ant to the provisions referenced in subdivision (g) of this section. The
 50 amount of the credit, allowable for up to five consecutive taxable
 51 years, is the sum of the following three credit components:

- 52 (1) the excelsior jobs tax credit;
- 53 (2) the excelsior investment tax credit; and
- 54 (3) the excelsior research and development tax credit.

1 (b) To be eligible for the excelsior jobs program tax credit, the
2 taxpayer shall have been issued a "certificate of tax credit" by the
3 department of economic development pursuant to subdivision four of
4 section three hundred fifty-four of the economic development law, which
5 certificate shall set forth the amount of each credit component for the
6 taxable year. A taxpayer may claim such credit for five consecutive
7 taxable years commencing in the first taxable year that the taxpayer
8 receives a certificate of tax credit or the first taxable year listed on
9 its preliminary schedule of benefits, whichever is later. The taxpayer
10 shall be allowed to claim only the amount listed on the certificate of
11 tax credit for that taxable year. Such certificate should be attached
12 to the taxpayer's return. No cost or expense paid or incurred by the
13 taxpayer shall be the basis for more than one component of this credit
14 or any other tax credit.

15 (c) Election of credit. A taxpayer who or which is qualified to claim
16 the excelsior investment tax credit component and is also qualified to
17 claim the investment tax credit provided for under subdivision twelve of
18 section two hundred ten, subsection (a) of section six hundred six,
19 subsection (i) of section fourteen hundred fifty-six, or subdivision (q)
20 of section fifteen hundred eleven of this chapter, may claim either the
21 excelsior investment tax credit component or the investment tax credit,
22 but not both with regard to a particular piece of property. In addition,
23 a taxpayer who or which is qualified to claim the excelsior investment
24 tax credit component and is also qualified to claim the brownfield
25 tangible property credit component under section twenty-one of this
26 article, as added by chapter one of the laws of two thousand three, may
27 claim either the excelsior investment tax credit component or such
28 tangible property credit component, but not both with regard to a
29 particular piece of property. The election to claim the excelsior
30 investment tax credit component, the investment tax credit or the brown-
31 field tangible property credit component, with regard to the same prop-
32 erty, is irrevocable.

33 (d) Information sharing. Notwithstanding any provision of this chap-
34 ter, employees and officers of the department of economic development
35 and the department shall be allowed and are directed to share and
36 exchange:

37 (1) information derived from tax returns or reports that is relevant
38 to a taxpayer's eligibility to participate in the excelsior jobs
39 program;

40 (2) information regarding the component or components of the credit
41 applied for, allowed, or claimed pursuant to this section and taxpayers
42 who are applying for the credit or who are claiming the credit; and

43 (3) information contained in or derived from credit claim forms
44 submitted to the department and applications for admission into the
45 excelsior jobs program.

46 Other than the information required to be contained in the report
47 issued pursuant to subdivision (e) of this section, all information
48 exchanged between the department of economic development and the depart-
49 ment shall not be subject to disclosure or inspection under the state's
50 freedom of information law.

51 (e) Excelsior jobs program tax credit report. (1) The commissioner
52 must publish an excelsior jobs program tax credit report annually by
53 June thirtieth. The first report must be published by June thirtieth,
54 two thousand eleven.



1 (2) The credit report must contain the following information about the
2 excelsior jobs program tax credit claimed under this chapter during the
3 previous calendar year:

4 (i) the name of each taxpayer claiming a credit; provided however, if
5 the taxpayer claims a credit because the taxpayer is a member of a
6 limited liability company, a partner in a partnership or a shareholder
7 in a subchapter S corporation, the name of each limited liability compa-
8 ny, partnership or subchapter S corporation earning any of the credit
9 must be included in the report instead of information about the taxpayer
10 claiming the credit; and

11 (ii) the amount of each credit earned by each taxpayer; provided
12 however, if the taxpayer claims a credit because the taxpayer is a
13 member of a limited liability company, a partner in a partnership or a
14 shareholder in a subchapter S corporation, the amount of credit earned
15 by each entity must be included in the report instead of information
16 about the taxpayer claiming the credit.

17 (3) The credit report may also contain any other information received
18 by the commissioner with regard to the excelsior jobs program tax credit
19 that the commissioner deems to be useful in evaluating the use of the
20 credit. The information included in the credit report will be based on
21 the information filed with the department during the previous calendar
22 year, to the extent that it is practicable to use that information.

23 (f) Credit recapture. If a certificate of eligibility or a certificate
24 of tax credit issued by the department of economic development under
25 article seventeen of the economic development law is revoked by such
26 department, the amount of credit described in this section and claimed
27 by the taxpayer prior to that revocation shall be added back to income
28 in the taxable year in which any such revocation becomes final.

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

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

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

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

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

35 § 3. Section 210 of the tax law is amended by adding a new subdivision
36 41 to read as follows:

37 41. Excelsior jobs program tax credit. (a) Allowance of credit. A
38 taxpayer will be allowed a credit, to be computed as provided in section
39 thirty-one of this chapter, against the tax imposed by this article.

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

51 § 4. Section 606 of the tax law is amended by adding a new subsection
52 (qq) to read as follows:

53 (qq) Excelsior jobs program tax credit. (1) A taxpayer will be allowed
54 a credit, to the extent allowed under section thirty-one of this chap-
55 ter, against the tax imposed by this article.

1 regulations, and that such decertifications that occur in 2009 are
2 deemed to be in effect for the taxable year commencing on or after Janu-
3 ary 1, 2008 and before January 1, 2009.

4 § 2. Subdivision (a) of section 959 of the general municipal law, as
5 amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is
6 amended to read as follows:

7 (a) After consultation with the director of the budget, the commis-
8 sioner of labor, and the commissioner of taxation and finance, promul-
9 gate regulations, which, notwithstanding any provisions to the contrary
10 in the state administrative procedure act, may be adopted on an emergen-
11 cy basis, governing (i) criteria of eligibility for empire zone desig-
12 nation, provided, however, that such criteria be approved by the direc-
13 tor of the budget; (ii) the application process; (iii) the certification
14 by the commissioner as to the eligibility of business enterprises for
15 benefits referred to in section nine hundred sixty-six of this article,
16 which shall be governed by criteria including, but not limited to: (1)
17 whether the business enterprise, if certified, is reasonably likely to
18 create new employment or prevent a loss of employment in the zone, (2)
19 whether such new employment opportunities will be for individuals who
20 will perform a substantial part of their employment activities in the
21 zone, (3) whether certification will have the undesired effect of caus-
22 ing individuals to transfer from existing employment with another busi-
23 ness enterprise to similar employment with the business enterprise so
24 certified, and transferring existing employment from one or more other
25 municipalities, towns or villages in the state, or transferring existing
26 employment from one or more other businesses in the zone, (4) whether
27 such enterprise is likely to enhance the economic climate of the zone,
28 (5) whether the commissioner of labor establishes that such business
29 enterprise, during the three years preceding the submission of an appli-
30 cation for certification, has engaged in a substantial violation or a
31 pattern of violations of laws regulating unemployment insurance, workers
32 compensation, public work, child labor, employment of minorities and
33 women, safety and health, or other laws for the protection of workers as
34 determined by final judgment of a judicial or administrative proceeding;
35 (6) whether such business meets the requirements of the cost benefit
36 analysis as established in paragraph (p) of section nine hundred fifty-
37 seven of this article, and (7) if the commissioner of labor establishes
38 that the business enterprise has been found in a criminal proceeding to
39 have violated, in the previous three years, any of the laws referred to
40 in subparagraph five of this paragraph or regulations promulgated pursu-
41 ant to such laws, the conditions of any permit issued thereunder, or
42 similar statute, regulation, order or permit condition of any other
43 government agency, foreign or domestic, such business shall not be
44 certified; provided, however, that a business enterprise that has shift-
45 ed its operations, or some portions thereof, from an area within New
46 York state not designated as an empire zone or zone equivalent area to
47 an area so designated shall not be certified to receive such benefits
48 except where such shift is entirely within a municipality and has been
49 approved by the local governing body of such municipality or in situ-
50 ations where it has been established, after a public hearing, that
51 extraordinary circumstances exist which warrant the relocation of a
52 business, in whole or part, into an empire zone or a zone equivalent
53 area from another municipality and the municipality from which the busi-
54 ness is relocating approves of such relocation; or where such shift in
55 operations is from a business incubator facility operated by a munici-
56 pality or by a public or private not-for-profit entity which provides



1 space and business support services to newly established firms; and (iv)
2 the decertification by the commissioner, upon the recommendation of the
3 commissioner of labor, so as to revoke the certification of business
4 enterprises for benefits referred to in section nine hundred sixty-six
5 of this article with respect to an empire zone or zone equivalent area
6 upon a finding that the business enterprise has committed substantial
7 violations of laws for the protection of workers including all federal,
8 state and local labor laws, rules or regulations; and (v) the decertif-
9 ication by the commissioner so as to revoke the certification of busi-
10 ness enterprises for benefits referred to in section nine hundred
11 sixty-six of this article with respect to an empire zone or zone equiv-
12 alent area upon a finding of any one of the following: (1) the business
13 enterprise made material misrepresentations of fact on its application
14 for certification or in any of its business annual reports, or the busi-
15 ness enterprise failed to disclose facts in its application for certifi-
16 cation that would constitute grounds for not issuing a certification;
17 (2) the business enterprise has failed to construct, expand, rehabili-
18 tate or operate or invest in its facility substantially in accordance
19 with the representations contained in its application for certification;
20 (3) the business enterprise has failed to create new employment or
21 prevent a loss of employment in the empire zone or zone equivalent area;
22 (4) where applicable, the business enterprise has failed to submit an
23 annual report after it has applied for zone tax benefits or program
24 assistance based on new hires or investments or failed to submit other
25 information when due; (5) the business enterprise, if first certified
26 pursuant to this article prior to the first day of August, two thousand
27 two, caused individuals to transfer from existing employment with anoth-
28 er business enterprise with similar ownership and located in New York
29 state to similar employment with the certified business enterprise or if
30 the enterprise acquired, purchased, leased, or had transferred to it
31 real property previously owned by an entity with similar ownership,
32 regardless of form of incorporation or organization; (6) the business
33 enterprise has failed to provide economic returns to the state in the
34 form of total remuneration to its employees (i.e. wages and benefits)
35 and investments in its facility greater in value to the tax benefits the
36 business enterprise used and had refunded to it; or (7) the business
37 enterprise has changed ownership or moved its operations out of the
38 empire zone; said regulations shall provide that whenever any business
39 enterprise is decertified with respect to an empire zone: (A) the date
40 determined to be the earliest event constituting grounds for revoking
41 certification shall be the effective date of decertification; (B) its
42 certified single enterprise, if any, may also be decertified; and (C)
43 the commissioner shall notify the commissioner of taxation and finance
44 that such decertification has occurred, and such notification should
45 include the effective date of such decertification and the zone or zone
46 equivalent area to which such decertification applies; with respect to
47 any business enterprise whose certification has been revoked pursuant to
48 subparagraph five or six of this paragraph, that revocation (I) will be
49 effective for a taxable year beginning on or after January first, two
50 thousand eight and before January first, two thousand nine and for
51 subsequent taxable years, unless the business enterprise is subsequently
52 re-certified pursuant to part 11 of title 5 of the New York state codes,
53 rules and regulations for a business enterprise for which a review is
54 required to be conducted pursuant to subdivision (w) of this section in
55 calendar year two thousand nine, and (II) thereafter will be effective
56 for the taxable year during which the commissioner makes his or her



1 determination (prior to any appeal) to revoke the certification of a
2 business enterprise and for subsequent taxable years;

3 § 3. Subdivision (w) of section 959 of the general municipal law, as
4 amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is
5 amended to read as follows:

6 (w) Conduct a review during calendar year two thousand nine of all
7 business enterprises to determine whether the business enterprises
8 should be decertified pursuant to subparagraphs five and six of para-
9 graph (v) of subdivision (a) of this section and the regulations promul-
10 gated under this article. After such review, the commissioner shall
11 issue an empire zone retention certificate to each firm that the commis-
12 sioner determines is not subject to decertification under subparagraphs
13 five and six of paragraph (v) of subdivision (a) of this section. The
14 decertification referred to in subparagraph six of paragraph (v) of
15 subdivision (a) of this section shall be based upon an analysis of data
16 contained in at least three business annual reports filed by the busi-
17 ness enterprise. If any business enterprise fails the analysis described
18 in the immediately preceding sentence, or if the commissioner makes the
19 finding described in subparagraph five of paragraph (v) of subdivision
20 (a) of this section, the commissioner shall revoke the certification of
21 such business enterprise pursuant to paragraph [(iv)] (v) of subdivision
22 (a) of this section and as specified herein; provided, however, the
23 commissioner may consider, after consultation with the director of the
24 budget, and in his or her sole discretion, other economic, social and
25 environmental factors when evaluating the costs and benefits of a
26 project to the state and whether continued certification is warranted
27 based on such factors. The commissioner shall provide written notifica-
28 tion to such business enterprise of his or her determination to revoke
29 the certification, including the reasons therefor. Such notification
30 shall state that the business enterprise may appeal the determination by
31 sending a written notice to the empire zone designation board of such
32 appeal no later than fifteen business days from the date of the commis-
33 sioner's revocation notification. Provided that the business enterprise
34 appeals the commissioner's determination within fifteen business days of
35 the commissioner's revocation notification, the business enterprise may
36 present a written submission to the empire zone designation board no
37 later than sixty days following the date the commissioner's revocation
38 notification was sent to the business enterprise explaining why its
39 certification should be continued. The empire zone designation board
40 shall consider the explanation provided by the business enterprise, but
41 shall only reverse the determination to revoke the business enterprise's
42 certification if the empire zone designation board unanimously finds
43 that there was [insufficient] sufficient evidence presented by the busi-
44 ness enterprise demonstrating that the commissioner's finding, with
45 respect to subparagraph six of paragraph (v) of subdivision (a) of this
46 section, was in error, or that, with respect to subparagraph five of
47 paragraph (v) of subdivision (a) of this section, any extraordinary
48 circumstances occurred which would justify the continued certification
49 of the business enterprise.

50 § 4. Paragraph 6 of subdivision (d) of section 1119 of the tax law, as
51 added by section 31 of part S-1 of chapter 57 of the laws of 2009, is
52 amended to read as follows:

53 (6) Any reference in this chapter or in any local law, ordinance or
54 resolution enacted pursuant to the authority of article twenty-nine of
55 this chapter to former subdivision (z) of section eleven hundred fifteen
56 of this article will be deemed to be a reference to this subdivision,

1 and any such local law, ordinance or resolution which provides the
2 exemptions described in former subdivision (z) of such section eleven
3 hundred fifteen shall be deemed instead to provide the refunds and cred-
4 its described in this subdivision.

5 § 5. Subdivision (a) of section 17 of the tax law, as added by section
6 43 of part S-1 of chapter 57 of the laws of 2009, is amended to read as
7 follows:

8 (a) The department of taxation and finance must publish an empire
9 zones tax benefits report annually by [January thirty-first] June thir-
10 tieth. The first report must be published by [January thirty-first] June
11 thirtieth, two thousand [thirteen] eleven.

12 § 6. Subdivision (d) of section 44 of part S-1 of chapter 57 of the
13 laws of 2009, amending the general municipal law and the tax law relat-
14 ing to enacting reforms to the empire zones program, is amended to read
15 as follows:

16 (d) section forty-two of this act shall take effect on January 1,
17 [2012] 2010; and

18 § 7. Subdivision 12-B of section 210 of the tax law is amended by
19 adding a new paragraph (g) to read as follows:

20 (g) Notwithstanding the expiration of the empire zones program under
21 article eighteen-B of the general municipal law, a taxpayer that is
22 certified as a qualified investment project pursuant to such article
23 eighteen-B on the day immediately preceding the day the empire zones
24 program expired shall continue to be deemed certified under such article
25 eighteen-B for purposes of this subdivision for the remainder of the
26 taxable year in which the expiration occurred and for the next succeed-
27 ing nine taxable years. In addition, the areas designated as empire
28 zones in which the taxpayer is certified as a qualified investment
29 project on the day immediately preceding the day the empire zones
30 program expired shall continue to be deemed empire zones for purposes of
31 this subdivision for the remainder of the taxable year in which the
32 expiration occurred and for the next succeeding nine taxable years.

33 § 8. Subdivision 12-C of section 210 of the tax law is amended by
34 adding a new paragraph (d) to read as follows:

35 (d) Notwithstanding the expiration of the empire zones program under
36 article eighteen-B of the general municipal law, a taxpayer that is
37 certified as a qualified investment project pursuant to such article
38 eighteen-B on the day immediately preceding the day the empire zones
39 program expired shall continue to be deemed certified under such article
40 eighteen-B for purposes of this subdivision for the remainder of the
41 taxable year in which the expiration occurred and for the next succeed-
42 ing nine taxable years. In addition, the areas designated as empire
43 zones in which the taxpayer is certified as a qualified investment
44 project on the day immediately preceding the day the empire zones
45 program expired shall continue to be deemed empire zones for purposes of
46 this subdivision for the remainder of the taxable year in which the
47 expiration occurred and for the next succeeding nine taxable years.

48 § 9. This act shall take effect immediately, provided that the amend-
49 ment to paragraph 6 of subdivision (d) of section 1119 of the tax law
50 made by section four of this act shall take effect on the same date and
51 apply in the same manner that section 31 of part S-1 of chapter 57 of
52 the laws of 2009 took effect and applied.

1 Section 1. Section 51 of chapter 298 of the laws of 1985, amending the
2 tax law relating to the franchise tax on banking corporations imposed by
3 the tax law, authorized to be imposed by any city having a population of
4 one million or more by chapter 772 of the laws of 1966 and imposed by
5 the administrative code of the city of New York and relating to other
6 provisions of the tax law, chapter 883 of the laws of 1975 and the
7 administrative code of the city of New York which relates to such fran-
8 chise tax, as amended by section 1 of part H of chapter 60 of the laws
9 of 2007, is amended to read as follows:

10 § 51. This act shall take effect immediately and shall apply to taxa-
11 ble years beginning on or after January 1, 1985, except that:

12 (a) sections one through eight shall not apply to taxable years begin-
13 ning on or after January 1, [2010] 2011;

14 (b) sections nine, twelve, the amendment made to paragraph 9 of
15 subsection (a) of section 1452 of the tax law by section thirteen,
16 sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three,
17 twenty-seven, thirty and thirty-two, the amendment made to paragraph 9
18 of subdivision (a) of section 11-640 of the administrative code of the
19 city of New York by section thirty-three, sections thirty-five, thirty-
20 six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to
21 corporations other than savings banks and savings and loan associations
22 for taxable years beginning on or after January 1, [2010] 2011;

23 (c) sections twenty-one, twenty-two, twenty-four, forty-one and
24 forty-two shall not apply to corporations other than savings banks and
25 savings and loan associations for taxable years beginning on or after
26 January 1, [2010] 2011, provided, however, that the provisions of such
27 sections which relate to the alternative minimum tax measured by taxable
28 assets shall continue to apply to all taxpayers for taxable years begin-
29 ning on or after January 1, [2010] 2011;

30 (d) the amendment to the section heading and the opening paragraph of
31 section 11-643.3 of the administrative code of the city of New York made
32 by section forty-three shall not apply to corporations other than
33 savings banks and savings and loan associations for taxable years begin-
34 ning on or after January 1, [2010] 2011 with respect to those provisions
35 of such section 11-643.3 which relate to the basic tax measured by
36 entire net income; and

37 (e) section twenty-eight, and the addition of new section 11-643.5 of
38 the administrative code of the city of New York made by section forty-
39 four shall not apply to corporations other than savings banks and
40 savings and loan associations for taxable years beginning on or after
41 January 1, [2010] 2011, provided, however, that the provisions of such
42 sections which relate to the alternative minimum taxes measured by
43 assets, issued capital stock and one hundred twenty-five dollars shall
44 continue to apply to all taxpayers for taxable years beginning on or
45 after January 1, [2010] 2011.

46 § 2. Subdivision (f) of section 110 of chapter 817 of the laws of
47 1987, amending the tax law and the environmental conservation law,
48 constituting the business tax reform and rate reduction act of 1987, as
49 amended by section 2 of part H of chapter 60 of the laws of 2007, is
50 amended to read as follows:

51 (f) The provisions of section one hundred four of this act shall apply
52 to taxable years beginning after December 31, 1986, and shall not apply
53 to corporations other than savings banks and savings and loan associ-
54 ations for taxable years beginning on or after January 1, [2010] 2011,
55 provided, however, that the provisions of such section which relate to
56 the alternative minimum tax measured by taxable assets shall continue to

1 apply to all taxpayers for taxable years beginning on or after January
2 1, [2010] 2011.

3 § 3. Subdivision (d) of section 68 of chapter 525 of the laws of 1988,
4 amending the tax law and the administrative code of the city of New York
5 relating to the imposition of taxes in the city of New York, as amended
6 by section 3 of part H of chapter 60 of the laws of 2007, is amended to
7 read as follows:

8 (d) The provisions of section forty-six of this act shall apply to
9 taxable years beginning after December 31, 1986, and shall not apply to
10 corporations other than savings banks and savings and loan associations
11 for taxable years beginning on or after January 1, [2010] 2011,
12 provided, however, that the provisions of such section which relate to
13 the alternative minimum tax measured by taxable assets shall continue to
14 apply to all taxpayers for taxable years beginning on or after January
15 1, [2010] 2011;

16 § 4. Extension of Gramm-Leach-Bliley transitional provisions. Refer-
17 ences in subsection (m) of section 1452 of the tax law and subdivision
18 (1) of section 11-640 of the administrative code of the city of New York
19 to January 1, 2008 shall be read as January 1, 2010 and references in
20 those provisions to January 1, 2010 shall be read as January 1, 2011, as
21 if those dates were specifically referenced in those provisions of law.
22 References in subparagraph (iv) of paragraph (2) of subsection (f) of
23 section 1462 of the tax law and subparagraph (iv) of paragraph 2 of
24 subdivision (f) of section 11-646 of the administrative code of the city
25 of New York to January 1, 2010 shall be read as January 1, 2011, as if
26 that date was specifically referenced in those provisions of law. The
27 legislative bill drafting commission is hereby directed to effectuate
28 this provision, and shall be guided by a memorandum of instruction
29 setting forth the specific provisions of law to be amended. Such memo-
30 randum shall be transmitted to the legislative bill drafting commission
31 within thirty days of enactment of this provision. Such memorandum shall
32 be issued jointly by the governor, the temporary president of the
33 senate, and the speaker of the assembly, or by the delegate of each.

34 § 5. This act shall take effect immediately and shall be deemed to
35 have been in full force and effect on and after January 1, 2010.

36

PART Z

37 Section 1. This act enacts into law major components of legislation
38 relating to tax enforcement, sales tax avoidance and statements of
39 industrial agencies and their agents. Each component is wholly
40 contained within a Subpart identified as Subparts A through C. The
41 effective date for each particular provision contained within such
42 Subpart is set forth in the last section of such Subpart. Any provision
43 in any section contained within a Subpart, including the effective date
44 of the Subpart, which makes reference to a section "of this act", when
45 used in connection with that particular component, shall be deemed to
46 mean and refer to the corresponding section of the Subpart in which it
47 is found. Section three of this act sets forth the general effective
48 date of this act.

49

SUBPART A

50 Section 1. The tax law is amended by adding two new sections 1808 and
51 1809 to read as follows:

1 § 1808. Personal income and earnings taxes; repeated failure to file.
2 (a) Any person who, with intent to evade payment of any tax imposed
3 under article twenty-two of this chapter or any related income or earn-
4 ings tax statute, fails to file a return for three consecutive taxable
5 years shall be guilty of a class E felony, provided that such person had
6 an unpaid tax liability with respect to each of the three consecutive
7 taxable years.

8 (b) In any prosecution for a violation of subdivision (a) of this
9 section, it shall be a defense that the defendant had no unpaid tax
10 liability for any of the three consecutive taxable years.

11 (c) As used in this subdivision, the term "return" shall mean a return
12 required under section six hundred fifty-one of this chapter, section
13 11-1751 of the administrative code of the city of New York or section
14 92-85 or 92-105 of the codes and ordinances of the city of Yonkers. It
15 shall not include any information return referred to in subsection (i)
16 of section six hundred fifty-one of this chapter, or subdivision (i) of
17 section 11-1751 of such code, or subdivision (g) of section 92-105 of
18 such codes and ordinances, or section six hundred fifty-eight of this
19 chapter or section 11-1758 of such code or section 92-111 of such codes
20 and ordinances, or any employer's return required by section six hundred
21 seventy-four of this chapter or section 11-1774 of such code.

22 § 1809. Corporate taxes; repeated failure to file. (a) Any person who,
23 with intent to evade payment of any tax imposed under article nine
24 (other than under section one hundred eighty or one hundred eighty-one),
25 nine-A, thirteen, thirty-two, thirty-three or thirty-three-A of this
26 chapter, fails to file a return or report for three consecutive taxable
27 years shall be guilty of a class E felony, provided that such person had
28 an unpaid tax liability, in excess of the threshold amount with respect
29 to each of the three consecutive taxable years. The threshold amount in
30 the case of a taxable year under article nine-A of this chapter ending
31 after June thirtieth, nineteen hundred eighty-nine is the applicable
32 fixed dollar minimum prescribed under paragraph (d) of subdivision one
33 of section two hundred ten of this chapter. In the event such fixed
34 dollar minimum is less than two hundred fifty dollars, the threshold
35 amount in the case of such taxable year is two hundred fifty dollars. In
36 all other cases the threshold amount is two hundred fifty dollars.

37 (b) In any prosecution for a violation of subdivision (a) of this
38 section, it shall be a defense that the defendant had no unpaid tax
39 liability for any of the three consecutive taxable years.

40 (c) As used in this section, the terms "return" and "report" shall
41 mean a return or report required under section one hundred ninety-two,
42 two hundred eleven, two hundred ninety-four, fourteen hundred sixty-two,
43 fifteen hundred fifteen or fifteen hundred fifty-four of this chapter.
44 It shall not include any return or report referred to in section one
45 hundred ninety-seven-a, two hundred thirteen-a, fourteen hundred sixty
46 or fifteen hundred thirteen of this chapter.

47 § 2. Paragraph (b) of subdivision 3-a of section 170 of the tax law,
48 as amended by section 1 of subpart C of part V-1 of chapter 57 of the
49 laws of 2009, is amended to read as follows:

50 (b) A request for a conciliation conference shall be applied for in
51 the manner as set forth by regulation of the commissioner and, notwith-
52 standing any provision of law to the contrary, shall suspend the running
53 of the period of limitations for the filing of a petition protesting
54 such notice and requesting a hearing. To discontinue the conciliation
55 proceeding, the recipient of the notice shall make a request in writing
56 and such person shall have ninety days from the time such request of

1 discontinuance is made to petition the division of tax appeals for a
2 hearing, except that the recipient of a written notice described in
3 paragraph (h) of this subdivision will have thirty 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 tax
6 appeals when any person requests a conference or requests to discontinue
7 such conference.

8 § 3. Paragraph (h) of subdivision 3-a of section 170 of the tax law,
9 as added by section 2 of subpart C of part V-1 of chapter 57 of the laws
10 of 2009, is amended to read as follows:

11 (h) Notwithstanding any provision of law to the contrary, any person
12 who seeks review by the bureau of conciliation and mediation services of
13 a written notice that advises that person of (i) the proposed cancella-
14 tion, revocation, or suspension of a license, permit, registration, or
15 other credential issued under the authority of this chapter excluding a
16 certificate of registration of a retail dealer under section four
17 hundred eighty-a of this chapter, (ii) the denial of an application for
18 a license, permit, registration, or other credential issued under the
19 authority of this chapter excluding an application for registration as a
20 retail dealer under section four hundred eighty-a of this chapter and an
21 application to renew a certificate of authority filed pursuant to para-
22 graph five of subdivision (a) of section one thousand one hundred thir-
23 ty-four of this chapter and any other law, or, (iii) the imposition of a
24 fraud penalty under this chapter, must request a conciliation conference
25 within thirty days of [receipt] the mailing of that notice.

26 § 4. Paragraphs (a) and (b) of subdivision 2 of section 2008 of the
27 tax law, as added by section 3 of subpart C of part V-1 of chapter 57 of
28 the laws of 2009, are amended to read as follows:

29 (a) Notwithstanding any provision of law to the contrary, any person
30 who receives a written notice that advises that person of (i) the
31 proposed cancellation, revocation, or suspension of a license, permit,
32 registration, or other credential issued under the authority of this
33 chapter excluding a certificate of registration of a retail dealer under
34 section four hundred eighty-a of this chapter, (ii) the denial of an
35 application for a license, permit, registration, or other credential
36 issued under the authority of this chapter excluding an application for
37 registration as a retail dealer under section four hundred eighty-a of
38 this chapter and an application to renew a certificate of authority
39 filed pursuant to paragraph five of subdivision (a) of section one thou-
40 sand one hundred thirty-four of this chapter and any other law, or,
41 (iii) the imposition of a fraud penalty under this chapter, must file a
42 petition with the division of tax appeals within thirty days of
43 [receipt] the mailing of that notice (unless that person has requested a
44 conciliation conference as provided in subdivision three-a of section
45 one hundred seventy of this chapter), or the cancellation, revocation,
46 suspension, denial, or penalty will be permanently and irrevocably
47 fixed. An expedited hearing must be scheduled within ten business days
48 of receipt of the petition.

49 (b) In the case of any expedited hearing provided for under this
50 subdivision, the administrative law judge must render a decision within
51 thirty days from receipt of the petition. When exception is taken to an
52 administrative law judge's determination, the tax appeals tribunal must
53 issue its decision within three months from receipt of the petition. Any
54 request by [the petitioner] a party that delays the expedited hearing
55 process will extend the time limitations imposed on the tribunal or the
56 administrative law judge to issue a decision or determination. The

1 tribunal or administrative law judge may not approve any postponement or
2 other delay without a showing of good cause by the moving party and must
3 render a default determination or decision against the dilatory party
4 for any unwarranted delay.

5 § 5. Section 1807 of the tax law, as added by section 21 of subpart I
6 of part V-1 of chapter 57 of the laws of 2009, is amended to read as
7 follows:

8 § 1807. Aggregation. For purposes of this article, the payments due
9 and not paid under a single article [one] of this chapter pursuant to a
10 common scheme or plan or due and not paid, within one year, may be
11 charged in a single count, and the amount of underpaid tax liability
12 incurred, within one year, may be aggregated in a single count.

13 § 6. Section 34 of subpart I of part V-1 of chapter 57 of the laws of
14 2009, amending the criminal procedure law, the penal law, and the tax
15 law relating to creating the offense of "tax fraud act", is amended to
16 read as follows:

17 § 34. This act shall take effect immediately and sections two through
18 thirty-three of this act shall apply to offenses committed on and after
19 such effective date.

20 § 7. This act shall take effect immediately; provided however that
21 section one of this act shall apply to offenses committed on and after
22 such effective date.

23

SUBPART B

24 Section 1. Subparagraph (iv) of paragraph 4 of subdivision (b) of
25 section 1101 of the tax law, as added by chapter 93 of the laws of 1965,
26 clause (B) as amended by chapter 575 of the laws of 1965 and as renum-
27 bered by chapter 2 of the laws of 1995, is amended to read as follows:

28 (iv) (A) The term retail sale does not include:

29 [(A)] (I) The transfer of tangible personal property to a corporation,
30 solely in consideration for the issuance of its stock, pursuant to a
31 merger or consolidation effected under the law of New York or any other
32 jurisdiction.

33 [(B)] (II) The distribution of property by a corporation to its stock-
34 holders as a liquidating dividend.

35 [(C)] (III) The distribution of property by a partnership to its part-
36 ners in whole or partial liquidation.

37 [(D)] (IV) The transfer of property to a corporation upon its organ-
38 ization in consideration for the issuance of its stock.

39 [(E)] (V) The contribution of property to a partnership in consider-
40 ation for a partnership interest therein.

41 (B) For an exception applicable to this subparagraph, see subdivision
42 (q) of section eleven hundred eleven of this article.

43 § 2. Paragraph 17 of subdivision (b) of section 1101 of the tax law,
44 as amended by section 1 of part N-1 of chapter 57 of the laws of 2009,
45 is amended to read as follows:

46 (17) Commercial aircraft. Aircraft used primarily (i) to transport
47 persons or property, for hire, (ii) by the purchaser of the aircraft to
48 transport such person's tangible personal property in the conduct of
49 such person's business, or (iii) for both such purposes. Transporting
50 persons for hire does not include transporting agents, employees, offi-
51 cers, members, partners, managers or directors of affiliated persons.
52 Persons are affiliated persons with respect to each other where one of
53 the persons has an ownership interest of more than five percent, whether
54 direct or indirect, in the other, or where an ownership interest of more

1 than five percent, whether direct or indirect, is held in each of the
2 persons by another person or by a group of other persons that are affil-
3 iated persons with respect to each other. For an exception to the
4 exclusions from the definition of "retail sale" applicable to aircraft,
5 see subdivision (q) of section eleven hundred eleven of this article.

6 § 3. Section 1111 of the tax law is amended by adding a new subdivi-
7 sion (q) to read as follows:

8 (q) (1) The exclusions from the definition of retail sale in subpara-
9 graph (iv) of paragraph four of subdivision (b) of section eleven
10 hundred one of this article shall not apply to transfers, distributions,
11 or contributions of an aircraft or vessel, except where, in the case of
12 the exclusion in subclause (I) of clause (A) of such subparagraph (iv),
13 the two corporations to be merged or consolidated are not affiliated
14 persons with respect to each other. For purposes of this subdivision,
15 corporations are affiliated persons with respect to each other where (i)
16 more than five percent of their combined shares are owned by members of
17 the same family, as defined by paragraph four of subsection (c) of
18 section two hundred sixty-seven of the internal revenue code of nineteen
19 hundred eighty-six; (ii) one of the corporations has an ownership inter-
20 est of more than five percent, whether direct or indirect, in the other;
21 or (iii) another person or a group of other persons that are affiliated
22 persons with respect to each other hold an ownership interest of more
23 than five percent, whether direct or indirect, in each of the corpo-
24 rations.

25 (2) Notwithstanding any contrary provision of law, in relation to any
26 transfer, distribution, or contribution of an aircraft or vessel that
27 qualifies as a retail sale as a result of paragraph one of this subdivi-
28 sion, the sales tax imposed by subdivision (a) of section eleven hundred
29 five of this part shall be computed based on the price at which the
30 seller purchased the tangible personal property, provided that where the
31 seller or purchaser affirmatively shows that the seller owned the prop-
32 erty for six months prior to making the transfer, distribution or
33 contribution covered by paragraph one of this subdivision, such aircraft
34 or vessel shall be taxed on the basis of the current market value of the
35 aircraft or vessel at the time of that transfer, distribution, or
36 contribution. For the purposes of the prior sentence, "current market
37 value" shall not exceed the cost of the aircraft or vessel. See subdivi-
38 sion (b) of this section for a similar rule on the computation of any
39 compensating use tax due under section eleven hundred ten of this part
40 on such transfers, distributions, or contributions.

41 (3) A purchaser of an aircraft or vessel covered by paragraph one of
42 this subdivision will be entitled to a refund or credit against the
43 sales or compensating use tax due as a result of a transfer, distrib-
44 ution, or contribution of such aircraft or vessel in the amount of any
45 sales or use tax paid to this state or any other state on the seller's
46 purchase or use of the aircraft or vessel so transferred, distributed or
47 contributed, but not to exceed the tax due on the transfer, distrib-
48 ution, or contribution of the aircraft or vessel or on the purchaser's
49 use in the state of the aircraft or vessel so transferred, distributed
50 or contributed. An application for a refund or credit under this subdivi-
51 vision must be filed and shall be in such form as the commissioner may
52 prescribe. Where an application for credit has been filed, the applicant
53 may immediately take such credit on the return which is due coincident
54 with or immediately subsequent to the time the application for credit is
55 filed. However, the taking of the credit on the return shall be deemed
56 to be part of the application for credit. Provided that the commission-

1 er may, in his or her discretion and notwithstanding any other law,
2 waive the application requirement for any or all classes of persons
3 where the amount of the credit or refund is equal to the amount of the
4 tax due from the purchaser. The provisions of subdivisions (a), (b),
5 and (c) of section eleven hundred thirty-nine of this article shall
6 apply to applications for refund or credit under this subdivision. No
7 interest shall be allowed or paid on any refund made or credit allowed
8 under this subdivision. If a refund is granted or a credit allowed under
9 this paragraph, the seller or purchaser shall not be eligible for a
10 refund or credit pursuant to subdivision seven of section eleven hundred
11 eighteen of this article with regard to the same purchase or use.

12 § 4. Subdivision 2 of section 1118 of the tax law, as amended by
13 section 2 of part N-1 of chapter 57 of the laws of 2009, is amended to
14 read as follows:

15 (2) In respect to the use of property or services purchased by the
16 user while a nonresident of this state, except in the case of tangible
17 personal property or services which the user, in the performance of a
18 contract, incorporates into real property located in the state. A person
19 while engaged in any manner in carrying on in this state any employment,
20 trade, business or profession, shall not be deemed a nonresident with
21 respect to the use in this state of property or services in such employ-
22 ment, trade, business or profession. This exemption does not apply to
23 the use of qualified property where the qualified property is purchased
24 primarily to carry individuals, whether or not for hire, who are agents,
25 employees, officers, shareholders, members, managers, partners, or
26 directors of (A) the purchaser, where any of those individuals was a
27 resident of this state when the qualified property was purchased or (B)
28 any affiliated person that was a resident when the qualified property
29 was purchased. For purposes of this subdivision: (i) persons are affil-
30 iated persons with respect to each other where one of the persons has an
31 ownership interest of more than five percent, whether direct or indi-
32 rect, in the other, or where an ownership interest of more than five
33 percent, whether direct or indirect, is held in each of the persons by
34 another person or by a group of other persons that are affiliated
35 persons with respect to each other; (ii) "qualified property" means
36 aircraft, vessels and motor vehicles; and (iii) "carry" means to take
37 any person from one point to another, whether for the business purposes
38 or pleasure of that person. For an exception to the exclusions from the
39 definition of "retail sale" applicable to aircraft and vessels, see
40 subdivision (q) of section eleven hundred eleven of this article.

41 § 5. This act shall take effect on June 1, 2010, and shall apply to
42 sales made and uses occurring on or after such date in accordance with
43 the applicable transitional provisions in sections 1106 and 1217 of the
44 tax law, provided that sales or use tax paid on the seller's purchase or
45 use of the aircraft or vessel transferred, distributed or contributed
46 may be refunded or credited as authorized by the new subdivision (q) of
47 section 1111 of the tax law, as added by section three of this act,
48 regardless of the date on which the seller purchased or used the
49 aircraft or vessel.

50

SUBPART C

51 Section 1. Section 874 of the general municipal law is amended by
52 adding a new subdivision 9 to read as follows:

53 (9) Within thirty days of the date that the agency designates a
54 project operator or other person to act as agent of the agency for

1 purposes of providing financial assistance consisting of any sales and
2 compensating use tax exemption to such person, the agency shall file a
3 statement with the department of taxation and finance relating thereto,
4 on a form and in such manner as is prescribed by the commissioner of
5 taxation and finance, identifying each such agent so named by the agen-
6 cy, setting forth the taxpayer identification number of each such agent,
7 giving a brief description of the property and/or services intended to
8 be exempted from such taxes as a result of such appointment as agent,
9 indicating the agency's rough estimate of the value of the property
10 and/or services to which such appointment as agent relates, indicating
11 the date when such designation as agent became effective and indicating
12 the date upon which such designation as agent shall cease.

13 § 2. Section 1963 of the public authorities law is amended by adding
14 two new subdivisions 3 and 4 to read as follows:

15 3. Agents of the authority and project operators shall annually file a
16 statement with the department of taxation and finance, on a form and in
17 such a manner as is prescribed by the commissioner of taxation and
18 finance, of the value of all sales and use tax exemptions claimed by
19 such agents or agents of such agents or project operators, including,
20 but not limited to, consultants or subcontractors of such agents or
21 project operators, under the authority granted pursuant to this section.
22 The penalty for failure to file such statement shall be the removal of
23 the authority to act as an agent of the authority or as a project opera-
24 tor.

25 4. Within thirty days of the date that the authority designates a
26 project operator or other person to act as agent of the authority for
27 purposes of providing financial assistance consisting of any sales and
28 compensating use tax exemption to such person, the agency shall file a
29 statement with the department of taxation and finance relating thereto,
30 on a form and in such manner as is prescribed by the commissioner of
31 taxation and finance, identifying each such agent so named by the
32 authority, setting forth the taxpayer identification number of each such
33 agent, giving a brief description of the property and/or services
34 intended to be exempted from such taxes as a result of such appointment
35 as agent, indicating the authority's rough estimate of the value of the
36 property and/or services to which such appointment as agent relates,
37 indicating the date when such designation as agent became effective and
38 indicating the date upon which such designation as agent shall cease.

39 § 3. Section 2326 of the public authorities law is amended by adding
40 two new subdivisions 3 and 4 to read as follows:

41 3. Agents of the authority and project operators shall annually file a
42 statement with the department of taxation and finance, on a form and in
43 such a manner as is prescribed by the commissioner of taxation and
44 finance, of the value of all sales and use tax exemptions claimed by
45 such agents or agents of such agents or project operators, including,
46 but not limited to, consultants or subcontractors of such agents or
47 project operators, under the authority granted pursuant to this section.
48 The penalty for failure to file such statement shall be the removal of
49 the authority to act as an agent of the authority or as a project opera-
50 tor.

51 4. Within thirty days of the date that the authority designates a
52 project operator or other person to act as agent of the authority for
53 purposes of providing financial assistance consisting of any sales and
54 compensating use tax exemption to such person, the agency shall file a
55 statement with the department of taxation and finance relating thereto,
56 on a form and in such manner as is prescribed by the commissioner of

1 taxation and finance, identifying each such agent so named by the
2 authority, setting forth the taxpayer identification number of each such
3 agent, giving a brief description of the property and/or services
4 intended to be exempted from such taxes as a result of such appointment
5 as agent, indicating the authority's rough estimate of the value of the
6 property and/or services to which such appointment as agent relates,
7 indicating the date when such designation as agent became effective and
8 indicating the date upon which such designation as agent shall cease.

9 § 4. This act shall take effect immediately, provided, however, that:

10 (a) section one of this act shall be deemed to have been in full force
11 and effect on and after January 31, 2008;

12 (b) sections two and three of this act shall be deemed to have been in
13 full force and effect on and after January 1, 2010; and

14 (c) any statement of an industrial development agency or authority to
15 the department of taxation and finance required by this act with respect
16 to having appointed an agent or project operator before the effective
17 date of this act shall be deemed timely if it is filed within 90 days of
18 such date.

19 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
20 sion, section or part of this act shall be adjudged by any court of
21 competent jurisdiction to be invalid, such judgment shall not affect,
22 impair, or invalidate the remainder thereof, but shall be confined in
23 its operation to the clause, sentence, paragraph, subdivision, section
24 or part thereof directly involved in the controversy in which such judg-
25 ment shall have been rendered. It is hereby declared to be the intent of
26 the legislature that this act would have been enacted even if such
27 invalid provisions had not been included herein.

28 § 3. This act shall take effect immediately provided, however, that
29 the applicable effective date of Subparts A through C of this act shall
30 be as specifically set forth in the last section of such Subparts.

31

PART AA

32 Section 1. Paragraph (a) of subdivision 1 of section 1003 of the
33 racing, pari-mutuel wagering and breeding law, as amended by section 1
34 of part L-1 of chapter 57 of the laws of 2009, is amended to read as
35 follows:

36 (a) Any racing association or corporation or regional off-track
37 betting corporation, authorized to conduct pari-mutuel wagering under
38 this chapter, desiring to display the simulcast of horse races on which
39 pari-mutuel betting shall be permitted in the manner and subject to the
40 conditions provided for in this article may apply to the board for a
41 license so to do. Applications for licenses shall be in such form as may
42 be prescribed by the board and shall contain such information or other
43 material or evidence as the board may require. No license shall be
44 issued by the board authorizing the simulcast transmission of thorough-
45 bred races from a track located in Suffolk county. The fee for such
46 licenses shall be five hundred dollars per simulcast facility per year
47 payable by the licensee to the board for deposit into the general fund.
48 Except as provided herein, the board shall not approve any application
49 to conduct simulcasting into individual or group residences, homes or
50 other areas for the purposes of or in connection with pari-mutuel wager-
51 ing. The board may approve simulcasting into residences, homes or other
52 areas to be conducted jointly by one or more regional off-track betting
53 corporations and one or more of the following: a franchised corporation,
54 thoroughbred racing corporation or a harness racing corporation or asso-

1 ciation; provided (i) the simulcasting consists only of those races on
2 which pari-mutuel betting is authorized by this chapter at one or more
3 simulcast facilities for each of the contracting off-track betting
4 corporations which shall include wagers made in accordance with section
5 one thousand fifteen, one thousand sixteen and one thousand seventeen of
6 this article; provided further that the contract provisions or other
7 simulcast arrangements for such simulcast facility shall be no less
8 favorable than those in effect on January first, two thousand five; (ii)
9 that each off-track betting corporation having within its geographic
10 boundaries such residences, homes or other areas technically capable of
11 receiving the simulcast signal shall be a contracting party; (iii) the
12 distribution of revenues shall be subject to contractual agreement of
13 the parties except that statutory payments to non-contracting parties,
14 if any, may not be reduced; provided, however, that nothing herein to
15 the contrary shall prevent a track from televising its races on an
16 irregular basis primarily for promotional or marketing purposes as found
17 by the board. For purposes of this paragraph, the provisions of section
18 one thousand thirteen of this article shall not apply. Any agreement
19 authorizing an in-home simulcasting experiment commencing prior to May
20 fifteenth, nineteen hundred ninety-five, may, and all its terms, be
21 extended until June thirtieth, two thousand [ten] eleven; provided,
22 however, that any party to such agreement may elect to terminate such
23 agreement upon conveying written notice to all other parties of such
24 agreement at least forty-five days prior to the effective date of the
25 termination, via registered mail. Any party to an agreement receiving
26 such notice of an intent to terminate, may request the board to mediate
27 between the parties new terms and conditions in a replacement agreement
28 between the parties as will permit continuation of an in-home experiment
29 until June thirtieth, two thousand [ten] eleven; and (iv) no in-home
30 simulcasting in the thoroughbred special betting district shall occur
31 without the approval of the regional thoroughbred track.

32 § 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
33 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
34 section 2 of part L-1 of chapter 57 of the laws of 2009, is amended to
35 read as follows:

36 (iii) Of the sums retained by a receiving track located in Westchester
37 county on races received from a franchised corporation, for the period
38 commencing January first, two thousand eight and continuing through June
39 thirtieth, two thousand [ten] eleven, the amount used exclusively for
40 purses to be awarded at races conducted by such receiving track shall be
41 computed as follows: of the sums so retained, two and one-half percent
42 of the total pools. Such amount shall be increased or decreased in the
43 amount of fifty percent of the difference in total commissions deter-
44 mined by comparing the total commissions available after July twenty-
45 first, nineteen hundred ninety-five to the total commissions that would
46 have been available to such track prior to July twenty-first, nineteen
47 hundred ninety-five.

48 § 3. The opening paragraph of subdivision 1 of section 1014 of the
49 racing, pari-mutuel wagering and breeding law, as amended by section 3
50 of part L-1 of chapter 57 of the laws of 2009, is amended to read as
51 follows:

52 The provisions of this section shall govern the simulcasting of races
53 conducted at thoroughbred tracks located in another state or country on
54 any day during which a franchised corporation is conducting a race meet-
55 ing in Saratoga county at Saratoga thoroughbred racetrack until June
56 thirtieth, two thousand [ten] eleven and on any day regardless of wheth-

1 er or not a franchised corporation is conducting a race meeting in Sara-
2 toga county at Saratoga thoroughbred racetrack after June thirtieth, two
3 thousand [ten] eleven. On any day on which a franchised corporation has
4 not scheduled a racing program but a thoroughbred racing corporation
5 located within the state is conducting racing, every off-track betting
6 corporation branch office and every simulcasting facility licensed in
7 accordance with section one thousand seven (that have entered into a
8 written agreement with such facility's representative horsemen's organ-
9 ization, as approved by the board), one thousand eight, or one thousand
10 nine of this article shall be authorized to accept wagers and display
11 the live simulcast signal from thoroughbred tracks located in another
12 state or foreign country subject to the following provisions:

13 § 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering
14 and breeding law, as amended by section 4 of part L-1 of chapter 57 of
15 the laws of 2009, is amended to read as follows:

16 1. The provisions of this section shall govern the simulcasting of
17 races conducted at harness tracks located in another state or country
18 during the period July first, nineteen hundred ninety-four through June
19 thirtieth, two thousand [ten] eleven. This section shall supersede all
20 inconsistent provisions of this chapter.

21 § 5. The opening paragraph of subdivision 1 of section 1016 of the
22 racing, pari-mutuel wagering and breeding law, as amended by section 5
23 of part L-1 of chapter 57 of the laws of 2009, is amended to read as
24 follows:

25 The provisions of this section shall govern the simulcasting of races
26 conducted at thoroughbred tracks located in another state or country on
27 any day during which a franchised corporation is not conducting a race
28 meeting in Saratoga county at Saratoga thoroughbred racetrack until June
29 thirtieth, two thousand [ten] eleven. Every off-track betting corpo-
30 ration branch office and every simulcasting facility licensed in accord-
31 ance with section one thousand seven that have entered into a written
32 agreement with such facility's representative horsemen's organization as
33 approved by the board, one thousand eight or one thousand nine of this
34 article shall be authorized to accept wagers and display the live full-
35 card simulcast signal of thoroughbred tracks (which may include quarter
36 horse or mixed meetings provided that all such wagering on such races
37 shall be construed to be thoroughbred races) located in another state or
38 foreign country, subject to the following provisions; provided, however,
39 no such written agreement shall be required of a franchised corporation
40 licensed in accordance with section one thousand seven of this article:

41 § 6. The opening paragraph of section 1018 of the racing, pari-mutuel
42 wagering and breeding law, as amended by section 6 of part L-1 of chap-
43 ter 57 of the laws of 2009, is amended to read as follows:

44 Notwithstanding any other provision of this chapter, for the period
45 July twenty-fifth, two thousand one through September eighth, two thou-
46 sand [nine] ten, when a franchised corporation is conducting a race
47 meeting within the state at Saratoga Race Course, every off-track
48 betting corporation branch office and every simulcasting facility
49 licensed in accordance with section one thousand seven (that has entered
50 into a written agreement with such facility's representative horsemen's
51 organization as approved by the board), one thousand eight or one thou-
52 sand nine of this article shall be authorized to accept wagers and
53 display the live simulcast signal from thoroughbred tracks located in
54 another state, provided that such facility shall accept wagers on races
55 run at all in-state thoroughbred tracks which are conducting racing
56 programs subject to the following provisions; provided, however, no such

1 written agreement shall be required of a franchised corporation licensed
2 in accordance with section one thousand seven of this article.

3 § 7. Section 32 of chapter 281 of the laws of 1994, amending the
4 racing, pari-mutuel wagering and breeding law and other laws relating to
5 simulcasting, as amended by section 7 of part L-1 of chapter 57 of the
6 laws of 2009, is amended to read as follows:

7 § 32. This act shall take effect immediately and the pari-mutuel tax
8 reductions in section six of this act shall expire and be deemed
9 repealed on July 1, [2010] 2011; provided, however, that nothing
10 contained herein shall be deemed to affect the application, qualifica-
11 tion, expiration, or repeal of any provision of law amended by any
12 section of this act, and such provisions shall be applied or qualified
13 or shall expire or be deemed repealed in the same manner, to the same
14 extent and on the same date as the case may be as otherwise provided by
15 law; provided further, however, that sections twenty-three and twenty-
16 five of this act shall remain in full force and effect only until May 1,
17 1997 and at such time shall be deemed to be repealed.

18 § 8. Section 54 of chapter 346 of the laws of 1990, amending the
19 racing, pari-mutuel wagering and breeding law and other laws relating to
20 simulcasting and the imposition of certain taxes, as amended by section
21 8 of part L-1 of chapter 57 of the laws of 2009, is amended to read as
22 follows:

23 § 54. This act shall take effect immediately; provided, however,
24 sections three through twelve of this act shall take effect on January
25 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
26 ing law, as added by section thirty-eight of this act, shall expire and
27 be deemed repealed on July 1, [2010] 2011; and section eighteen of this
28 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
29 two of this act shall take effect as of the same date as chapter 772 of
30 the laws of 1989 took effect.

31 § 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
32 pari-mutuel wagering and breeding law, as amended by section 9 of part
33 L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

34 (a) The franchised corporation authorized under this chapter to
35 conduct pari-mutuel betting at a race meeting or races run thereat shall
36 distribute all sums deposited in any pari-mutuel pool to the holders of
37 winning tickets therein, provided such tickets be presented for payment
38 before April first of the year following the year of their purchase,
39 less an amount which shall be established and retained by such fran-
40 chised corporation of between sixteen to seventeen per centum of the
41 total deposits in pools resulting from on-track regular bets, and eigh-
42 teen and one-half to twenty-one per centum of the total deposits in
43 pools resulting from on-track multiple bets and twenty-six per centum of
44 the total deposits in pools resulting from on-track exotic bets and
45 sixteen to thirty-six per centum of the total deposits in pools result-
46 ing from on-track super exotic bets, and twenty-six to thirty-six per
47 centum when such on-track super exotic betting pools are carried
48 forward, plus the breaks. The retention rate to be established is
49 subject to the prior approval of the racing and wagering board. Such
50 rate may not be changed more than once per calendar quarter to be effec-
51 tive on the first day of the calendar quarter. "Exotic bets" and
52 "multiple bets" shall have the meanings set forth in section five
53 hundred nineteen of this chapter. "Super exotic bets" shall have the
54 meaning set forth in section three hundred one of this chapter. For
55 purposes of this section, a "pick six bet" shall mean a single bet or
56 wager on the outcomes of six races. The breaks are hereby defined as the

1 odd cents over any multiple of five for payoffs greater than one dollar
2 five cents but less than five dollars, over any multiple of ten for
3 payoffs greater than five dollars but less than twenty-five dollars,
4 over any multiple of twenty-five for payoffs greater than twenty-five
5 dollars but less than two hundred fifty dollars, or over any multiple of
6 fifty for payoffs over two hundred fifty dollars. Out of the amount so
7 retained there shall be paid by such franchised corporation to the
8 commissioner of taxation and finance, as a reasonable tax by the state
9 for the privilege of conducting pari-mutuel betting on the races run at
10 the race meetings held by such franchised corporation, the following
11 percentages of the total pool for regular and multiple bets five per
12 centum of regular bets and four per centum of multiple bets plus twenty
13 per centum of the breaks; for exotic wagers seven and one-half per
14 centum plus twenty per centum of the breaks, and for super exotic bets
15 seven and one-half per centum plus fifty per centum of the breaks. For
16 the period June first, nineteen hundred ninety-five through September
17 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
18 three per centum and such tax on multiple wagers shall be two and one-
19 half per centum, plus twenty per centum of the breaks. For the period
20 September tenth, nineteen hundred ninety-nine through March thirty-
21 first, two thousand one, such tax on all wagers shall be two and six-
22 tenths per centum and for the period April first, two thousand one
23 through December thirty-first, two thousand [ten] eleven, such tax on
24 all wagers shall be one and six-tenths per centum, plus, in each such
25 period, twenty per centum of the breaks. Payment to the New York state
26 thoroughbred breeding and development fund by such franchised corpo-
27 ration shall be one-half of one per centum of total daily on-track pari-
28 mutuel pools resulting from regular, multiple and exotic bets and three
29 per centum of super exotic bets provided, however, that for the period
30 September tenth, nineteen hundred ninety-nine through March thirty-
31 first, two thousand one, such payment shall be six-tenths of one per
32 centum of regular, multiple and exotic pools and for the period April
33 first, two thousand one through December thirty-first, two thousand
34 [ten] eleven, such payment shall be seven-tenths of one per centum of
35 such pools.

36 § 10. Paragraph (a) of subdivision 1 of section 238 of the racing,
37 pari-mutuel wagering and breeding law, as amended by section 10 of part
38 L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

39 (a) The franchised corporation authorized under this chapter to
40 conduct pari-mutuel betting at a race meeting or races run thereat shall
41 distribute all sums deposited in any pari-mutuel pool to the holders of
42 winning tickets therein, provided such tickets be presented for payment
43 before April first of the year following the year of their purchase,
44 less an amount which shall be established and retained by such fran-
45 chised corporation of between twelve to seventeen per centum of the
46 total deposits in pools resulting from on-track regular bets, and four-
47 teen to twenty-one per centum of the total deposits in pools resulting
48 from on-track multiple bets and fifteen to twenty-five per centum of the
49 total deposits in pools resulting from on-track exotic bets and fifteen
50 to thirty-six per centum of the total deposits in pools resulting from
51 on-track super exotic bets, plus the breaks. The retention rate to be
52 established is subject to the prior approval of the racing and wagering
53 board. Such rate may not be changed more than once per calendar quarter
54 to be effective on the first day of the calendar quarter. "Exotic bets"
55 and "multiple bets" shall have the meanings set forth in section five
56 hundred nineteen of this chapter. "Super exotic bets" shall have the

1 meaning set forth in section three hundred one of this chapter. For
2 purposes of this section, a "pick six bet" shall mean a single bet or
3 wager on the outcomes of six races. The breaks are hereby defined as the
4 odd cents over any multiple of five for payoffs greater than one dollar
5 five cents but less than five dollars, over any multiple of ten for
6 payoffs greater than five dollars but less than twenty-five dollars,
7 over any multiple of twenty-five for payoffs greater than twenty-five
8 dollars but less than two hundred fifty dollars, or over any multiple of
9 fifty for payoffs over two hundred fifty dollars. Out of the amount so
10 retained there shall be paid by such franchised corporation to the
11 commissioner of taxation and finance, as a reasonable tax by the state
12 for the privilege of conducting pari-mutuel betting on the races run at
13 the race meetings held by such franchised corporation, the following
14 percentages of the total pool for regular and multiple bets five per
15 centum of regular bets and four per centum of multiple bets plus twenty
16 per centum of the breaks; for exotic wagers seven and one-half per
17 centum plus twenty per centum of the breaks, and for super exotic bets
18 seven and one-half per centum plus fifty per centum of the breaks. For
19 the period June first, nineteen hundred ninety-five through September
20 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
21 three per centum and such tax on multiple wagers shall be two and one-
22 half per centum, plus twenty per centum of the breaks. For the period
23 September tenth, nineteen hundred ninety-nine through March thirty-
24 first, two thousand one, such tax on all wagers shall be two and six-
25 tenths per centum and for the period April first, two thousand one
26 through December thirty-first, two thousand [ten] eleven, such tax on
27 all wagers shall be one and six-tenths per centum, plus, in each such
28 period, twenty per centum of the breaks. Payment to the New York state
29 thoroughbred breeding and development fund by such franchised corpo-
30 ration shall be one-half of one per centum of total daily on-track pari-
31 mutuel pools resulting from regular, multiple and exotic bets and three
32 per centum of super exotic bets provided, however, that for the period
33 September tenth, nineteen hundred ninety-nine through March thirty-
34 first, two thousand one, such payment shall be six-tenths of one per
35 centum of regular, multiple and exotic pools and for the period April
36 first, two thousand one through December thirty-first, two thousand
37 [ten] eleven, such payment shall be seven-tenths of one per centum of
38 such pools.

39 § 11. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-
40 ing and breeding law, as amended by section 11 of part L-1 of chapter 57
41 of the laws of 2009, is amended to read as follows:

42 5. The provisions of this section shall expire and be of no further
43 force and effect after June thirtieth, two thousand [ten] eleven.

44 § 12. This act shall take effect immediately, provided that the amend-
45 ments to paragraph (a) of subdivision 1 of section 238 of the racing,
46 pari-mutuel wagering and breeding law made by section nine of this act
47 shall be subject to the expiration and reversion of such paragraph
48 pursuant to section 32 of chapter 115 of the laws of 2008, as amended,
49 when upon such date the provisions of section ten of this act shall take
50 effect.

51 PART BB

52 Section 1. Subsection (a) of section 951 of the tax law, as amended by
53 section 1 of part A of chapter 407 of the laws of 1999, is amended to
54 read as follows:

1 (a) Dates. For purposes of this article, any reference to the internal
2 revenue code means the United States Internal Revenue Code of 1986, with
3 all amendments enacted on or before July twenty-second, nineteen hundred
4 ninety-eight, and, unless specifically provided otherwise in this arti-
5 cle, any reference to December thirty-first, nineteen hundred seventy-
6 six or January first, nineteen hundred seventy-seven contained in the
7 provisions of such code which are applicable to the determination of the
8 tax imposed by this article shall be read as a reference to June thirti-
9 eth, nineteen hundred seventy-eight or July first, nineteen hundred
10 seventy-eight, respectively. Notwithstanding the foregoing, the unified
11 credit against the estate tax provided in section two thousand ten of
12 the internal revenue code shall, for purposes of this article, be the
13 amount [allowed by such section under the applicable federal law in
14 effect on the decedent's date of death. Provided, however, the amount of
15 such credit allowable for purposes of this article shall not exceed the
16 amount] allowable as if the federal [unified credit did not exceed the
17 tax due under section two thousand one of the internal revenue code on a
18 federal taxable estate of] applicable exclusion amount were one million
19 dollars.

20 § 2. This act shall take effect immediately and shall apply to estates
21 of decedents dying on or after January 1, 2010.

22

PART CC

23 Section 1. The article heading of article 29-A of the tax law, as
24 added by section 1 of part E of chapter 25 of the laws of 2009, is
25 amended to read as follows:

[TAX ON] MEDALLION TAXICAB [RIDES] OWNERS TAX

IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT

28 § 2. Subdivisions (d), (e), (f) and (h) of section 1280 of the tax
29 law, as added by section 1 of part E of chapter 25 of the laws of 2009,
30 are amended and two new subdivisions (i) and (j) are added to read as
31 follows:

32 (d) "Taxicab" means a motor vehicle [carrying passengers for hire in
33 the city, duly] licensed by the [taxi and limousine commission of the
34 city] TLC to carry passengers for hire and [permitted] authorized to
35 accept hails from prospective passengers in the street.

36 (e) ["Taxicab ride" means a taxicab ride provided to one or more
37 passengers to a given destination] "TLC" means the taxi and limousine
38 commission of the city.

39 (f) "Taxicab owner" or "owner" means a person [owning a taxicab and
40 shall include a purchaser under a reserve title contract, conditional
41 sales agreement or vendor's lien agreement. In addition, an owner shall
42 be deemed to include any lessee, licensee or bailee having the exclusive
43 use of a taxicab, under a lease or otherwise, for a period of thirty
44 days or more] licensed by the TLC to own and operate a medallion
45 taxicab.

46 (h) ["Taximeter" shall include any device which, when affixed to a
47 motor vehicle, is so constructed as to operate as a fare indicator and a
48 time and distance register for the purpose of automatically determining
49 the charge for which a passenger becomes liable] "Taxicab license" means
50 the authority granted by the TLC to an owner to operate a designated
51 vehicle as a taxicab in the city.

52 (i) "Medallion" means a plate issued by the TLC as the physical
53 evidence of a taxicab license, and affixed to the outside of such taxi-
54 cab.



1 (j) "Medallion taxicab" means a taxicab to which a medallion has been
2 affixed in accordance with applicable law and regulations.

3 § 3. Section 1281 of the tax law, as added by section 1 of part E of
4 chapter 25 of the laws of 2009, is amended to read as follows:

5 § 1281. Imposition of tax. In addition to any other tax imposed by
6 this chapter or other law, there is hereby imposed on every taxicab
7 owner a tax on the use of a medallion taxicab in the city, or on the
8 privilege of using the public highways or streets of the city for such
9 medallion taxicab, or on both such use and such privilege. The tax
10 imposed by this section shall be at the rate of one thousand seven
11 hundred fifty [cents per taxicab ride on every ride that originates in
12 the city and terminates anywhere within the territorial boundaries of
13 the MCTD] dollars per quarterly filing period for each medallion taxicab
14 that the TLC licenses such person to operate, whether or not operated.

15 § 4. Section 1282 of the tax law, as added by section 1 of part E of
16 chapter 25 of the laws of 2009, is amended to read as follows:

17 § 1282. Presumption of taxability. For the purpose of the proper
18 administration of this article and to prevent evasion of the tax imposed
19 by this article, it shall be presumed that every taxicab [ride that
20 originates in the city is] owner and every use of a medallion taxicab in
21 the city are subject to the tax imposed by this article with respect to
22 every medallion taxicab licensed to such owner to operate. This
23 presumption shall prevail until the contrary is proven, and the burden
24 of proving the contrary shall be on [the person liable for payment of
25 the tax] such owner.

26 § 5. Section 1283 of the tax law, as added by section 1 of part E of
27 chapter 25 of the laws of 2009, is amended to read as follows:

28 § 1283. [Special] Liability for tax, special provisions. Notwithstand-
29 ing any [provisions] provision of [this article] law to the contrary:
30 (a) [If a taxicab owner subject to the tax imposed by this article leas-
31 es, rents or otherwise furnishes a taxicab to an unrelated person who
32 uses the taxicab to provide taxicab rides originating in the city, then:
33 (1) the owner is deemed to provide such taxicab rides during the day or
34 other period that the unrelated person uses the taxicab to provide such
35 rides; (2) the tax imposed by this article shall be imposed on such
36 owner; and (3) the owner must pay the tax imposed by this article on the
37 number of rides subject to such tax provided by such unrelated person
38 during the day or other period.] Any person that the TLC has licensed as
39 the taxicab owner as of the end of each quarterly period for which a
40 return is required to be filed shall be liable for the tax imposed by
41 this article for that quarter, whether or not that person is the taxicab
42 owner for the entire quarter. If a taxicab owner transfers ownership of
43 a medallion to another person, the transferee shall be liable for the
44 tax imposed by this article with respect to use of the taxicab to which
45 that medallion relates for the entire quarterly period in which such
46 transfer occurs.

47 (b) Notwithstanding any law to the contrary: (1) Although the tax is
48 imposed on the taxicab owner, the [taxicab owner must pass along] city
49 or the TLC shall adopt or amend ordinances or regulations and shall
50 increase maximum taxicab vehicle lease rate or rental charge (including
51 any charge attributable to the rental of the medallion) and taxicab trip
52 fares to ensure that the economic incidence of the tax is ultimately
53 passed through to [the passenger] passengers, such as by [adjusting the
54 fare for the ride, and the] increasing taxicab trip fares and also by
55 increasing the amount of any such maximum lease rate or rental charge
56 (including any charge attributable to the rental of the medallion) made

1 by a taxicab owner or taxicab vehicle owner, as the case may be, to a
2 driver for the use of the taxicab vehicle. The passing along of such
3 economic incidence of the tax imposed by this article may not be
4 construed by any court or administrative body as imposing the tax on
5 [the] any person [or entity that pays the fare for a ride] other than
6 the taxicab owner. [A] The city [that regulates taxicabs or taxicab
7 fares] or the TLC must adjust the fares and any such maximum lease rate
8 or rental charge (including any charge attributable to the rental of the
9 medallion) authorized to include therein the pass-through of the econom-
10 ic incidence of the tax imposed by this article, as the rate of such tax
11 may from time to time change, and must timely require that any taximeter
12 in a taxicab used to provide rides that originate in the city be
13 adjusted to include the [tax] pass-through.

14 (2) A taxicab owner in such city must timely adjust the taximeter in
15 any of such person's taxicabs so that it reflects [the tax imposed by
16 this article] such pass-through prescribed by the city or TLC as such
17 [rate] pass-through amount may from time to time change.

18 (3) Neither the failure of such city or the TLC to adjust fares nor
19 the failure of a taxicab owner or other person to adjust a taximeter
20 will relieve any [person] taxicab owner liable for the tax imposed by
21 this article from the obligation to pay such tax timely, [at] in the
22 correct [rate] amount.

23 [(c) For purposes of this section, "unrelated person" means a person
24 other than a related person as defined for purposes of section fourteen
25 of this chapter.]

26 § 6. Section 1284 of the tax law, as added by section 1 of part E of
27 chapter 25 of the laws of 2009, is amended to read as follows:

28 § 1284. Returns. Every person liable for the tax imposed by this arti-
29 cle shall file a return quarterly with the commissioner. Each return
30 shall show the number of [rides] taxicabs in the quarter [for] with
31 respect to which the return is filed, together with such other informa-
32 tion as the commissioner may require. The returns required by this
33 section shall be filed for quarterly periods [ending] commencing on the
34 [last] first day of March, June, September, and December of each year,
35 and each return shall be filed [within twenty days after the end] on the
36 last day of the quarterly period covered thereby. [Every such person
37 shall also file a return with the commissioner for the period of Novem-
38 ber and December two thousand nine, by January twentieth, two thousand
39 ten, containing the information described above. If the commissioner
40 deems it necessary in order to ensure the payment of the tax imposed by
41 this article, the commissioner may require returns to be made for short-
42 er periods than prescribed by the foregoing provisions of this section,
43 and upon such dates as the commissioner may specify.] The form of
44 returns shall be prescribed by the commissioner and shall contain such
45 information as the commissioner may deem necessary for the proper admin-
46 istration of this article. The commissioner may require amended returns
47 to be filed within twenty days after notice and to contain the informa-
48 tion specified in the notice. The commissioner may require that the
49 returns be filed electronically.

50 § 7. Section 1285 of the tax law, as added by section 1 of part E of
51 chapter 25 of the laws of 2009, is amended to read as follows:

52 § 1285. Payment of tax. Every person required to file a return under
53 this article shall, at the time of filing such return, pay to the
54 commissioner the total of all tax imposed by this article, on the
55 correct number of [rides] taxicabs with respect to which such person is
56 subject to tax under this article. The amount so payable to the commis-

1 sioner for the period for which a return is required to be filed shall
2 be due and payable to the commissioner on the date limited for the
3 filing of the return for such period, without regard to whether a return
4 is filed or whether the return which is filed correctly shows the
5 correct number of [rides] taxicabs or the amount of tax due [thereon] on
6 such return. The commissioner may require that the tax be paid elec-
7 tronically.

8 § 8. Section 1286 of the tax law, as added by section 1 of part E of
9 chapter 25 of the laws of 2009, is amended to read as follows:

10 § 1286. Records to be kept. (a) Every person [required to pay] liable
11 for any tax imposed by this article shall keep:

12 (1) records of every [ride originating] taxicab the person uses in the
13 city [and of all amounts paid, charged or due thereon and of the tax
14 payable thereon], in such form as the commissioner may require[. Every
15 such person shall also keep a true and complete copy of every contract,
16 agreement, or arrangement concerning the lease, rental, or license to
17 use a taxicab for which the person is required to remit the tax on rides
18 imposed by this article on such person];

19 (2) a true and complete copy of every contract, agreement, or arrange-
20 ment concerning the sale, transfer, or assignment of a medallion or
21 taxicab;

22 (3) true and complete copies of any records required to be kept by the
23 TLC; and

24 (4) such other records and information that the commissioner may
25 require to perform his or her duties under this article.

26 [Such] (b) The records required to be kept by this section shall be
27 available for inspection and examination at any time upon demand by the
28 commissioner or the commissioner's duly authorized agent or employee and
29 shall be preserved for a period of three years, except that the commis-
30 sioner may consent to their destruction within that period or may
31 require that they be kept longer. Such records may be kept within the
32 meaning of this section when reproduced on any photographic, photostat-
33 ic, microfilm, micro-card, miniature photographic or other process which
34 actually reproduces the original record. If those records are maintained
35 in an electronic format, they must be made available and accessible to
36 the commissioner in electronic format.

37 § 9. Subdivision (b) of section 1287 of the tax law, as added by
38 section 1 of part E of chapter 25 of the laws of 2009, is amended to
39 read as follows:

40 (b) Notwithstanding the provisions of subdivision (a) of this section,
41 the commissioner may, in his or her discretion, permit the proper offi-
42 cer of [a] the city [that regulates taxicabs] or the duly authorized
43 representative of such officer, to inspect any return filed under this
44 article, or may furnish to such officer or such officer's authorized
45 representative an abstract of any such return or supply such person with
46 information concerning an item contained in any such return, or
47 disclosed by any investigation of tax liability under this article; but
48 such permission shall be granted or such information furnished only if
49 such city or the TLC shall have furnished the commissioner with all
50 information requested by the commissioner pursuant to this article and
51 shall have permitted the commissioner or the commissioner's authorized
52 representative to make any inspection of any records or reports concern-
53 ing taxicabs, and [their] taxicab owners [or operators] filed with or
54 possessed by such city or the TLC which the commissioner may have
55 requested from such city or the TLC. Provided, further, that the commis-
56 sioner may disclose to such city or the TLC whether or not a person

1 liable for the tax imposed by this article has paid all of the tax due
2 under this article as of any given date.

3 § 10. Section 1289 of the tax law, as added by section 1 of part E of
4 chapter 25 of the laws of 2009, is amended to read as follows:

5 § 1289. Cooperation by city. The city and the TLC shall cooperate with
6 and assist the commissioner to effect the purposes of this article and
7 the commissioner's responsibilities under this article. Such cooperation
8 shall include furnishing the names, addresses and all other information
9 concerning every taxicab owner, [operator] medallion, and [driver of
10 taxicabs] taxicab in the city, and the records of any of them, in the
11 city's possession or in the possession of any of its agencies or instru-
12 mentalities, together with any other information the commissioner
13 requests, all without cost to the commissioner.

14 § 11. Section 1290 of the tax law, as added by section 1 of part E of
15 chapter 25 of the laws of 2009, is amended to read as follows:

16 § 1290. Practice and procedure. The provisions of article twenty-seven
17 of this chapter shall apply with respect to the administration of and
18 procedure with respect to the tax imposed by this article in the same
19 manner and with the same force and effect as if the language of such
20 article twenty-seven had been incorporated in full into this article and
21 had expressly referred to the tax under this article, except to the
22 extent that any such provision is either inconsistent with a provision
23 of this article or is not relevant to this article. [Criminal penalties
24 provided in section one thousand eight hundred twenty of this chapter
25 shall apply in the same manner and with the same force and effect with
26 respect to this article.]

27 § 12. The tax law is amended by adding a new section 1821 to read as
28 follows:

29 § 1821. Medallion taxicab owners tax in the metropolitan commuter
30 transportation district. Any willful act or omission by any person which
31 constitutes a violation of any provision of article twenty-nine-A of
32 this chapter shall constitute a misdemeanor.

33 § 13. Subdivision 1 of section 181 of the general municipal law, as
34 amended by chapter 430 of the laws of 2003, is amended to read as
35 follows:

36 1. The registration and licensing of taxicabs and may limit the number
37 of taxicabs to be licensed and the county of Westchester may adopt ordi-
38 nances regulating the registration and licensing of taxicabs and limou-
39 sines and may limit the number to be licensed; and the county of Nassau
40 may adopt ordinances regulating the registration of taxicabs and limou-
41 sines; provided, however, that a city with a population of a million or
42 more in the metropolitan commuter transportation district established by
43 section twelve hundred sixty-two of the public authorities law shall
44 adopt or amend ordinances, regulations, and procedures that comply with
45 the requirements of article twenty-nine-A of the tax law, including
46 providing that the taxicab owner liable for tax under article twenty-
47 nine-A of the tax law shall, if such owner's medallion taxicab is driven
48 by a person other than such owner, be permitted to charge a lessee of
49 such taxicab, in addition to any lease fee authorized by the TLC of the
50 city, an amount equal to the annualized amount of such tax imposed by
51 article twenty-nine-A of the tax law divided by the number of lease
52 periods such vehicle is required to be operated each year by such TLC.
53 The terms "taxicab owner," "medallion," "medallion taxicab," "TLC," and
54 "city" shall have the same meanings they have in section twelve hundred
55 eighty of the tax law.



1 § 14. Section 19-504 of the administrative code of the city of New
2 York is amended by adding a new subdivision q to read as follows:

3 g. Notwithstanding any contrary provision of law, the commission shall
4 not issue or renew a taxicab license unless the applicant or holder, as
5 the case may be, avows under penalty of perjury that such person has
6 fully paid all and any tax imposed on such person by article twenty-
7 nine-A of the tax law. The commission may ask the commissioner of taxa-
8 tion and finance for confirmation that such person has paid such tax. If
9 the person does not make such avowal or the commissioner of taxation and
10 finance advises that such person owes any such tax, the commission shall
11 not issue or renew such license unless and until such person presents
12 proof that all such tax has been paid. Nothing in this subdivision shall
13 prevent a person to whom a taxicab license has been issued from moving
14 the medallion which evidences the license to a standby vehicle if the
15 TLC's regulations permit such person to do so.

16 § 15. The legislature hereby declares that it is an essential public
17 interest to support public transportation in the metropolitan commuter
18 transportation district, to enable citizens to commute to work and
19 school, to access health care and to engage in all the other activities
20 that are part of a healthy and robust society and article 29-A of the
21 tax law has been enacted and the revenues from the tax imposed by that
22 article have been expressly dedicated to support the metropolitan trans-
23 portation authority financial assistance fund for those purposes. Thus
24 the legislature considers it vital to the public health and welfare of
25 the people of the state of New York to ensure that the revenues from
26 article 29-A of the tax law continue unabated. Therefore, notwithstand-
27 ing any provision of law to the contrary, if any court of competent
28 jurisdiction issues any temporary restraining order, permanent injunc-
29 tion, or other injunctive relief, or any order or decision, or takes any
30 other action, that invalidates or prevents or delays from taking effect
31 all or any portion of article 29-A of the tax law as amended by this
32 act, then the sections of this act, other than sections eleven and
33 twelve of this act and this section, shall expire and article 29-A of
34 the tax law as it existed prior to the amendments made by this act,
35 other than by sections eleven and twelve of this act, shall be restored
36 effective the first day of the first month next commencing at least 30
37 days after any such court order, injunction, decision, or relief takes
38 effect, and such restored article 29-A shall apply to taxicab rides
39 occurring on and after such first day of such first month, provided,
40 however that sections eleven and twelve of this act shall apply to such
41 restored article 29-A. Provided, further, that, notwithstanding any
42 provision of law to the contrary, if any such order, injunction, or
43 other injunctive relief, or any order or decision, or any such other
44 action that invalidated or prevented or delayed from taking effect all
45 or any portion of such article 29-A shall be overturned, overruled, or
46 reversed or shall expire or be of no further force and effect, then the
47 sections of this act that expired, as described above in this section,
48 shall be restored and take effect the first day of a quarterly period,
49 as described in section 1284 of the tax law as amended by section six of
50 this act, next commencing at least 30 days after the date of such over-
51 turn, overrule, reversal, or expiration.

52 § 16. This act shall take effect June 1, 2010, and shall apply to uses
53 made and privileges exercised on and after that date; provided that:

54 (a) the provisions of article 29-A of the tax law in existence prior
55 to that date shall continue to apply to all liabilities accrued up to
56 that date;

1 (b) notwithstanding any contrary provision of law, a person required
2 to file a return and pay tax under sections 1284 and 1285 of the tax law
3 for the period commencing April 1, 2010, shall file that return and pay
4 tax by June 20, 2010, for the period commencing April 1, 2010, and
5 ending May 31, 2010; and

6 (c) sections nine, eleven and twelve of this act shall be deemed to
7 have taken effect on the same date and apply in the same manner that
8 part E of chapter 25 of the laws of 2009 took effect.

9 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
10 sion, section or part of this act shall be adjudged by any court of
11 competent jurisdiction to be invalid, such judgment shall not affect,
12 impair, or invalidate the remainder thereof, but shall be confined in
13 its operation to the clause, sentence, paragraph, subdivision, section
14 or part thereof directly involved in the controversy in which such judg-
15 ment shall have been rendered. It is hereby declared to be the intent of
16 the legislature that this act would have been enacted even if such
17 invalid provisions had not been included herein.

18 § 3. This act shall take effect immediately provided, however, that
19 the applicable effective date of Parts A through CC of this act shall be
20 as specifically set forth in the last section of such Parts.

