

STATE OF NEW YORK

S. 2811--C

A. 4011--C

SENATE - ASSEMBLY

February 1, 2011

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to
arti- cle seven of the Constitution -- read twice and ordered printed,
and when printed to be committed to the Committee on Finance --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

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 -- committee discharged, bill
amended, ordered reprinted as amended and recommitted to said committee
-- again reported from said committee with amendments, ordered
reprinted as amended and recommitted to said committee -- again reported
from said committee with amendments, ordered reprinted as amended
and recommitted to said committee

AN ACT to amend the abandoned property law, in relation to the
dormancy period of miscellaneous unclaimed property, payment of abandoned
prop- erty, publication of notices of abandoned property, and
written reports pertaining to payment of abandoned property; to amend the
tax law, in relation to reports by the commissioner regarding
abandoned property; to amend the state finance law, in relation to payments
from

the abandoned property fund; and to repeal certain provisions of
the abandoned property law and the tax law relating thereto (Part A);
to amend part N of chapter 61 of the laws of 2005 amending the tax
law relating to certain transactions and related information and
relating to the voluntary compliance initiative; in relation to extending
the disclosure and penalty provisions for transactions that present
the potential for tax avoidance (Part B); Intentionally omitted (Part
C); to amend the tax law, in relation to directing the crediting
of lottery prizes of more than six hundred dollars against liability
for any tax administered by the commissioner of taxation and finance
(Part D); to amend chapter 56 of the laws of 1998, amending the tax law
and other laws relating to extending the dates of application of
the investment tax credit under articles 9-A, 22 and 32 of the tax law
and to amend chapter 63 of the laws of 2000, amending the tax law
and

EXPLANATION--Matter in italics (underscored) is new; matter in
brackets

[-] is old law to be omitted.

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other laws relating to extending the dates of application of
the investment tax credit under article 33 of the tax law, in relation
to extending the effectiveness thereof (Part E); 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 F); to
amend the economic development law, the tax law and the public service
law, in relation to the excelsior jobs program (Part G);
Intentionally omitted (Part H); to amend the insurance law and the tax law,
in relation to conforming to the federal Dodd-Frank Wall Street
Reform and Consumer Protection Act; and to repeal paragraphs 8 and 9
of

thereto subsection (b) of section 2118 of the insurance law, relating
tax (Part I); to amend chapter 298 of the laws of 1985, amending the
by law relating to the franchise tax on banking corporations imposed
population the tax law, authorized to be imposed by any city having a
imposed of one million or more by chapter 772 of the laws of 1966 and
to by the administrative code of the city of New York and relating
and other provisions of the tax law, chapter 883 of the laws of 1975
such the administrative code of the city of New York which relates to
the franchise tax, to amend chapter 817 of the laws of 1987, amending
busi- tax law and the environmental conservation law, constituting the
chapter ness tax reform and rate reduction act of 1987, and to amend
administrative 525 of the laws of 1988, amending the tax law and the
in code of the city of New York relating to the imposition of taxes
certain the city of New York, in relation to the effectiveness of
adminis- provisions of such chapters; and to amend the tax law and the
transi- trative code of the city of New York, in relation to extending
(Part tional provisions relating to the federal Gramm-Leach-Bliley act
relation J); to amend the tax law and the criminal procedure law, in
consist- to updating the tax classification of diesel motor fuel to be
consistent ent with federal laws and make the diesel tax structure
the with this new tax treatment; and to repeal certain provisions of
relating tax law and the administrative code of the city of New York
tech- thereto (Part K); to amend the tax law, in relation to making a
of nical correction to the E85 definition; and to amend chapter 109
providing the laws of 2006, amending the tax law relating to
certain exemptions, reimbursements and credits from various taxes for
tax alternative fuels, in relation to extending the alternative fuels
of exemptions for one year (Part L); to amend section 11 of part EE

chapter 63 of the laws of 2000, amending the tax law and other laws relating to modifying the distribution of funds from the motor vehicle fuel excise tax, in relation to the distribution of motor vehicle fees (Part M); Intentionally omitted (Part N); to amend the tax law, in relation to video lottery free play allowance program (Part O); to amend the tax law, in relation to prize payout of certain instant lottery games (Part P); to amend the tax law, in relation to prize payout for certain multi-jurisdictional lottery games (Part Q); to amend the tax law, in relation to multi-jurisdictional video lottery gaming (Part R); and 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 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 S. 2811--C 3 A.
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relation to extending certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part S); to amend the tax law and the state finance law, in relation to application fees owed by retail dealers of businesses that sell tobacco products and owners of ciga-rette vending machines (Part T); to amend the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, in relation to establishing standards

depart- for electronic real property tax administration, allowing the
to ment of taxation and finance to use electronic communication means
filing furnish tax notices and other documents, mandatory electronic
sales of tax documents, debit cards issued for tax refunds, improving
the tax compliance and to repeal certain provisions of the tax law and
and administrative code of the city of New York relating thereto;
thereof providing for the repeal of certain provisions upon expiration
and (Part U); and to amend the economic development law, the tax law
economic the real property tax law, in relation to establishing the
tax transformation and facility redevelopment program and providing
such benefits under that program; and providing for the repeal of
provisions upon expiration thereof (Part V)

**The People of the State of New York, represented in Senate and
Assem- bly, 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 2011-
2012
3 state fiscal year. Each component is wholly contained within a
Part
4 identified as Parts A through V. 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.

12 PART A

13 Section 1. Paragraphs (a), (b) and (k) of subdivision 1 of section
300
14 of the abandoned property law, paragraph (a) as amended and
paragraph

15 (k) as relettered by chapter 15 of the laws of 1983, subparagraph
(iv)
16 of paragraph (a) as amended and subparagraph (v) of paragraph (a)
as
17 added by chapter 409 of the laws of 1994, paragraphs (b) and (k)
as
18 amended by chapter 78 of the laws of 1976, are amended to read
as
19 follows:

20 (a) Any amounts due on deposits or any amounts to which a
shareholder
21 of a savings and loan association or a credit union is entitled, held
or
22 owing by a banking organization, which shall have remained unclaimed
for
23 [~~five~~] three years by the person or persons appearing to be
entitled
24 thereto, including any interest or dividends credited thereon,
excepting

25 (i) any such amount which has been reduced or increased, exclusive
of
26 dividend or interest payment, within [~~five~~] three years, or
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1 (ii) any such amount which is represented by a passbook not in
the
2 possession of the banking organization, which has been presented
for

3 entry of dividend or interest credit within [~~five~~] three years, or
4 (iii) any such amount with respect to which the banking
organization

5 has on file written evidence received within [~~five~~] three years that
the
6 person or persons appearing to be entitled to such amounts had
knowledge

7 thereof, or
8 (iv) any such amount payable only at or by a branch office located
in

9 a foreign country, or payable in currency other than United
States
10 currency, or

11 (v) any such amount that is separately identifiable and has been
set

12 aside to meet the burial and related expenses of an individual,
provided

13 however that said amount shall be deemed abandoned property where
it
14 remains unclaimed for [~~five~~] three years subsequent to the death of
the
15 individual for whom the amount was deposited.

16 (b) Any amounts, together with all accumulations of interest or
other
17 increment thereon, held or owing by a banking organization for
the

18 payment of an interest in a bond and mortgage apportioned or
transferred

19 by it pursuant to subdivision seven of former section one hundred
eight-
20 y-eight of the banking law as it existed prior to July first,
nineteen
21 hundred thirty-seven, which shall have remained unclaimed by the
person
22 or persons appearing to be entitled thereto for [~~five~~] three years
after
23 the full and final liquidation of such mortgage, excepting
24 (i) any such amount which has been reduced by payment to the person
or
25 persons appearing to be entitled thereto within [~~five~~] three years,
or
26 (ii) any such amount which is represented by a certificate of
share
27 ownership not in the possession of the banking organization,
which
28 certificate has been presented for transfer within [~~five~~] three
years,
29 or
30 (iii) any such amount with respect to which the banking
organization
31 has on file written evidence received within [~~five~~] three years that
the
32 person or persons appearing to be entitled to such amount had
knowledge
33 thereof.
34 (k) Lost property or instruments as defined in section two
hundred
35 fifty-one of the personal property law which shall have been held
by a
36 safe deposit company or bank for [~~five~~] three years pursuant to
the
37 provisions of section two hundred fifty-six of the personal
property
38 law.
39 § 2. Paragraphs (a) and (c) of subdivision 1 of section 600 of
the
40 abandoned property law, paragraph (a) as amended by chapter 655 of
the
41 laws of 1978 and paragraph (c) as amended by chapter 281 of the laws
of
42 1980, are amended to read as follows:
43 (a) Any moneys including the monetary proceeds from the sale of
tangi-
44 ble personal property and securities or other intangible property
paid
45 into court, which, except as provided in section ten hundred of
this
46 chapter, shall have remained in the hands of any county treasurer,
or
47 the commissioner of finance of the city of New York, for [~~five~~]
three
48 years, together with all accumulations of interest or other
increment
49 thereon, less such legal fees as he may be entitled to.

50 (c) Any moneys paid to a support bureau of a family court, for
the
51 support of a spouse or child, which shall have remained in the
custody
52 of a county treasurer, or the commissioner of finance of the city of
New
53 York, for [~~five~~] three years, together with any interest due
thereon,
54 less such legal fees as he may be entitled to. For purposes of
this
55 section, "family court" includes the domestic relations court of
the
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1 city of New York prior to the first day of September, nineteen
hundred
2 sixty-two.
3 § 3. Subdivision 1 of section 1000 of the abandoned property law,
as
4 amended by chapter 670 of the laws of 1989, is amended to read
as
5 follows:
6 1. (a) Any moneys held or owing for the payment of an award made
by a
7 court in any condemnation proceeding and payable by a public
corporation
8 or other corporation possessing powers of condemnation, which shall
have
9 remained unclaimed by the person or persons appearing to be
entitled
10 thereto for [~~five~~] three years after confirmation by the court,
together
11 with any interest due thereon, less, when an award is payable
by a
12 public corporation, any amount due such public corporation at the
time
13 of title vesting for tax, water or any other liens on the same
parcel
14 the award was for, with any interest due thereon, and any amount
due
15 such public corporation at the time of title vesting or at the time
of
16 confirmation, whichever is later, for an assessment on the same
parcel
17 the award was for, with any interest due thereon, shall be deemed
aban-
18 doned property. In any condemnation proceedings in which the court
shall
19 have not made an award, any moneys paid into court, including
interest
20 thereon, shall be subject to the provisions of article six of this
chap-
21 ter and this section shall have no application thereto.
22 (b) The issuance of a warrant for such an award shall not prevent
an

23 award from being deemed abandoned property if such warrant is
unclaimed
24 [~~five~~] three years after confirmation of such award by the court.
25 § 4. Subdivision 1 of section 1300 of the abandoned property law
is
26 amended to read as follows:
27 1. Any unclaimed moneys arising from the sale of any personal
property
28 which shall have been pledged or mortgaged as security for the loan
of
29 money with a corporation, except a banking organization or a
licensed
30 lender, heretofore or hereafter organized by or pursuant to a
special
31 statute for the purpose of, and principally engaged in, giving aid
to
32 individuals by loans of money at interest upon the pledge or mortgage
of
33 personal property, and which has subjected itself to special
provisions
34 of the banking law, after deducting the amount of the loan, the
interest
35 then due on the same and any other lawful charges, which shall
have
36 remained in its possession for [~~six~~] three years from the date of
such
37 sale, shall be deemed abandoned property.
38 § 5. Subdivision 2 of section 1315 of the abandoned property law,
as
39 amended by section 2 of part II of chapter 57 of the laws of 2010,
is
40 amended to read as follows:
41 2. Except as otherwise provided by law, any amount
representing
42 unclaimed money or securities and held in escrow or otherwise by
any
43 corporation (other than a public corporation), joint stock
company,
44 individual, association of two or more individuals, committee or
busi-
45 ness trust, to ensure the performance of any duty or obligation,
shall
46 be deemed abandoned property when:
47 a. such amount is held or owing in this state, and
48 b. such amount has remained unclaimed by the person or persons
enti-
49 tled thereto for [~~five~~] three years, except
50 c. where the duty or obligation for which such amount was
deposited
51 has not been performed and such performance is still required,
such
52 amounts shall not be deemed abandoned property.
53 § 6. Paragraph (a) of subdivision 1 of section 1002 of the
abandoned
54 property law is amended to read as follows:
55 (a) That a report of all awards in condemnation proceedings
unclaimed

56 for more than [~~five~~] three years has been made to the state
comptroller

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1 and that a copy thereof is on file and open to public inspection, if
a
2 public corporation at the office of the chief fiscal officer thereof;
or
3 if not a public corporation at the principal office or place of
business

4 of such corporation;
5 § 7. Sections 301, 401, 701 and 1001 of the abandoned property law
are
6 REPEALED.

7 § 8. Subdivision 1 of section 302 of the abandoned property law
is
8 amended to read as follows:

9 1. [~~Within thirty days after making a report of abandoned
property
10 pursuant to the provisions of section three hundred one, such
banking]~~

11 Every banking organization shall cause to be published, on or before
the

12 first day of September in each year, a notice entitled: "NOTICE OF
NAMES

13 OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD
BY
14 (name of banking organization)."

15 § 9. The opening paragraph of subdivision 3 of section 302 of
the
16 abandoned property law, as amended by chapter 315 of the laws of
1954,

17 is amended to read as follows:

18 Such notice shall [~~, in accordance with the classification
prescribed~~

19 ~~by the state comptroller for the report pursuant to the provisions
of
20 section three hundred one,~~] set forth:

21 § 10. Section 303 of the abandoned property law is amended to read
as
22 follows:

23 § 303. Payment of abandoned property. 1. In such succeeding month
of
24 November, and on or before the tenth day thereof, every banking
organ-
25 ization shall pay or deliver to the state comptroller all
[~~abandoned~~

26 property [~~specified in such report, excepting such abandoned property
as~~

27 ~~since the date of such report shall have ceased to be abandoned]~~
which,

28 as of the thirtieth day of June next preceding, was deemed
abandoned

29 pursuant to section three hundred of this article, held or owing by
such

30 banking organization.

31 2. Such payment shall be accompanied by a [~~statement~~] true and
accu-
32 rate report setting forth such information as the state comptroller
may
33 require relative to such abandoned property [~~as shall have ceased to~~
~~be~~
34 ~~abandoned~~]. Such report shall include:
35 (a) with respect to amounts specified in paragraph (a) of
subdivision
36 one of section three hundred which are abandoned property:
37 (i) the name and last known address of the person or persons
appearing
38 from the records of such banking organization to be the owner of
any
39 such abandoned property;
40 (ii) the amount appearing from such records to be due such person
or
41 persons;
42 (iii) the date of the last transaction with respect to such
abandoned
43 property;
44 (iv) the nature and identifying number, if any, of such
abandoned
45 property; and
46 (v) such other identifying information as the state comptroller
may
47 require.
48 (b) with respect to amounts specified in paragraph (b) of
subdivision
49 one of section three hundred of this article which are abandoned
proper-
50 ty:
51 (i) the name and last known address, if any, of the person or
persons
52 appearing from the records of such banking organization to be
entitled
53 to receive such abandoned property;
54 (ii) the amount appearing from such records to be due such person
or
55 persons;
56 (iii) the amount of any interest or other increment due thereon;
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1 (iv) the date of the last transaction with respect to such
abandoned
2 property; and
3 (v) such other identifying information as the state comptroller
may
4 require.
5 (c) with respect to amounts specified in paragraph (c) of
subdivision
6 one of section three hundred of this article which are abandoned
proper-
7 ty:
8 (i) the name and last known address, if any, of the person or
persons

9 appearing from the records of such banking organization to be
entitled
10 to receive such abandoned property;
11 (ii) a description of such abandoned property including
identifying
12 numbers, if any, and the amount appearing from such records to be due
or
13 payable;
14 (iii) the amount of any interest or other increment due thereon;
15 (iv) the date such abandoned property was payable or demandable;
16 (v) the amount and identifying number of any such instrument where
the
17 payee thereof is unknown to the banking organization; and
18 (vi) such other identifying information as the state comptroller
may
19 require.
20 (d) with respect to amounts specified in paragraph (d) of
subdivision
21 one of section three hundred of this article which are abandoned
proper-
22 ty:
23 (i) the name and last known address, if any, of the person or
persons
24 appearing from the records of such banking organization to be the
owner
25 of any such abandoned property; and
26 (ii) such other information as the state comptroller may
reasonably
27 require.
28 3. Such report shall be in such form as the state comptroller
may
29 prescribe. All names of persons appearing in the section of such
report
30 relating to deposits, appearing to be the owners thereof, shall be
list-
31 ed in alphabetical order. Abandoned property other than deposits
listed
32 in such report shall be classified in such manner as the state
comp-
33 troller may prescribe, and names of persons appearing to be entitled
to
34 such abandoned property appearing in such report shall be listed
alpha-
35 betically within each such classification.
36 4. No banking organization in this state, organized under or
subject
37 to the provisions of section six hundred eleven of title twelve of
the
38 United States code, shall be required to file reports of abandoned
prop-
39 erty relating to any amounts received on or before the thirtieth day
of
40 June, nineteen hundred seventy-seven, unless, as of the effective
date
41 of this subdivision, such amounts remain recorded and shown in the
books

42 and records of such banking organization as an outstanding
obligation
43 thereof.
44 § 11. Subdivision 1 of section 402 of the abandoned property law
is
45 amended to read as follows:
46 1. [~~Within thirty days after making a report of abandoned~~
property
47 ~~pursuant to the provisions of section four hundred one,~~] Every
such
48 corporation shall cause to be published, on or before the first day
of
49 September in each year, a notice entitled: "NOTICE OF CERTAIN
UNCLAIMED
50 PROPERTY HELD BY (name of corporation)."
51 § 12. Section 403 of the abandoned property law is amended to read
as
52 follows:
53 § 403. Payment of abandoned property. 1. In such succeeding month
of
54 October, and on or before the tenth day thereof, every such
corporation
55 shall pay to the state comptroller all [~~abandoned~~] property
[~~specified~~
56 ~~in the last preceding report made to the state comptroller pursuant~~
~~to~~
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1 ~~section four hundred one, excepting such abandoned property as since~~
~~the~~
2 ~~date of such report shall have ceased to be abandoned~~] which, as of
the
3 first day of July next preceding, was deemed abandoned pursuant
to
4 section four hundred of this article, held or owing by such
corporation.
5 2. Such payment shall be accompanied by a [~~statement~~] true and
accu-
6 rate report setting forth such information as the state comptroller
may
7 require relating to such abandoned property [~~as shall have ceased to~~
~~be~~
8 ~~abandoned~~] including:
9 (a) as to abandoned property specified in paragraphs (a) and (b)
of
10 subdivision one of section four hundred of this article:
11 (i) the name and last known address of each depositor or
subscriber
12 appearing from the records of such corporation to be entitled to
receive
13 any such abandoned property;
14 (ii) the date when the deposit was made or amount paid;
15 (iii) the amount of such deposit or payment;
16 (iv) the date when utility services furnished to such consumer
or
17 subscriber ceased;

18 (v) any sums due and unpaid to the corporation by such consumer
or
19 subscriber, with interest thereon from the date of termination
of
20 service;
21 (vi) the amount of interest due upon such deposit or payment on
any
22 balance thereof that has remained with such corporation and not
been
23 credited to such consumer's or subscriber's account;
24 (vii) the amount of such abandoned property; and
25 (viii) such other identifying information as the state comptroller
may
26 require.
27 (b) as to abandoned property specified in paragraph (c) of
subdivision
28 one of section four hundred of this article:
29 (i) the name and last known address of each person appearing from
the
30 records of such corporation to be entitled to receive the same;
31 (ii) the amount appearing from such records to be due each
such
32 person;
33 (iii) the date payment became due; and
34 (iv) such other identifying information as the state comptroller
may
35 require.
36 3. Such report shall be in such form and the abandoned property
listed
37 shall be classified in such manner as the state comptroller
may
38 prescribe. Names of persons entitled to such abandoned property
appear-
39 ing in such report shall be listed in alphabetical order within
each
40 such classification.
41 § 13. Paragraph (b) of subdivision 1 of section 700 of the
abandoned
42 property law, as amended by chapter 78 of the laws of 1976, is
amended
43 to read as follows:
44 (b) Any moneys held or owing by any life insurance corporation
which
45 are payable under other kinds of life insurance policies to any
person
46 whose last-known address, according to the records of the
corporation,
47 is within this state, where the insured, if living, would[~~, prior to~~
~~the~~
48 ~~thirty-first day of December next preceding the report required~~
~~by~~
49 ~~section seven hundred one,~~] have attained the limiting age under
the
50 mortality table on which the reserves are based, exclusive of
51 (i) any policy which has within three years been assigned,
readjusted,

52 kept in force by payment of premium, reinstated or subjected to loan,
or
53 (ii) any policy with respect to which such corporation has on
file
54 written evidence received within three years that the person or
persons
55 apparently entitled to claim thereunder have knowledge thereof.
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1 § 14. Subdivision 1 of section 702 of the abandoned property law,
as
2 amended by chapter 497 of the laws of 1944, is amended to read
as
3 follows:

4 1. [~~Within thirty days after making a report of abandoned~~
~~property~~
5 ~~pursuant to the provisions of section seven hundred one,~~ Every
such
6 life insurance corporation shall cause to be published, on or before
the
7 first day of May in each year, a notice entitled: "NOTICE OF NAMES
OF
8 PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY
(name
9 of life insurance corporation)."

10 § 15. The opening paragraph of subdivision 3 of section 702 of
the
11 abandoned property law, as amended by chapter 315 of the laws of
1954,
12 is amended to read as follows:

13 Such notice shall [~~in accordance with the classification~~
~~prescribed~~
14 ~~by the state comptroller for the report pursuant to the provisions~~
~~of~~
15 ~~section seven hundred one,~~] set forth:

16 § 16. Section 703 of the abandoned property law, subdivision 1
as
17 amended by chapter 497 of the laws of 1944, is amended to read
as
18 follows:

19 § 703. Payment of abandoned property. 1. In such succeeding month
of
20 September, and on or before the succeeding tenth day thereof, every
such
21 life insurance corporation shall pay to the state comptroller all

[~~aban-~~
22 ~~doned~~] property [~~specified in such report, excepting such~~
~~abandoned~~
23 ~~property as since the date of such report shall have ceased to be~~
~~aban-~~
24 ~~doned~~] which, as of the first day of January next preceding, was
deemed
25 abandoned pursuant to section seven hundred of this article, held
or
26 owing by such life insurance corporation.

27 2. Such payment shall be accompanied by a [~~statement~~] true and
accu-
28 rate report setting forth such information as the state comptroller
may
29 require relative to such abandoned property [~~as shall have ceased to~~
~~be~~
30 ~~abandoned~~] including:
31 (a) the name and last known address of any person or persons
appearing
32 from the records of such life insurance corporation to be entitled
to
33 receive any such abandoned property;
34 (b) the amount appearing from the records of such corporation to
be
35 due;
36 (c) the policy number and policy age of the insured;
37 (d) the date such abandoned property was payable;
38 (e) the names and last known addresses of each beneficiary
appearing
39 in the records of the insurer; and
40 (f) such other identifying information as the state comptroller
may
41 require.
42 3. Such report shall be in such form and the abandoned property
listed
43 shall be classified in such manner as the state comptroller
may
44 prescribe. Names of persons appearing to be entitled to such property
or
45 of beneficiaries appearing in such report shall be listed in
alphabet-
46 ical order within each such classification.
47 § 17. Section 1003 of the abandoned property law is amended to read
as
48 follows:
49 § 1003. Payment of abandoned property. 1. In such succeeding month
of
50 February, and on or before the tenth day thereof, every such public
and
51 other corporation shall pay to the state comptroller all
[~~abandoned~~]
52 property [~~specified in such report, excepting such abandoned property~~
~~as~~
53 ~~since the date of such report shall have ceased to be abandoned~~]
which,
54 as of the first day of July next preceding, was deemed abandoned
pursu-
55 ant to section one thousand of this article, held or owing by
such
56 corporation.

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A.

1 2. Such payment shall be accompanied by a [~~statement~~] true and
accu-
2 rate report setting forth such information as the state comptroller
may

3 require in relation to such abandoned property [~~as shall have ceased~~
4 ~~to be abandoned~~] including the title of the proceeding, the name and
5 last known address of the awardee if such award is made to a known owner,
6 the date of confirmation, the damage parcel number, the amount of the
7 award, and the amount of any interest due thereon and, if a deduction
8 is claimed for liens by a public corporation, the nature and amount of
9 such liens and any interest claimed thereon.

10 § 18. The opening paragraph of subdivision 1 of section 1002 of
the abandoned property law is amended to read as follows:

11 ~~[Within thirty days after making a report of abandoned property~~
12 ~~pursuant to the provisions of section ten hundred one,]~~ Every such
13 corporation shall cause to be published, on or before the first day of
14 November in each year, once in a newspaper of general circulation in
15 each

16 county where a damaged parcel included in such report is
located a

17 notice, approved as to form by the state comptroller, stating:

18 § 19. Paragraph (b) of subdivision 6 of section 1406 of the
abandoned property law, as amended by chapter 643 of the laws of 1989, is
19 amended

20 to read as follows:

21 (b) Notwithstanding any other provision of law, payment for any
22 abandoned condemnation award heretofore or hereafter paid to the state
23 comptroller pursuant to sections ten hundred and ten hundred three of
24 this chapter for the benefit of known persons may be made by the state
25 comptroller on sworn application, where the name and last known address
26 of the person or persons entitled to payment and any other
27 identifying information as appearing on the records of the court into which
28 payment was made is included in the report required to be filed pursuant
29 to section ten hundred [~~one~~] three of this chapter and when the identity
30 of the claimant as the person entitled to payment is established to
31 the satisfaction of the state comptroller. When, in the determination of
32 the state comptroller, the identifying information included in the report
is

33 insufficient to enable the state comptroller to make a determination
of
34 entitlement, such claim must be established only on order of the
court
35 as set forth in paragraph (a) of this subdivision.

36 § 20. Subdivision 3 of section 1311 of the abandoned property law
is
37 REPEALED.

38 § 21. Subdivision 4 of section 1311 of the abandoned property law,
as
39 added by chapter 778 of the laws of 1956, is renumbered subdivision
3
40 and amended to read as follows:

41 3. On or before the tenth day of October in each year, every
such
42 corporation shall pay to the state comptroller all [~~abandoned~~]
property

43 [~~specified in the last preceding report made to the state
comptroller
44 pursuant to this section, excepting such abandoned property as since
the
45 date of the report shall have ceased to be abandoned~~] which, as of
the
46 first day of July next preceding, was deemed abandoned pursuant to
this
47 section, held or owing by such corporation. Such payment shall be
accom-
48 panied by a true and accurate report containing such identifying
infor-
49 mation as the state comptroller may require.

50 § 22. Subdivision 2 of section 1316 of the abandoned property law
is
51 REPEALED.

52 § 23. Subdivisions 3 and 4 of section 1316 of the abandoned
property
53 law, as amended by chapter 166 of the laws of 1991, are
renumbered

54 subdivisions 2 and 3 and amended to read as follows:

55 2. [~~Within thirty days following the filing of the report of
abandoned
56 property with the comptroller pursuant to subdivision two of
this~~

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1 ~~section, the~~ Every insurer shall cause to be published, on or
before
2 the first day of May in each year, a list of such abandoned property
in
3 the same manner as that prescribed for life insurance companies
by
4 section seven hundred two of this chapter.

5 3. Such [~~abandoned~~] property which was deemed abandoned pursuant
to
6 subdivision one of this section shall be paid or delivered to the
comp-

7 troller within the first ten days of September of each year.
Such
8 payment shall be accompanied by a true and accurate report that shall
be
9 in such form and manner as the state comptroller may prescribe.
10 § 24. Section 1408 of the abandoned property law is REPEALED.
11 § 25. The opening paragraph of section 503 of the abandoned
property
12 law, as amended by chapter 815 of the laws of 1963, is amended to
read
13 as follows:
14 Each payment or delivery of abandoned property pursuant to
section
15 five hundred two shall be accompanied by a [verified] written
report,
16 affirmed as true and accurate under penalty of perjury, in such form
as
17 the state comptroller shall prescribe, setting forth:
18 § 26. The opening paragraph of section 513 of the abandoned
property
19 law, as amended by chapter 815 of the laws of 1963, is amended to
read
20 as follows:
21 A payment or delivery pursuant to section five hundred twelve shall
be
22 accompanied by a [verified] written report, affirmed as true and
accu-
23 rate under penalty of perjury, in such form as the state comptroller
may
24 prescribe, setting forth:
25 § 27. Subdivision 4 of section 513 of the abandoned property law
is
26 REPEALED.
27 § 28. Subdivision 5 of section 513 of the abandoned property law,
as
28 added by chapter 617 of the laws of 1973, is renumbered subdivision
4
29 and amended to read as follows:
30 4. In case any broker or dealer determines the property which shall
be
31 deemed abandoned property pursuant to subdivisions one and three
of
32 section five hundred eleven by the method provided in subdivision six
of
33 that section, the payment of such abandoned property shall be
accompa-
34 nied by a [verified] written report, affirmed as true and accurate
under
35 penalty of perjury, in such form as the state comptroller may
prescribe,
36 which, among other things, shall set forth the computation of the
aver-
37 age factor of such broker or dealer pursuant to subdivision six
of
38 section five hundred eleven. Each [verified] written report
accompanying

39 the payment of abandoned property determined pursuant to subdivision
six
40 of section five hundred eleven shall contain an undertaking by
the
41 broker or dealer making such payment to honor all claims to the
extent
42 herein provided whenever made against such broker or dealer by
any
43 person determined by him or proved to be entitled to receive from him
a
44 stock or cash dividend received in this state during the calendar
year
45 covered by such report as the holder of record of a security or
an
46 interest payment on a security received in this state during such
year.
47 Such undertaking shall obligate the broker or dealer to honor any
such
48 claim provided that the payment of abandoned property relating to
the
49 year in question determined pursuant to subdivision six of section
five
50 hundred eleven made by such broker or dealer to the state
comptroller
51 has been exhausted as a result of reimbursements by the state
comp-
52 troller to the broker or dealer or to other persons claiming such
aban-
53 doned property as provided in subdivision two of section five
hundred
54 fourteen. To the extent related to any stock dividend, any such
claim
55 shall not exceed the fair market value of such stock dividend on
the

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1 thirty-first day of December of the year in which such stock
dividend
2 was deemed abandoned property.
3 § 29. The opening paragraph of section 603 of the abandoned
property
4 law is amended to read as follows:
5 Each such payment of abandoned property pursuant to section
six
6 hundred two shall be accompanied by a [verified] written
report,
7 affirmed as true and accurate under penalty of perjury, classified
as
8 the state comptroller shall prescribe, setting forth:
9 § 30. Subdivision 2 of section 1304 of the abandoned property law,
as
10 added by chapter 698 of the laws of 1943, is amended to read as
follows:
11 2. Any such abandoned property shall be paid or delivered forthwith
to

12 the state comptroller. Such payment shall be accompanied by a
[verified]
13 written report, affirmed as true and accurate under penalty of
perjury,
14 setting forth such identifying information as the state comptroller
may
15 require.
16 § 31. Section 1305 of the abandoned property law, as amended by
chap-
17 ter 149 of the laws of 1977, is amended to read as follows:
18 § 1305. Unclaimed surplus moneys after recovery of cost of
public
19 assistance and care.
20 Any amount comprising a balance credited to an estate or person
pursu-
21 ant to sections one hundred fifty-two-b or three hundred sixty of
the
22 social services law which, on June thirtieth in any year, has for
four
23 years from the date of such credit remained unclaimed by the estate
or
24 person entitled thereto shall be deemed abandoned property.
25 On or before the tenth day of September in each year every
public
26 welfare official shall pay such abandoned property to the state
comp-
27 troller. Such payment shall be accompanied by a [verified]
written
28 report, affirmed as true and accurate under penalty of perjury, in
such
29 form as the state comptroller may prescribe.
30 § 32. Subdivision 3 of section 1307 of the abandoned property law,
as
31 added by chapter 700 of the laws of 1943, is amended to read as
follows:
32 3. Any sheriff or county treasurer holding any such abandoned
proper-
33 ty, shall pay the same to the state comptroller immediately after
such
34 property shall have been deemed abandoned. Each such payment shall
be
35 accompanied by a [verified] written report, affirmed as true and
accu-
36 rate under penalty of perjury, which shall set forth such information
as
37 the state comptroller may require.
38 § 33. Subdivision 5 of section 1313 of the abandoned property law
is
39 REPEALED.
40 § 34. Subdivision 2 of section 1314 of the abandoned property law,
as
41 added by chapter 228 of the laws of 1977, is amended to read as
follows:
42 2. Such transfer of moneys shall be accompanied by a [verified]
writ-
43 ten report, affirmed as true and accurate under penalty of perjury,
in

44 such form as the state comptroller may prescribe.
45 § 34-a. Section 1401 of the abandoned property law is amended to
read

46 as follows:
47 § 1401. Comptroller to maintain public record. The state
comptroller
48 shall maintain a public record of all names and last known addresses
of
49 the person or persons appearing to be entitled to abandoned
property,

50 heretofore paid to the state or hereafter paid or delivered to the
state

51 comptroller pursuant to this chapter. In addition, the state
comp-

52 troller shall maintain a searchable database on the state
comptroller's

53 website in such form and manner as the state comptroller deems

54 reasonable and appropriate, subject to the requirements set forth in
55 section

56 fourteen hundred two of this article. The state comptroller shall
place

a disclaimer prominently on his or her website advising that
this

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1 searchable database does not contain complete information with
respect

2 to abandoned property paid to the state or paid or delivered to
the

3 state comptroller, and provide contact information prominently on
the

4 website to enable interested parties to inquire whether they appear
on

5 an abandoned property listing. Other identifying information set
forth

6 in any report or record made or delivered to the state comptroller
shall

7 be retained by him but shall be considered confidential and may
be

8 disclosed only in the discretion of the state comptroller. The
state

9 comptroller shall not reveal the amount of any abandoned
property,

10 except to a person who has presented satisfactory proof of an
interest

11 in or title to such property.

12 § 35. Section 1402 of the abandoned property law is REPEALED and a
new

13 section 1402 is added to read as follows:

14 § 1402. Publication of abandoned property by state comptroller. 1.
(a)

15 Notwithstanding anything to the contrary set forth in section
fourteen

16 hundred one of this article, the comptroller shall maintain on his
or

17 her website in a readily searchable format, a list of such
abandoned
18 property as has been paid or delivered to the comptroller that has
a
19 value of over twenty dollars, for a period of twelve months prior
to
20 April first, two thousand eleven, and any such abandoned property as
has
21 been paid or delivered to the comptroller thereafter that has a value
of
22 over twenty dollars, provided that when sixty or more months has
passed
23 after such property has been paid or delivered to the comptroller,
the
24 comptroller shall not be required to post such property on his or
her
25 website if he or she does not deem it reasonable and appropriate to
do
26 so.

27 (b) The provisions of this subdivision shall not apply to
abandoned
28 property paid pursuant to section one thousand three hundred of
this
29 chapter or section four hundred twenty-four of the vehicle and
traffic
30 law.

31 2. Such list shall be in such form and classified in such manner
as
32 the state comptroller shall determine and shall include:

33 (a) the names and last known addresses of all persons appearing
from
34 the records in the comptroller's office, as set forth in the
report
35 filed by the holder, to be entitled to receive such abandoned
property
36 exceeding twenty dollars in value; and

37 (b) such other information as the state comptroller may determine.

38 3. Such listing shall include a statement that: (a) information
about
39 the property and its return to the owner may be available to a
person
40 having a legal or beneficial interest in the property, upon request
to
41 the comptroller; and

42 (b) a public record is maintained in the office of the state
comp-
43 troller of all abandoned property in accordance with section
fourteen
44 hundred one of this article; and that a claim for any such
abandoned

45 property should be filed with the state comptroller at his or her
office
46 in the city of Albany.

47 4. Notwithstanding the foregoing provisions of this section, the
state
48 comptroller may omit from such list the name and last known address
of

49 any person where special circumstances make it desirable that
such
50 information be withheld.

51 § 36. Subdivision 12 of section 211 of the tax law is REPEALED
and a

52 new subdivision 12 is added to read as follows:

53 12. (a) Notwithstanding the provisions of subdivision eight of
this

54 section, the commissioner and the comptroller shall enter into an
agree-

55 ment pursuant to which the commissioner shall, upon request, provide
the

56 comptroller with a report, not more frequently than annually,
with

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1 respect to corporations or other entities which have filed a
business

2 corporation franchise tax report under this article for any taxable
year

3 within ten calendar years prior to the report to the comptroller
made

4 pursuant to this subdivision, providing the following information,
to

5 the extent that such information is readily available from the
depart-

6 ment's system for identifying taxpayer indicative data:

7 (1) business name and legal name, if different;

8 (2) business address and mailing address;

9 (3) federal employer identification number;

10 (4) date entered into business.

11 (b) Each report to the comptroller made pursuant to this
subdivision

12 shall list each corporation or other entity with respect to which
such

13 report is made according to the total assets reported for the end of
the

14 year on its most recent available business corporation franchise
tax

15 report, in descending order. Such reports to the comptroller shall
not

16 disclose the actual amount of total assets reported on such
business

17 corporation franchise tax reports.

18 (c) The information provided to the comptroller pursuant to
this

19 subdivision shall be used only for administration and enforcement of
the

20 abandoned property law. The comptroller may redisclose the
information

21 provided under this subdivision only to the extent necessary
for

22 enforcement or administration of the abandoned property law.

23 (d) The reports to the comptroller required under this
subdivision

24 shall be submitted by electronic means or in some other format which
is
25 mutually acceptable to the comptroller and the commissioner. The
written
26 agreement with the comptroller shall set forth the procedures
for
27 providing the information the commissioner is allowed to disclose
pursu-
28 ant to this subdivision.

29 (e) Notwithstanding article six of the public officers law or
any
30 other provision of law, the reports to be furnished to the
comptroller
31 pursuant to this subdivision shall not be open to the public
for
32 inspection.

33 § 37. Subdivision 2 of section 95 of the state finance law, as
amended
34 by section 10-a of part RR of chapter 57 of the laws of 2008, is
amended
35 to read as follows:

36 2. Annually, the comptroller shall file with the director of the
budg-
37 et an itemized estimate of the expenses for the administration of
the
38 abandoned property fund for the ensuing year. The director of the
budget
39 may revise and amend such estimate. After such revision and
amendment,
40 if any, such director shall approve the same for inclusion in the
execu-
41 tive budget. No moneys shall be paid out of the abandoned property
fund
42 for [~~such~~] expenses unless expenditures therefor shall have been
author-
43 ized by law; provided, however, that the expenses [~~of any~~
audits
44 ~~conducted by the state comptroller to assure compliance by holders~~
of
45 ~~unclaimed property with the provisions of the abandoned property~~
law]
46 for the administration of the provisions of the abandoned property
law
47 paid by the state comptroller pursuant to an appropriation, shall
be
48 reimbursed by a transfer of funds no more frequently than monthly,
from
49 any balance remaining in the abandoned property fund prior to
any
50 payment made pursuant to the provisions of subdivision three of
this
51 section.

52 § 38. This act shall take effect immediately.

1 Section 1. Section 12 of part N of chapter 61 of the laws of
2005,
2 amending the tax law relating to certain transactions and related
infor-
3 mation and relating to the voluntary compliance initiative,
subdivision
4 (iii) as amended by section 16 of subpart J of part V-1 of chapter 57
of
5 the laws of 2009, is amended to read as follows:
6 § 12. This act shall take effect immediately; provided, however,
that
7 (i) section one of this act shall apply to all disclosure
statements
8 described in paragraph 1 of subdivision (a) of section 25 of the
tax
9 law, as added by section one of this act, that were required to be
filed
10 with the internal revenue service at any time with respect to
"listed
11 transactions" as described in such paragraph 1, and shall apply to
all
12 disclosure statements described in paragraph 1 of subdivision (a)
of
13 section 25 of the tax law, as added by section one of this act,
that
14 were required to be filed with the internal revenue service with
respect
15 to "reportable transactions" as described in such paragraph 1,
other
16 than "listed transactions", in which a taxpayer participated during
any
17 taxable year for which the statute of limitations for assessment has
not
18 expired as of the date this act shall take effect, and shall apply
to
19 returns or statements described in such paragraph 1 required to be
filed
20 by taxpayers (or persons as described in such paragraph) with
the
21 commissioner of taxation and finance on or after the sixtieth day
after
22 this act shall have become a law; and
23 (ii) sections two through four and seven through nine of this
act
24 shall apply to any tax liability for which the statute of limitations
on
25 assessment has not expired as of the date this act shall take
effect;
26 and
27 (iii) provided, further, that the provisions of this act,
except
28 section five of this act, shall expire and be deemed repealed July
1,
29 ~~[2011. The commissioner of taxation and finance shall cause to~~
~~be~~

30 ~~prepared a written report on the tax shelter law. Notwithstanding~~
any
31 ~~other provision of law to the contrary, such report shall include,~~
but
32 ~~not be limited to, statistical information regarding the listed~~
and
33 ~~reportable transactions and avoidance transactions under this~~
act. A
34 ~~copy of such report shall be delivered to the governor, the~~
temporary
35 ~~president of the senate, and the speaker of the assembly no later~~
than
36 ~~April 1, 2007;] 2015;~~ provided, that, such expiration and repeal
shall
37 not affect any requirement imposed pursuant to this act.
38 § 2. This act shall take effect immediately.

39 PART C

40 Intentionally omitted.

41 PART D

42 Section 1. The tax law is amended by adding a new section 1613-c
to
43 read as follows:

44 § 1613-c. Crediting of lottery prizes against liabilities for
taxes
45 administered by the commissioner. (1) The director, on behalf of
the
46 division, shall enter into a written agreement with the commissioner,
on
47 behalf of the department, within sixty days of the effective date
of
48 this section, which will set forth procedures for crediting
lottery
49 prizes of more than six hundred dollars awarded to holders of
winning
50 lottery tickets, whether individuals, corporations, associations,
compa-
51 nies, partnerships, limited liability partnerships or companies,
part-
52 ners, members, managers, estates, trust fiduciaries or entities,
against

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1 past due tax liabilities owed by such holders for any tax
administered
2 by the commissioner, about which the director has been notified by
the
3 commissioner pursuant to the provisions of such agreement.
4 (2) Such agreement shall apply to any past due tax liability
which
5 arises from (i) an enforceable warrant or judgment, (ii) an
enforceable

6 determination of an administrative body which is no longer subject
to
7 administrative or judicial review, or (iii) an assessment or
determi-
8 nation (including self-assessment or self-assessed determination)
which
9 has become final or finally and irrevocably fixed and no longer
subject
10 to administrative or judicial review.
11 (3) Such agreement shall include:
12 (a) the procedure under which the department will notify the
division
13 of tax liabilities, including when the division will be notified and
the
14 content of that notification;
15 (b) the procedure for reimbursement of the division by the
department
16 for the cost of carrying out the procedures authorized by this
section;
17 and
18 (c) any other matters the parties to the agreement deem necessary
to
19 carry out the provisions of this section.
20 (4) Prior to awarding lottery prizes of more than six hundred
dollars,
21 the division shall review the most recent notice of tax
liabilities
22 provided by the commissioner. For holders of winning lottery
tickets
23 identified on that notice, the division shall credit to the
department
24 the amount of each holder's prize necessary to satisfy that holder's
tax
25 liability, and the remainder of the prize shall be awarded to the
holder
26 of the winning ticket.
27 (5) If the division has also received a notice of liability of a
prize
28 winner for past-due support or public assistance benefits pursuant
to
29 section sixteen hundred thirteen-a or sixteen hundred thirteen-b of
this
30 article, then the amount of any prize shall be first credited or
applied
31 to the income tax required to be withheld by law, then as required
by
32 section sixteen hundred thirteen-a or sixteen hundred thirteen-b of
this
33 article, then to the past due tax liability as required by this
section.
34 The balance will then be paid to the holder of the winning lottery
tick-
35 et.
36 (6) The division shall certify to the comptroller the total amount
of
37 the lottery prize to be credited against past due tax liabilities
and

38 the remainder of the prize to be awarded to the holder of the
winning
39 lottery ticket.
40 (7) The division shall notify the holder of the winning lottery
tick-
41 et, in writing, of the total amount of the lottery prize
credited
42 against past due tax liabilities and the remainder of the prize to
be
43 awarded to the holder. That notice must also advise the holder that
the
44 department will provide separate notice, in writing, of the
procedure
45 for and time frame by which the holder may contest such crediting.
46 (8) The department shall notify the holder of the winning
lottery
47 ticket, in writing, of the amount of a prize to be credited against
past
48 due tax liabilities and the procedure for and time frame by which
the
49 holder may contest the crediting of the prize.
50 (9) From the time the division is notified by the department of a
past
51 due tax liability of a holder of a winning lottery ticket, the
division
52 shall be relieved from all liability to the holder, and the
holder's
53 heirs, representatives, estate, successors or assigns for the amount
of
54 a prize certified to the comptroller to be credited against past due
tax
55 liabilities and the holder and the holder's heirs,
representatives,
56 estate, successor or assigns shall have no right to commence a
court

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A.

1 action or proceeding or to any other legal recourse against the
division
2 to recover any amount certified to the comptroller to be
credited
3 against past due tax liabilities. Provided however, nothing herein
shall
4 be construed to prohibit a holder of a winning lottery ticket and
the
5 holder's heirs, representatives, estate, successors or assigns
from
6 proceeding against the department to recover the part of the
prize
7 certified to the comptroller and credited to past due tax
liabilities
8 which is greater than the amount of past due tax liabilities owed
by
9 that holder on the date of certification.
10 (10) Notwithstanding any law to the contrary, the department and
its

11 officers and employees may furnish to the division any abstract of
12 any
13 tax return or report, or any information concerning an item contained
14 in
15 any such return or report or disclosed by any investigation of
16 tax
17 liability under this chapter, but only for the purpose of
18 crediting
19 lottery prizes against past due tax liabilities described in
20 subdivision
21 two of this section.

22 § 2. This act shall take effect on the first of August next
succeeding
23 the date on which it shall have become a law, provided that the
depart-
24 ment of taxation and finance and the division of the lottery may
take
25 steps to effectuate the written agreement between the director of
the
26 division of the lottery and the commissioner of taxation and
finance
27 prior to such effective date.

28 PART E

29 Section 1. Paragraph c of subdivision 2 of section 124 of part A
of
30 chapter 56 of the laws of 1998, amending the tax law and other
laws
31 relating to extending the dates of application of the investment
tax
32 credit under articles 9-A, 22 and 32 of the tax law, as amended
by
33 section 1 of part YY-1 of chapter 57 of the laws of 2008, is amended
to
34 read as follows:
35 c. Sections fifteen through twenty-seven of this act shall apply
to
36 property placed in service on or after October 1, 1998 and before
Octo-
37 ber 1, ~~2011~~ 2015.

38 § 2. Section 2 of part L of chapter 63 of the laws of 2000,
amending
39 the tax law and other laws relating to extending the dates of
applica-
40 tion of the investment tax credit under article 33 of the tax law,
as
41 amended by section 2 of part YY-1 of chapter 57 of the laws of 2008,
is
42 amended to read as follows:
43 § 2. This act shall take effect immediately and shall apply to
proper-
44 ty placed in service on or after January 1, 2002 and before October
1,
45 ~~2011~~ 2015.
46 § 3. This act shall take effect immediately.

42

PART F

43 Section 1. Subdivision 4 of section 22 of the public housing law,
as
44 amended by section 1 of part P of chapter 57 of the laws of 2010,
is
45 amended to read as follows:

46 4. Statewide limitation. The aggregate dollar amount of credit
which
47 the commissioner may allocate to eligible low-income buildings
under
48 this article shall be [~~twenty-eight~~] thirty-two million dollars.
The
49 limitation provided by this subdivision applies only to allocation
of
50 the aggregate dollar amount of credit by the commissioner, and does
not
51 apply to allowance to a taxpayer of the credit with respect to an
eligi-
52 ble low-income building for each year of the credit period.
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1 § 2. This act shall take effect immediately.

2

PART G

3 Section 1. Subdivision 12 of section 352 of the economic
development
4 law, as added by section 1 of part MM of chapter 59 of the laws of
2010,
5 is amended to read as follows:

6 12. "Preliminary schedule of benefits" means the maximum
aggregate
7 amount of each component of the tax credit that a participant in
the
8 excelsior jobs program is eligible to receive pursuant to this
article.

9 The schedule shall indicate the annual amount of each component of
the
10 credit a participant may claim in each of its [~~five~~] ten years of
eligi-
11 bility. The preliminary schedule of benefits shall be issued by
the
12 department when the department approves the application for
admission
13 into the program. The commissioner may amend that schedule,
provided
14 that the commissioner complies with the credit caps in section
three
15 hundred fifty-nine of this article.

16 § 2. Section 353 of the economic development law, as added by
section
17 1 of part MM of chapter 59 of the laws of 2010, is amended to read
as
18 follows:

19 § 353. Eligibility criteria. 1. To be a participant in the
excelsior
20 jobs program, a business entity shall operate in New York state
predomi-
21 nantly:
22 (a) as a financial services data center or a financial services
back
23 office operation;
24 (b) in manufacturing;
25 (c) in software development and new media;
26 (d) in scientific research and development;
27 (e) in agriculture;
28 (f) in the creation or expansion of back office operations in
the
29 state;
30 (g) in a distribution center; or
31 (h) in an industry with significant potential for private-
sector
32 economic growth and development in this state as established by
the
33 commissioner in regulations promulgated pursuant to this article.
In
34 promulgating such regulations the commissioner shall include job
and
35 investment criteria.

36 2. When determining whether an applicant is operating predominately
in
37 one of the industries listed in subdivision one of this section,
the
38 commissioner will examine the nature of the business activity at
the
39 location for the proposed project and will make eligibility
determi-
40 nations based on such activity.

41 3. For the purposes of this article, in order to participate in
the
42 excelsior jobs program, a business entity operating predominantly
in
43 manufacturing must create at least twenty-five net new jobs; a
business
44 entity operating predominately in agriculture must create at least
ten
45 net new jobs; a business entity operating predominantly as a
financial
46 service data center or financial services customer back office
operation
47 must create at least one hundred net new jobs; a business entity
operat-
48 ing predominantly in scientific research and development must create
at
49 least ten net new jobs; a business entity operating predominantly
in
50 software development must create at least ten net new jobs; a
business
51 entity creating or expanding back office operations or a
distribution

52 center in the state must create at least one hundred fifty net new
jobs,
53 notwithstanding subdivision [~~four~~] five of this section; or a
business

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1 entity must be a regionally significant project as defined in this
arti-

2 cle; or
3 [~~3.~~] 4. A business entity operating predominantly in one of the
indus-
4 tries referenced in paragraphs (a) through (h) of subdivision one
of
5 this section but which does not meet the job requirements of
subdivision

6 [~~two~~] three of this section must have at least fifty full-time
job
7 equivalents and must demonstrate that its benefit-cost ratio is at
least
8 ten to one.

9 [~~4.~~] 5. A not-for-profit business entity, a business entity
whose

10 primary function is the provision of services including
personal

11 services, business services, or the provision of utilities, and a
busi-

12 ness entity engaged predominantly in the retail or entertainment
indus-

13 try, and a company engaged in the generation or distribution of
elec-

14 tricity, the distribution of natural gas, or the production of
steam

15 associated with the generation of electricity are not eligible
to

16 receive the tax credit described in this article.

17 [~~5.~~] 6. A business entity must be in compliance with all
worker

18 protection and environmental laws and regulations. In addition, a
busi-

19 ness entity may not owe past due state taxes or local property taxes.

20 § 3. Section 354 of the economic development law, as added by
section

21 1 of part MM of chapter 59 of the laws of 2010, is amended to read
as

22 follows:

23 § 354. Application and approval process. 1. A business enterprise
must

24 submit a completed application as prescribed by the commissioner.
An

25 application may be recommended by entities, including but not
limited

26 to, those created pursuant to subdivision (e) of section nine
hundred

27 fifty-seven of the general municipal law.

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) Agree to allow the department of labor to share its tax
and
34 employer information with the department. However, any
information
35 shared as a result of this agreement shall not be available for
disclo-
36 sure or inspection under the state freedom of information law.

37 (c) Allow the department and its agents access to any and all
books
38 and records the department may require to monitor compliance.

39 (d) Agree to be permanently [~~decertified from the empire zones
program~~
40 ~~if admitted into the excelsior jobs program, effective for the
first~~
41 ~~taxable year that the business enterprise may claim the excelsior
jobs~~
42 ~~program credit and for all subsequent taxable years]~~ disqualified
for
43 empire zone benefits at any location or locations that qualify
for
44 excelsior jobs program benefits if admitted into the excelsior
jobs
45 program.

46 (e) Provide the following information to the department upon
request:

47 (i) a plan outlining the schedule for meeting the job and
investment
48 requirements as set forth in subdivisions [~~two~~] three and [~~three~~]
four
49 of section three hundred fifty-three of this article. Such plan
must

50 include details on job titles and expected salaries;

51 (ii) the prior three years of federal and state income or
franchise

52 tax returns, unemployment insurance quarterly returns, real property
tax
53 bills and audited financial statements;

54 (iii) the amount and description of projected qualified
investments

55 for which it plans to claim the excelsior investment tax credit;
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1 (iv) 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 excelsior research and development credit;
and
5 (v) the employer identification or social security numbers for
all
6 related persons to the applicant, including those of any members of
a
7 limited liability company or partners in a partnership.
8 (f) Provide a clear and detailed presentation of all related
persons
9 to the applicant to assure the department that jobs are not being
shift-
10 ed within the state.
11 (g) Certify, under penalty of perjury, that it is in
substantial
12 compliance with all environmental, worker protection, and local,
state,
13 and federal tax laws.
14 3. After reviewing a business enterprise's completed application
and
15 determining that the business enterprise will meet the conditions
set
16 forth in subdivisions [~~two~~] three and [~~three~~] four of section
three
17 hundred fifty-three of this article, the department may admit the
appli-
18 cant into the program and provide the applicant with a certificate
of
19 eligibility and a preliminary schedule of benefits by year based on
the
20 applicant's projections as set forth in its application. This
prelimi-
21 nary schedule of benefits delineates the maximum possible benefits
an
22 applicant may receive.
23 4. In order to become a participant in the program, an applicant
must
24 submit evidence [~~of achieving job and investment requirements~~] that
it
25 satisfies the eligibility criteria specified in section three
hundred
26 fifty-three of this article and subdivision two of this section in
such
27 form as the commissioner may prescribe. After reviewing such
evidence
28 and finding it sufficient, the department shall certify the applicant
as
29 a participant and issue to that participant a certificate of tax
credit
30 for one taxable year. To receive a certificate of tax credit for
subse-
31 quent taxable years, the participant must submit to the department
a
32 performance report demonstrating that the participant continues
to
33 satisfy the eligibility criteria specified in section three
hundred

34 fifty-three of this article and subdivision two of this section. If
such
35 eligibility criteria is met, a participant can receive tax credits
based
36 on interim job, investment or research and development
milestones. A

37 participant's increase in employment, qualified investment, or
federal
38 research and development tax credit attributable to research and
devel-
39 opment activities in New York state above its projections listed in
its
40 application shall not result in an increase in tax benefits under
this
41 article. However, if the participant's expenditures are less than
the
42 estimated amounts, the credit shall be less than the estimate.

43 5. A participant may claim tax benefits commencing in the first
taxa-
44 ble year that the business enterprise receives a certificate of
tax
45 credit or the first taxable year listed on its preliminary schedule
of
46 benefits, whichever is later. A participant may claim such benefits
for
47 the next [~~four~~] nine consecutive taxable years, provided that
the
48 participant demonstrates to the department that it continues to
satisfy
49 the eligibility criteria specified in section three hundred fifty-
three
50 of this article and subdivision two of this section in each of
those
51 taxable years.

52 § 4. Section 355 of the economic development law, as added by
section
53 1 of part MM of chapter 59 of the laws of 2010, is amended to read
as
54 follows:

55 § 355. Excelsior jobs program credit. 1. Excelsior jobs tax
credit
56 component. A participant in the excelsior jobs program shall be
eligible

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1 to claim a credit for each net new job it creates in New York state.
The

2 amount of such credit per job shall be equal to the [~~sum of the~~
~~follow-~~
3 ~~ing: five percent of the amount of remuneration equal to or less~~
~~than~~
4 ~~fifty thousand dollars; four percent of the amount of remuneration~~
~~in~~
5 ~~excess of fifty thousand dollars and equal to or less than seventy-~~
~~five~~

6 ~~thousand dollars; and 1.33 percent of the amount of remuneration~~
in
7 ~~excess of seventy-five thousand dollars. However, the amount of~~
the
8 ~~credit for each net new job shall not exceed five thousand~~
dollars]

9 product of the gross wages paid and 6.85 percent.

10 2. Excelsior investment tax credit component. A participant in
the
11 excelsior jobs program shall be eligible to claim a credit on
qualified
12 investments. The credit shall be equal to two percent of the cost
or
13 other basis for federal income tax purposes of the qualified
investment.

14 A participant may not claim both the excelsior investment tax
credit
15 component and the investment tax credit set forth in subdivision
twelve
16 of section two hundred ten, subsection (a) of section six hundred
six,

17 ~~[or]~~ subsection (i) of section fourteen hundred fifty-six, or
subdivi-

18 sion (q) of section fifteen hundred eleven of the tax law for the
same

19 property in any taxable year, except that a participant may claim
both

20 the excelsior investment tax credit component and the investment
tax

21 credit for research and development property. In addition, a
taxpayer

22 who or which is qualified to claim the excelsior investment tax
credit

23 component and is also qualified to claim the brownfield tangible
proper-

24 ty credit component under section twenty-one of the tax law may
claim

25 either the excelsior investment tax credit component or such
tangible

26 property credit component, but not both with regard to a
particular

27 piece of property. A credit may not be claimed until a business
enter-

28 prise has received a certificate of tax credit, provided that
qualified

29 investments made on or after the issuance of the certificate of
eligi-

30 bility but before the issuance of the certificate of tax credit to
the

31 business enterprise, may be claimed in the first taxable year for
which

32 the business enterprise is allowed to claim the credit.
Expenses

33 incurred prior to the date the certificate of eligibility is issued
are

34 not eligible to be included in the calculation of the credit.

35 3. Excelsior research and development tax credit component. A
partic-
36 ipant in the excelsior jobs program shall be eligible to claim a
credit
37 equal to [~~ten~~] fifty percent of the portion of the participant's
federal
38 research and development tax credit that relates to the
participant's
39 research and development expenditures in New York state during the
taxa-
40 ble year; provided however, the excelsior research and development
tax
41 credit shall not exceed three percent of the qualified research
and
42 development expenditures attributable to activities conducted in
New
43 York state. If the federal research and development credit has
expired,
44 then the research and development expenditures relating to the
federal
45 research and development credit shall be calculated as if the
federal
46 research and development credit structure and definition in effect
in
47 two thousand nine were still in effect. Notwithstanding any
other
48 provision of this chapter to the contrary, research and
development
49 expenditures in this state, including salary or wage expenses for
jobs
50 related to research and development activities in this state, may
be
51 used as the basis for the excelsior research and development tax
credit
52 component and the qualified emerging technology company
facilities,
53 operations and training credit under the tax law.

54 4. Excelsior real property tax credit component. (a) A participant

in

55 the excelsior jobs program who either qualified as a regionally
signif-

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1 icant project or is located in an investment zone shall be eligible
to

2 claim a credit for a period of [~~five~~] ten years.

3 (b) The credit in year one shall be equal to fifty percent of
the

4 eligible real property taxes on the real property comprising
the

5 regionally significant project or located in the investment zone

[~~that~~
6 ~~were assessed and paid in the year immediately prior to application~~].

In

7 the remaining years the credit shall be computed according to
the

8 following schedule:
9 Year two: [~~forty~~] forty-five percent of eligible real property
taxes
10 on the real property comprising the regionally significant project
or
11 located in the investment zone [~~that were assessed and paid in the~~
~~year~~
12 ~~immediately prior to application~~];
13 Year three: [~~thirty~~] forty percent of eligible real property taxes
on
14 the real property comprising the regionally significant project
or
15 located in the investment zone [~~that were assessed and paid in the~~
~~year~~
16 ~~immediately prior to application~~];
17 Year four: [~~twenty~~] thirty-five percent of eligible real
property
18 taxes on real property comprising the regionally significant project
or
19 located in the investment zone [~~that were assessed and paid in the~~
~~year~~
20 ~~immediately prior to application~~]; [and]
21 Year five: [~~ten~~] thirty percent of eligible real property taxes on
the
22 real property comprising the regionally significant project or
located
23 in the investment zone [~~that were assessed and paid in the year~~
~~imme-~~
24 ~~diately prior to application~~];
25 Year six: twenty-five percent of eligible real property taxes on
the
26 real property comprising the regionally significant project or
located
27 in the investment zone;
28 Year seven: twenty percent of eligible real property taxes on the
real
29 property comprising the regionally significant project or located in
the
30 investment zone;
31 Year eight: fifteen percent of eligible real property taxes on
the
32 real property comprising the regionally significant project or
located
33 in the investment zone;
34 Year nine: ten percent of eligible real property taxes on the
real
35 property comprising the regionally significant project or located in
the
36 investment zone; and
37 Year ten: five percent of eligible real property taxes on the
real
38 property comprising the regionally significant project or located in
the
39 investment zone.
40 (c) For purposes of this credit, the term "eligible real
property

41 taxes" shall have the same meaning as in subdivision (e) of
section
42 fifteen of the tax law, provided that such subdivision (e) shall be
read
43 as if it specifically referenced the excelsior jobs program and
partic-
44 ipants in that program.

45 (d) In calculating the excelsior real property tax credit and
deter-
46 mining the maximum aggregate amount of such credit component in
the
47 preliminary schedule of benefits, the commissioner shall include
any
48 improvements projected to be made by the taxpayer to the
property
49 comprising the regionally significant project or located in the
invest-
50 ment zone as listed in its application for participation in the
excels-
51 ior jobs program.

52 5. Refundability of credits. The tax credit components established
in
53 this section shall be refundable as provided in the tax law. If
a
54 participant fails to satisfy the eligibility criteria in any one
year,
55 it will lose the ability to claim credit for that year. The event
of

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1 such failure shall not extend the original [~~five-year~~] ten-year
eligi-
2 bility period.

3 6. Claim of tax credit. The business enterprise shall be allowed
to
4 claim the credit as prescribed in section thirty-one of the tax law.

5 7. For availability of special excelsior jobs program rates
governing
6 the provision of gas or electric service, see subdivision twelve-d
of
7 section sixty-six of the public service law. Such special excelsior
jobs
8 program rates may remain available to participants as defined in
this
9 article for a period of up to ten years commencing in the first
taxable
10 year that the participant receives a certificate of tax credit, or
the
11 first taxable year listed on its preliminary schedule of
benefits,
12 whichever is later. Provided however, if a participant is removed
from
13 the excelsior jobs program pursuant to this article, the excelsior
jobs
14 program rates may be denied.

15 § 5. Subdivision 3 of section 356 of the economic development law,
as
16 added by section 1 of part MM of chapter 59 of the laws of 2010,
is
17 amended to read as follows:

18 3. The commissioner shall solely determine the eligibility of
any
19 applicant applying for entry into the program and shall remove
any
20 participant from the program for failing to meet any of the
requirements

21 set forth in subdivision two of section three hundred fifty-four of
this
22 article, or for failing to meet the minimum job or investment
require-
23 ments set forth in subdivisions [~~two~~] three and [~~three~~] four of
section
24 three hundred fifty-three of this article.

25 § 6. Section 359 of the economic development law, as added by
section
26 1 of part MM of chapter 59 of the laws of 2010, is amended to read
as
27 follows:

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

34 Credit components in the aggregate	With respect to
35 shall not exceed:	taxable years
36	beginning in:

37 \$ 50 million	2011
38 \$ 100 million	2012
39 \$ 150 million	2013
40 \$ 200 million	2014
41 \$ 250 million	2015
42 \$ 200 million	2016
43 \$ [150] <u>200</u> million	2017
44 \$ [100] <u>200</u> million	2018
45 \$ [50] <u>200</u> million	2019
46 <u>\$ 200 million</u>	<u>2020</u>
47 <u>\$ 200 million</u>	<u>2021</u>
48 <u>\$ 150 million</u>	<u>2022</u>
49 <u>\$ 100 million</u>	<u>2023</u>
50 <u>\$ 50 million</u>	<u>2024</u>

51 Twenty-five percent of tax credits shall be allocated to
businesses

52 accepted into the program under subdivision [~~three~~] four of
section

53 three hundred fifty-three of this article and seventy-five percent
of
54 tax credits shall be allocated to businesses accepted into the
program
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1 under subdivision [~~two~~] three of section three hundred fifty-three
of
2 this article.

3 Provided, however, if by September thirtieth of a calendar year,
the
4 department has not allocated the full amount of credits available
in
5 that year to either: (i) businesses accepted into the program
under
6 subdivision [~~three~~] four of section three hundred fifty-three of
this
7 article or (ii) businesses accepted into the program under
subdivision

8 [~~two~~] three of section three hundred fifty-three of this article,
the
9 commissioner may allocate any remaining tax credits to businesses
refer-
10 enced in paragraphs (i) and (ii) of this section as needed;
provided,
11 however, that under no circumstances may the statutory cap be
exceeded.

12 § 7. Subdivisions (a), (b), (f), and (g) of section 31 of the tax
law,
13 as added by section 2 of part MM of chapter 59 of the laws of 2010,
are

14 amended to read as follows:

15 (a) General. A taxpayer subject to tax under section one
hundred
16 eighty-five, article nine-A, twenty-two, thirty-two or thirty-three
of
17 this chapter shall be allowed a credit against such tax, pursuant to
the
18 provisions referenced in subdivision (g) of this section. The amount
of
19 the credit, allowable for up to [~~five~~] ten consecutive taxable years,
is

20 the sum of the following four credit components:

- 21 (1) the excelsior jobs tax credit component;
- 22 (2) the excelsior investment tax credit component;
- 23 (3) the excelsior research and development tax credit component;

and

- 24 (4) the excelsior real property tax credit component.

25 (b) To be eligible for the excelsior jobs program credit, the
taxpayer

26 shall have been issued a "certificate of tax credit" by the
department
27 of economic development pursuant to subdivision four of section
three

28 hundred fifty-four of the economic development law, which
certificate

29 shall set forth the amount of each credit component that may be
claimed
30 for the taxable year. A taxpayer may claim such credit for [~~five~~
ten
31 consecutive taxable years commencing in the first taxable year that
the
32 taxpayer receives a certificate of tax credit or the first taxable
year
33 listed on its preliminary schedule of benefits, whichever is later.
The
34 taxpayer shall be allowed to claim only the amount listed on the certifi-
35 cate of tax credit for that taxable year. Such certificate
[~~should~~
36 must be attached to the taxpayer's return. No cost or expense paid
or
37 incurred by the taxpayer shall be the basis for more than one
component
38 of this credit or any other tax credit, except as provided in
section
39 three hundred fifty-five of the economic development law.
40 (f) Credit recapture. If a certificate of eligibility or a
certificate
41 of tax credit issued by the department of economic development
under
42 article seventeen of the economic development law is revoked by
such
43 department because the taxpayer does not meet the eligibility
require-
44 ment set forth in subdivision six of section three hundred fifty-
three
45 of the economic development law, the amount of credit described in
this
46 section and claimed by the taxpayer prior to that revocation shall
be
47 added back to [~~income~~] tax in the taxable year in which any such
revoca-
48 tion becomes final.
49 (g) Cross-references. For application of the credit provided for
in
50 this section, see the following provisions of this chapter:
51 (1) article 9: section 187-q.
52 (2) article 9-A: section 210: subdivision 41.
53 [~~(2)~~] (3) article 22: section 606: subsection (qq).
54 [~~(3)~~] (4) article 32: section 1456: subsection (u).
55 [~~(4)~~] (5) article 33: section 1511: subdivision (y).
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1 § 8. Section 66 of the public service law is amended by adding a
new
2 subdivision 12-d to read as follows:
3 12-d. Notwithstanding any other provision of law, upon application
of
4 a gas or electric corporation, the commission shall authorize
such

5 corporation to charge a special excelsior jobs program rate equal to
the
6 incremental cost of providing service to participants in the
excelsior
7 jobs program as defined in article seventeen of the economic
development
8 law.

9 § 9. The tax law is amended by adding a new section 187-q to read
as
10 follows:

11 § 187-q. Excelsior jobs program credit. (a) Allowance of credit.

A
12 taxpayer will be allowed a credit, to be computed as provided in
section
13 thirty-one of this chapter, against the tax imposed by section
one
14 hundred eighty-five of this article.

15 (b) Application of credit. The credit allowed under this section
for
16 any taxable year may not reduce the tax due for such year to less
than
17 the minimum tax fixed in this article. However, if the amount of
credit
18 allowed under this section for any taxable year reduces the tax to
such
19 amount, any amount of credit thus not deductible in such taxable
year
20 will be treated as an overpayment of tax to be credited or refunded
in
21 accordance with the provisions of section one thousand eighty-six
of
22 this chapter. Provided, however, the provisions of subsection (c)
of
23 section one thousand eighty-eight of this chapter notwithstanding,
no
24 interest will be paid thereon.

25 § 10. This act shall take effect immediately.

26 PART H

27 Intentionally omitted.

28 PART I

29 Section 1. The opening paragraph of paragraph 1 of subsection (b)
of
30 section 1101 of the insurance law, as amended by chapter 614 of the
laws
31 of 1997, is amended to read as follows:

32 Except as provided in paragraph two, three ~~[e*]~~, three-a, or seven
of
33 this subsection, any of the following acts in this state, effected
by
34 mail from outside this state or otherwise, by any person, firm,
associ-
35 ation, corporation or joint-stock company shall constitute doing
an

19 requirements:
20 (A) the person employs or retains a qualified risk manager to
negoti-
21 ate insurance coverage;
22 (B) the person has paid aggregate nationwide
commercial
23 property/casualty insurance premiums in excess of one hundred
thousand
24 dollars in the immediately preceding twelve months; and
25 (C) (i) the person meets at least one of the following criteria:
26 (I) the person possesses a net worth in excess of twenty
million
27 dollars, as such amount is adjusted pursuant to item (ii) of
this
28 subparagraph;
29 (II) the person generates annual revenues in excess of fifty
million
30 dollars, as such amount is adjusted pursuant to item (ii) of
this
31 subparagraph;
32 (III) the person employs more than five hundred full-time or full-
time
33 equivalent employees per individual insured or is a member of an
affil-
34 iated group employing more than one thousand employees in the
aggregate;
35 (IV) the person is a not-for-profit organization or public
entity
36 generating annual budgeted expenditures of at least thirty
million
37 dollars, as such amount is adjusted pursuant to item (ii) of
this
38 subparagraph; or
39 (V) the person is a municipality with a population in excess of
fifty
40 thousand persons;
41 (ii) Effective on the fifth January first occurring after July
twen-
42 ty-first, two thousand ten and each fifth January first occurring
there-
43 after, the amounts in clauses (I), (II), and (IV) of item (i) of
this
44 subparagraph shall be adjusted to reflect the percentage change for
such
45 five-year period in the Consumer Price Index for All Urban
Consumers
46 published by the Bureau of Labor Statistics of the United States
Depart-
47 ment of Labor;
48 (3) "Insured's home state" means:
49 (A) the state in which an insured maintains its principal place
of
50 business or, in the case of an individual, the individual's
principal
51 residence;
52 (B) if one hundred percent of the insured risk is located outside
of

53 the state referred to in subparagraph (A) of this paragraph, then
54 the state to which the greatest percentage of the insured's taxable
55 premium for that insurance contract is allocated;

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1 (C) if more than one insured from an affiliated group are
2 named insureds on a single insurance contract, then the insured's home
3 state, as determined pursuant to subparagraph (A) of this paragraph, of
4 the member of the affiliated group that has the largest percentage of
5 premi- um attributed to it under such insurance contract; or

6 (D) in the case of a group policy:
7 (i) when the group policyholder pays one hundred percent of the
8 premi- um from its own funds, then the insured's home state, as
9 determined pursuant to subparagraph (A) of this paragraph, of the group

10 policyhold- er; or
11 (ii) when the group policyholder does not pay one hundred percent
12 of the premium from its own funds, then the home state, as
13 determined pursuant to subparagraph (A) of this paragraph, of the group member;

14 (4) With respect to determining an insured's home state,
15 "principal place of business" means the state where:

16 (A) the insured maintains its headquarters and where the
17 insured's high-level officers direct, control, and coordinate the business
18 activ- ities; or

19 (B) if the insured's high-level officers direct, control, and
20 coordi- nate the business activities in more than one state, or if the
21 insured's principal place of business is located outside any state, then the

22 state to which the greatest percentage of the insured's taxable premium
23 for that insurance contract is allocated;

24 (5) With respect to determining an insured's home state,
25 "principal residence" means the state:
26 (A) where the individual resides for the greatest number of
27 days during a calendar year; or

28 (B) if the insured's principal residence is located outside any
29 state, the state to which the greatest percentage of the insured's
30 taxable

30 premium for that insurance contract is allocated;
31 (6) "Property/casualty insurance" means any kind of insurance as
spec-
32 ified in subsection (a) of section one thousand one hundred thirteen
of
33 this chapter, except insurance issued pursuant to paragraph one,
two,
34 three, fifteen, eighteen or thirty-one of subsection (a) of section
one
35 thousand one hundred thirteen of this chapter or insurance
substantially
36 similar thereto; and
37 (7) With respect to an exempt commercial purchaser, "qualified
risk
38 manager" means, with respect to a policyholder of commercial
insurance,
39 a person who meets all of the following requirements:
40 (A) the person is an employee of, or third-party consultant
retained
41 by, the commercial policyholder;
42 (B) the person provides skilled services in loss prevention,
loss
43 reduction, or risk and insurance coverage analysis, and purchase
of
44 insurance;
45 (C) the person:
46 (i) (I) has a bachelor's degree or higher from an accredited college
or
47 university in risk management, business administration, finance,
econom-
48 ics, or any other field determined by the superintendent to
demonstrate
49 minimum competence in risk management; and
50 (II) (aa) has three years of experience in risk financing,
claims
51 administration, loss prevention, risk and insurance analysis,
or
52 purchasing commercial lines of insurance; or
53 (bb) has:
54 (aaa) a designation as a chartered property and casualty
underwriter
55 (in this clause referred to as a "CPCU") issued by the American
Insti-
56 tute for CPCU/Insurance Institute of America;
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1 (bbb) a designation as an associate in risk management (ARM) issued
by
2 the American Institute for CPCU/Insurance Institute of America;
3 (ccc) a designation as certified risk manager (CRM) issued by
the
4 National Alliance for Insurance Education & Research;
5 (ddd) a designation as a Risk and Insurance Management Society
(RIMS)
6 fellow (RF) issued by the Global Risk Management Institute; or

7 (eee) any other designation, certification, or license determined
by
8 the superintendent to demonstrate minimum competency in risk
management;
9 (ii) (I) has at least seven years of experience in risk
financing,
10 claims administration, loss prevention, risk and insurance
coverage
11 analysis, or purchasing commercial lines of insurance; and
12 (II) has any one of the designations specified in subclauses
(aaa)
13 through (eee) of subitem (bb) of clause (II) of item (i) of this
subpar-
14 agraph;
15 (iii) has at least ten years of experience in risk financing,
claims
16 administration, loss prevention, risk and insurance coverage
analysis,
17 or purchasing commercial lines of insurance; or
18 (iv) has a graduate degree from an accredited college or university
in
19 risk management, business administration, finance, economics, or
any
20 other field determined by the superintendent to demonstrate
minimum
21 competence in risk management.

22 § 5. Paragraphs 7 and 8 of subsection (c) of section 2101 of
the

23 insurance law, as added by chapter 687 of the laws of 2003, are
amended

24 and a new paragraph 9 is added to read as follows:

25 (7) a person whose activities in this state are limited to
advertising

26 without the intent to solicit insurance in this state through
communi-

27 cations in printed publications or other forms of electronic mass
media

28 whose distribution is not limited to residents of the state,
provided

29 that the person does not sell, solicit or negotiate insurance that
would

30 insure risks residing, located or to be performed in this state; [~~or~~]

31 (8) a person who is not a resident of this state who sells,
solicits

32 or negotiates a contract for commercial property/casualty risks to
an

33 insured with risks located in more than one state insured under
that

34 contract, provided that such person is otherwise licensed as an
insur-

35 ance producer to sell, solicit or negotiate that insurance in the
state

36 where the insured maintains its principal place of business and
the

37 contract of insurance insures risks located in that state[-]; or

38 (9) a person who is not a resident of this state who sells,
solicits

39 or negotiates a contract of property/casualty insurance, as defined
in
40 paragraph six of subsection (x) of this section, of an insurer
not
41 authorized to do business in this state, provided that: (A)
the
42 insured's home state is a state other than this state; and (B)
such
43 person is otherwise licensed to sell, solicit or negotiate excess
line
44 insurance in the insured's home state.

45 § 6. Paragraphs 9 and 10 of subsection (k) of section 2101 of
the
46 insurance law, as added by chapter 687 of the laws of 2003, are
amended

47 and a new paragraph 11 is added to read as follows:

48 (9) a person who is not a resident of this state who sells,
solicits

49 or negotiates a contract of insurance for commercial
property/casualty

50 risks to an insured with risks located in more than one state
insured

51 under that contract, provided that such person is otherwise licensed
as

52 an insurance producer to sell, solicit or negotiate that insurance
in

53 the state where the insured maintains its principal place of
business

54 and the contract of insurance insures risks located in that state;
[ex]

55 (10) any salaried full-time employee who counsels or advises his
or

56 her employer relative to the insurance interests of the employer or
of

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1 the subsidiaries or business affiliates of the employer, provided
that

2 the employee does not sell or solicit insurance or receive a
commis-

3 sion[-]; or

4 (11) a person who is not a resident of this state who sells,
solicits

5 or negotiates a contract of property/casualty insurance, as defined
in

6 paragraph six of subsection (x) of this section, of an insurer
not

7 authorized to do business in this state, provided that: (A)
the

8 insured's home state is a state other than this state; and (B)
such

9 person is otherwise licensed to sell, solicit or negotiate excess
line

10 insurance in the insured's home state.

11 § 7. Section 2105 of the insurance law is amended by adding a
new

12 subsection (i) to read as follows:

13 (i) Pursuant to subsection (a) of this section, an excess line
14 broker
15 may procure policies of salary protection insurance from insurers
16 that
17 are not authorized to transact business in this state.

16 § 8. Paragraph 1 of subsection (a) of section 2102 of the
insurance
17 law, as amended by chapter 499 of the laws of 2009, is amended to
read
18 as follows:

19 (1) (A) No person, firm, association or corporation shall act as
an
20 insurance producer, insurance adjuster or life settlement broker in
this
21 state without having authority to do so by virtue of a license
issued
22 and in force pursuant to the provisions of this chapter.

23 (B) No person, firm, association or corporation shall act as an
24 excess
25 line broker in this state without having authority to do so by virtue
26 of
27 a license issued and in force pursuant to section two thousand
28 one
29 hundred five of this article, provided, however, that such person,
30 firm,
31 association or corporation shall not be required to be licensed as
32 an
33 excess line broker where the insured's home state is a state other
34 than
35 this state and such person, firm, association or corporation is
36 other-
37 wise licensed to sell, solicit or negotiate excess line insurance in
38 the
39 insured's home state.

32 § 9. Subsection (a) of section 2105 of the insurance law, as
amended
33 by chapter 626 of the laws of 2006, is amended to read as follows:

34 (a) The superintendent may issue an excess line broker's license
to

35 any person, firm, association or corporation who or which ~~is~~
36 ~~domiciled~~
37 ~~or maintains an office in this state and~~ is licensed as an
insurance
38 broker under section two thousand one hundred four of this article,
or
39 who or which is licensed as an excess line broker in the licensee's
home
40 state, provided, however, that the applicant's home state grants non-
re-
41 sident licenses to residents of this state on the same basis,
except
42 that reciprocity is not required in regard to the placement of
liability
43 insurance on behalf of a purchasing group or any of its members;
author-

43 izing such person, firm, association or corporation to procure,
subject
44 to the restrictions herein provided, policies of insurance from
insurers
45 which are not authorized to transact business in this state of the
kind
46 or kinds of insurance specified in paragraphs four through
fourteen,
47 sixteen, seventeen, nineteen, twenty, twenty-two, twenty-seven,
twenty-
48 eight and thirty-one of subsection (a) of section one thousand
one
49 hundred thirteen of this chapter and in subsection (h) of this
section,
50 provided, however, that the provisions of this section and section
two
51 thousand one hundred eighteen of this article shall not apply to
ocean
52 marine insurance and other contracts of insurance enumerated
in
53 subsections (b) and (c) of section two thousand one hundred seventeen
of
54 this article. Such license may be suspended or revoked by the
super-
55 intendent whenever in his or her judgment such suspension or
revocation
56 will best promote the interests of the people of this state.
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1 § 10. Section 2117 of the insurance law is amended by adding a
new
2 subsection (j) to read as follows:
3 (j) Nothing in this section shall prohibit a person who is not a
resi-
4 dent of this state from selling, soliciting or negotiating
a
5 property/casualty insurance contract of an insurer not authorized to
do
6 business in this state, provided that: (1) the insured's home state
is a
7 state other than this state; and (2) the person is licensed to
sell,
8 solicit or negotiate excess line insurance in the insured's home
state.

9 § 11. Paragraphs 8 and 9 of subsection (b) of section 2118 of
the
10 insurance law are REPEALED.

11 § 12. Subparagraph (A) of paragraph 3 of subsection (b) of
section
12 2118 of the insurance law, as amended by chapter 498 of the laws
of
13 1996, is amended and a new subparagraph (F) is added to read as
follows:

14 (A) [~~The~~] Except as provided in subparagraph (F) of this
paragraph,

15 submission of insurance documents to the excess line association
shall
16 be accompanied by a statement subscribed to, and affirmed by, the
licen-
17 see or sublicensee as true under the penalties of perjury that,
after
18 diligent effort, the full amount of insurance required could not
be
19 procured, from authorized insurers, each of which is authorized to
write
20 insurance of the kind requested and which the licensee has reason
to
21 believe might consider writing the type of coverage or class of
insur-
22 ance involved, and further showing that the amount of insurance
procured
23 from an unauthorized insurer is only the excess over the amount
procura-
24 ble from an authorized insurer. The licensee, however, shall be
excused
25 from affirming that a diligent effort, as defined above, was made
to
26 procure the coverage from authorized insurers if the licensee's
affida-
27 vit is accompanied by the affidavit of another broker involved in
the
28 placement affirming as true under the penalties of perjury that,
after
29 diligent effort by the affirming broker, the required insurance
could
30 not be procured from an authorized insurer which the affirming
broker
31 had reason to believe might consider writing the type of coverage
or
32 class of insurance involved. The licensee and the affirming broker
shall
33 be excused from affirming that a diligent effort was made if the
super-
34 intendent determines, pursuant to paragraph four of this
subsection,
35 that no declinations are required.

36 (F) A licensee seeking to procure or place insurance in this state
for
37 an exempt commercial purchaser shall not be required to satisfy
any
38 requirement of this state to make a due diligence search to
determine
39 whether the full amount or type of insurance sought by the
exempt
40 commercial purchaser can be obtained from authorized insurers if:
41 (i) the licensee procuring or placing the excess line insurance
has
42 disclosed to the exempt commercial purchaser that the insurance may
or
43 may not be available from the authorized market that may provide
greater
44 protection with more regulatory oversight; and

45 (ii) the exempt commercial purchaser has subsequently requested
in
46 writing that the licensee procure or place the insurance from an
unau-
47 thorized insurer.

48 § 13. Paragraph 1 of subsection (d) of section 2118 of the
insurance
49 law, as amended by chapter 190 of the laws of 1990, is amended to
read
50 as follows:

51 (1) ~~Every~~ Where this state is the insured's home state, a
person,
52 firm, association or corporation licensed pursuant to the provisions
of
53 section two thousand one hundred five of this article shall pay to
the
54 superintendent a sum equal to three and six-tenths percent of the
gross
55 premiums charged the insureds by the insurers for insurance procured
by
56 such licensee pursuant to such license, less the amount of such
premiums

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1 returned to such insureds. [~~Where the insurance covers property~~
or
2 ~~risks located or resident both in and out of this state, the sum~~
payable
3 ~~shall be computed on that portion of the gross premiums allocated~~
to
4 ~~this state pursuant to subsection (b) of section nine thousand~~
one
5 ~~hundred two of this chapter less the amount of gross premiums~~
allocated
6 ~~to this state and returned to the insured.~~]

7 § 14. Section 9102 of the insurance law, as amended by chapter 190
of
8 the laws of 1990, subsection (c) as amended by chapter 73 of the laws
of
9 1991, is amended to read as follows:

10 § 9102. Allocation of premiums. [~~(a)~~] In determining the amount
of
11 direct premiums taxable in this state, all such premiums
written,
12 procured, or received in this state shall be deemed written on
property
13 or risks located or resident in this state except such premiums
properly
14 allocated and reported as taxable premiums of any other state or
states.

15 [~~(b) (1) In determining the amount of gross premiums taxable in~~
this
16 ~~state pursuant to paragraph one of subsection (d) of section two~~
thou-
17 ~~sand one hundred eighteen of this chapter, where a placement of~~
excess

18 ~~line insurance covers property or risks located or resident both in~~
and
19 ~~out of this state, the sum paid to the superintendent shall be~~
computed
20 ~~on that portion of the policy premium that is attributable to~~
property
21 ~~or risks located or resident in this state, as determined by~~
reference
22 ~~to an allocation schedule prescribed by the superintendent in a~~
regu-
23 ~~lation.~~

24 ~~(2) If the allocation schedule does not identify a~~
classification
25 ~~appropriate to the property or risk being insured, an alternative~~
method
26 ~~of equitable allocation shall be used for such coverage. In that~~
circum-
27 ~~stance, documented evidence of the underwriting bases and other~~
criteria
28 ~~used by the insurer shall be given significant weight by the~~
superinten-
29 ~~dent.~~

30 ~~(3) The licensee shall report the method of allocation utilized in~~
a
31 ~~form and in a manner prescribed by the superintendent in a~~
regulation.
32 ~~Where the licensee bases the allocation on an alternative method~~
of
33 ~~equitable allocation, such licensee shall provide additional~~
information
34 ~~in support of the allocation as the superintendent may require.~~

35 ~~(4) If the superintendent reasonably determines that the~~
information
36 ~~provided is insufficient to substantiate the method of allocation~~
or
37 ~~that the method used is incorrect, the superintendent shall~~
determine
38 ~~the sum to be paid in accordance with the method prescribed by~~
the
39 ~~superintendent in the regulation. The superintendent's determination~~
of
40 ~~the sum to be paid shall finally and irrevocably fix the tax~~
unless,
41 ~~within thirty days of notification of the superintendent's~~
determi-
42 ~~nation, the licensee requests a hearing to dispute such~~
determination.

43 ~~(c) (1) Any licensee who allocated the premium tax for any of the~~
six
44 ~~years prior to the effective date of this subsection shall not be~~
liable
45 ~~for the payment of any additional premium tax that would have been~~
due
46 ~~had the licensee not allocated, unless the superintendent~~
determines
47 ~~that the method of allocation was inequitable.~~

48 ~~(2) The superintendent's determination under this subsection shall~~
be
49 ~~in accordance with the procedures in paragraph four of subsection (b)~~
of
50 ~~this section. Documented evidence of the underwriting bases and~~
other
51 ~~criteria used by the insurer shall be given significant weight by~~
the
52 ~~superintendent.~~
53 ~~(3) Nothing in this subsection shall entitle a licensee to a refund~~
of
54 ~~taxes previously paid.]~~

55 § 15. Subdivision (c) of section 1550 of the tax law, as added
by
56 chapter 190 of the laws of 1990, is amended to read as follows:
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1 (c) The term "taxable insurance contract" means a contract of
insur-
2 ance of the ~~[type]~~ kind described in [~~paragraphs four through~~
~~fourteen,~~
3 ~~sixteen, seventeen, nineteen, twenty and twenty-two of~~] subsection
(a)
4 of section [~~one thousand one hundred thirteen~~] two thousand one
hundred
5 five of the insurance law [~~that covers risks located or resident~~
~~within~~
6 ~~this state~~].

7 § 16. Section 1550 of the tax law is amended by adding a new
subdivi-
8 sion (d) to read as follows:
9 (d) The term "home state" means:
10 (1) In general. Except as provided in paragraphs two and three of
this
11 subdivision, the term "home state" means, with respect to an insured:
12 (A) the state in which an insured maintains its principal place
of
13 business or, in the case of an individual, the individual's
principal
14 residence;
15 (B) if one hundred percent of the insured risk is located out of
the
16 state referred to in subparagraph (A) of this paragraph, the state
to
17 which the greatest percentage of the insured's taxable premium for
that
18 insurance contract is allocated;
19 (C) if more than one insured from an affiliated group, as defined
in
20 section two thousand one hundred one of the insurance law, are
named
21 insureds on a single insurance contract, the home state of the member
of
22 the affiliated group that has the largest percentage of premium
attri-
23 buted to it under such insurance contract; or

24 (D) in the case of a group policy:
25 (i) if the group policyholder pays one hundred percent of the
premium
26 from its own funds, the home state, as determined pursuant to
subpara-
27 graph (A) of this paragraph, of the group policyholder; or
28 (ii) if the group policyholder does not pay one hundred percent of
the
29 premium from its own funds, the home state, as determined pursuant
to
30 subparagraph (A) of this paragraph, of the group member;
31 (2) "Principal place of business" means, with respect to
determining
32 the home state of the insured, the state where:
33 (A) the insured maintains its headquarters and where the
insured's
34 high-level officers direct, control and coordinate the business
activ-
35 ities; or
36 (B) if the insured's high-level officers direct, control and
coordi-
37 nate the business activities in more than one state, or if the
insured's
38 principal place of business is located outside any state, the state
to
39 which the greatest percentage of the insured's taxable premium for
that
40 insurance contract is allocated.
41 (3) "Principal residence" means, with respect to determining the
home
42 state of the insured, the state where:
43 (a) the insured resides for the greatest number of days
during a
44 calendar year; or
45 (b) if the insured's principal residence is located outside any
state,
46 the state to which the greatest percentage of the insured's
taxable
47 premium for that insurance contract is allocated.

48 § 17. Section 1551 of the tax law, as amended by chapter 73 of
the
49 laws of 1991, is amended to read as follows:
50 § 1551. Imposition of tax. There is hereby imposed on any
person
51 whose home state is New York and who purchases or renews a
taxable
52 insurance contract from an insurer not authorized to transact
business
53 in this state under a certificate of authority from the
superintendent
54 of insurance a tax at the rate of three and six-tenths percent of
the
55 premiums paid or to be paid, less returns thereon, for such
insurance.

1 Nothing in this article modifies or abrogates any provision of
the
2 insurance law.

3 § 18. Section 1552 of the tax law, as added by chapter 190 of the
laws
4 of 1990, is amended to read as follows:

5 § 1552. Allocation. Where the taxable insurance contract covers
risks
6 located or resident both within and without this state[~~7, the amount~~
~~of~~
7 ~~premiums allocable to risks resident or located within this state~~
~~shall~~
8 ~~be determined pursuant to rules and regulations of the commissioner~~
~~of~~
9 ~~taxation and finance. In promulgating such rules and regulations,~~
~~the~~
10 ~~commissioner of taxation and finance shall give due consideration to~~
~~the~~
11 ~~rules and regulations promulgated by the superintendent of~~
~~insurance~~
12 ~~pursuant to subsection (b) of section nine thousand one hundred two~~
~~of~~
13 ~~the insurance law]~~ and the taxpayer's home state is New York,
one
14 hundred percent of premiums shall be allocable to this state.

15 § 19. This act shall take effect July 21, 2011; provided,
however,

16 that:

17 (1) sections one and three of this act shall take effect July
16,
18 2011;

19 (2) the amendments to subsection (b) of section 2118 of the
insurance

20 law made by section twelve of this act shall not affect the
expiration

21 and reversion of such subsection and shall be deemed to expire
there-

22 with;

23 (3) sections thirteen and fourteen of this act shall apply to
insur-

24 ance contracts that have an effective date on or after July 21, 2011
and

25 sections fifteen through eighteen of this act shall apply to
taxable

26 insurance contracts that have an effective date on or after July
21,

27 2011; and

28 (4) effective immediately, the addition, amendment, or repeal of
any

29 rules and regulations necessary for the implementation of this act
on

30 its effective date are authorized and directed to be made and
completed

31 on or before such effective date.

33 Section 1. Section 51 of chapter 298 of the laws of 1985, amending
the
34 tax law relating to the franchise tax on banking corporations imposed
by
35 the tax law, authorized to be imposed by any city having a population
of
36 one million or more by chapter 772 of the laws of 1966 and imposed
by
37 the administrative code of the city of New York and relating to
other
38 provisions of the tax law, chapter 883 of the laws of 1975 and
the
39 administrative code of the city of New York which relates to such
fran-
40 chise tax, as amended by chapter 67 of the laws of 2010, is amended
to
41 read as follows:

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

44 ~~(a) sections one through eight shall not apply to taxable years
begin-
45 ning on or after January 1, 2011;
46 (b) sections nine, twelve, the amendment made to paragraph 9
of
47 subsection (a) of section 1452 of the tax law by section
thirteen,
48 sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-
three,
49 twenty-seven, thirty and thirty-two, the amendment made to paragraph
9
50 of subdivision (a) of section 11-640 of the administrative code of
the
51 city of New York by section thirty-three, sections thirty-five,
thirty-
52 six, thirty-eight, thirty-nine, forty, and forty-five shall not apply
to
53 corporations other than savings banks and savings and loan
associations
54 for taxable years beginning on or after January 1, 2011.~~

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1 ~~(c) sections twenty-one, twenty-two, twenty-four, forty-one
and
2 forty-two shall not apply to corporations other than savings banks
and
3 savings and loan associations for taxable years beginning on or
after
4 January 1, 2011, provided, however, that the provisions of such
sections
5 which relate to the alternative minimum tax measured by taxable
assets
6 shall continue to apply to all taxpayers for taxable years beginning
on
7 or after January 1, 2011;~~

8 ~~(d) the amendment to the section heading and the opening paragraph~~
of
9 ~~section 11-643.3 of the administrative code of the city of New York~~
made
10 ~~by section forty-three shall not apply to corporations other~~
than
11 ~~savings banks and savings and loan associations for taxable years~~
begin-
12 ~~ning on or after January 1, 2011 with respect to those provisions~~
of
13 ~~such section 11-643.3 which relate to the basic tax measured by~~
entire
14 ~~net income; and~~

15 ~~(e) section twenty-eight, and the addition of new section 11-643.5~~
of
16 ~~the administrative code of the city of New York made by section~~
forty-
17 ~~four shall not apply to corporations other than savings banks~~
and
18 ~~savings and loan associations for taxable years beginning on or~~
after
19 ~~January 1, 2011, provided, however, that the provisions of such~~
sections
20 ~~which relate to the alternative minimum taxes measured by assets,~~
issued
21 ~~capital stock and one hundred twenty-five dollars shall continue~~
to
22 ~~apply to all taxpayers for taxable years beginning on or after~~
January
23 ~~1, 2011].~~

24 § 2. Subdivisions (d) and (f) of section 110 of chapter 817 of
the
25 laws of 1987, amending the tax law and the environmental
conservation
26 law, constituting the business tax reform and rate reduction act
of
27 1987, as amended by chapter 67 of the laws of 2010, are amended to
read

28 as follows:
29 (d) The provisions of section sixty-seven of this act except
insofar
30 as it amends paragraph 10 of subsection (b) of section 1453 of the
tax
31 law, seventy-one and seventy-four shall apply to taxable years
beginning
32 after December 31, 1986[, ~~provided, however, that new paragraphs 11~~
and
33 ~~12 of subsection (b) of section 1453 of the tax law as added by~~
section
34 ~~sixty-seven of this act, the amendments made by section seventy-one~~
of
35 ~~this act, and new subsection (i) of section 1453 of the tax law as~~
added
36 ~~by section seventy-four of this act shall not apply to taxable~~
years
37 ~~beginning on or after January 1, 2011];~~

38 (f) The provisions of section one hundred four of this act shall
apply
39 to taxable years beginning after December 31, 1986[, ~~and shall not~~
~~apply~~
40 ~~to corporations other than savings banks and savings and loan~~
~~associ-~~
41 ~~ations for taxable years beginning on or after January 1,~~
~~2011,~~
42 ~~provided, however, that the provisions of such section which relate~~
~~to~~
43 ~~the alternative minimum tax measured by taxable assets shall continue~~
~~to~~
44 ~~apply to all taxpayers for taxable years beginning on or after~~
~~January~~
45 ~~1, 2011].~~

46 § 3. Subdivisions (c) and (d) of section 68 of chapter 525 of
the
47 laws of 1988, amending the tax law and the administrative code of
the
48 city of New York relating to the imposition of taxes in the city of
New
49 York, as amended by chapter 67 of the laws of 2010, are amended to
read

50 as follows:

51 (c) The provisions of sections one, thirty-one, thirty-two,
thirty-
52 three, thirty-six, thirty-seven, forty through forty-five, forty-
seven
53 and forty-eight of this act shall apply to taxable years beginning
after
54 December 31, 1986[, ~~provided, however, that the amendments made~~
~~by~~
55 ~~sections thirty-six and forty-one of this act, and new subdivision~~
~~(i)~~
56 ~~of section 11-641 of the administrative code of the city of New York~~
~~as~~

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1 ~~added by section forty four of this act shall not apply to taxable~~
~~years~~
2 ~~beginning on or after January 1, 2011];~~

3 (d) The provisions of section forty-six of this act shall apply
to
4 taxable years beginning after December 31, 1986[, ~~and shall not apply~~
~~to~~
5 ~~corporations other than savings banks and savings and loan~~
~~associations~~
6 ~~for taxable years beginning on or after January 1, 2011,~~
~~provided,~~
7 ~~however, that the provisions of such section which relate to the~~
~~alter-~~
8 ~~native minimum tax measured by taxable assets shall continue to apply~~
~~to~~
9 ~~all taxpayers for taxable years beginning on or after January 1,~~
~~2011];~~

10 § 4. Paragraphs 1 and 2 of subsection (m) of section 1452 of the
tax
11 law, as amended by chapter 24 of the laws of 2010, are amended to
read
12 as follows:
13 (1) Notwithstanding anything to the contrary contained in this
section
14 other than subsection (n) of this section, a corporation that was
in
15 existence before January first, two thousand [~~ten~~] eleven and
was
16 subject to tax under article nine-A of this chapter for its last
taxable
17 year beginning before January first, two thousand [~~ten~~] eleven,
shall
18 continue to be taxable under such article for all taxable years
begin-
19 ning on or after January first, two thousand [~~ten~~] eleven and
before
20 January first, two thousand [~~eleven~~] thirteen. The preceding
sentence
21 shall not apply to any taxable year during which such corporation
is a
22 banking corporation described in paragraphs one through eight
of
23 subsection (a) of this section. Notwithstanding anything to the
contrary
24 contained in this section other than subsection (n) of this
section, a
25 banking corporation or corporation that was in existence before
January
26 first, two thousand [~~ten~~] eleven and was subject to tax under this
arti-
27 cle for its last taxable year beginning before January first, two
thou-
28 sand [~~ten~~] eleven, shall continue to be taxable under this article
for
29 all taxable years beginning on or after January first, two
thousand
30 [~~ten~~] eleven and before January first, two thousand [~~eleven~~] thirteen
or
31 in which the corporation satisfies the requirements for a corporation
to
32 elect to be taxable under this article. Provided further, that
nothing
33 in this subsection shall prohibit a corporation that elected pursuant
to
34 subsection (d) of this section to be taxable under article nine-A
of
35 this chapter from revoking that election in accordance with
such
36 subsection (d).
37 For purposes of this paragraph, a corporation shall be considered
to
38 be subject to tax under article nine-A of this chapter for a
taxable

39 year if such corporation was not a taxpayer but was properly included
in
40 a combined report filed pursuant to section two hundred eleven of
this
41 chapter for such taxable year and a corporation shall be considered
to
42 be subject to tax under this article for a taxable year if such
corpo-
43 ration was not a taxpayer but was properly included in a combined
return
44 filed pursuant to subsection (f) or (g) of section fourteen
hundred
45 sixty-two of this article for such taxable year. A corporation that
was
46 in existence before January first, two thousand [~~ten~~] eleven but
first
47 becomes a taxpayer in a taxable year beginning on or after
January
48 first, two thousand [~~ten~~] eleven and before January first, two
thousand
49 [~~eleven~~] thirteen, shall be considered for purposes of this paragraph
to
50 have been subject to tax under article nine-A of this chapter for
its
51 last taxable year beginning before January first, two thousand
[~~ten~~]
52 eleven if such corporation would have been subject to tax under
such
53 article for such taxable year if it had been a taxpayer during
such
54 taxable year. A corporation that was in existence before January
first,
55 two thousand [~~ten~~] eleven but first becomes a taxpayer in a taxable
year
56 beginning on or after January first, two thousand [~~ten~~] eleven
and
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1 before January first, two thousand [~~eleven~~] thirteen, shall be
consid-
2 ered for purposes of this paragraph to have been subject to tax
under
3 this article for its last taxable year beginning before January
first,
4 two thousand [~~ten~~] eleven if such corporation would have been subject
to
5 tax under this article for such taxable year if it had been a
taxpayer
6 during such taxable year.
7 (2) Notwithstanding anything to the contrary contained in this
section
8 other than subsection (n) of this section, a corporation formed on
or
9 after January first, two thousand [~~ten~~] eleven and before January
first,

10 two thousand [~~eleven~~] thirteen may elect to be subject to tax under
this
11 article or under article nine-A of this chapter for its first
taxable
12 year beginning on or after January first, two thousand [~~ten~~] eleven
and
13 before January first, two thousand [~~eleven~~] thirteen in which either
(i)
14 sixty-five percent or more of its voting stock is owned or
controlled,
15 directly or indirectly by a financial holding company, provided
the
16 corporation whose voting stock is so owned or controlled is
principally
17 engaged in activities that are described in section 4(k)(4) or
4(k)(5)
18 of the federal bank holding company act of nineteen hundred fifty-
six,
19 as amended and the regulations promulgated pursuant to the authority
of
20 such section, or (ii) it is a financial subsidiary. An election
under
21 this paragraph may not be made by a corporation described in
paragraphs
22 one through eight of subsection (a) of this section or in subsection
(e)
23 of this section. In addition, an election under this paragraph may
not
24 be made by a corporation that is a party to a reorganization, as
defined
25 in subsection (a) of section 368 of the internal revenue code of
1986,
26 as amended, of a corporation described in paragraph one of
this
27 subsection if both corporations were sixty-five percent or more owned
or
28 controlled, directly or indirectly, by the same interests at the time
of
29 the reorganization.
30 An election under this paragraph must be made by the taxpayer on
or
31 before the due date for filing its return (determined with regard
to
32 extensions of time for filing) for the applicable taxable year.
The
33 election to be taxed under article nine-A of this chapter shall be
made
34 by the taxpayer by filing the report required pursuant to section
two
35 hundred eleven of this chapter and the election to be taxed under
this
36 article shall be made by the taxpayer by filing the return
required
37 pursuant to section fourteen hundred sixty-two of this article.
Any
38 election made pursuant to this paragraph shall be irrevocable and
shall

39 apply to each subsequent taxable year beginning on or after
January
40 first, two thousand [~~ten~~] eleven and before January first, two
thousand
41 [~~eleven~~] thirteen, provided that the stock ownership and
activities
42 requirements described in subparagraph (i) of this paragraph are met
or
43 such corporation described in subparagraph (ii) of this
paragraph
44 continues as a financial subsidiary.
45 § 5. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of
the
46 administrative code of the city of New York, as amended by chapter 24
of
47 the laws of 2010, are amended to read as follows:
48 (1) Notwithstanding anything to the contrary contained in this
section
49 other than subdivision (m) of this section, a corporation that was
in
50 existence before January first, two thousand [~~ten~~] eleven and
was
51 subject to tax under subchapter two of this chapter for its last
taxable
52 year beginning before January first, two thousand [~~ten~~] eleven,
shall
53 continue to be taxable under such subchapter for all taxable
years
54 beginning on or after January first, two thousand [~~ten~~] eleven
and
55 before January first, two thousand [~~eleven~~] thirteen. The
preceding
56 sentence shall not apply to any taxable year during which such
corpo-

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1 ration is a banking corporation described in paragraphs one
through
2 eight of subdivision (a) of this section. Notwithstanding anything
to
3 the contrary contained in this section other than subdivision (m)
of
4 this section, a banking corporation or corporation that was in
existence
5 before January first, two thousand [~~ten~~] eleven and was subject to
tax
6 under this subchapter for its last taxable year beginning before
January
7 first, two thousand [~~ten~~] eleven, shall continue to be taxable
under
8 this subchapter for all taxable years beginning on or after
January
9 first, two thousand [~~ten~~] eleven and before January first, two
thousand
10 [~~eleven~~] thirteen or in which the corporation satisfies the
requirements

11 for a corporation to elect to be taxable under this subchapter.
Provided
12 further, that nothing in this subdivision shall prohibit a
corporation
13 that elected pursuant to subdivision (d) of this section to be
taxable
14 under subchapter two of this chapter from revoking that election
in
15 accordance with subdivision (d) of this section. For purposes of
this
16 paragraph, a corporation shall be considered to be subject to tax
under
17 subchapter two of this chapter for a taxable year if such
corporation
18 was not a taxpayer but was properly included in a combined report
filed
19 pursuant to subdivision four of section 11-605 of this chapter for
such
20 taxable year and a corporation shall be considered to be subject to
tax
21 under this subchapter for a taxable year if such corporation was not
a
22 taxpayer but was properly included in a combined report filed
pursuant
23 to subdivision (f) or (g) of section 11-646 of this part for such
taxa-
24 ble year. A corporation that was in existence before January first,
two
25 thousand [~~ten~~] eleven but first becomes a taxpayer in a taxable
year
26 beginning on or after January first, two thousand [~~ten~~] eleven
and
27 before January first, two thousand [~~eleven~~] thirteen, shall be
consid-
28 ered for purposes of this paragraph to have been subject to tax
under
29 subchapter two of this chapter for its last taxable year
beginning
30 before January first, two thousand [~~ten~~] eleven if such
corporation
31 would have been subject to tax under such subchapter for such
taxable
32 year if it had been a taxpayer during such taxable year. A
corporation
33 that was in existence before January first, two thousand [~~ten~~]
eleven
34 but first becomes a taxpayer in a taxable year beginning on or
after
35 January first, two thousand [~~ten~~] eleven and before January first,
two
36 thousand [~~eleven~~] thirteen, shall be considered for purposes of
this
37 paragraph to have been subject to tax under this subchapter for its
last
38 taxable year beginning before January first, two thousand [~~ten~~]
eleven

39 if such corporation would have been subject to tax under this
subchapter
40 for such taxable year if it had been a taxpayer during such
taxable
41 year.
42 (2) Notwithstanding anything to the contrary contained in this
section
43 other than subdivision (m) of this section, a corporation formed on
or
44 after January first, two thousand [~~ten~~] eleven and before January
first,
45 two thousand [~~eleven~~] thirteen may elect to be subject to tax under
this
46 subchapter or under subchapter two of this chapter for its first
taxable
47 year beginning on or after January first, two thousand [~~ten~~] eleven
and
48 before January first, two thousand [~~eleven~~] thirteen in which either
(i)
49 sixty-five percent or more of its voting stock is owned or
controlled,
50 directly or indirectly by a financial holding company, provided
the
51 corporation whose voting stock is so owned or controlled is
principally
52 engaged in activities that are described in section 4(k)(4) or
4(k)(5)
53 of the federal bank holding company act of nineteen hundred fifty-
six,
54 as amended and the regulations promulgated pursuant to the authority
of
55 such section or (ii) it is a financial subsidiary. An election
under
56 this paragraph may not be made by a corporation described in
paragraphs

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1 one through eight of subdivision (a) of this section or in
subdivision
2 (e) of this section. In addition, an election under this paragraph
may
3 not be made by a corporation that is a party to a reorganization,
as
4 defined in subsection (a) of section 368 of the internal revenue code
of
5 1986, as amended, of a corporation described in paragraph one of
this
6 subdivision if both corporations were sixty-five percent or more
owned
7 or controlled, directly or indirectly by the same interests at the
time
8 of the reorganization.
9 An election under this paragraph must be made by the taxpayer on
or
10 before the due date for filing its return (determined with regard
to

11 extensions of time for filing) for the applicable taxable year.
The
12 election to be taxed under subchapter two of this chapter shall be
made
13 by the taxpayer by filing the return required pursuant to
subdivision
14 one of section 11-605 of this chapter and the election to be taxed
under
15 this subchapter shall be made by the taxpayer by filing the
return
16 required pursuant to subdivision (a) of section 11-646 of this part.
Any
17 election made pursuant to this paragraph shall be irrevocable and
shall
18 apply to each subsequent taxable year beginning on or after
January
19 first, two thousand [~~ten~~] eleven and before January first, two
thousand
20 [~~eleven~~] thirteen, provided that the stock ownership and
activities
21 requirements described in subparagraph (i) of this paragraph are met
or
22 such corporation described in subparagraph (ii) of this
paragraph
23 continues as a financial subsidiary.
24 § 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of
section
25 1462 of the tax law, as amended by chapter 24 of the laws of 2010,
is
26 amended to read as follows:
27 (iv) (A) Notwithstanding any provision of this paragraph, any
bank
28 holding company exercising its corporate franchise or doing business
in
29 the state may make a return on a combined basis without seeking
the
30 permission of the commissioner with any banking corporation
exercising
31 its corporate franchise or doing business in the state in a corporate
or
32 organized capacity sixty-five percent or more of whose voting stock
is
33 owned or controlled, directly or indirectly, by such bank holding
compa-
34 ny, for the first taxable year beginning on or after January first,
two
35 thousand and before January first, two thousand [~~eleven~~] thirteen
during
36 which such bank holding company registers for the first time under
the
37 federal bank holding company act, as amended, and also elects to
be a
38 financial holding company. In addition, for each subsequent taxable
year
39 beginning after January first, two thousand and before January
first,

40 two thousand [~~eleven~~] thirteen, any such bank holding company may
file
41 on a combined basis without seeking the permission of the
commissioner
42 with any banking corporation that is exercising its corporate
franchise
43 or doing business in the state and sixty-five percent or more of
whose
44 voting stock is owned or controlled, directly or indirectly, by
such
45 bank holding company if either such banking corporation is
exercising
46 its corporate franchise or doing business in the state in a corporate
or
47 organized capacity for the first time during such subsequent
taxable
48 year, or sixty-five percent or more of the voting stock of such
banking
49 corporation is owned or controlled, directly or indirectly, by such
bank
50 holding company for the first time during such subsequent taxable
year.
51 Provided however, for each subsequent taxable year beginning after
Janu-
52 ary first, two thousand and before January first, two thousand
[~~eleven~~]
53 thirteen, a banking corporation described in either of the two
preceding
54 sentences which filed on a combined basis with any such bank
holding
55 company in a previous taxable year, must continue to file on a
combined
56 basis with such bank holding company if such banking corporation,
during
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1 such subsequent taxable year, continues to exercise its corporate
fran-
2 chise or do business in the state in a corporate or organized
capacity
3 and sixty-five percent or more of such banking corporation's
voting
4 stock continues to be owned or controlled, directly or indirectly,
by
5 such bank holding company, unless the permission of the commissioner
has
6 been obtained to file on a separate basis for such subsequent
taxable
7 year. Provided further, however, for each subsequent taxable year
begin-
8 ning after January first, two thousand and before January first,
two
9 thousand [~~eleven~~] thirteen, a banking corporation described in either
of
10 the first two sentences of this clause which did not file on a
combined

11 basis with any such bank holding company in a previous taxable year,
may
12 not file on a combined basis with such bank holding company during
any
13 such subsequent taxable year unless the permission of the
commissioner
14 has been obtained to file on a combined basis for such subsequent
taxa-
15 ble year.
16 (B) Notwithstanding any provision of this paragraph other than
clause
17 (A) of this subparagraph, the commissioner may not require a bank
hold-
18 ing company which, during a taxable year beginning on or after
January
19 first, two thousand and before January first, two thousand
[eleven]
20 thirteen, registers for the first time during such taxable year
under
21 the federal bank holding company act, as amended, and also elects to
be
22 a financial holding company, to make a return on a combined basis
for
23 any taxable year beginning on or after January first, two thousand
and
24 before January first, two thousand [eleven] thirteen with a
banking
25 corporation sixty-five percent or more of whose voting stock is owned
or
26 controlled, directly or indirectly, by such bank holding company.
27 § 7. Subparagraph (iv) of paragraph 2 of subdivision (f) of
section
28 11-646 of the administrative code of the city of New York, as amended
by
29 chapter 24 of the laws of 2010, is amended to read as follows:
30 (iv) (A) Notwithstanding any provision of this paragraph, any
bank
31 holding company exercising its corporate franchise or doing business
in
32 the city may make a return on a combined basis without seeking
the
33 permission of the commissioner with any banking corporation
exercising
34 its corporate franchise or doing business in the city in a corporate
or
35 organized capacity sixty-five percent or more of whose voting stock
is
36 owned or controlled, directly or indirectly, by such bank holding
compa-
37 ny, for the first taxable year beginning on or after January first,
two
38 thousand and before January first, two thousand [eleven] thirteen
during
39 which such bank holding company registers for the first time under
the
40 federal bank holding company act, as amended, and also elects to be
a

41 financial holding company. In addition, for each subsequent taxable
year
42 beginning after January first, two thousand and before January
first,
43 two thousand [~~eleven~~] thirteen, any such bank holding company may
file
44 on a combined basis without seeking the permission of the
commissioner
45 with any banking corporation that is exercising its corporate
franchise
46 or doing business in the city and sixty-five percent or more of
whose
47 voting stock is owned or controlled, directly or indirectly, by
such
48 bank holding company if either such banking corporation is
exercising
49 its corporate franchise or doing business in the city in a corporate
or
50 organized capacity for the first time during such subsequent
taxable
51 year, or sixty-five percent or more of the voting stock of such
banking
52 corporation is owned or controlled, directly or indirectly, by such
bank
53 holding company for the first time during such subsequent taxable
year.
54 Provided however, for each subsequent taxable year beginning after
Janu-
55 ary first, two thousand and before January first, two thousand
[~~eleven~~]
56 thirteen, a banking corporation described in either of the two
preceding
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1 sentences which filed on a combined basis with any such bank
holding
2 company in a previous taxable year, must continue to file on a
combined
3 basis with such bank holding company if such banking corporation,
during
4 such subsequent taxable year, continues to exercise its corporate
fran-
5 chise or do business in the city in a corporate or organized
capacity
6 and sixty-five percent or more of such banking corporation's
voting
7 stock continues to be owned or controlled, directly or indirectly,
by
8 such bank holding company, unless the permission of the commissioner
has
9 been obtained to file on a separate basis for such subsequent
taxable
10 year. Provided further, however, for each subsequent taxable year
begin-
11 ning after January first, two thousand and before January first,
two

12 thousand [~~eleven~~] thirteen, a banking corporation described in either
of
13 the first two sentences of this clause which did not file on a
combined
14 basis with any such bank holding company in a previous taxable year,
may
15 not file on a combined basis with such bank holding company during
any
16 such subsequent taxable year unless the permission of the
commissioner
17 has been obtained to file on a combined basis for such subsequent
taxa-
18 ble year.

19 (B) Notwithstanding any provision of this paragraph other than
clause

20 (A) of this subparagraph, the commissioner may not require a bank
hold-

21 ing company which, during a taxable year beginning on or after
January

22 first, two thousand and before January first, two thousand
[~~eleven~~]

23 thirteen, registers for the first time during such taxable year
under

24 the federal bank holding company act, as amended, and also elects to
be

25 a financial holding company, to make a return on a combined basis
for

26 any taxable year beginning on or after January first, two thousand
and

27 before January first, two thousand [~~eleven~~] thirteen with a
banking

28 corporation sixty-five percent or more of whose voting stock is owned
or

29 controlled, directly or indirectly, by such bank holding company.

30 § 8. This act shall take effect immediately.

31 PART K

32 Section 1. Paragraph b of subdivision 1, subdivisions 2, 6, 14, 22
and

33 23 of section 282 of the tax law, paragraph b of subdivision 1
and

34 subdivision 14 as amended by chapter 245 of the laws of 1989,
subdivi-

35 sion 2 as amended by chapter 509 of the laws of 1937, subdivision 6
as

36 amended by chapter 261 of the laws of 1988 and subdivisions 22 and 23
as

37 added by section 1 of part W-1 of chapter 109 of the laws of 2006,
are

38 amended to read as follows:

39 b. With respect to Diesel motor fuel, "distributor" means any
person,

40 firm, association or corporation (i) who or which imports or causes
to

41 be imported into the state, for use, distribution, storage or sale
with-

42 in the state, any Diesel motor fuel; (ii) who or which
produces,
43 refines, manufactures or compounds Diesel motor fuel within the
state;
44 (iii) [~~who or which engages in the enhancement of Diesel motor fuel~~
~~in~~
45 ~~this state; (iv)~~] who or which makes a sale or use of Diesel motor
fuel
46 in this state other than: (A) a retail sale not in bulk or (B) the
self-
47 use of Diesel motor fuel which has been the subject of a retail sale
to
48 such person; [~~(v)~~] (iv) who or which is registered by the department
[~~of~~
49 ~~taxation and finance~~] as a distributor of kero-jet fuel pursuant to
the
50 provisions of subdivision two of section two hundred eighty-two-a
of
51 this article. For the purposes of this article when used with respect
to
52 Diesel motor fuel, a "retail sale not in bulk" means the making
or
53 offering to make any sale of Diesel motor fuel to a consumer of
such
54 fuel which is delivered directly into a motor vehicle for use in
the

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1 operation of such vehicle. A "retail sale in bulk" means the making
or
2 offering to make any sale of Diesel motor fuel to a consumer which
is
3 other than a "retail sale not in bulk". Motor fuel or Diesel motor
fuel
4 brought into the state in the ordinary fuel tank connecting with
the
5 engine of a motor vehicle, aeroplane, motor boat or other
conveyance
6 propelled by the use of such motor fuel or Diesel motor fuel, and to
be
7 used only in the operation thereof, shall not be deemed imported
within
8 the meaning of this article, if not removed from such tank except
as
9 used in the propulsion of such engine.

10 2. "Motor fuel" means gasoline, benzol, reformulated blend stock
for
11 oxygenate blending, conventional blend stock for oxygenate
blending,
12 E85, fuel grade ethanol that meets the ASTM International active
stand-
13 ards specifications D4806 or D4814 or other product [~~except~~
~~kerosene~~
14 ~~and crude oil,~~] which is suitable for use in operation of a motor
vehi-

15 cle engine [~~, but if kerosene or crude oil is compounded or mixed~~
with
16 ~~any other product or products, and the resulting compound or mixture~~
is
17 ~~suitable for use in the operation of any such motor vehicle engine,~~
such
18 ~~resulting compound or mixture in its entirety shall be a "motor~~
fuel."].

19 6. "Filling station" shall include any place, location or
station

20 where motor fuel [~~or~~], highway Diesel motor fuel or water-white
kerosene

21 (exclusively for heating purposes in containers of no more than
twenty

22 gallons), is offered for sale at retail.

23 14. "Diesel motor fuel" shall mean No. 1 Diesel fuel, No. 2
Diesel

24 fuel, biodiesel, kerosene, crude oil, fuel oil or other middle
distil-

25 late and also motor fuel suitable for use in the operation of an
engine

26 of the diesel type, excluding, however, any product specifically
desig-

27 nated "No. 4 Diesel fuel" and not suitable as a fuel used in the
opera-

28 tion of a motor vehicle engine.

29 22. "E85" means a [~~mixture consisting by volume of eighty-~~
~~five~~

30 ~~percent]~~ fuel blend consisting of ethanol and [~~the remainder of~~
~~which~~

31 ~~is]~~ motor fuel, which meets the ASTM International active standard
D5798

32 for fuel ethanol.

33 23. "B20" means a mixture consisting by volume of twenty percent
biod-

34 iesel and the remainder of which is diesel motor fuel. [~~For purposes~~
~~of~~

35 ~~this subdivision "biodiesel"]~~ "Biodiesel" shall mean either
"qualified

36 biodiesel" or "unqualified biodiesel." "Qualified biodiesel" means
a

37 diesel motor fuel substitute produced from nonpetroleum
renewable

38 resources that meets the registration requirements for fuels and
fuel

39 additives established by the Environmental Protection Agency
under

40 section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets
the

41 [~~American Society for Testing and Materials D6751-02a Standard~~
~~Specifi-~~

42 ~~cation for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels]~~
ASTM

43 International active standard D6751 for biodiesel fuel.

"Unqualified

44 biodiesel" means a diesel motor fuel substitute produced from
nonpetro-

45 leum renewable resources that does not meet the ASTM
International
46 active standard D6751 for biodiesel fuel.
47 § 1-a. Subdivision 15 of section 282 of the tax law is REPEALED.
48 § 2. Subdivision 16 of section 282 of the tax law is REPEALED and
two
49 new subdivisions 16 and 16-a are added to read as follows:
50 16. "Non-highway Diesel motor fuel" means any Diesel motor fuel
that
51 is designated for use other than on a public highway (except for the
use
52 of the public highway by farmers to reach adjacent lands), and is
dyed
53 Diesel motor fuel as defined in subdivision eighteen-a of this
section.
54 16-a. "Highway Diesel motor fuel" means any Diesel motor fuel which
is
55 not non-highway Diesel motor fuel.
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1 § 3. Subdivision 18 of section 282 of the tax law, as added by
chapter
2 302 of the laws of 2006, is renumbered subdivision 18-a and is
amended
3 to read as follows:
4 18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which
[is
5 ~~enhanced Diesel motor fuel and which~~] has been dyed in accordance
with
6 and for the purpose of complying with the provisions of 26 USC
§4082(a)
7 and the regulations thereunder, as may be amended from time to time.
8 § 4. Section 282 of the tax law is amended by adding a new
subdivision
9 26 to read as follows:
10 26. "Public highway" means public highway as defined in
subdivision
11 six of section five hundred one of this chapter.
12 § 5. Subdivisions 2, 3, 4 and 5 of section 282-a of the tax
law,
13 subdivision 2 and paragraph (b) of subdivision 3 as amended by
chapter
14 245 of the laws of 1989, subdivisions 3, 4 and 5 as added by chapter
261
15 of the laws of 1988 and paragraph (c) of subdivision 3 as added by
chap-
16 ter 302 of the laws of 2006, are amended to read as follows:
17 2. No person shall [~~engage~~] sell or use Diesel motor fuel within
this
18 state [~~in the enhancement of Diesel motor fuel, make a sale or use~~
~~of~~
19 ~~Diesel motor fuel~~] (other than a retail sale not in bulk or self-use
of
20 Diesel motor fuel which has been the subject of a retail sale),
import

21 or cause the importation of Diesel motor fuel into the state or
produce,
22 refine, manufacture or compound Diesel motor fuel within the
state
23 unless such person shall be registered by the department [~~of~~
~~taxation~~
24 ~~and finance~~] as a distributor of Diesel motor fuel. Provided,
the
25 commissioner [~~of taxation and finance~~] shall not register as a
distribu-
26 tor of Diesel motor fuel any person who is engaged solely in one or
both
27 of the following: (i) any person who makes or offers to make a
retail
28 sale not in bulk of such fuel or (ii) any person who purchases
Diesel
29 motor fuel in bulk in this state for the sole purpose of self-use.
The
30 commissioner may, however, register as a distributor of kero-jet
fuel
31 only a fixed base operator who makes no sales of kero-jet fuel
other
32 than retail sales not in bulk delivered directly into the fuel tank
of
33 an airplane for use in the operation of such airplane and who makes
no
34 other sales of diesel motor fuel. Such registration shall apply only
to
35 the wholesale purchase of kero-jet fuel and the retail sale of such
fuel
36 not in bulk for delivery directly into the fuel tank of an airplane
for
37 use in the operation thereof. Provided, further, that if the
commission-
38 er is satisfied that full registration is not necessary in order
to
39 protect tax revenues, the commissioner may limit or modify the
require-
40 ment of registration as a distributor with respect to any person
other-
41 wise required to register solely because such person engages in the
sale
42 of non-highway Diesel motor fuel where such person makes sales of
non-
43 highway Diesel motor fuel to the consumer solely for the
purposes
44 described in subparagraph (i) of paragraph (b) of subdivision three
of
45 this section, provided that if the commissioner so limits or
modifies
46 such registration requirement with respect to such person, then
such
47 registration shall apply only to the importation, sale and
distribution
48 of such non-highway Diesel motor fuel [~~for the purposes described~~
~~in~~

49 ~~such subparagraph (i)~~. The commissioner [~~of taxation and finance~~]
may
50 also waive any other requirement imposed by this article on such
a
51 distributor. All the provisions of section two hundred eighty-three
of
52 this article shall apply to applicants for registration and
registrants
53 with respect to Diesel motor fuel, and, in addition, distributors
with
54 respect to Diesel motor fuel shall be subject to all other provisions
of
55 this article relating to distributors of motor fuel, including but
not
56 limited to, the keeping of records, the fixing, determination
and
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1 payment of tax and filing of returns. Provided, further, the
commission-
2 er may limit or modify the requirement of registration as a
distributor
3 with respect to any person who produces for self use "unqualified
biod-
4 iesel."
5 3. (a) The tax imposed by this section shall not apply to the sale
of
6 untaxed Diesel motor fuel to or the use of such fuel by an
organization
7 described in paragraph one or two of subdivision (a) of section
eleven
8 hundred sixteen of this chapter where such Diesel motor fuel is used
by
9 such organization for its own use or consumption.
10 (b) The tax on the [~~incident~~] incidence of sale or use imposed
by
11 subdivision one of this section shall not apply to: (i) the sale [~~to~~]
or
12 use [~~by the consumer of previously untaxed Diesel motor fuel which~~
~~is~~
13 ~~not enhanced Diesel motor fuel and which is used exclusively for~~
~~heating~~
14 ~~purposes or for the purpose of use or consumption directly and~~
~~exclu-~~
15 ~~sively in the production of tangible personal property, gas,~~
~~electric-~~
16 ~~ity, refrigeration or steam, for sale,] of non-highway Diesel
motor
17 fuel, but only if all of such fuel is consumed other than on the
public
18 highways of this state (except for the use of the public highway
by
19 farmers to reach adjacent farmlands); provided, however, this
exemption
20 shall in no event apply to a sale of non-highway Diesel motor fuel
which~~

21 involves a delivery at a filling station or into a repository which
is
22 equipped with a hose or other apparatus by which such fuel can
be
23 dispensed into the fuel tank of a motor vehicle (except for delivery
at
24 a farm site which qualifies for the exemption under subdivision (g)
of
25 section three hundred one-b of this chapter); or (ii) [~~the sale~~
~~of~~
26 ~~previously untaxed Diesel motor fuel which is not enhanced Diesel~~
~~motor~~
27 ~~fuel to a person registered under this article as a distributor~~
~~of~~
28 ~~Diesel motor fuel other than (A) a retail sale to such person or (B)~~
~~a~~
29 ~~sale to such person which involves a delivery at a filling station~~
~~or~~
30 ~~into a repository which is equipped with a hose or other apparatus~~
~~by~~
31 ~~which such fuel can be dispensed into the fuel tank of a motor~~
~~vehicle;~~
32 ~~or (iii) a sale or use of enhanced Diesel motor fuel to or by a~~
~~consumer~~
33 ~~exclusively for the purposes of heating specified in subparagraph (i)~~
~~of~~
34 ~~this paragraph but only if such enhanced Diesel motor fuel is~~
~~delivered~~
35 ~~into a storage tank which is not equipped with a hose or other~~
~~apparatus~~
36 ~~by which such fuel can be dispensed into the fuel tank of a motor~~
~~vehi-~~
37 ~~cle and such storage tank is attached to the heating unit burning~~
~~such~~
38 ~~fuel, provided that each delivery of such fuel of over four~~
~~thousand~~
39 ~~five hundred gallons shall be evidenced by a certificate signed by~~
~~the~~
40 ~~purchaser stating that the product will be used exclusively for~~
~~heating~~
41 ~~purposes; or (iv) a sale or use consisting of no more than four~~
~~thousand~~
42 ~~five hundred gallons of Diesel motor fuel in a thirty-day period to~~
~~or~~
43 ~~by a consumer who purchases or uses such fuel for use or~~
~~consumption~~
44 ~~directly and exclusively in the production for sale of tangible~~
~~personal~~
45 ~~property by farming but only if all of such fuel is delivered on~~
~~the~~
46 ~~farm site and is consumed other than on the highways of this~~
~~state~~
47 ~~(except for the use of the highway to reach adjacent~~
~~farmlands)~~
48 ~~provided, however, a farmer may purchase more than four thousand~~
~~five~~

49 ~~hundred gallons of Diesel motor fuel in a thirty-day period for such~~
use
50 ~~or consumption exempt from the tax in accordance with prior~~
clearance
51 ~~given by the commissioner of taxation and finance; or (v)]~~ a sale to
the
52 consumer consisting of not more than twenty gallons of water-white
kero-
53 sene to be used and consumed exclusively for heating purposes; or
[(vi)]
54 (iii) the sale to or delivery at a filling station or other
retail
55 vendor of water-white kerosene provided such filling station or
other
56 retail vendor only sells such water-white kerosene exclusively for heat-
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1 ing purposes in containers of no more than twenty gallons; or
[(vii)]
2 (iv) a sale of kero-jet fuel to an airline for use in its airplanes
or a
3 use of kero-jet fuel by an airline in its airplanes; or [(viii)] (v)
a
4 sale of kero-jet fuel by a registered distributor of Diesel motor
fuel
5 to a fixed base operator registered under this article as a
distributor
6 of kero-jet fuel only where such fixed base operator is engaged
solely
7 in making or offering to make retail sales not in bulk of kero-jet
fuel
8 directly into the fuel tank of an airplane for the purpose of
operating
9 such airplane; or [(ix)] (vi) a retail sale not in bulk of kero-jet
fuel
10 by a fixed base operator registered under this article as a
distributor
11 of kero-jet fuel only where such fuel is delivered directly into
the
12 fuel tank of an airplane for use in the operation of such airplane.

13 (c) ~~[Limited exemptions for dyed Diesel motor fuel. (i) The~~
tax
14 ~~imposed by this section shall not apply to: (A) the sale of dyed~~
Diesel
15 ~~motor fuel by the importer to a purchaser under the circumstances~~
and
16 ~~subject to the terms and conditions as follows: (1) the importer~~
and
17 ~~purchaser are each registered under this article as a full Diesel~~
motor
18 ~~fuel distributor; (2) such importer has imported the enhanced~~
Diesel
19 ~~motor fuel, which is the subject of the sale, into the state and~~
has

20 ~~dyed such fuel to comply with the provisions of 26 USC § 4082(a) and~~
the
21 ~~regulations thereunder, as may be amended from time to time; (3)~~
the
22 ~~purchaser is a holder of a currently valid direct payment permit~~
issued
23 ~~pursuant to section two hundred eighty-three-d of this article; and~~
(4)
24 ~~such purchaser is primarily engaged in the retail heating oil~~
business
25 ~~and such dyed Diesel motor fuel will be sold by such purchaser~~
in a
26 ~~retail sale to a consumer for use solely as residential or~~
commercial
27 ~~heating oil; (B) a first sale of the dyed Diesel motor fuel, which~~
as
28 ~~the subject of an exempt sale described in clause (A) of this~~
subpara-
29 ~~graph, by the purchaser described therein to a purchaser likewise~~
hold-
30 ~~ing a currently valid direct pay permit under the circumstances~~
and
31 ~~subject to the terms and conditions as follows: (1) the sale of~~
such
32 ~~second purchaser by such first purchaser is the first and only sale~~
of
33 ~~such dyed Diesel motor fuel by such first purchaser; (2) such~~
second
34 ~~purchaser is primarily engaged in the retail heating oil business~~
and
35 ~~such dyed Diesel motor fuel will be sold by such second purchaser~~
in a
36 ~~retail sale to a consumer for use solely as residential or~~
commercial
37 ~~heating oil; (3) on the sale to the second purchaser, such~~
first
38 ~~purchaser described in such clause (A) attaches to the invoice a copy~~
of
39 ~~the invoice given by the importer on the exempt sale described in~~
such
40 ~~clause (A), so as to identify the origin of the dyed Diesel fuel~~
which
41 ~~is the subject of the sale to such second purchaser; and (4) such~~
second
42 ~~purchaser certifies that such dyed Diesel motor fuel is to be sold by~~
it
43 ~~only to a consumer for use solely as residential or commercial~~
heating
44 ~~oil. (ii) Prior to, or at the time of, such sale of such dyed~~
Diesel
45 ~~motor fuel described in clause (A) or (B) of subparagraph (i) of~~
this
46 ~~paragraph, the purchaser shall give a certificate to the seller~~
setting
47 ~~forth the intended use of the dyed Diesel motor fuel which is sought~~
to

48 ~~be qualified for exemption under this paragraph, that the purchaser~~
has
49 ~~been issued a direct payment permit which is currently valid, that~~
such
50 ~~permit has not been suspended or revoked and that the purchaser~~
other-
51 ~~wise meets the qualifications of this paragraph. (iii) The~~
limited
52 ~~exemptions allowed under this paragraph shall in no event apply to~~
any
53 ~~dyed Diesel motor fuel which is delivered into a repository~~
equipped
54 ~~with hose or other apparatus capable of being used to dispense fuel~~
into
55 ~~the fuel tank of a motor vehicle, or where the purchaser's~~
direct
56 ~~payment permit has been suspended or revoked and the commissioner~~
has

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1 ~~made generally available the identity of those persons whose~~
direct
2 ~~payment permits have been suspended or revoked.] Nothing in this~~
article
3 ~~shall exempt non-highway diesel motor fuel from the imposition of~~
the
4 ~~tax under this section, if such non-highway diesel motor fuel~~
is
5 ~~intended for use on the waterways of the state including any~~
other
6 ~~waterways bordering on the state, for operating pleasure or~~
recreational
7 ~~motor boats thereon.~~

8 4. The tax imposed by this section on Diesel motor fuel shall
be
9 passed through by the seller and included as part of the selling
price
10 to each purchaser of such fuel. Provided, however, the amount of the
tax
11 imposed by this section may be excluded from the selling price of
Diesel
12 motor fuel where (i) a sale of Diesel motor fuel is made to an
organiza-
13 tion described in paragraph (a) of subdivision three of this
section
14 solely for the purpose stated therein; (ii) a sale of [~~enhanced~~]
non-
15 highway Diesel motor fuel is made to a consumer [~~exclusively for~~
the
16 ~~purposes of heating specified in subparagraph (i) of paragraph (b)~~
of
17 ~~subdivision three of this section~~] but only if such [~~enhanced~~] non-
high-
18 way Diesel motor fuel is not delivered to a filling station, nor
deliv-

19 ered into a storage tank which is [~~not~~] equipped with a hose or
other
20 apparatus by which such fuel can be dispensed into the fuel tank
of a
21 motor vehicle [~~and such storage tank is attached to the heating
unit
22 burning such fuel, provided that each delivery of such fuel of over
four
23 thousand five hundred gallons shall be evidenced by a certificate
signed
24 by the purchaser stating that the product will be used exclusively
for
25 heating purposes; (iii) a sale is made consisting of no more than
four
26 thousand five hundred gallons (or a greater amount which has been
given
27 prior clearance by the commissioner of taxation and finance) of
Diesel
28 motor fuel in a thirty-day period to a consumer who purchases such
fuel
29 for use or consumption directly and exclusively in the production
for
30 sale of tangible personal property by farming but only if all of
such
31 fuel is consumed other than on the highways or waterways of this
state];
32 or [~~(iv)~~] (iii) the sale to or delivery at a filling station or
other
33 retail vendor of water-white kerosene provided such filling station
or
34 other retail vendor only sells such water-white kerosene exclusively
for
35 heating purposes in containers of no more than twenty gallons; or
[~~(v)~~]
36 (iv) a sale of kero-jet fuel is made to an airline for use in
its
37 airplanes.~~

38 5. All the provisions of this article relating to the
administration
39 and collection of the taxes on motor fuel, except sections two
hundred
40 eighty-three-a and two hundred eighty-three-b of this article, shall
be
41 applicable to the tax imposed by this section with such limitation
as
42 specifically provided for in this article with respect to Diesel
motor
43 fuel and with such modification as may be necessary to adapt
the
44 language of such provisions to the tax imposed by this section.
With
45 respect to the bond or other security required by subdivision three
of
46 section two hundred eighty-three of this article, the commissioner
[~~of
47 taxation and finance~~], in determining the amount of bond or other
secu-

48 rity required for the purpose of securing tax payments, shall take
into
49 account the volume of [~~heating fuel~~] non-highway Diesel motor fuel
and
50 other Diesel motor fuel sold for exempt purposes by a distributor
of
51 Diesel motor fuel during prior periods as a factor reducing
potential
52 tax liability along with any other relevant factors in determining
the
53 amount of security required. With respect to the bond required to
be
54 filed prior to registration as a Diesel motor fuel distributor, no
bond
55 shall be required of an applicant upon a finding of the
applicant's
56 fiscal responsibility, as reflected by such factors as net
worth,
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1 current assets and liabilities, and tax reporting and payment
history,
2 and the department shall not provide for a minimum bond of every
appli-
3 cant.
4 § 6. Subdivision 7 of section 283 of the tax law, as amended by
chap-
5 ter 261 of the laws of 1988, is amended to read as follows:
6 7. Temporary restraining order and permanent [~~injunction~~]
injunction
7 against unlawful importation and forfeiture of unlawfully imported
or
8 produced [~~automotive~~] motor fuel or diesel motor fuel. (a)
Whenever
9 evidence is furnished by the commissioner [~~of taxation and finance~~]
to
10 any justice of the supreme court, in court or at chambers, showing
that
11 any person not registered as a distributor as required by this
article
12 has imported [~~automotive fuel~~] motor fuel or diesel motor fuel into
this
13 state or caused [~~automotive~~] motor fuel or diesel motor fuel to
be
14 imported into this state or has produced, refined, manufactured
or
15 compounded [~~automotive fuel or has subjected diesel motor fuel to~~
~~the~~
16 ~~process of enhancement within this state~~] motor fuel or diesel
motor
17 fuel, such justice may make a temporary order without notice
prohibiting
18 such person and his agents from selling, transferring or
otherwise
19 disposing of any such fuel or any fuel and also prohibiting all
other

20 persons in possession of or having control over the same from
selling,
21 releasing, transferring or otherwise disposing of any [~~automotive
fuel~~]
22 motor fuel or diesel motor fuel imported, produced, refined,
manufac-
23 tured, compounded, [~~enhanced~~], sold or transferred by such person not
so
24 registered pending a hearing for a preliminary injunction.
25 (b) Upon granting a temporary order, the court shall direct
that a
26 hearing be held at the earliest possible time upon such notice
and
27 service as the court shall direct and at the same time, if such
action
28 has not yet been commenced, the commissioner [~~of taxation and
finance~~]
29 shall commence an action in supreme court for a permanent injunction
and
30 forfeiture of [~~automotive fuel~~] motor fuel or diesel motor fuel
pursuant
31 to paragraph (c) of this subdivision. Where, after such opportunity
for
32 a hearing, the court determines that there is a substantial
probability
33 that the commissioner will prevail in such action, the court shall
grant
34 a preliminary injunction restraining the sale, release, transfer
or
35 other disposition of fuel subject to the temporary order.
36 (c) (1) If it is established by clear and convincing evidence
that
37 [~~automotive fuel~~] motor fuel or diesel motor fuel was imported,
caused
38 to be imported, produced, refined, manufactured or compounded [~~or
diesel
39 motor fuel was subjected to the process of enhancement~~] by any
person
40 not registered as a distributor as required by this article, the
court
41 shall grant a judgment (i) permanently enjoining such person and
his
42 agents from selling, transferring or otherwise disposing of any
such
43 fuel or any fuel within this state and (ii) declaring the forfeiture
of
44 any fuel that was so imported, caused to be imported, produced,
refined,
45 manufactured, or compounded [~~or enhanced~~] by such person.
46 (2) With respect to [~~automotive fuel~~] motor fuel or diesel motor
fuel
47 that was imported, caused to be imported, produced, refined,
manufac-
48 tured or compounded, [~~or diesel motor fuel that was subjected to
the
49 process of enhancement~~] by a person not registered as a distributor
as

50 required by this article or that was unlawfully sold or transferred
by
51 such person, if it is established by clear and convincing evidence
that
52 any other person in possession of or having control over such fuel
was
53 not a purchaser or transferee in good faith of such fuel with respect
to
54 the fact that such fuel was so imported, caused to be
imported,

55 produced, refined, manufactured, or compounded [~~or enhanced~~] by a
person

56 not registered as a distributor as required by this article or that
such

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1 fuel was so unlawfully sold or transferred by such person, the
court

2 shall grant a judgment (i) permanently enjoining such other person
and

3 his or her agents from selling, releasing, transferring or
otherwise

4 disposing of any such fuel and (ii) declaring the forfeiture of
such

5 fuel in the possession or under the control of such other person.

6 (d) The commissioner may, at any time subsequent to the granting
of

7 the temporary order pursuant to paragraph (a) of this subdivision,
in

8 his or her sole discretion consent to a sale of [~~automotive fuel~~]
motor

9 fuel or diesel motor fuel subject to such temporary order which is
in

10 the possession or under the control of a person other than the person
or

11 the agent of the person who imported, caused to be imported,
produced,

12 refined, manufactured, compounded [~~or enhanced~~] or unlawfully sold
or

13 transferred such fuel. As a condition of granting permission to a
sale

14 of [~~automotive fuel~~] motor fuel or diesel motor fuel pursuant to
this

15 subdivision, the commissioner shall require the payment of all
taxes,

16 penalties and interest imposed by and pursuant to the authority of
this

17 chapter with respect to such fuel.

18 (e) (1) At any time during the pendency of an action under
this

19 section, the [~~automotive fuel~~] motor fuel or diesel motor fuel
subject

20 to a temporary, preliminary or permanent order hereunder may be
released

21 from the scope of such order if there is given an undertaking, in
an

22 amount equal to the market value of such fuel plus state excise
and
23 sales taxes and federal excise taxes, to the effect that there will
be
24 paid to the commissioner the amount of the market value of such fuel
and
25 such taxes in the event that such fuel is adjudged forfeited.
26 (2) Any person enjoined by a temporary order or a preliminary
injunc-
27 tion issued pursuant to this subdivision may move at any time,
on
28 notice, to vacate or modify it.
29 (f) The procedures of the civil practice law and rules applicable
to
30 temporary restraining orders, preliminary injunctions and
permanent
31 injunctions not inconsistent with this subdivision shall apply to
tempo-
32 rary orders, preliminary injunctions and permanent injunctions
issued
33 under this subdivision and any provision of this subdivision which
is
34 not in accord with the constitutional mandate of such procedures of
the
35 civil practice law and rules shall be deemed to be modified as
necessary
36 to accord with such a mandate. The procedural provisions set forth
in
37 paragraph three of subdivision (d) and in subdivision (j) of
section
38 eighteen hundred forty-eight of this chapter shall apply to the
forfei-
39 ture proceedings under this subdivision and, in respect to a
declaration
40 of forfeiture under this subdivision, the court shall direct the
commis-
41 sioner to sell or otherwise dispose of such forfeited [~~automotive~~
~~fuel~~]
42 motor fuel or diesel motor fuel on such conditions the
commissioner
43 deems most advantageous and just under the circumstances. The
commis-
44 sioner shall not be required to file any undertaking in connection
with
45 an action pursuant to this subdivision.
46 § 7. Sections 283-d and 284-b of the tax law are REPEALED.
47 § 8. Subdivision 3 of section 285-b of the tax law, as amended
by
48 chapter 245 of the laws of 1989, is amended to read as follows:
49 3. (a) The claim for or exemption from tax provided for in
subpara-
50 graphs (i), (ii), (iii), (iv), [~~(v)~~], and (vi) [~~(vii) and (ix)~~]
of
51 paragraph (b) of subdivision three of section two hundred eighty-
two-a
52 of this article shall be established by means of an exempt
transaction

53 certificate. If any such exemption is applicable, such certificate shall
54 be provided by the purchaser to the seller at the time of or prior
to
55 delivery of the Diesel motor fuel. Such exempt transaction
certificate
56 shall set forth the name and address of the purchaser and the basis
of
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1 the exemption and shall be signed by such purchaser and by the
seller.
2 Such certificate shall be in such form and contain such other
informa-
3 tion as the commissioner [~~of taxation and finance~~] shall require.
Where
4 a proper and complete exempt transaction certificate has been
furnished
5 and accepted by the seller in good faith, such certificate under
such
6 circumstance shall relieve the seller of the burden of proving that
the
7 Diesel motor fuel covered by such certificate is exempt from tax
by
8 reason of subparagraph (i), (ii), (iii), (iv), [~~(v)~~], or (vi) [~~(vii)~~
~~or~~
9 ~~(ix)~~] of paragraph (b) of subdivision three of such section two
hundred
10 eighty-two-a. Any purchaser who furnishes to his seller a false or
frau-
11 dulent exempt transaction certificate for the purpose of establishing
an
12 exemption from the tax imposed by section two hundred eighty-two-a
of
13 this article shall be jointly and severally liable for the tax
imposed
14 by such section. In lieu of an exempt transaction certificate,
the
15 commissioner [~~of taxation and finance~~] may provide for the
establishment
16 of such exemption by means of a procedure or other document which he
or
17 she deems appropriate so as to secure the revenues from the excise
tax
18 on Diesel motor fuel. Provided, further, in the case of the
exemption
19 provided by subparagraph (i) of paragraph (b) of subdivision three
of
20 section two hundred eighty-two-a of this article, the commissioner
shall
21 provide for an alternative procedure or other document signed only
by
22 the seller, such as a metered delivery ticket, for the establishment
of
23 such exemption in those cases where such commissioner is satisfied
that

24 the use of such alternative procedure or other document will not
jeop-
25 ardize the revenues from the excise tax on Diesel motor fuel.
26 (b) A claim for the exemption from tax provided for in
subparagraph
27 [~~(ii) or (viii)~~] (v) of paragraph (b) of subdivision three of
section
28 two hundred eighty-two-a of this article shall be established by
means
29 of an interdistributor sale certificate. If such exemption is
applica-
30 ble, such certificate shall be provided by the purchaser to the
seller
31 at the time of or prior to delivery of the Diesel motor fuel.
Such
32 certificate shall set forth the name and address of the purchaser,
the
33 purchaser's registration number, an affirmation by such purchaser
that
34 the purchaser is registered as a distributor and that such
registration
35 has not been suspended or cancelled and shall be signed by such
purchas-
36 er and by the seller. Such certificate shall be in such form and
contain
37 such other information as the commissioner [~~of taxation and~~
~~finance~~]
38 shall require. Where a proper and complete interdistributor sale
certif-
39 icate has been furnished and accepted by the seller in good faith,
such
40 certificate under such circumstance shall relieve the seller of
the
41 burden of proving that the Diesel motor fuel covered by such
certificate
42 is exempt from tax by reason of subparagraph [~~(ii) or (viii)~~] (v)
of
43 paragraph (b) of subdivision three of such section two hundred
eighty-
44 two-a. For purposes of this paragraph, a seller shall not have
accepted
45 such certificate in good faith if the purchaser's registration is
inval-
46 id because it has been suspended or cancelled, or if the purchaser
is
47 not registered, and the commissioner [~~of taxation and finance~~]
has
48 furnished registered distributors with information identifying all
those
49 persons then validly registered as distributors of Diesel motor fuel
and
50 those persons whose registrations have been suspended or cancelled.
Any
51 purchaser who furnishes to his seller a false or fraudulent
interdis-
52 tributor sale certificate for the purpose of establishing an
exemption

53 from the tax imposed by section two hundred eighty-two-a of this
article
54 shall be jointly and severally liable for the tax imposed by
such
55 section.

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1 § 9. Subdivision 1 of section 286 of the tax law, as amended by
chap-
2 ter 302 of the laws of 2006, is amended to read as follows:

3 1. Every person who imports or causes to be imported into this
state,
4 or who produces, refines, manufactures or compounds within this
state,
5 or who purchases or sells in this state motor fuel or diesel motor
fuel
6 or ingredients which may be manufactured or compounded into motor
fuel
7 or diesel motor fuel, [~~or engages in the enhancement of diesel
motor~~
8 ~~fuel~~] shall keep a complete and accurate record of all purchases
and
9 sales, uses or other dispositions thereof and a complete and
accurate
10 record of the number of gallons of motor fuel or diesel motor fuel
or
11 such ingredients so imported, produced, refined, manufactured[~~7~~
or
12 compounded [~~or enhanced~~]. Every person who stores motor fuel or
diesel
13 motor fuel shall keep a complete and accurate record of the identity
of
14 the person for whom such fuel is stored, the quantity and type of
fuel
15 so stored, the identity of the person to whom such fuel is released
from
16 storage and the quantity and type of fuel so released. Such
records
17 shall be in such form and contain such other information as the
commis-
18 sioner shall prescribe. Said commissioner, by rule or regulation,
also
19 may require the delivery of statements to purchasers with
consignments
20 of motor fuel or diesel motor fuel or such ingredients, and
prescribe
21 the matters to be contained therein. Such records and statements,
unless
22 required by the commissioner to be preserved for a longer period,
shall
23 be preserved for a period of three years and shall be offered
for
24 inspection at any time upon oral or written demand by such
commissioner
25 or the commissioner's duly authorized agents. The commissioner is
hereby

26 further authorized to examine the equipment of any such person
pertain-
27 ing to the storage, sale or delivery of such fuels, as well as the
stock
28 of such fuels in the possession or control of such person. To verify
the
29 amount of tax due under this article, each such person is
hereby
30 directed and required to give to the commissioner or the
commissioner's
31 duly authorized representatives, the means, facilities and
opportunity
32 for such examinations as are herein provided for and required.
Nothing
33 contained in this section [~~contained~~] shall be construed to require
the
34 keeping for purposes of this article of a record of purchases or
sales
35 of motor fuel or diesel motor fuel or such ingredients at retail
in
36 small quantities (less than thirty gallons) or of motor fuel or
diesel
37 motor fuel imported into this state in the tank of a motor vehicle
which
38 supplies the fuel for its operation.
39 § 10. Section 286-a of the tax law, as amended by chapter 261 of
the
40 laws of 1988, is amended to read as follows:
41 § 286-a. Records and reports of transportation of [~~automotive~~]
motor
42 fuel and diesel motor fuel. Every person transporting [~~automotive~~]
motor
43 fuel or diesel motor fuel within this state, whether such
transportation
44 originates within or without this state, when required by the
[~~tax~~
45 ~~commission~~] commissioner, shall keep a true and accurate record of
all
46 [~~automotive~~] motor fuel and diesel motor fuel so transported,
including
47 ingredients which may be manufactured or compounded into
[~~automotive~~]
48 motor fuel or diesel motor fuel, showing such facts with relation
to
49 such [~~automotive~~] fuel and ingredients and their transportation as
the
50 [~~tax-commission~~] commissioner may require. Such record shall be open
to
51 inspection by the representatives of the department [~~of taxation~~
~~and~~
52 ~~finance~~] at any time and the [~~tax-commission~~] commissioner may
require
53 from any such person sworn returns of all or any part of the
information
54 shown by such records.
55 § 11. Section 286-b of the tax law, as amended by chapter 261 of
the

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1 § 286-b. Transportation of [~~automotive~~] motor fuel or diesel
motor
2 fuel; manifest required. 1. The master or other person in charge of
any
3 barge, tanker or other vessel in which [~~automotive~~] motor fuel or
diesel
4 motor fuel is being transported over any of the navigable waters of
this
5 state, the operator of a motor vehicle in which [~~automotive~~] motor
fuel
6 or diesel motor fuel is being transported in this state, or the
operator
7 of a pipeline through which [~~automotive~~] motor fuel or diesel motor
fuel
8 is being transported in this state, other than [~~automotive~~] motor
fuel
9 or diesel motor fuel being transported for use in operating the
engine
10 which propels such vessel or motor vehicle, as the case may be,
must
11 have in his or her possession a manifest which shows the name
and
12 address of the person from whom such [~~automotive~~] fuel was received
by
13 him or her and the place of receipt of such fuel and the name
and
14 address of every person to whom he or she is to make delivery of
the
15 same and the place of delivery, together with the number of gallons
to
16 be delivered to each such person, and, if such [~~automotive~~] fuel
is
17 being imported into the state in such vessel, motor vehicle or
pipeline
18 for use, storage, distribution or sale in the state, the name of
the
19 distributor importing or causing such fuel to be imported into the
state
20 and such other information as the [~~tax commission~~] commissioner
may
21 require pursuant to rule or regulation, and shall at the request of
a
22 peace officer, acting pursuant to his or her special duties, a
police
23 officer, any representative of the department [~~of taxation and~~
~~finance~~]
24 or any other person authorized by law to inquire into or investigate
the
25 transportation of such [~~automotive~~] fuel, produce such manifest
for
26 inspection. The person causing the operation of such vessel, motor
vehi-

27 cle or pipeline shall be responsible to cause the operator of
such
28 vessel, motor vehicle or pipeline to keep in his or her possession
on
29 such vessel, in such motor vehicle or in the main control building
of
30 such pipeline in this state the manifest required by this section.
The
31 absence of the manifest required by this section shall give rise to
a
32 presumption that the [~~automotive~~] motor fuel or diesel motor fuel
being
33 transported is intended for sale, use, distribution or storage in
this
34 state and is being imported or caused to be imported by other
than a
35 registered distributor. Moreover, the absence of (1) the place of
deliv-
36 ery of motor fuel or diesel motor fuel on the manifest with respect
to
37 [~~automotive~~] motor fuel or diesel motor fuel being imported into
the
38 state shall give rise to a presumption that such fuel is being
imported
39 into the state for use, distribution, storage or sale in the state
and
40 (2) the name of a registered distributor on the manifest with respect
to
41 [~~automotive~~] motor fuel or diesel motor fuel being imported into
the
42 state for use, distribution, storage or sale in the state shall
give
43 rise to a presumption that such fuel is being so imported or caused
to
44 be imported by other than a registered distributor. Every barge,
tanker
45 or other vessel so used for the transportation of motor fuel must
be
46 plainly and visibly marked on both sides thereof and above the
water
47 line with the word "Gasoline," or other name of the motor fuel
being
48 transported, in letters at least eight inches high and of
corresponding
49 appropriate width, or must be identified as prescribed by the
[~~tax~~
50 ~~commission~~] commissioner pursuant to rule or regulation. The master
or
51 person in charge of such barge, tanker or other vessel, as well as
the
52 owners thereof, shall be guilty of a violation of this section if
such
53 barge, tanker or other vessel is not so marked.
54 2. The commissioner may, by regulation provide for the form
and
55 content of the manifest required for [~~automotive~~] motor and diesel
motor

56 fuel and for the filing of monthly information returns by every
person
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1 required to maintain records, described in subdivision one of
this
2 section, which shall in all material respects reflect the
information
3 required to be contained in such records. Such returns shall be in
such
4 form and contain such other information as the commissioner
shall
5 require.

6 § 12. Subdivision 1 of section 287 of the tax law, as amended by
chap-
7 ter 261 of the laws of 1988, is amended to read as follows:

8 1. Every distributor shall, on or before the twentieth day of
each
9 month, file with the department [~~of taxation and finance~~] a return,
on
10 forms to be prescribed by the commissioner and furnished by such
depart-
11 ment, stating the number of gallons of motor fuel imported,
manufactured
12 or sold by such distributor in the state during the preceding
calendar
13 month and in the case of Diesel motor fuel, the number of gallons
of
14 [~~enhanced~~] Diesel motor fuel imported[~~, the number of gallons~~
~~enhanced~~]

15 and the number of gallons which have been sold or used. Provided,
howev-
16 er, the commissioner may, if he or she deems it necessary in order
to
17 [~~insure~~] ensure the payment of the taxes imposed by this
article,
18 require returns to be made at such times and covering such periods as
he
19 or she may deem necessary, and, by regulation, may permit the filing
of
20 returns by distributors of Diesel motor fuel on a quarterly, semi-
annual
21 or annual basis, or may waive the filing of returns by a distributor
of
22 Diesel motor fuel for such time and upon such terms as he or she
may
23 deem proper if satisfied that no tax imposed by this article
with
24 respect to Diesel motor fuel is or will be payable by him or her
during
25 the time for which returns are waived. Such returns shall contain
such
26 further information as the commissioner shall require. The fact
that a
27 distributor's name is signed to a filed return shall be prima
facie

28 evidence for all purposes that the return was actually signed by
such
29 distributor. Each such distributor shall, with respect to motor
fuel,
30 pay to the department with the filing of such return, the taxes
imposed
31 by this article on each gallon of motor fuel imported, manufactured
or
32 sold by such distributor in the state, and so reported, during the
peri-
33 od covered by such return. Each distributor shall, with respect
to
34 Diesel motor fuel, pay to the department with the filing of the
return
35 the taxes imposed by this article on the number of gallons of
Diesel
36 motor fuel sold or used or delivered to a filling station or
delivered
37 into the fuel tank of a motor vehicle during the period covered by
the
38 return. Provided, however, that where a distributor has purchased
[~~auto-~~
39 ~~otive~~] motor fuel or diesel motor fuel upon which the taxes imposed
by
40 this article have been paid or paid over and in each instance the tax
is
41 included in the price, a credit shall be allowed for the amount of
such
42 taxes upon the subsequent sale of such fuel to the extent that
such
43 taxes are so paid and included in the price.
44 § 13. Paragraphs (a) and (c) of subdivision 3 of section 289-c of
the
45 tax law, paragraph (a) as amended by chapter 558 of the laws of 1965
and
46 paragraph (c) as amended by chapter 302 of the laws of 2006, are
amended
47 to read as follows:
48 (a) Except as otherwise provided in paragraph (b) of this section,
any
49 person who shall buy any motor fuel or diesel motor fuel, on which
the
50 tax imposed by this article shall have been paid, and shall consume
the
51 same in any manner except in the operation of a motor vehicle upon
or
52 over the public highways of this state, or in the operation of a
pleas-
53 ure or recreational motor boat upon or over the waterways of the
state
54 including waterways bordering on the state, shall be reimbursed
the
55 amount of such tax in the manner and subject to the conditions
herein
56 provided except that there shall be no reimbursement of tax paid
on

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1 motor fuel or diesel motor fuel taken out of this state in a fuel
tank
2 connected with the engine of a motor vehicle and consumed outside
of
3 this state.

4 (c) All claims for reimbursement shall be in such form and
contain
5 such information as the commissioner shall prescribe and shall be
filed
6 within three years from (i) the date of the purchase, in the case of
the
7 purchaser; or (ii) the date of the sale, in the case of the seller,
of
8 the motor fuel so subject to reimbursement. Every such claim
shall
9 include a certificate by or on behalf of the party presenting the
same

10 to the effect that it is just, true and correct, that no part
thereof
11 has been paid, except as stated therein, and that the balance
therein

12 stated is actually due and owing. The claimant shall satisfy the
depart-
13 ment that the claimant has borne the tax and that the motor fuel
has
14 been consumed by the claimant in a manner other than the operation
of a
15 motor vehicle upon or over the public highways of this state, the
opera-
16 tion of a pleasure or recreational motorboat upon or over the
waterways

17 of the state including waterways bordering on the state or, in the
case
18 of an omnibus carrier, taxicab licensee, nonpublic school operator
or
19 volunteer ambulance service, that the claimant has borne the tax
and

20 that the amount claimed is the amount of such tax reimbursable
under
21 paragraph (b), (d), (e) or (f) of this subdivision [~~three of
this~~

22 ~~section~~]. The department may require such further information or
proof
23 as it shall deem necessary for the administration of such claim.

Claims
24 for reimbursement approved by the department shall be paid from
revenues
25 collected under this article and deposited to the credit of the
comp-
26 troller as hereinafter provided; but no such claims shall be paid
unless
27 the department is satisfied that the amount of the tax for which
the

28 reimbursement is claimed has actually been collected by the state.
The
29 amount of any erroneous or excessive payment to a claimant
for
30 reimbursement may be determined by the department and may be
recovered
31 from such claimant in the same manner as a tax imposed by this
article,
32 provided, however, that any such determination shall be made
within
33 three years after the date of such erroneous or excessive payment.
34 § 14. Subdivision 4 of sections 289-c of the tax law is REPEALED.
35 § 15. Subdivision 1 of section 289-e of the tax law, as amended
by
36 section 5 of part EE of chapter 63 of the laws of 2000, is amended
to
37 read as follows:
38 1. All taxes, interest, penalties and fees collected or received
by
39 the commissioner under the taxes imposed by this article, except
as
40 provided otherwise in subdivision two and subdivision three of
this
41 section and sections two hundred eighty-two-b, two hundred eighty-
two-c,
42 two hundred eighty-four-a and two hundred eighty-four-c, other
than
43 [~~those imposed by section two hundred eighty-four-b and~~] the fee
imposed
44 by section two hundred eighty-four-d and penalties and interest on
such
45 fee, shall be deposited and disposed of pursuant to the provisions
of
46 section one hundred seventy-one-a of this chapter; provided that
an
47 amount equal to thirty-seven and one-half per centum of the
moneys
48 collected under section two hundred eighty-four of this chapter shall
be
49 appropriated and used for the acquisition of property necessary for
the
50 construction and reconstruction of highways and bridges or culverts
on
51 the state highway system, and for the construction, maintenance
and
52 repair of such highways and bridges or culverts, all under the
direction
53 of the commissioner of transportation.
54 § 16. Section 289-f of the tax law, as added by chapter 44 of the
laws
55 of 1985, is amended to read as follows:
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1 § 289-f. Joint administration of taxes. In addition to the
powers

2 granted to the [~~tax-commission~~] commissioner in this chapter,
the
3 [~~commission~~] commissioner is hereby authorized to make provisions
pursu-
4 ant to rules and regulations for the joint administration, in whole
or
5 in part, of the state and local taxes imposed by article twenty-
eight
6 and authorized to be imposed by article twenty-nine of this chapter
upon
7 the sale of [~~automotive~~] motor fuel or diesel motor fuel and the
taxes
8 imposed and authorized to be imposed by this article, including
the
9 joint reporting, assessment, collection, determination and refund
of
10 such taxes, and for that purpose to prescribe that any of the
[~~commis-~~
11 ~~sion's~~] commissioner's functions under such articles, and any
returns,
12 forms, statements, documents or information to be submitted to
the
13 [~~commission~~] commissioner under such articles, any books and records
to
14 be kept for purposes of the taxes imposed or authorized to be imposed
by
15 such articles, any schedules of amounts to be collected under such
arti-
16 cles, any registration required under such articles, and the payment
of
17 taxes under such articles shall be on a joint basis with respect to
the
18 taxes imposed by such articles.

19 § 17. Paragraph 2 of subdivision (b) and subdivisions (c), (k),
(l)
20 and (m) of section 300 of the tax law, paragraph 2 of subdivision (b)
as
21 amended by chapter 170 of the laws of 1994, subdivision (c) as added
by
22 chapter 190 of the laws of 1990, subdivision (k) as amended by
section 1
23 of part H of chapter 407 of the laws of 1999 and subdivisions (l)
and
24 (m) as added by chapter 309 of the laws of 1996, are amended to read
as

25 follows:
26 (2) With respect to diesel motor fuel, every corporation and
unincor-
27 porated business (i) importing diesel motor fuel or causing diesel
motor
28 fuel to be imported into the state for use, distribution, storage
or
29 sale in the state, (ii) producing, refining, manufacturing or
compound-
30 ing diesel motor fuel within the state, (iii) [~~engaging in the~~
~~enhance-~~

31 ~~ment of diesel motor fuel within the state, (iv)]~~ making a sale or
use
32 of diesel motor fuel in the state, other than a retail sale not in
bulk
33 or self-use of diesel motor fuel which has been the subject of a
retail
34 sale to such corporation or unincorporated business, or [~~(v)]~~
(iv)
35 registered by the department [~~of taxation and finance~~] as a
"distributor
36 of kero-jet fuel only" pursuant to the provisions of subdivision two
of
37 section two hundred eighty-two-a of this chapter. Diesel motor
fuel
38 brought into this state in the ordinary fuel tank connecting with
the
39 engine of a motor vehicle, airplane or other conveyance, but not
a
40 vessel (other than a recreational motor boat or a commercial
fishing
41 vessel as defined in subdivision (j) of this section if the diesel
motor
42 fuel imported into and consumed in this state is used to operate
such
43 vessel while it is engaged in the harvesting of fish for
sale),
44 propelled by the use of such diesel motor fuel and to be used only
in
45 the operation thereof, shall not be deemed imported within the
meaning
46 of this article, if not removed from such tank except as used in
the
47 propulsion of such engine.

48 (c) [~~(1)]~~ The [~~term (A)]~~ terms (1) "diesel motor fuel" means such
term
49 as defined in subdivision fourteen of section two hundred eighty-two
of
50 this chapter [~~and regulations thereunder including any~~
~~regulations~~

51 ~~relating to product specifically designated "No. 4 diesel fuel" and~~
~~not~~

52 ~~suitable as a fuel used in the operation of a motor vehicle engine],~~
and

53 [~~(B) "enhanced]~~ (2) "highway diesel motor fuel" means such term
as

54 defined in subdivision [~~sixteen]~~ sixteen-a of section two hundred
eight-

55 y-two of this chapter, and

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1 [~~(C) (i) "nonautomotive type diesel motor fuel" as used in relation~~
to
2 ~~the rates of the tax imposed by section three hundred one-a of~~
this
3 ~~article means any diesel motor fuel, as described in subparagraph (A)~~
of

4 ~~this paragraph, which would be excluded from the diesel motor~~
fuel
5 ~~excise tax imposed by section two hundred eighty-two-a of this~~
chapter
6 ~~solely by reason of the enumerated exclusions based on ultimate use~~
of
7 ~~the product set forth in paragraph (b) of subdivision three of~~
such
8 ~~section, and (ii) "automotive-type diesel motor fuel" as used~~
in
9 ~~relation to the rates of tax imposed by such section three hundred~~
one-a
10 ~~means diesel motor fuel which is not nonautomotive-type diesel~~
motor
11 ~~fuel.]~~

12 (3) "non-highway diesel motor fuel" means such term as defined
in
13 subdivision sixteen of section two hundred eighty-two of this
chapter.

14 ~~(2)~~ (4) As used in this article, references to persons or
petroleum
15 businesses registered under article twelve-A of this chapter as
distrib-
16 utors of diesel motor fuel shall include all such persons or
petroleum
17 businesses registered under such article as distributors of diesel
motor
18 fuel and persons or petroleum businesses operating under valid
limited
19 registrations relating to persons or petroleum businesses making
retail
20 sales of diesel motor fuel to consumers solely for the
purposes
21 described in subparagraph (i) of paragraph (b) of subdivision three
of
22 section two hundred eighty-two-a of this chapter, but such
references
23 shall not include persons and petroleum businesses registered
as
24 "distributors of kero-jet fuel only" pursuant to the provisions
of
25 subdivision two of section two hundred eighty-two-a of this chapter.

26 (k) "Commercial gallonage" means gallonage (1) which is
[~~nonautomo-~~
27 ~~tive-type~~] non-highway diesel motor fuel [~~(which is not enhanced~~
~~diesel~~
28 ~~motor fuel)~~] or residual petroleum product, (2) which is included in
the
29 full measure of the [~~nonautomotive-type~~] non-highway diesel motor
fuel
30 component or the residual petroleum product component of the tax
imposed
31 under section three hundred one-a of this article, [~~and~~] (3) which
does
32 not (and will not) qualify (A) for the utility credit or
reimbursement

33 provided for in section three hundred one-d of this article, (B)
as
34 "manufacturing gallonage", as such term is defined in subdivision (m)
of
35 this section, (C) for the not-for-profit organization exemption
provided
36 for in subdivision (h) of section three hundred one-b of this
article,
37 or (D) for the heating exemption provided for in paragraph two of
subdi-
38 vision (d) of section three hundred one-b of this article or the
heating
39 reimbursement provided for in paragraph two of subdivision (a)
of
40 section three hundred one-c of this article, and (4) which will not
be
41 used nor has been used in the fuel tank connecting with the engine
of a
42 vessel. No gallonage shall qualify as "commercial gallonage" where
such
43 gallonage is eligible for the (i) utility credit or reimbursement
under
44 such section three hundred one-d of this article, (ii) [~~if before~~
~~Janu-~~
45 ~~ary first, nineteen hundred ninety-eight, the manufacturing exemption~~
~~or~~
46 ~~reimbursement under paragraph one of subdivision (b) of section~~
~~three~~
47 ~~hundred one-j of this article and, if on or after January first,~~
~~nine-~~
48 ~~teen hundred ninety-eight, the~~] "manufacturing exemption" under
para-
49 graph [~~four~~] three of subdivision (f) of section three hundred one-a
of
50 this article, (iii) [~~the~~] not-for-profit organization exemption
under
51 subdivision (h) of section three hundred one-b of this article, or
(iv)
52 heating exemption provided for in paragraph two of subdivision (d)
of
53 section three hundred one-b of this article or the heating
reimbursement
54 provided for in paragraph two of subdivision (a) of section
three
55 hundred one-c of this article. The commissioner shall require such
docu-
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1 mentary proof to substantiate the classification of product as
"commer-
2 cial gallonage" as the commissioner deems appropriate.
3 (1) "Railroad diesel" means non-highway diesel motor fuel for use
and
4 consumption directly and exclusively in the operation of a locomotive
or

5 a self-propelled vehicle run only on rails or tracks, but only if
either
6 (1) all such fuel is delivered into a storage facility which is
not
7 equipped with a hose or other apparatus by which such fuel can
be
8 dispensed into the fuel tank of a motor vehicle and such facility
is
9 used only to fuel such locomotives or such self-propelled vehicles,
or
10 (2) in accordance with the terms of sale, all such fuel is
delivered

11 directly into the tank of a locomotive or self-propelled
vehicle.

12 Provided, however, that a sale to a purchaser who will use such

non-
13 highway diesel motor fuel as "railroad diesel" shall be evidenced
by a

14 certificate signed by the purchaser stating that such diesel motor
fuel

15 will be used and consumed as prescribed in this subdivision and
the

16 commissioner may require such other information as the
commissioner

17 deems appropriate.

18 (m) "Manufacturing gallonage" means residual petroleum product
or

19 non-highway diesel motor fuel [~~(which is not enhanced diesel~~
~~motor~~

20 ~~fuel)] used and consumed directly and exclusively in the production
of~~

21 tangible personal property for sale by manufacturing, processing
or

22 assembly, but only if (i) all of such fuel or product is delivered
on

23 the manufacturing site [~~and is consumed other than on the highways~~
~~of~~

24 ~~this state], or (ii) the purchaser causes such fuel or product to~~

be
25 delivered to its manufacturing site. "Manufacturing gallonage" shall
in

26 no event [~~include diesel motor fuel] be consumed on the public~~

highways
27 of this state or delivered at a filling station or into a
repository

28 which is equipped with a hose or other apparatus by which such fuel
can

29 be dispensed into the fuel tank of a motor vehicle. The
commissioner

30 shall require such documentary proof to substantiate the
classification

31 of product as "manufacturing gallonage" as the commissioner deems
appro-

32 priate.

33 § 18. Section 301 of the tax law is REPEALED.

34 § 19. Subdivision (a), paragraph 1 of subdivision (b) and
subdivisions

35 (c), (e), (f) and (h) of section 301-a of the tax law, subdivision
(a)
36 as amended by section 1 of part U of chapter 63 of the laws of
2000,
37 paragraph 1 of subdivision (b) and paragraph 1 of subdivision (c)
as
38 amended by section 154 of part A of chapter 389 of the laws of
1997,
39 subdivisions (c), (e), (f) and (h) as added by chapter 190 of the
laws
40 of 1990, paragraph 3 of subdivision (e) and paragraph 3 of
subdivision
41 (f) as amended by chapter 170 of the laws of 1994 and paragraph 4
of
42 subdivision (e) and paragraph 4 of subdivision (f) as added by
chapter
43 309 of the laws of 1996, are amended to read as follows:
44 (a) General. Notwithstanding any other provision of this chapter,
or
45 of any other law, [~~for taxable months commencing on or after the
first~~
46 ~~day of September, nineteen hundred ninety,~~] there is hereby imposed
upon
47 every petroleum business for the privilege of engaging in
business,
48 doing business, employing capital, owning or leasing property, or
main-
49 taining an office in this state, a monthly tax for each or any part
of a
50 taxable month equal to the sum of the motor fuel component
determined
51 pursuant to subdivision (b) of this section, the [~~automotive-type~~
high-
52 way diesel motor fuel component determined pursuant to paragraph one
of
53 subdivision (c) of this section, the [~~nonautomotive-type~~ non-
highway
54 diesel motor fuel component determined pursuant to paragraph two
of
55 subdivision (c) of this section and the residual petroleum
product
56 component determined pursuant to subdivision (d) of this section.
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1 (1) The motor fuel component shall be determined by multiplying
the
2 motor fuel and [~~automotive-type~~ highway diesel motor fuel rate
times
3 the number of gallons of (1) motor fuel imported or caused to
be
4 imported into this state by the petroleum business for use,
distrib-
5 ution, storage or sale in the state or (2) produced, refined,
manufac-
6 tured or compounded in the state by the petroleum business during
the

7 month covered by the return under this article. Provided, however,
that
8 no motor fuel shall be included in the measure of the tax unless
it
9 shall have previously come to rest within the meaning of federal
deci-
10 sional law interpreting the United States constitution, nor shall
any
11 motor fuel be included in the measure of the tax imposed by this
article
12 more than once.

13 (c) (1) [~~Automotive-type~~] Highway Diesel motor fuel component. (A)
The
14 [~~automotive-type~~] highway diesel motor fuel component shall be
deter-
15 mined by multiplying the motor fuel and [~~automotive-type~~] highway
diesel
16 motor fuel rate times (1) the number of gallons of [~~automotive-~~
~~type~~]
17 highway diesel motor fuel sold or used by a petroleum business in
this
18 state during the month covered by the return under this article and
(2)
19 with respect to any gallonage which prior thereto has not been
included
20 in the measure of the tax imposed by this article, times the number
of
21 gallons of highway diesel motor fuel delivered (i) to a filling
station
22 or (ii) into the fuel tank connecting with the engine of a motor
vehicle
23 for use in the operation thereof, whichever of the latter two
events
24 shall be the first to occur. Provided, however, that no highway
diesel
25 motor fuel shall be included in the measure of the tax unless it
shall
26 have previously come to rest within the meaning of federal
decisional
27 law interpreting the United States constitution, nor decisional law,
nor
28 shall any highway diesel motor fuel be included in the measure of
the
29 tax imposed by this article more than once.

30 (B) [~~Diesel~~] Highway diesel motor fuel brought into this state in
the
31 fuel tank connecting with the engine of a vessel propelled by the use
of
32 such diesel motor fuel shall be deemed to constitute a taxable use
of
33 diesel motor fuel for the purpose of this paragraph to the extent of
the
34 fuel that is consumed in the operation of the vessel in this
state.

35 Provided, however, this paragraph shall not apply to (i) a
recreational

36 motor boat or (ii) [~~subsequent to August thirty-first, nineteen~~
37 ~~hundred~~ ~~ninety-four,~~] a commercial fishing vessel (as defined in subdivision
(j)
38 of section three hundred of this article) if the highway diesel
motor
39 fuel imported into and consumed in this state is used to operate
such
40 commercial fishing vessel while it is engaged in the harvesting of
fish
41 for sale. Provided, further, that tax liability for gallorage that
a
42 vessel consumes in this state shall be the tax liability with respect
to
43 the positive difference between the gallorage consumed in this
state
44 during the reporting period and the gallorage purchased in this
state
45 (upon which the tax imposed by this section has been paid) during
such
46 period. A credit or refund shall be available for any excess of
tax
47 liability for gallorage purchased in this state during the period
over
48 tax liability on gallorage so consumed in this state during such
period,
49 which excess shall be presumed to have been used outside this state.

50 (2) [~~Nonautomotive-type~~] Non-highway diesel motor fuel component.
The
51 [~~nonautomotive-type~~] non-highway diesel fuel component shall be
deter-
52 mined by multiplying the [~~nonautomotive-type~~] non-highway diesel
motor
53 fuel rate times the number of gallons of [~~nonautomotive-type~~] non-
high-
54 way diesel motor fuel sold or used by a petroleum business in this
state
55 during the month covered by the return under this section.

Provided,
56 however, that no non-highway diesel motor fuel shall be included in
the

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1 measure of the tax unless it shall have previously come to rest
within
2 the meaning of federal decisional law interpreting the United
States
3 constitution, nor shall any [~~nonautomotive-type~~] non-highway
diesel
4 motor fuel be included in the measure of the tax imposed by this
article
5 more than once.

6 (e) Motor fuel and [~~automotive-type~~] highway diesel motor fuel
rate.

7 (1) The basic motor fuel and highway diesel [~~automotive-type~~] motor
fuel

8 rate shall be [~~five and one-half~~] ten and two-tenths cents per
gallon.

9 (2) [~~Commencing April first, nineteen hundred ninety-one, the~~
~~motor~~
10 ~~fuel and automotive-type diesel motor fuel rate shall be the product~~
~~of~~
11 ~~the basic rate set forth in paragraph one of this subdivision~~
~~multiplied~~
12 ~~by a fraction, the numerator of which is the sum of the monthly~~
~~producer~~
13 ~~price index (unadjusted) published by the bureau of labor statistics~~
~~of~~
14 ~~the United States department of labor for the category of~~
~~commodities~~
15 ~~designated "refined petroleum products" for the twelve~~
~~consecutive~~
16 ~~months ending with the month of November, nineteen hundred ninety,~~
~~and~~
17 ~~the denominator of which is the sum of the monthly producer price~~
~~index~~
18 ~~(unadjusted) published by the bureau of labor statistics of the~~
~~United~~
19 ~~States department of labor for the category of commodities~~
~~designated~~
20 ~~"refined petroleum products" for the twelve consecutive months~~
~~ending~~
21 ~~with the month of November, nineteen hundred eighty-nine.~~

22 (3) ~~Commencing on the first day of January, nineteen hundred~~
~~ninety-~~
23 ~~two, the motor fuel and automotive-type diesel motor fuel rate then~~
~~in~~
24 ~~effect on the immediately preceding December thirty first shall~~
~~be~~
25 ~~adjusted as follows: such rate shall be multiplied by a fraction~~
~~the~~
26 ~~numerator of which is the sum of the monthly producer price index~~
~~(unad-~~
27 ~~justed) published by the bureau of labor statistics of the United~~
~~States~~
28 ~~department of labor for the category of commodities designated~~
~~"refined~~
29 ~~petroleum products" for the twelve consecutive months ending with~~
~~the~~
30 ~~month of August, nineteen hundred ninety-one and the denominator~~
~~of~~
31 ~~which is the sum of the monthly producer price index~~
~~(unadjusted)~~
32 ~~published by the bureau of labor statistics of the United States~~
~~depart-~~
33 ~~ment of labor for the category of commodities designated "refined~~
~~petro-~~
34 ~~leum products" for the twelve consecutive months ending with the~~
~~month~~
35 ~~of August, nineteen hundred ninety. Commencing on the first day of~~
~~Janu-~~
36 ~~ary of nineteen hundred ninety-six and every] Every year [thereafter]~~
as

37 of January first, the motor fuel and [~~automotive-type~~] highway
diesel
38 motor fuel rate then in effect on the immediately preceding
December
39 thirty-first shall be adjusted as follows: such rate shall be
multiplied
40 by a fraction the numerator of which is the sum of the monthly
producer
41 price index (unadjusted) published by the bureau of labor statistics
of
42 the United States department of labor for the category of
commodities
43 designated "refined petroleum products" for the twelve
consecutive
44 months ending with the month of August of the immediately preceding
year
45 and the denominator of which is the sum of the monthly producer
price
46 index (unadjusted) published by the bureau of labor statistics of
the
47 United States department of labor for the category of commodities
desig-
48 nated "refined petroleum products" for the twelve consecutive
months
49 ending with the month of August in the year prior to such
immediately
50 preceding year, provided, however, that the adjusted rate [~~to~~
~~take~~
51 ~~effect on January first, nineteen hundred ninety-six and each~~
~~January~~
52 ~~first thereafter~~] shall not increase above or decrease below the rate
in
53 effect on the immediately preceding December thirty-first by more
than
54 five percent.
55 [~~(4)~~] (3) Notwithstanding any other provision of this
article,
56 [~~commencing January first, nineteen hundred ninety-seven,~~] the
per
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1 gallon rate with respect to "railroad diesel" shall be the
adjusted
2 motor fuel and [~~automotive-type~~] highway diesel motor fuel rate
under
3 paragraphs one [~~through three~~] and two of this subdivision [~~for~~
~~the~~
4 ~~period commencing such January first, nineteen hundred ninety-~~
~~seven,~~]
5 minus one and three tenths cents per gallon. [~~Commencing on the~~
~~first~~
6 ~~day of January each year thereafter, the per gallon rate with respect~~
~~to~~
7 ~~"railroad diesel" shall be determined by taking the then motor fuel~~
~~and~~

8 ~~automotive-type diesel motor fuel rate under paragraphs one~~
through
9 ~~three of this subdivision which commences on such first day of~~
January
10 ~~and subtracting one and three tenths cents per gallon.]~~
11 (f) [Nonautomotive-type] Non-highway diesel motor fuel rate.
12 (1) The basic [~~nonautomotive-type~~] non-highway diesel motor fuel
rate
13 shall be [~~five~~] nine and three-tenths cents per gallon.
14 (2) [~~Commencing April first, nineteen hundred ninety-one, the~~
~~nonauto-~~
15 ~~motive-type diesel motor fuel rate shall be the product of the~~
basic
16 ~~rate set forth in paragraph one of this subdivision multiplied by~~
a
17 ~~fraction the numerator of which is the sum of the monthly producer~~
price
18 ~~index (unadjusted) published by the bureau of labor statistics of~~
the
19 ~~United States department of labor for the category of commodities~~
desig-
20 ~~nated "refined petroleum products" for the twelve consecutive~~
months
21 ~~ending with the month of November, nineteen hundred ninety, and~~
the
22 ~~denominator of which is the sum of the monthly producer price~~
index
23 ~~(unadjusted) published by the bureau of the labor statistics of~~
the
24 ~~United States department of labor for the category of commodities~~
desig-
25 ~~nated "refined petroleum products" for the twelve consecutive~~
months
26 ~~ending with the month of November, nineteen hundred eighty-nine.~~
27 ~~(3) Commencing on the first day of January, nineteen hundred~~
ninety-
28 ~~two, the nonautomotive-type diesel motor fuel rate then in effect on~~
the
29 ~~immediately preceding December thirty-first shall be adjusted~~
as
30 ~~follows: Such rate shall be multiplied by a fraction the numerator~~
of
31 ~~which is the sum of the monthly producer price index~~
(unadjusted)
32 ~~published by the bureau of labor statistics of the United States~~
depart-
33 ~~ment of labor for the category of commodities designated "refined~~
petro-
34 ~~leum products" for the twelve consecutive months ending with the~~
month
35 ~~of August, nineteen hundred ninety-one and the denominator of which~~
is
36 ~~the sum of the monthly producer price index (unadjusted) published~~
by
37 ~~the bureau of labor statistics of the United States department of~~
labor

38 ~~for the category of commodities designated "refined petroleum~~
products"
39 ~~for the twelve consecutive months ending with the month of August,~~
nine-
40 ~~teen hundred ninety. Commencing on the first day of January of~~
nineteen
41 ~~hundred ninety-six and every~~ Every year [~~thereafter,~~⁷] as of
January
42 first the [~~nonautomotive-type~~] non-highway diesel motor fuel rate
then
43 in effect on the immediately preceding December thirty-first shall
be
44 adjusted as follows: Such rate shall be multiplied by a fraction
the
45 numerator of which is the sum of the monthly producer price index
(unad-
46 justed) published by the bureau of labor statistics of the United
States
47 department of labor for the category of commodities designated
"refined
48 petroleum products" for the twelve consecutive months ending with
the
49 month of August of the immediately preceding year and the denominator
of
50 which is the sum of the monthly producer price index
(unadjusted)
51 published by the bureau of labor statistics of the United States
depart-
52 ment of labor for the category of commodities designated "refined
petro-
53 leum products" for the twelve consecutive months ending with the
month
54 of August in the year prior to such immediately preceding
year,
55 provided, however, that the adjusted rate [~~to take effect on~~
January
56 ~~first, nineteen hundred ninety-six and each January first~~
~~thereafter~~]

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1 shall not increase above or decrease below the rate in effect on
the
2 immediately preceding December thirty-first by more than five
percent.
3 [~~(4)~~] (3) Notwithstanding any other provision of this
article,
4 [~~commencing January first, nineteen hundred ninety-eight,~~
~~nonautome-~~
5 ~~tive-type~~] non-highway diesel motor fuel which is "manufacturing
gallo-
6 nage," as such term is defined in subdivision (m) of section
three
7 hundred of this article, shall be exempt from the measure of the
[~~nonau-~~
8 ~~tomotive-type~~] non-highway diesel motor fuel component of the
tax

9 imposed under this section.

10 (h) Publication and rounding of rate. (1) The commissioner [~~of~~
~~taxa-~~
11 ~~tion and finance~~] shall cause to be published in the section for
miscel-
12 laneous notices in the state register, and give other appropriate
gener-
13 al notice of, the rate adjustment calculation and the resulting
motor
14 fuel and [~~automotive-type~~] highway diesel motor fuel rate,
[~~nonautomo-~~
15 ~~tive-type~~] non-highway diesel motor fuel rate and residual
petroleum
16 product rate fixed by this section for the period commencing on
[~~April~~
17 ~~first, nineteen hundred ninety-one, no later than the~~
~~immediately~~
18 ~~preceding first day of March~~] January first, two thousand twelve,
and
19 for each calendar year thereafter, no later than the immediately
preced-
20 ing first day of December. The calculation and publication of the
rates
21 of tax so fixed by provisions of this section shall not be
included
22 within paragraph (a) of subdivision two of section one hundred two
of
23 the state administrative procedure act relating to the definition of
a
24 rule.

25 (2) The rates determined pursuant to this section shall be rounded
to
26 the nearest one-tenth of one cent.

27 § 19-a. Subdivision (k) of section 301-a of the tax law is
REPEALED.

28 § 20. Section 301-a of the tax law is amended by adding a new
subdivi-
29 sion (m) to read as follows:
30 (m) Special rate adjustment for certain vessels. Notwithstanding
any
31 provision of this section to the contrary, the use of non-highway
diesel
32 motor fuel in the engine of a vessel to propel such vessel shall
be
33 subject to tax at the motor fuel and highway diesel motor fuel
rate
34 provided for in this section, and shall be subject to the provisions
of
35 section three hundred one-j of this article, including the
adjustment
36 set forth in paragraph four of subdivision (a) of such section
three
37 hundred one-j. A credit or refund shall be available to the extent
tax
38 paid on gallonage used to propel any such vessel exceeds the amount
of

39 tax due based on the tax rate set forth herein. Provided, however,
that
40 the commissioner shall require such documentary proof to qualify for
any
41 credit or reimbursement provided hereunder as the commissioner
deems
42 appropriate.

43 § 21. Paragraph 2 of subdivision (b), paragraphs 2 and 3 of
subdivi-
44 sion (c), subdivisions (d) and (e), paragraph 1 of subdivision (f)
and
45 subdivisions (g), (h) and (i) of section 301-b of the tax law,
paragraph
46 2 of subdivision (b) and paragraphs 2 and 3 of subdivision (c)
and
47 subdivision (e) as added by chapter 190 of the laws of 1990, the
opening
48 paragraph of paragraph 2 of subdivision (b) as amended by section 155
of
49 part A of chapter 389 of the laws of 1997, subdivision (d) as amended
by
50 section 2 of part H of chapter 407 of the laws of 1999 and
subparagraph
51 (C) of paragraph 2 of subdivision (d) as amended by section 1 of
part X
52 of chapter 63 of the laws of 2000, paragraph 1 of subdivision (f)
as
53 added by chapter 166 of the laws of 1991, subdivision (g) as added
by
54 chapter 170 of the laws of 1994, subdivision (h) as amended by
chapter
55 302 of the laws of 2006 and subdivision (i) as added by chapter 468
of
56 the laws of 2000, are amended to read as follows:

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1 (2) [Enhanced] Highway diesel motor fuel imported or caused to
be
2 imported into this state or produced, refined, manufactured
or
3 compounded in this state by a petroleum business registered under
arti-
4 cle twelve-A of this chapter, as a distributor of diesel motor
fuel,
5 which is sold by such petroleum business to a purchaser who then
exports
6 such highway diesel motor fuel from this state for sale or use
outside
7 the state where
8 (A) such purchaser exporting such fuel is duly registered with
or
9 licensed by the taxing authorities of the state to which such fuel
is
10 exported as a distributor or a dealer in the product being so
exported,

11 (B) in connection with the exportation, such fuel was
immediately
12 shipped to an identified facility in the state to which such fuel
is
13 exported, and
14 (C) the rules and regulations of the commissioner [~~of taxation~~
~~and~~
15 ~~finance~~] relating to evidentiary requirements are complied with.
16 (2) [~~Enhanced~~] Highway diesel motor fuel imported or caused to
be
17 imported into this state or produced, refined, manufactured
or
18 compounded by a petroleum business registered under article twelve-A
of
19 this chapter, as a distributor of diesel motor fuel, and then sold
by
20 such petroleum business to an organization described in paragraph one
or
21 two of subdivision (a) of section eleven hundred sixteen of this
chapter
22 where such highway diesel motor fuel is used by such organization
for
23 its own use or consumption.
24 (3) Non-highway Diesel motor fuel[~~, which is not enhanced diesel~~
~~motor~~
25 ~~fuel,~~] sold by a petroleum business registered under article twelve-A
of
26 this chapter as a distributor of diesel motor fuel to an
organization
27 described in paragraph one or two of subdivision (a) of section
eleven
28 hundred sixteen of this chapter where such non-highway diesel motor
fuel
29 is used by such organization for its own use or consumption.
30 (d) Sales to consumers for heating purposes. (1) Total
residential
31 heating exemption. [~~(A) Unenhanced~~] Non-highway diesel motor fuel
sold
32 by a petroleum business registered under article twelve-A of this
chap-
33 ter as a distributor of diesel motor fuel or residual petroleum
product
34 sold by a petroleum business registered under this article as a
residual
35 petroleum product business to the consumer exclusively for
residential
36 heating purposes[~~-~~
37 ~~(B) Enhanced diesel motor fuel sold by a petroleum business~~
~~registered~~
38 ~~under article twelve-A of this chapter as a distributor of diesel~~
~~motor~~
39 ~~fuel to the consumer exclusively for residential heating purposes~~
~~but~~
40 only if such [~~enhanced~~] non-highway diesel motor fuel is delivered
into
41 a storage tank which is not equipped with a hose or other apparatus
by

42 which such fuel can be dispensed into the fuel tank of a motor
vehicle
43 and such storage tank is attached to the heating unit burning
such
44 fuel[, ~~provided, that with respect to each delivery of such fuel
over~~
45 ~~four thousand five hundred gallons, to obtain this exemption there
shall~~
46 ~~be required a certificate signed by the purchaser stating that the
prod-~~
47 ~~uct will be used exclusively for residential heating purposes~~].

48 (2) Partial non-residential heating exemption. (A) [~~Unenhanced~~]
Non-
49 highway diesel motor fuel sold by a petroleum business registered
under
50 article twelve-A of this chapter as a distributor of diesel motor
fuel
51 or residual petroleum product sold by a petroleum business
registered
52 under this article as a residual petroleum product business to
the
53 consumer exclusively for heating, other than residential
heating
54 purposes[~~.~~

55 ~~(B) Enhanced diesel motor fuel sold by a petroleum business
registered~~
56 ~~under article twelve-A of this chapter as a distributor of diesel
motor~~

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1 ~~fuel to the consumer exclusively for heating, other than
residential~~
2 ~~heating purposes, but~~] only if such [~~enhanced~~] non-highway diesel
motor
3 fuel is delivered into a storage tank which is not equipped with a
hose
4 or other apparatus by which such fuel can be dispensed into the
fuel
5 tank of a motor vehicle and such storage tank is attached to the
heating
6 unit burning such fuel[, ~~provided, that with respect to each delivery
of~~
7 ~~such fuel over four thousand five hundred gallons, to obtain
this~~
8 ~~exemption there shall be required a certificate signed by the
purchaser~~
9 ~~stating that the product will be used exclusively for heating,
other~~
10 ~~than residential heating purposes.~~
11 (C)] (B) Calculation of partial exemption. [~~Notwithstanding any
other~~
12 ~~provision of this article, commencing April first, two thousand one
and~~
13 ~~ending August thirty-first, two thousand two, the amount of the
partial~~

14 ~~exemption under this paragraph shall be determined by multiplying~~
15 ~~the~~
16 ~~quantity of diesel motor fuel and residual petroleum product~~
17 ~~eligible~~
18 ~~for the exemption times the sum of the then current rate of the~~
19 ~~supple-~~
20 ~~mental tax imposed by section three hundred one-j of this article~~
21 ~~and~~
22 ~~twenty percent of the then current rate of the tax imposed by~~
23 ~~section~~
24 ~~three hundred one-a of this article, with respect to the specific~~
25 ~~diesel~~
26 ~~motor fuel or residual petroleum product rate, as the case may be,~~
27 ~~and~~
28 ~~commencing September first, two thousand two, the amount of the]~~

The
22 partial exemption under this paragraph shall be determined by
multiply-
23 ing the quantity of non-highway diesel motor fuel and residual
petroleum
24 product eligible for the exemption times the sum of the then
current
25 rate of the supplemental tax imposed by section three hundred one-j
of
26 this article and forty-six percent of the then current rate of the
tax
27 imposed by section three hundred one-a of this article, with respect
to
28 the specific non-highway diesel motor fuel or residual petroleum
product
29 rate, as the case may be.

30 (e) Sales of non-highway diesel motor fuel and residual
petroleum
31 product to registered distributors of diesel motor fuel and
registered
32 residual petroleum product businesses.

33 (1) Non-highway Diesel motor fuel[, ~~which is not enhanced diesel~~
~~motor~~
34 ~~fuel,~~] sold by a person registered under article twelve-A of this
chap-
35 ter as a distributor of diesel motor fuel to a person registered
under
36 such article twelve-A as a distributor of diesel motor fuel where
such
37 sale is not a retail sale or a sale that involves a delivery at a
fill-
38 ing station or into a repository equipped with a hose or other
apparatus
39 by which such non-highway Diesel motor fuel can be dispensed into
the
40 fuel tank of a motor vehicle.

41 (2) Residual petroleum product sold by a person registered under
this
42 article as a residual petroleum product business to a person
registered
43 under this article as a residual petroleum product business where
such

44 sale is not a retail sale. Provided, however, that the commissioner
[of
45 ~~taxation and finance~~] may require such documentary proof to qualify
for
46 any exemption provided in this section as the commissioner deems
appro-
47 priate, including the expansion of any certifications required
pursuant
48 to section two hundred eighty-five-a or two hundred eighty-five-b
of
49 this chapter to cover the taxes imposed by this article.

50 (1) Residual petroleum product and non-highway diesel motor
fuel
51 [~~(which is not enhanced diesel motor fuel)~~] sold to an electric
corpo-
52 ration, as described in subdivision (a) of section three hundred
one-d
53 of this article, which is registered with the department [of
~~taxation~~
54 ~~and finance~~] as a petroleum business tax direct pay permittee, and
used
55 by such electric corporation to fuel generators for the purpose of
manu-
56 facturing or producing electricity where such electric
corporation

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1 provides a copy of a direct pay permit authorized and issued by
the
2 commissioner [~~of taxation and finance~~], to the petroleum business
making
3 such sale. If so registered, such corporation shall be a taxpayer
under
4 this article and (i) such electric corporation shall file a
return
5 monthly and pay the applicable tax under this article, after the
appli-
6 cation of allowable credits, on all such purchases directly to
the
7 commissioner, (ii) such electric corporation shall be subject to all
of
8 the provisions of this article relating to the responsibilities
and
9 liabilities of taxpayers under this article with respect to such
resi-
10 dual petroleum product and non-highway diesel motor fuel.

11 (g) Sales or uses of non-highway diesel motor fuel and residual
petro-
12 leum product for farm production. Non-highway Diesel motor fuel or
resi-
13 dual petroleum product sold to or used by a consumer who purchases
or
14 uses such non-highway Diesel motor fuel or product for use or
consump-
15 tion directly and exclusively in the production for sale of
tangible

16 personal property by farming, but only if all such non-highway
17 Diesel motor fuel or product is delivered on the farm site and is
consumed
18 other than on the public highways of this state (except for the use
of
19 the public highway to reach adjacent farmlands) [~~; provided,~~
~~however,~~
20 ~~that a farmer may purchase no more than four thousand five~~
~~hundred~~
21 ~~gallons of diesel motor fuel in a thirty-day period for such use~~
~~or~~
22 ~~consumption exempt from the measure of the tax imposed by section~~
~~three~~
23 ~~hundred one-a of this article, except in accordance with prior~~
~~clearance~~
24 ~~given by the commissioner)].~~
25 (h) Exemption for certain not-for-profit organizations. There shall
be
26 exempt from the measure of the petroleum business tax imposed by
section
27 three hundred one-a of this article a sale or use of residual
petroleum
28 product, or non-highway diesel motor fuel [~~(which is not enhanced~~
~~diesel~~
29 ~~motor fuel) or dyed diesel motor fuel,~~] to or by an organization
which
30 has qualified under paragraph four or five of subdivision (a) of
section
31 eleven hundred sixteen of this chapter where such non-highway
diesel
32 motor fuel or residual petroleum product is exclusively for use
and
33 consumption by such organization, but only if all of such non-
highway
34 diesel motor fuel or product is consumed other than on the public
high-
35 ways of this state. Provided, however, this exemption shall in no
event
36 apply to a sale of non-highway diesel motor fuel which involves a
deliv-
37 ery at a filling station or into a repository which is equipped with
a
38 hose or other apparatus by which such non-highway Diesel motor fuel
can
39 be dispensed into the fuel tank of a motor vehicle and all
deliveries
40 hereunder shall be made to the premises occupied by the
qualifying
41 organization and used by such organization in furtherance of the
exempt
42 purposes of such organization. Provided, however, that the
commissioner
43 shall require such documentary proof to qualify for any
exemption
44 provided herein as the commissioner deems appropriate.
Provided,

45 further, the distributor selling such non-highway Diesel motor fuel
and
46 product shall separately report on its return the gallonage sold
during
47 the reporting period exempt from tax under the provisions of this
subdi-
48 vision and provide such other information with respect to such sales
as
49 the commissioner deems appropriate to prevent evasion. [~~The term~~
~~"dyed~~
50 ~~diesel motor fuel" as used in this subdivision shall have the same~~
~~mean-~~
51 ~~ing it has in subdivision eighteen of section two hundred eighty-two~~
~~of~~
52 ~~this chapter.~~]

53 (i) Exemption for passenger commuter ferries. A use by a
passenger
54 commuter ferry of non-highway diesel motor fuel or residual
petroleum
55 product where such non-highway diesel motor fuel or residual
petroleum
56 product was used and consumed by a passenger commuter ferry
exclusively

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1 in providing mass transportation service. Provided, that the
commission-
2 er shall require such documentary proof to qualify for any
exemption
3 provided hereunder as the commissioner deems appropriate.
4 § 22. Subdivision (j) of section 301-b of the tax law is REPEALED.
5 § 23. Subdivisions (a), (e), (f), (h), (i), (j), (k), (l) and (m)
of
6 section 301-c of the tax law, subdivision (a) as amended by section
4
7 and subdivision (l) as added by section 5 of part H of chapter 407
of
8 the laws of 1999, subparagraph (B) of paragraph 2 of subdivision (a)
as
9 amended by section 2 of part X of chapter 63 of the laws of 2000,
subdi-
10 visions (e) and (f) as added by chapter 170 of the laws of 1994,
subdi-
11 vision (h) as amended by chapter 302 of the laws of 2006,
subdivisions
12 (i), (j) and (k) as added by chapter 309 of the laws of 1996, and
subdi-
13 vision (m) as added by chapter 468 of the laws of 2000, are amended
to
14 read as follows:
15 (a) Non-highway Diesel motor fuel used for heating purposes. (1)
Total
16 residential heating reimbursement. Non-highway Diesel motor
fuel
17 purchased in this state and sold by such purchaser to a consumer for
use

18 exclusively for residential heating purposes but only where (i)
such
19 non-highway diesel motor fuel is delivered into a storage tank which
is
20 not equipped with a hose or other apparatus by which such non-
highway
21 Diesel motor fuel can be dispensed into the fuel tank of a motor
vehicle
22 and such storage tank is attached to the heating unit burning such
non-
23 highway Diesel motor fuel, (ii) the tax imposed pursuant to this
article
24 has been paid with respect to such non-highway diesel motor fuel and
the
25 entire amount of such tax has been absorbed by such purchaser, and
(iii)
26 such purchaser possesses documentary proof satisfactory to the
commis-
27 sioner evidencing the absorption by it of the entire amount of the
tax
28 imposed pursuant to this article. Provided, however, that the
commis-
29 sioner is authorized, in the event that the commissioner determines
that
30 it would not threaten the integrity of the administration and
enforce-
31 ment of the tax imposed by this article, to provide a reimbursement
with
32 respect to a retail sale to a consumer for residential heating
purposes
33 of less than ten gallons of non-highway diesel motor fuel provided
such
34 fuel is not dispensed into the tank of a motor vehicle.
[~~Provided,~~
35 ~~further, that with respect to each delivery of enhanced diesel~~
~~motor~~
36 ~~fuel of over four thousand five hundred gallons, to obtain~~
~~this~~
37 ~~reimbursement there shall be required a certificate signed by~~
~~the~~
38 ~~consumer stating that the product will be used exclusively for~~
~~residen-~~
39 ~~tial heating purposes.~~]
40 (2) Partial non-residential heating reimbursement. (A) Non-
highway
41 Diesel motor fuel purchased in this state and sold by such purchaser
to
42 a consumer for use exclusively for heating, other than for
residential
43 heating purposes, but only where (i) such non-highway diesel motor
fuel
44 is delivered into a storage tank which is not equipped with a hose
or
45 other apparatus by which such non-highway Diesel motor fuel can
be
46 dispensed into the fuel tank of a motor vehicle and such storage tank
is

47 attached to the heating unit burning such non-highway Diesel motor
fuel,
48 (ii) the tax imposed pursuant to this article has been paid with
respect
49 to such non-highway diesel motor fuel and the entire amount of such
tax
50 has been absorbed by such purchaser, and (iii) such purchaser
possesses
51 documentary proof satisfactory to the commissioner evidencing
the
52 absorption by it of the entire amount of the tax imposed pursuant
to
53 this article. [~~Provided, however, that with respect to each delivery
of
54 enhanced diesel motor fuel of over four thousand five hundred
gallons,
55 to obtain this reimbursement there shall be required a
certificate~~

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1 ~~signed by the consumer stating that the product will be used
exclusively
2 for heating, other than for residential heating purposes.]~~
3 (B) Calculation of partial reimbursement. Notwithstanding any
other
4 provision of this article, [~~commencing April first, two thousand one
and
5 ending August thirty-first, two thousand two, the amount of
the
6 reimbursement under this paragraph shall be determined by
multiplying
7 the quantity of diesel motor fuel eligible for the reimbursement
times
8 the sum of the then current rate of the supplemental tax imposed
by
9 section three hundred one-j of this article and twenty percent of
the
10 then current rate of the tax imposed by section three hundred one-a
of
11 this article, with respect to the specific diesel motor fuel rate,
as
12 the case may be, and commencing September first, two thousand two,~~]
the
13 amount of the reimbursement under this paragraph shall be determined
by
14 multiplying the quantity of non-highway diesel motor fuel eligible
for
15 the reimbursement times the sum of the then current rate of the
supple-
16 mental tax imposed by section three hundred one-j of this article
and
17 forty-six percent of the then current rate of the tax imposed by
section
18 three hundred one-a of this article, with respect to the
[~~specific~~]
19 non-highway diesel motor fuel rate, as the case may be.

20 (e) Non-highway Diesel motor fuel and residual petroleum product
used
21 for farm production. Non-highway Diesel motor fuel or residual
petroleum
22 product purchased in this state and sold by such purchaser to a
consumer
23 for use or consumption directly and exclusively in the production
for
24 sale of tangible personal property by farming, but only if all of
such
25 non-highway Diesel motor fuel or product is delivered on the farm
site
26 and is consumed other than on the public highways of this state
(except
27 for the use of the public highway to reach adjacent
farmlands) [~~+~~
28 ~~provided, however, that a subsequent purchaser shall be eligible~~
~~for~~
29 ~~this reimbursement with respect to no more than four thousand~~
~~five~~
30 ~~hundred gallons of diesel motor fuel sold to a consumer in a thirty-~~
~~day~~
31 ~~period for such use or consumption, except in accordance with~~
~~prior~~
32 ~~clearance given by the commissioner~~]. This reimbursement may be
claimed
33 only where (i) the tax imposed pursuant to this article has been
paid
34 with respect to such non-highway diesel motor fuel or residual
petroleum
35 product and the entire amount of such tax has been absorbed by
such
36 purchaser, and (ii) such purchaser possesses documentary proof
satisfac-
37 tory to the commissioner evidencing the absorption by it of the
entire
38 amount of the tax imposed pursuant to this article. Provided,
however,
39 that the commissioner shall require such documentary proof to
qualify
40 for any reimbursement of tax provided by this section as the
commission-
41 er deems appropriate [~~, including any certification required pursuant~~
~~to~~
42 ~~section two hundred eighty five b of this chapter and any such~~
~~prior~~
43 ~~clearance described in the first sentence of this subdivision~~].
44 (f) Motor fuel used for farm production. No more than one
thousand
45 five hundred gallons of motor fuel purchased in this state in a
thirty-
46 day period or a greater amount which has been given prior clearance
by
47 the commissioner, by a consumer for use or consumption directly
and
48 exclusively in the production for sale of tangible personal property
by

49 farming, but only if all of such fuel is delivered on the farm site
and
50 is consumed other than on the public highways of this state (except
for
51 the use of the public highway to reach adjacent farmlands).
This
52 reimbursement to such purchaser who used such motor fuel in the
manner
53 specified in this subdivision may be claimed only where, (i) the
tax
54 imposed pursuant to this article has been paid with respect to
such
55 motor fuel and the entire amount of such tax has been absorbed by
such
56 purchaser, and (ii) such purchaser possesses documentary proof
satisfac-
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1 tory to the commissioner evidencing the absorption by it of the
entire
2 amount of the tax imposed pursuant to this article. Provided,
however,
3 that the commissioner shall require such documentary proof to
qualify
4 for any reimbursement of tax provided by this subdivision as the
commis-
5 sioner deems appropriate. The commissioner is hereby empowered to
make
6 such provisions as deemed necessary to define the procedures for
grant-
7 ing prior clearance for purchases of more than one thousand five
hundred
8 gallons in a thirty-day period.
9 (h) A subsequent purchaser which is registered as a distributor
of
10 diesel motor fuel shall be eligible for reimbursement of the tax
imposed
11 by section three hundred one-a of this article with respect to
gallorage
12 of residual petroleum product[7] and non-highway diesel motor
fuel
13 [~~(which is not enhanced diesel motor fuel) and dyed diesel motor
fuel,~~]
14 subsequently sold by such purchaser to an organization which has
quali-
15 fied under paragraph four or five of subdivision (a) of section
eleven
16 hundred sixteen of this chapter for the exclusive use and consumption
by
17 such organization. Provided, however, this exemption shall in no
event
18 apply to a sale of non-highway diesel motor fuel which involves a
deliv-
19 ery at a filling station or into a repository which is equipped
with a

20 hose or other apparatus by which such non-highway Diesel motor fuel
can
21 be dispensed into the fuel tank of a motor vehicle and all
deliveries
22 hereunder shall be made to the premises occupied by the
qualifying
23 organization and used by such organization in furtherance of the
exempt
24 purposes of such organization. This reimbursement may be claimed
only
25 where (i) the tax imposed pursuant to this article has been paid
with
26 respect to such non-highway diesel motor fuel or residual
petroleum
27 product and the entire amount of such tax has been absorbed by
such
28 purchaser, and (ii) such purchaser possesses documentary proof
satisfac-
29 tory to the commissioner evidencing the absorption by it of the
entire
30 amount of the tax imposed pursuant to this article. Provided,
further,
31 that the commissioner shall require such other documentary proof
to
32 qualify for any reimbursement of tax provided by this section as
the
33 commissioner deems appropriate. [~~The term "dyed diesel motor fuel"~~
~~as~~
34 ~~used in this subdivision shall have the same meaning it has in~~
~~subdivi-~~
35 ~~sion eighteen of section two hundred eighty-two of this chapter.~~
36 (i) Reimbursement for commercial gallonage. (1) [~~Commencing~~
~~March~~
37 ~~first, nineteen hundred ninety-seven, a~~] A reimbursement shall
be
38 allowed to a consumer with respect to gallonage of [~~nonautomotive-~~
~~type~~]
39 non-highway diesel motor fuel [~~(which is not enhanced diesel~~
~~motor~~
40 ~~fuel)~~] or residual petroleum product (i) which was purchased by
such
41 consumer and where the supplemental tax imposed by section three
hundred
42 one-j of this article with respect to such gallonage was paid
by a
43 petroleum business and passed through to such consumer, (ii)
such
44 consumer absorbed the entirety of such tax in the purchase price of
such
45 gallonage, and (iii) such gallonage was used and consumed by
such
46 consumer exclusively as "commercial gallonage". Provided, however,
that
47 the commissioner shall require such documentary proof to qualify for
any
48 reimbursement of tax provided by this subdivision as the
commissioner

49 deems appropriate, including a certification by the consumer that
the
50 product was used and consumed exclusively as "commercial gallonage"
by
51 such consumer.

52 (2) Calculation. The amount of the reimbursement shall be
determined
53 by multiplying the quantity of "commercial gallonage" eligible
for
54 reimbursement times the then current rate of the supplemental
tax
55 imposed by section three hundred one-j of this article with respect
to

56 [~~nonautomotive-type~~] non-highway diesel motor fuel or residual
petroleum

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1 product, as the case may be. Any reimbursement of tax may be applied
for
2 not more often than monthly.

3 (j) Reimbursement for manufacturing gallonage. [~~Commencing~~
~~January~~

4 ~~first, nineteen hundred ninety-eight, a~~] A subsequent purchaser shall
be

5 eligible for reimbursement of any taxes imposed under this article
with

6 respect to gallonage of residual petroleum product and non-
highway

7 diesel motor fuel [~~(which is not enhanced diesel motor fuel),~~]
subse-

8 quently sold by such purchaser to a consumer as "manufacturing
gallo-

9 nage." This reimbursement may be claimed only where (1) any tax
imposed

10 pursuant to this article has been paid with respect to such
gallonage

11 and the entire amount of such tax has been absorbed by such
purchaser,

12 and (2) such purchaser possesses documentary proof satisfactory to
the

13 commissioner evidencing the absorption by it of the entire amount
of

14 such tax. Provided, however, that the commissioner shall require
such

15 documentary proof to qualify for any reimbursement of tax provided
by

16 this subdivision as the commissioner deems appropriate
including a

17 certificate by the consumer that such product is to be used and
consumed

18 exclusively as "manufacturing gallonage".

19 (k) Reimbursement for railroad gallonage. (1) [~~Commencing~~
~~January~~

20 ~~first, nineteen hundred ninety-seven, a~~] A subsequent purchaser,
which

21 is registered as a distributor of diesel motor fuel, shall be
eligible
22 for a reimbursement in accordance with this subdivision with respect
to
23 non-highway diesel motor fuel subsequently sold by such purchaser to
a
24 consumer as "railroad diesel".
25 (2) The amount of the reimbursement with respect to such product
shall
26 be equal to the difference between (i) the tax actually paid under
this
27 article by a petroleum business with respect to such product and
subse-
28 quently passed through to and absorbed by such purchaser, and (ii)
the
29 tax under this article that would have been paid with respect to
such
30 product had an importing distributor sold such product directly
to a
31 purchaser as "railroad diesel". Provided that the commissioner
shall
32 require such documentary proof as the commissioner deems necessary
to
33 substantiate a reimbursement claim under this subdivision.
Any
34 reimbursement of tax may be applied for not more often than monthly.
35 (1) Reimbursement for mining and extraction. A purchaser shall
be
36 eligible for reimbursement of the tax imposed by section three
hundred
37 one-a of this article with respect to gallonage of residual
petroleum
38 product and non-highway diesel motor fuel, purchased for use
and
39 consumption directly and exclusively in the production of
tangible
40 personal property for sale by mining or extracting, but only if all
of
41 such fuel or product is delivered at the mining or extracting site
and
42 is consumed other than on the public highways of this state;
provided,
43 however, this reimbursement shall in no event apply to a sale of
non-
44 highway diesel motor fuel which involves a delivery at a
filling
45 station. This reimbursement may be claimed only where (i) the
tax
46 imposed pursuant to this article has been paid with respect to
such
47 non-highway diesel motor fuel or residual petroleum product and
the
48 entire amount of such tax has been absorbed by such purchaser, and
(ii)
49 such purchaser possesses documentary proof satisfactory to the
commis-

50 sioner evidencing the absorption by it of the entire amount of the
tax
51 imposed pursuant to this article. Provided, however, that the
commis-
52 sioner shall require such documentary proof to qualify for
any
53 reimbursement of tax provided by this section as the commissioner
deems
54 appropriate.

55 (m) Reimbursement for passenger commuter ferries. A use by a
passenger

56 commuter ferry of non-highway diesel motor fuel or residual
petroleum

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1 product where such non-highway diesel motor fuel or residual
petroleum

2 product was used and consumed by a passenger commuter ferry
exclusively

3 in providing mass transportation service. This reimbursement may
be

4 claimed only where (1) any tax imposed pursuant to this article has
been

5 paid with respect to such gallonage and the entire amount of such
tax

6 has been absorbed by such purchaser, and (2) such ferry possesses
docu-

7 mentary proof satisfactory to the commissioner evidencing the
absorption

8 by it of the entire amount of such tax. Provided, that the
commissioner

9 shall require such documentary proof to qualify for any
reimbursement

10 provided hereunder as the commissioner deems appropriate.

11 § 24. Paragraphs 1 and 2 of subdivision (a) of section 301-d of
the

12 tax law, as amended by chapter 410 of the laws of 1991, are amended
to

13 read as follows:

14 (1) Credit. Residual petroleum product and non-highway diesel
motor

15 fuel [~~(which is not enhanced diesel motor fuel)~~] (i) imported into
this

16 state by such electric corporation which is a petroleum business
where

17 the tax liability under section three hundred one-a of this article
is

18 imposed on such electric corporation and where the residual petroleum
or

19 non-highway diesel product so imported is used by such electric
corpo-

20 ration to fuel generators for the purpose of manufacturing or
producing

21 electricity or (ii) purchased in this state by such electric
corporation

22 by the use of a valid direct payment permit whereby such electric
corpo-
23 ration assumed full liability for tax with respect to such product
where
24 such product so purchased is used by such electric corporation to
fuel
25 generators for the purpose of manufacturing or producing electricity.
26 (2) Reimbursement. Residual petroleum product and non-highway
diesel
27 motor fuel [~~(which is not enhanced diesel motor fuel)~~] purchased in
this
28 state by such electric corporation where the tax imposed by
section
29 three hundred one-a of this article with respect to such residual
petro-
30 leum or diesel product was paid and the utility absorbed such tax in
the
31 purchase price of such fuel and where such product is used by such
elec-
32 tric corporation to fuel generators for the purpose of manufacturing
or
33 producing electricity.
34 § 25. Subdivision (c) of section 301-e of the tax law, as amended
by
35 chapter 2 of the laws of 1995, is amended to read as follows:
36 (c) Kero-jet fuel component. The kero-jet fuel component shall
be
37 determined by multiplying the kero-jet fuel rate times the number
of
38 gallons of (1) kero-jet fuel imported or caused to be imported into
this
39 state by an aviation fuel business and consumed in this state by
such
40 business in the operation of its aircraft; and (2) kero-jet fuel,
which
41 has not been previously included in the measure of the tax imposed
by
42 this section, (i) which is sold in this state by an aviation fuel
busi-
43 ness to persons other than those registered under this article
as
44 aviation fuel businesses or (ii) which is consumed in this state by
an
45 aviation fuel business in the operation of its aircraft. Provided
that
46 importation of kero-jet fuel in the fuel tanks of aircraft shall
be
47 importation for the purposes of this section. The basic kero-jet
fuel
48 rate shall be [~~one and nine-tenths~~] six and eight-tenths cents
per
49 gallon. The rate shall be adjusted at the same time as the rates of
the
50 components of the petroleum business tax imposed by section
three
51 hundred one-a of this article, and the method of making adjustments
to

52 the kero-jet fuel rate shall be the same as the method used for
such
53 rates. [~~Provided, however, that commencing July first, nineteen
hundred
54 ninety-one, the kero-jet fuel rate shall be equal to the motor fuel
and
55 automotive-type diesel motor fuel rate set by subdivision (e) of
section
56 three hundred one-a of this article as such rate may be adjusted
as~~

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1 ~~provided in such subdivision. Provided, further, that commencing
Septem-
2 ber first, nineteen hundred ninety-five, the kero-jet fuel rate shall
be
3 five and two-tenths cents per gallon. The rate shall be adjusted at
the
4 same time as the rates of the components of the petroleum business
tax
5 imposed by section three hundred one-a of this article, and the
method
6 of making adjustments to the kero-jet fuel rate shall be the same as
the
7 method used for such rates.]~~

8 § 26. Sections 301-f and 301-g of the tax law are REPEALED.

9 § 27. Paragraph 2 of subdivision (a) of section 301-h of the tax
law,
10 as amended by chapter 170 of the laws of 1994, is amended to read
as
11 follows:

12 (2) The rate of the tax imposed by this section shall be equal to
the
13 motor fuel and [~~automotive-type~~ highway diesel motor fuel rate set
by
14 subdivision (e) of section three hundred one-a plus the rate of
the
15 supplemental tax imposed by section three hundred one-j of this
article
16 as such rates are specified therein and as they may be adjusted
as
17 provided in such provisions. [~~In addition, the tax surcharge imposed
by
18 section three hundred one-g of this article shall be imposed
with
19 respect to the tax imposed by this section as if the tax imposed
here-
20 under were imposed by section three hundred one-a of this article.]~~

21 § 28. Section 301-i of the tax law is REPEALED.

22 § 29. Paragraphs 1, 2, 3 and 4 of subdivision (a) and subdivision
(c)
23 of section 301-j of the tax law, paragraph 1 of subdivision (a)
as
24 amended and paragraphs 2, 3 and 4 of subdivision (a) as added by
chapter

25 309 of the laws of 1996 and subdivision (c) as amended by chapter 410
of

26 the laws of 1991, are amended to read as follows:

27 (1) In addition to the taxes imposed by sections three hundred
one-a

28 and three hundred one-e of this article, [~~for taxable months~~
~~commencing~~
29 ~~on or after July first, nineteen hundred ninety-one~~] there is
hereby

30 imposed upon every petroleum business subject to tax imposed
under
31 section three hundred one-a of this article and every aviation
fuel
32 business subject to the aviation gasoline component of the tax
imposed

33 under section three hundred one-e of this article, a supplemental
month-
34 ly tax for each or any part of a taxable month at a rate of [~~four~~
~~and~~

35 ~~one-half~~] six and eight-tenths cents per gallon with respect to
the
36 products included in each component of the taxes imposed by
such

37 [~~sections~~] section three hundred one-a and the aviation gasoline
compo-
38 nent of the tax imposed by such section three hundred one-e of
this
39 article.

40 (2) Provided, however, [~~commencing March first, nineteen hundred~~
~~nine-~~
41 ~~ty-seven,~~] "commercial gallonage," as such term is defined in
subdivi-
42 sion (k) of section three hundred of this article, shall be exempt
from
43 the measure of the tax imposed under this section.

44 (3) Provided, further, [~~commencing January first, nineteen~~
~~hundred~~
45 ~~ninety-seven,~~] "railroad diesel," as such term is defined in
subdivision

46 (1) of section three hundred of this article, shall be exempt from
the
47 measure of the tax imposed under this section.

48 (4) Provided, further, [~~commencing January first, nineteen~~
~~hundred~~
49 ~~ninety-eight,~~] a separate per gallon rate shall apply with respect
to

50 [~~automotive-type~~] highway diesel motor fuel. Such rate shall be
deter-
51 mined by taking the adjusted rate per gallon of tax imposed under
para-
52 graph one of this subdivision as adjusted in accordance with
paragraph

53 five of this subdivision [~~which commences on such date~~] and
subtracting

54 therefrom [~~three-quarters of one cent. On January first,~~
~~nineteen~~

55 ~~hundred ninety-nine, the automotive-type diesel motor fuel rate shall~~
be
56 ~~determined by taking the adjusted rate per gallon of tax imposed~~
under

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1 ~~paragraph one of this subdivision, as adjusted in accordance with~~
para-
2 ~~graph five of this subdivision which commences on such date~~
and
3 ~~subtracting therefrom three-quarters of one cent. On April first,~~
nine-
4 ~~teen hundred ninety-nine, there shall be a new rate applicable to~~
such
5 ~~fuel which shall be such adjusted rate of tax per gallon under~~
such
6 ~~paragraph one of this subdivision, as adjusted in accordance with~~
para-
7 ~~graph five of this subdivision then in effect, minus] one and~~
three-
8 quarters cents. Commencing January first, two thousand twelve, and
each
9 January thereafter, the per gallon rate applicable to [~~automotive-~~
type]
10 highway diesel motor fuel shall be the adjusted rate under paragraph
one
11 of this subdivision as adjusted in accordance with paragraph five
of
12 this subdivision which commences on such date minus one and three-
quar-
13 ters cents. The resulting rate under this paragraph shall be
expressed
14 in hundredths of a cent.

15 (c) Rate adjustment [~~and surcharge~~]. [~~Commencing January first,~~
nine-
16 ~~teen hundred ninety-two and on the first day of January every year~~
ther-
17 ~~eafter, the~~] The rate of the supplemental tax shall be adjusted at
the
18 same time as the rates of the components of the taxes imposed
by
19 sections three hundred one-a and three hundred one-e of this
article,
20 and the method of making adjustments to the rate of the supplemental
tax
21 shall be the same as the method used for such rates.

22 § 30. The opening paragraph and subdivisions (a) and (c) of
section
23 301-1 of the tax law, as added by chapter 170 of the laws of 1994,
are
24 amended to read as follows:

25 There shall be allowed to a registered petroleum business or
aviation
26 fuel business a refund under this section for the taxes [~~and~~
tax

27 ~~surcharge~~] imposed by sections three hundred one-a, three hundred
one-e,
28 [~~three hundred one-g~~] and three hundred one-j of this article for
the
29 tax paid under such sections with respect to gallonage which is
repres-
30 ented by a worthless debt as follows:
31 (a) The refund shall be allowed to a registered petroleum business
or
32 aviation fuel business for gallonage with respect to which tax
liability
33 for the taxes under this article is imposed on such petroleum
business
34 or aviation fuel business where (i) such gallonage has been included
in
35 the reports filed by such petroleum business or aviation fuel
business
36 and all the taxes under this article with respect to such gallonage
have
37 been paid by such business, (ii) such gallonage was sold in-bulk by
such
38 petroleum or aviation fuel business to a purchaser for such
purchaser's
39 own use and consumption and (iii) such sale gave rise to a debt
which
40 became worthless, as that term is used for federal income tax
purposes,
41 and where such debt is deducted as a worthless debt for federal
income
42 tax purposes for the taxable year covering the month in which
such
43 refund claim relating to such debt is filed. Provided, however, for
the
44 purposes of this section, a sale of motor fuel and [~~enhanced~~]
highway
45 diesel motor fuel to a filling station shall be deemed to be a
sale
46 in-bulk for such filling station's own use and consumption
and,
47 provided, further, in no event shall a worthless debt qualify
with
48 respect to the refund hereunder where such debt arises from a
retail
49 sale at a filling station or sale wherein product is delivered
directly
50 into the fuel tank of a motor vehicle, airplane or other conveyance.
51 (c) Upon receipt of a claim for refund in processible form,
interest
52 shall be allowed and paid at the overpayment rate set by the
commission-
53 er pursuant to subdivision twenty-sixth of section one hundred
seventy-
54 one of this chapter from the date of the receipt of the refund claim
to
55 the date immediately preceding the date of the refund check except
no

56 such interest shall be allowed or paid if the refund check is
mailed
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1 within ninety days of such receipt and except no interest shall
be
2 allowed or paid if the amount thereof would be less than one
dollar.
3 Provided, further, the refund shall be granted pro rata against
sections
4 three hundred one-a, three hundred one-e, [~~three hundred one-g~~]
and
5 three hundred one-j of this article, as the case may be, to the
same
6 extent as represented by the remittance of the petroleum business
or
7 aviation fuel business with respect to the gallonage represented by
the
8 worthless debt.

9 § 31. Subdivision (b) of section 302 of the tax law, as added by
chap-
10 ter 190 of the laws of 1990, is amended to read as follows:

11 (b) Residual petroleum product business. The department [~~of~~
~~taxation~~
12 ~~and finance~~], upon the application of a corporation or
unincorporated
13 business, shall register such corporation or unincorporated business
as
14 a residual petroleum product business except that the commissioner
[~~of~~
15 ~~taxation and finance~~] may refuse to register an applicant for any of
the
16 grounds specified in subdivision two or five of section two
hundred
17 eighty-three of this chapter or in subdivision (d) of this section.
The
18 application shall be in such form and contain such information as
the
19 commissioner shall prescribe. All of the provisions of subdivisions
two,
20 four, five, six, seven, eight, nine and ten of section two
hundred
21 eighty-three of this chapter relating to registration of
distributors
22 shall be applicable to the registration of residual petroleum
product
23 businesses under this section with the same force and effect as if
the
24 language of those subdivisions had been incorporated in full in
this
25 section and had expressly referred to the registration of
residual
26 petroleum product businesses and the tax imposed by this article,
with
27 such modification as may be necessary in order to adapt the language
of

28 such provisions to the provisions of this article, provided,
specif-

29 ically, that the term "distributor" shall be read as "residual
petroleum

30 product business" and the ~~[terms]~~ term "motor fuel" ~~[and~~
~~"automotive~~

31 ~~fuel"]~~ shall be read as "residual petroleum product". Provided,
however,

32 that if the commissioner is satisfied that the requirements of
such

33 provisions for registration are not necessary in order to protect
tax

34 revenues, the commissioner may limit or modify such requirements
with

35 respect to corporations or unincorporated businesses not required to
be

36 registered as distributors of motor fuel or diesel motor fuel.

37 § 32. Section 312 of the tax law, as amended by chapter 166 of
the

38 laws of 1991 and subdivision (b) as amended by section 8 of part EE
of

39 chapter 63 of the laws of 2000, is amended to read as follows:

40 § 312. Deposit and disposition of revenue.--~~[(a) Except as provided~~
~~in~~

41 ~~sections three hundred one-f and three hundred one-g of this chapter,~~
~~of~~

42 ~~all of the taxes, interest and penalties collected or received by~~
~~the~~

43 ~~commissioner of taxation and finance under section three hundred one~~
~~of~~

44 ~~this article with respect to any taxable year commencing on or~~
~~after~~

45 ~~April first, nineteen hundred eighty-four and to that portion of~~
~~any~~

46 ~~taxable year commencing prior thereto to the extent of that portion~~
~~of~~

47 ~~such year which includes the period which commences with April~~
~~first,~~

48 ~~nineteen hundred eighty-four, seventy-two and seven-tenths percent~~
~~shall~~

49 ~~be deposited and disposed of pursuant to the provisions of section~~
~~one~~

50 ~~hundred seventy-one-a of this chapter and the balance thereof shall~~
~~be~~

51 ~~deposited in the mass transportation operating assistance fund to~~
~~the~~

52 ~~credit of the metropolitan mass transportation operating~~
~~assistance~~

53 ~~account and the public transportation systems operating~~
~~assistance~~

54 ~~account thereof in the manner provided by subdivision eleven of~~
~~section~~

55 ~~one hundred eighty-two-a of this chapter. Provided, however, that~~
~~the~~

56 ~~actual amount of such taxes, interest and penalties which shall~~
~~be~~

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1 ~~deposited in such mass transportation operating assistance fund~~
2 ~~pursuant~~
3 ~~to this section during the twelve-month period from April first,~~
4 ~~nine-~~
5 ~~teen hundred eighty-four to and including March thirty-first,~~
6 ~~nineteen~~
7 ~~hundred eighty-five shall not be less than an amount which, when~~
8 ~~added~~
9 ~~to the actual amount that is deposited in such fund during such~~
10 ~~twelve-~~
11 ~~month period and that is attributable to the taxes, interest and~~
12 ~~penal-~~
13 ~~ties collected and received under section one hundred eighty-two-a~~
14 ~~of~~
15 ~~this chapter, yields the sum of seventy-nine million five hundred~~
16 ~~thou-~~
17 ~~sand dollars and provided further that of such actual amounts~~
18 ~~deposited~~
19 ~~in such fund pursuant to this section and to section one hundred~~
20 ~~eight-~~
21 ~~y-two-a of this chapter during the twelve-month period from April~~
22 ~~first,~~
23 ~~nineteen hundred eighty-five to March thirty-first, nineteen~~
24 ~~hundred~~
25 ~~eighty-six and during the twelve-month period from April first,~~
26 ~~nineteen~~
27 ~~hundred eighty-six to March thirty-first, nineteen hundred eighty-~~
28 ~~seven,~~
29 ~~the amount which shall be deposited to the credit of the public~~
30 ~~trans-~~
31 ~~portation systems operating assistance account thereof during each~~
32 ~~such~~
33 ~~period shall be not less than thirty-six million dollars.~~
34 ~~Provided~~
35 ~~further that if the total amount deposited in the mass~~
36 ~~transportation~~
37 ~~operating assistance fund during the twelve month period~~
38 ~~commencing~~
39 ~~April first, nineteen hundred eighty-five pursuant to this section~~
40 ~~and~~
41 ~~to section one hundred eighty-two-a of this chapter is less than~~
42 ~~eighty~~
43 ~~million dollars, the comptroller shall deposit to the credit of~~
44 ~~the~~
45 ~~metropolitan mass transportation operating assistance account on~~
46 ~~or~~
47 ~~after April first, nineteen hundred eighty-six and on or before~~
48 ~~June~~
49 ~~thirtieth, nineteen hundred eighty-six from any taxes, interest,~~
50 ~~and~~
51 ~~penalties collected or received by the commissioner of taxation~~
52 ~~and~~
53 ~~finance under this article in addition to amounts which would~~
54 ~~otherwise~~

28 ~~be deposited to the credit of the mass transportation operating~~
assist-
29 ~~ance fund, an amount equal to the difference between eighty~~
million
30 ~~dollars and the amounts actually deposited in the mass~~
transportation
31 ~~operating assistance fund during such twelve-month period pursuant~~
to
32 ~~this section and to section one hundred eighty-two-a of this~~
chapter.
33 ~~Provided further that if the total amount deposited in the mass~~
trans-
34 ~~portation operating assistance fund during the twelve month~~
period
35 ~~commencing April first, nineteen hundred eighty-six pursuant to~~
this
36 ~~section and to section one hundred eighty-two-a of this chapter,~~
exclu-
37 ~~sive of the amount deposited in such fund to the credit of the~~
metropol-
38 ~~itan mass transportation operating assistance account on or after~~
April
39 ~~first, nineteen hundred eighty-six and on or before June~~
thirtieth,
40 ~~nineteen hundred eighty-six pursuant to the preceding sentence, is~~
less
41 ~~than eighty million dollars, the comptroller shall deposit to the~~
credit
42 ~~of the metropolitan mass transportation operating assistance account~~
on
43 ~~or after April first, nineteen hundred eighty-seven and on or~~
before
44 ~~June thirtieth, nineteen hundred eighty-seven from any taxes,~~
interest,
45 ~~and penalties collected or received by the commissioner of taxation~~
and
46 ~~finance under this article in addition to amounts which would~~
otherwise
47 ~~be deposited to the credit of the mass transportation operating~~
assist-
48 ~~ance fund, an amount equal to the difference between eighty~~
million
49 ~~dollars and the amounts actually deposited in the mass~~
transportation
50 ~~operating assistance fund during such twelve-month period pursuant~~
to
51 ~~this section and to section one hundred eighty-two-a of this~~
chapter,
52 ~~exclusive of the amount deposited in such fund to the credit of~~
the
53 ~~metropolitan mass transportation operating assistance account on~~
or
54 ~~after April first, nineteen hundred eighty-six and on or before~~
June
55 ~~thirtieth, nineteen hundred eighty-six pursuant to the~~
preceding

56 ~~sentence. Provided, further, however, with respect to all taxes,~~
and

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1 ~~interest and penalties relating thereto, collected or received by~~
the
2 ~~commissioner of taxation and finance under the tax imposed by~~
section
3 ~~three hundred one of this article with respect to any taxable~~
year
4 ~~commencing on and after June first, nineteen hundred ninety and to~~
that
5 ~~portion of any taxable year commencing prior thereto to the extent~~
of
6 ~~that portion of such year which includes the period which commences~~
June
7 ~~first, nineteen hundred ninety, eighty-nine and one-half percent of~~
such
8 ~~collections shall be deposited and disposed of pursuant to~~
the
9 ~~provisions of section one hundred seventy-one-a of this chapter and~~
the
10 ~~balance thereof shall be deposited in the mass transportation~~
operating
11 ~~assistance fund to the credit of the metropolitan mass~~
transportation
12 ~~operating assistance account and the public transportation systems~~
oper-
13 ~~ating assistance account thereof in the manner provided by~~
subdivision
14 ~~eleven of section one hundred eighty-two-a of this chapter.~~
15 (b) ~~Of all of the taxes collected or received by the commissioner~~
on
16 ~~or before March thirty-first, nineteen hundred ninety-one under~~
the
17 ~~taxes imposed by sections three hundred one-a and three hundred one-e~~
of
18 ~~this article, and all interest and penalties relating thereto,~~
eighty-
19 ~~seven and five-hundredths percent of such collections shall be~~
deposited
20 ~~and disposed of pursuant to the provisions of section one hundred~~
seven-
21 ~~ty-one-a of this chapter and the balance thereof shall be deposited~~
in
22 ~~the mass transportation operating assistance fund to the credit of~~
the
23 ~~metropolitan mass transportation operating assistance account and~~
the
24 ~~public transportation systems operating assistance account thereof~~
in
25 ~~the manner provided by subdivision eleven of section one hundred~~
eight-
26 ~~y-two-a of this chapter. Of all taxes, interest and penalties~~
collected

27 ~~or received after March thirty-first, nineteen hundred ninety-one,~~
and
28 ~~before April first, nineteen hundred ninety-three, from the~~
taxes
29 ~~imposed by sections three hundred one-a and three hundred one-e of~~
this
30 ~~article, initially thirty-five percent shall be deposited and~~
disposed
31 ~~of pursuant to such section one hundred seventy-one-a. The balance~~
ther-
32 ~~eof shall then be disposed of as follows: seventy-two and seven-~~
tenths
33 ~~percent shall be deposited and disposed of pursuant to such section~~
one
34 ~~hundred seventy-one-a and twenty-seven and three-tenths percent shall~~
be
35 ~~deposited in such mass transportation operating assistance fund~~
as
36 ~~prescribed in the aforestated manner. Except as otherwise provided,~~
of
37 ~~all taxes, interest and penalties collected or received after~~
March
38 ~~thirty-first, nineteen hundred ninety-three, and before April~~
first,
39 ~~nineteen hundred ninety-four, from the taxes imposed by sections~~
three
40 ~~hundred one-a and three hundred one-e of this article, (i)-~~
initially
41 ~~fifty-four percent shall be deposited, as prescribed by subdivision~~
(d)
42 ~~of section three hundred one-j of this chapter, (ii) twenty-eight~~
and
43 ~~three-tenths percent shall be deposited and disposed of pursuant to~~
such
44 ~~section one hundred seventy-one-a of this chapter in the general~~
fund
45 ~~and (iii) seventeen and seven-tenths percent shall be deposited in~~
such
46 ~~mass transportation operating assistance fund as prescribed in~~
the
47 ~~aforestated manner. Provided, however, that, prior to such deposit,~~
from
48 ~~the amounts so collected or received during the period commencing~~
on
49 ~~January first, nineteen hundred ninety-four and ending on March~~
thirty-
50 ~~first, nineteen hundred ninety-four, an amount equal to the portion~~
of
51 ~~the taxes, interest and penalties so received or collected~~
resulting
52 ~~from the amendments made by sections forty-two, forty-three and~~
forty-
53 ~~four of chapter fifty-seven of the laws of nineteen hundred ninety-~~
three
54 ~~shall be deposited and disposed of pursuant to the provisions of~~
subdi-

55 ~~vision one of section one hundred seventy one a of this chapter.~~
Except
56 ~~as otherwise provided, of all taxes, interest and penalties collected~~
or

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1 ~~received on or after April first, nineteen hundred ninety four, from~~
the
2 ~~taxes imposed by sections three hundred one a and three hundred one e~~
of
3 ~~this article, (i) initially fifty four percent shall be deposited,~~
as
4 ~~prescribed by subdivision (d) of section three hundred one j of~~
this
5 ~~article, (ii) twenty eight and three tenths percent shall be~~
deposited
6 ~~and disposed of pursuant to such section one hundred seventy one a~~
of
7 ~~this chapter in the general fund, (iii) seven and nine hundred~~
sixty-
8 ~~five thousandths percent shall be deposited in such mass~~
transportation
9 ~~operating assistance fund as prescribed in the aforestated manner~~
and
10 ~~(iv) nine and seven hundred thirty five thousandths percent shall~~
be
11 ~~deposited in the revenue accumulation fund. Except as~~
otherwise
12 ~~provided, of all taxes, interest and penalties collected or received~~
on
13 ~~or after September first, nineteen hundred ninety four and~~
before
14 ~~September first, nineteen hundred ninety five, from the taxes imposed~~
by
15 ~~sections three hundred one a and three hundred one e of this~~
article,
16 ~~(i) initially fifty nine percent shall be deposited, as prescribed~~
by
17 ~~subdivision (d) of section three hundred one j of this article,~~
(ii)
18 ~~twenty two and four tenths percent shall be deposited and disposed~~
of
19 ~~pursuant to such section one hundred seventy one a of this chapter~~
in
20 ~~the general fund, (iii) eight and three hundred seventy~~
thousandths
21 ~~percent shall be deposited in such mass transportation operating~~
assist-
22 ~~ance fund as prescribed in the aforestated manner and (iv) ten and~~
two
23 ~~hundred thirty thousandths percent shall be deposited in the~~
revenue
24 ~~accumulation fund. Except as otherwise provided, of all taxes,~~
interest
25 ~~and penalties, collected or received on or after September first,~~
nine-

26 ~~teen hundred ninety-five and before April first, nineteen hundred~~
nine-
27 ~~ty-six from the taxes imposed by sections three hundred one-a and~~
three
28 ~~hundred one-e of this article, (i) initially sixty-two and eight-~~
tenths
29 ~~percent shall be deposited as prescribed by subdivision (d) of~~
section
30 ~~three hundred one-j of this article, (ii) eighteen percent shall~~
be
31 ~~deposited and disposed of pursuant to section one hundred seventy-~~
one-a
32 ~~of this chapter in the general fund, (iii) eight and six hundred~~
forty
33 ~~thousandths percent shall be deposited in such mass transportation~~
oper-
34 ~~ating assistance fund as prescribed in the aforestated manner and~~
(iv)
35 ~~ten and five hundred sixty thousandths percent shall be deposited in~~
the
36 ~~revenue accumulation fund. Except as otherwise provided, of all~~
taxes,
37 ~~interest and penalties collected or received on or after April~~
first,
38 ~~nineteen hundred ninety-six, and before January first, nineteen~~
hundred
39 ~~ninety-seven from the taxes imposed by sections three hundred one-a~~
and
40 ~~three hundred one-e of this article, (i) initially sixty-three~~
and
41 ~~three-tenths percent shall be deposited, as prescribed by~~
subdivision
42 ~~(d) of section three hundred one-j of this article, (ii) seventeen~~
and
43 ~~four-tenths percent shall be deposited and disposed of pursuant to~~
such
44 ~~section one hundred seventy-one-a of this chapter in the general~~
fund
45 ~~and (iii) nineteen and three-tenths percent shall be deposited in~~
such
46 ~~mass transportation operating assistance fund as prescribed in~~
the
47 ~~aforestated manner. Except as otherwise provided, of all taxes,~~
inter-
48 ~~est and penalties collected or received on or after January first,~~
nine-
49 ~~teen hundred ninety-seven and before January first, nineteen~~
hundred
50 ~~ninety-eight from the taxes imposed by sections three hundred one-a~~
and
51 ~~three hundred one-e of this article, (i) initially sixty-six and~~
two-
52 ~~tenths percent shall be deposited, as prescribed by subdivision (d)~~
of
53 ~~section three hundred one-j of this article, (ii) fourteen and one-~~
half

54 ~~percent shall be deposited and disposed of pursuant to such section~~
one
55 ~~hundred seventy-one-a of this chapter in the general fund and~~
~~(iii)~~
56 ~~nineteen and three-tenths percent shall be deposited in such mass~~
~~trans-~~

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1 ~~portation operating assistance fund as prescribed in the~~
aforestated
2 ~~manner. Except as otherwise provided, of all taxes, interest and~~
penal-
3 ~~ties collected or received on or after January first, nineteen~~
hundred
4 ~~ninety-eight and before April first, nineteen hundred ninety-nine~~
from
5 ~~the taxes imposed by sections three hundred one-a and three~~
hundred
6 ~~one-e of this article, (i) initially sixty-eight and one-tenth~~
percent
7 ~~shall be deposited, as prescribed by subdivision (d) of section~~
three
8 ~~hundred one-j of this article, (ii) twelve and four-tenths percent~~
shall
9 ~~be deposited and disposed of pursuant to such section one hundred~~
seven-
10 ~~ty-one-a of this chapter in the general fund and (iii) nineteen~~
and
11 ~~one-half percent shall be deposited in such mass transportation~~
operat-
12 ~~ing assistance fund as prescribed in the aforestated manner. Except~~
as
13 ~~otherwise provided, of all taxes, interest and penalties collected~~
or
14 ~~received on or after April first, nineteen hundred ninety-nine, from~~
the
15 ~~taxes imposed by sections three hundred one-a and three hundred one-e~~
of
16 ~~this article, (i) initially sixty-nine and eight-tenths percent shall~~
be
17 ~~deposited, as prescribed by subdivision (d) of section three~~
hundred
18 ~~one-j of this article, (ii) ten and seven-tenths percent shall be~~
depos-
19 ~~ited and disposed of pursuant to such section one hundred seventy-~~
one-a
20 ~~of this chapter in the general fund and (iii) nineteen and one-~~
half
21 ~~percent shall be deposited in such mass transportation operating~~
assist-
22 ~~ance fund as prescribed in the aforestated manner.] Except as~~
otherwise
23 provided, of all taxes, interest and penalties collected or received
on
24 or after April first, two thousand one, from the taxes imposed
by

25 sections three hundred one-a and three hundred one-e of this
article,
26 (i) initially eighty and three-tenths percent shall be deposited,
as
27 prescribed by subdivision (d) of section three hundred one-j of
this
28 article and (ii) nineteen and seven-tenths percent shall be deposited
in
29 such mass transportation operating assistance fund [~~as prescribed in
the~~
30 ~~forestated manner~~] to the credit of the metropolitan mass
transporta-
31 tion operating assistance account and the public transportation
systems
32 operating assistance account thereof in the manner provided by
subdivi-
33 sion eleven of section one hundred eighty-two-a of this
chapter.
34 [~~Provided, further, that on or before the twenty-fifth day of each~~
~~month~~
35 ~~commencing with October, nineteen hundred ninety and terminating~~
~~with~~
36 ~~the month of March, two thousand one, the comptroller shall deduct~~
~~the~~
37 ~~amount of six hundred twenty-five thousand dollars prior to any~~
~~deposit~~
38 ~~or disposition of the taxes, interest and penalties collected~~
~~or~~
39 ~~received pursuant to such sections three hundred one-a and three~~
~~hundred~~
40 ~~one-e and shall pay such amount to the state treasury to the credit~~
~~of~~
41 ~~the general fund.~~] Provided, further that on or before the twenty-
fifth
42 day of each month commencing with April, two thousand one, the
comp-
43 troller shall deduct the amount of six hundred twenty-five
thousand
44 dollars prior to any deposit or disposition of the taxes, interest,
and
45 penalties collected or received pursuant to such sections three
hundred
46 one-a and three hundred one-e and shall deposit such amount in the
dedi-
47 cated fund accounts pursuant to subdivision (d) of section three
hundred
48 one-j of this article. Provided, further, that commencing
January
49 fifteenth, nineteen hundred ninety-one, and on or before the tenth
day
50 of March and the fifteenth day of June and September of such year,
the
51 commissioner shall, based on information supplied by taxpayers and
other
52 appropriate sources, estimate the amount of the utility credit
author-

53 ized by section three hundred one-d of this article which has
been
54 accrued to reduce tax liability under section one hundred eighty-
six-a
55 of this chapter during the period covered by such estimate and
certify
56 to the state comptroller such estimated amount. The comptroller
shall
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1 forthwith, after receiving such certificate, deduct the amount of
such
2 credit so certified by the commissioner prior to any deposit or
disposi-
3 tion of the taxes, interest and penalties collected or received
pursuant
4 to such sections three hundred one-a and three hundred one-e and
shall
5 pay such amount so certified and deducted into the state treasury to
the
6 credit of the general fund. [~~As soon as practicable after April
first,
7 nineteen hundred ninety-one, nineteen hundred ninety-two and
nineteen
8 hundred ninety-three, but before June fifteenth of each such year,
the
9 commissioner shall determine the amount of the utility tax credit
which
10 has been actually used to reduce tax liability under such section
one
11 hundred eighty six a and shall certify the difference between such
actu-
12 al amount and the earlier estimated amount.~~] Also, subsequently,
during
13 the fiscal year when the commissioner becomes aware of changes
or
14 modifications with respect to actual credit usage, the
commissioner
15 shall, as soon as practicable, issue a certification setting forth
the
16 amount of any required adjustment to the amount of actual credit
usage
17 previously certified. After receiving the certificate of the
commission-
18 er with respect to actual credit usage or modification of the same,
the
19 comptroller shall forthwith adjust general fund receipts and the
reven-
20 ues to be deposited or disposed of under this article to reflect
the
21 difference so certified by the commissioner. The commissioner shall
not
22 be liable for any overestimate or underestimate of the amount of
the
23 utility credit which has been accrued to reduce tax liability under
such

24 section one hundred eighty-six-a. Nor shall the commissioner be
liable
25 for any inaccuracy in any certificate with respect to the amount of
such
26 credit actually used or any required adjustment with respect to
actual
27 credit usage, but the commissioner shall as soon as practicable
after
28 discovery of any error adjust the next certification under this
section
29 to reflect any such error.

30 ~~[On or before July thirty-first, nineteen hundred ninety-two and on
or
31 before July thirty-first, nineteen hundred ninety-three, the
commission-
32 er shall conduct the following reconciliation with respect to
the
33 preceding fiscal year: he shall multiply the total of all taxes,
penal-
34 ties and interest, after refunds and reimbursements, which are
derived
35 from the motor fuel component, the automotive-type diesel motor
fuel
36 component and the aviation gasoline component by twenty fifty-
fifths;
37 the total of all taxes, penalties and interest, after refunds
and
38 reimbursements, which are derived from the nonautomotive-type
diesel
39 motor fuel component (excluding taxes, penalties and interest which
are
40 derived from product with respect to which the credit or
reimbursement
41 provided by section three hundred one-d is taken) by twenty-
fiftieths;
42 and all taxes, penalties and interest, after refunds and
reimbursements,
43 which are derived from the residual petroleum product component
(exclud-
44 ing taxes, penalties and interest which are derived from product
with
45 respect to which the credit or reimbursement provided by section
three
46 hundred one-d is taken) by twenty-fortieths. The products of the
forego-
47 ing multiplications shall be added together and the resulting sum
of
48 such products shall be compared with the total of the amounts
initially
49 distributed during such fiscal year with respect to such
components
50 (excluding receipts derived from product with respect to which the
cred-
51 it or reimbursement provided by section three hundred one-d is taken
and
52 excluding any amount which represents a reconciliation adjustment
pursu-~~

53 ~~ant to this paragraph) pursuant to section one hundred seventy-one-a~~
of
54 ~~this chapter which represented thirty-five percent of the total,~~
after
55 ~~refunds and reimbursements, of all taxes, penalties and~~
interest
56 ~~collected or received during such fiscal year under sections~~
three

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1 ~~hundred one-a and three hundred one-e during the months of such~~
fiscal
2 ~~year with respect to such components. The commissioner shall then~~
certi-
3 ~~fy the amount of such difference to the comptroller. If the~~
amounts
4 ~~initially distributed in such fiscal year are greater than the sum~~
of
5 ~~such products, the comptroller shall withhold an amount equal to~~
tween-
6 ~~ty-seven and three-tenths percent of such difference from the~~
first
7 ~~moneys otherwise payable to the general fund pursuant to this~~
subdivi-
8 ~~sion and shall pay such amount to the mass transportation~~
operating
9 ~~assistance fund to the credit of the metropolitan mass~~
transportation
10 ~~operating assistance account and the public transportation systems~~
oper-
11 ~~ating assistance account thereof in the aforestated manner. If~~
the
12 ~~amounts initially distributed in such fiscal year are less than the~~
sum
13 ~~of such products, the comptroller shall withhold an amount equal~~
to
14 ~~twenty-seven and three-tenths percent of such difference from the~~
first
15 ~~moneys otherwise payable to the mass transportation operating~~
assistance
16 ~~fund pursuant to this subdivision and shall pay such amount to~~
the
17 ~~general fund.~~

18 ~~When the commissioner becomes aware of changes or modifications~~
with
19 ~~respect to the distribution of revenue under this article, the~~
commis-
20 ~~sioner shall, as soon as practicable, issue a certification~~
setting
21 ~~forth the amount of any required adjustment. After receiving the~~
certif-
22 ~~icate of the commissioner with respect to any adjustments, the~~
comp-
23 ~~troller shall forthwith adjust general fund receipts and the revenues~~
to

24 ~~be deposited or disposed of under this article to reflect the~~
difference
25 ~~so certified by the commissioner. The commissioner shall not be~~
liable
26 ~~for any overestimate or underestimate of the amount of the~~
distribution.
27 ~~Nor shall the commissioner be liable for any inaccuracy in any~~
certif-
28 ~~icate with respect to the amount of the distribution or any~~
required
29 ~~adjustment with respect to the distribution, but the commissioner~~
shall
30 ~~as soon as practicable after discovery of any error adjust the~~
next
31 ~~certification under this section to reflect any such error.]~~ Prior
to
32 making deposits as provided in this [~~subdivision~~] section, the
comp-
33 troller shall retain such amount as the commissioner may determine to
be
34 necessary, subject to the approval of the director of the budget,
for
35 reasonable costs of the department in administering and collecting
the
36 taxes deposited pursuant to this [~~subdivision~~] section and for
refunds
37 and reimbursements with respect to such taxes, out of which the
comp-
38 troller shall pay any refunds or reimbursements of such taxes to
which
39 taxpayers shall be entitled.
40 § 33. Subdivision (b) of section 315 of the tax law, as amended
by
41 section 156 of part A of chapter 389 of the laws of 1997, is amended
to
42 read as follows:
43 (b) Joint administration of taxes. In addition to the powers
granted
44 to the commissioner in this chapter, the commissioner is hereby
author-
45 ized to make provisions for the joint administration, in whole or
in
46 part, of the taxes imposed by articles twelve-A and twenty-eight
and
47 pursuant to the authority of article twenty-nine of this chapter
upon
48 [~~automotive fuel~~] motor fuel and diesel motor fuel and the taxes
imposed
49 by this article, including the joint reporting, assessment,
collection,
50 determination and refund of such taxes, and for that purpose
to
51 prescribe that any of the commissioner's functions under such
articles,
52 and any returns, forms, statements, documents or information to
be

53 submitted to the commissioner under such articles, any books and
records
54 to be kept for purposes of the taxes imposed or authorized to be
imposed
55 by such articles, any schedules of amounts to be collected under
such
56 articles, any registration required under such articles, and the
payment
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1 of taxes under such articles, shall be on a joint basis with respect
to
2 the taxes imposed by or pursuant to such articles. Provided,
notwith-
3 standing any provision of this article to the contrary, in the
further-
4 ance of joint administration, the provisions of subdivision one
of
5 section two hundred eighty-five-a and subdivision one of section
two
6 hundred eighty-nine-c of this chapter shall apply to the taxes
imposed
7 under this article with the same force and effect as if those
provisions
8 specifically referred to the taxes imposed hereunder and all
the
9 products with respect to which the taxes are imposed under this
article.
10 Provided, further, a reimbursement (or credit) of taxes imposed
under
11 this article shall be available to subsequent purchasers of motor
fuel,
12 diesel motor fuel or residual petroleum product under the
circumstances
13 specified in subdivision eight of section two hundred eighty-nine-c
of
14 this chapter with respect to the export of such products. In
addition,
15 all the provisions of subdivision one of section two hundred eighty-
six
16 of this chapter shall be applicable to all of the products included
in
17 the measure of the tax imposed by this article and the powers of
the
18 commissioner in administering the tax imposed by this article
shall
19 include these set forth in such subdivision. Moreover, the
commission-
20 er, in order to preserve the revenue from the tax imposed by this
arti-
21 cle, shall, by regulation, require that the movement of residual
petro-
22 leum product into or in this state be accompanied by a
tracking
23 document. [~~Such manifest or other tracking document shall be
prescribed~~]

24 ~~only after consultation with the state motor fuels taxation~~
advisory
25 ~~council (created by section forty-one of chapter forty-four of the~~
laws
26 ~~of nineteen hundred eighty-five) as to its form and content and as~~
to
27 ~~whether an existing industry document (or a modified version~~
thereof)
28 ~~may adequately serve the tracking purpose so that such existing~~
industry
29 ~~document may be prescribed as the tracking document.]~~ Also, the
commis-
30 sioner may require (i) that any returns, forms, statements or
other
31 document with respect to motor fuel or diesel motor fuel required
of
32 transporters or terminal operators under such article twelve-A of
this
33 chapter apply with the same force and effect to persons transporting
or
34 storing residual petroleum product, (ii) a certification that
particular
35 gallonage of motor fuel, diesel motor fuel or residual petroleum
product
36 has been included in the measure of the tax imposed by this article
and
37 such tax has been paid, and (iii) that the certification required
pursu-
38 ant to section two hundred eighty-five-a or two hundred eighty-five-b
of
39 this chapter be expanded to include the tax imposed by this article.
40 § 34. Subdivision 10 of section 501 of the tax law, as amended
by
41 chapter 407 of the laws of 1990, is amended to read as follows:
42 10. "Automotive fuel" shall mean, solely for purposes of this
article,
43 diesel motor fuel as defined in subdivision fourteen of section
two
44 hundred eighty-two of this chapter and motor fuel as defined in
subdivi-
45 sion two of section two hundred eighty-two of this chapter.
46 § 35. Subdivision (b) of section 528 of the tax law, as added by
chap-
47 ter 170 of the laws of 1994, is amended to read as follows:
48 (b) Cooperative agreements. Notwithstanding any inconsistent
provision
49 of law, the commissioner is authorized to enter into a
cooperative
50 agreement with other states, the District of Columbia or provinces
or
51 territories of Canada for the administration of the tax imposed by
this
52 article and similar taxes imposed by other member jurisdictions and
for
53 the reporting and payment of tax to a single base state and a propo-

54 tional sharing of revenue of taxes relating to fuel use among the
juris-
55 dictions where a qualified motor vehicle is operated. The agreement
may
56 provide for determining the base state for carriers, carriers
records
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1 requirements, audit procedures, exchange of information, persons
eligi-
2 ble for tax licensing, defining qualified motor vehicles, determining
if
3 bonding is required and requiring bonds to secure the tax imposed
by
4 this article and similar taxes imposed by other member
jurisdictions,
5 specifying reporting requirements and periods including defining
uniform
6 penalty and interest rates for late reporting, determining methods
for
7 collecting and forwarding of taxes, interest and penalties to
another
8 jurisdiction, notice and timing of hearings and other provisions as
will
9 facilitate the administration of the agreement. The commissioner
may,
10 pursuant to the terms of the agreement, forward to the proper
officers
11 of another member jurisdiction any information in the
commissioner's
12 possession relating to the manufacture, receipt, sale, use,
transporta-
13 tion or shipment of [~~automotive fuel~~] motor fuel or diesel motor fuel
by
14 any person and may share any information relating to the
administration
15 of taxes pursuant to the agreement with such officers. The
commissioner
16 may disclose to the proper officers of another member jurisdiction
the
17 location of offices, motor vehicles and other real and personal
property
18 of carriers. The agreement may provide for each member jurisdiction
to
19 audit the records of persons based in the member jurisdiction and
deter-
20 mine taxes due each member jurisdiction. The commissioner may
adopt
21 rules and regulations for the administration and enforcement of
the
22 agreement. In connection with the administration of taxes under such
a
23 cooperative agreement, the commissioner may enter into an agreement
with
24 other member jurisdictions and any banks, banking houses, trust
compa-

25 nies or other similar institutions with respect to the payment of
any
26 tax, fees, penalty or interest to such banks, banking houses,
trust
27 companies or similar institutions and the filing of returns and
reports
28 with such banks, banking houses, trust companies or similar
institutions
29 as agent of the commissioner and such other member jurisdictions.
Pursu-
30 ant to a written agreement made with one or more of the
appropriate
31 departments, agencies, officers or instrumentalities of other
jurisdic-
32 tions, the commissioner may let contracts for provision of such
services
33 to the department and to one or more of such entities of other
jurisdic-
34 tions; provided, that provisions shall be made in all such
agreements
35 with the participating governmental entities and in all such
contracts
36 let by the commissioner for the assumption by each of the
participating
37 governmental entities of sole responsibility for its proportionate
share
38 of the costs under the terms of such contract. The commissioner
may
39 contract for such services jointly with and pursuant to a contract
let
40 by the appropriate department, agency, officer or instrumentality
of
41 another jurisdiction; provided that (1) the commissioner shall
approve
42 the proposed terms and conditions of all such joint
governmental
43 contracts, (2) the letting of such joint governmental contract shall
be
44 based on invitation of competitive bids or proposals, and (3)
the
45 participation by the department in any such joint contract shall
be
46 preceded by an evaluation and finding in writing by the
commissioner
47 that a reasonable potential exists for the saving of costs by the
state,
48 by means of such joint governmental contract.
49 § 36. The opening paragraph of subparagraph (ii) of paragraph 4
of
50 subdivision (b) of section 1101 of the tax law, as amended by
chapter
51 261 of the laws of 1988, is amended to read as follows:
52 Notwithstanding the provisions of subparagraph (i) of this
paragraph,
53 no motor fuel or diesel motor fuel shall be sold or used in this
state

54 without payment, and inclusion in the sales price of such motor fuel,
of
55 the tax on motor fuel required to be prepaid pursuant to the
provisions

56 of section eleven hundred two of this article except where a
provision

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1 of this article relating to motor fuel or diesel motor fuel
specifically

2 provides otherwise and except in the case of a sale or use subject
to

3 tax under section eleven hundred five or eleven hundred ten,
respective-

4 ly, of this article. Provided, however, except for such requirement
of

5 prepayment of tax required by section eleven hundred two of this
arti-

6 cle, the provisions of this subparagraph shall not otherwise modify
the

7 meaning of the term "retail sale" as used in this article. For
purposes

8 of this subparagraph and sections eleven hundred two, eleven
hundred

9 eleven, eleven hundred twenty, eleven hundred thirty-two, eleven
hundred

10 thirty-four, eleven hundred thirty-five, eleven hundred thirty-
six,

11 eleven hundred forty-two, eleven hundred forty-five and eighteen
hundred

12 seventeen of this chapter, the following terms shall have the
following

13 meanings:

14 § 37. Clause (A) of subparagraph (ii) of paragraph 4 of
subdivision

15 (b) of section 1101 of the tax law, as amended by chapter 261 of
the

16 laws of 1988, is amended to read as follows:

17 (A) "~~Automotive fuel~~" Petroleum products means diesel motor fuel
as

18 defined in subdivision fourteen of section two hundred eighty-two
of

19 this chapter, other than kerosene or propane used for
residential

20 purposes, or motor fuel as defined in subdivision two of section
two

21 hundred eighty-two of this chapter. The phrase "used for
residential

22 purposes" shall have the same meaning as it has for purposes of
section

23 eleven hundred five-A of this article.

24 § 38. Clause (F) of subparagraph (ii) of paragraph 4 of
subdivision

25 (b) of section 1101 of the tax law is REPEALED and a new clause (F)
is

26 added to read as follows:

27 (F) The terms "highway diesel motor fuel" and "non-highway
28 diesel
29 motor fuel" shall have the same meaning as they have for purposes
30 of
31 article twelve-A of this chapter.

32 § 39. Paragraph 2 of subdivision (a) of section 1102 of the tax
33 law,
34 as separately amended by section 9 of part W-1 of chapter 109 and
35 chap-
36 ter 302 of the laws of 2006, is amended to read as follows:

37 (2) Every distributor of diesel motor fuel shall pay, as a
38 prepayment
39 on account of the taxes imposed by this article and pursuant to
40 the
41 authority of article twenty-nine of this chapter, a tax upon the sale
42 or
43 use of diesel motor fuel in this state. The tax shall be computed
44 based
45 upon the number of gallons of diesel motor fuel sold or used.

46 Provided,
47 however, if the tax has not been imposed prior thereto, it shall
48 be

49 imposed on the delivery of diesel motor fuel to a retail
50 service
51 station. The collection of such tax shall not be made applicable to
52 the
53 sale or use of diesel motor fuel under circumstances which preclude
54 the
55 collection of such tax by reason of the United States constitution
56 and
57 of laws of the United States enacted pursuant thereto. The prepaid
58 tax

59 on diesel motor fuel shall not apply to (i) the sale of
60 previously
61 untaxed [~~diesel motor fuel which is not enhanced~~] non-highway

62 Diesel
63 motor fuel to a person registered as a distributor of Diesel motor
64 fuel

65 other than a sale to such person which involves a delivery at a
66 filling
67 station or into a repository which is equipped with a hose or
68 other
69 apparatus by which such fuel can be dispensed into the fuel tank
70 of a
71 motor vehicle, or (ii) the sale to or delivery at a filling station
72 or

73 other retail vendor of water-white kerosene provided such
74 filling
75 station or other retail vendor only sells such water-white
76 kerosene
77 exclusively for heating purposes in containers of no more than
78 twenty
79 gallons or to the sale of CNG or hydrogen [~~or (iii) the sale of~~

80 ~~dyed~~
81 ~~diesel motor fuel as set forth in clause (A) or (B) of subparagraph~~
82 ~~(i)~~

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1 ~~of paragraph (c) of subdivision three of section two~~
hundred

2 ~~eighty-two-a of this chapter~~].

3 § 39-a. Paragraph 2 of subdivision (a) of section 1102 of the tax
law,

4 as amended by chapter 302 of the laws of 2006, is amended to read
as

5 follows:

6 (2) Every distributor of diesel motor fuel shall pay, as a
prepayment

7 on account of the taxes imposed by this article and pursuant to
the

8 authority of article twenty-nine of this chapter, a tax upon the sale
or

9 use of diesel motor fuel in this state. The tax shall be computed
based

10 upon the number of gallons of diesel motor fuel sold or used.

Provided,

11 however, if the tax has not been imposed prior thereto, it shall
be

12 imposed on the delivery of diesel motor fuel to a retail
service

13 station. The collection of such tax shall not be made applicable to
the

14 sale or use of diesel motor fuel under circumstances which preclude
the

15 collection of such tax by reason of the United States constitution
and

16 of laws of the United States enacted pursuant thereto. The prepaid
tax

17 on diesel motor fuel shall not apply to (i) the sale of
previously

18 untaxed [~~diesel motor fuel which is not enhanced~~] non-highway
Diesel

19 motor fuel to a person registered as a distributor of Diesel motor
fuel

20 other than a sale to such person which involves a delivery at a
filling

21 station or into a repository which is equipped with a hose or
other

22 apparatus by which such fuel can be dispensed into the fuel tank
of a

23 motor vehicle, or (ii) the sale to or delivery at a filling station
or

24 other retail vendor of water-white kerosene provided such
filling

25 station or other retail vendor only sells such water-white
kerosene

26 exclusively for heating purposes in containers of no more than
twenty

27 gallons [~~or (iii) the sale of dyed diesel motor fuel as set forth~~
in

28 ~~clause (A) or (B) of subparagraph (i) of paragraph (c) of~~
subdivision

29 ~~three of section two hundred eighty-two-a of this chapter~~].
30 § 40. Subsection (a) of section 1105-A of the tax law, as amended
by
31 section 1 of part B of chapter 35 of the laws of 2006, is amended
to
32 read as follows:
33 (a) Notwithstanding any other provisions of this article, but not
for
34 purposes of the taxes imposed by section eleven hundred eight of
this
35 part or authorized pursuant to the authority of article twenty-nine
of
36 this chapter, the taxes imposed by subdivision (a) or (b) of
section
37 eleven hundred five of this part on the receipts from the retail sale
of
38 fuel oil and coal used for residential purposes; the receipts from
the
39 retail sale of wood used for residential heating purposes; and
the
40 receipts from every sale, other than for resale, of propane (except
when
41 sold in containers of less than one hundred pounds), natural gas,
elec-
42 tricity, steam and gas, electric and steam services used for
residential
43 purposes shall be paid at the rate of three percent for the
period
44 commencing January first, nineteen hundred seventy-nine and
ending
45 December thirty-first, nineteen hundred seventy-nine; at the rate of
two
46 and one-half percent for the period commencing January first,
nineteen
47 hundred eighty and ending September thirtieth, nineteen hundred
eighty,
48 and at the rate of zero percent on and after October first,
nineteen
49 hundred eighty. The provisions of this subsection shall not apply to
a
50 sale of ~~[(i)]~~ diesel motor fuel which involves a delivery at a
filling
51 station or into a repository which is equipped with a hose or
other
52 apparatus by which such fuel can be dispensed into the fuel tank
of a
53 motor vehicle ~~[and (ii) enhanced diesel motor fuel except in the case
of
54 a sale of such enhanced diesel motor fuel used exclusively for
residen-
55 tial purposes which is delivered into a storage tank which is
not
56 equipped with a hose or other apparatus by which such fuel can
be~~

1 ~~dispensed into the fuel tank of a motor vehicle and such storage tank~~
is
2 ~~attached to the heating unit burning such fuel, provided that~~
each
3 ~~delivery of such fuel of over four thousand five hundred gallons~~
shall
4 ~~be evidenced by a certificate signed by the purchaser stating that~~
the
5 ~~product will be used exclusively for residential purposes~~].

6 § 41. Subdivision (j) of section 1115 of the tax law, as amended
by
7 section 12 of part W-1 of chapter 109 of the laws of 2006, is amended
to
8 read as follows:

9 (j) The exemptions provided in this section shall not apply to the
tax
10 required to be prepaid pursuant to the provisions of section
eleven
11 hundred two of this article nor to the taxes imposed by sections
eleven
12 hundred five and eleven hundred ten of this article with respect
to
13 receipts from sales and uses of motor fuel or diesel motor fuel,
except
14 that the exemptions provided in paragraphs nine and forty-two of
subdi-
15 vision (a) of this section shall apply to the tax required to be
prepaid
16 pursuant to the provisions of section eleven hundred two of this
article
17 and to the taxes imposed by sections eleven hundred five and
eleven
18 hundred ten of this article with respect to sales and uses of kero-
jet
19 fuel, CNG, hydrogen and E85, provided, however, the exemption
allowed
20 for E85 shall be subject to the additional requirements provided
in
21 section eleven hundred two of this article with respect to E85.

The
22 exemption provided in subdivision (c) of this section shall apply
to
23 sales and uses of non-highway diesel motor fuel [~~which is not~~
~~enhanced~~
24 ~~diesel motor fuel~~] but only if all of such fuel is consumed other
than
25 on the public highways of this state[, ~~provided, however, this~~
~~exemption~~
26 ~~shall in no event apply to a sale of diesel motor fuel which involves~~
a
27 ~~delivery at a filling station or into a repository which is~~
~~equipped~~
28 ~~with a hose or other apparatus by which such fuel can be dispensed~~
~~into~~
29 ~~the fuel tank of a motor vehicle~~]. The exemption provided in
subdivision

30 (c) of this section shall apply to sales and uses of [~~no more than~~
31 ~~four~~ ~~thousand five hundred gallons of~~] non-highway diesel motor fuel [~~in~~
32 ~~a~~ ~~thirty-day period~~] for use or consumption either in the production
33 for sale of tangible personal property by farming or in a commercial
34 horse boarding operation, or in both but only if all of such fuel is
35 consumed other than on the public highways of this state (except for the use
36 of the public highways to reach adjacent farmlands or adjacent lands
37 used in a commercial horse boarding operation, or both) [~~provided,~~
38 ~~however,~~ ~~such exemption shall be applicable to the sale or use of more than~~
39 ~~four~~ ~~thousand five hundred gallons of diesel motor fuel in a thirty-day~~
40 ~~peri-~~ ~~od for such use or consumption in accordance with a prior~~
41 ~~clearance~~ ~~given by the commissioner~~].

42 § 41-a. Subdivision (j) of section 1115 of the tax law, as amended
43 by section 8 of part B of chapter 63 of the laws of 2000, is amended
44 to

44 read as follows:

45 (j) The exemptions provided in this section shall not apply to the
46 tax required to be prepaid pursuant to the provisions of section
47 eleven hundred two of this article nor to the taxes imposed by sections
48 eleven hundred five and eleven hundred ten of this article with respect
49 to receipts from sales and uses of motor fuel or diesel motor fuel,
50 except that the exemption provided in paragraph nine of subdivision (a) of
51 this section shall apply to the tax required to be prepaid pursuant to
52 the provisions of section eleven hundred two of this article and to
53 the taxes imposed by sections eleven hundred five and eleven hundred ten
54 of this article with respect to sales and uses of kero-jet fuel.
55 The exemption provided in subdivision (c) of this section shall apply
56 to sales and uses of non-highway diesel motor fuel [~~which is not~~
57 ~~enhanced~~

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1 ~~diesel motor fuel~~] but only if all of such fuel is consumed other
than

2 on the public highways of this state [~~7, provided, however, this~~
exemption
3 shall in no event apply to a sale of diesel motor fuel which
involves a
4 delivery at a filling station or into a repository which is
equipped
5 with a hose or other apparatus by which such fuel can be dispensed
into
6 the fuel tank of a motor vehicle]. The exemption provided in
subdivision
7 (c) of this section shall apply to sales and uses of [~~no more than~~
four
8 thousand five hundred gallons of] non-highway diesel motor fuel [in
a
9 thirty-day period] for use or consumption either in the production
for
10 sale of tangible personal property by farming or in a commercial
horse
11 boarding operation, or in both but only if all of such fuel is
consumed
12 other than on the public highways of this state (except for the use
of
13 the public highways to reach adjacent farmlands or adjacent lands
used
14 in a commercial horse boarding operation, or both) [~~7, provided,~~
however,
15 such exemption shall be applicable to the sale or use of more than
four
16 thousand five hundred gallons of diesel motor fuel in a thirty-day
peri-
17 od for such use or consumption in accordance with a prior
clearance
18 given by the commissioner].
19 § 42. Subdivision (e) of section 1120 of the tax law, as amended
by
20 chapter 2 of the laws of 1995, is amended to read as follows:
21 (e) Immediate export. With respect to (i) motor fuel imported,
manu-
22 factured or sold or purchased in this state, and (ii) [enhanced]
highway
23 diesel motor fuel, a refund or credit shall be allowed a
registered
24 distributor of this state or a purchaser of the tax required to
be
25 prepaid pursuant to section eleven hundred two of this article in
the
26 amount of such tax paid by or included in the price paid by a
distribu-
27 tor or such purchaser if such fuel was exported from this state for
sale
28 outside this state, such distributor or such purchaser, as the case
may
29 be, exporting such fuel is duly registered with or licensed by
the
30 taxing authorities of the state to which such fuel is exported
as a

31 distributor or a dealer in the fuel being so exported, and in
connection
32 with such exportation such fuel was immediately shipped to an
identified
33 facility in the state to which such fuel is exported, and provided
the
34 applicant complies with all requirements and rules and regulations
of
35 the commissioner, including evidentiary requirements, relating
thereto.

36 § 43. Subparagraph (i) of paragraph 3 of subdivision (h) of
section
37 1132 of the tax law, as amended by chapter 261 of the laws of 1988,
is
38 amended to read as follows:

39 (i) For the purpose of the proper administration of this article
and
40 to prevent evasion of the tax hereby imposed, it shall be presumed
that
41 all retail sales of motor fuel or diesel motor fuel are subject to
the
42 tax required to be collected by subdivision (a) of section
eleven
43 hundred five of this article or paid by the provisions of section
eleven
44 hundred ten of this article until the contrary is established, and
it
45 shall be presumed that all motor fuel or diesel motor fuel
imported,
46 manufactured, [~~subjected to enhancement,~~] sold, received or possessed
by
47 any person in this state, which such person cannot otherwise account
for
48 as having been sold subject to the tax required to be collected
by
49 subdivision (a) of section eleven hundred five or paid by the
provisions
50 of section eleven hundred ten of this article, has been sold subject
to
51 the tax required to be collected by subdivision (a) of section
eleven
52 hundred five or paid by the provisions of section eleven hundred
ten
53 except that no such presumption shall apply with respect to motor
fuel
54 or diesel motor fuel in the fuel tank of a motor vehicle used to
propel
55 such vehicle or to motor fuel in small drums or similar containers.

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1 burden of proving that any sale is not so subject shall be upon
the

2 person required to collect such tax and the purchaser of such fuel.

3 § 44. Subparagraph (iii) of paragraph 1 of subdivision (a) of
section

4 1134 of the tax law, as amended by section 160 of part A of chapter
389
5 of the laws of 1997, is amended to read as follows:
6 (iii) every person selling [~~automotive fuel~~] petroleum
products
7 including persons who or which are not distributors,
8 § 45. Subdivision (d) of section 1135 of the tax law, as amended
by
9 chapter 44 of the laws of 1985 and as relettered by chapter 61 of
the
10 laws of 1989, is amended to read as follows:
11 (d) Every person selling or holding large volumes of [~~automotive~~
~~fuel~~]
12 petroleum products shall keep records for such periods and in the
manner
13 prescribed by the [~~tax commission~~] commissioner pursuant to rules
and
14 regulations. Such records shall show (1) the number of gallons of
[~~auto-~~
15 ~~otive fuel~~] petroleum products purchased, the price paid therefor,
the
16 amount of tax paid pursuant to the provisions of section eleven
hundred
17 two of this article [~~and the regional average retail sales price~~
~~appli-~~
18 ~~cable thereto~~] and (2) the number of gallons sold, and the price paid
by
19 the purchaser to whom such person sells the [~~automotive fuel~~]
petroleum
20 products, and the amount of tax included in such price pursuant to
the
21 provisions of section eleven hundred two of this article and
the
22 [~~regional average retail sales price or the~~] amount of tax
collected
23 pursuant to the provisions of subdivision (a) of section eleven
hundred
24 five of this article applicable to such sale together with such
addi-
25 tional information as the [~~tax commission~~] commissioner shall
require.
26 The [~~regional average retail sales price, and the~~] amount of tax
shall
27 be calculated in the manner set forth in section eleven hundred
eleven
28 of this article.
29 § 46. Subdivision (a) of section 1136 of the tax law, as amended
by
30 chapter 89 of the laws of 1976, paragraphs 1, 2, 3 and 5 as amended
and
31 paragraph 6 as added by chapter 2 of the laws of 1995 and
paragraphs 4
32 and 7 as amended by section 2-e of part M-1 of chapter 106 of the
laws
33 of 2006, is amended to read as follows:
34 (a) (1) Every person required to register with the commissioner
as

35 provided in section eleven hundred thirty-four of this part whose
taxa-
36 ble receipts, amusement charges and rents total less than three
hundred
37 thousand dollars, or in the case of any such person who is a
distributor
38 whose sales of [~~automotive fuel~~] petroleum products total less than
one
39 hundred thousand gallons, in every quarter of the preceding four
quar-
40 ters, shall only file a return quarterly with the commissioner.

41 (2) Every person required to register with the commissioner
as
42 provided in section eleven hundred thirty-four of this part whose
taxa-
43 ble receipts, amusement charges and rents total three hundred
thousand
44 dollars or more, or in the case of any such person who is a
distributor
45 whose sales of [~~automotive fuel~~] petroleum products total one
hundred
46 thousand gallons or more, in any quarter of the preceding four
quarters,

47 shall, in addition to filing a quarterly return described in
paragraph
48 one of this subdivision, and except as otherwise provided in
section
49 eleven hundred two or eleven hundred three of this article, file
either
50 a long-form or short-form part-quarterly return monthly with the
commis-
51 sioner.

52 (3) However, a person required to register with the commissioner
as
53 provided in section eleven hundred thirty-four of this part only
because
54 such person is purchasing or selling tangible personal property
for
55 resale, and who is not required to collect any tax or pay any
tax
56 directly to the commissioner under this article, shall file an informa-

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1 tion return annually in such form as the commissioner may
prescribe.

2 Likewise, a person, who is required to register and who is
selling

3 [~~automotive fuel~~] petroleum products who is not a distributor of
motor

4 fuel, shall file an information return quarterly or, if the
commissioner

5 deems necessary, monthly, in such form as the commissioner
shall

6 prescribe.

7 (4) The return of a vendor of tangible personal property or
services
8 shall show such vendor's receipts from sales and the number of
gallons
9 of any motor fuel or diesel motor fuel sold and also the aggregate
value
10 of tangible personal property and services and number of gallons of
such
11 fuels sold by the vendor, the use of which is subject to tax under
this
12 article, and the amount of tax payable thereon pursuant to
the
13 provisions of section eleven hundred thirty-seven of this part.
The
14 return of a recipient of amusement charges shall show all such
charges
15 and the amount of tax thereon, and the return of an operator required
to
16 collect tax on rents shall show all rents received or charged and
the
17 amount of tax thereon.

18 (5) The returns of any seller of [~~automotive fuel~~] petroleum
products
19 shall show the number of gallons of [~~automotive fuel~~] petroleum
products
20 sold, together with such additional information as the
commissioner
21 shall require in order to certify the amount of taxes, penalties
and
22 interest payable to local taxing jurisdictions imposed on the sale
or
23 use of [~~automotive fuel~~] petroleum products pursuant to the
provisions
24 of section twelve hundred sixty-one of this chapter.

25 (6) The returns of any seller of cigarettes shall show the amount
of
26 prepaid tax assumed or paid thereon and passed through, together
with
27 such additional information as the commissioner shall require.

28 (7) Taxable receipts as used in this section shall include
taxable
29 receipts from the sale of [~~automotive fuel~~] petroleum products and
ciga-
30 rettes and any receipts from the sale of motor fuel or diesel motor
fuel
31 or cigarettes in this state whether or not such receipts are subject
to
32 the taxes imposed by section eleven hundred two, eleven hundred
three,
33 eleven hundred five or eleven hundred ten of this article and
regardless
34 of whether the provisions of section eleven hundred twenty or
eleven
35 hundred twenty-one of this article are applicable to the taxes
imposed
36 in respect of such receipts or numbers of gallons of motor fuel
or

37 diesel motor fuel sold.
38 [~~(i)~~] (8) For purposes of this article the term "long-form, part-
quar-
39 terly return" shall mean a return in a form determined by the
[~~tax~~
40 ~~commission~~] commissioner providing for the calculation of the
actual
41 sales and compensating use taxes for the preceding month in the
manner
42 set forth in subdivisions (a) and (b) of section eleven hundred
thirty-
43 seven of this part. A person filing a long-form, part-quarterly
return
44 for each of the months contained in a quarter shall also be required
to
45 file a quarterly return for such quarter.

46 [~~(i)~~] (9) For purposes of this article the term "short-form,
part-
47 quarterly return" shall mean a return which shall be available for
use
48 in filing as a return for the first two months of any quarter and
only
49 by a person required to file a return monthly who has had at least
four
50 successive quarterly tax periods immediately preceding the month
for
51 which the return is to be filed and who elects such use, and is
in a
52 form determined by the [~~tax-commission~~] commissioner and providing
for
53 the calculation of one-third of the total state and local sales
and
54 compensating use taxes paid by the person to the [~~tax~~
~~commission~~]
55 commissioner in the comparable quarter of the immediately preceding
year
56 under this article and as taxes imposed pursuant to the authority
of

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1 article twenty-nine with respect to all receipts, amusement charges
and
2 rents.
3 § 47. Subdivision 11 of section 1142 of the tax law, as added by
chap-
4 ter 930 of the laws of 1982, is amended to read as follows:
5 11. To make such provision pursuant to rules and regulations for
the
6 joint administration, in whole or in part, of the state and local
taxes
7 imposed by this article and authorized by article twenty-nine of
this
8 chapter upon the sale of [~~automotive-fuel~~] petroleum products and
the
9 taxes imposed by article twelve-A of this chapter and authorized to
be

10 imposed by such article, including the joint reporting,
assessment,
11 collection, determination and refund of such taxes, and for that
purpose
12 to prescribe that any of the [~~commission's~~] commissioner's
functions
13 under said articles, and any returns, forms, statements, documents
or
14 information to be submitted to the [~~commission~~] commissioner under
said
15 articles, any books and records to be kept for purposes of the
taxes
16 imposed or authorized by said articles, any schedules of amounts to
be
17 collected under said articles, any registration required under
said
18 articles, and the payment of taxes under said articles shall be
on a
19 joint basis with respect to the taxes imposed by said articles.
20 § 48. Subparagraph (i) of paragraph 3 of subdivision (a) of
section
21 1145 of the tax law, as amended by chapter 2 of the laws of 1995,
is
22 amended to read as follows:
23 (i) Any person required to obtain a certificate of authority
under
24 section eleven hundred thirty-four of this part who, without
possessing
25 a valid certificate of authority, (A) sells tangible personal
property
26 or services subject to tax, receives amusement charges or
operates a
27 hotel, (B) purchases or sells tangible personal property for resale,
(C)
28 sells [~~automotive fuel~~] petroleum products, or (D) sells
cigarettes
29 shall, in addition to any other penalty imposed by this chapter,
be
30 subject to a penalty in an amount not exceeding five hundred dollars
for
31 the first day on which such sales or purchases are made, plus an
amount
32 not exceeding two hundred dollars for each subsequent day on which
such
33 sales or purchases are made, not to exceed ten thousand dollars in
the
34 aggregate.
35 § 49. Subparagraph (i) of paragraph 3 of subdivision (a) of
section
36 1210 of the tax law, as amended by section 2 of part B of chapter 35
of
37 the laws of 2006, is amended to read as follows:
38 (i) Notwithstanding any other provision of law to the contrary but
not
39 with respect to cities subject to the provisions of section
eleven

40 hundred eight of this [~~article~~] chapter, any city or county, except
a
41 county wholly contained within a city, may provide that the
taxes
42 imposed, pursuant to this subdivision, by such city or county on
the
43 retail sale or use of fuel oil and coal used for residential
purposes,
44 the retail sale or use of wood used for residential heating
purposes,
45 the sale, other than for resale, of propane (except when sold
in
46 containers of less than one hundred pounds), natural gas,
electricity,
47 steam and gas, electric and steam services used for residential
purposes
48 and the use of gas or electricity used for residential purposes may
be
49 imposed at a lower rate than the uniform local rate imposed pursuant
to
50 the opening paragraph of this section, as long as such rate is one
of
51 the rates authorized by such paragraph or such sale or use may
be
52 exempted from such taxes. Provided, however, such lower rate must
apply
53 to all such energy sources and services and at the same rate and no
such
54 exemption may be enacted unless such exemption applies to all such
ener-
55 gy sources and services. The provisions of this subparagraph shall
not
56 apply to a sale or use of [~~(i)~~] diesel motor fuel which
involves a

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1 delivery at a filling station or into a repository which is
equipped
2 with a hose or other apparatus by which such fuel can be dispensed
into
3 the fuel tank of a motor vehicle [~~and (ii) enhanced diesel motor~~
~~fuel~~
4 ~~except in the case of a sale or use of such enhanced diesel motor~~
~~fuel~~
5 ~~used exclusively for residential purposes which is delivered into~~
a
6 ~~storage tank which is not equipped with a hose or other apparatus~~
by
7 ~~which such fuel can be dispensed into the fuel tank of a motor~~
~~vehicle~~
8 ~~and such storage tank is attached to the heating unit burning such~~
~~fuel,~~
9 ~~provided that each delivery of such fuel of over four thousand~~
~~five~~
10 ~~hundred gallons shall be evidenced by a certificate signed by~~
the

11 ~~purchaser stating that the product will be used exclusively for~~
12 ~~residen-~~
13 ~~tial purposes~~].

14 § 50. Subdivision (c) of section 1812 of the tax law, as amended
by

15 section 25 of subpart I of part V-1 of chapter 57 of the laws of
2009,
16 is amended to read as follows:

17 (c) Any owner of a filling station who shall willfully and
knowingly

18 have in his or her custody, possession or under his or her control
any

19 motor fuel or Diesel motor fuel [~~on which~~] (1) on which the
taxes

20 imposed by or pursuant to the authority of such article have not
been

21 assumed or paid by a distributor registered as such under such
article

22 [~~or~~], (2) on which the taxes imposed by or pursuant to the authority
of

23 such article have not been included in the cost to him or her of
such

24 fuel where such taxes were required to have been passed through to
him

25 or her and included in the cost to him or her of such fuel, or
(3)

26 which is dyed diesel motor fuel as defined by subdivision eighteen-a
of

27 section two hundred eighty-two of this chapter (except for water-
white

28 kerosene), shall [~~in either case,~~] be guilty of a class E felony.
For

29 purposes of this subdivision, such owner shall willfully and
knowingly

30 have in his or her custody, possession or under his or her control
any

31 motor fuel or Diesel motor fuel on which such taxes have not
been

32 assumed or paid by a distributor registered as such where such owner
has

33 knowledge of the requirement that such taxes be paid and where, to
his

34 or her knowledge, such taxes have not been assumed or paid by a
regis-

35 tered distributor on such motor fuel or Diesel motor fuel. Such
owner

36 shall willfully and knowingly have in his or her custody, possession
or

37 under his or her control any motor fuel or Diesel motor fuel on
which

38 such taxes are required to have been passed through to him or her
and

39 have not been included in his or her cost where such owner has
knowledge

of the requirement that such taxes be passed through and where to
his

40 knowledge such taxes have not been so included. Such owner shall
will-
41 fully and knowingly have in his or her custody, possession or under
his
42 or her control any dyed diesel motor fuel (except water-white
kerosene)
43 where such owner has knowledge of the requirement that dyed diesel
motor
44 fuel (except water-white kerosene) may not be in his or her
custody,
45 possession or under his or her control.

46 § 51. Subdivision (e) of section 1812 of the tax law is REPEALED
and

47 subdivision (f) is relettered subdivision (e).

48 § 52. Section 1812-a of the tax law, as added by chapter 261 of
the

49 laws of 1988, is amended to read as follows:

50 § 1812-a. Person not registered as distributor of Diesel motor
fuel.

51 (a) Any person who, while not registered as a distributor of
Diesel

52 motor fuel pursuant to the provisions of article twelve-A of this
chap-

53 ter, [~~engages in the enhancement,~~] makes a sale or use within the
state

54 of Diesel motor fuel (other than a retail sale not in bulk or the
self-

55 use of Diesel motor fuel which has been the subject of a retail
sale),

56 imports or causes Diesel motor fuel to be imported into the state
or

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1 produces, refines, manufactures or compounds Diesel motor fuel
within

2 the state shall be guilty of a misdemeanor. If, within any ninety
day

3 period, two thousand nine hundred gallons or more of Diesel motor
fuel

4 are subjected to [~~enhancement or~~] sale or use (other than a retail
sale

5 not in bulk or the self-use of Diesel motor fuel which has been
the

6 subject of a retail sale) within the state or are imported or caused
to

7 be imported by any person while not so registered as a distributor
of

8 Diesel motor fuel, such person shall be guilty of a class E felony.

9 (b) Any person whose registration under article twelve-A of this
chap-

10 ter applies only to the importation, sale and distribution of
Diesel

11 motor fuel for [~~the purposes~~] use other than on a public highway
as

12 described in subparagraph (i) of paragraph (b) of subdivision three
of

13 section two hundred eighty-two-a of this chapter who delivers non-
14 high- Diesel motor fuel at a filling station [~~other than for the~~
15 ~~sole~~ ~~purpose of heating such station~~] or into a repository equipped with
16 a hose or other apparatus by which non-highway Diesel motor fuel can
17 be dispensed into the fuel tank of a motor vehicle, other than such
18 a repository which is located on the premises of such registrant where
19 the Diesel motor fuel delivered therein is used exclusively for the
20 purpose of fueling motor vehicles operated by registrant for the purpose
21 of distributing Diesel motor fuel for the purposes described in
22 such subparagraph (i), shall be guilty of a misdemeanor. If, within any
23 nine-ty day period, any such person whose registration under article
24 twelve-A of this chapter applies only to the importation, sale and
25 distribution of non-highway Diesel motor fuel for the purposes described in
26 subparagraph (i) of paragraph (b) of subdivision three of section two
27 hundred eighty-two-a of this chapter so unlawfully delivers a total of one
28 thousand gallons or more of Diesel motor fuel at such filling station
29 or stations or into such repository or repositories (or a combination
30 of both such filling stations and repositories), then, such person shall
31 be guilty of a class E felony.

32 (c) Any person who has twice been convicted under this section
33 shall be guilty of a class E felony for any subsequent violation of
34 this section, regardless of the amount of Diesel motor fuel involved in
35 such violation. For purposes of this section, the terms
36 [~~"enhancement"~~] "non-highway Diesel motor fuel" and "retail sale not in bulk" shall
37 have the same meaning they have for purposes of article twelve-A of
38 this chapter.

39 § 53. Subdivisions (a) and (b) of section 1817 of the tax law,
40 as amended by section 30 of subpart I of part V-1 of chapter 57 of the
41 laws of 2009, is amended to read as follows:

42 (a) Any person required to obtain a certificate of authority
under

43 section eleven hundred thirty-four of this chapter who, without
possess-
44 ing a valid certificate of authority, willfully (1) sells
tangible
45 personal property or services subject to tax, receives amusement
charges
46 or operates a hotel, (2) purchases or sells tangible personal
property
47 for resale, or (3) sells [~~automotive fuel~~] petroleum products; and
any
48 person who fails to surrender a certificate of authority as required
by
49 such article shall be guilty of a misdemeanor.

50 (b) Any person required to obtain a certificate of authority
under
51 section eleven hundred thirty-four of this chapter who within five
years
52 after a determination by the [~~tax commission~~] commissioner, pursuant
to
53 such section, to suspend, revoke or refuse to issue a certificate
of
54 authority has become final, and without possession of a valid

certif-
55 icate of authority (1) sells tangible personal property or
services
56 subject to tax, receives amusement charges or operates a hotel,
(2)

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1 purchases or sells tangible personal property for resale, or (3)
sells

2 [~~automotive fuel~~] petroleum products, shall be guilty of a
misdemeanor.

3 It shall be an affirmative defense that such person performed the
acts
4 described in this subdivision without knowledge of such
determination.

5 Any person who violates a provision of this subdivision,
upon
6 conviction, shall be subject to a fine in any amount authorized by
this
7 article, but not less than five hundred dollars, in addition to
any
8 other penalty provided by law.

9 § 54. The section heading, subdivisions (a), (b) and (c), paragraph
3,
10 subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d)
and
11 subdivisions (e) and (g) of section 1848 of the tax law, as added
by
12 chapter 276 of the laws of 1986 and subparagraph (D) of paragraph 4
and
13 paragraph 6 of subdivision (d) as amended by chapter 190 of the laws
of
14 1990, are amended to read as follows:

15 Forfeiture action with respect to motor fuel and diesel motor fuel
16 and vehicle carrying such fuel. (a) Temporary seizure. Whenever a
17 police officer designated in section 1.20 of the criminal procedure law or
18 a peace officer designated in subdivision four of section 2.10 of
19 such law, acting pursuant to his special duties, shall discover any
20 motor fuel or diesel motor fuel which is being imported for use,
21 distribution, storage or sale in the state where the person importing or causing
22 such motor fuel or diesel motor fuel to be imported is not registered as
23 a distributor under section two hundred eighty-three or section
24 two hundred eighty-two-a, of this chapter, as the case may be, such
25 police officer or peace officer is hereby authorized to seize and
26 take possession of such motor fuel or diesel motor fuel, together with
27 the vehicle or other means of transportation used to transport such
28 motor fuel.
29 (b) Retention of property. The department [~~of taxation and~~
30 ~~finance~~] shall hold and safely keep such motor fuel, diesel motor fuel,
31 vehicle or other means of transportation seized pursuant to subdivision (a)
32 of this section. Seized motor fuel or diesel motor fuel may be
33 deposited to the credit of the department [~~of taxation and finance~~] at a
34 terminal or other storage facility within the state or may be sold by the
35 depart-ment on the open market.
36 (c) Confirmation of temporary seizure. Within five business days
37 after the temporary seizure of motor fuel, diesel motor fuel, vehicle or
38 other means of transportation pursuant to subdivision (a) of this section,
39 the department [~~of taxation and finance~~] shall move in supreme court in
40 any county, on such notice as the court shall direct to the owners of
41 the property, to confirm the temporary seizure. If the department [~~of~~
42 ~~taxa-~~ ~~tion and finance~~] fails to make such motion within the required
43 period, such seized property shall be restored to the owners thereof as
provided

44 in subdivision (e) of this section. On a motion for an order
confirming
45 the seizure, the department [~~of taxation and finance~~] shall show,
by
46 affidavit and such other written evidence as may be submitted,
that
47 there is a cause of action for forfeiture under subdivision (d) of
this
48 section and that there are grounds for confirmation of the seizure.
The
49 department shall include, in its motion papers, an inventory of
all
50 seized property. The court shall grant an application for an
order
51 confirming the seizure when it determines that there is a
substantial
52 probability that the department [~~of taxation and finance~~] will
prevail
53 on the issue of forfeiture.

54 (3) Forfeiture of motor fuel or diesel motor fuel together with
the
55 vehicle or other means of transportation used to transport such
motor
56 fuel or diesel motor fuel shall be adjudged where the department

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1 ~~taxation and finance~~] proves, by clear and convincing evidence, that
the
2 person importing or causing such motor fuel or diesel motor fuel to
be
3 imported was not registered as a distributor under section two
hundred
4 eighty-three or section two hundred eighty-two-a of this chapter, as
the
5 case may be. All defendants in a forfeiture action brought pursuant
to
6 this article shall have the right to trial by jury on any issue of
fact.

7 (D) The court may grant the relief provided in subparagraph (A)
[~~here-~~
8 ~~ef~~] of this paragraph if it finds that such relief is warranted by
the
9 existence of some compelling factor, consideration or
circumstance
10 demonstrating that forfeiture of the property or any part thereof,
would
11 not serve the ends of justice. Reporting and payment of the tax
imposed
12 pursuant to article twelve-A or article twenty-eight of this
chapter
13 with respect to such motor fuel or diesel motor fuel subsequent to
the
14 seizure of such fuel shall not constitute a compelling factor,
consider-

15 ation or circumstance warranting the granting of the relief provided
for
16 in subparagraph (A) [~~hereof~~] of this paragraph. In determining
whether
17 such relief is warranted by the existence of some compelling
factor,
18 consideration or circumstances pursuant to this paragraph, the
court
19 may, however, take into account the fact that such taxes with respect
to
20 the seized fuel have been reported and remitted to the state prior
to
21 the temporary seizure of such fuel if the unregistered importation
into
22 the state was effected in good faith and without knowledge of
the
23 requirement of registration and without intent to evade tax. The
court
24 must issue a written decision, stating the basis for an order
issued
25 pursuant to this paragraph.

26 (6) The total that may be recovered shall not exceed the value of
the
27 motor fuel or diesel motor fuel seized and, in addition, either
the
28 value of the vehicle or other means of transportation used to
transport
29 such fuel or three times the amount of the tax and penalty under
anti-
30 cles twelve-A, thirteen-A and twenty-eight and pursuant to the
authority
31 of article twenty-nine of this chapter with respect to the motor fuel
or
32 diesel motor fuel, whichever is less.

33 (e) Return of property. If (1) the department [~~of taxation~~
~~and~~
34 ~~finance~~] fails to move for confirmation of the seizure pursuant
to
35 subdivision (c) of this section or (2) a court denies an application
for
36 an order confirming the seizure or (3) judgment is entered against
the
37 department in the forfeiture action and that judgment is affirmed
after
38 all appeals are exhausted, then the department shall restore such
seized
39 motor fuel or diesel motor fuel, or motor fuel or diesel motor fuel
of a
40 like quantity and type, or such seized vehicle or other means of
trans-
41 portation to the owners thereof. Alternatively, if such seized
motor
42 fuel or diesel motor fuel has been sold as provided in subdivision

(b)
43 of this section, the department shall pay to the owners of such
motor

44 fuel or diesel motor fuel the proceeds of such sale or, if greater,
an
45 amount of money representing the fair market value of the motor fuel
or
46 diesel motor fuel at the time of the seizure.
47 (g) Disposal of property. The department [~~of taxation and~~
~~finance~~],
48 after a judicial determination of forfeiture, shall, in its
discretion,
49 either retain such seized property for its official use or sell
such
50 forfeited property at public sale. The net proceeds of any such sale,
or
51 of any sale of seized motor fuel or diesel motor fuel as provided
in
52 subdivision (b) of this section, after deduction of the lawful
expenses
53 incurred, shall be deposited and disposed of pursuant to the
provisions
54 of section one hundred seventy-one-a of this chapter with respect
to
55 deposit and disposition of revenue.
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1 § 55. Paragraph (q) of subdivision 34 of section 1.20 of the
criminal
2 procedure law, as amended by chapter 318 of the laws of 2002, is
amended
3 to read as follows:
4 (q) An employee of the department of taxation and finance (i)
assigned
5 to enforcement of the taxes imposed under or pursuant to the
authority
6 of article twelve-A of the tax law and administered by the
commissioner
7 of taxation and finance, taxes imposed under or pursuant to the
authori-
8 ty of article eighteen of the tax law and administered by the
commis-
9 sioner, taxes imposed under article twenty of the tax law, or sales
or
10 compensating use taxes relating to [~~automotive fuel~~] petroleum
products
11 or cigarettes imposed under article twenty-eight or pursuant to
the
12 authority of article twenty-nine of the tax law and administered by
the
13 commissioner or (ii) designated as a revenue crimes specialist
and
14 assigned to the enforcement of the taxes described in paragraph (c)
of
15 subdivision four of section 2.10 of this title, for the purpose
of
16 applying for and executing search warrants under article six
hundred

17 ninety of this chapter, for the purpose of acting as a claiming
agent
18 under article thirteen-A of the civil practice law and rules
in
19 connection with the enforcement of the taxes referred to above and
for
20 the purpose of executing warrants of arrest relating to the
respective
21 crimes specified in subdivision four of section 2.10 of this title.
22 § 56. Paragraph (a) of subdivision 4 of section 2.10 of the
criminal
23 procedure law, as amended by chapter 2 of the laws of 1995, is
amended
24 to read as follows:
25 (a) to the enforcement of any of the criminal or seizure and
forfeiture
26 ture provisions of the tax law relating to (i) taxes imposed under
or
27 pursuant to the authority of article twelve-A of the tax law and
admin-
28 istered by the commissioner, (ii) taxes imposed under or pursuant to
the
29 authority of article eighteen of the tax law and administered by
the
30 commissioner, (iii) taxes imposed under article twenty of the tax
law,
31 or (iv) sales or compensating use taxes relating to [~~automotive
fuel~~]
32 petroleum products or cigarettes imposed under article twenty-eight
or
33 pursuant to the authority of article twenty-nine of the tax law
and
34 administered by the commissioner or
35 § 57. Sections 11-2033, 11-2034, 11-2035, 11-2036, 11-2037 and 11-
2038
36 of the administrative code of the city of New York are REPEALED.
37 § 58. This act shall take effect September 1, 2011 and shall apply
to
38 sales or uses occurring on or after such date in accordance with
the
39 applicable transitional provisions in sections 1106 and 1217 of the
tax
40 law; provided, however, that:
41 (a) the amendments to subdivisions 22 and 23 of section 282 of the
tax
42 law, made by section one of this act shall not affect the repeal of
such
43 subdivisions and shall be deemed repealed therewith;
44 (b) the amendments to paragraph 2 of subdivision (a) of section
1102
45 of the tax law made by section thirty-nine of this act shall be
subject
46 to the expiration and reversion of such paragraph pursuant to section
19
47 of part W-1 of chapter 109 of the laws of 2006, as amended, when
upon

48 such date the provisions of section thirty-nine-a of this act shall
take
49 effect; and
50 (c) the amendments to subdivision (j) of section 1115 of the tax
law
51 made by section forty-one of this act shall be subject to the
expiration
52 and reversion of such subdivision pursuant to section 19 of part W-1
of
53 chapter 109 of the laws of 2006, as amended, when upon such date
the
54 provisions of section forty-one-a of this act shall take effect.

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PART L
91

A.

1 Section 1. Subdivision 22 of section 282 of the tax law, as added
by
2 section 1 of part W-1 of chapter 109 of the laws of 2006, is amended
to

3 read as follows:

4 22. "E85" means a ~~[mixture consisting by volume of eighty-~~
~~five~~
5 ~~percent]~~ fuel blend consisting of ethanol and ~~[the remainder of~~
~~which~~
6 ~~is]~~ motor fuel, which meets the ASTM International active standard
D5798
7 for fuel ethanol.

8 § 2. Section 19 of part W-1 of chapter 109 of the laws of 2006,
amend-
9 ing the tax law relating to providing exemptions, reimbursements
and
10 credits from various taxes for certain alternative fuels, is amended
to

11 read as follows:

12 § 19. This act shall take effect immediately; provided, however,
that
13 sections one through thirteen of this act shall take effect September
1,
14 2006 and shall be deemed repealed on September 1, ~~[2011]~~ 2012 and
such
15 repeal shall apply in accordance with the applicable
transitional
16 provisions of sections 1106 and 1217 of the tax law, and shall apply
to
17 sales made, fuel compounded or manufactured, and uses occurring on
or
18 after such date, and with respect to sections seven through eleven
of
19 this act, in accordance with applicable transitional provisions
of
20 sections 1106 and 1217 of the tax law; provided, however, that
the
21 commissioner of taxation and finance shall be authorized on and
after

22 the date this act shall have become a law to adopt and amend any
rules
23 or regulations and to take any steps necessary to implement
the
24 provisions of this act; provided further that sections fourteen
through
25 sixteen of this act shall take effect immediately and shall apply
to
26 taxable years beginning on or after January 1, 2006.
27 § 3. This act shall take effect immediately; provided, however,
that
28 the amendments made to subdivision 22 of section 282 of the tax law
made
29 by section one of this act shall not affect the repeal of such
subdivi-
30 sion and shall be deemed repealed therewith.

31 PART M

32 Section 1. Section 11 of part EE of chapter 63 of the laws of
2000,
33 amending the tax law and other laws relating to modifying the
distrib-
34 ution of funds from the motor vehicle fuel excise tax, as amended
by
35 section 1-b of part A of chapter 63 of the laws of 2005, is amended
to
36 read as follows:
37 § 11. Notwithstanding any other law, rule or regulation to the
contra-
38 ry, the comptroller is hereby authorized and directed to deposit
in
39 equal monthly installments and distribute pursuant to the provisions
of
40 subdivision (d) of section 301-j of the tax law amounts listed below
to
41 the credit of the dedicated highway and bridge trust fund and the
dedi-
42 cated mass transportation trust fund from [~~taxes and fees~~] all
motor
43 vehicle receipts now deposited into the general fund pursuant
to
44 provisions of the vehicle and traffic law: twenty-eight million
four
45 hundred thousand dollars from April 1, 2002 through March 31,
2003,
46 sixty-seven million nine hundred thousand dollars from April 1,
2003
47 through March 31, 2004, one hundred seventy million one hundred
thousand
48 dollars from April 1, 2004 through March 31, 2005, and one
hundred
49 percent of all [~~taxes and fees~~] motor vehicle receipts pursuant
to
50 provisions of the vehicle and traffic law that are not
otherwise

51 directed to be deposited in a fund other than the general fund
from
52 April 1, 2005 through March 31, 2006, and the same amount each
year
53 thereafter.

54 § 2. This act shall take effect April 1, 2011.

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1 PART N

2 Intentionally omitted.

3 PART O

4 Section 1. Subparagraph (ii) of paragraph 1 of subdivision b
of
5 section 1612 of the tax law is amended by adding a new clause (I)
to
6 read as follows:

7 (I) Notwithstanding any provision of law to the contrary, free
play
8 allowance credits authorized by the division pursuant to subdivision
f
9 of section sixteen hundred seventeen-a of this article shall not
be
10 included in the calculation of the total amount wagered on video
lottery
11 games, the total amount wagered after payout of prizes, the vendor
fees
12 payable to the operators of video lottery facilities, vendor's
capital
13 awards, fees payable to the division's video lottery gaming
equipment
14 contractors, or racing support payments.

15 § 2. Section 1617-a of the tax law is amended by adding a new
subdivi-
16 sion f to read as follows:

17 f. (1) The division may administer a free play allowance program
to
18 offer players or prospective players of video lottery games free
play
19 credits for the purpose of increasing revenues earned by the
video
20 lottery program for the support of education. For the purposes of
this
21 subdivision, "free play allowance credit" means a specified
dollar
22 amount that (i) may be used by a player to play a video lottery
game
23 without paying any other consideration, and (ii) is not used in
the
24 calculation of total revenue wagered after payout of prizes.

25 (2) For each video lottery facility, the division shall authorize
the
26 use of free play allowance credits if the operator of such
facility

27 submits a written plan for the use of the free play allowance that
the
28 division determines is designed to increase the amount of revenue
earned
29 by video lottery gaming at such facility for the support of
education.

30 (3) For each video lottery facility, the annual value of the free
play
31 allowance credits authorized for use by the operator pursuant to
this
32 subdivision shall not exceed an amount equal to ten percent of the
total
33 amount wagered on video lottery games after payout of prizes. The
divi-
34 sion shall establish procedures to assure that free play allowance
cred-
35 its do not exceed such amount.

36 (4) The division, in conjunction with the director of the budget,
may
37 suspend the use of free play allowance credits authorized pursuant
to
38 this subdivision whenever they jointly determine that the use of
free
39 play allowance credits are not effective in increasing the amount
of
40 revenue earned for the support of education, and such use may not
be
41 resumed unless the operator of such facility submits a new or
revised
42 written plan for the use of the free play allowance that the
division
43 determines is designed more effectively to produce an increase in
the
44 amount of revenue earned by video lottery gaming at such facility
for
45 the support of education.

46 (5) Nothing in this subdivision shall be deemed to prohibit the
opera-
47 tor of a video lottery facility from offering free play credits to
play-
48 ers or prospective players of video lottery games when the value of
such
49 free play credits is included in the calculation of the total
amount
50 wagered on video lottery games and the total amount wagered after
payout
51 of prizes, and the operator of such facility pays the division the
full
52 amount due as the result of such calculations.

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1 (6) The division may amend the contract with the provider of
the
2 central computer system that controls the video lottery network
during

3 the term of such contract in effect on the effective date of this
subdi-
4 vision to provide additional consideration to such provider in an
amount
5 determined by the division to be necessary to compensate for (i)
proc-
6 essing free play allowance transactions and (ii) system updates
and
7 modifications otherwise needed as of such effective date.

8 § 3. This act shall take effect immediately.

9 PART P

10 Section 1. Paragraph 2 of subdivision a of section 1612 of the
tax
11 law, as amended by section 1 of part P of chapter 85 of the laws
of
12 2002, is amended to read as follows:

13 (2) sixty-five percent of the total amount for which tickets have
been
14 sold for the "Instant Cash" game in which the participant
purchases a
15 preprinted ticket on which dollar amounts or symbols are concealed
on
16 the face or the back of such ticket, provided however up to [~~three~~
such]
17 five new games may be offered during the fiscal year, seventy-
five
18 percent of the total amount for which tickets have been sold for
such
19 [~~three~~] five games in which the participant purchases a preprinted
tick-
20 et on which dollar amounts or symbols are concealed on the face or
the
21 back of such ticket; or

22 § 2. This act shall take effect immediately.

23 PART Q

24 Section 1. Paragraphs 3 and 4 of subdivision a of section 1612 of
the
25 tax law, paragraph 3 as amended by section 2 of part D of chapter 383
of
26 the laws of 2001, paragraph 4 as amended by chapter 2 of the laws
of
27 1995, are amended to read as follows:

28 (3) fifty-five percent of the total amount for which tickets have
been
29 sold for any joint, multi-jurisdiction, and out-of-state lottery
except
30 as otherwise provided in paragraph one of subdivision b of this
section
31 for any joint, multi-jurisdiction, out-of-state video lottery gaming;
or

32 (4) fifty percent of the total amount for which tickets have been
sold

33 for games known as: (A) the "Daily Numbers Game" or "Win 4",
discrete
34 games in which the participants select no more than three or four
of
35 their own numbers to match with three or four numbers drawn by the
divi-
36 sion for purposes of determining winners of such games, (B) "Pick
10",
37 offered no more than once daily, in which participants select
from a
38 specified field of numbers a subset of ten numbers to match against
a
39 subset of numbers to be drawn by the division from such field of
numbers
40 for the purpose of determining winners of such game, (C) "Take
5",
41 offered no more than once daily, in which participants select from
a
42 specified field of numbers a subset of five numbers to match
against a
43 subset of five numbers to be drawn by the division from such field
of
44 numbers for purposes of determining winners of such game[~~, and (D)~~
~~any~~
45 ~~joint, multi-jurisdiction, and out-of-state lottery~~]; or
46 [~~(4)~~ (5) forty percent of the total amount for which tickets
have
47 been sold for: (A) "Lotto", offered no more than once daily, a
discrete
48 game in which all participants select a specific subset of numbers
to
49 match a specific subset of numbers, as prescribed by rules and
regu-
50 lations promulgated and adopted by the division, from a larger
specific
51 field of numbers, as also prescribed by such rules and regulations
and
52 (B) with the exception of the game described in paragraph one of
this
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1 subdivision, such other state-operated lottery games which the
division
2 may introduce, offered no more than once daily, commencing on or
after
3 forty-five days following the official publication of the rules
and
4 regulations for such game.
5 The moneys in the lottery prize account shall be paid out of
such
6 account on the audit and warrant of the comptroller on vouchers
certi-
7 fied or approved by the director or his or her duly designated
official.
8 Prize money derived from ticket sales receipts of a particular
game

9 and deposited in the lottery prize account in accordance with
the
10 percentages set forth above may be used to pay prizes in such
game.
11 Balances in the lottery prize account identified by individual games
may
12 be carried over from one fiscal year to the next to ensure proper
payout
13 of games.
14 § 2. This act shall take effect immediately.

15 PART R

16 Section 1. The opening paragraph of paragraph 1 of subdivision b
of
17 section 1612 of the tax law, as amended by section 1 of part O-1
of
18 chapter 57 of the laws of 2009, is amended to read as follows:
19 Notwithstanding section one hundred twenty-one of the state
finance
20 law, on or before the twentieth day of each month, the division
shall
21 pay into the state treasury, to the credit of the state lottery
fund
22 created by section ninety-two-c of the state finance law, not less
than
23 forty-five percent of the total amount for which tickets have been
sold
24 for games defined in paragraph four of subdivision a of this
section
25 during the preceding month, not less than thirty-five percent of
the
26 total amount for which tickets have been sold for games defined in
para-
27 graph three of subdivision a of this section during the preceding
month,
28 not less than twenty percent of the total amount for which tickets
have
29 been sold for games defined in paragraph two of subdivision a of
this
30 section during the preceding month, provided however that for games
with
31 a prize payout of seventy-five percent of the total amount for
which
32 tickets have been sold, the division shall pay not less than ten
percent
33 of sales into the state treasury and not less than twenty-five
percent
34 of the total amount for which tickets have been sold for games
defined
35 in paragraph one of subdivision a of this section during the
preceding
36 month; and the balance of the total revenue after payout for prizes
for
37 games known as "video lottery gaming," including any joint, multi-
juris-
38 diction, and out-of-state video lottery gaming,

39 § 2. Paragraph 1 of subdivision c of section 1612 of the tax law,
as
40 amended by section 2 of part CC of chapter 61 of the laws of 2005,
is
41 amended to read as follows:
42 1. The specifications for video lottery gaming, including any
joint,
43 multi-jurisdiction, and out-of-state video lottery gaming, shall
be
44 designed in such a manner as to pay prizes that average no less
than
45 ninety percent of sales.
46 § 3. This act shall take effect immediately.

47 PART S

48 Section 1. Paragraph (a) of subdivision 1 of section 1003 of
the
49 racing, pari-mutuel wagering and breeding law, as amended by section
1
50 of part C of chapter 134 of the laws of 2010, is amended to read
as

51 follows:
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1 (a) Any racing association or corporation or regional off-
track
2 betting corporation, authorized to conduct pari-mutuel wagering
under
3 this chapter, desiring to display the simulcast of horse races on
which
4 pari-mutuel betting shall be permitted in the manner and subject to
the
5 conditions provided for in this article may apply to the board
for a
6 license so to do. Applications for licenses shall be in such form as
may
7 be prescribed by the board and shall contain such information or
other
8 material or evidence as the board may require. No license shall
be
9 issued by the board authorizing the simulcast transmission of
thorough-
10 bred races from a track located in Suffolk county. The fee for
such
11 licenses shall be five hundred dollars per simulcast facility per
year
12 payable by the licensee to the board for deposit into the general
fund.
13 Except as provided herein, the board shall not approve any
application
14 to conduct simulcasting into individual or group residences, homes
or
15 other areas for the purposes of or in connection with pari-mutuel
wager-

16 ing. The board may approve simulcasting into residences, homes or
other
17 areas to be conducted jointly by one or more regional off-track
betting
18 corporations and one or more of the following: a franchised
corporation,
19 thoroughbred racing corporation or a harness racing corporation or
asso-
20 ciation; provided (i) the simulcasting consists only of those races
on
21 which pari-mutuel betting is authorized by this chapter at one or
more
22 simulcast facilities for each of the contracting off-track
betting
23 corporations which shall include wagers made in accordance with
section
24 one thousand fifteen, one thousand sixteen and one thousand seventeen
of
25 this article; provided further that the contract provisions or
other
26 simulcast arrangements for such simulcast facility shall be no
less
27 favorable than those in effect on January first, two thousand five;
(ii)
28 that each off-track betting corporation having within its
geographic
29 boundaries such residences, homes or other areas technically capable
of
30 receiving the simulcast signal shall be a contracting party; (iii)
the
31 distribution of revenues shall be subject to contractual agreement
of
32 the parties except that statutory payments to non-contracting
parties,
33 if any, may not be reduced; provided, however, that nothing herein
to
34 the contrary shall prevent a track from televising its races on
an
35 irregular basis primarily for promotional or marketing purposes as
found
36 by the board. For purposes of this paragraph, the provisions of
section
37 one thousand thirteen of this article shall not apply. Any
agreement
38 authorizing an in-home simulcasting experiment commencing prior to
May
39 fifteenth, nineteen hundred ninety-five, may, and all its terms,
be
40 extended until June thirtieth, two thousand ~~eleven~~ twelve;
provided,
41 however, that any party to such agreement may elect to terminate
such
42 agreement upon conveying written notice to all other parties of
such
43 agreement at least forty-five days prior to the effective date of
the

44 termination, via registered mail. Any party to an agreement
receiving
45 such notice of an intent to terminate, may request the board to
mediate
46 between the parties new terms and conditions in a replacement
agreement
47 between the parties as will permit continuation of an in-home
experiment
48 until June thirtieth, two thousand [~~eleven~~] twelve; and (iv) no in-
home
49 simulcasting in the thoroughbred special betting district shall
occur
50 without the approval of the regional thoroughbred track.
51 § 2. Subparagraph (iii) of paragraph d of subdivision 3 of
section
52 1007 of the racing, pari-mutuel wagering and breeding law, as amended
by
53 section 2 of part C of chapter 134 of the laws of 2010, is amended
to
54 read as follows:
55 (iii) Of the sums retained by a receiving track located in
Westchester

56 county on races received from a franchised corporation, for the
period
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1 commencing January first, two thousand eight and continuing through
June
2 thirtieth, two thousand [~~eleven~~] twelve, the amount used exclusively
for
3 purses to be awarded at races conducted by such receiving track shall
be
4 computed as follows: of the sums so retained, two and one-half
percent
5 of the total pools. Such amount shall be increased or decreased in
the
6 amount of fifty percent of the difference in total commissions
deter-
7 mined by comparing the total commissions available after July
twenty-
8 first, nineteen hundred ninety-five to the total commissions that
would
9 have been available to such track prior to July twenty-first,
nineteen
10 hundred ninety-five.

11 § 3. The opening paragraph of subdivision 1 of section 1014 of
the
12 racing, pari-mutuel wagering and breeding law, as amended by section
3
13 of part C of chapter 134 of the laws of 2010, is amended to read
as
14 follows:
15 The provisions of this section shall govern the simulcasting of
races
16 conducted at thoroughbred tracks located in another state or country
on

17 any day during which a franchised corporation is conducting a race
meet-
18 ing in Saratoga county at Saratoga thoroughbred racetrack until
June
19 thirtieth, two thousand [~~eleven~~] twelve and on any day regardless
of
20 whether or not a franchised corporation is conducting a race meeting
in
21 Saratoga county at Saratoga thoroughbred racetrack after June
thirtieth,
22 two thousand [~~eleven~~] twelve. On any day on which a franchised
corpo-
23 ration has not scheduled a racing program but a thoroughbred
racing
24 corporation located within the state is conducting racing, every
off-
25 track betting corporation branch office and every simulcasting
facility
26 licensed in accordance with section one thousand seven (that
have
27 entered into a written agreement with such facility's
representative
28 horsemen's organization, as approved by the board), one thousand
eight,
29 or one thousand nine of this article shall be authorized to
accept
30 wagers and display the live simulcast signal from thoroughbred
tracks
31 located in another state or foreign country subject to the
following
32 provisions:
33 § 4. Subdivision 1 of section 1015 of the racing, pari-mutuel
wagering
34 and breeding law, as amended by section 4 of part C of chapter 134
of
35 the laws of 2010, is amended to read as follows:
36 1. The provisions of this section shall govern the simulcasting
of
37 races conducted at harness tracks located in another state or
country
38 during the period July first, nineteen hundred ninety-four through
June
39 thirtieth, two thousand [~~eleven~~] twelve. This section shall
supersede
40 all inconsistent provisions of this chapter.
41 § 5. The opening paragraph of subdivision 1 of section 1016 of
the
42 racing, pari-mutuel wagering and breeding law, as amended by
section 5
43 of part C of chapter 134 of the laws of 2010, is amended to read
as
44 follows:
45 The provisions of this section shall govern the simulcasting of
races
46 conducted at thoroughbred tracks located in another state or country
on

47 any day during which a franchised corporation is not conducting a
race
48 meeting in Saratoga county at Saratoga thoroughbred racetrack until
June
49 thirtieth, two thousand [~~eleven~~] twelve. Every off-track betting
corpo-
50 ration branch office and every simulcasting facility licensed in
accord-
51 ance with section one thousand seven that have entered into a
written
52 agreement with such facility's representative horsemen's organization
as
53 approved by the board, one thousand eight or one thousand nine of
this
54 article shall be authorized to accept wagers and display the live
full-
55 card simulcast signal of thoroughbred tracks (which may include
quarter
56 horse or mixed meetings provided that all such wagering on such
races

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1 shall be construed to be thoroughbred races) located in another state
or
2 foreign country, subject to the following provisions; provided,
however,
3 no such written agreement shall be required of a franchised
corporation
4 licensed in accordance with section one thousand seven of this
article:
5 § 6. The opening paragraph of section 1018 of the racing, pari-
mutuel
6 wagering and breeding law, as amended by section 6 of part C of
chapter
7 134 of the laws of 2010, is amended to read as follows:
8 Notwithstanding any other provision of this chapter, for the
period
9 July twenty-fifth, two thousand one through September eighth, two
thou-
10 sand [~~ten~~] eleven, when a franchised corporation is conducting a
race
11 meeting within the state at Saratoga Race Course, every off-
track
12 betting corporation branch office and every simulcasting
facility
13 licensed in accordance with section one thousand seven (that has
entered
14 into a written agreement with such facility's representative
horsemen's
15 organization as approved by the board), one thousand eight or one
thou-
16 sand nine of this article shall be authorized to accept wagers
and
17 display the live simulcast signal from thoroughbred tracks located
in

18 another state, provided that such facility shall accept wagers on
races
19 run at all in-state thoroughbred tracks which are conducting
racing
20 programs subject to the following provisions; provided, however, no
such
21 written agreement shall be required of a franchised corporation
licensed
22 in accordance with section one thousand seven of this article.
23 § 7. Section 32 of chapter 281 of the laws of 1994, amending
the
24 racing, pari-mutuel wagering and breeding law and other laws relating
to
25 simulcasting, as amended by section 7 of part C of chapter 134 of
the
26 laws of 2010, is amended to read as follows:
27 § 32. This act shall take effect immediately and the pari-mutuel
tax
28 reductions in section six of this act shall expire and be
deemed
29 repealed on July 1, [~~2011~~] 2012; provided, however, that
nothing
30 contained herein shall be deemed to affect the application,
qualifica-
31 tion, expiration, or repeal of any provision of law amended by
any
32 section of this act, and such provisions shall be applied or
qualified
33 or shall expire or be deemed repealed in the same manner, to the
same
34 extent and on the same date as the case may be as otherwise provided
by
35 law; provided further, however, that sections twenty-three and
twenty-
36 five of this act shall remain in full force and effect only until May
1,
37 1997 and at such time shall be deemed to be repealed.
38 § 8. Section 54 of chapter 346 of the laws of 1990, amending
the
39 racing, pari-mutuel wagering and breeding law and other laws relating
to
40 simulcasting and the imposition of certain taxes, as amended by
section
41 8 of part C of chapter 134 of the laws of 2010, is amended to read
as
42 follows:
43 § 54. This act shall take effect immediately; provided,
however,
44 sections three through twelve of this act shall take effect on
January
45 1, 1991, and section 1013 of the racing, pari-mutuel wagering and
breed-
46 ing law, as added by section thirty-eight of this act, shall expire
and
47 be deemed repealed on July 1, [~~2011~~] 2012; and section eighteen of
this

48 act shall take effect on July 1, 2008 and sections fifty-one and
fifty-
49 two of this act shall take effect as of the same date as chapter 772
of
50 the laws of 1989 took effect.

51 § 9. Paragraph (a) of subdivision 1 of section 238 of the
racing,
52 pari-mutuel wagering and breeding law, as amended by section 10 of
part

53 C of chapter 134 of the laws of 2010, is amended to read as follows:
54 (a) The franchised corporation authorized under this chapter
to

55 conduct pari-mutuel betting at a race meeting or races run thereat
shall
56 distribute all sums deposited in any pari-mutuel pool to the holders
of

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1 winning tickets therein, provided such tickets be presented for
payment
2 before April first of the year following the year of their
purchase,

3 less an amount which shall be established and retained by such
fran-
4 chised corporation of between twelve to seventeen per centum of
the

5 total deposits in pools resulting from on-track regular bets, and
four-
6 teen to twenty-one per centum of the total deposits in pools
resulting

7 from on-track multiple bets and fifteen to twenty-five per centum of
the
8 total deposits in pools resulting from on-track exotic bets and
fifteen

9 to thirty-six per centum of the total deposits in pools resulting
from
10 on-track super exotic bets, plus the breaks. The retention rate to
be

11 established is subject to the prior approval of the racing and
wagering
12 board. Such rate may not be changed more than once per calendar
quarter

13 to be effective on the first day of the calendar quarter. "Exotic
bets"
14 and "multiple bets" shall have the meanings set forth in section
five

15 hundred nineteen of this chapter. "Super exotic bets" shall have
the
16 meaning set forth in section three hundred one of this chapter.
For

17 purposes of this section, a "pick six bet" shall mean a single bet
or
18 wager on the outcomes of six races. The breaks are hereby defined as
the

19 odd cents over any multiple of five for payoffs greater than one
dollar

20 five cents but less than five dollars, over any multiple of ten
for
21 payoffs greater than five dollars but less than twenty-five
dollars,
22 over any multiple of twenty-five for payoffs greater than twenty-
five
23 dollars but less than two hundred fifty dollars, or over any multiple
of
24 fifty for payoffs over two hundred fifty dollars. Out of the amount
so
25 retained there shall be paid by such franchised corporation to
the
26 commissioner of taxation and finance, as a reasonable tax by the
state
27 for the privilege of conducting pari-mutuel betting on the races run
at
28 the race meetings held by such franchised corporation, the
following
29 percentages of the total pool for regular and multiple bets five
per
30 centum of regular bets and four per centum of multiple bets plus
twenty
31 per centum of the breaks; for exotic wagers seven and one-half
per
32 centum plus twenty per centum of the breaks, and for super exotic
bets
33 seven and one-half per centum plus fifty per centum of the breaks.
For
34 the period June first, nineteen hundred ninety-five through
September
35 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall
be
36 three per centum and such tax on multiple wagers shall be two and
one-
37 half per centum, plus twenty per centum of the breaks. For the
period
38 September tenth, nineteen hundred ninety-nine through March
thirty-
39 first, two thousand one, such tax on all wagers shall be two and
six-
40 tenths per centum and for the period April first, two thousand
one
41 through December thirty-first, two thousand [~~eleven~~] twelve, such tax
on
42 all wagers shall be one and six-tenths per centum, plus, in each
such
43 period, twenty per centum of the breaks. Payment to the New York
state
44 thoroughbred breeding and development fund by such franchised
corpo-
45 ration shall be one-half of one per centum of total daily on-track
pari-
46 mutuel pools resulting from regular, multiple and exotic bets and
three
47 per centum of super exotic bets provided, however, that for the
period

48 September tenth, nineteen hundred ninety-nine through March
thirty-
49 first, two thousand one, such payment shall be six-tenths of one
per
50 centum of regular, multiple and exotic pools and for the period
April
51 first, two thousand one through December thirty-first, two
thousand
52 [~~eleven~~] twelve, such payment shall be seven-tenths of one per centum
of
53 such pools.

54 § 10. Subdivision 5 of section 1012 of the racing, pari-mutuel
wager-
55 ing and breeding law, as amended by section 11 of part C of chapter
134
56 of the laws of 2010, is amended to read as follows:
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1 5. The provisions of this section shall expire and be of no
further
2 force and effect after June thirtieth, two thousand [~~eleven~~] twelve.
3 § 11. This act shall take effect immediately.

4 PART T

5 Section 1. Paragraphs (a) and (b) of subdivision 2 of section 480-a
of
6 the tax law, as amended by section 125 of part C of chapter 58 of
the
7 laws of 2009, are amended to read as follows:

8 (a) (i) Every retail dealer and every person owning or, if the
owner
9 is not the operator, then any person operating one or more
vending
10 machines through which cigarettes or tobacco products are sold in
this
11 state, who is required under section eleven hundred thirty-six of
this
12 chapter to file a return for the quarterly period ending on the last
day
13 of August, nineteen hundred ninety or for the quarterly period ending
on
14 the last day of August in any year thereafter, must file an
application
15 for registration under this section with that quarterly return, in
such
16 form as shall be prescribed by the commissioner.

17 (ii) Each retail dealer must pay an application fee with the
quarterly
18 return [~~described by subparagraph (i) of this paragraph~~] of
three
19 hundred dollars for each retail place of business in this state
through
20 which it sells cigarettes or tobacco products[~~, which is based on~~
~~gross~~

21 ~~sales of that place of business during the previous calendar year.~~
The
22 ~~application fee is: one thousand dollars for each retail place of~~
busi-
23 ~~ness with gross sales totaling less than one million dollars; two~~
thou-
24 ~~sand five hundred dollars for each retail place of business with~~
gross
25 ~~sales totaling at least one million dollars but less than ten~~
million
26 ~~dollars; and five thousand dollars for each retail place of~~
business
27 ~~with gross sales totaling at least ten million dollars].~~

28 (iii) Every person who owns or, if the owner is not the operator,
then
29 any person who operates one or more vending machines through which
ciga-
30 rettes or tobacco products are sold in this state, regardless of
whether
31 located on the premises of the vending machine owner or, if the owner
is
32 not the operator, then the premises of the operator or the premises
of
33 any other person, must pay an application fee with the quarterly
return
34 ~~[described by subparagraph (i) of this paragraph]~~ of one hundred
dollars
35 for each vending machine[, ~~which is based on gross sales of that~~
vending
36 ~~machine during the previous calendar year. The application fee is:~~
two
37 ~~hundred fifty dollars for each vending machine with gross sales~~
totaling
38 ~~less than one hundred thousand dollars; six hundred twenty-five~~
dollars
39 ~~for each vending machine with gross sales totaling at least one~~
hundred
40 ~~thousand dollars but less than one million dollars; and one thousand~~
two
41 ~~hundred fifty dollars for each vending machine with gross sales~~
totaling
42 ~~at least one million dollars].~~ The department will issue a

registration
43 certificate, as prescribed by the commissioner, after receipt
of a
44 registration application and the appropriate registration fee, prior
to
45 the next succeeding January first.

46 (b) Every retail dealer and every person who owns or, if the owner
is
47 not the operator, then any person who operates one or more
vending
48 machines through which cigarettes or tobacco products are sold in
this
49 state who commences business after the last day of August,
nineteen

50 hundred ninety, or who commences selling cigarettes or tobacco
products
51 at retail through a new or different place of business in this
state
52 after such date, or who commences selling cigarettes or tobacco
products
53 through new or different vending machines after such date, must
file
54 with the commissioner an application for registration, in a
form
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1 prescribed by him or her, at least thirty days prior to commencing
busi-
2 ness or commencing sales. Each application must be accompanied by
an
3 application fee of three hundred dollars for each retail place of
busi-
4 ness and one hundred dollars for each vending machine to be
registered.

5 ~~[The amount of the application fee is determined by subparagraphs~~
~~(ii)~~
6 ~~and (iii) of paragraph (a) of this subdivision, except that any~~
~~retail~~
7 ~~place of business or vending machine with zero dollars in gross~~
~~sales~~
8 ~~during the previous calendar year is subject to the lowest~~
~~application~~

9 ~~fee required by such subparagraphs.]~~ The department, within ten
days

10 after receipt of an application for registration under this
paragraph
11 and payment of the proper fee for application for registration,
will
12 issue a registration certificate, as prescribed by the commissioner,
for
13 each retail place of business or cigarette or tobacco products
vending
14 machine registered.

15 § 2. Section 482 of the tax law, as amended by section 10 of part D
of

16 chapter 134 of the laws of 2010, is amended to read as follows:

17 § 482. Deposit and disposition of revenue. (a) All taxes, fees,
inter-

18 est and penalties collected or received by the commissioner under
this

19 article and article twenty-A of this chapter shall be deposited
and

20 disposed of pursuant to the provisions of section one hundred
seventy-

21 one-a of this chapter. (b) From the taxes, interest and
penalties

22 collected or received by the commissioner under sections four
hundred

23 seventy-one and four hundred seventy-one-a of this article, effective
on

24 and after March first, two thousand, forty-nine and fifty-
five
25 hundredths, and effective on and after February first, two thousand
two,
26 forty-three and seventy hundredths; and effective on and after
May
27 first, two thousand two, sixty-four and fifty-five hundredths;
and
28 effective on and after April first, two thousand three, sixty-one
and
29 twenty-two hundredths percent; and effective on and after June
third,
30 two thousand eight, seventy and sixty-three hundredths percent;
and
31 effective on and after July first, two thousand ten, seventy-six
percent
32 collected or received under those sections must be deposited to
the
33 credit of the tobacco control and insurance initiatives pool to
be
34 established and distributed by the commissioner of health in
accordance
35 with section twenty-eight hundred seven-v of the public health law.

[~~(e)~~
36 ~~From the fees collected or received by the commissioner under~~
subdivi-
37 ~~sion two of section four hundred eighty-a of this article, effective~~
on
38 ~~or after September first, two thousand nine, any monies collected~~
or
39 ~~received under that section in excess of three million dollars must~~
be
40 ~~deposited to the credit of the tobacco control and insurance~~
initiatives
41 ~~pool to be distributed by the commissioner of health in accordance~~
with
42 ~~section twenty-eight hundred seven-v of the public health law.]~~

43 § 3. Subdivisions (a) and (b) of section 92-dd of the state
finance
44 law, as amended by section 125-c of part C of chapter 58 of the laws
of
45 2009, are amended to read as follows:
46 (a) On and after April first, two thousand five, such fund
shall
47 consist of the revenues heretofore and hereafter collected or
required
48 to be deposited pursuant to paragraph (a) of subdivision eighteen
of
49 section twenty-eight hundred seven-c, and sections twenty-eight
hundred
50 seven-j, twenty-eight hundred seven-s and twenty-eight hundred
seven-t
51 of the public health law, [~~subdivisions~~ subdivision (b) [~~and (e)~~]
of
52 section four hundred eighty-two of the tax law and required to be
cred-

53 ited to the tobacco control and insurance initiatives pool,
subparagraph
54 (O) of paragraph four of subsection (j) of section four thousand
three
55 hundred one of the insurance law, section twenty-seven of part A
of
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1 chapter one of the laws of two thousand two and all other moneys
credit-
2 ed or transferred thereto from any other fund or source pursuant to
law.
3 (b) The pool administrator under contract with the commissioner
of
4 health pursuant to section twenty-eight hundred seven-y of the
public
5 health law shall continue to collect moneys required to be collected
or
6 deposited pursuant to paragraph (a) of subdivision eighteen of
section
7 twenty-eight hundred seven-c, and sections twenty-eight hundred
seven-j,
8 twenty-eight hundred seven-s and twenty-eight hundred seven-t of
the
9 public health law, and shall deposit such moneys in the HCRA
resources
10 fund. The comptroller shall deposit moneys collected or required to
be
11 deposited pursuant to [~~subdivisions~~] subdivision (b) [~~and—(e)~~]
of
12 section four hundred eighty-two of the tax law and required to be
cred-

13 ited to the tobacco control and insurance initiatives pool,
subparagraph
14 (O) of paragraph four of subsection (j) of section four thousand
three
15 hundred one of the insurance law, section twenty-seven of part A
of
16 chapter one of the laws of two thousand two and all other moneys
credit-
17 ed or transferred thereto from any other fund or source pursuant to
law
18 in the HCRA resources fund.
19 § 3-a. Notwithstanding any other provision to the contrary, a
notice
20 and demand will be issued for calendar years 2010 and 2011, as
relevant,
21 to each retail dealer and vending machine operator for each
retail
22 location and/or vending machine for any part of the registration
fee
23 which is still owed under section 480-a of the tax law. Any such
notice
24 and demand shall not be construed as a notice which gives a person
the

25 right to a hearing under article 40 of the tax law. In registering
a
26 retail dealer and vending machine operator for any of their
retail
27 locations and/or vending machines for calendar year 2012, if
any
28 outstanding registration fees are owed for calendar years 2010 and
2011,
29 no registrations will be issued to them for calendar year 2012
until
30 these outstanding registration fees, and any corresponding interest
and
31 penalties, are paid in full.
32 § 3-b. Notwithstanding any other provision to the contrary,
the
33 commissioner of taxation and finance shall refund an application
fee
34 paid with respect to the registration of a vending machine or a
retail
35 place of business in this state through which cigarettes or
tobacco
36 products were to be sold if for calendar years 2010 and 2011, the
retail
37 dealer or vending machine operator paid a fee in an amount greater
than
38 the fees owed under the fee structure established by this act.
The
39 refund shall be deemed a refund of tax paid in error provided,
however,
40 no interest shall be allowed or paid on any such refund.
41 § 4. This act shall take effect immediately; provided, however,
that
42 section one of this act shall be deemed to have been in full force
and
43 effect on and after the date that section 125 of part C of chapter 58
of
44 the laws of 2009 took effect and shall apply only to fees related
to
45 applications for registration for the 2010 calendar year and
thereafter;
46 and provided further, however, that sections two and three of this
act
47 shall be deemed to have been in full force and effect on and
after
48 September 1, 2009.

49 PART U

50 Section 1. The real property tax law is amended by adding a
new
51 section 104 to read as follows:

52 § 104. Electronic real property tax administration. 1.
Notwithstanding-
53 ing any provision of law to the contrary, the commissioner is
hereby
54 authorized to establish standards for electronic real property
tax

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1 administration (E-RPT). Such standards shall set forth the terms
and
2 conditions under which the various tasks associated with real
property
3 tax administration may be executed electronically, dispensing with
the
4 need for paper documents. Such tasks shall include:
5 (a) The filing of exemption applications;
6 (b) The filing of petitions for administrative review of
assessments;
7 (c) The filing of petitions for judicial review of assessments;
8 (d) The filing of applications for administrative corrections
of
9 errors;
10 (e) The issuance of statements of taxes;
11 (f) The payment of taxes, subject to the provisions of sections
five
12 and five-b of the general municipal law;
13 (g) The provision of receipts for the payment of taxes;
14 (h) The issuance of taxpayer notices required by law,
including
15 sections five hundred eight, five hundred ten, five hundred ten-a,
five
16 hundred eleven, five hundred twenty-five and five hundred fifty-
one-a
17 through five hundred fifty-six-b of this chapter; and
18 (i) The furnishing of notices and certificates under this
chapter
19 relating to state equalization rates, residential assessment
ratios,
20 special franchise assessments, railroad ceilings, taxable state
lands,
21 advisory appraisals, and the certification of assessors and
county
22 directors or real property tax services.
23 2. Such standards shall be developed after consultation with
local
24 government officials, the office of court administration and the
office
25 of the state comptroller.
26 3. (a) Taxpayers shall not be required to accept notices,
statements
27 of taxes, receipts for the payment of taxes, or other documents
elec-
28 tronically unless they have so elected. Taxpayers who have not
so
29 elected shall be sent such communications in the manner
otherwise
30 provided by law.
31 (b) Assessors and other municipal officials shall not be required
to
32 accept and respond to communications from the commissioner
electron-
33 ically.

34 (c) The governing board of any municipal corporation may, by
local
35 law, ordinance or resolution, determine that it is in the public
inter-
36 est for such municipal corporation to provide electronic real
property
37 tax administration. Upon adoption of such local law, ordinance or
resol-
38 ution, such municipal corporation shall comply with standards set
forth
39 by the commissioner.
40 (d) The standards prescribed by the commissioner pursuant to
this
41 section shall provide for the collection of electronic contact
informa-
42 tion, such as e-mail addresses and/or social network usernames,
from
43 taxpayers who have elected to receive electronic communications
in
44 accordance with the provisions of this section. Such information
shall
45 be exempt from public disclosure in accordance with section eighty-
nine
46 of the public officers law.
47 4. When a document has been transmitted electronically in
accordance
48 with the provisions of this section and the standards adopted by
the
49 commissioner hereunder, it shall be deemed to satisfy the
applicable
50 legal requirements to the same extent as if it had been mailed via
the
51 United States postal service.

52 § 2. Intentionally omitted.

53 § 3. The opening paragraph of paragraph (a) of subdivision 1
of
54 section 922 of the real property tax law, as amended by section 5
of
55 part B of chapter 389 of the laws of 1997, is amended to read
as
56 follows:

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1 Upon receipt of the tax roll and warrant, the collecting officer
shall
2 mail or, subject to the provisions of section one hundred four of
this
3 chapter, transmit electronically to each owner of real property at
the
4 tax billing address listed thereon a statement showing the amount
of
5 taxes due on the property. The statement must contain:

6 § 4. Subdivision 1 of section 925 of the real property tax law,
as
7 separately amended by chapters 513 and 568 of the laws of 2002,
is

8 amended to read as follows:
9 1. (a) Notwithstanding any contrary provision of this chapter, or
of
10 any general, special or local law, code or charter, if payment for
the
11 amount of any taxes on real property, accompanied by the statement
of
12 such taxes, is enclosed in a postpaid wrapper properly addressed to
the
13 appropriate collecting officer and is deposited in a post office
or
14 official depository under the exclusive care and custody of the
United
15 States ~~[post office]~~ postal service, such payment shall, upon
delivery,
16 be deemed to have been made to such officer on the date of the
United
17 States postmark on such wrapper. If the postmark does not appear on
such
18 wrapper or the postmark is illegible such payment shall be deemed
to
19 have been made on the date of delivery to such collecting officer.
As
20 used in this section, "taxes on real property" includes special ad
valo-

21 rem levies and special assessments.
22 (b) The provisions of this subdivision shall not apply to a
payment
23 that has been made electronically pursuant to section five-b of
the
24 general municipal law, but shall apply to a payment that has been
mailed
25 via the United States postal service by a financial institution
acting
26 pursuant to instructions given to it by a taxpayer electronically.

27 § 5. Section 925-c of the real property tax law, as added by
section
28 11 of part X of chapter 62 of the laws of 2003, is amended to read
as
29 follows:

30 § 925-c. Payment of real property taxes via the internet.

[1.]
31 Notwithstanding any contrary provision of this chapter, or of any
gener-
32 al, special or local law, code or charter, ~~[if payment for the amount~~
~~of~~
33 ~~any taxes on real property, accompanied by sufficient language to~~
~~iden-~~
34 ~~tify the property and tax levy, is received via the internet,~~
~~such~~
35 ~~payment is considered received by the appropriate officer and paid~~
~~by~~
36 ~~the taxpayer at the time the internet transaction is completed and~~
~~sent~~
37 ~~by the taxpayer.~~

38 ~~2. Any local government authorizing the payment of taxes via~~
the

39 ~~internet pursuant to section five-b of the general municipal law~~
shall
40 ~~provide a confirmation page to the taxpayer following the completion~~
of
41 ~~the internet transaction. Such confirmation page shall include,~~
at
42 ~~least, the following:~~
43 ~~(a) the date the transaction was completed and sent by the~~
taxpayer;
44 and
45 ~~(b) a notice to the taxpayer to print out and retain the~~
confirmation
46 ~~page as his or her receipt]~~ real property taxes may be paid via
the
47 internet under the terms and conditions set forth in section five-b
of
48 the general municipal law.

49 § 6. Subdivisions 3 and 3-a of section 955 of the real property
tax
50 law, subdivision 3 as amended by section 7 of part B of chapter 389
of
51 the laws of 1997 and subdivision 3-a as added by chapter 365 of the
laws

52 of 2010, are amended to read as follows:
53 3. No later than three weeks after a tax has been paid by a
mortgage
54 investing institution pursuant to this title, the collecting
officer
55 shall deliver ~~[or]~~, mail, or, subject to the provisions of section
one
56 hundred four of this chapter, transmit electronically a receipt to
the
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1 mortgagor for whom the real property tax escrow account is
maintained.
2 Each such receipt shall be in the same format as a statement of
taxes,
3 except that the word "Paid" (or an equivalent word or words) and
the
4 date of payment shall be clearly displayed thereon. The receipt
may
5 also display, if the collecting officer so elects, the name, title
and
6 signature (or initials) of the collecting officer or of the
authorized
7 subordinate who received the payment.

8 ~~[3-a. (a) The collecting officer shall deliver or mail the~~
receipt
9 ~~required under subdivision three of this section unless a~~
taxpayer
10 ~~requests to receive such receipt electronically, in which case~~
the
11 ~~collecting officer shall make an electronic receipt available to~~
the

12 ~~taxpayer. The collecting officer shall notify all taxpayers that~~
any
13 ~~availability of electronic receipts does not preclude a taxpayer~~
from
14 ~~electing to receive a copy of his or her tax receipt in the mail or~~
in
15 ~~person.~~
16 ~~(b) The provisions of paragraph (a) of this subdivision shall~~
apply
17 ~~only to a city, town, or village which by local law provides that~~
elec-
18 ~~tronic availability of such receipts shall be an authorized means~~
of
19 ~~delivery.]~~

20 § 7. Subdivision 1 of section 986 of the real property tax law,
as
21 amended by section 8 of part B of chapter 389 of the laws of 1997,
is
22 amended to read as follows:

23 1. The collecting officer shall upon request or by notice on the
tax
24 bill of a person paying a tax, deliver ~~[or]~~, forward by mail,
or,
25 subject to the provisions of section one hundred four of this
chapter,
26 transmit electronically a receipt to such person specifying the date
of
27 such payment, the name of such person, the description of the
property
28 as shown on the tax roll, the name of the person to whom the same
is
29 assessed, the amount of such tax and the date of delivery to such
offi-
30 cer of the tax roll on account of which such tax was paid, except
that
31 the collecting officer of the city of New York shall not be required
to
32 give such a receipt unless payment of a tax is made in money or
unless
33 the person paying the tax makes a request therefor in writing.
Nothing
34 contained in this subdivision shall prevent the collecting officer
from
35 delivering ~~[or]~~, forwarding by mail, or transmitting electronically
a
36 receipt to any person paying a tax who does not request such a
receipt
37 or make a proper notation on the tax bill. Provided, however, if a
tax
38 is paid by a mortgage investing institution pursuant to title three-A
of
39 this article, a receipt for each paid tax bill shall be delivered
[or],
40 mailed, or transmitted electronically to the mortgagor pursuant to
the
41 provisions of section nine hundred fifty-five of this article.

42 § 8. Subdivision 1 of section 1590 of the real property tax law,
as
43 amended by section 3 of part X of chapter 56 of the laws of 2010, and
as
44 further amended by subdivision (b) of section 1 of part W of chapter
56
45 of the laws of 2010, is amended to read as follows:

46 1. (a) A municipal corporation, other than a school district
or a
47 village, which prepares assessment rolls by means of electronic
data
48 processing, shall annually submit to the commissioner the data
files
49 used in the preparation of each tentative and final assessment roll
and
50 summaries of the information from the final assessment roll including
as
51 a minimum the number of parcels, the total assessed value thereof,
and
52 the total taxable assessed value thereof. Such information shall
be
53 submitted within ten days of the time of filing the tentative or
final
54 assessment roll, as provided for pursuant to section five hundred six
or
55 five hundred sixteen of this chapter or such other law as may be
appli-
56 cable.

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1 (b) (i) In addition, if the assessing unit maintains a website,
then
2 within ten days of the filing of the tentative assessment roll, it
shall
3 post a copy of such roll on its website, with a link thereto
prominently
4 displayed on its home page, and shall not remove the same before
the
5 final assessment roll has been filed. In lieu of posting a copy of
such
6 roll on its website, the assessing unit may cause such copy to be
posted
7 on the website of the county in which it is located for the same
period
8 of time as otherwise required by this subdivision, provided that a
link
9 thereto shall be prominently displayed on the website of the
assessing
10 unit.

11 (ii) If the assessing unit does not maintain a website, then,
within
12 ten days of the filing of the tentative assessment roll, it shall
cause
13 a copy of such roll to be posted on the website of the county in
which

14 it is located for the same period of time as otherwise required by
this
15 subdivision.
16 (c) Within ten days of the filing of the final assessment roll,
the
17 assessing unit shall cause a copy of such final roll to be posted
either
18 on its own website or on the county's website, in the same manner
and
19 subject to the same conditions as provided in paragraph (b) of
this
20 subdivision.

21 § 9. Intentionally omitted.
22 § 10. Section 5-b of the general municipal law, as added by
section
23 10 of part X of chapter 62 of the laws of 2003, subdivision 1 as
amended
24 by chapter 741 of the laws of 2005, is amended to read as follows:
25 § 5-b. Collection of fines, civil penalties, rent, rates, taxes,
fees,
26 charges and other amounts via the internet. 1. The governing board
of
27 any local government, as that term is defined in section ten of
this
28 article, may, by local law, ordinance or resolution, determine that
it
29 is in the public interest and authorize such local government to
provide
30 for the acceptance of penalties, rents, rates, taxes, fees,
charges,
31 revenue, financial obligations or other amounts, including
penalties,
32 special assessments or interest via a municipal internet website or
the
33 website of a third-party vendor that has contracted with the
local
34 government to receive such payments on its behalf. Submission via
the
35 internet may not, however, be required as the sole method for
the
36 collection of fines, civil penalties, rent, rates, taxes, fees,
charges
37 and other amounts. Such payments shall be accepted via the internet
in a
38 manner and condition defined by such local government. Any method
used
39 to receive internet payments shall comply with article three of
the
40 state technology law and any rules and regulations promulgated
and
41 guidelines developed thereunder and, at a minimum must (a)
authenticate
42 the identity of the sender; and (b) ensure the security of the
informa-
43 tion transmitted.
44 2. Any local government authorizing the payment of taxes via
the

45 internet shall provide or direct its vendor to provide a
confirmation
46 page to the taxpayer following the completion of the internet
trans-
47 action. Such confirmation page shall include, at least, the
following:
48 (a) the date the internet transaction was completed and sent by
the
49 taxpayer; [~~and~~]
50 (b) the amount paid;
51 (c) a unique confirmation number; and
52 (d) a notice [~~to~~] advising the taxpayer to print out and retain
the
53 confirmation page as his or her receipt.
54 3. Payments received via the internet shall be considered received
by
55 the appropriate officer and paid by the taxpayer at the time the
inter-
56 net transaction is completed and sent by the taxpayer.

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1 4. The underlying debt, lien, obligation, bill, account or
other
2 amount owed to the local government for which payment by internet
is
3 accepted by the local government shall not be expunged,
cancelled,
4 released, discharged or satisfied, and any receipt or other evidence
of
5 payment shall be deemed conditional, until the local government
has
6 received final and unconditional payment of the full amount due.

7 5. The governing board, in enacting a local law, ordinance or
resol-
8 ution pursuant to this section, shall designate which of its
officers,
9 charged with the duty of collecting or receiving moneys on behalf of
the
10 local government, shall be authorized to accept such payments via
the
11 internet.

12 6. The state comptroller shall issue such guidelines as he or
she
13 deems appropriate governing the use of third-party vendors for
this
14 purpose. Any local government contracting with a third-party vendor
for
15 this purpose shall follow the guidelines issued by the state
comp-
16 troller.

17 § 11. Subdivision 2 of section 89 of the public officers law, as
added
18 by chapter 933 of the laws of 1977, subparagraph (iii) of paragraph
(b)
19 and subparagraph (iii) of paragraph (c) as amended and subparagraph
(iv)

20 of paragraph (c) as added by chapter 223 of the laws of 2008,
subpara-

21 graph (v) of paragraph (b) as amended and subparagraph (vi) of
paragraph

22 (b) as added by chapter 545 of the laws of 1998, is amended to read
as

23 follows:

24 2. (a) The committee on public access to records may promulgate
guide-

25 lines regarding deletion of identifying details or withholding
of

26 records otherwise available under this article to prevent
unwarranted

27 invasions of personal privacy. In the absence of such guidelines,
an

28 agency may delete identifying details when it makes records
available.

29 (b) An unwarranted invasion of personal privacy includes, but
shall

30 not be limited to:

31 i. disclosure of employment, medical or credit histories or
personal

32 references of applicants for employment;

33 ii. disclosure of items involving the medical or personal records
of a

34 client or patient in a medical facility;

35 iii. sale or release of lists of names and addresses if such
lists

36 would be used for solicitation or fund-raising purposes;

37 iv. disclosure of information of a personal nature when
disclosure

38 would result in economic or personal hardship to the subject party
and

39 such information is not relevant to the work of the agency requesting
or

40 maintaining it; ~~or~~

41 v. disclosure of information of a personal nature reported in
confi-

42 dence to an agency and not relevant to the ordinary work of such
agency;

43 ~~or~~

44 vi. information of a personal nature contained in a workers'
compen-

45 sation record, except as provided by section one hundred ten-a of
the

46 workers' compensation law[-] ; or

47 vii. disclosure of electronic contact information, such as an e-
mail

48 address or a social network username, that has been collected
from a

49 taxpayer under section one hundred four of the real property tax law.

50 (c) Unless otherwise provided by this article, disclosure shall not
be

51 construed to constitute an unwarranted invasion of personal
privacy

52 pursuant to paragraphs (a) and (b) of this subdivision:

53 i. when identifying details are deleted;

54 ii. when the person to whom a record pertains consents in writing
to
55 disclosure;
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1 iii. when upon presenting reasonable proof of identity, a person
seeks
2 access to records pertaining to him or her; or

3 iv. when a record or group of records relates to the right, title
or

4 interest in real property, or relates to the inventory, status or
char-

5 acteristics of real property, in which case disclosure and
providing

6 copies of such record or group of records shall not be deemed an
unwar-

7 ranted invasion of personal privacy, provided that nothing herein
shall

8 be construed to authorize the disclosure of electronic contact
informa-

9 tion, such as an e-mail address or a social network username, that
has

10 been collected from a taxpayer under section one hundred four of
the

11 real property tax law.

12 § 12. The tax law is amended by adding a new section 35 to read
as

13 follows:

14 § 35. Use of electronic means of communication. Notwithstanding
any

15 other provision of New York state law, where the department has
obtained

16 authorization of an online services account holder, in such form as
may

17 be prescribed by the commissioner, the department may use
electronic

18 means of communication to furnish any document it is required to
mail

19 per law or regulation. If the department furnishes such document
in

20 accordance with this section, department records of such
transaction

21 shall constitute appropriate and sufficient proof of delivery
thereof

22 and be admissible in any action or proceeding.

23 § 13. Section 29 of the tax law, as added by section 1 of part UU-1
of

24 chapter 57 of the laws of 2008 and paragraph (1) of subdivision (e)
as

25 amended by section 1 of part G of chapter 57 of the laws of 2010,
is

26 amended to read as follows:

27 § 29. Mandatory electronic filing and payment. (a) For purposes
of

28 this section, the following terms have the specified meanings:

29 (1) "Authorized tax document" means a tax document which the
commis-
30 sioner has authorized to be filed electronically.
31 (2) "Electronic" means computer technology.
32 (3) "Original tax document" means a tax document that is filed
during
33 the calendar year for which that tax document is required or
permitted
34 to be filed.
35 (4) "Tax" means any tax or other matter administered by the
commis-
36 sioner pursuant to this chapter or any other provision of
law[
37 ~~provided, however, that the term "tax" does not include the~~
~~taxes~~
38 ~~imposed by, or pursuant to the authority of, articles twenty-two,~~
~~thir-~~
39 ~~ty, thirty-A or thirty-B of this chapter].~~
40 (5) "Tax document" means a return, report or any other document
relat-
41 ing to a tax or other matter administered by the commissioner.
42 (6) "Tax return preparer" means any person who prepares for
compen-
43 sation, or who employs or engages one or more persons to prepare
for
44 compensation, any authorized tax document. For purposes of this
section,
45 the term "tax return preparer" also includes a payroll service.
46 (7) "Tax software" means any computer software program intended
for
47 tax return preparation purposes. For purposes of this section, the
term
48 "tax software" includes, but is not limited to, an off-the-shelf
soft-
49 ware program loaded onto a tax return preparer's or taxpayer's
computer,
50 an online tax preparation application, or a tax preparation
application
51 hosted by the department.
52 (b) (1) If a tax return preparer prepared more than one
hundred
53 original tax documents during any calendar year beginning on or
after
54 January first, two thousand seven, and if, in any succeeding
calendar
55 year that tax return preparer prepares one or more authorized tax
docu-
56 ments using tax software, then, for that succeeding calendar year
and
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1 for each subsequent calendar year thereafter, all authorized tax
docu-
2 ments prepared by that tax return preparer must be filed
electronically,
3 in accordance with instructions prescribed by the commissioner.

4 (2) If a tax return preparer prepared more than five original
5 tax
6 documents during any calendar year beginning on or after January
7 first,
8 two thousand eleven, and if in any succeeding calendar year that
9 tax
10 return preparer prepares one or more authorized returns using tax
11 soft-
12 ware, then, for such succeeding calendar year and for each
13 subsequent
14 calendar year thereafter, all authorized tax documents prepared by
15 that
16 tax return preparer must be filed electronically, in accordance
17 with
18 instructions prescribed by the commissioner.

19 (c) If a taxpayer does not utilize a tax return preparer to prepare
20 an
21 authorized tax document [~~during any calendar year beginning on or~~
22 ~~after~~
23 ~~January first, two thousand eight~~], but instead prepares that
24 document
25 itself using tax software, then[~~, for that calendar year and for~~
26 ~~each~~
27 ~~subsequent calendar year thereafter,~~] all authorized tax
28 documents
29 prepared by the taxpayer using tax software must be filed
30 electron-
31 ically, in accordance with instructions prescribed by the
32 commissioner.

33 (d) [~~Any~~] The commissioner may require tax liability or other
34 amount
35 due shown on, or required to be paid with, an authorized tax
36 document
37 required to be filed electronically pursuant to subdivision (b) or
38 (c)
39 of this section [~~must~~] to be paid by the taxpayer electronically,
40 in
41 accordance with instructions prescribed by the commissioner.

42 (e) Failure to electronically file or electronically pay. (1)
43 If a
44 tax return preparer is required to file authorized tax documents
45 elec-
46 tronically pursuant to subdivision (b) of this section, and that
47 prepar-
48 er fails to file one or more of those documents electronically,
49 then
50 that preparer will be subject to a penalty of fifty dollars for
51 each
52 failure to electronically file an authorized tax document, unless it
53 is
54 shown that the failure is due to reasonable cause and not due to
55 willful
56 neglect.

57 (2) If a taxpayer is required to electronically file any
58 authorized
59 tax documents or electronically pay any tax liability or other
60 amount

34 due shown on, or required to be paid with, an authorized tax
document
35 required to be filed electronically pursuant to subdivision (b) or
(c)
36 of this section, and that taxpayer fails to electronically file one
or
37 more of those tax documents or electronically pay one or more of
those
38 liabilities or other amounts due, then that taxpayer will be subject
to
39 a penalty of [~~fifty~~] twenty-five dollars for each individual
taxpayer's
40 failure to electronically file an authorized tax document required by
or
41 pursuant to the authority of article twenty-two, thirty, thirty-A
or
42 thirty-B of this chapter or electronically pay any personal income
tax
43 imposed by or pursuant to the authority of any of those articles,
and
44 fifty dollars for each failure to electronically file any other
author-
45 ized tax document or electronically pay any other tax, unless it
is
46 shown that the failure is due to reasonable cause and not due to
willful
47 neglect. In addition, any taxpayer that fails to electronically file
an
48 authorized tax document for any tax other than an individual
taxpayer
49 who fails to file an authorized tax document for any personal income
tax
50 imposed by or pursuant to the authority of article twenty-two,
thirty,
51 thirty-A or thirty-B will be subject to the penalty imposed under
the
52 applicable article for the failure to file a return or report,
whether a
53 paper return or report has been filed or not.

54 (3) The penalties provided for by this subdivision must be paid
upon
55 notice and demand, and will be assessed, collected and paid in the
same
56 manner as the tax to which the electronic transaction relates.

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A.

1 if the electronic transaction relates to another matter administered
by
2 the commissioner, then the [~~penally~~] penalty will be assessed,
collected
3 and paid in the same manner as prescribed by article twenty-seven
of
4 this chapter.

5 (4) If a taxpayer or tax return preparer fails to electronically
file

6 an authorized tax document when required to do so pursuant to
7 subdivision (b) or (c) of this section, the taxpayer shall not be eligible
8 to receive interest on any overpayment in accordance with the
9 overpayment provisions of this chapter until such document is filed
10 electronically.

11 (f) The provisions of sections nine and ten of this chapter are
not affected by this section and will remain in full force and effect.

12 (g) The commissioner is authorized to promulgate any
regulations necessary to implement this section.

13 § 14. Paragraph 10 of subsection (g) of section 658 of the tax law
is REPEALED.

14 § 14-a. Subparagraph (A) of paragraph 10 of subsection (g) of
section 658 of the tax law is amended by adding a new clause (iii) to read
as follows:

15 (iii) If a tax return preparer prepared more than five original
16 tax documents during any calendar year beginning on or after January
17 first, two thousand eleven, and if in any succeeding calendar year that
18 tax return preparer prepares one or more authorized returns using tax
19 software, then, for such succeeding calendar year and for each
20 subsequent calendar year thereafter, all authorized tax documents prepared by
21 that tax return preparer must be filed electronically, in accordance
22 with instructions prescribed by the commissioner.

23 § 14-b. Subsection (g) of section 658 of the tax law is amended
by adding a new paragraph 10 to read as follows:

24 (10) Mandatory electronic filing by certain tax return
25 preparers.
26 (A) (i) If a tax return preparer prepared more than two hundred
27 original returns during the calendar year beginning on January first, two
28 thousand five, and if, in the calendar year beginning on January first,
29 two thousand six, such tax return preparer prepares one or more
30 authorized returns using tax software, then, for such calendar year two
31 thousand six and for each subsequent calendar year thereafter, all
32 authorized returns prepared by such tax return preparer shall be filed
33 electronically.

37 ically, in accordance with instructions prescribed by the
commissioner.
38 (ii) If a tax return preparer prepared more than one hundred
original
39 returns during any calendar year beginning on or after January
first,
40 two thousand six, and if, in any succeeding calendar year such
tax
41 return preparer prepares one or more authorized returns using tax
soft-
42 ware, then, for such succeeding calendar year and for each
subsequent
43 calendar year thereafter, all authorized returns prepared by such
tax
44 return preparer shall be filed electronically, in accordance
with
45 instructions prescribed by the commissioner.
46 (B) For purposes of this paragraph:
47 (i) "Electronic" means computer technology; provided, however,
that
48 the commissioner may, in instructions, provide that use of barcode
tech-
49 nology will also satisfy the mandatory electronic filing requirements
of
50 this section.
51 (ii) "Authorized return" means any return required under this
article
52 which the commissioner has authorized to be filed electronically.
53 (iii) "Original return" means a return required under this
article
54 that is filed, without regard to extensions, during the calendar
year
55 for which that return is required to be filed.

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1 (iv) "Tax software" means any computer software program intended
for
2 tax return preparation purposes.
3 § 15. Paragraph 10 of subdivision (g) of section 11-1758 of the
admin-
4 istrative code of the city of New York is REPEALED.
5 § 15-a. Subparagraph (A) of paragraph 10 of subdivision (g) of
section
6 11-1758 of the administrative code of the city of New York is amended
by
7 adding a new clause (iii) to read as follows:
8 (iii) If a tax return preparer prepared more than five original
tax
9 documents during any calendar year beginning on or after January
first,
10 two thousand eleven, and if in any succeeding calendar year that
tax
11 return preparer prepares one or more authorized returns using tax
soft-
12 ware, then, for such succeeding calendar year and for each
subsequent

13 calendar year thereafter, all authorized tax documents prepared by
that
14 tax return preparer must be filed electronically, in accordance
with
15 instructions prescribed by the commissioner of taxation and finance.

16 § 15-b. Subdivision (g) of section 11-1758 of the administrative
code
17 of the city of New York is amended by adding a new paragraph 10 to
read

18 as follows:

19 (10) Mandatory electronic filing by certain tax return
preparers.

20 (A) (i) If a tax return preparer prepared more than two hundred
original
21 returns during the calendar year beginning on January first, two
thou-
22 sand five, and if, in the calendar year beginning on January first,
two
23 thousand six, such tax return preparer prepares one or more
authorized
24 returns using tax software, then, for such calendar year two
thousand
25 six and for each subsequent calendar year thereafter, all
authorized
26 returns prepared by such tax return preparer shall be filed
electron-
27 ically, in accordance with instructions prescribed by the
commissioner
28 of taxation and finance.

29 (ii) If a tax return preparer prepared more than one hundred
original
30 returns during any calendar year beginning on or after January
first,
31 two thousand six, and if, in any succeeding calendar year such
tax
32 return preparer prepares one or more authorized returns using tax
soft-
33 ware, then, for such succeeding calendar year and for each
subsequent
34 calendar year thereafter, all authorized returns prepared by such
tax
35 return preparer shall be filed electronically, in accordance
with
36 instructions prescribed by the commissioner of taxation and finance.

37 (B) For purposes of this paragraph:

38 (i) "Electronic" means computer technology; provided, however,
that

39 the commissioner of taxation and finance may, in instructions,
provide

40 that use of barcode technology will also satisfy the mandatory
electron-

41 ic filing requirements of this section.

42 (ii) "Authorized return" means any return required under this
article

43 which the commissioner of taxation and finance has authorized to
be

44 filed electronically.

45 (iii) "Original return" means a return required under this
article
46 that is filed, without regard to extensions, during the calendar
year
47 for which that return is required to be filed.
48 (iv) "Tax software" means any computer software program intended
for
49 tax return preparation purposes.
50 § 16. Paragraph 5 of subsection (u) of section 685 of the tax law
is
51 REPEALED.
52 § 16-a. Subsection (u) of section 685 of the tax law is amended
by
53 adding a new paragraph 5 to read as follows:
54 (5) Failure to electronically file. If a tax return preparer
is
55 required to file returns electronically pursuant to paragraph ten
of
56 subsection (g) of section six hundred fifty-eight of this article,
and
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1 such preparer fails to file one or more of such returns
electronically,
2 then such preparer shall be subject to a penalty of fifty dollars
for
3 each such failure to electronically file a return, unless it is
shown
4 that such failure is due to reasonable cause and not due to
willful
5 neglect.
6 § 17. Paragraph 5 of subdivision (t) of section 11-1785 of the
admin-
7 istrative code of the city of New York is REPEALED.
8 § 17-a. Subdivision (t) of section 11-1785 of the administrative
code
9 of the city of New York is amended by adding a new paragraph 5 to
read
10 as follows:
11 (5) Failure to electronically file. If a tax return preparer
is
12 required to file returns electronically pursuant to paragraph ten
of
13 subdivision (g) of section 11-1758, and such preparer fails to file
one
14 or more of such returns electronically, then such preparer shall
be
15 subject to a penalty of fifty dollars for each such failure to
electron-
16 ically file a return, unless it is shown that such failure is due
to
17 reasonable cause and not due to willful neglect.
18 § 17-b. By September 15, 2011, the commissioner of taxation
and
19 finance shall report to the governor, the director of the budget,
the

20 speaker and minority leader of the assembly, and the majority and
minor-
21 ity leaders of the senate, the number and percentage of
individual
22 taxpayers that, by August 31, 2011, electronically filed their
2010
23 income tax returns. Provided, however, if such commissioner fails
to
24 report such percentage by September 15, 2011, then the percentage
shall
25 be presumed to be eighty-five percent or higher, and the report shall
be
26 presumed to be reported.

27 § 18. Subparagraph (A) of paragraph 3 of subsection (c) of section
658
28 of the tax law, as amended by section 1 of part H-1 of chapter 57 of
the
29 laws of 2009, is amended to read as follows:

30 (A) Every subchapter K limited liability company, every
limited
31 liability company that is a disregarded entity for federal income
tax
32 purposes, and every partnership which has any income derived from
New
33 York sources, determined in accordance with the applicable rules
of
34 section six hundred thirty-one of this article as in the case of
a
35 nonresident individual, shall, within [~~thirty~~ sixty] days after the
last
36 day of the taxable year, make a payment of a filing fee. The amount
of
37 the filing fee is the amount set forth in subparagraph (B) of this
para-
38 graph. The minimum filing fee is twenty-five dollars for taxable
years
39 beginning in two thousand eight and thereafter. Limited liability
compa-
40 nies that are disregarded entities for federal income tax purposes
must
41 pay a filing fee of twenty-five dollars for taxable years beginning
on
42 or after January first, two thousand eight.

43 § 19. Subdivision 4 of section 1315 of the abandoned property law,
as
44 amended by section 2 of part II of chapter 57 of the laws of 2010,
is
45 amended to read as follows:

46 4. Any amount representing an unpaid check or draft issued by
the
47 state of New York which shall have remained unpaid after one year
from
48 the date of issuance or a debit card issued on behalf of the state
of
49 New York for the purpose of paying a tax refund which shall not
have

50 been activated for one year from the date of issuance in accordance
with
51 section one hundred two of the state finance law shall be deemed
aban-
52 doned property and shall be paid to the state comptroller.
53 § 20. Section 102 of the state finance law, as amended by section 7
of
54 part P of chapter 62 of the laws of 2003, is amended to read as
follows:

55 § 102. Amounts of unpaid checks, drafts or debit cards to be paid
into
56 abandoned property fund. Upon audit and statement of the
comptroller,

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1 the amounts of all checks or drafts on bank accounts of any funds of
the
2 state, and the amounts of all debit cards issued on behalf of the
state
3 for the purpose of paying a tax refund which checks or drafts have
not
4 been paid or which debit cards have not been activated and which
shall
5 have been outstanding for more than one year from the respective
dates
6 thereof, shall be paid into the abandoned property fund pursuant
to
7 subdivision four of section one thousand three hundred fifteen of
the
8 abandoned property law. The proper disbursing officers or agents of
such
9 funds shall notify the bank or banks on which such checks ~~[or]~~,
drafts
10 or debit cards were drawn not to pay or permit the activation of
the
11 same. The comptroller shall keep a record of all such checks
~~[or]~~,
12 drafts or debit cards and upon presentation to him by the lawful
holder
13 of any such check ~~[or]~~, draft or debit card at any time, the amount
of
14 which shall thus have been paid into the state treasury to the credit
of
15 the general fund, the comptroller, to the extent appropriations
are
16 available, shall issue a new check ~~[or]~~, draft or electronic payment
to
17 the payee upon submission of proof satisfactory to the comptroller as
to
18 the legitimacy of the claim and, if insufficient appropriations
are
19 available, shall include in his next request for appropriations by
the
20 legislature the amount or amounts of any such checks ~~[or]~~, drafts
or

21 debit cards so presented to him, for the purpose of payment
without
22 interest to the lawful holder or holders thereof.
23 § 21. Paragraph 3 of subdivision (e) of section 1137 of the tax
law,
24 as amended by chapter 65 of the laws of 1985, is amended to read
as
25 follows:
26 (3) As an additional or alternate requirement, whenever any
person
27 fails to collect, truthfully account for, pay over the tax, or
file
28 returns of the tax as required in this article, the [~~tax~~
~~commission~~]
29 commissioner, in [~~its~~] his or her discretion where [~~it~~] he or she
deems
30 necessary to protect the revenues to be obtained under this article,
may
31 give notice requiring such person to collect the taxes which
become
32 collectible after the giving of such notice, to deposit such taxes
at
33 least one time per week in a separate account in any banking
institution
34 approved by the [~~tax commission~~] commissioner and located in this
state
35 the deposits in which are insured by any agency of the federal
govern-
36 ment [~~, in a separate account,~~]. Such notice may require either (i)
that
37 such account be held in trust for and payable to the [~~tax~~
~~commission~~]
38 commissioner, and [~~to keep~~] that the amount of such tax shall be kept
in
39 such account until payment over to the [~~tax commission~~] commissioner;
or
40 (ii) that such person authorize the commissioner to debit such
account.
41 [~~Such notice~~] Any notice given by the commissioner under this
paragraph
42 shall remain in effect until a notice of cancellation is given by
the
43 [~~tax commission~~] commissioner. Any such person who fails to comply
with
44 a notice issued under this paragraph shall be required to file a
bond
45 pursuant to paragraph two of this subdivision.
46 § 21-a. Subparagraph (A) of paragraph 4 of subdivision (a) of
section
47 1134 of the tax law, as amended by chapter 2 of the laws of 1995,
is
48 amended to read as follows:
49 (A) Where a person who holds a certificate of authority (i)
willfully
50 fails to file a report or return required by this article, (ii)
willful-

51 ly files, causes to be filed, gives or causes to be given a
report,
52 return, certificate or affidavit required under this article which
is
53 false, (iii) willfully fails to comply with the provisions of
paragraph
54 two or three of subdivision (e) of section eleven hundred thirty-
seven
55 of this article, (iv) willfully fails to prepay, collect,
truthfully
56 account for or pay over any tax imposed under this article or
pursuant
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1 to the authority of article twenty-nine of this chapter, [~~ex~~] (v)
fails
2 to obtain a bond pursuant to paragraph two of subdivision (e) of
section
3 eleven hundred thirty-seven of this part, or fails to comply
with a
4 notice issued by the commissioner pursuant to paragraph three of
such
5 subdivision, or (vi) has been convicted of a crime provided for in
this
6 chapter, the commissioner may revoke or suspend such certificate
of
7 authority and all duplicates thereof. Provided, however, that
the
8 commissioner may revoke or suspend a certificate of authority based
on
9 the grounds set forth in clause [~~v~~] (vi) of this subparagraph
only
10 where the conviction referred to occurred not more than one year
prior
11 to the date of revocation or suspension.
12 § 22. Paragraph 1 of subdivision (a) of section 1136 of the tax
law,
13 as amended by chapter 2 of the laws of 1995, is amended to read
as
14 follows:
15 (1) Every person required to register with the commissioner
as
16 provided in section eleven hundred thirty-four of this part whose
taxa-
17 ble receipts, amusement charges and rents total less than three
hundred
18 thousand dollars, or in the case of any such person who is a
distributor
19 whose sales of automotive fuel total less than one hundred
thousand
20 gallons, in every quarter of the preceding four quarters, shall
only
21 file a return quarterly with the commissioner. Provided, however,
that
22 if the commissioner in the exercise of his or her discretion deems
it

23 necessary to protect the revenues to be obtained under this article,
he
24 or she may give notice requiring such person, in addition to filing
a
25 quarterly return, to file either short-form or long-form part
quarterly
26 returns, as specified in such notice.

27 § 23. This act shall take effect immediately; provided, however,
that:

28 (a) the amendments to section 29 of the tax law made by section
thir-
29 teen of this act shall apply to tax documents filed or required to
be
30 filed on or after the sixtieth day after which this act shall
have
31 become a law and shall expire and be deemed repealed December 31,
2012,
32 provided however that the amendments to paragraph 4 of subdivision
(a)
33 of section 29 of the tax law and paragraph 2 of subdivision (e)
of
34 section 29 of the tax law made by section thirteen of this act
with
35 regard to individual taxpayers shall take effect September 15, 2011
but
36 only if the commissioner of taxation and finance has reported in
the
37 report required by section seventeen-b of this act that the
percentage
38 of individual taxpayers electronically filing their 2010 income
tax
39 returns is less than eighty-five percent; provided that the
commissioner
40 of taxation and finance shall notify the legislative bill
drafting
41 commission of the date of the issuance of such report in order that
the
42 commission may maintain an accurate and timely effective data base
of
43 the official text of the laws of the state of New York in furtherance
of
44 effectuating the provisions of section 44 of the legislative law
and
45 section 70-b of the public officers law;

46 (b) sections fourteen, fifteen, sixteen and seventeen of this
act
47 shall take effect September 15, 2011 but only if the commissioner
of
48 taxation and finance has reported in the report required by
section
49 seventeen-b of this act that the percentage of individual
taxpayers
50 electronically filing their 2010 income tax returns is less than
eight-
51 y-five percent;

52 (c) sections fourteen-a and fifteen-a of this act shall take
effect

53 September 15, 2011 and expire and be deemed repealed December 31,
2012
54 but shall take effect only if the commissioner of taxation and
finance
55 has reported in the report required by section seventeen-b of this
act
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1 that the percentage of individual taxpayers electronically filing
their
2 2010 income tax returns is eighty-five percent or greater;
3 (d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of
this
4 act shall take effect January 1, 2013 but only if the commissioner
of
5 taxation and finance has reported in the report required by
section
6 seventeen-b of this act that the percentage of individual
taxpayers
7 electronically filing their 2010 income tax returns is less than
eight-
8 y-five percent; and
9 (e) sections twenty-one and twenty-one-a of this act shall expire
and
10 be deemed repealed December 31, 2012.

11 PART V

12 Section 1. Legislative intent. Recognizing the potential
economic
13 impact of the closure of certain correctional and juvenile
justice
14 facilities on communities, it is the intent of the legislature to
amel-
15 iorate this impact and promote economic development in these
vulnerable
16 communities. This bill provides tax benefits for the redevelopment
of
17 closed facilities and the economic transformation of the
surrounding
18 communities by attracting new businesses.
19 It is the strong public policy of New York state to protect the confi-
20 dentiality of tax information subject to certain narrow
exceptions.
21 Nonetheless, it is and has been the intent of the legislature to
allow
22 the use of such information to determine the eligibility of
businesses
23 for state economic development grants or tax incentives, provided
that
24 the specific tax information contained in such filing is not
publicly
25 disclosed unless specifically authorized in law. Use of such
informa-

26 tion for review is necessary to prevent fraud and ensure compliance
with
27 the requirements of these programs.

28 § 2. The economic development law is amended by adding a new
article
29 18 to read as follows:

30 ARTICLE 18

31 ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

32 Section 400. Definitions.

33 401. Eligibility criteria.

34 402. Application and approval process.

35 403. Powers and duties of the commissioner.

36 404. Reporting.

37 § 400. Definitions. For the purposes of this article:

38 1. "Benefit-cost ratio" means the following calculation: the
numerator
39 is the sum of (i) the value of all remuneration projected to be paid
for
40 all net new jobs during the period of participation in the program,
and
41 (ii) the cost of qualified investments to be made by the business
entity
42 during the period of participation in the program, and the
denominator
43 is the amount of total tax benefits under this article that is
projected
44 to be used and refunded.

45 2. "Certificate of eligibility" means the document issued by
the
46 department to an applicant that demonstrates that the applicant has
been
47 admitted as a participant into the economic transformation and
facility
48 redevelopment program by the department. Possession of a certificate
of
49 eligibility does not by itself guarantee the eligibility of the
partic-
50 ipant to claim the tax credits allowed pursuant to section thirty-
five
51 of the tax law.

52 3. "Net new jobs" means jobs created in the economic
transformation
53 area that:

54 (a) are new to the area;
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1 (b) have not been transferred from employment in this state with
the
2 participant or with a related person in this state, and are not
replac-
3 ing jobs with similar titles or job responsibilities;
4 (c) are either full-time wage-paying jobs or equivalent to a full-
time
5 wage-paying job requiring at least thirty-five hours per week;
6 (d) are filled for more than six months in a taxable year;
7 (e) are not general executive officers of the participant; and

8 (f) may not be filled with individuals having the familial
relation-
9 ship defined in section 267(c) (4) of the internal revenue code with
any
10 owner of the participant.
11 4. "Participant" means a business entity that:
12 (a) is a new business as defined in subdivision nine of this
section.
13 (b) has completed an application prescribed by the department to
be
14 admitted into the program;
15 (c) has demonstrated how it plans to meet the eligibility criteria
in
16 section four hundred one of this article; and
17 (d) has been issued a certificate of eligibility by the department.
18 5. "Preliminary schedule of benefits" means the estimated
aggregate
19 amount of the tax credits that a participant in the economic
transforma-
20 tion and facility redevelopment program is eligible to receive
pursuant
21 to section thirty-five of the tax law. The schedule shall indicate
the
22 annual amount of each credit a participant expects to claim in each
of
23 its five years of eligibility.
24 6. "Qualified investment" means an investment in tangible
property
25 (including a building or a structural component of a building) owned
by
26 a business entity which:
27 (a) is depreciable pursuant to section one hundred sixty-seven of
the
28 internal revenue code;
29 (b) has a useful life of four years or more;
30 (c) is acquired by purchase as defined in section one hundred
seven-
31 ty-nine (d) of the internal revenue code;
32 (d) has a situs in an economic transformation area in this state
in
33 which it is certified; and
34 (e) is placed in service in an economic transformation area in
the
35 state on or after the date the certificate of eligibility is issued
to
36 the business entity.
37 7. "Related person" means a "related person" pursuant to
subparagraph
38 (c) of paragraph three of subsection (b) of section four hundred
sixty-
39 five of the internal revenue code.
40 8. "Remuneration" means wages paid to and benefits received by
an
41 employee by a participant in the economic transformation and
facility
42 redevelopment program.

43 9. "New business" means a business entity that satisfies all of
the
44 following tests:
45 (a) the business entity must not be currently operating or
located
46 within the economic transformation area in which it is applying
for
47 certification;
48 (b) the business entity must not be moving existing jobs into
the
49 economic transformation area in which it is applying for
certification
50 from another area of the state;
51 (c) the business entity must not be substantially similar in
ownership
52 and operation to another taxpayer taxable or previously taxable
under
53 section one hundred eighty-three, one hundred eighty-four or one
hundred
54 eighty-five of article nine, former section one hundred eighty-six
or
55 article nine-A, twenty-two, thirty-two or thirty-three of the tax law
or
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1 the income or losses of which is or was includable under article
twen-
2 ty-two of the tax law;
3 (d) the business entity must not have caused individuals to
transfer
4 from existing employment with a related person and located in New
York
5 state to similar employment with the business entity;
6 (e) the business entity must not have acquired, purchased, leased,
or
7 had transferred to it real property located in the economic
transforma-
8 tion area in which it is applying for certification if that real
proper-
9 ty was previously owned by an entity with similar ownership,
regardless
10 of form of incorporation or organization; and
11 (f) the business entity must not be substantially similar in
operation
12 to a business entity from which it has acquired real or
tangible
13 personal property that is located in the economic transformation area
in
14 which it is applying for certification.
15 10. "Economic transformation area" means:
16 (a) In the region of the state outside of the metropolitan
commuter
17 transportation district (as defined in section twelve hundred sixty-
two
18 of the public authorities law) and the port authority district
(as

19 defined by article two of chapter one hundred fifty-four of the laws
of
20 nineteen hundred twenty-one), an area within a five mile radius in
this
21 state of a closed facility. If more than sixty persons were employed
in
22 full-time positions at a closed facility on April first, two
thousand
23 eleven, then it is the area within a ten mile radius in this state
of
24 that closed facility. The commissioner may increase the radius of
the
25 area from ten miles to up to fifteen miles in this state based
on
26 factors including but not limited to population density, the
poverty
27 rate, the unemployment rate and the loss of jobs in the region.
Howev-
28 er, the increased radius may not extend into the metropolitan
commuter
29 transportation district. The commissioner may also decrease the
radius
30 of the ten mile area but to no less than a five mile radius based
on
31 factors including but not limited to population density, the
poverty
32 rate, the unemployment rate and the loss of jobs in the region.
Upon
33 notification of the commissioner, pursuant to subdivision eleven of
this
34 section, the commissioner shall establish the size of the
transformation
35 area prior to the acceptance of any applications into the program.
36 (b) In the metropolitan commuter transportation district outside
the
37 port authority district, an area within a one mile radius in this
state
38 of a closed facility. If more than sixty persons were employed in
full-
39 time positions at a closed facility on April first, two thousand
eleven,
40 then it is the area within a five mile radius in this state of
that
41 closed facility, provided that the commissioner may decrease the
radius
42 of the expanded area but to no less than a one mile radius based
on
43 factors including but not limited to population density, the
poverty
44 rate, the unemployment rate, and the loss of jobs in the area and
wheth-
45 er the radius would extend outside of the metropolitan commuter
trans-
46 portation district. Upon notification of the commissioner pursuant
to
47 subdivision eleven of this section, the commissioner shall establish
the

48 size of the transformation area prior to the acceptance of any
applica-
49 tions into the program.

50 (c) In the port authority district, an area limited to the site of
the
51 closed facility.

52 11. "Closed facility" means:
53 (a) a correctional facility, as defined in paragraph (a) of
subdivi-
54 sion four of section two of the correction law, that has been
selected
55 by the governor of the state of New York for closure after April
first,

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1 two thousand eleven but no later than March thirty-first, two
thousand
2 twelve; or

3 (b) a facility operated by the office of children and family
services

4 under article nineteen-G of the executive law that is closed pursuant
to

5 authority granted to such office in a chapter of the laws of two
thou-

6 sand eleven; and
7 (c) which has been closed provided that the commissioner of

correc-
8 tional services or the commissioner of the office of children and
family

9 services has notified the commissioner of such closure.

10 § 401. Eligibility criteria. 1. In order to be eligible for
benefits

11 in the economic transformation and facility redevelopment
program, a

12 participant must satisfy the following criteria:

13 (a) must create and maintain at least five net new jobs in an
economic

14 transformation area, and must demonstrate that its benefit-cost ratio
is

15 at least ten to one; and

16 (b) must be in compliance with all worker protection and
environmental

17 laws and regulations; and

18 (c) must not owe past due federal or state taxes or local
property

19 taxes, unless those taxes are being paid pursuant to an executed
payment

20 plan; and

21 (d) the location of the participant's operations for which it
seeks

22 tax benefits must be wholly located within the economic
transformation

23 area.

24 2. A business entity that is primarily operated as a retail
business

25 is not eligible to participate in the economic transformation and
26 facility redevelopment program if their application is for any facility
27 or business location that will be primarily used in making retail sales
28 to customers who personally visit such facilities. A business entity
29 that is engaged in offering professional services licensed by the state or
30 by the courts of this state is not eligible to participate in the
31 economic transformation and facility redevelopment program. In addition, a
32 business entity that is or will be principally operated as a real
33 estate holding company or landlord for retail businesses or entities
34 offering professional services licensed by the state or by the courts of
35 this state shall not be eligible to participate in the economic
36 transformation and facility redevelopment program. Provided however that
37 the commissioner may determine that such a business entity described in
38 the preceding three sentences may be eligible to participate at the site
39 of a closed facility if it is pursuant to an adaptive reuse plan for
40 a substantial portion of such facility.
41 3. Additional eligibility criteria may be developed pursuant to
42 regulations promulgated by the commissioner. The additional
43 eligibility criteria may include, but not be limited to, alignment with any
44 adaptive reuse plan for a closed facility developed by the department.
45 4. A business entity must continue to satisfy the employment
46 requirements in subdivision one of this section in each year in which it
47 claims the economic transformation and facility redevelopment tax
48 credits. Prior to claiming the economic transformation and facility
49 redevelopment tax credits in the final year of its five year benefit period, a
50 business entity must demonstrate to the commissioner that it has created
51 the jobs and made the qualified investments necessary to meet a benefit-
52 cost ratio of at least ten to one.
53 § 402. Application and approval process. 1. A business entity
54 must submit a completed application as prescribed by the commissioner by
55 the

55 later of (a) the date that is three years after the date of the
closure
56 of the closed facility located in the economic transformation area
in

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1 which the business entity would operate or (b) January first, two
thou-
2 sand fifteen.

3 2. As part of such application, each business entity must:
4 (a) Agree to allow the department of taxation and finance to share
its
5 tax information with the department. However, any information shared
as
6 a result of this agreement shall not be available for disclosure
or
7 inspection under the state freedom of information law.

8 (b) Agree to allow the department of labor to share its tax
and
9 employer information with the department. However, any
information

10 shared as a result of this agreement shall not be available for
disclo-
11 sure or inspection under the state freedom of information law.

12 (c) Agree to not participate in the excelsior jobs program, the
New
13 York state empire zones program, or claim any tax credits under
the
14 brownfield cleanup program if admitted into the economic
transformation

15 and facility redevelopment program with regard to the facility
(or
16 facilities) located in the economic transformation area.

17 (d) Provide the following information to the department upon
request:

18 (i) a plan outlining the schedule for meeting the job and
investment
19 requirements set forth in section four hundred one of this
article,

20 including details on job titles and expected salaries;

21 (ii) the prior three years of federal and state income or
franchise

22 tax returns, unemployment insurance quarterly returns, real property
tax
23 bills and audited financial statements;

24 (iii) the amount and description of projected qualified
investments

25 for which it plans to claim the economic transformation and
facility

26 redevelopment investment tax credit;

27 (iv) the employer identification numbers or social security
numbers

28 for all related persons to the applicant, including those of any
members

29 of a limited liability company or partners in a partnership.

30 (e) Provide a clear and detailed presentation of all related
persons
31 to the applicant to assure the department that jobs are not being
shift-
32 ed within the state.
33 (f) Certify, under penalty of perjury, that it is in
substantial
34 compliance with all environmental, worker protection, and local,
state,
35 and federal tax laws.
36 (g) Agree, to the extent practicable, to consider for
employment
37 persons displaced by a facility closure.
38 3. After reviewing a business entity's completed application
and
39 determining that the business entity satisfies the requirements
in
40 subdivision four of section four hundred of this article and will
meet
41 eligibility requirements set forth in section four hundred one of
this
42 article, the department may, at the discretion of the
commissioner,
43 admit the applicant into the program and provide the applicant
with a
44 certificate of eligibility. If a participant does not start
construction
45 on or acquire a qualified investment or create at least one net new
job
46 within one year of the issuance of its certificate of eligibility,
the
47 participant will not be eligible for any of the economic
transformation
48 and facility redevelopment program tax credits.
49 4. A participant may claim tax credits pursuant to section thirty-
five
50 of the tax law commencing in the first taxable year in which the
partic-
51 ipant creates five net new jobs. A participant may claim such
benefits
52 for the next four consecutive taxable years, provided that the
partic-
53 ipant demonstrates to the commissioner of taxation and finance that
it
54 continues to maintain five net new jobs. However, in no event may
that
55 benefit period start later than two years after the certificate
of
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1 eligibility is issued. The participant may also be eligible for
the
2 economic transformation and facility redevelopment sales tax refund.
3 § 403. Powers and duties of the commissioner. 1. The
commissioner

4 shall promulgate regulations establishing an application process
and
5 eligibility criteria set forth in section four hundred one of this
arti-
6 cle which, notwithstanding any provisions to the contrary in the
state
7 administrative procedure act, may be adopted on an emergency basis.

8 2. When considering an application, the commissioner shall
consider
9 factors including, but not limited to, the overall cost and
effective-
10 ness of the project, and whether the project is consistent with
the
11 intent of the program.

12 3. The commissioner shall, in consultation with the department
of
13 taxation and finance, develop a certificate of eligibility that shall
be
14 issued by the commissioner to participants. Participants must include
a
15 copy of the certificate of eligibility with their tax return to
receive
16 any tax benefits under section thirty-five of the tax law.

Participants
17 must also include a copy of the certificate of eligibility with
their
18 application for the real property tax exemption authorized by
section
19 four hundred eighty-five-p of the real property tax law, if
such
20 exemption is available where the property is located.

21 § 404. Reporting. The commissioner shall prepare on a quarterly
basis
22 a program report for posting on the department's website. The
first
23 report will be due June thirtieth, two thousand twelve, and every
three
24 months thereafter. Such report shall include, but not be limited to,
the
25 following: number of applicants; number of participants approved;
names
26 of participants; total amount of projected benefits certified by type
of
27 benefit; total number of projected new jobs to be created; number
of
28 projected net new jobs created per participant; aggregate projected
new
29 investment in the state; projected new investment per participant;
and
30 such other information as the commissioner determines.

31 § 3. The tax law is amended by adding a new section 35 to read
as
32 follows:

33 § 35. Economic transformation and facility redevelopment program
tax
34 credit. (a) General. (1) A taxpayer which is a participant or the
owner

35 of a participant in the economic transformation and facility
redevelop-
36 ment program under article eighteen of the economic development law
that
37 is subject to tax under section one hundred eighty-five of article
nine,
38 or article nine-A, twenty-two, thirty-two or thirty-three of this
chap-
39 ter shall be allowed the sum of following components against such
tax,
40 pursuant to the provisions referenced in subdivision (f) of
this
41 section.

42 (A) the economic transformation and facility redevelopment
program
43 jobs tax credit component;
44 (B) the economic transformation and facility redevelopment
program
45 investment tax credit component;
46 (C) the economic transformation and facility redevelopment program
job
47 training credit component; and
48 (D) the economic transformation and facility redevelopment
program
49 real property tax credit component.

50 (2) A taxpayer which is a participant in the economic
transformation
51 and facility redevelopment program under article eighteen of the
econom-
52 ic development law, or such participant's contractor, shall be
allowed a
53 sales tax refund as provided in subdivision (f) of section one
thousand
54 one hundred nineteen of this chapter.

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1 (3) To be eligible for the economic transformation and facility
rede-
2 velopment program tax credit, the taxpayer must meet all the
following
3 requirements.

4 (A) The taxpayer must be a participant or the owner of a
participant
5 in the economic transformation and facility development program.
The
6 commissioner of economic development must have issued a certificate
of
7 eligibility pursuant to section four hundred two of the economic
devel-
8 opment law to the taxpayer or to an entity in which the taxpayer is
an
9 owner. A copy of the certificate shall be attached to the
taxpayer's
10 report or return.

11 (B) The taxpayer or the entity in which the taxpayer is an owner
must

12 be a qualified new business as defined in subdivision (e) of
13 this
14 section.

15 (C) The taxpayer or the entity in which the taxpayer is an owner
16 must
17 create and maintain at least five net new jobs in the economic
18 transfor-
19 mation area.

20 (4) The benefit period for the tax credits under articles
21 nine,
22 nine-A, twenty-two, thirty-two and thirty-three of this chapter is
23 five
24 consecutive taxable years, beginning with the first taxable year
25 in
26 that
27 benefit period start later than two years after the certificate
28 of
29 eligibility is issued. If, in any year of the benefit period,
30 the
31 taxpayer fails to maintain the required level of five net new
32 jobs
33 (measured quarterly), the taxpayer will not be allowed a credit for
34 that
35 year. Such failure to be allowed a credit will not extend the
36 taxpayer's
37 benefit period.

38 (b) Election of credit. No cost or expense paid or incurred by
39 the
40 taxpayer or the entity in which the taxpayer is an owner that is
41 the
42 basis for any of the above named credits shall be the basis for
43 any
44 other tax credit under this chapter. If a taxpayer elects to claim
45 an
46 economic transformation and facility redevelopment program tax
47 credit,
48 the election is irrevocable.

49 (c) Information sharing. (1) Notwithstanding any provision of
50 this
51 chapter, employees and officers of the department of economic
52 develop-
53 ment and the department shall be allowed and are directed to share
54 and
55 exchange:

56 (A) information derived from tax returns or reports that is
57 relevant
58 to a taxpayer's eligibility to participate in the economic
59 transforma-
60 tion and facility redevelopment program;

61 (B) information regarding the credits applied for, allowed, or
62 claimed
63 pursuant to this section and taxpayers who are applying for the
64 credits
65 or who are claiming the credits; and

66 (C) information contained in or derived from credit claim
67 forms

44 submitted to the department and applications for admission into
the
45 economic transformation and facility redevelopment program.
46 (2) Other than the information required to be contained in the
report
47 issued pursuant to subdivision (d) 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 (d) Economic transformation and facility redevelopment program
tax
52 credits report. (1) The commissioner must publish an economic
transfor-
53 mation and facility redevelopment program tax credits report annually
by
54 July thirty-first. The first report shall be due July thirty-first,
two
55 thousand thirteen.
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1 (2) The credits report shall contain the following information
about
2 the economic transformation program and facility redevelopment tax
cred-
3 its claimed under this chapter during the previous calendar year:
4 (A) 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 New York subchapter S corporation, the name of each limited
liabil-
8 ity company, partnership or New York subchapter S corporation
earning
9 any of the credit must be included in the report instead of
information
10 about the taxpayer claiming the credit; and
11 (B) the amount of each credit earned by each taxpayer; provided
howev-
12 er, if the taxpayer claims a credit because the taxpayer is a member
of
13 a limited liability company, a partner in a partnership or a
shareholder
14 in a New York subchapter S corporation, the amount of credit earned
by
15 each entity must be included in the report instead of information
about
16 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 economic transformation
and

19 facility redevelopment program tax credits that the commissioner
deems
20 to be useful in evaluating the use of the credits. The
information
21 included in the credit report will be based on the information
filed
22 with the department during the previous calendar year, to the
extent
23 that it is practicable to use that information.
24 (e) Definitions. (1) The terms "participant", "net new jobs",
"econom-
25 ic transformation area", "related person", "certificate of
eligibility",
26 "benefit-cost ratio", and "qualified investment" shall have the
same
27 meaning as those terms have in section four hundred of the
economic
28 development law.
29 (2) The term "qualified new business" means a business entity
that
30 satisfies all of the following tests:
31 (A) the business entity must not be currently operating or
located
32 within the economic transformation area in which it is applying
for
33 certification under article eighteen of the economic development law;
34 (B) the business entity must not be moving existing jobs into
the
35 economic transformation area in which it is applying for
certification
36 under article eighteen of the economic development law from another
area
37 of the state;
38 (C) the business entity must not be substantially similar in
ownership
39 and operation to another taxpayer taxable or previously taxable
under
40 section one hundred eighty-three, one hundred eighty-four or one
hundred
41 eighty-five of article nine, former section one hundred eighty-six
of
42 this chapter or article nine-A, twenty-two, thirty-two or thirty-
three
43 of this chapter or the income or losses of which is or was
includable
44 under article twenty-two of this chapter;
45 (D) the business entity must not have caused individuals to
transfer
46 from existing employment in New York with another business entity
with
47 similar ownership to similar employment with the business entity;
48 (E) the business entity must not have acquired, purchased, leased,
or
49 had transferred to it real property located in the economic
transforma-
50 tion area in which it is applying for certification if that real
proper-

51 ty was previously owned by an entity with similar ownership,
regardless
52 of form of incorporation or organization; and
53 (F) the business entity must not be substantially similar in
operation
54 to a business entity from which it has acquired real or
tangible
55 personal property that is located in the economic transformation area
in
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1 which it is applying for certification under article eighteen of
the
2 economic development law.

3 (3) The term "entity in which the taxpayer is an owner" shall
mean a
4 limited liability company in which the taxpayer is a member, a
partner-
5 ship in which the taxpayer is a partner and a New York
subchapter S

6 corporation in which the taxpayer is a shareholder.
7 (f) Cross-references. For application of the credits provided for
in

8 this section, see the following provisions of this chapter:

- 9 (1) section 185: section 187-r
10 (2) article 9-A: section 210(43).
11 (3) article 22: section 606 (ss).
12 (4) article 32: section 1456(x).
13 (5) article 33: section 1511 (aa).
14 (g) Economic transformation and facility redevelopment program

jobs
15 tax credit. A taxpayer which meets the requirements in this
section
16 shall be eligible to claim a credit for each net new job that
the
17 taxpayer creates in the economic transformation area with respect to
the
18 project for which the certificate of eligibility is issued. The
amount
19 of such credit per job shall be equal to the product of the gross
wages
20 paid and 6.85 percent.

21 (h) Economic transformation and facility redevelopment program
invest-
22 ment tax credit. (1) A taxpayer which meets the requirements in
this
23 section shall be eligible to claim a credit on qualified
investments
24 with respect to the project for which the certificate of eligibility
is
25 issued. The credit shall be equal to ten percent of the cost or
other
26 basis for federal income tax purposes of the qualified investment at
a
27 closed facility. The total amount of investment tax credit allowed
for

28 all eligible participants under this subdivision for qualified
invest-
29 ments located at each closed facility shall not exceed eight
million
30 dollars. The credit shall be equal to six percent of the cost or
other
31 basis for federal income tax purposes for all other qualified
invest-
32 ments, but the credit allowed to a taxpayer may not exceed four
million
33 dollars.
34 (2) Costs incurred prior to the date the certificate of eligibility
is
35 issued are not eligible to be included in the calculation of the
credit.
36 A taxpayer which is a participant in the economic transformation
and
37 redevelopment program or is an owner of an entity that is a
participant
38 is not eligible for any other investment tax credit provided under
this
39 chapter.
40 (3) If the taxpayer is a partner in a partnership, member of a
limited
41 liability company or shareholder of a New York S corporation, then
the
42 four million dollar limit imposed above by the preceding sentences
shall
43 be applied at the entity level, so that the aggregate credit allowed
to
44 all the partners, members or shareholders of each such entity in
the
45 taxable year does not exceed the four million dollar
limitation.
46 Further, in order to properly administer the limitation of
investment
47 tax credit at a closed facility, the department may disclose
information
48 about the calculation and the amounts of the credits claimed under
this
49 subdivision for qualified investments at a particular closed facility
to
50 other taxpayers claiming investment tax credits under this
subdivision
51 at that same closed facility.
52 (i) Economic transformation and facility redevelopment program
train-
53 ing tax credit. (1) A taxpayer which meets the requirements of
this
54 section shall be allowed a credit for qualified training
expenditures
55 paid by the taxpayer with respect to the project for which the
certif-
56 icate of eligibility is issued. The amount of the credit shall be
fifty

1 percent of the qualified training expenses paid during the taxable
year,
2 subject to a limitation of no more than four thousand dollars
per
3 employee per year for such training expenses. This credit applies
only
4 to qualified training provided to employees who were hired after
they
5 lost their jobs at a closed facility as a result of the closure of
that
6 facility as described in subdivision eleven of section four hundred
of
7 the economic development law.

8 (2) Qualified training shall include a course or courses taken
and
9 satisfactorily completed by an employee of the taxpayer at an
accred-
10 ited, degree granting, post-secondary college or university in New
York
11 state that (A) directly relates to the duties that the employee
performs
12 for the taxpayer within the economic transformation area; and (B)
is
13 intended to upgrade, retrain or improve the productivity or
theoretical
14 awareness of the employee. Such course or courses shall not
include
15 classes in the disciplines of management, accounting or the law or
any
16 class designed to fulfill the discipline specific requirements
of a
17 degree program at the associate, baccalaureate, graduate or
professional
18 level of these disciplines. Satisfactory completion of a course
or
19 courses shall mean the earning and granting of credit or
equivalent
20 unit, with the attainment of a grade of "B" or higher in a
graduate
21 level course or courses, a grade of "C" or higher in an
undergraduate
22 level course or courses, or a similar measure of competency for a
course
23 that is not measured according to a standard grade formula.

24 (3) Qualified training expenditures shall include expenses for
tuition
25 and mandatory fees, software required by the institution, fees for
text-
26 books or other literature required by the institution offering
the
27 course or courses, minus applicable scholarships and tuition or
fee
28 waivers not granted by the taxpayer or any related person, that are
paid
29 or reimbursed by the taxpayer. Qualified training expenditures do
not

30 include room and board, computer hardware or software not
specifically
31 assigned for such course or courses, late-charges, fines or
membership
32 dues and similar expenses. Such qualified training expenditures
shall
33 not be eligible for the credit provided by this section unless
the
34 employee for whom the expenditures are disbursed is
continuously
35 employed by the taxpayer in a full-time, full-year position
primarily
36 located at a site in an economic transformation area during the
period
37 of such coursework and lasting through at least one hundred eighty
days
38 after the satisfactory completion of the qualifying course-work.
Quali-
39 fied training expenditures shall not include expenses for in-house
or
40 shared training outside of a New York state higher education
institution
41 or the use of consultants outside of credit granting courses,
whether
42 such consultants function inside of such higher education institution
or
43 not.
44 (j) Economic transformation and facility redevelopment program
real
45 property tax credit. (1) A taxpayer which meets the requirements of
this
46 section shall be allowed a credit measured by the real property taxes
on
47 the real property located in the economic transformation area
with
48 respect to the project for which the certificate of eligibility
is
49 issued. In the first taxable year that the taxpayer may claim this
cred-
50 it, the credit shall be equal to twenty-five percent of the real
proper-
51 ty taxes assessed and paid during that year by the participant on
the
52 real property located in the economic transformation area outside of
the
53 closed facility. If the real property is located entirely within
the
54 grounds of a closed facility, the credit in the first year of the
bene-
55 fit period shall be equal to fifty percent of the real property
taxes
56 assessed and paid by the participant during that year on that
property.

1 In the following years of the benefit period, the percentage
decreases
2 by five percentage points each year for real property located in
the
3 economic transformation area outside of the closed facility, and
ten
4 percentage points for real property located at the closed facility.
5 (2) (A) For purposes of this credit, "real property taxes"
means a
6 charge imposed upon real property by or on behalf of a county,
city,
7 town, village or school district for municipal or school
district
8 purposes, provided that the charge is levied for the general
public
9 welfare by the proper taxing authorities at a like rate against
all
10 property in the territory over which such authorities have
jurisdiction,
11 and provided that where taxes are levied pursuant to article eighteen
or
12 article nineteen of the real property tax law, the property must
have
13 been taxed at the rate determined for the class in which it
is
14 contained, as provided by such article eighteen or nineteen,
whichever
15 is applicable.
16 (B) The term "real property taxes" does not include a charge for
local
17 benefits, including any portion of that charge that is properly
allo-
18 cated to the costs attributable to maintenance or interest, when (i)
the
19 property subject to the charge is limited to the property that
benefits
20 from the charge, or (ii) the amount of the charge is determined by
the
21 benefit to the property assessed, or (iii) the improvement for which
the
22 charge is assessed tends to increase the property value.
23 (C) The term "real property taxes" includes payments in lieu of
taxes
24 made by the participant which is the beneficial owner of the real
prop-
25 erty to the state, a municipal corporation or a public benefit
corpo-
26 ration pursuant to a written agreement entered into between the
partic-
27 ipant and the state, municipal corporation, or public
benefit
28 corporation. Provided, however, a payment in lieu of taxes made by
the
29 participant pursuant to a written agreement shall not constitute
real
30 property taxes in any taxable year to the extent that such
payment

31 exceeds the product of (i) the basis for federal income tax purposes
of
32 the real property located in the economic transformation area
and
33 subject to that agreement, calculated without regard to depreciation,
on
34 the last day of the taxable year, and (ii) the estimated effective
full
35 value tax rate within the county in which such property is located,
as
36 most recently calculated by the commissioner. The commissioner
shall
37 annually calculate estimated effective full value tax rates within
each
38 county for this purpose based upon the most current information
avail-
39 able to him or her in relation to county, city, town, village and
school
40 district taxes.

41 (k) Recapture of credits. If the participant at the end of its
benefit
42 period has not created sufficient net new jobs and made sufficient
qual-
43 ified investments to achieve a benefit-cost ratio of at least ten
to
44 one, the taxpayer shall be required to add back as tax in the last
year
45 of its benefit period the portion of the economic transformation
and
46 facility redevelopment tax credits claimed in the years of its
benefit
47 period necessary to achieve a cost benefit ratio of ten to one.

48 § 4. The tax law is amended by adding a new section 187-r to read
as
49 follows:

50 § 187-r. Economic transformation and facility redevelopment tax
cred-
51 it. (a) Allowance of credit. A taxpayer shall be allowed a credit,
to
52 be computed as provided in section thirty-five of this chapter,
against
53 the tax imposed by section one hundred eighty-five of this article.

54 (b) Application of credit. The credit allowed under this
subdivision
55 for any taxable year may not reduce the tax due for such year to
less
56 than the minimum tax prescribed in subdivision two of section
one

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1 hundred eighty-five of this article. However, if the amount of
credit
2 allowed under this section for any taxable year reduces the tax to
such
3 amount, any amount of credit thus not deductible in such taxable
year

4 will be treated as an overpayment of tax to be credited or refunded
in
5 accordance with the provisions of section one thousand eighty-six
of
6 this chapter. Provided, however, the provisions of subsection (c)
of
7 section one thousand eighty-eight of this chapter notwithstanding,
no
8 interest will be paid thereon.

9 § 5. Section 210 of the tax law is amended by adding a new
subdivision

10 43 to read as follows:

11 43. Economic transformation and facility redevelopment program
tax
12 credit. (a) Allowance of credit. A taxpayer shall be allowed a
credit,
13 to be computed as provided in section thirty-five of this
chapter,
14 against the tax imposed by this article.

15 (b) Application of credit. The credit allowed under this
subdivision
16 for any taxable year may not reduce the tax due for such year to
less
17 than the amount prescribed in paragraph (d) of subdivision one of
this
18 section. However, if the amount of credit allowed under this
subdivi-
19 sion for any taxable year reduces the tax to such amount, any amount
of
20 credit thus not deductible in such taxable year will be treated as
an
21 overpayment of tax to be credited or refunded in accordance with
the
22 provisions of section one thousand eighty-six of this chapter.
Provided,
23 however, the provisions of subsection (c) of section one thousand
eight-
24 y-eight of this chapter notwithstanding, no interest will be paid
there-
25 on.

26 § 6. Subparagraph (B) of paragraph 1 of subsection (i) of section
606
27 of the tax law is amended by adding a new clause (xxxii) to read
as

28 follows:

29 <u>(xxxii) Economic transformation</u>	<u>Amount of credit under</u>
30 <u>and facility redevelopment credit</u>	<u>forty-three of section 210 or</u>
31	<u>subsection (x) of section</u>
32	<u>hundred fifty-six</u>

33 § 7. Section 606 of the tax law is amended by adding a new
subdivision

34 (ss) to read as follows:

35 (ss) Economic transformation and facility redevelopment program
tax

36 credit. (1) Allowance of credit. A taxpayer shall be allowed a
37 credit,
37 to the extent allowed under section thirty-five of this chapter,
38 against
38 the tax imposed by this article.
39 (2) Application of credit. If the amount of the credit allowed
39 under
40 this subsection for any taxable year exceeds the taxpayer's tax for
40 such
41 year, the excess will be treated as an overpayment of tax to be
41 credited
42 or refunded in accordance with the provisions of section six
42 hundred
43 eighty-six of this article, provided, however, that no interest will
43 be
44 paid thereon.

45 § 8. Section 1456 of the tax law is amended by adding a new
subsection

46 (x) to read as follows:

47 (x) Economic transformation and facility redevelopment program
47 tax

48 credit. (1) Allowance of credit. A taxpayer shall be allowed a
48 credit,
49 to be computed as provided in section thirty-five of this
49 chapter,
50 against the tax imposed by this article.

51 (2) The credit allowed under this subsection for any taxable year
51 will
52 not reduce the tax due for such year to less than the minimum tax
52 fixed
53 by paragraph three of subsection (b) of section fourteen hundred
53 fifty-
54 five of this article. However, if the amount of credit allowed
54 under
55 this subsection for any taxable year reduces the tax to such amount,
55 any
56 amount of credit thus not deductible in such taxable year will be
56 treat-

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1 ed as an overpayment of tax to be credited or refunded in
1 accordance
2 with the provisions of section one thousand eighty-six of this
2 chapter.
3 Provided, however, the provisions of subsection (c) of section one
3 thou-
4 sand eighty-eight of this chapter notwithstanding, no interest will
4 be
5 paid thereon.

6 § 9. Section 1511 of the tax law is amended by adding a new
subdivi-

7 sion (aa) to read as follows:

8 (aa) Economic transformation and facility redevelopment program
8 tax

9 credit. (1) Allowance of credit. A taxpayer will be allowed a credit,
9 to

10 be computed as provided in section thirty-five of this chapter,
against
11 the taxes imposed by this article.
12 (2) Application of credit. The credit allowed under this
subdivision
13 for any taxable year will not reduce the tax due for such year to
less
14 than the minimum tax fixed by this article. However, if the amount
of
15 credit allowed under this subdivision for any taxable year reduces
the
16 tax to such amount, any amount of credit thus not deductible in
such
17 taxable year will be treated as an overpayment of tax to be credited
or
18 refunded in accordance with the provisions of section one
thousand
19 eighty-six of this chapter. Provided, however, the provisions
of
20 subsection (c) of section one thousand eighty-eight of this
chapter
21 notwithstanding, no interest will be paid thereon.
22 § 10. Section 1119 of the tax law is amended by adding a new
subdivi-
23 sion (f) to read as follows:
24 (f) (1) Subject to the conditions and limitations provided for in
this
25 section, a refund will be allowed for tax paid pursuant to
subdivision
26 (a) of section eleven hundred five, or section eleven hundred ten
of
27 this article, on the purchase or use of tangible personal property
sold
28 to a participant who has received a certificate of eligibility in
the
29 economic transformation and facility redevelopment program;
provided
30 that such tangible personal property has been used in
constructing,
31 expanding or rehabilitating industrial or commercial real
property
32 located in an area designated as an economic transformation area
pursu-
33 ant to article eighteen of the economic development law, but only to
the
34 extent that such tangible personal property becomes an integral
compo-
35 nent part of such real property. Such tangible personal property must
be
36 purchased, or contracted to be purchased, after the participant
receives
37 its certificate of eligibility and before the issuance of a
certificate
38 of occupancy and it must be used in a manner consistent with the
partic-
39 ipant's application for such constructed, expanded, or
rehabilitated

40 real property.
41 (2) Subject to the conditions and limitations provided for in
this
42 section, a refund will be allowed for taxes imposed on receipts from
the
43 retail sale of, and consideration given or contracted to be given
for,
44 or for the use of, tangible personal property sold to a
contractor,
45 subcontractor or repairman for use in (A) erecting a structure or
build-
46 ing of a participant who has received a certificate of eligibility,
or
47 (B) adding to, altering or improving real property, property or land
of
48 such a participant, as the terms real property, property or land
are
49 defined in the real property tax law; provided, however, no refund
will
50 be allowed under this paragraph unless such tangible personal
property
51 has become an integral component part of such structure, building,
real
52 property, property or land located within an economic
transformation
53 area as defined by article eighteen of the economic development law
in,
54 and with respect to which such participant has been issued a
certificate
55 of eligibility pursuant to such article eighteen and only to the
extent
56 that such property is used in a manner consistent with the
participant's

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1 application. Such tangible personal property must be in the
contractor's
2 inventory on or after the day the participant receives its
certificate
3 of eligibility, or be purchased or contracted to be purchased after
the
4 participant receives its certificate of eligibility, but such
property
5 must meet the conditions of the preceding sentence and be used
before
6 the issuance of a certificate of occupancy for such
constructed,
7 expanded, or rehabilitated real property.

8 (3) Notwithstanding any other provision of law, the refund
provided
9 for in this subdivision shall not apply to the taxes imposed by
section
10 eleven hundred seven or eleven hundred nine of this article or to
any
11 tax imposed pursuant to the authority of article twenty-nine of
this

12 chapter.
13 (4) Notwithstanding any other provision of law, where the tax on
the
14 sale or use of such tangible personal property has been paid to
the
15 vendor, to qualify for such refund, such tangible personal property
must
16 be incorporated into real property and used as required in
paragraphs
17 one and two of this subdivision within three years after the date
such
18 tax was payable to the commissioner by the vendor pursuant to
section
19 eleven hundred thirty-seven of this article. Where the tax on the
sale
20 or use of such tangible personal property was paid by the applicant
for
21 the refund directly to the commissioner, to qualify for such
refund,
22 such tangible personal property must be incorporated into real
property
23 and used in the manner described in paragraphs one and two of
this
24 subdivision within three years after the date such tax was payable
to
25 the commissioner by such applicant pursuant to this article. An
applica-
26 tion for a refund pursuant to this section must be filed with
the
27 commissioner within the time provided by subdivision (a) of
section
28 eleven hundred thirty-nine of this article. Such application shall be
in
29 such form as the commissioner may prescribe. This application will
be
30 the only means of applying for the refund allowed by this section;
the
31 applicant may not take this refund in any other manner, including
the
32 taking of a credit on any return due pursuant to section eleven
hundred
33 thirty-six of this article. A taxpayer may not apply for a refund
under
34 this subdivision more frequently than once a sales tax quarterly
period
35 as described in subdivision (b) of section eleven hundred thirty-six
of
36 this article.

37 (5) The terms "participant", "economic transformation area",
and
38 "certificate of eligibility" shall have the same meaning as those
terms
39 have in section four hundred of the economic development law.

40 § 11. The real property tax law is amended by adding a new

section

41 485-p to read as follows:

42 § 485-p. Economic transformation area exemption. 1. (a) Real
property
43 constructed, altered, installed or improved in an economic
transforma-
44 tion area as defined in subdivision ten of section four hundred of
the
45 economic development law which is used for business, commercial
or
46 industrial purposes and which is owned by a business entity that
has
47 been issued a certificate of eligibility pursuant to subdivision
three
48 of section four hundred two of the economic development law shall
be
49 exempt from taxation and special ad valorem levies by any
municipal
50 corporation in which located, for the period and to the extent
herein
51 provided, provided that the governing board of such municipal
corpo-
52 ration, after public hearing, adopts a local law, ordinance or
resol-
53 ution providing therefore. Such local law, ordinance or resolution
must
54 be adopted within three years of the date of the closure of a
closed
55 facility (as that term is defined in subdivision eleven of section
four

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1 hundred of the economic development law) located in the economic
trans-
2 formation area.

3 (b) The exemption so authorized shall be for a term of five
years.

4 The amount of such exemption shall be as follows:

5 (i) If the construction, alteration, installation or
improvement

6 occurs on or at the site of the closed facility in the economic
trans-

7 formation area, then the exemption in the first year of its term
shall

8 be fifty percent of the "base amount," determined pursuant to
subdivi-

9 sion two of this section. The amount of the exemption in the
second,

10 third, fourth and fifth year of its term shall be forty percent,
thirty

11 percent, twenty percent and ten percent, respectively, of such
base

12 amount.

13 (ii) If the construction, alteration, installation or
improvement

14 occurs in the economic transformation area outside of the closed
facili-

15 ty, then the exemption in the first year of its term shall be
20 twenty-
16 five percent of the "base amount," determined pursuant to
subdivision
17 two of this section. The amount of the exemption in the second,
third,
18 fourth and fifth year of its term shall be twenty percent,
fifteen
19 percent, ten percent and five percent, respectively, of such
base
20 amount.

21 2. (a) The base amount of the exemption shall be the extent of
the
22 increase in assessed value attributable to such construction,
alter-
23 ation, installation or improvement as determined in the initial year
for
24 which application for exemption is made pursuant to this section.
The
25 base amount shall remain constant for the authorized term of
the
26 exemption, subject to the following:

27 (i) If there is subsequent construction, alteration, installation
or
28 improvement during the term of the exemption, the base amount shall
be
29 revised to include the increase in assessed value attributable to
such
30 construction, alteration, installation or improvement.

31 (ii) If a change in level of assessment of fifteen percent or more
is
32 certified for an assessment roll pursuant to the rules of the
commis-
33 sioner, the base amount shall be adjusted by such change in level
of
34 assessment. The exemption on that assessment roll shall thereupon
be
35 recomputed, notwithstanding the fact that the assessor receives
the
36 certification after the completion, verification and filing of the
final
37 assessment roll. In the event the assessor does not have custody of
the
38 roll when such certification is received, the assessor shall certify
the
39 recomputed exemption to the local officers having custody and control
of
40 the roll, and such local officers are hereby directed and authorized
to
41 enter the recomputed exemption certified by the assessor on the roll.

42 (b) No such exemption shall be granted unless the construction,
alter-
43 ation, installation or improvement commenced within one year of the
date
44 of the issuance of the certificate of eligibility to the property
owner.

45 (c) For purposes of this section the terms construction,
alteration,
46 installation and improvement shall not include ordinary maintenance
and
47 repairs.
48 (d) No such exemption shall be granted concurrently with or
subsequent
49 to any other real property tax exemption granted to the same
improve-
50 ments to real property, except, where during the period of such
previous
51 exemption, payments in lieu of taxes or other payments were made to
the
52 local government in an amount that would have been equal to or
greater
53 than the amount of real property taxes that would have been paid on
such
54 improvements had such property been granted an exemption pursuant
to
55 this section. In such case, an exemption shall be granted for a
number
56 of years equal to the five year exemption granted pursuant to
this

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A.

1 section less the number of years the property would have been
previously
2 exempt from real property taxes.
3 3. Such exemption shall be granted only upon application by the
owner
4 of such real property on a form prescribed by the commissioner.
The
5 original of such application shall be filed with the assessor of
the
6 assessing unit. Such original application shall be filed on or
before
7 the appropriate taxable status date of such assessing unit and no
later
8 than one year from the date of completion of such construction,
alter-
9 ation, installation or improvement.
10 4. If the assessor receives an application by the owner of the
real
11 property, he or she shall approve the application and such real
property
12 shall thereafter be exempt from taxation as herein provided
commencing
13 with the assessment roll prepared after the taxable status date
referred
14 to in subdivision three of this section. The assessed value of
any
15 exemption granted pursuant to this section shall be entered by
the
16 assessor on the assessment roll with the taxable property, with
the
17 amount of the exemption entered in a separate column.

18 § 12. This act shall take effect immediately and shall expire and
be
19 deemed repealed December 31, 2021.
20 § 2. Severability clause. If any clause, sentence, paragraph,
subdivi-
21 sion, section or part of this act shall be adjudged by any court
of
22 competent jurisdiction to be invalid, such judgment shall not
affect,
23 impair, or invalidate the remainder thereof, but shall be confined
in
24 its operation to the clause, sentence, paragraph, subdivision,
section
25 or part thereof directly involved in the controversy in which such
judg-
26 ment shall have been rendered. It is hereby declared to be the intent
of
27 the legislature that this act would have been enacted even if
such
28 invalid provisions had not been included herein.
29 § 3. This act shall take effect immediately provided, however,
that
30 the applicable effective date of Parts A through V of this act shall
be
31 as specifically set forth in the last section of such Parts.