

STATE OF NEW YORK

S. 57--B

A. 157--B

SENATE - ASSEMBLY

(Prefiled)

January 7, 2009

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

AN ACT to amend the education law, in relation to contracts for excellence, reporting requirements, electronic format materials, reimbursement of school districts, calculation of foundation aid base, foundation amount and local contribution, apportionment of school aid and of current year approved expenditures for debt service, deficit reduction assessment, building aid, Medicaid reimbursement, grants, maximum class size; to amend chapter 756 of the laws of 1992 relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to apportionment and reimbursement; to amend chapter 169 of the laws of 1994 relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets, chapter 82 of the laws of 1995, amending the education law and certain other laws relating to state aid to school districts and the appropriation of funds for the support of government, chapter 472 of the laws of 1998 amending the education law relating to the lease of school buses by school districts, in relation to school aid and extending the expiration of certain provisions of such chapters; to amend chapter 57 of the laws of 2008 amending the education law and other laws relating to special apportionment for salary expenses, in relation to education apportionment; in relation to school bus driver training; in relation to the support of public libraries; to provide special apportionment for salary expenses; to provide special apportionment for public

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

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pension expenses; in relation to suballocation of certain education department accruals; to amend chapter 57 of the laws of 2004, amending the labor law and other laws relating to implementation of the state fiscal plan for the 2004-2005 state fiscal year, in relation to extending certain provisions of such chapter; to amend the general municipal law, in relation to withdrawal of funds and examination of reserve funds; to amend the education law, in relation to federal subsidy payments that reduce the actual interest costs incurred by the issuer and providing for the repeal of certain provisions upon expiration thereof (Part A); Intentionally omitted (Part B); Intentionally omitted (Part C); Intentionally omitted (Part D); Intentionally omitted (Part E); to amend the education law, in relation to expanding the definition of income in tuition assistance program awards determinations (Part F); Intentionally omitted (Part G); Intentionally omitted (Part H); Intentionally omitted (Part I); to amend the education law and the state finance law, in relation to the establishment of a program to provide loans to students to finance the costs of post-secondary education; to amend the public authorities law, in relation to the issuance of bonds in connection therewith; to repeal sections 682, 683 and 684 of the education law relating thereto; and to repeal section 2405-a of the public authorities law relating to loans to students (Part J); Intentionally omitted (Part K); Intentionally omitted (Part L); to amend the tax law and the administrative code of the city of New York, in relation to reducing the state school tax credit on city personal income taxes; to repeal section 1306-b of the real property tax law and section 178 of the tax law relating to the Middle Class STAR rebate program; and to repeal section 171-q of the tax law relating to offsets taken from the basic STAR rebate amounts (Part M); Intentionally omitted (Part N); to amend the emergency tenant protection act of nineteen seventy-four, in relation to offices of the division of housing and community renewal (Part O); Intentionally omitted (Part P); to amend section 28 of part C of chapter 83 of the laws of 2002 amending the executive law and other laws relating to funding for children and family services, in relation to the extension of provisions on funding of child welfare services (Part Q); to amend chapter 81 of the laws of 1995 amending the vehicle and traffic law and other laws relating to the enforcement of support through the suspension of driving privileges, in relation to the effectiveness of such provisions (Part R); Intentionally omitted (Part S); Intentionally omitted (Part T); to amend the social services law, in relation to increasing the standards of monthly need for aged, blind and disabled persons (Part U); to amend the social services law and the tax law, in relation to wage reporting for purposes of determining eligibility for foster children (Part V); relating to the closing and downsizing of certain facilities to align their capacity with their facility and service needs, and providing for the repeal of such provisions (Part W); Intentionally omitted (Part X); to amend the social services law, in relation to amounts of public assistance (Part Y); to amend chapter 62 of the laws of 2003 amending the state finance law and other laws relating to authorizing and directing the state comptroller to loan money to certain funds and accounts, in relation to extending the statutory authorization and the rules governing contributions to the unemployment insurance interest assessment surcharge fund (Part Z); to amend the executive law, in relation to providing for assessment of civil fines and penalties in appropriate cases (Part AA); to amend the labor law, in relation to increasing

boiler inspection fees and asbestos licensing, certification and notification fees (Part BB); to amend the labor law, in relation to explosives; to amend the labor law and the general business law, in relation to misdemeanor penalties; and to amend the penal law, in relation to permits for fireworks displays (Part CC); to amend the general business law, in relation to establishing civil penalties for uncertified crane operation (Part DD); to amend the education law, in relation to establishing a memorial award for children and financial dependents of those deceased as a result of Continental Airlines Flight 3407 (Part EE); to amend the private housing finance law, in relation to the removal of funding limitations (Part FF); to amend the education law, in relation to the financing of the city university of New York; and to amend the education law, in relation to the powers and duties of trustees of the state university of New York (Part GG); to amend the education law, in relation to the capital costs of Medgar Evers college; and to repeal paragraph (ii) of subdivision E of section 6221 of such law relating thereto (Part HH); to amend chapter 420 of the laws of 2002 amending the education law relating to the profession of social work; and to amend chapter 676 of the laws of 2002 amending the education law relating to defining the practice of psychology, in relation to the professions of social work and mental health practitioners (Part II); relating to the continuation of the demonstration project established pursuant to part G of chapter 58 of the laws of 2006; and providing for the repeal of such provisions upon expiration thereof (Part JJ); requiring reporting and performance data for expenditures made to local social services districts for the flexible fund for family services (Part KK); to amend the tax law and the administrative code of the city of New York, in relation to the definition of presence in New York in determining a taxpayer's New York residency status (Part A-1); to amend the tax law, in relation to changing the tax classification of health maintenance organizations (Part B-1); to amend the tax law, in relation to limiting various underutilized tax credits (Part C-1); to amend the tax law, in relation to collection and offset agreements with the United States or other states (Part D-1); to amend the tax law, in relation to the treatment of overcapitalized captive insurance companies (Part E-1); to amend the tax law, in relation to requiring nonresidents to include as a source of income the gain or loss from the sale of a partnership, limited liability corporation, S corporation or a non-publicly traded C corporation with one hundred or fewer shareholders to the extent that the gain or loss includes gain or loss from real property located in New York (Part F-1); to amend the tax law, in relation to changing the percentage used to complete the mandatory first installment of franchise tax and the metropolitan commuter transportation district business tax surcharge under articles 9, 9-A, 32 and 33 (Part G-1); to amend the tax law, in relation to adding filing fees for partnerships (Part H-1); to amend the tax law, in relation to the tax on tobacco products (Part I-1); to amend the public housing law and the tax law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part J-1); to amend the tax law, in relation to reauthorizing the commissioner of taxation and finance to require the use of decals in certain instances (Part K-1); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of

wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part L-1); to amend the tax law, in relation to changing the rate of the prepaid sales tax on cigarettes (Part M-1); to amend the tax law, in relation to curtailing certain abusive sales and use tax avoidance schemes by narrowing the use tax non-resident exemption for certain items of tangible personal property and the sales tax exemption for commercial aircraft (Part N-1); to amend the tax law, in relation to making technical corrections regarding the operation of video lottery gaming and approving the construction or alteration of any facility housing video lottery gaming (Part O-1); to amend the tax law, in relation to expanding the definition of vendor for purposes of the sales and compensating use taxes (Part P-1); to amend the tax law, in relation to participation in more than one joint, multi-jurisdiction and out-of-state lottery (Part Q-1); to amend the tax law, in relation to the special tax on passenger car rentals under article 28-A of such law (Part R-1); to amend the general municipal law and the tax law, in relation to enacting reforms to the empire zones program; and to repeal certain provisions of such laws relating thereto (Part S-1); to amend the tax law, in relation to the fees for replacement highway use tax credentials (Part T-1); to amend the tax law, in relation to imposing state and local sales taxes on certain transportation services (Part U-1); to amend the tax law, in relation to imposing a penalty for failure to keep mandatory records, to provide records in auditable format or to provide access to mandatory records maintained electronically (Subpart A); to amend the tax law, in relation to the failure of a responsible person to collect and pay over withholding tax (Subpart B); to amend the tax law, in relation to providing expedited hearings relating to cancellations, revocations, or suspensions of certain credentials and to penalties imposed on persons who aid or assist in the filing of fraudulent tax documents (Subpart C); to amend the tax law, the environmental conservation law, the insurance law, the lien law, the mental hygiene law, the public health law, the social services law, the state finance law and the administrative code of the city of New York, in relation to decreasing the overpayment and increasing the underpayment rates of interest, changing the overpayment interest accrual date for sales and compensating use taxes and providing for an interest-free period for refunds or credits of sales and compensating use taxes (Subpart D); to amend the tax law, in relation to changing the last quarterly withholding filing date for employers (Subpart E); to amend the county law, in relation to authorizing district attorneys to appoint attorneys employed by the department of taxation and finance as special assistant district attorneys in tax cases (Subpart F); to amend the tax law, in relation to the annual information return providing the information about transactions with vendors (Subpart G); to amend the tax law, in relation to clarifying some technical aspects of the voluntary disclosure and compliance program (Subpart H); to amend the criminal procedure law, the penal law and the tax law, in relation to creating the offense of "tax fraud act"; to amend the tax law, in relation to simplifying and consolidating the provisions

describing the acts that constitute offenses under such law; and to repeal certain provisions of the tax law relating thereto (Subpart I); to amend the tax law, in relation to changing the last quarterly withholding filing date for employers; and to repeal certain provisions of such law relating thereto and to amend chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information, in relation to the effectiveness thereof (Subpart J) (Part V-1); to amend the tax law and the administrative code of the city of New York, in relation to limiting itemized deductions for certain taxpayers and determining the amount of estimated tax installments to be paid (Part W-1); to amend the tax law, in relation to taxes on beer and wine under article 18 of the tax law (Part X-1); to amend the tax law, in relation to the allocation of film production credits and requires annual refundable tax credit reporting; to amend chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, in relation to aggregate amounts of tax credits; and relating to quarterly reporting by the office of motion picture and television development (Part Y-1); and to amend the tax law, in relation to the personal income tax rates and benefit recapture (Part Z-1)

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

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

12 PART A

13 Section 1. Intentionally omitted.

14 § 2. Paragraph c of subdivision 1 of section 211-d of the education
15 law, as added by section 2 of part A of chapter 57 of the laws of 2008,
16 is amended to read as follows:

17 c. In a city school district located in a city of one million or more
18 inhabitants, a contract for excellence shall be prepared for the city
19 school district and each community district that meets ~~[the above]~~
20 criteria specified in this subdivision.

21 § 2-a. Subdivision 1 of section 211-d of the education law is amended
22 by adding a new paragraph e to read as follows:

23 e. Notwithstanding paragraphs a and b of this subdivision, a school
24 district that submitted a contract for excellence for the two thousand
25 eight--two thousand nine school year shall submit a contract for excel-
26 lence for the two thousand nine--two thousand ten school year in
27 conformity with the requirements of subparagraph (vi) of paragraph a of
28 subdivision two of this section unless all schools in the district are
29 identified as in good standing.

1 § 3. Paragraph a of subdivision 2 of section 211-d of the education
2 law is amended by adding a new subparagraph (vii) to read as follows:

3 (vii) Notwithstanding any other provision of this section to the
4 contrary, a school district that submitted a contract for excellence for
5 the two thousand seven--two thousand eight school year and the two thou-
6 sand eight--two thousand nine school year and is required to submit a
7 contract for excellence for the two thousand nine--two thousand ten
8 school year but did not fully expend all of its two thousand seven--two
9 thousand eight foundation aid subject to the contract for excellence
10 restrictions during the two thousand seven--two thousand eight school
11 year may re-allocate and expend such unexpended funds during the two
12 thousand eight--two thousand nine and two thousand nine--two thousand
13 ten school years for allowable contract for excellence programs and
14 activities as defined in subdivision three of this section in a manner
15 prescribed by the commissioner. For purposes of determining maintenance
16 of effort pursuant to subparagraph (vi) of this paragraph for the two
17 thousand eight--two thousand nine school year, funds expended pursuant
18 to this subparagraph shall be included in the total budgeted amount
19 approved by the commissioner in the district's contract for excellence
20 for the two thousand seven--two thousand eight school year; provided
21 that such amount shall not be counted more than once in determining
22 maintenance of effort for the two thousand nine--two thousand ten
23 school year or thereafter.

24 § 3-a. Paragraph b of subdivision 2 of section 211-d of the education
25 law is amended by adding a new subparagraph (iii) to read as follows:

26 (iii) A city school district in a city having a population of one
27 million or more inhabitants shall prepare a report to the commissioner
28 on the status of the implementation of its plan to reduce average class
29 sizes pursuant to subparagraph (ii) of this paragraph. Such report
30 shall identify all schools that received funds targeted at class size
31 reduction efforts pursuant to the requirements of this section and
32 provide the following information regarding such schools:

33 (A) the amount of contract for excellence funds received by each
34 school and the school year in which it received such funds;

35 (B) a detailed description of how contract for excellence funds
36 contributed to achieving class size reduction in each school that
37 received such funding including specific information on the number of
38 classrooms in each school that existed prior to receiving contract for
39 excellence funds and the number of new classrooms that were created in
40 each school for each year such funding was received, the number of
41 classroom teachers that existed in each school prior to receiving
42 contract for excellence funds and the number of new classroom teachers
43 in each school for each year such funding was received, the student to
44 teacher ratio in each school prior to receiving contract for excellence
45 funds and the student to teacher ratio in each school for each year such
46 funding was received;

47 (C) the actual student enrollment for the two thousand six--two thou-
48 sand seven school year, the actual student enrollment for the two thou-
49 sand seven--two thousand eight school year, the actual student enroll-
50 ment for the two thousand eight--two thousand nine school year, and the
51 projected student enrollment for the two thousand nine--two thousand ten
52 school year for each school by grade level;

53 (D) the actual average class sizes for the two thousand six--two thou-
54 sand seven school year, the actual average class sizes for the two thou-
55 sand seven--two thousand eight school year, the actual average class
56 sizes for the two thousand eight--two thousand nine school year, and the

1 projected average class sizes for the two thousand nine--two thousand
2 ten school year for each school by grade level; and

3 (E) the schools that have made insufficient progress toward achieving
4 the class size reduction goals outlined in the approved five year class
5 size reduction plan pursuant to subparagraph (ii) of this paragraph and
6 a detailed description of the actions that will be taken to reduce class
7 sizes in such schools.

8 Such report shall be submitted to the commissioner on or before Novem-
9 ber seventeenth, two thousand nine and shall be made available to the
10 public by such date.

11 § 4. Subdivision 1 of section 273-a of the education law, as amended
12 by section 4 of part B of chapter 57 of the laws of 2007, is amended to
13 read as follows:

14 1. State aid shall be provided for up to fifty percent of the total
15 project approved costs, excluding feasibility studies, plans or similar
16 activities, for projects for the acquisition, construction, renovation
17 or rehabilitation, including leasehold improvements, of buildings of
18 public libraries and library systems chartered by the regents of the
19 state of New York or established by act of the legislature subject to
20 the limitations provided in subdivision four of this section and upon
21 approval by the commissioner. ~~[For purposes of this subdivision, an~~
22 ~~amount of eight hundred thousand dollars shall be available for each~~
23 ~~calendar year]~~ Provided however that the state liability for aid paid
24 pursuant to this section shall be limited to funds appropriated for such
25 purpose. Aid shall be provided on approved expenses incurred during the
26 period commencing July first and ending June thirtieth for up to three
27 years, or until the project is completed, whichever occurs first. Fifty
28 percent of such aid shall be payable to each system or library upon
29 approval of the application. Forty percent of such aid shall be payable
30 in the next state fiscal year. The remaining ten percent shall be paya-
31 ble upon project completion.

32 § 4-a. Subdivision 12 of section 273 of the education law, as amended
33 by section 1 of part B of chapter 57 of the laws of 2008, is amended to
34 read as follows:

35 12. The commissioner is hereby authorized to expend in state fiscal
36 year two thousand six--two thousand seven three million dollars and in
37 state fiscal year two thousand seven--two thousand eight eight million
38 dollars and in state fiscal year two thousand eight--two thousand nine
39 seven million nine hundred forty thousand dollars and in state fiscal
40 year two thousand nine--two thousand ten eight million dollars subject
41 to an appropriation for formula grants to public library systems, refer-
42 ence and research library resources systems, and school library systems
43 operating under an approved plan of service. Such formula grants shall
44 be provided for the period commencing July first and ending on June
45 thirtieth next following. Such formula grants will be distributed in the
46 following manner:

47 a. Each public library system established pursuant to sections two
48 hundred fifty-five and two hundred seventy-two of this part and operat-
49 ing under a plan approved by the commissioner is entitled to receive
50 ~~[fifteen thousand dollars and an amount equal to four percent of the~~
51 ~~amount of state aid received by such system in two thousand six two~~
52 ~~thousand seven and thirty nine thousand dollars and an amount equal to~~
53 ~~ten and ninety four hundredths percent of the amount of state aid~~
54 ~~received by such system in two thousand seven two thousand eight and~~
55 ~~thirty eight thousand seven hundred eight dollars and an amount equal to~~
56 ~~ten and ninety four hundredths percent of the amount of state aid~~

1 ~~received by such system in two thousand eight--two thousand nine under~~
2 ~~paragraphs a, c, d, e and n of subdivision one of this section] thirty-~~
3 ~~nine thousand dollars and an amount equal to ten and ninety-four~~
4 ~~hundredths percent of the amount of state aid received for the current~~
5 ~~year by such system under paragraphs a, c, d, e and n of subdivision one~~
6 ~~of this section for the two thousand nine--two thousand ten state fiscal~~
7 ~~year;~~

8 b. Each reference and research library resources system established
9 pursuant to section two hundred seventy-two of this part and operating
10 under a plan approved by the commissioner is entitled to receive
11 ~~[fifteen thousand dollars and an amount equal to four percent of the~~
12 ~~amount of state aid received by such system in two thousand six two~~
13 ~~thousand seven and thirty nine thousand dollars and an amount equal to~~
14 ~~ten and ninety four hundredths percent of the amount of state aid~~
15 ~~received by such system in two thousand seven two thousand eight and~~
16 ~~thirty eight thousand seven hundred eight dollars and an amount equal to~~
17 ~~ten and ninety four hundredths percent of the amount of state aid~~
18 ~~received by such system in two thousand eight two thousand nine under~~
19 ~~paragraph a of subdivision four of this section] thirty-nine thousand~~
20 ~~dollars and an amount equal to ten and ninety-four hundredths percent of~~
21 ~~the amount of state aid received for the current year under paragraph a~~
22 ~~of subdivision four of this section for the two thousand nine--two thou-~~
23 ~~sand ten state fiscal year; and~~

24 c. Each school library system established pursuant to section two
25 hundred eighty-two of this part and operating under a plan approved by
26 the commissioner is entitled to receive ~~[fifteen thousand dollars and an~~
27 ~~amount equal to a four percent increase over the amount of state aid~~
28 ~~received by such system in two thousand six two thousand seven and~~
29 ~~thirty nine thousand dollars and an amount equal to ten and ninety four~~
30 ~~hundredths percent of the amount of state aid received by such system in~~
31 ~~two thousand seven two thousand eight and thirty eight thousand seven~~
32 ~~hundred eight dollars and an amount equal to ten and ninety four~~
33 ~~hundredths percent of the amount of state aid received by such system in~~
34 ~~two thousand eight two thousand nine under paragraphs a, b, c, d, e and~~
35 ~~f of subdivision one of section two hundred eighty four of this part]~~
36 ~~thirty-nine thousand dollars and an amount equal to ten and ninety-four~~
37 ~~hundredths percent of the amount of state aid received for the current~~
38 ~~year by such system under paragraphs a, b, c, d, e and f of subdivision~~
39 ~~one of section two hundred eighty-four of this part for the two thousand~~
40 ~~nine--two thousand ten state fiscal year.~~

41 § 5. Intentionally omitted.

42 § 6. Subdivision 2 of section 751 of the education law, as added by
43 chapter 53 of the laws of 1984, is amended to read as follows:

44 2. A software program, for the purposes of this article shall mean (a)
45 a computer program which a pupil is required to use as a learning aid in
46 a particular class in the school the pupil legally attends, or (b) for
47 expenses incurred after July first, two thousand nine, any content-based
48 instructional materials in an electronic format that are aligned with
49 state standards which are accessed or delivered through the internet
50 based on a subscription model. Such electronic format materials may
51 include a variety of media assets and learning tools, including video,
52 audio, images, teacher guides, and student access capabilities as such
53 terms are defined in the regulations of the commissioner.

54 § 7. Intentionally omitted.

55 § 8. Intentionally omitted.

56 § 9. Intentionally omitted.

1 § 10. Subparagraph 4 of paragraph d of subdivision 5 of section 3202
2 of the education law, as amended by section 3 of part A-1 of chapter 58
3 of the laws of 2006, is amended to read as follows:

4 (4) The education department shall reimburse the school district in
5 which such intermediate care facility is located for the full cost of
6 all ~~[nonfederally reimbursable]~~ services, which shall, notwithstanding
7 any inconsistent provision of law, include transportation services
8 provided pursuant to a contract authorized by this paragraph. Provided,
9 however, that notwithstanding any other law, rule or regulation to the
10 contrary, that no reimbursement shall be payable pursuant to this
11 subparagraph for due process costs incurred on or after July first, two
12 thousand nine. Such reimbursement shall be for the period from September
13 first through June thirtieth, and state reimbursement for July and
14 August programs shall be in accordance with subdivision one of section
15 forty-four hundred eight of this chapter. The provisions of subdivision
16 two of such section forty-four hundred eight shall apply to all July and
17 August programs provided pursuant to this section.

18 § 11. Intentionally omitted.

19 § 12. Paragraph (a) of subdivision 1 of section 2856 of the education
20 law, as amended by chapter 378 of the laws of 2007, is amended to read
21 as follows:

22 (a) The enrollment of students attending charter schools shall be
23 included in the enrollment, attendance, membership and, if applicable,
24 count of students with disabilities of the school district in which the
25 pupil resides. The charter school shall report all such data to the
26 school districts of residence in a timely manner. Each school district
27 shall report such enrollment, attendance and count of students with
28 disabilities to the department. The school district of residence shall
29 pay directly to the charter school for each student enrolled in the
30 charter school who resides in the school district the charter school
31 basic tuition, which shall be an amount equal to one hundred percent of
32 the amount calculated pursuant to paragraph f of subdivision one of
33 section thirty-six hundred two of this chapter for the school district
34 for the year prior to the base year increased by the percentage change
35 in the state total approved operating expense calculated pursuant to
36 paragraph t of subdivision one of section thirty-six hundred two of this
37 chapter from two years prior to the base year to the base year;
38 provided, however, that for the two thousand nine--two thousand ten
39 school year, the charter school basic tuition shall be the amount paya-
40 ble by such district as charter school basic tuition for the two thou-
41 sand eight--two thousand nine school year.

42 § 13. The opening paragraph, subparagraph 1 of paragraph a and para-
43 graphs b and b-1 of subdivision 4 of section 3602 of the education law,
44 as amended by section 14 of part B of chapter 57 of the laws of 2008,
45 are amended to read as follows:

46 In addition to any other apportionment pursuant to this chapter, a
47 school district, other than a special act school district as defined in
48 subdivision eight of section four thousand one of this chapter, shall be
49 eligible for total foundation aid equal to the product of total aidable
50 foundation pupil units multiplied by the district's selected foundation
51 aid, which shall be the greater of five hundred dollars (\$500) or foun-
52 dation formula aid, provided, however that for the two thousand seven--
53 two thousand eight through ~~[two thousand nine--two thousand ten]~~ two
54 thousand eight--two thousand nine and two thousand eleven--two thousand
55 twelve through two thousand twelve--two thousand thirteen school years,
56 no school district shall receive total foundation aid in excess of the

1 sum of the total foundation aid base for aid payable in the two thousand
2 seven--two thousand eight school year computed pursuant to subparagraph
3 (i) of paragraph j of subdivision one of this section, plus the phase-in
4 foundation increase computed pursuant to paragraph b of this subdivi-
5 sion, and provided further that total foundation aid shall not be less
6 than the product of the total foundation aid base computed pursuant to
7 paragraph j of subdivision one of this section and one hundred three
8 percent, nor more than the product of such total foundation aid base and
9 one hundred fifteen percent, and provided further that for the two thou-
10 sand nine--two thousand ten and two thousand ten--two thousand eleven
11 school years, each school district shall receive total foundation aid in
12 an amount equal to the amount apportioned to such school district for
13 the two thousand eight--two thousand nine school year pursuant to this
14 subdivision. Total aidable foundation pupil units shall be calculated
15 pursuant to paragraph g of subdivision two of this section. For the
16 purposes of calculating aid pursuant to this subdivision, aid for the
17 city school district of the city of New York shall be calculated on a
18 citywide basis.

19 (1) The foundation amount shall reflect the average per pupil cost of
20 general education instruction in successful school districts, as deter-
21 mined by a statistical analysis of the costs of special education and
22 general education in successful school districts, provided that the
23 foundation amount shall be adjusted annually to reflect the percentage
24 increase in the consumer price index as computed pursuant to section two
25 thousand twenty-two of this chapter, provided that for the two thousand
26 eight--two thousand nine school year, for the purpose of such adjust-
27 ment, the percentage increase in the consumer price index shall be
28 deemed to be two and nine-tenths percent (0.029), and provided further
29 that the foundation amount for the two thousand seven--two thousand
30 eight school year shall be five thousand two hundred fifty-eight
31 dollars, and provided further that for the two thousand seven--two thou-
32 sand eight through ~~[two thousand nine two thousand ten]~~ two thousand
33 twelve--two thousand thirteen school years, such foundation amount shall
34 be further adjusted by the phase-in foundation percent established
35 pursuant to paragraph b of this subdivision.

36 b. Phase-in foundation increase. (1) The phase-in foundation increase
37 shall equal the product of the phase-in foundation increase factor
38 multiplied by the greater of (i) the positive difference, if any, of (A)
39 the product of the total aidable foundation pupil units multiplied by
40 the district's selected foundation aid less (B) the total foundation aid
41 base for aid payable in the two thousand seven--two thousand eight
42 school year computed pursuant to subparagraph (i) of paragraph j of
43 subdivision one of this section or (ii) the product of the phase-in
44 due-minimum percent multiplied by the total foundation aid base for aid
45 payable in the two thousand seven--two thousand eight school year
46 computed pursuant to subparagraph (i) of paragraph j of subdivision one
47 of this section.

48 (2) For the two thousand seven--two thousand eight school year, the
49 phase-in foundation percent shall equal one hundred seven and sixty-
50 eight hundredths percent (1.0768), the phase-in foundation increase
51 factor shall equal twenty percent (0.20), and the phase-in due-minimum
52 percent shall equal twelve and fifty-five hundredths percent (0.1255);

53 for the two thousand eight--two thousand nine school year, the phase-
54 in foundation percent shall equal one hundred five and twenty-six
55 hundredths percent [~~4~~] (1.0526), the phase-in foundation increase factor
56 shall equal thirty-seven and one-half percent (0.375), and the phase-in

1 due-minimum percent shall equal twelve and fifty-five hundredths percent
2 (0.1255);

3 for the two thousand nine--two thousand ten school year, the phase-in
4 foundation percent shall equal one hundred two and five tenths percent
5 (1.025), the phase-in foundation increase factor shall equal [~~sixty-~~
6 ~~five~~] thirty-seven and one-half percent [~~(0.65)~~] (0.375), and the phase-
7 in due-minimum percent shall equal twelve and fifty-five hundredths
8 percent (0.1255)

9 for the two thousand ten--two thousand eleven school year, the phase-
10 in foundation percent shall equal one hundred seven and sixty-eight
11 hundredths percent (1.0768), the phase-in foundation increase factor
12 shall equal thirty-seven and one-half percent (0.375), and the phase-in
13 due-minimum percent shall equal twelve and fifty-five hundredths percent
14 (0.1255);

15 for the two thousand eleven--two thousand twelve school year, the
16 phase-in foundation percent shall equal one hundred five and six
17 hundredths percent (1.0506), the phase-in foundation increase factor
18 shall equal fifty-three and one-tenth percent (0.531), and the phase-in
19 due-minimum percent shall equal twelve and fifty-five hundredths percent
20 (0.1255); and

21 for the two thousand twelve--two thousand thirteen school year, the
22 phase-in foundation percent shall equal one hundred two and five
23 hundredths percent (1.0250), the phase-in foundation increase factor
24 shall equal seventy-five percent (0.75), and the phase-in due-minimum
25 percent shall equal twelve and fifty-five hundredths percent (0.1255).

26 b-1. Notwithstanding any other provision of law to the contrary, for
27 the two thousand seven--two thousand eight through [~~two thousand ten--~~
28 ~~two thousand eleven~~] two thousand thirteen--two thousand fourteen school
29 years, the additional amount payable to each school district pursuant to
30 this subdivision in the current year as total foundation aid, after
31 deducting the total foundation aid base, shall be deemed a state grant
32 in aid identified by the commissioner for general use for purposes of
33 sections seventeen hundred eighteen and two thousand twenty-three of
34 this chapter.

35 § 14. The closing paragraph of subdivision 5-a of section 3602 of the
36 education law, as added by section 15-a of part B of chapter 57 of the
37 laws of 2008, is amended to read as follows:

38 For the two thousand eight--two thousand nine school year, each school
39 district shall be entitled to an apportionment equal to the product of
40 fifteen percent and the additional apportionment computed pursuant to
41 this subdivision for the two thousand seven--two thousand eight school
42 year. For the two thousand nine--two thousand ten and two thousand ten-
43 -two thousand eleven school years, each school district shall be enti-
44 itled to an apportionment equal to the amount set forth for such school
45 district as "SUPPLEMENTAL PUB EXCESS COST" under the heading "2008-09
46 BASE YEAR AIDS" in the school aid computer listing produced by the
47 commissioner in support of the budget for the two thousand nine--two
48 thousand ten school year and entitled "SA0910".

49 § 15. Subclause (ii) of clause b of subparagraph 2 of paragraph e of
50 subdivision 6 of section 3602 of the education law, as amended by
51 section 16 of part B of chapter 57 of the laws of 2008, is amended to
52 read as follows:

53 (ii) For any assumed unpaid principal or the equivalent amount in the
54 case of a lease-purchase agreement or its equivalent, remaining as of
55 the first day of July, two thousand two pursuant to subparagraph one of
56 this paragraph, the commissioner shall establish a new assumed amorti-

1 zation commencing on such date for the unexpired term of the original
2 assumed amortization as of such date. Such assumed amortization shall
3 provide for equal semiannual payments of principal and interest based on
4 the interest rate applied to the original amortization as established by
5 the commissioner pursuant to subparagraph one of this paragraph.
6 Provided, however, that, notwithstanding any provision of law to the
7 contrary, for aid payable in the two thousand nine--two thousand ten
8 school year and thereafter, the total ~~[of]~~ apportionment for such
9 current year approved expenditures for debt service shall not exceed the
10 estimated apportionment as computed based on the estimated current year
11 approved expenditures for debt service on file with the commissioner as
12 of the date upon which an electronic data file was created for the
13 purposes of compliance with paragraph b of subdivision twenty-one of
14 section three hundred five of this chapter on November fifteenth of the
15 base year, and the positive remainder, if any, of such ~~[debt service or~~
16 ~~lease purchase or other annual payments under a lease purchase agreement~~
17 ~~or an equivalent agreement that would be incurred during the current~~
18 ~~year based on an assumed amortization to be established by the commis-~~
19 ~~sioner pursuant to this subparagraph of the approved project costs to be~~
20 ~~financed]~~ apportionment less such estimated ~~[current year approved~~
21 ~~expenditures for debt service on file with the commissioner as of the~~
22 ~~date upon which an electronic data file was created for the purposes of~~
23 ~~compliance with paragraph b of subdivision twenty-one of section three~~
24 ~~hundred five of this chapter on November fifteenth of the base year]~~
25 apportionment shall not be an apportionment payable in the current year
26 ~~[approved expenditures for debt service]~~, but shall be deemed to be an
27 apportionment payable for debt service on new bonds and capital notes
28 aidable in July following the current year as defined in clause (b) of
29 subparagraph one of paragraph f of this subdivision. Such estimate shall
30 be done in consultation with the commissioner.

31 § 16. Intentionally omitted.

32 § 17. Intentionally omitted.

33 § 18. Subdivision 12 of section 3602 of the education law is amended
34 by adding a new closing paragraph to read as follows:

35 For the two thousand nine--two thousand ten and two thousand ten--two
36 thousand eleven school years, each school district shall be entitled to
37 an apportionment equal to the amount set forth for such school district
38 as "EDUCATION GRANTS, ACADEMIC EN" under the heading "2008-09 BASE YEAR
39 AIDS" in the school aid computer listing produced by the commissioner in
40 support of the budget for the two thousand nine--two thousand ten school
41 year and entitled "SA0910", and such apportionment shall be deemed to
42 satisfy the state obligation to provide an apportionment pursuant to
43 subdivision eight of section thirty-six hundred forty-one of this arti-
44 cle.

45 § 19. The opening paragraph of subdivision 16 of section 3602 of the
46 education law, as amended by section 18 of part B of chapter 57 of the
47 laws of 2008, is amended to read as follows:

48 Each school district shall be eligible to receive a high tax aid
49 apportionment in the two thousand eight--two thousand nine school year,
50 which shall equal the greater of (i) the sum of the tier 1 high tax aid
51 apportionment, the tier 2 high tax aid apportionment and the tier 3 high
52 tax aid apportionment or (ii) the product of the apportionment received
53 by the school district pursuant to this subdivision in the two thousand
54 seven--two thousand eight school year, multiplied by the due-minimum
55 factor, which shall equal, for districts with an alternate pupil wealth
56 ratio computed pursuant to paragraph b of subdivision three of this

1 section that is less than two, seventy percent (0.70), and for all other
2 districts, fifty percent (0.50). Each school district shall be eligible
3 to receive a high tax aid apportionment in the two thousand nine--two
4 thousand ten and two thousand ten--two thousand eleven school years in
5 the amount set forth for such school district as "HIGH TAX AID" under
6 the heading "2008-09 BASE YEAR AIDS" in the school aid computer listing
7 produced by the commissioner in support of the budget for the two thou-
8 sand nine--two thousand ten school year and entitled "SA0910".

9 § 20. Intentionally omitted.

10 § 21. The opening paragraph of paragraph b of subdivision 10 of
11 section 3602-e of the education law, as amended by section 22 of part B
12 of chapter 57 of the laws of 2008, is amended to read as follows:

13 Notwithstanding any provision of law to the contrary, for aid payable
14 in the two thousand eight--two thousand nine school year, the grant to
15 each eligible school district for universal prekindergarten aid shall be
16 computed pursuant to this subdivision, and for the two thousand nine--
17 two thousand ten and two thousand ten--two thousand eleven school years,
18 each school district shall be eligible for a maximum grant equal to the
19 amount computed for such school district for the base year in the elec-
20 tronic data file produced by the commissioner in support of the two
21 thousand nine--two thousand ten education, labor and family assistance
22 budget, provided, however, that in the case of a district implementing
23 programs for the first time or implementing expansion programs in the
24 two thousand eight--two thousand nine school year where such programs
25 operate for a minimum of ninety days in any one school year as provided
26 in section 151-1.4 of the regulations of the commissioner, such school
27 district shall be eligible for a maximum grant equal to the amount
28 computed pursuant to paragraph a of subdivision nine of this section in
29 the two thousand eight--two thousand nine school year, and provided
30 further that the maximum grant shall not exceed the total actual grant
31 expenditures incurred by the school district in the current school year
32 as approved by the commissioner.

33 § 22. The opening paragraph of section 3609-a of the education law,
34 as amended by section 25 of part B of chapter 57 of the laws of 2008, is
35 amended to read as follows:

36 For aid payable in the two thousand seven--two thousand eight school
37 year and thereafter, "moneys apportioned" shall mean the lesser of (i)
38 the sum of one hundred percent of the respective amount set forth for
39 each school district as payable pursuant to this section in the school
40 aid computer listing for the current year produced by the commissioner
41 in support of the budget which includes the appropriation for the gener-
42 al support for public schools for the prescribed payments and individ-
43 ualized payments due prior to April first for the current year plus the
44 apportionment payable during the current school year pursuant to subdi-
45 vision six-a and subdivision fifteen of section thirty-six hundred two
46 of this part minus any reductions to current year aids pursuant to
47 subdivision seven of section thirty-six hundred four of this part or any
48 deduction from apportionment payable pursuant to this chapter for
49 collection of a school district basic contribution as defined in subdi-
50 vision eight of section forty-four hundred one of this chapter, less any
51 grants provided pursuant to subparagraph two-a of paragraph b of subdi-
52 vision four of section ninety-two-c of the state finance law, less any
53 grants provided pursuant to subdivision twelve of section thirty-six
54 hundred forty-one of this article, or (ii) the apportionment calculated
55 by the commissioner based on data on file at the time the payment is
56 processed; provided however, that for the purposes of any payments made

1 pursuant to this section prior to the first business day of June of the
2 current year, moneys apportioned shall not include any aids payable
3 pursuant to subdivisions six and fourteen, if applicable, of section
4 thirty-six hundred two of this part as current year aid for debt service
5 on bond anticipation notes and/or bonds first issued in the current year
6 or any aids payable for full-day kindergarten for the current year
7 pursuant to subdivision nine of section thirty-six hundred two of this
8 part. The definitions of "base year" and "current year" as set forth in
9 subdivision one of section thirty-six hundred two of this part shall
10 apply to this section. For aid payable in the [~~two thousand eight two~~
11 ~~thousand nine~~] two thousand nine--two thousand ten school year, refer-
12 ence to such "school aid computer listing for the current year" shall
13 mean the printouts entitled [~~"SA0809"~~] "SA0910".

14 § 23. Subdivision 1 of section 3609-a of the education law is amended
15 by adding a new paragraph c to read as follows:

16 c. Deficit reduction assessment for two thousand nine--two thousand
17 ten. Notwithstanding any other provision of law, the commissioner shall
18 reduce payments due to each district pursuant to this section by an
19 amount equal to the amounts set forth for each school district as "DEFI-
20 CIT REDUCTION ASSESSMENT" in the school aid computer listing produced by
21 the commissioner in support of the executive budget request for the two
22 thousand nine--two thousand ten school year and entitled "BT112-1", and
23 such amount shall be deducted from moneys apportioned for the purposes
24 of payments made pursuant to section thirty-six hundred nine-a of the
25 education law and provided further that the amount of such reduction
26 shall be deemed to have been paid to the district pursuant to this
27 section for the school year in which such deduction is made. The
28 commissioner shall provide a schedule of such reductions in payments to
29 the state comptroller, the director of the budget, the chair of the
30 senate finance committee and the chair of the assembly ways and means
31 committee.

32 § 24. Deficit Reduction Assessment Restoration. Notwithstanding any
33 other provision of law to the contrary, apportionments from this section
34 shall be supported from funds appropriated for such purpose from the
35 state fiscal stabilization fund-education fund as funded by the American
36 recovery and reinvestment act of 2009. For the purposes of this section
37 the term "fiscal year", followed by a reference to a year shall mean the
38 period from July 1 of the preceding year to June 30 of the calendar year
39 referenced.

40 Funds shall be apportioned to each school district in an amount equal
41 to the difference, if any, of the sum of (1) the absolute value of the
42 amount set forth for each school district as "DEFICIT REDUCTION ASSESS-
43 MENT" in the school aid computer listing produced by the commissioner in
44 support of the executive budget request for the two thousand nine--two
45 thousand ten school year and entitled "BT112-1", plus (2) the current
46 year restoration, which shall equal the difference of the amount
47 provided for the 2009-10 school year through funding formulae pursuant
48 to sections thirty-six hundred two, seven hundred one, seven hundred
49 eleven, seven hundred fifty-one, seven hundred fifty-three, nineteen
50 hundred fifty and forty-four hundred five of the education law as set
51 forth in the 2009-10 school aid computer listing for the current year as
52 defined pursuant to section thirty-six hundred nine-a of the education
53 law, less the amount provided for such school year through such formulae
54 as set forth in the school aid computer listing produced by the commis-
55 sioner in support of the executive budget request for the two thousand
56 nine--two thousand ten school year and entitled "BT112-1", plus (3) an

1 amount equal to the base year restoration, which shall equal the differ-
2 ence of the amount provided for the 2008-09 school year through funding
3 formulae pursuant to sections thirty-six hundred two, seven hundred one,
4 seven hundred eleven, seven hundred fifty-one, seven hundred fifty-
5 three, nineteen hundred fifty and forty-four hundred five of the educa-
6 tion law as set forth in the 2009-10 school aid computer listing for the
7 current year as defined pursuant to section thirty-six hundred nine-a of
8 the education law, less the amount provided for such school year through
9 such formulae as set forth in the school aid computer listing produced
10 by the commissioner in support of the executive budget request for the
11 two thousand nine--two thousand ten school year and entitled "BT112-1".

12 Notwithstanding any other provision of law to the contrary, an amount
13 equal to the sum of the current year restoration and the base year
14 restoration shall be deducted from moneys apportioned for the purposes
15 of payments made pursuant to section thirty-six hundred nine-a of the
16 education law in order to ensure that districts are not paid an amount
17 in excess of that which would otherwise receive through the state's
18 primary elementary and secondary funding formulae.

19 Each district shall be eligible, pursuant to applicable Federal rules,
20 regulations and guidelines, for a payment for the 2009-2010 school year
21 of up to seventy percent (0.7) of such funds on or after the date on
22 which the lottery apportionment is made pursuant to subparagraph two of
23 paragraph a of subdivision one of section thirty-six hundred nine-a of
24 the education law and up to an additional thirty percent (0.3) of such
25 funds on or after April first.

26 § 25. Subparagraph 4 of paragraph b of subdivision 1 of section 3609-a
27 of the education law, as amended by chapter 474 of the laws of 1996, is
28 amended to read as follows:

29 (4) State share of medicaid reimbursements. For the purposes of this
30 subparagraph, ~~[for payments made in the nineteen hundred ninety five-~~
31 ~~ninety six school year, there shall be two reporting periods: the first~~
32 ~~reporting period shall run from February first, nineteen hundred nine-~~
33 ~~ty five through January thirty first, nineteen hundred ninety six, and~~
34 ~~the second reporting period shall run from February first, nineteen~~
35 ~~hundred ninety six through April thirtieth, nineteen hundred ninety six;~~
36 ~~thereafter,]~~ the first reporting period shall run from May first of the
37 base year through January thirty-first of the current year, and the
38 second reporting period shall run from February first of the current
39 year through April thirtieth of the current year. Notwithstanding any
40 inconsistent provisions of law to the contrary, the sustaining advance
41 payment due any school district pursuant to clause (ii) of subparagraph
42 three of this paragraph in March shall be reduced by fifty percent of
43 any federal participation during the first reporting period pursuant to
44 title XIX of the social security act, in special education programs
45 provided pursuant to article eighty-nine of this chapter for services
46 provided on or before June thirtieth, two thousand nine; the June
47 payment due any school district pursuant to clause (v) of subparagraph
48 three of this paragraph shall be reduced by fifty percent of any federal
49 participation during the second reporting period for services provided
50 on or before June thirtieth, two thousand nine. Not later than ten days
51 after the end of a reporting period, the commissioner of [~~social~~
52 ~~services~~] health, as the authorized fiscal agent of the state education
53 department, shall certify to the commissioner and the director of the
54 budget the total amount of such federal moneys paid to a school district
55 for such services during such reporting period. Following each cycle
56 payment, the commissioner of [~~social services~~] health shall report to

1 the commissioner the aggregate amount of such federal medicaid payments
2 to each school district. The commissioner shall recoup such amounts
3 first, to the extent possible, from the specified payment, then by with-
4 holding any other moneys due the school district and finally by direct
5 billing to any school district still owing moneys to the state. All
6 moneys withheld or paid to the state on account of this paragraph shall
7 be credited by the comptroller to the local assistance account for
8 general support for public schools.

9 § 26. Paragraph a of subdivision 1 of section 3609-b of the education
10 law, as amended by section 41 of part C of chapter 57 of the laws of
11 2004, is amended to read as follows:

12 a. Any moneys to be apportioned by the commissioner to school
13 districts during the school year pursuant to this section for services
14 provided on or before June thirtieth, two thousand nine shall, in the
15 first instance, be designated as the state share of moneys due a school
16 district pursuant to title XIX of the social security act, on account of
17 school supportive health services provided to students with disabilities
18 in special education programs pursuant to article eighty-nine of this
19 chapter and to those pupils who are qualified handicapped persons as
20 defined in the federal rehabilitation act of nineteen hundred seventy-
21 three, as amended. Some or all of such state share may be assigned on
22 behalf of school districts to the department of [~~social services~~]
23 health, as provided herein; any remaining state share moneys shall be
24 paid to school districts on the same schedule as the federal share of
25 such title XIX payments and shall be based on the monthly report of the
26 commissioner of [~~social services~~] health to the commissioner; and any
27 remaining moneys to be apportioned to a school district pursuant to this
28 section shall be paid in accordance with the provisions of subdivision
29 two of this section. The amount to be assigned to the department of
30 [~~social services~~] health, as determined by the commissioner of [~~social~~
31 ~~services~~] health, for any school district shall not exceed the federal
32 share of any moneys due such school district pursuant to title XIX.
33 Moneys designated as state share moneys shall be paid to such school
34 districts based on the submission and approval of claims related to such
35 school supportive health services, in the manner provided by law.

36 § 27. Subdivision 1 of section 3609-b of the education law is amended
37 by adding a new paragraph a-1 to read as follows:

38 a-1. Any moneys to be apportioned by the commissioner to school
39 districts during the school year pursuant to this section for services
40 provided during the two thousand nine--two thousand ten school year and
41 thereafter shall, in the first instance, be designated as the state
42 share of moneys due a school district pursuant to title XIX of the
43 social security act, on account of school supportive health services
44 provided to students with disabilities in special education programs
45 pursuant to article eighty-nine of this chapter and to those pupils who
46 are qualified handicapped persons as defined in the federal rehabili-
47 tation act of nineteen hundred seventy-three, as amended. Such state
48 share shall be assigned on behalf of school districts to the department
49 of health, as provided herein; the amount designated as such nonfederal
50 share shall be transferred by the commissioner to the department of
51 health based on the monthly report of the commissioner of health to
52 the commissioner; and any remaining moneys to be apportioned to a school
53 district pursuant to this section shall be paid in accordance with the
54 provisions of subdivision two of this section. The amount to be
55 assigned to the department of health, as determined by the commissioner
56 of health, for any school district shall not exceed the federal share of

1 any moneys due such school district pursuant to title XIX. Moneys desig-
2 nated as state share moneys shall be paid to such school districts by
3 the department of health based on the submission and approval of claims
4 related to such school supportive health services, in the manner
5 provided by law.

6 § 28. Paragraph b of subdivision 2 of section 3612 of the education
7 law, as amended by section 27 of part B of chapter 57 of the laws of
8 2008, is amended to read as follows:

9 b. Such grants shall be awarded to school districts, within the limits
10 of funds appropriated therefor, through a competitive process that takes
11 into consideration the magnitude of any shortage of teachers in the
12 school district, the number of teachers employed in the school district
13 who hold temporary licenses to teach in the public schools of the state,
14 the number of provisionally certified teachers, the fiscal capacity and
15 geographic sparsity of the district, the number of new teachers the
16 school district intends to hire in the coming school year and the number
17 of summer in the city student internships proposed by an eligible school
18 district, if applicable. Grants provided pursuant to this section shall
19 be used only for the purposes enumerated in this section. Notwithstand-
20 ing any other provision of law to the contrary, a city school district
21 in a city having a population of one million or more inhabitants receiv-
22 ing a grant pursuant to this section may use no more than eighty percent
23 of such grant funds for any recruitment, retention and certification
24 costs associated with transitional certification of teacher candidates
25 for the school years two thousand one--two thousand two through [~~two~~
26 ~~thousand eight--two thousand nine~~] two thousand nine--two thousand ten.

27 § 29. Paragraphs c and d of subdivision 5-b of section 2576 of the
28 education law, as added by section 9 of part B of chapter 57 of the laws
29 of 2007, are amended to read as follows:

30 c. Upon the enactment of a city budget, for the two thousand nine--two
31 thousand ten school year budget and annually thereafter, the chief exec-
32 utive officer of the city, as defined pursuant to subdivision five-a of
33 section 2.00 of the local finance law, shall annually certify to the
34 commissioner, in a form prescribed by the commissioner upon approval of
35 the director of the budget, as to the city amount in such budget, the
36 city amount in the base year, and that the city amount appropriated in
37 such budget is in compliance with paragraph b of this subdivision.

38 d. The school district audit report certified to by an independent
39 certified public accountant or an independent accountant pursuant to
40 section twenty-one hundred sixteen-a of this title for the two thousand
41 eight--two thousand nine school year budget and annually thereafter
42 shall include a certification by the accountant, in a form prescribed by
43 the commissioner upon approval of the director of the budget, as to the
44 city amount expended in the school year covered by such audit report,
45 the city amount in the prior school year, and that the city amount
46 expended in the school year covered by such audit report is in compli-
47 ance with paragraph b of this subdivision.

48 § 30. Intentionally omitted.

49 § 31. Paragraph a of subdivision 3 of section 3641 of the education
50 law, as added by section 29-a of part B of chapter 57 of the laws of
51 2008, is amended to read as follows:

52 a. In addition to apportionments otherwise provided by section thir-
53 ty-six hundred two of this article, for aid payable in the two thousand
54 eight--two thousand nine and two thousand nine--two thousand ten school
55 [~~year~~] years, the amounts specified in paragraphs c and d of this subdi-
56 vision shall be paid for the purpose of providing additional funding for

1 school districts which have experienced a significant financial hardship
2 caused by an extraordinary change in the taxable property valuation or
3 extraordinary judgments resulting from tax certiorari proceedings.

4 § 32. Intentionally omitted.

5 § 33. Intentionally omitted.

6 § 34. Subdivision 6 of section 4402 of the education law, as amended
7 by section 31 of part B of chapter 57 of the laws of 2008, is amended to
8 read as follows:

9 6. Notwithstanding any other law, rule or regulation to the contrary,
10 the board of education of a city school district with a population of
11 one hundred twenty-five thousand or more inhabitants shall be permitted
12 to establish maximum class sizes for special classes for certain
13 students with disabilities in accordance with the provisions of this
14 subdivision. For the purpose of obtaining relief from any adverse fiscal
15 impact from under-utilization of special education resources due to low
16 student attendance in special education classes at the middle and
17 secondary level as determined by the commissioner, such boards of educa-
18 tion shall, during the school years nineteen hundred ninety-five--nine-
19 ty-six through June thirtieth, two thousand ~~[nine]~~ ten of the ~~[two thou-~~
20 ~~sand eight--two thousand nine]~~ two thousand nine--two thousand ten
21 school year, be authorized to increase class sizes in special classes
22 containing students with disabilities whose age ranges are equivalent to
23 those of students in middle and secondary schools as defined by the
24 commissioner for purposes of this section by up to but not to exceed one
25 and two tenths times the applicable maximum class size specified in
26 regulations of the commissioner rounded up to the nearest whole number,
27 provided that in a city school district having a population of one
28 million or more, classes that have a maximum class size of fifteen may
29 be increased by no more than one student and provided that the projected
30 average class size shall not exceed the maximum specified in the appli-
31 cable regulation, provided that such authorization shall terminate on
32 June thirtieth, two thousand. Such authorization shall be granted upon
33 filing of a notice by such a board of education with the commissioner
34 stating the board's intention to increase such class sizes and a certif-
35 ication that the board will conduct a study of attendance problems at
36 the secondary level and will implement a corrective action plan to
37 increase the rate of attendance of students in such classes to at least
38 the rate for students attending regular education classes in secondary
39 schools of the district. Such corrective action plan shall be submitted
40 for approval by the commissioner by a date during the school year in
41 which such board increases class sizes as provided pursuant to this
42 subdivision to be prescribed by the commissioner. Upon at least thirty
43 days notice to the board of education, after conclusion of the school
44 year in which such board increases class sizes as provided pursuant to
45 this subdivision, the commissioner shall be authorized to terminate such
46 authorization upon a finding that the board has failed to develop or
47 implement an approved corrective action plan.

48 § 35. Intentionally omitted.

49 § 36. Intentionally omitted.

50 § 37. Intentionally omitted.

51 § 38. Where a school district that was required to submit a contract
52 for excellence for the two thousand eight--two thousand nine school year
53 but is not required to submit a contract for excellence for the two
54 thousand nine--two thousand ten school year did not fully expend its two
55 thousand seven--two thousand eight foundation aid subject to the
56 contract for excellence restrictions, an amount equal to such unexpended

1 funds shall be deducted from moneys apportioned for the purposes of
2 payments made pursuant to section thirty-six hundred nine-a of the
3 education law.

4 § 39. Paragraph a-1 of subdivision 11 of section 3602 of the educa-
5 tion law, as amended by section 33 of part B of chapter 57 of the laws
6 of 2008, is amended to read as follows:

7 a-1. Notwithstanding the provisions of paragraph a of this subdivi-
8 sion, for aid payable in the school years two thousand--two thousand one
9 through [~~two thousand eight two thousand nine~~] two thousand nine--two
10 thousand ten, the commissioner may set aside an amount not to exceed two
11 million five hundred thousand dollars from the funds appropriated for
12 purposes of this subdivision for the purpose of serving persons twenty-
13 one years of age or older who have not been enrolled in any school for
14 the preceding school year, including persons who have received a high
15 school diploma or high school equivalency diploma but fail to demon-
16 strate basic educational competencies as defined in regulation by the
17 commissioner, when measured by accepted standardized tests, and who
18 shall be eligible to attend employment preparation education programs
19 operated pursuant to this subdivision.

20 § 40. Section 33 of the general municipal law is amended by adding a
21 new subdivision 3 to read as follows:

22 3. Examinations and report. In addition to the inspection and exam-
23 ination of certain accounts pursuant to this section, the comptroller by
24 the end of the two thousand eleven--two thousand twelve school year,
25 shall also examine for the most recent school year as practicable, the
26 employee benefit accrued liability reserve funds of school districts
27 established pursuant to section six-p of this chapter. Such examination
28 shall be for the purpose of determining the amount of funding in the
29 reserve fund, the amount of liabilities against such fund and if there
30 exist funds in the reserve fund which are in excess of the total liabil-
31 ities of such fund. The comptroller shall notify the school district if
32 such excess funds exist and the dollar value of the excess funding. The
33 comptroller shall also prepare a report on the school districts with
34 excess funds in their employee benefit accrued liability reserve fund
35 and the amount of the excess funding for each district. Such report
36 shall be submitted by July first, two thousand twelve to the director of
37 the budget, the chair of the senate finance committee, the chair of the
38 assembly ways and means committee and the commissioner of education.

39 § 41. Subdivision b of section 2 of chapter 756 of the laws of 1992,
40 relating to funding a program for work force education conducted by the
41 consortium for worker education in New York city, as amended by section
42 36 of part B of chapter 57 of the laws of 2008, is amended to read as
43 follows:

44 b. Reimbursement for programs approved in accordance with subdivision
45 a of this section for the 2006-07 school year shall not exceed 64.7
46 percent of the lesser of such approvable costs per contact hour or nine
47 dollars and twenty-five cents per contact hour where a contact hour
48 represents sixty minutes of instruction services provided to an eligible
49 adult, reimbursement for the 2007-08 school year shall not exceed 63.3
50 percent of the lesser of such approvable costs per contact hour or nine
51 dollars and ninety cents per contact hour where a contact hour repres-
52 ents sixty minutes of instruction services provided to an eligible
53 adult, [~~and~~] reimbursement for the 2008-09 school year shall not exceed
54 62.8 percent of the lesser of such approvable costs per contact hour or
55 ten dollars and sixty-five cents per contact hour where a contact hour
56 represents sixty minutes of instruction services provided to an eligible

1 adult and reimbursement for the 2009-10 school year shall not exceed
2 64.1 percent of the lesser of such approvable costs per contact hour or
3 eleven dollars and fifty cents per contact hour where a contact hour
4 represents sixty minutes of instruction services provided to an eligible
5 adult. Notwithstanding any other provision of law to the contrary, for
6 the 2006-07 school year such contact hours shall not exceed one million
7 nine hundred twenty-three thousand seventy-six (1,923,076) hours; where-
8 as for the 2007-08 school year such contact hours shall not exceed one
9 million eight hundred thirty-seven thousand sixty (1,837,060) hours;
10 whereas for the 2008-09 school year such contact hours shall not exceed
11 one million nine hundred forty-six thousand one hundred seven
12 (1,946,107) hours; whereas for the 2009-10 school year such contact
13 hours shall not exceed one million seven hundred sixty-three thousand
14 nine hundred seven (1,763,907) hours.

15 Notwithstanding any other provision of law to the contrary, the appor-
16 tionment calculated for the city school district of the city of New York
17 pursuant to subdivision 11 of section 3602 of the education law shall be
18 computed as if such contact hours provided by the consortium for worker
19 education, not to exceed the contact hours set forth herein, were eligi-
20 ble for aid in accordance with the provisions of such subdivision 11 of
21 section 3602 of the education law.

22 § 42. Section 4 of chapter 756 of the laws of 1992, relating to fund-
23 ing a program for work force education conducted by the consortium for
24 worker education in New York city, is amended by adding a new subdivi-
25 sion o to read as follows:

26 o. The provisions of this subdivision shall not apply after the
27 completion of payments for the 2009--2010 school year. Notwithstanding
28 any inconsistent provisions of law, the commissioner of education shall
29 withhold a portion of employment preparation education aid due to the
30 city school district of the city of New York to support a portion of the
31 costs of the work force education program. Such moneys shall be credited
32 to the elementary and secondary education fund-local assistance account
33 and shall not exceed thirteen million dollars (\$13,000,000).

34 § 43. Section 6 of chapter 756 of the laws of 1992, relating to fund-
35 ing a program for work force education conducted by the consortium for
36 worker education in New York city, as amended by section 38 of part B of
37 chapter 57 of the laws of 2008, is amended to read as follows:

38 § 6. This act shall take effect July 1, 1992, and shall be deemed
39 repealed on June 30, [2009] 2010.

40 § 44. Subdivision 1 of section 167 of chapter 169 of the laws of 1994
41 relating to certain provisions related to the 1994-95 state operations,
42 aid to localities, capital projects and debt service budgets as amended
43 by section 39 of part B of chapter 57 of the laws of 2008, is amended to
44 read as follows:

45 1. Sections one through seventy of this act shall be deemed to have
46 been in full force and effect as of April 1, 1994 provided, however,
47 that sections one, two, twenty-four, twenty-five and twenty-seven
48 through seventy of this act shall expire and be deemed repealed on March
49 31, 2000; provided, however, that section twenty of this act shall apply
50 only to hearings commenced prior to September 1, 1994, and provided
51 further that section twenty-six of this act shall expire and be deemed
52 repealed on March 31, 1997; and provided further that sections four
53 through fourteen, sixteen, and eighteen, nineteen and twenty-one through
54 twenty-one-a of this act shall expire and be deemed repealed on March
55 31, 1997; and provided further that sections three, fifteen, seventeen,

1 twenty, twenty-two and twenty-three of this act shall expire and be
2 deemed repealed on March 31, ~~[2010]~~ 2011.

3 § 45. Subdivisions 22 and 24 of section 140 of chapter 82 of the laws
4 of 1995, amending the education law and certain other laws relating to
5 state aid to school districts and the appropriation of funds for the
6 support of government, as amended by section 40 of part B of chapter 57
7 of the laws of 2008, are amended to read as follows:

8 (22) sections one hundred twelve, one hundred thirteen, one hundred
9 fourteen, one hundred fifteen and one hundred sixteen of this act shall
10 take effect on July 1, 1995; provided, however, that section one hundred
11 thirteen of this act shall remain in full force and effect until July 1,
12 ~~[2009]~~ 2010 at which time it shall be deemed repealed;

13 (24) sections one hundred eighteen through one hundred thirty of this
14 act shall be deemed to have been in full force and effect on and after
15 July 1, 1995; provided further, however, that the amendments made pursu-
16 ant to section one hundred nineteen of this act shall be deemed to be
17 repealed on and after July 1, ~~[2009]~~ 2010;

18 § 46. Section 7 of chapter 472 of the laws of 1998 amending the educa-
19 tion law relating to the lease of school buses by school districts, as
20 amended by section 53 of part B of chapter 57 of the laws of 2007, is
21 amended to read as follows:

22 § 7. This act shall take effect September 1, 1998, and shall expire
23 and be deemed repealed September 1, ~~[2009]~~ 2011.

24 § 47. Subdivision c of section 45 of part B of chapter 57 of the laws
25 of 2008 amending the education law and other laws relating to special
26 apportionment for salary expenses, is amended to read as follows:

27 c. Notwithstanding the provisions of section 3609-a of the education
28 law, an amount equal to the amount paid to a school district pursuant to
29 subdivisions a and b of this section shall first be deducted from the
30 following payments due the school district during the ~~[2008-2009]~~ school
31 year following the school year in which application was made, pursuant
32 to subparagraphs (1), (2), (3), (4) and (5) of paragraph a of subdivi-
33 sion 1 of section 3609-a of the education law in the following order:
34 the lottery apportionment payable pursuant to subparagraph (2) of such
35 paragraph followed by the fixed fall payments payable pursuant to
36 subparagraph (4) of such paragraph and then followed by the district's
37 payments to the teachers' retirement system pursuant to subparagraph (1)
38 of such paragraph, and any remainder to be deducted from the individual-
39 ized payments due the district pursuant to paragraph b of such subdivi-
40 sion shall be deducted on a chronological basis starting with the earli-
41 est payment due the district.

42 § 48. School bus driver training. In addition to apportionments other-
43 wise provided by section 3602 of the education law, for aid payable in
44 the 2009-2010 school year, the commissioner of education shall allocate
45 school bus driver training grants to school districts and boards of
46 cooperative education services pursuant to sections 3650-a, 3650-b and
47 3650-c of the education law, or for contracts directly with not-for-pro-
48 fit educational organizations for the purposes of this section. Such
49 payments shall not exceed four hundred thousand dollars (\$400,000).

50 § 49. Support of public libraries. The moneys appropriated for the
51 support of public libraries by the chapter of the laws of 2009 enacting
52 the education, labor and family assistance budget shall be apportioned
53 for 2009--2010 in accordance with the provisions of sections 271, 272,
54 273, 282, 284, and 285 of the education law as amended by the provisions
55 of this chapter and the provisions of this section, provided that
56 library construction aid pursuant to section 273-a of the education law

1 shall not be payable from the appropriations for the support of public
2 libraries and provided further that no library, library system or
3 program, as defined by the commissioner of education, shall receive
4 less total system or program aid than it received for the year
5 2001--2002 except as a result of a reduction adjustment necessary to
6 conform to the appropriations for support of public libraries.

7 Notwithstanding any other provision of law to the contrary the moneys
8 appropriated for the support of public libraries for the year 2009--2010
9 by a chapter of the laws of 2009 enacting the education, labor and fami-
10 ly assistance budget shall fulfill the state's obligation to provide
11 such aid and, pursuant to a plan developed by the commissioner of educa-
12 tion and approved by the director of the budget, the aid payable to
13 libraries and library systems pursuant to such appropriations shall be
14 reduced proportionately to assure that the total amount of aid payable
15 does not exceed the total appropriations for such purpose.

16 § 50. Special apportionment for salary expenses. a. Notwithstanding
17 any other provision of law, upon application to the commissioner of
18 education, not sooner than the first day of the second full business
19 week of June, 2010 and not later than the last day of the third full
20 business week of June, 2010, a school district eligible for an appor-
21 tionment pursuant to section 3602 of the education law shall be eligible
22 to receive an apportionment pursuant to this section, for the school
23 year ending June 30, 2010, for salary expenses incurred between April 1
24 and June 30, 2010, and such apportionment shall not exceed the deficit
25 reduction assessment of 1990-91 as determined by the commissioner of
26 education, pursuant to paragraph f of subdivision 1 of section 3602 of
27 the education law, as in effect through June 30, 1993, plus 186 percent
28 of such amount for a city school district in a city with a population in
29 excess of 1,000,000 inhabitants and plus 209 percent of such amount for
30 a city school district in a city with a population of more than 195,000
31 inhabitants and less than 219,000 inhabitants according to the latest
32 federal census, and shall not exceed such salary expenses. Such applica-
33 tion shall be made by a school district, after the board of education or
34 trustees have adopted a resolution to do so and in the case of a city
35 school district in a city with a population in excess of 125,000 inhab-
36 itants, with the approval of the mayor of such city.

37 b. The claim for an apportionment to be paid to a school district
38 pursuant to subdivision a of this section shall be submitted to the
39 commissioner of education on a form prescribed for such purpose, and
40 shall be payable upon determination by such commissioner that the form
41 has been submitted as prescribed. Such approved amounts shall be payable
42 on the same day in September of the school year following the year in
43 which application was made as funds provided pursuant to subparagraph
44 (4) of paragraph b of subdivision 4 of section 92-c of the state finance
45 law, on the audit and warrant of the state comptroller on vouchers
46 certified or approved by the commissioner of education in the manner
47 prescribed by law from moneys in the state lottery fund and from the
48 general fund to the extent that the amount paid to a school district
49 pursuant to this section exceeds the amount, if any, due such school
50 district pursuant to subparagraph (2) of paragraph a of subdivision 1 of
51 section 3609-a of the education law in the school year following the
52 year in which application was made.

53 c. Notwithstanding the provisions of section 3609-a of the education
54 law, an amount equal to the amount paid to a school district pursuant to
55 subdivisions a and b of this section shall first be deducted from the
56 following payments due the school district during the school year

1 following the year in which application was made pursuant to subpara-
2 graphs (1), (2), (3), (4) and (5) of paragraph a of subdivision 1 of
3 section 3609-a of the education law in the following order: the lottery
4 apportionment payable pursuant to subparagraph (2) of such paragraph
5 followed by the fixed fall payments payable pursuant to subparagraph (4)
6 of such paragraph and then followed by the district's payments to the
7 teachers' retirement system pursuant to subparagraph (1) of such para-
8 graph, and any remainder to be deducted from the individualized payments
9 due the district pursuant to paragraph b of such subdivision shall be
10 deducted on a chronological basis starting with the earliest payment due
11 the district.

12 § 51. Special apportionment for public pension accruals. a. Notwith-
13 standing any other provision of law, upon application to the commission-
14 er of education, not later than June 30, 2010, a school district eligi-
15 ble for an apportionment pursuant to section 3602 of the education law
16 shall be eligible to receive an apportionment pursuant to this section,
17 for the school year ending June 30, 2010, and such apportionment shall
18 not exceed the additional accruals required to be made by school
19 districts in the 2004-05 and 2005-06 school years associated with chang-
20 es for such public pension liabilities. The amount of such additional
21 accrual shall be certified to the commissioner of education by the pres-
22 ident of the board of education or the trustees or, in the case of a
23 city school district in a city with a population in excess of 125,000
24 inhabitants, the mayor of such city. Such application shall be made by a
25 school district, after the board of education or trustees have adopted a
26 resolution to do so and in the case of a city school district in a city
27 with a population in excess of 125,000 inhabitants, with the approval of
28 the mayor of such city.

29 b. The claim for an apportionment to be paid to a school district
30 pursuant to subdivision a of this section shall be submitted to the
31 commissioner of education on a form prescribed for such purpose, and
32 shall be payable upon determination by such commissioner that the form
33 has been submitted as prescribed. Such approved amounts shall be payable
34 on the same day in September of the school year following the year in
35 which application was made as funds provided pursuant to subparagraph
36 (4) of paragraph b of subdivision 4 of section 92-c of the state finance
37 law, on the audit and warrant of the state comptroller on vouchers
38 certified or approved by the commissioner of education in the manner
39 prescribed by law from moneys in the state lottery fund and from the
40 general fund to the extent that the amount paid to a school district
41 pursuant to this section exceeds the amount, if any, due such school
42 district pursuant to subparagraph (2) of paragraph a of subdivision 1 of
43 section 3609-a of the education law in the school year following the
44 year in which application was made.

45 c. Notwithstanding the provisions of section 3609-a of the education
46 law, an amount equal to the amount paid to a school district pursuant to
47 subdivisions a and b of this section shall first be deducted from the
48 following payments due the school district during the school year
49 following the year in which application was made pursuant to subpara-
50 graphs (1), (2), (3), (4) and (5) of paragraph a of subdivision 1 of
51 section 3609-a of the education law in the following order: the lottery
52 apportionment payable pursuant to subparagraph (2) of such paragraph
53 followed by the fixed fall payments payable pursuant to subparagraph (4)
54 of such paragraph and then followed by the district's payments to the
55 teachers' retirement system pursuant to subparagraph (1) of such para-
56 graph, and any remainder to be deducted from the individualized payments

1 due the district pursuant to paragraph b of such subdivision shall be
2 deducted on a chronological basis starting with the earliest payment due
3 the district.

4 § 52. a. Notwithstanding any other law, rule or regulation to the
5 contrary, any moneys appropriated to the state education department may
6 be suballocated to other state departments or agencies, as needed, to
7 accomplish the intent of the specific appropriations contained therein.

8 b. Notwithstanding any other law, rule or regulation to the contrary,
9 moneys appropriated to the state education department from the general
10 fund/aid to localities, local assistance account-001, shall be for
11 payment of financial assistance, as scheduled, net of disallowances,
12 refunds, reimbursement and credits.

13 c. Notwithstanding any other law, rule or regulation to the contrary,
14 all moneys appropriated to the state education department for aid to
15 localities shall be available for payment of aid heretofore or hereafter
16 to accrue and may be suballocated to other departments and agencies to
17 accomplish the intent of the specific appropriations contained therein.

18 d. Notwithstanding any other law, rule or regulation to the contrary,
19 moneys appropriated to the state education department for general
20 support for public schools may be interchanged with any other item of
21 appropriation for general support for public schools within the general
22 fund local assistance account elementary, middle, secondary and continu-
23 ing education program.

24 § 53. Notwithstanding the provision of any law, rule, or regulation to
25 the contrary, the city school district of the city of Rochester, upon
26 the consent of the board of cooperative educational services of the
27 supervisory district serving its geographic region may purchase from
28 such board for the 2009-10 school year, as a non-component school
29 district, services required by article 19 of the education law.

30 § 54. The amounts specified in this section shall be a setaside from
31 the state funds which each such district is receiving from the total
32 foundation aid:

33 a. for the purpose of the development, maintenance or expansion of
34 magnet schools or magnet school programs for the two thousand nine--two
35 thousand ten school year. To the city school district of the city of New
36 York there shall be paid forty-eight million one hundred seventy-five
37 thousand dollars (\$48,175,000) including five hundred thousand dollars
38 (\$500,000) for the Andrew Jackson High School; to the Buffalo city
39 school district, twenty-one million twenty-five thousand dollars
40 (\$21,025,000); to the Rochester city school district, fifteen million
41 dollars (\$15,000,000); to the Syracuse city school district, thirteen
42 million dollars (\$13,000,000); to the Yonkers city school district,
43 forty-nine million five hundred thousand dollars, (\$49,500,000); to the
44 Newburgh city school district, four million six hundred forty-five thou-
45 sand dollars (\$4,645,000); to the Poughkeepsie city school district, two
46 million four hundred seventy-five thousand dollars (\$2,475,000); to the
47 Mount Vernon city school district, two million dollars (\$2,000,000); to
48 the New Rochelle city school district, one million four hundred ten
49 thousand dollars (\$1,410,000); to the Schenectady city school district,
50 one million eight hundred thousand dollars (\$1,800,000); to the Port
51 Chester city school district, one million one hundred fifty thousand
52 dollars (\$1,150,000); to the White Plains city school district, nine
53 hundred thousand dollars (\$900,000); to the Niagara Falls city school
54 district, six hundred thousand dollars (\$600,000); to the Albany city
55 school district, three million five hundred fifty thousand dollars
56 (\$3,550,000); to the Utica city school district, two million dollars

1 (\$2,000,000); to the Beacon city school district, five hundred sixty-six
2 thousand dollars (\$566,000); to the Middletown city school district,
3 four hundred thousand dollars (\$400,000); to the Freeport union free
4 school district, four hundred thousand dollars (\$400,000); to the Green-
5 burgh central school district, three hundred thousand dollars
6 (\$300,000); to the Amsterdam city school district, eight hundred thou-
7 sand dollars (\$800,000); to the Peekskill city school district, two
8 hundred thousand dollars (\$200,000); and to the Hudson city school
9 district, four hundred thousand dollars (\$400,000).

10 b. notwithstanding the provisions of paragraph a of this subdivision,
11 a school district receiving a grant pursuant to this subdivision may use
12 such grant funds for: (i) any instructional or instructional support
13 costs associated with the operation of a magnet school; or (ii) any
14 instructional or instructional support costs associated with implementa-
15 tion of an alternative approach to reduction of racial isolation and/or
16 enhancement of the instructional program and raising of standards in
17 elementary and secondary schools of school districts having substantial
18 concentrations of minority students. The commissioner of education shall
19 not be authorized to withhold magnet grant funds from a school district
20 that used such funds in accordance with this paragraph, notwithstanding
21 any inconsistency with a request for proposals issued by such commis-
22 sioner.

23 c. for the purpose of attendance improvement and dropout prevention
24 for the two thousand nine--two thousand ten school year, for any city
25 school district in a city having a population of more than one million,
26 the setaside for attendance improvement and dropout prevention shall
27 equal the amount set aside in the base year. For the two thousand nine-
28 -two thousand ten school year, it is further provided that any city
29 school district in a city having a population of more than one million
30 shall allocate at least one-third of any increase from base year levels
31 in funds set aside pursuant to the requirements of this subdivision to
32 community-based organizations. Any increase required pursuant to this
33 subdivision to community-based organizations must be in addition to
34 allocations provided to community-based organizations in the base year.

35 d. for the purpose of teacher support for the two thousand nine--two
36 thousand ten school year: to the city school district of the city of New
37 York, sixty-two million seven hundred seven thousand dollars
38 (\$62,707,000); to the Buffalo city school district, one million seven
39 hundred forty-one thousand dollars (\$1,741,000); to the Rochester city
40 school district, one million seventy-six thousand dollars (\$1,076,000);
41 to the Yonkers city school district, one million one hundred forty-seven
42 thousand dollars (\$1,147,000); and to the Syracuse city school district,
43 eight hundred nine thousand dollars (\$809,000). All funds made available
44 to a school district pursuant to this subdivision shall be distributed
45 among teachers including prekindergarten teachers and teachers of adult
46 vocational and academic subjects in accordance with this subdivision and
47 shall be in addition to salaries heretofore or hereafter negotiated or
48 made available; provided, however, that all funds distributed pursuant
49 to this section for the current year shall be deemed to incorporate all
50 funds distributed pursuant to former subdivision 27 of section 3602 of
51 the education law for prior years. In school districts where the teach-
52 ers are represented by certified or recognized employee organizations,
53 all salary increases funded pursuant to this section shall be determined
54 by separate collective negotiations conducted pursuant to the provisions
55 and procedures of article 14 of the civil service law, notwithstanding

1 the existence of a negotiated agreement between a school district and a
2 certified or recognized employee organization.

3 § 55. Subdivision 11 of section 94 of part C of chapter 57 of the
4 laws of 2004, amending the labor law and other laws relating to imple-
5 mentation of the state fiscal plan for the 2004-2005 state fiscal year,
6 as amended by section 49-b of part B of chapter 57 of the laws of 2008,
7 is amended to read as follows:

8 11. section seventy-one of this act shall expire and be deemed
9 repealed June 30, [~~2009~~] 2010;

10 § 55-a. Subparagraph 5 of paragraph e of subdivision 6 of section 3602
11 of the education law is amended by adding a new clause (d) to read as
12 follows:

13 (d) Notwithstanding any other law, rule or regulation to the contrary,
14 any interest rate calculated under this subdivision shall take into
15 account any federal subsidy payments made or to be made to the applica-
16 ble issuer under the terms of a federally authorized debt instrument
17 which have the effect of reducing the actual interest costs incurred by
18 such issuer over the life of such capital debt, irrespective of any
19 federal government right of set-off.

20 § 56. Severability. The provisions of this act shall be severable, and
21 if the application of any clause, sentence, paragraph, subdivision,
22 section or part of this act to any person or circumstance shall be
23 adjudged by any court of competent jurisdiction to be invalid, such
24 judgment shall not necessarily affect, impair or invalidate the applica-
25 tion of any such clause, sentence, paragraph, subdivision, section or
26 part of this act or remainder thereof, as the case may be, to any other
27 person or circumstance, but shall be confined in its operation to the
28 clause, sentence, paragraph, subdivision, section or part thereof
29 directly involved in the controversy in which such judgment shall have
30 been rendered.

31 § 57. This act shall take effect immediately and shall be deemed to
32 have been in full force and effect on and after April 1, 2009; provided,
33 however, that:

34 1. Sections six, ten, thirteen, fourteen, eighteen, nineteen, twenty-
35 one through twenty-seven, twenty-eight, thirty-one, thirty-four, thir-
36 ty-nine, forty-six, forty-eight, fifty, fifty-one and fifty-four of this
37 act shall take effect July 1, 2009; provided however, that the amend-
38 ments to subdivision 6 of section 4402 of the education law made by
39 section thirty-four of this act shall not affect the repeal of such
40 subdivision and shall be deemed repealed therewith; provided, further
41 that the amendments to chapter 756 of the laws of 1992 relating to fund-
42 ing a program for work force education conducted by the consortium for
43 worker education in New York city made by sections forty-one and forty-
44 two of this act shall not affect the repeal of such chapter and shall be
45 deemed repealed therewith;

46 2. Section fifteen of this act shall take effect immediately, and
47 shall be deemed to have been in full force and effect on and after July
48 1, 2008;

49 3. The amendments to chapter 756 of the laws of 1992 relating to fund-
50 ing a program for work force education conducted by the consortium for
51 worker education in New York city made by section forty-three of this
52 act shall take effect immediately, and shall be deemed to have been in
53 full force and effect on and after the effective date of section 85 of
54 part H of chapter 83 of the laws of 2002;

1 4. Section forty-four of this act shall be deemed to have been in full
2 force and effect on and after the effective date of section 101 of part
3 A of chapter 436 of the laws of 1997;

4 5. Section forty-seven of this act shall take effect immediately, and
5 shall be deemed to have been in full force and effect on and after the
6 effective date of section forty-five of part B of chapter 57 of the laws
7 of 2008;

8 6. Section fifty-two of this act shall take effect immediately, and
9 shall be deemed to have been in full force and effect on and after April
10 1, 2009 and shall expire and be deemed repealed March 31, 2010; and

11 7. Section fifty-five-a of this act shall take effect immediately, and
12 shall apply to the computation of state building aid on federally
13 authorized debt instruments issued on or after such effective date; and

14 8. The amendments to section 2856 of the education law made by section
15 twelve of this act shall survive the expiration and reversion of such
16 section as provided in section 27 of chapter 378 of the laws of 2007, as
17 amended.

18 PART B

19 Intentionally omitted.

20 PART C

21 Intentionally omitted.

22 PART D

23 Intentionally omitted.

24 PART E

25 Intentionally omitted.

26 PART F

27 Section 1. Subdivision 1 of section 663 of the education law, as
28 amended by chapter 305 of the laws of 2008, is amended to read as
29 follows:

30 1. Income defined. Except as otherwise provided in this section,
31 "income" shall be the total of the combined net taxable income and
32 income from pensions of New York state, local governments and the feder-
33 al government of the applicant, the applicant's spouse, and the appli-
34 cant's parents as reported in New York state income tax returns for the
35 calendar year next preceding the beginning of the school year for which
36 application for assistance is made, except that any amount received by
37 an applicant as a scholarship at an educational institution or as a
38 fellowship grant, including the value of contributed services and accom-
39 modations, shall not be included within the definition of "income" for
40 the purposes of this article. The term "parent" shall include birth
41 parents, stepparents, adoptive parents and the spouse of an adoptive
42 parent. Income, if not a whole dollar amount, shall be assumed to be
43 equal to the next lowest whole dollar amount. Any change in the status
44 of an applicant with regard to the persons responsible for the appli-
45 cant's support occurring after the beginning of any semester shall not
46 be considered to change the applicant's award for that semester.

1 § 2. This act shall take effect July 1, 2009.

2 PART G

3 Intentionally omitted.

4 PART H

5 Intentionally omitted.

6 PART I

7 Intentionally omitted.

8 PART J

9 Section 1. Article 14 of the education law is amended by adding a new
10 Part V to read as follows:

11 PART V

12 THE NEW YORK HIGHER EDUCATION LOAN PROGRAM

13 Section 690. Definitions.

14 691. Powers and duties.

15 692. Education loans; special requirements.

16 693. Repayment of loans.

17 694. Sale of education loans.

18 694-a. Miscellaneous.

19 694-b. Reporting.

20 \$ 690. Definitions. As used in this part, the following terms shall
21 have the following meanings unless otherwise specified:

22 1. "Education loan" shall mean any loan that is made under this
23 program to finance or refinance higher education expenses at an eligible
24 college.

25 2. "Eligible borrower" or "borrower" shall mean (i) a student who is a
26 resident of New York state attending, or accepted for enrollment at, an
27 eligible college, or (ii) the parent, legal guardian, or sponsor, as
28 defined by the corporation in regulation, of a student attending, or
29 accepted for enrollment at, an eligible college who is a resident of New
30 York state, and who obtains an education loan from a lending institution
31 to pay for or finance higher education expenses under this program.

32 3. "Eligible college" shall mean a post-secondary institution, located
33 within New York state, eligible for funds under Title IV of the Higher
34 Education Act of nineteen hundred sixty-five, as amended, or successor
35 statute offering a two-year, four-year, graduate or professional degree
36 granting or certificate program.

37 4. "Eligible co-signer" shall mean a parent, legal guardian or other-
38 wise credit worthy individual over twenty-one years of age who satisfies
39 applicable credit criteria approved by the corporation and is a resident
40 of New York state.

41 5. "Higher education expenses" shall mean the cost of attendance at an
42 eligible college and shall include tuition and fees, books, room and
43 board, and other educationally related expenses, as determined by the
44 corporation.

6. "Holder" shall mean, with respect to an education loan: (i) a lender; (ii) a public benefit corporation authorized to finance the purchase or making of education loans pursuant to the public authorities law; or (iii) any assignee of such lender or public benefit corporation.

1 7. "Lending institution" or "lender" shall mean any entity that itself
2 or through an affiliate originates education loans, other than an entity
3 authorized to finance the purchase or making of education loans through
4 the issuance of bonds pursuant to the public authorities law.

5 8. "Program" shall mean the New York Higher Education Loan Program
6 established by this article.

7 9. "Student" shall mean any individual who is enrolled at least half-
8 time, as defined by the commissioner, in a two year, four year, graduate
9 or professional degree granting or certificate program at an eligible
10 college.

11 § 691. Powers and duties. In furtherance of the purposes set forth in
12 this part, the corporation shall have the following additional powers
13 and duties:

14 1. To market, originate, disburse, service, collect, administer, guar-
15 antee, secure, finance, and purchase education loans not in default
16 status made under this program or contract for these services.

17 2. To purchase defaulted education loans made under this program.

18 3. To establish and maintain one or more default reserve funds and
19 accounts within such funds, in accordance with the terms of this
20 program.

21 4. To develop and administer or contract to administer one or more
22 financial literacy programs.

23 5. To provide or contract to provide default aversion services.

24 6. To establish criteria for eligible colleges, lenders, and other
25 entities such as, but not limited to, servicers, and to enter into
26 participation agreements with any such eligible colleges, lenders, and
27 other entities and any entity authorized to finance the purchase or
28 making of education loans through the issuance of bonds pursuant to the
29 public authorities law, and any subsequent purchaser of education loans
30 made under this program.

31 7. To establish criteria for all lender underwriting, education loan
32 purchases, servicing and default insurance payments.

33 8. To establish criteria for the distribution of education loans made
34 under this program.

35 9. To audit lenders, servicers, holders, and eligible colleges for
36 program compliance.

37 10. To adopt rules and regulations to implement this program.

38 § 692. Education loans; special requirements. In any year in which
39 fixed rate education loans are to be acquired using the proceeds of
40 bonds issued by the state of New York mortgage agency or other public
41 benefit corporation authorized to issue bonds for the purposes of this
42 program, preference shall be given to education loans made to eligible
43 borrowers for the benefit of students who demonstrate financial need
44 based on such student's family gross income, pursuant to rules and regu-
45 lations promulgated by the corporation after consultation with the state
46 of New York mortgage agency or other public benefit corporation author-
47 ized to issue bonds for the purposes of this program. 1. Terms and
48 conditions. (a) eligible borrowers shall apply for education loans
49 under this program on forms prescribed by the corporation;

50 (b) except as may be provided by regulation, a student for whom an
51 education loan is made shall be required to first apply for and exhaust:
52 (i) their maximum eligibility of loans under the Federal Family Educa-
53 tion Loan Program (FFELP) and the Federal Direct Student Loan Program
54 (FDSLP), excluding PLUS loans; (ii) any other federal student aid, other
55 than HEAL loans and other aid permitted by the corporation to be
56 excluded; (iii) any state student aid; and (iv) any other student aid as

1 prescribed by the corporation before being eligible for any education
2 loan under this program;

3 (c) borrowers shall successfully complete a financial literacy course
4 as prescribed by the corporation;

5 (d) student borrowers must apply for education loans under this
6 program with an eligible co-signer;

7 (e) a borrower, or co-signer, who is in default on an education loan
8 made under this program, the Federal Family Education Loan Program, the
9 Williams D. Ford Program, or has failed to comply with the terms and
10 conditions of any award under this article and has failed to satisfac-
11 torily cure such default or non-compliance as prescribed by applicable
12 law or regulation shall be ineligible to receive a loan under this
13 program, and shall further be ineligible for any other state student aid
14 while in default on an education loan made under this program; and

15 (f) participating eligible colleges, lending institutions, and other
16 participants in this program shall be required to enter into a partic-
17 ipation agreement with the corporation and comply with all reporting and
18 processing requirements and procedures as established by the corpo-
19 ration. These participation agreements shall contain such other specif-
20 ic terms and conditions of the program as shall be determined by the
21 corporation.

22 2. Citizenship. A borrower must be (a) a citizen of the United States,
23 or

24 (b) an alien lawfully admitted for permanent residence in the United
25 States, or

26 (c) an individual of a class of refugees paroled by the attorney
27 general of the United States under his or her parole authority pertain-
28 ing to the admission of aliens to the United States.

29 3. Loan limits. Education loans made under this program shall have
30 annual and cumulative loan limits as approved from time to time by the
31 corporation, subject to the approval of the state of New York mortgage
32 agency, or other public benefit corporation authorized to issue bonds
33 under the public authorities law for purposes of this program, with
34 respect to loans that are expected to be financed by such entity.

35 4. Interest rates. The interest rate of loans made under this program
36 shall be established in a manner that shall be approved at least annual-
37 ly by the corporation, subject to the approval of the state of New York
38 mortgage agency, or other subject to public benefit corporation author-
39 ized to issue bonds under the public authorities law for purposes of
40 this program, with respect to loans that are expected to be financed by
41 such entity.

42 5. Default fee. A percentage of the education loan shall be paid as a
43 default fee, by or on behalf of the borrower or the lender, in an amount
44 to be established at least annually by the corporation subject to the
45 approval of the state of New York mortgage agency, or other public bene-
46 fit corporation authorized to issue bonds under the public authorities
47 law for purposes of this program, with respect to loans that are
48 expected to be financed by such entity. The default fee established by
49 the corporation, subject to the approval of the state of New York mort-
50 gage agency, or other public benefit corporation authorized to issue
51 bonds under the public authorities law for purposes of this program,
52 with respect to education loans that are expected to be financed by such
53 entity, shall be a percentage of the principal amount of such loans, as
54 determined by the corporation, that, together with other amounts on
55 deposit in the applicable default reserve fund, shall not exceed an
56 amount sufficient to ensure that the balance of such funds satisfies the

1 obligations of such default reserve fund and permits such loans to be
2 financed. This fee may be considered part of the cost of attendance for
3 the purposes of calculating the loan amount for this program and shall
4 be transmitted to the corporation in accordance with rules or regu-
5 lations promulgated by the corporation. The corporation shall deposit
6 these funds into a designated account within the New York higher educa-
7 tion loan program variable rate default reserve fund, the New York high-
8 er education loan program fixed rate default reserve fund, or the state
9 of New York mortgage agency New York higher education loan program
10 default reserve fund, as applicable.

11 6. Consolidation. Education loans made pursuant to this program may be
12 eligible for consolidation upon the terms and conditions established by
13 the corporation. Any person consolidating education loans under this
14 program shall be considered a borrower for purposes of this part.

15 7. Default reserve funds. (a) General provisions. One or more default
16 reserve funds shall be established in the custody of the comptroller
17 pursuant to sections seventy-eight-a and seventy-eight-b of the state
18 finance law. One or more default reserve funds shall be established in
19 the custody of the state of New York mortgage agency pursuant to subdi-
20 vision six of section two thousand four hundred five-a of the public
21 authorities law. These funds shall be used by the corporation to pay
22 default claims to participating lenders and holders of education loans
23 made pursuant to this program.

24 (b) Deposits. The corporation shall promptly deposit or transfer into
25 the New York higher education loan program variable rate default reserve
26 fund created by section seventy-eight-a of the state finance law, the
27 New York higher education loan program fixed rate default reserve fund
28 created by section seventy-eight-b of the state finance law or the state
29 of New York mortgage agency New York higher education loan program
30 default reserve fund created by subdivision six of section two thousand
31 four hundred five-a of the public authorities law, with respect to
32 education loans, described in such provisions, any moneys received in
33 connection with this program other than payments of principal and inter-
34 est of education loans that are not in default status, including, but
35 not limited to: (i) default fees; (ii) fees received from eligible
36 colleges; (iii) funds received for the repayment of defaulted education
37 loans, the unpaid principal, capitalized and unpaid accrued interest of
38 which have been paid from the funds, including without limitation all
39 such amounts received through the operation of voluntary collection
40 activities, administrative wage garnishment or credit of tax overpay-
41 ments less any amounts received for collection fees assessed by the
42 corporation; (iv) contractual penalties and subsidy fees; (v) any amount
43 that may be appropriated to the corporation; (vi) any amount received by
44 the corporation or any agent from any other source for deposit therein;
45 and (vii) interest and investment income earned by the funds.

46 8. Lender due diligence. Participating lenders shall be required to
47 perform all due diligence requirements as prescribed by the corporation
48 and incorporated into the participation agreement and into regulations
49 promulgated by the corporation.

50 9. Eligible college requirements. (a) Participating eligible colleges
51 shall be required to certify loan eligibility upon forms prescribed by
52 the corporation and incorporated into the participation agreement and
53 pursuant to regulations promulgated by the corporation.

54 (b) Participating eligible colleges shall be required to contribute a
55 one percent fee prescribed by the corporation, subject to the approval
56 of the state of New York mortgage agency, or other public benefit corpo-

1 ration authorized to issue bonds under the public authorities law for
2 purposes of this program, with respect to loans that are expected to be
3 financed by such entity, based upon the loan dollar volume or have the
4 contribution made on its behalf, pursuant to the terms of the partic-
5 ipation agreement. This fee shall be deposited into a designated account
6 within the New York higher education loan program variable rate default
7 reserve fund the New York higher education loan program fixed rate
8 default reserve fund, or the state of New York mortgage agency New York
9 higher education loan program default reserve fund, as described in
10 subdivision seven of this section as applicable. This fee, or any other
11 college fee, shall not be assessed to the student or eligible borrower
12 in connection with this program.

13 § 693. Repayment of loans. 1. Terms of repayment. The terms of repay-
14 ment of education loans made under this program shall be established in
15 rules and regulations promulgated by the corporation subject to the
16 approval of the state of New York mortgage agency or other public bene-
17 fit corporation authorized to issue bonds under the public authorities
18 law for purposes of this program with respect to loans that are expected
19 to be financed by such entity.

20 2. Grace period. The terms of any grace period for education loans
21 made under this program shall be established in rules and regulations
22 promulgated by the corporation subject to the approval of the state of
23 New York mortgage agency or other public benefit corporation authorized
24 to issue bonds under the public authorities law for purposes of this
25 program with respect to loans that are expected to be financed by such
26 entity. Notwithstanding, the grace period established shall be no less
27 than six months.

28 3. Forbearance and deferments. Education loans made under this program
29 shall be eligible for in-school and military deferments pursuant to
30 rules and regulations promulgated by the corporation, or pursuant to
31 such additional deferments and/or forbearance as offered by an eligible
32 lender, in each case, subject to the approval of the state of New York
33 mortgage agency, or other authorized public benefit corporation author-
34 ized to issue bonds under the public authorities law for purposes of
35 this program, with respect to loans that are expected to be financed by
36 such entity. Upon the assignment of a defaulted education loan made
37 under this program for collection as described in subdivision five of
38 this section, the borrower shall no longer be eligible for any forbear-
39 ance or deferments while such loan remains in default.

40 4. Delinquency. A borrower shall be considered delinquent on an educa-
41 tion loan under this program after thirty days of non-payment. The hold-
42 er shall notify the corporation promptly after the first day of delin-
43 quency and the corporation shall undertake actions to return the
44 borrower to repayment pursuant to rules and regulations established by
45 the corporation. Such actions shall include, but not be limited to,
46 attempts at: (i) locating and contacting the borrower and/or co-signer,
47 as applicable, regarding the delinquent status of their loan; (ii)
48 explaining the account history and clarifying any discrepancies; (iii)
49 counseling the borrower and/or co-signer, as applicable, regarding all
50 available repayment options, inducing deferments, and any public assist-
51 ance available to them; (iv) providing the borrower and/or co-signer, as
52 applicable, with documentation in connection with their loan or loans;
53 (v) informing the borrower and/or co-signer, as applicable, of the
54 consequences of default; and (vi) any other assistance that would
55 prevent a default by a borrower.

1 5. Default. Any education loan under this program that is delinquent
2 for one hundred eighty days shall be deemed in default. Upon default,
3 the holder shall file a claim with the corporation and, if applicable,
4 the state of New York mortgage agency, for payment from the New York
5 education loan program variable rate default reserve fund, the New York
6 education loan program fixed rate default reserve fund, or the state of
7 New York mortgage agency New York education loan program default reserve
8 fund, as described in subdivision seven of section six hundred ninety
9 two of the education law, as applicable, pursuant to regulations promul-
10 gated by the corporation. Upon receipt of a claim, the corporation shall
11 notify the borrower that their loan is being assigned to the corporation
12 for collection. The lender, or holder shall be paid one hundred percent
13 of the outstanding principal, and of the capitalized and unpaid accrued
14 interest. Upon such payment, this amount shall be the principal owed by
15 the borrower.

16 All collection payments received by the corporation from a borrower,
17 or on behalf of borrowers, in default on loans made under this program,
18 except collection fees shall be deposited into a designated account
19 within the New York higher education loan program variable rate default
20 reserve fund, New York higher education loan program fixed rate default
21 reserve fund, or the state of New York mortgage agency New York higher
22 education loan program default reserve fund, as applicable.

23 6. Collection fee. The corporation shall assess a collection fee, in
24 an amount to be determined by the corporation at least annually, on all
25 defaulted education loans under this program. This fee shall be retained
26 by the corporation for the administration of the program. The aggregate
27 annual revenue generated by such fee shall not exceed the actual costs
28 incurred by the corporation, in the preceding year, in collecting a
29 defaulted loan under this program on which the corporation has paid a
30 claim, except in the initial year for which such fee shall not exceed
31 the fee charged by the corporation for the collection of defaulted loans
32 under the federal family education loan program. Any amounts in excess
33 of actual cost shall be used to reduce the fee charged in the subsequent
34 year.

35 7. Administrative wage garnishment. (a) Notwithstanding any provision
36 of law to the contrary, the corporation shall be entitled to garnish the
37 disposable pay of an individual to collect the amount owed by the indi-
38 vidual, if such individual fails to make required voluntary payments
39 under a repayment agreement with the corporation, provided that:

40 (i) The amount deducted for any pay period does not exceed fifteen
41 percent of disposable pay. However, the amount deducted for any period
42 may exceed fifteen percent with the written consent of the individual;

43 (ii) Prior to garnishment the individual shall have been given thirty
44 days written notice to the individual's last known address advising such
45 individual of the nature of the obligation, amount of the loan obli-
46 gation, the corporation's intent to garnish and an explanation of the
47 individual's rights under this section including the right to inspect
48 and copy records relating to the debt;

49 (iii) The individual shall have been given an opportunity within the
50 aforementioned thirty days to enter into a written repayment agreement
51 with the corporation to avoid garnishment of wages;

52 (iv) The individual shall have been provided an opportunity for a
53 hearing pursuant to the requirements of paragraph (f) of this subdivi-
54 sion.

55 (b) The individual's employer shall pay to the corporation amounts as
56 directed in the withholding order and shall be liable for failure to

1 comply with said order. The corporation may sue an employer in a court
2 of competent jurisdiction to recover from such employer the amount the
3 employer fails to withhold from the individual's wages following receipt
4 of the order of withholding with interest thereon plus attorneys' fees
5 and costs;

6 (c) The notice of withholding served upon the employer shall contain
7 only such information as is necessary for the employer to comply with
8 the withholding order.

9 (d) No amount may be deducted from the wages of an individual who has
10 been involuntarily separated from employment and has not been contin-
11 uously employed for twelve months. An individual must prove that sepa-
12 ration from employment was involuntary. Separation due to incarceration
13 shall not qualify as involuntary separation.

14 (e) An employer may not discharge from employment, take disciplinary
15 action against or refuse to employ an individual by reason of the fact
16 that such individual's wages are subject to an order of withholding.
17 Such individual may take action against said employer in a court of
18 competent jurisdiction for reinstatement, back pay or such further
19 relief as may be just and necessary.

20 (f) A hearing as described in subparagraph (iv) of paragraph (a) of
21 this subdivision shall be provided prior to an order of withholding if
22 the individual submits a written request for a hearing on or before the
23 fifteenth day following the notice described in subparagraph (ii) of
24 paragraph (a) of this subdivision in accordance with procedures set
25 forth by the corporation. If an individual fails to submit a written
26 request in the time frame provided, the corporation shall still provide
27 a hearing upon receipt of a written request, but such hearing need not
28 be provided prior to an order of withholding being issued to the employ-
29 er. The hearing shall not be conducted by a party under the supervision
30 or control of the corporation except that nothing shall prohibit the
31 corporation from appointing an administrative law judge. A hearing deci-
32 sion shall be issued no later than sixty days after the filing of the
33 petition requesting the hearing.

34 (g) For purposes of this section "disposable pay" shall mean that part
35 of the compensation of any individual from an employer remaining after
36 deduction of amounts required to be withheld by law.

37 (h) All funds received through administrative wage garnishment shall
38 be deposited into a designated account within the New York higher educa-
39 tion loan program variable rate default reserve fund, the New York high-
40 er education loan program fixed rate default reserve fund, or the state
41 of New York mortgage agency New York higher education loan program
42 default reserve fund, as applicable.

43 8. New York state tax offset. The corporation shall be entitled to
44 receive credits of New York state tax overpayments pursuant to section
45 one hundred seventy-one-d and paragraph three of subdivision (e) of
46 section six hundred ninety-seven of the tax law with respect to
47 defaulted education loans under this program. All funds, or credits,
48 received through such tax offsets shall be deposited into a designated
49 account within the New York higher education loan program variable rate
50 default reserve fund, the New York higher education loan program fixed
51 rate default reserve fund, or the state of New York mortgage agency New
52 York higher education loan program default reserve fund, as applicable.

53 9. Data share. The corporation shall be entitled to receive data from
54 the New York state department of taxation and finance pursuant to
55 section one hundred seventy-one-a and paragraph three of subdivision (e)

1 of section six hundred ninety-seven of the tax law with respect to
2 defaulted education loans under this program.

3 10. Statute of limitation. Notwithstanding any provision of law to the
4 contrary, there shall be no statute of limitations to bring suit or
5 otherwise collect an education loan under this program. Judgments in
6 favor of the corporation under this program shall not expire and there
7 shall be no statute of limitations upon which to enforce or collect said
8 judgment.

9 11. Capacity of minors. Any person otherwise qualifying for an educa-
10 tion loan under this program shall not be disqualified by reason of his
11 or her being under the age of eighteen years and for the purposes of
12 applying for, receiving and repaying such a loan, any such person shall
13 be deemed to have full legal capacity to act. The corporation, in
14 collecting education loans under this program, shall not be subject to a
15 defense raised by any borrower based on a claim of infancy.

16 12. Usury. Notwithstanding any provision of law to the contrary the
17 rate or amount of interest or fees payable on education loans made under
18 this program shall not exceed twenty-five per centum per annum or its
19 equivalent rate for a longer or shorter period.

20 13. Death and disability discharge. Upon the death of a student, for
21 the funding of whose higher education expenses an education loan was
22 made, the education loan made under this program shall be deemed
23 discharged. If such a student becomes totally and permanently disabled,
24 the education loan under this program shall be deemed discharged. A
25 total or permanent disability shall mean a condition of an individual
26 who is unable to work and earn money because of an injury or illness
27 that is expected to continue indefinitely or result in death. The holder
28 of such discharged education loans shall be paid the outstanding princi-
29 pal, capitalized and unpaid accrued interest due from the New York high-
30 er education loan program variable rate default reserve fund, the New
31 York higher education loan program fixed rate default reserve fund, or
32 the state of New York mortgage agency New York higher education loan
33 program default reserve fund, as applicable.

34 14. Bankruptcy. Education loans under this program shall be considered
35 non-dischargeable pursuant to section 523(a)(8) of the U.S. Bankruptcy
36 Code.

37 15. Notwithstanding any other provision of law, other than section one
38 thousand six hundred eighty two and section two thousand four hundred
39 five-a of the public authorities law, a security interest in education
40 loans shall be perfected only by the filing of a financing statement in
41 the manner provided under section 9-310 of the uniform commercial code,
42 and shall attach and be assigned priority in the manner provided under
43 the uniform commercial code with respect to security interests perfected
44 by such a filing, and a description of collateral consisting of educa-
45 tion loans in any financing statement shall be conclusively deemed to be
46 legally sufficient if it refers to records identifying such loans
47 retained by the corporation, provided that any such security interest
48 shall be subject to any applicable lien under section two thousand four
49 hundred five-a of the public authorities law. The owner of any education
50 loan shall advise the corporation of any sale or assignment of such loan
51 at the time and in the manner required by the corporation.

52 16. Notwithstanding any other provision of law, any eligible public
53 college or public career education institution is hereby authorized to
54 enter into one or more agreements with the corporation and any entity
55 authorized to finance education loans pursuant to the public authorities
56 law providing for the participation of such college or career education

1 institution in the program and to perform or contract the performance of
2 its obligations under any such agreement. Such obligations may include
3 without limitation the payment obligations described in this title.

4 § 694. Sale of education loans. 1. The corporation and holders shall
5 be authorized to enter into one or more agreements for the sale of
6 education loans made pursuant to this program.

7 2. Education loan purchases may be financed (i) by bonds issued by the
8 state of New York mortgage agency, or other entity authorized to issue
9 bonds for such purpose pursuant to the public authorities law, in an
10 amount approved by the director of the division of the budget; or (ii)
11 by other non-state sources in amounts established pursuant to an agree-
12 ment with the corporation.

13 3. The corporation shall establish the criteria and terms upon which
14 lenders may sell education loans subject to the approval of the state of
15 New York mortgage agency or any other entity authorized to issue bonds
16 under this program with respect to loans that are expected to be
17 financed by such entity.

18 § 694-a. Miscellaneous. 1. No education loan shall be deemed subject
19 to section one hundred eight of the banking law, to article nine of the
20 banking law or to any other provisions of law governing the qualifica-
21 tions to make loans or the terms or conditions of loans described in
22 this part, including, without limitation, the interest rates, fees and
23 charges applicable thereto. Neither the corporation nor any entity
24 authorized to finance education loans pursuant to the public authorities
25 law shall be subject to any licensing requirements in connection with
26 its education lending activities. No entity shall be considered a lender
27 for purposes of any other provision of law solely as a result of its
28 interest in an education loan made under this part.

29 2. Funds may be appropriated to the corporation and/or the state of
30 New York mortgage agency, or other entity authorized to issue bonds
31 under this program, for the administration of this program.

32 3. Interest paid on education loans made under this program shall be
33 allowed as a deduction in computing the net taxable income of any such
34 person for purposes of any income or franchise tax imposed by the state
35 or any political subdivision thereof.

36 4. Any agreement of an entity authorized to issue bonds under the
37 public authorities law for purposes of this program to acquire education
38 loans from a lender shall be subject to the availability to such entity
39 of funding for such purpose upon terms and conditions approved by such
40 entity and shall not require the expenditure by such entity of funds
41 from any source other than amounts obtained through the issuance of
42 bonds or notes, including earnings thereon, and any appropriations ther-
43 eof.

44 5. The corporation, the state of New York mortgage agency, any lender,
45 and any public benefit corporation authorized to issue bonds under the
46 public authorities law for the purposes of this program shall not be
47 subject to Title 5 of the general obligations law with respect to educa-
48 tion loans and such education loans shall not be subject to such title.

49 6. To the extent that the provisions of this part are inconsistent
50 with the provisions of any other part of this article, the provisions of
51 this part shall be controlling.

52 § 694-b. Reporting. The corporation, after consultation with the state
53 of New York mortgage agency, and any other public benefit corporation
54 that shall have issued bonds under the public authorities law for
55 purposes of this program, with respect to loans that have been financed
56 by or that are expected to be financed by such entity, shall report

1 annually with respect to education loans made under this program for the
2 prior academic year to the governor, the temporary president of the
3 senate, the speaker of the assembly, the director of the division of the
4 budget, the senate finance committee, the assembly ways and means
5 committee and the standing committees of the legislature having juris-
6 isdiction of higher education on the number and characteristics of
7 students who received fixed rate and/or variable rate loans under this
8 program, including, but not limited to, the interest rate charged, the
9 default and collection fees established, the grace period established if
10 other than six months, the number of students who received loans that
11 demonstrated financial need pursuant to section six hundred ninety-two
12 of this part, the income established by the corporation pursuant to
13 section six hundred ninety-two of this part, the number of students who
14 received fixed rate loans, the number of students who received variable
15 rate loans, the number of default claims received by the corporation,
16 the number of borrowers subject to administrative wage garnishment, and
17 a list of the lenders and holders, if known, who have provided variable
18 rate loans. Such annual report shall be submitted by the first day of
19 December following the close of the academic year for which such educa-
20 tion loans were made.

21 § 2. Subdivision 2 of section 653 of the education law, as added by
22 chapter 942 of the laws of 1974, is amended to read as follows:

23 2. a. To submit to the governor, the temporary president of the
24 senate, the speaker of the assembly, the senate finance committee, the
25 assembly ways and means committee and the standing committees of the
26 legislature having jurisdiction of higher education, at such times as
27 the director of the budget may prescribe a student aid and loan budget
28 request for the following state fiscal year. The budget request shall
29 include, but not be limited to estimates of the number and character-
30 istics of students eligible for aid and loans, other than education
31 loans made under the New York higher education loan program pursuant to
32 part V of this article which budget request shall be developed by the
33 president after consultation with the board of regents in order to
34 implement the student financial aid and loan programs, other than educa-
35 tion loans made under the New York higher education loan program pursu-
36 ant to part V of this article provided for in this article. Notwith-
37 standing, the budget request shall also include an estimate of the
38 amounts needed for state operations within the New York higher education
39 loan program account for purposes of the New York higher education loan
40 program established pursuant to part V of this article. A copy of the
41 budget request shall be transmitted to the commissioner for his informa-
42 tion. The budget request submitted by the board shall be subject to
43 approval annually as part of the executive budget.

44 b. At the time and in the format prescribed by the Director of the
45 Budget, the Board shall submit to the Division of the Budget an adminis-
46 trative and operating budget request. This budget request shall be
47 subject to approval annually as part of the executive budget.

48 c. In order further to assure the payment by the corporation to lend-
49 ing institutions for defaulted loans, other than education loans made
50 under the New York higher education loan program pursuant to part V of
51 this article in the respective amounts as guaranteed by the corporation
52 pursuant to contract, there shall be annually apportioned and paid to
53 the corporation such estimated amount, if any, as shall be certified by
54 the board to the governor and director of the budget as necessary to
55 provide for the payment of all such defaults for the next ensuing state
56 fiscal year. The board shall, as part of its annual budget request, make

1 and deliver to the governor and director of the budget, its certificate
2 stating the estimated amount, if any, required to pay such defaults for
3 the ensuing state fiscal year, if any, and said sums shall be appor-
4 tioned and paid to the corporation during such fiscal year.

5 § 3. Section 656 of the education law, as added by chapter 942 of the
6 laws of 1974, is amended to read as follows:

7 § 656. Contributions to corporation; tax deduction thereof. Notwith-
8 standing the provisions of any general or special law all domestic
9 corporations or associations organized for the purpose of carrying on
10 business in this state, and any person, are hereby authorized to make
11 contributions to the New York state higher education services corpo-
12 ration or to the New York higher education loan program variable rate
13 default reserve fund, the New York higher education loan program fixed
14 rate default reserve fund, or the state of New York mortgage agency
15 higher education loan program default reserve fund, as applicable and
16 such contributions shall be allowed as deductions in computing the net
17 taxable income of any such person, corporation or association for
18 purposes of any income or franchise tax imposed by the state or any
19 political subdivision thereof.

20 § 4. Subdivision 2 of section 657 of the education law, as added by
21 chapter 942 of the laws of 1974, is amended to read as follows:

22 2. The state of New York [~~covenants~~] does hereby pledge to and agree
23 with the holders of the [~~obligations and~~] bonds, notes [~~issued by~~], or
24 other obligations of the corporation pursuant to this article, or of the
25 state of New York mortgage agency authorized in section two thousand
26 four hundred six of the public authorities law for the corporate
27 purposes authorized in section two thousand four hundred five-a of the
28 public authorities law, or of any other state entity authorized to issue
29 bonds or notes under the New York education loan program codified in
30 part V of this article that are issued for such purpose, and with the
31 holders of such education loans, that the provisions of law applicable
32 to the New York education loan program variable rate default reserve
33 fund, the New York education loan program fixed rate default reserve
34 fund, or the state of New York mortgage agency New York education loan
35 program default reserve fund, as applicable, and to the powers of the
36 corporation to receive and deposit in each such fund the applicable
37 amounts described therein shall not be amended in a manner adversely
38 affecting the interests of such holders without adequate provision being
39 made to protect such interests and that the corporation shall not be
40 required to pay any taxes or assessments upon any of its property or
41 upon its activities pursuant to the provisions of this article, or upon
42 any moneys, funds, revenues or other income held or received by the
43 corporation, and that the obligations and notes of the corporation and
44 the income therefrom shall at all times be exempt from taxation, except
45 for estate and gift taxes and taxes on transfers. Each of the corpo-
46 ration, the state of New York mortgage agency and any such other public
47 benefit corporation, is authorized to include this pledge and agreement
48 of the state in any agreements with the holders of such bonds and with
49 the holders of such education loans.

50 § 5. Subdivision 1 of section 661 of the education law, as amended by
51 chapter 844 of the laws of 1975, is amended to read as follows:

52 1. Applicability. The eligibility requirements and conditions estab-
53 lished in this section shall apply to all general awards, academic
54 performance awards and student loans other than education loans made
55 pursuant to part V of this article.

1 § 6. Paragraph c of subdivision 6 of section 661 of the education
2 law, as added by chapter 637 of the laws of 1985, subparagraph 1 as
3 amended by chapter 212 of the laws of 1988, is amended to read as
4 follows:

5 c. A student who has defaulted on a guaranteed student loan or has
6 failed to make a refund of an award may notwithstanding be considered
7 eligible for a further guaranteed student loan under the federal student
8 aid programs or an award or both, ~~[if]~~ provided:

9 (1) (i) the student, except for the default, shall be eligible for the
10 guaranteed student loan or the award; and (ii) the student has entered
11 into a plan of repayment of the amount outstanding on the defaulted loan
12 or refund satisfactory to the corporation, and has made satisfactory
13 payments thereunder for a period of six months prior to the application
14 to the corporation for the guaranteed student loan or the award; and
15 (iii) in the case of a default in the payment of a guaranteed student
16 loan, the student has demonstrated to the satisfaction of the president,
17 that at the time the default occurred the student was entitled to a
18 deferment or could have been granted forbearance of payment on the loan
19 by the lender if a request for forbearance had been made;

20 (2) application for the further loan or award as authorized by this
21 paragraph shall be on such forms and supported by such documentation as
22 shall be prescribed by the president. The determination on the applica-
23 tion by the president may be made without a hearing and shall be deemed
24 final administrative action;

25 (3) anything to the contrary herein notwithstanding the corporation
26 may offset any award to which the student shall be entitled against a
27 refund due for a previous award, as provided under the provisions of
28 subdivision four of section six hundred sixty-five of this article.

29 § 7. Section 682 of the education law is REPEALED.

30 § 8. Section 683 of the education law is REPEALED.

31 § 8-a. Section 684 of the education law is REPEALED.

32 § 8-b. Section 651 of the education law is amended by adding a new
33 subdivision 7 to read as follows:

34 7. "Lend" shall include one or more of the following services: the
35 origination, disbursement, servicing, and/or collection of any student
36 or parent education loan made by or on behalf of a lending institution a
37 government entity, or an institution of higher education for the purpose
38 of paying for higher education expenses as well as serving as a second-
39 ary market for these loans.

40 § 9. Section 2405-a of the public authorities law is REPEALED and a
41 new section 2405-a is added to read as follows:

42 § 2405-a. Education loans. (1) For purposes of this section, the
43 following words and terms shall have the following meaning unless the
44 context shall indicate another or different meaning or intent:

45 (a) "Corporation" shall mean the New York state higher education
46 services corporation.

47 (b) "Education Loan" shall mean: (i) a New York higher education loan
48 program loan made pursuant to part v of article fourteen of the educa-
49 tion law; or (ii) a loan under Part B of Title IV of the Higher Educa-
50 tion Act of nineteen hundred sixty-five, as amended, including but not
51 limited to a loan described in subdivision ten of section twenty-four
52 hundred two of this part; provided, that the borrower shall be required
53 to apply the net proceeds of such loans to pay the student's costs of
54 post-secondary education or to repay one or more such loans incurred for
55 such purpose.

1 (2) In addition to the powers of the agency pursuant to the other
2 sections of this title, the agency shall have power:

3 (a) To enter into one or more agreements with the corporation and to
4 perform or contract for the performance of its obligations under any
5 such agreement;

6 (b) To make and contract to make and to acquire and contract to
7 acquire education loans and to enter into advance commitments for the
8 purchase of said education loans;

9 (c) Subject to any agreement with bondholders or noteholders, to
10 invest moneys of the agency not required for immediate use, including
11 proceeds from the sale of any bonds or notes, in education loans;

12 (d) To make and execute contracts for the marketing, origination,
13 servicing, collection, administration, guarantee, securing, and financ-
14 ing of education loans originated or acquired by the agency pursuant to
15 this title, and to pay the reasonable value of services rendered to the
16 agency pursuant to those contracts;

17 (e) Subject to any agreement with bondholders or noteholders, to rene-
18 gotiate or refinance any education loan that has been acquired by the
19 agency or which the agency has committed to purchase that is in default;
20 to waive any default or consent to the modification of the terms or any
21 such education loan; to forgive all or part of any indebtedness; and to
22 commence any action or proceeding to protect or enforce any right
23 conferred upon it with respect to any such education loan by law, loan
24 agreement, contract or other agreement;

25 (f) To prescribe standards and criteria for the origination of educa-
26 tion loans to be eligible for acquisition by the agency and for educa-
27 tion loans purchased by the agency;

28 (g) Subject to any agreement with bondholders or noteholders, to sell
29 any education loans made or acquired by the agency at public or private
30 sale and at such price or prices and on such terms as the agency shall
31 determine;

32 (h) To establish, revise from time to time, charge and collect such
33 premiums or fees in connection with education loans and its partic-
34 ipation in the New York higher education loan program as the agency
35 shall determine; and

36 (i) Subject to any agreement with bondholders or noteholders, to
37 invest moneys pledged to secure bonds issued for the corporate purposes
38 authorized by this section not required for immediate use in investments
39 authorized for investment of state funds under section ninety-eight or
40 ninety-eight-a of the state finance law.

41 (3) The agency shall have the power and is hereby authorized from time
42 to time to issue its bonds and notes pursuant to section two thousand
43 four hundred six of this title for the corporate purposes authorized by
44 this section, including without limitation for the purposes of financing
45 and refinancing education loans and of refunding any bonds or notes
46 issued for such purpose.

47 (4) Each lender or service provider who makes a representation or
48 warranty to the agency with respect to an education loan shall be liable
49 to the agency for any damages suffered by the agency by reason of the
50 untruth of such representation or the breach of such warranty and, in
51 the event that any representation shall prove to be untrue when made or
52 in the event of any breach of warranty, such person shall, at the option
53 of the agency, repurchase the education loan for the price provided in
54 the applicable financing agreement, as the agency may determine.

55 (5) It is the intent of the legislature that any pledge by the agency
56 of education loans or of earnings, revenues or other moneys receivable

1 from any source, including without limitation default payments by the
2 New York higher education loan program variable rate default reserve
3 fund, the New York higher education loan program fixed rate default
4 reserve fund, or the state of New York mortgage agency New York higher
5 education loan program default reserve fund, as applicable, with respect
6 to education loans financed by the agency, shall be valid and binding
7 from the time when the pledge is made. The education loans, earnings,
8 revenues or other moneys so pledged and thereafter received by the agen-
9 cy or its agent, including without limitation the higher education
10 services corporation or any education loan servicer, shall immediately
11 be subject to the lien of such pledge without any physical delivery
12 thereof or further act, and the lien of any such pledge shall be valid
13 and binding as against all parties having claims of any kind in tort,
14 contract or otherwise against the agency or its agent, including without
15 limitation the higher education services corporation or any education
16 loan servicer, irrespective of whether such parties have notice thereof.
17 Neither the resolution nor any other instrument by which a pledge is
18 created need be recorded.

19 (6) The state of New York mortgage agency New York higher education
20 loan program default reserve fund. (a) There is hereby created and
21 established in the sole custody of the state of New York mortgage agency
22 a special fund to be known as the state of New York mortgage agency New
23 York higher education loan program default reserve fund which shall be
24 for the exclusive benefit of the holders of education loans that the
25 agency has acquired, or agreed to acquire, under the New York higher
26 education loan program, codified in part V of article fourteen of the
27 education law.

28 (b) Amounts held in this fund shall not be, or be deemed, funds of the
29 state or funds under the management of the state, the agency, or the
30 corporation. The obligations of such fund shall not be, or be deemed,
31 the debts or obligations of the state and the state shall not be, or be
32 deemed, in any way obligated to: any holder of any such education loan;
33 any holder of bonds issued pursuant to section two thousand four hundred
34 six of this part for the corporate purposes authorized in section two
35 thousand five-a of this article; any fiduciary or provider of any credit
36 facility, liquidity facility or interest rate exchange agreement with
37 respect to such bonds; or any other creditor of this fund.

38 (c) Such fund shall consist of: (i) all moneys received by the higher
39 education services corporation pursuant to paragraph (b) of subdivision
40 seven of section six hundred ninety-two of the education law, in
41 connection with education loans that the agency has acquired or agreed
42 to acquire under the New York higher education loan program education
43 loans; (ii) any transfers from the New York higher education loan
44 program variable rate default reserve fund created by section seventy-
45 eight-a of the state finance law or from the New York higher education
46 loan program fixed rate default reserve fund created by section seven-
47 ty-eight-b of the state finance law; and (iii) any appropriation payment
48 or transfer to the agency for such purpose.

49 (d) The agency shall establish accounts within the fund and priorities
50 of payment from such accounts and shall invest the fund in investments
51 authorized for investment of state funds under section ninety-eight or
52 ninety-eight-a of the state finance law.

53 (e) This fund, including all sub-accounts thereof, shall be segregated
54 from all other funds kept by the agency and shall not be used for any
55 other purpose beyond those set forth in part V of article fourteen of
56 the education law or in this section. The agency shall utilize monies in

1 the fund solely to pay the outstanding principal, capitalized and unpaid
2 accrued interest on defaulted education loans described in paragraph a
3 of this subdivision.

4 (f) Nothing contained in this section shall prevent the agency, or the
5 corporation, from receiving grants, gifts or bequests for the purposes
6 of this fund and depositing them into the fund according to law, rules,
7 or regulations.

8 (g) The agency shall make payments from the monies in this fund in
9 amounts and at times required pursuant to part V of article fourteen of
10 the education law.

11 § 10. Section 201 of the state finance law is amended by adding a new
12 subdivision 16 to read as follows:

13 16. The comptroller is hereby authorized to deduct from the salary of
14 any state employee such amount as such employee may specify in writing
15 to be filed with the payroll officer of the employee's agency for the
16 purpose of making payments on outstanding education loans made pursuant
17 to part V of article fourteen of the education law and to transmit
18 deductions so withheld to the appropriate collecting agent designated by
19 the higher education services corporation for receipt thereof. Any such
20 written authorization may be withdrawn by such employee at any time upon
21 filing written notice of such withdrawal with the comptroller. The comp-
22 troller is hereby authorized to make such rules and regulations as may
23 be necessary to provide for deductions for this purpose.

24 § 11. The state finance law is amended by adding a new section 78-a to
25 read as follows:

26 § 78-a. New York higher education loan program variable rate default
27 reserve fund. 1. There is hereby created and established in the sole
28 custody of the state comptroller a special fund to be known as the New
29 York higher education loan program variable rate default reserve fund
30 which shall be for the exclusive benefit of the holders of variable rate
31 education loans originated pursuant to the New York higher education
32 loan program codified in part V of article fourteen of the education
33 law, other than variable rate education loans described in subdivision
34 six of section two thousand four hundred five-a of the public authori-
35 ties law.

36 2. Amounts held in this fund shall not be, or be deemed, funds of the
37 state or funds under the management of the state or the higher education
38 services corporation. The obligations of the fund shall not be, or be
39 deemed, the debts or obligations of the state and the state shall not
40 be, or be deemed, in any way obligated to: any holder of any such educa-
41 tion loan; any holder of bonds issued pursuant to the public authorities
42 law for the purposes of the New York higher education loan program; any
43 fiduciary or provider of any credit facility, liquidity facility or
44 interest rate exchange agreement with respect to such bonds; or any
45 other creditor of this fund.

46 3. Such fund shall consist of all moneys received by the higher
47 education services corporation pursuant to paragraph (b) of subdivision
48 seven of section six hundred ninety-two of the education law, in
49 connection with variable rate education loans made under part V of arti-
50 cle fourteen of the education law, other than variable rate education
51 loans described in subdivision six of section two thousand four hundred
52 five-a of the public authorities law. The state comptroller, at the
53 request of the higher education services corporation, shall establish
54 accounts within the fund and priorities of payment from such accounts
55 and shall invest the fund in compliance with applicable state laws
56 concerning the investment of public funds. Moneys in the fund shall be

1 segregated from all other funds kept by the state comptroller and shall
2 not be used for any other purpose beyond those set forth in part V of
3 article fourteen of the education law or in this section.

4 4. The state comptroller shall make payments from the fund in amounts
5 and at times required by the higher education services corporation
6 pursuant to part V of article fourteen of the education law. Notwith-
7 standing subdivision one of this section, upon certification by the
8 State of New York mortgage agency that a variable rate education loan
9 described in subdivision three of this section has been acquired by the
10 agency or has become subject to the agreement of the agency to acquire
11 such education loan, the state comptroller shall make transfers from the
12 monies in the variable rate New York higher education loan program
13 default reserve fund to the corporation for deposit into the state of
14 New York mortgage agency New York higher education loan program default
15 reserve fund created by subdivision six of section two thousand four
16 hundred five-a of the public authorities law in amounts certified by the
17 agency and the corporation as properly allocable to such education loan.

18 § 12. The state finance law is amended by adding a new section 78-b to
19 read as follows:

20 § 78-b. New York higher education loan program fixed rate default
21 reserve fund. 1. There is hereby created and established in the sole
22 custody of the state comptroller a special fund to be known as the New
23 York higher education loan program fixed rate default reserve fund which
24 shall be for the exclusive benefit of the holders of fixed rate educa-
25 tion loans originated pursuant to the New York higher education loan
26 program codified in part V of article fourteen of the education law,
27 other than fixed rate education loans described in subdivision six of
28 section two thousand four hundred five-a of the public authorities law.

29 2. Amounts held in this fund shall not be, or be deemed, funds of the
30 state or funds under the management of the state or the higher education
31 services corporation. The obligations of the fund shall not be, or be
32 deemed, the debts or obligations of the state and the state shall not
33 be, or be deemed, in any way obligated to: any holder of any such educa-
34 tion loan; any holder of bonds issued pursuant to the public authorities
35 law for the purposes of the New York higher education loan program; any
36 fiduciary or provider of any credit facility, liquidity facility or
37 interest rate exchange agreement with respect to such bonds; or any
38 other creditor of this fund.

39 3. Such fund shall consist of all moneys received by the higher
40 education services corporation pursuant to paragraph (b) of subdivision
41 seven of section six hundred ninety-two of the education law, in
42 connection with fixed rate education loans, other than fixed rate educa-
43 tion loans described in subdivision six of section two thousand four
44 hundred five-a of the public authorities law. The state comptroller, at
45 the request of the higher education services corporation, shall estab-
46 lish accounts within the fund and priorities of payment from such
47 accounts and shall invest the fund in compliance with applicable state
48 laws concerning the investment of public funds. Moneys in the fund shall
49 be segregated from all other funds kept by the state comptroller and
50 shall not be used for any other purpose beyond those set forth in part V
51 of article fourteen of the education law or in this section.

52 4. The state comptroller shall make payments from the fund in amounts
53 and at times required by the higher education services corporation
54 pursuant to part V of article fourteen of the education law. Notwith-
55 standing subdivision one of this section, upon certification by the
56 state of New York mortgage agency that a fixed rate education loan

1 described in subdivision three of this section has been acquired by the
2 agency or has become subject to the agreement of the agency to acquire
3 such education loan, the state comptroller shall make transfers from the
4 monies in the fixed rate New York higher education loan program default
5 reserve fund to the corporation for deposit into the state of New York
6 mortgage agency New York higher education loan program default reserve
7 fund created by subdivision six of section two thousand four hundred
8 five-a of the public authorities law in amounts certified by the agency
9 and the corporation as properly allocable to such education loan.

10 § 13. The public authorities law is amended by adding a new section
11 1679-c to read as follows:

12 § 1679-c. The New York higher education loan program. 1. For
13 purposes of this section, the following words and terms shall have the
14 following meaning unless the context shall indicate another or different
15 meaning or intent:

16 (a) "Corporation" shall mean the New York state higher education
17 services corporation.

18 (b) "Education loan" shall mean a loan made under the New York higher
19 education loan program established pursuant to part v of article four-
20 teen of the education law.

21 2. In addition to the powers of the authority pursuant to the other
22 sections of this title, the authority shall have power:

23 (a) To enter into one or more agreements with the corporation, which
24 agreement may provide for the securing of education loans in accordance
25 with part V of article fourteen of the education law, and to perform or
26 contract for the performance of its obligations under any such agree-
27 ment;

28 (b) To make and contract to make and to acquire and contract to
29 acquire education loans and to enter into advance commitments for the
30 purchase of said education loans;

31 (c) Subject to any agreement with bondholders or noteholders, to
32 invest moneys of the authority not required for immediate use, including
33 proceeds from the sale of any bonds or notes, in education loans;

34 (d) To service and execute contracts for the servicing of education
35 loans acquired by the authority pursuant to this title, and to pay the
36 reasonable value of services rendered to the authority pursuant to those
37 contracts;

38 (e) To prescribe standards and criteria for education loans purchases,
39 insofar as such standards and criteria are not inconsistent with the
40 applicable agreement with the corporation;

41 (f) Subject to any agreement with bondholders or noteholders, to sell
42 any education loans made or acquired by the authority at public or
43 private sale and at such price or prices and on such terms as the
44 authority shall determine; and

45 (g) To establish, revise from time to time, charge and collect such
46 premiums or fees in connection with education loans and its partic-
47 ipation in the New York higher education loan program as the authority
48 shall determine.

49 3. The authority shall have the power and is hereby authorized from
50 time to time to issue bonds and notes, including without limitation for
51 the purposes of financing and refinancing education loans and of refund-
52 ing any bonds or notes issued for such purpose pursuant to part V of
53 article fourteen of the education law.

54 § 14. Subdivision 4-a of section 1682 of the public authorities law,
55 as amended by chapter 817 of the laws of 1976, is amended to read as
56 follows:

1 4-a. Any pledge of or other security interest in moneys, earnings,
2 income, revenues, accounts, contract rights, general intangibles or
3 other personal property made or created by the authority shall be valid,
4 binding and perfected from the time when such pledge or other security
5 interest attaches, without any physical delivery of the collateral or
6 further act. The lien of any such pledge or other security interest
7 shall be valid, binding and perfected as against all parties having
8 claims of any kind in tort, contract or otherwise against the authority
9 irrespective of whether or not such parties have notice thereof. No
10 instrument by which such a pledge or other security interest is created
11 nor any financing statement need be recorded or filed. This subdivision
12 shall apply notwithstanding the provisions of the uniform commercial
13 code. Any moneys, earnings, income, revenues, accounts, contract
14 rights, general intangibles or other personal property held or received
15 by the authority or on behalf of the authority by any lender, servicer,
16 trustee, custodian, collection agent or institution of higher education,
17 pursuant to any resolution, trust agreement or other agreement author-
18 ized by, or entered into in connection with, the program established
19 pursuant to section sixteen hundred seventy nine-c of this title and
20 pledged by the authority pursuant to a resolution, trust agreement or
21 such other agreement for the benefit of bondholders shall constitute
22 moneys, earnings, income, revenues, accounts, contract rights, general
23 intangibles or other personal property pledged by the authority for all
24 purposes of this subdivision.
25 § 15. This act shall take effect July 1, 2009.

26 PART K

27 Intentionally omitted.

28 PART L

29 Intentionally omitted.

30 PART M

31 Section 1. Section 1306-b of the real property tax law is REPEALED.

32 § 2. Section 171-q of the tax law is REPEALED.

33 § 3. Section 178 of the tax law is REPEALED.

34 § 4. Subparagraphs (A) and (B) of paragraph 2 of subsection (e) of
35 section 1310 of the tax law, as amended by section 1 of part R of chap-
36 ter 57 of the laws of 2008, are amended to read as follows:

37 (A) Married individuals filing joint returns and surviving spouses. In
38 the case of a husband and wife who make a single return jointly and of a
39 surviving spouse:

40 For taxable years beginning:	The credit shall be:
41 in 2001-2005	\$125
42 in 2006	\$230
43 in 2007-2008	\$290
44 in 2009 <u>and after</u>	[\$310] \$125
45 [after 2009]	[\$335]

46 (B) All others. In the case of an unmarried individual, a head of a
47 household or a married individual filing a separate return:

48 For taxable years beginning:	The credit shall be:
49 in 2001-2005	\$62.50
50 in 2006	\$115

1 in 2007-2008 \$145
2 in 2009 and after ~~[\$155]~~ \$62.50
3 ~~[after 2009]~~ ~~[\$167.50]~~
4 § 5. Subparagraphs (A) and (B) of paragraph 2 of subdivision (c) of
5 section 11-1706 of the administrative code of the city of New York, as
6 amended by section 2 of part R of chapter 57 of the laws of 2008, are
7 amended to read as follows:
8 (A) Married individuals filing joint returns and surviving spouses. In
9 the case of a husband and wife who make a single return jointly and of a
10 surviving spouse:
11 For taxable years beginning: The credit shall be:
12 in 2001-2005 \$125
13 in 2006 \$230
14 in 2007-2008 \$290
15 in 2009 and after ~~[\$310]~~ \$125
16 ~~[after 2009]~~ ~~[\$335]~~
17 (B) All others. In the case of an unmarried individual, a head of a
18 household or a married individual filing a separate return:
19 For taxable years beginning: The credit shall be:
20 in 2001-2005 \$62.50
21 in 2006 \$115
22 in 2007-2008 \$145
23 in 2009 and after ~~[\$155]~~ \$62.50
24 ~~[after 2009]~~ ~~[\$167.50]~~
25 § 6. This act shall take effect immediately, provided that sections
26 one, two and three of this act shall apply to the administration and
27 issuance of Middle Class STAR rebates for the 2009-2010 and subsequent
28 school years, and sections four and five of this act shall apply to
29 taxable years beginning on and after January 1, 2009.

30 PART N

31 Intentionally omitted.

32 PART O

33 Section 1. Subdivision e of section 8 of section 4 of chapter 576 of
34 the laws of 1974, constituting the emergency tenant protection act of
35 nineteen seventy-four, as amended by chapter 403 of the laws of 1983, is
36 amended to read as follows:

37 e. The division shall maintain at least one office in each county
38 which is governed by the rent stabilization law of nineteen hundred
39 sixty-nine or this act; provided, however, that the division shall not
40 be required to maintain an office in the counties of Nassau, Rockland,
41 or Richmond.

42 § 2. This act shall take effect immediately; and provided that the
43 amendments to subdivision e of section 8 of the emergency tenant
44 protection act of nineteen seventy-four made by section one of this act
45 shall expire on the same date as such act expires and shall not affect
46 the expiration of such act as provided in section 17 of chapter 576 of
47 the laws of 1974.

48 PART P

49 Intentionally omitted.

1

PART Q

2 Section 1. Section 28 of part C of chapter 83 of the laws of 2002
3 amending the executive law and other laws relating to funding for chil-
4 dren and family services, as amended by section 1 of part I of chapter
5 57 of the laws of 2007, is amended to read as follows:

6 § 28. This act shall take effect immediately; provided that sections
7 nine through eighteen and twenty through twenty-seven of this act shall
8 be deemed to have been in full force and effect on and after April 1,
9 2002; provided, however, that section fifteen of this act shall apply to
10 claims that are otherwise reimbursable by the state on or after April 1,
11 2002 except as provided in subdivision 9 of section 153-k of the social
12 services law as added by section fifteen of this act; provided further
13 however, that nothing in this act shall authorize the office of children
14 and family services to deny state reimbursement to a social services
15 district for violations of the provisions of section 153-d of the social
16 services law for services provided from January 1, 1994 through March
17 31, 2002; provided that section nineteen of this act shall take effect
18 September 13, 2002; and, provided further, however, that notwithstanding
19 any law to the contrary, the office of children and family services
20 shall have the authority to promulgate, on an emergency basis, any rules
21 and regulations necessary to implement the requirements established
22 pursuant to this act; provided further, however, that the regulations to
23 be developed pursuant to section one of this act shall not be adopted by
24 emergency rule; and provided further that the provisions of sections
25 nine through twenty-seven of this act shall expire and be deemed
26 repealed on June 30, ~~2009~~ 2012.

27 § 2. This act shall take effect immediately.

28

PART R

29 Section 1. Subdivision 19 of section 246 of chapter 81 of the laws of
30 1995, amending the vehicle and traffic law and other laws relating to
31 the enforcement of support through the suspension of driving privileges,
32 as amended by section 1 of part J of chapter 59 of the laws of 2007, is
33 amended to read as follows:

34 19. Sections two hundred one, two hundred eight, two hundred eleven,
35 two hundred thirteen, two hundred fifteen and two hundred sixteen of
36 this act shall expire and be deemed repealed on June 30, ~~2009~~ 2011.

37 § 2. This act shall take effect immediately and shall be deemed to
38 have been in full force and effect on and after April 1, 2009.

39

PART S

40 Intentionally omitted.

41

PART T

42 Intentionally omitted.

43

PART U

44 Section 1. Paragraphs (a), (b) and (d) of subdivision 1 of section
45 131-o of the social services law, as amended by section 1 of part X of
46 chapter 57 of the laws of 2008, are amended and a new paragraph (c) is
47 added to read as follows:

1 (a) in the case of each individual receiving family care, an amount
2 equal to at least ~~[\$123.00]~~ \$130.00 for each month beginning on or after
3 January first, two thousand ~~[eight]~~ nine.

4 (b) in the case of each individual receiving residential care, an
5 amount equal to at least ~~[\$142.00]~~ \$150.00 for each month beginning on
6 or after January first, two thousand ~~[eight]~~ nine.

7 (c) in the case of each individual receiving enhanced residential
8 care, an amount equal to at least \$178.00 for each month beginning on or
9 after January first, two thousand nine.

10 (d) for the period commencing January first, two thousand ~~[nine]~~ ten,
11 the monthly personal needs allowance shall be an amount equal to the sum
12 of the amounts set forth in subparagraphs one and two of this paragraph:

13 (1) the amounts specified in paragraphs (a) ~~[and]~~, (b) and (c) of this
14 subdivision; and

15 (2) the amount in subparagraph one of this paragraph, multiplied by
16 the percentage of any federal supplemental security income cost of
17 living adjustment which becomes effective on or after January first, two
18 thousand ~~[nine]~~ ten, but prior to June thirtieth, two thousand ~~[nine]~~
19 ten, rounded to the nearest whole dollar.

20 § 2. Paragraph (e) of subdivision 1 of section 131-o of the social
21 services law, as amended by section 45 of part C of chapter 58 of the
22 laws of 2005, is amended to read as follows:

23 ~~[(e) in the case of each individual receiving enhanced residential~~
24 ~~care, an amount equal to at least \$144.00 for each month beginning on or~~
25 ~~after January first, two thousand six, and an amount equal to \$159.00~~
26 ~~for each month beginning on or after January first, two thousand seven.]~~

27 § 3. Paragraphs (a), (b), (c), (d) and (e) of subdivision 2 of section
28 209 of the social services law, as amended by section 2 of part X of
29 chapter 57 of the laws of 2008, are amended to read as follows:

30 (a) On and after January first, two thousand ~~[eight]~~ nine, for an
31 eligible individual living alone, ~~[\$724.00]~~ \$761.00; and for an eligible
32 couple living alone, ~~[\$1060.00]~~ \$1115.00.

33 (b) On and after January first, two thousand ~~[eight]~~ nine, for an
34 eligible individual living with others with or without in-kind income,
35 ~~[\$660.00]~~ \$697.00; and for an eligible couple living with others with or
36 without in-kind income, ~~[\$1002.00]~~ \$1057.00.

37 (c) On and after January first, two thousand ~~[eight]~~ nine, (i) for an
38 eligible individual receiving family care, ~~[\$903.48]~~ \$940.48 if he or
39 she is receiving such care in the city of New York or the county of
40 Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible
41 couple receiving family care in the city of New York or the county of
42 Nassau, Suffolk, Westchester or Rockland, two times the amount set forth
43 in subparagraph (i) of this paragraph; or (iii) for an eligible individ-
44 ual receiving such care in any other county in the state, ~~[\$865.48]~~
45 \$902.48; and (iv) for an eligible couple receiving such care in any
46 other county in the state, two times the amount set forth in subpara-
47 graph (iii) of this paragraph.

48 (d) On and after January first, two thousand ~~[eight]~~ nine, (i) for an
49 eligible individual receiving residential care, ~~[\$1072.00]~~ \$1109.00 if
50 he or she is receiving such care in the city of New York or the county
51 of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible
52 couple receiving residential care in the city of New York or the county
53 of Nassau, Suffolk, Westchester or Rockland, two times the amount set
54 forth in subparagraph (i) of this paragraph; or (iii) for an eligible
55 individual receiving such care in any other county in the state,
56 ~~[\$1042.00]~~ \$1079.00; and (iv) for an eligible couple receiving such care

1 in any other county in the state, two times the amount set forth in
2 subparagraph (iii) of this paragraph.

3 (e) (i) On and after January first, two thousand ~~[eight]~~ nine, for an
4 eligible individual receiving enhanced residential care, ~~[\$1293.00]~~
5 \$1368.00; and (ii) for an eligible couple receiving enhanced residential
6 care, two times the amount set forth in subparagraph (i) of this para-
7 graph.

8 § 4. Subdivision 2 of section 209 of the social services law is
9 amended by adding a new paragraph (f) to read as follows:

10 (f) The amounts set forth in paragraphs (a) through (e) of this subdi-
11 vision shall be increased to reflect any increases in federal supple-
12 mental security income benefits for individuals or couples which become
13 effective on or after January first, two thousand ten but prior to June
14 thirtieth, two thousand ten.

15 § 5. Paragraph (g) of subdivision 2 of section 209 of the social
16 services law, as amended by chapter 713 of the laws of 2005, is amended
17 to read as follows:

18 ~~[(g) The amounts set forth in paragraphs (a) through (d) of this~~
19 ~~subdivision and the amounts set forth in subparagraph (ii) of paragraph~~
20 ~~(e) and subparagraph (ii) of paragraph (f) of this subdivision as added~~
21 ~~by section forty six of part C of chapter fifty eight of the laws of two~~
22 ~~thousand five shall be increased to reflect any increases in federal~~
23 ~~supplemental security income benefits for individuals or couples which~~
24 ~~become effective on or after January first, two thousand six but prior~~
25 ~~to June thirtieth, two thousand six; provided, however, that the amounts~~
26 ~~set forth in paragraphs (c), (d) and (f) of this subdivision with~~
27 ~~respect to eligible couples shall be increased by an amount sufficient~~
28 ~~to establish standards for couples that are equal to twice the increase~~
29 ~~hereunder for eligible individuals.]~~

30 § 6. This act shall take effect immediately; provided however that the
31 amendments to paragraph (e) of subdivision 1 of section 131-o of the
32 social services law made by section two of this act and the amendments
33 to subdivision 2 of section 209 of the social services law made by
34 sections four and five of this act shall take effect on the same date as
35 the reversion of such provisions as provided in section 4 of part C of
36 chapter 57 of the laws of 2006, as amended, takes effect.

37 PART V

38 Section 1. Paragraph (a) of subdivision 1 of section 23 of the social
39 services law, as amended by chapter 398 of the laws of 1997, is amended
40 to read as follows:

41 (a) to social services districts;

42 (i) with respect to applicants for and recipients of public assistance
43 and care or other benefits pursuant to this chapter for which such
44 districts are responsible[~~r~~];

45 (ii) with respect to any person legally responsible for the support of
46 such applicants and recipients [and];

47 (iii) with respect to any person legally responsible for the support
48 of a recipient of services under section one hundred eleven-g of this
49 chapter or to any agent of any entity that is under contract with the
50 child support program pursuant to title [six-a] ~~six-A~~ of article three
51 of this chapter[~~r~~]; and

52 (iv) with respect to the parents, the stepparents, the child and the
53 siblings of the child who were living in the same household as a child
54 who is in the custody, care and custody or custody and guardianship of a

1 local social services district or of the office of children and family
2 services during the month that the court proceedings leading to the
3 child's removal from the household were initiated, or the written
4 instrument transferring care and custody of the child pursuant to the
5 provisions of section three hundred fifty-eight-a of this chapter or
6 section three hundred eighty-four-a of this chapter was signed, provided
7 however, that such social services district shall only use the informa-
8 tion obtained pursuant to this subdivision for the purpose of determin-
9 ing the eligibility of such child for federal payments for foster care
10 and adoption assistance pursuant to the provisions of title IV-E of the
11 federal social security act,

12 § 2. Subdivision 3 of section 23 of the social services law, as sepa-
13 rately amended by chapters 304 and 818 of the laws of 1990, is amended
14 to read as follows:

15 3. Information obtained by the ~~[department]~~ office of temporary and
16 disability assistance from the wage reporting system operated by the
17 state department of taxation and finance shall be considered confiden-
18 tial and shall not be disclosed to persons or agencies other than those
19 considered entitled to such information when such disclosure is neces-
20 sary for the proper administration of programs of public assistance and
21 care or for the proper administration of the child support program
22 pursuant to title six-A of article three of this chapter, or of eligi-
23 bility assessments of children for federal payments for foster care and
24 adoption assistance pursuant to the provisions of title IV-E of the
25 federal social security act. For the purpose of this subdivision, any
26 disclosure made pursuant to subdivision one of this section shall be
27 considered necessary for the proper administration of programs of public
28 assistance and care, or of eligibility assessments of children for
29 federal payments for foster care and adoption assistance pursuant to the
30 provisions of title IV-E of the federal social security act; and the
31 federal parent locator service shall be considered an agency entitled to
32 such information as is necessary for the proper administration of the
33 child support program pursuant to title six-A of article three of this
34 chapter.

35 § 3. Paragraph (a) of subdivision 3 of section 171-a of the tax law,
36 as amended by chapter 304 of the laws of 1990 and as designated by chap-
37 ter 818 of the laws of 1990, is amended to read as follows:

38 (a) Notwithstanding any law to the contrary, the commissioner of taxa-
39 tion and finance shall maintain ~~[a]~~ cooperative ~~[agreement]~~ agreements
40 with the state ~~[department of social services]~~ office of temporary and
41 disability assistance, which ~~[agreement]~~ shall provide:

42 (i) for the utilization by the office of temporary and disability
43 assistance of information obtained pursuant to subdivision one ~~[hereof]~~
44 of this section, for the purpose of verifying eligibility for and enti-
45 tlement to amounts of benefits under the social services law, locating
46 absent parents or other persons legally responsible for the support of
47 applicants or recipients of public assistance and care under the social
48 services law and persons legally responsible for the support of a recip-
49 ient of services under section one hundred eleven-g of the social
50 services law and, in appropriate cases, establishing support obligations
51 pursuant to the social services law and the family court act, and for
52 the purpose of evaluating the effect on earnings of participation in
53 employment or training programs authorized pursuant to the social
54 services law by current recipients of public assistance and care and by
55 former recipients of public assistance and care, such agreement shall
56 further provide to the degree required by federal law for the commis-

1 sioner [~~of taxation and finance~~] and the [~~social services department~~]
2 office of temporary and disability assistance to provide information
3 obtained pursuant to subdivision one of this section to the federal
4 social security administration or to public agencies in other states
5 which administer programs under the food stamp act of nineteen hundred
6 seventy-seven or title I, II, IV-A, IV-D, X, XIV, XVI, or XIX of the
7 federal social security act and to take such other steps as may be
8 required by section one thousand one hundred thirty-seven of the social
9 security act or federal regulations promulgated thereunder; and

10 (ii) for the utilization by the office of temporary and disability
11 assistance of information obtained pursuant to subdivision one of this
12 section, with respect to the parents, the stepparents, the child and the
13 siblings of the child who were living in the same household as a child
14 who is in the custody, care and custody or custody and guardianship of a
15 local social services district or of the office of children and family
16 services during the month that the court proceedings leading to the
17 child's removal from the household were initiated, or the written
18 instrument transferring care and custody of the child pursuant to the
19 provisions of section three hundred fifty-eight-a or three hundred
20 eighty-four-a of the social services law was signed, provided however,
21 that the office of temporary and disability assistance shall only use
22 the information obtained pursuant to this subdivision, for the purpose
23 of determining the eligibility of such child for federal payments for
24 foster care and adoption assistance pursuant to the provisions of title
25 IV-E of the federal social security act. Notwithstanding any other
26 provision of law, the office of temporary and disability assistance is
27 authorized to share information obtained pursuant to this subdivision
28 with any applicable social services district, provided however, that if
29 such information is shared, that such social services district shall
30 only use the information obtained for the purpose of determining the
31 eligibility of such child for federal payments for foster care and
32 adoption assistance pursuant to the provisions of title IV-E of the
33 federal social security act.

34 § 4. Paragraph 3 of subsection (e) of section 697 of the tax law, as
35 separately amended by section 1 of part M of chapter 57 and section 45-f
36 of part C of chapter 58 of the laws of 2008, is amended to read as
37 follows:

38 (3) Nothing herein shall be construed to prohibit the department, its
39 officers or employees from furnishing information to the office of
40 temporary and disability assistance relating to the payment of the cred-
41 it for certain household and dependent care services necessary for gain-
42 ful employment under subsection (c) of section six hundred six of this
43 article and the earned income credit under subsection (d) of section six
44 hundred six of this article, or pursuant to a local law enacted by a
45 city having a population of one million or more pursuant to subsection
46 (f) of section thirteen hundred ten of this chapter, only to the extent
47 necessary to calculate qualified state expenditures under paragraph
48 seven of subdivision (a) of section four hundred nine of the federal
49 social security act or to document the proper expenditure of federal
50 temporary assistance for needy families funds under section four hundred
51 three of such act. The office of temporary and disability assistance may
52 redisclose such information to the United States department of health
53 and human services only to the extent necessary to calculate such quali-
54 fied state expenditures or to document the proper expenditure of such
55 federal temporary assistance for needy families funds. Nothing herein
56 shall be construed to prohibit the delivery by the commissioner to a

1 commissioner of jurors, appointed pursuant to section five hundred four
2 of the judiciary law, or, in counties within cities having a population
3 of one million or more, to the county clerk of such county, of a mailing
4 list of individuals to whom income tax forms are mailed by the commis-
5 sioner for the sole purpose of compiling a list of prospective jurors as
6 provided in article sixteen of the judiciary law. Provided, however,
7 such delivery shall only be made pursuant to an order of the chief
8 administrator of the courts, appointed pursuant to section two hundred
9 ten of the judiciary law. No such order may be issued unless such chief
10 administrator is satisfied that such mailing list is needed to compile a
11 proper list of prospective jurors for the county for which such order is
12 sought and that, in view of the responsibilities imposed by the various
13 laws of the state on the department, it is reasonable to require the
14 commissioner to furnish such list. Such order shall provide that such
15 list shall be used for the sole purpose of compiling a list of prospec-
16 tive jurors and that such commissioner of jurors, or such county clerk,
17 shall take all necessary steps to insure that the list is kept confiden-
18 tial and that there is no unauthorized use or disclosure of such list.
19 Furthermore, nothing herein shall be construed to prohibit the delivery
20 to a taxpayer or his or her duly authorized representative of a certi-
21 fied copy of any return or report filed in connection with his or her
22 tax or to prohibit the publication of statistics so classified as to
23 prevent the identification of particular reports or returns and the
24 items thereof, or the inspection by the attorney general or other legal
25 representatives of the state of the report or return of any taxpayer or
26 of any employer filed under section one hundred seventy-one-h of this
27 chapter, where such taxpayer or employer shall bring action to set aside
28 or review the tax based thereon, or against whom an action or proceeding
29 under this chapter or under this chapter and article eighteen of the
30 labor law has been recommended by the commissioner, the commissioner of
31 labor with respect to unemployment insurance matters, or the attorney
32 general or has been instituted, or the inspection of the reports or
33 returns required under this article by the comptroller or duly desig-
34 nated officer or employee of the state department of audit and control,
35 for purposes of the audit of a refund of any tax paid by a taxpayer
36 under this article, or the furnishing to the state department of labor
37 of unemployment insurance information obtained or derived from quarterly
38 combined withholding, wage reporting and unemployment insurance returns
39 required to be filed by employers pursuant to paragraph four of
40 subsection (a) of section six hundred seventy-four of this article, for
41 purposes of administration of such department's unemployment insurance
42 program, employment services program, federal and state employment and
43 training programs, employment statistics and labor market information
44 programs, worker protection programs, federal programs for which the
45 department has administrative responsibility or for other purposes
46 deemed appropriate by the commissioner of labor consistent with the
47 provisions of the labor law, and redisclosure of such information in
48 accordance with the provisions of sections five hundred thirty-six and
49 five hundred thirty-seven of the labor law or any other applicable law,
50 or the furnishing to the state office of temporary and disability
51 assistance of information obtained or derived from New York state
52 personal income tax returns as described in paragraph (b) of subdivision
53 two of section one hundred seventy-one-g of this chapter for the purpose
54 of reviewing support orders enforced pursuant to title six-A of article
55 three of the social services law to aid in the determination of whether
56 such orders should be adjusted, or the furnishing of information

1 obtained from the reports required to be submitted by employers regard-
2 ing newly hired or re-hired employees pursuant to section one hundred
3 seventy-one-h of this chapter to the state office of temporary and disa-
4 bility assistance, the state department of health, the state department
5 of labor and the workers' compensation board for purposes of adminis-
6 tration of the child support enforcement program, verification of indi-
7 viduals' eligibility for one or more of the programs specified in
8 subsection (b) of section eleven hundred thirty-seven of the federal
9 social security act and for other public assistance programs authorized
10 by state law, and administration of the state's employment security and
11 workers' compensation programs, and to the national directory of new
12 hires established pursuant to section four hundred fifty-three-A of the
13 federal social security act for the purposes specified in such section,
14 or the furnishing to the state office of temporary and disability
15 assistance of the amount of an overpayment of income tax and interest
16 thereon certified to the comptroller to be credited against past-due
17 support pursuant to section one hundred seventy-one-c of this chapter
18 and of the name and social security number of the taxpayer who made such
19 overpayment, or the disclosing to the commissioner of finance of the
20 city of New York, pursuant to section one hundred seventy-one-l of this
21 chapter, of the amount of an overpayment and interest thereon certified
22 to the comptroller to be credited against a city of New York tax warrant
23 judgment debt and of the name and social security number of the taxpayer
24 who made such overpayment, or the furnishing to the New York state high-
25 er education services corporation of the amount of an overpayment of
26 income tax and interest thereon certified to the comptroller to be cred-
27 ited against the amount of a default in repayment of any education loan
28 debt, including judgments, owed to the federal or New York state govern-
29 ment that is being collected by the New York state higher education
30 services corporation, and of the name and social security number of the
31 taxpayer who made such overpayment, or the furnishing to the state
32 department of health of the information required by paragraph (f) of
33 subdivision two and subdivision two-a of section two thousand five
34 hundred eleven of the public health law and by subdivision eight of
35 section three hundred sixty-six-a and paragraphs (b) and (d) of subdivi-
36 sion two of section three hundred sixty-nine-ee of the social services
37 law, or the furnishing to the state university of New York or the city
38 university of New York respectively or the attorney general on behalf of
39 such state or city university the amount of an overpayment of income tax
40 and interest thereon certified to the comptroller to be credited against
41 the amount of a default in repayment of a state university loan pursuant
42 to section one hundred seventy-one-e of this chapter and of the name and
43 social security number of the taxpayer who made such overpayment, or the
44 disclosing to a state agency, pursuant to section one hundred seventy-
45 one-f of this chapter, of the amount of an overpayment and interest
46 thereon certified to the comptroller to be credited against a past-due
47 legally enforceable debt owed to such agency and of the name and social
48 security number of the taxpayer who made such overpayment, or the
49 furnishing of employee and employer information obtained through the
50 wage reporting system, pursuant to section one hundred seventy-one-a of
51 this chapter, as added by chapter five hundred forty-five of the laws of
52 nineteen hundred seventy-eight, to the state office of temporary and
53 disability assistance, the department of health or to the state office
54 of the medicaid inspector general for the purpose of verifying eligibil-
55 ity for and entitlement to amounts of benefits under the social services
56 law or similar law of another jurisdiction, locating absent parents or

1 other persons legally responsible for the support of applicants for or
2 recipients of public assistance and care under the social services law
3 and persons legally responsible for the support of a recipient of
4 services under section one hundred eleven-g of the social services law
5 and, in appropriate cases, establishing support obligations pursuant to
6 the social services law and the family court act or similar provision of
7 law of another jurisdiction for the purpose of evaluating the effect on
8 earnings of participation in employment, training or other programs
9 designed to promote self-sufficiency authorized pursuant to the social
10 services law by current recipients of public assistance and care and by
11 former applicants and recipients of public assistance and care, (except
12 that with regard to former recipients, information which relates to a
13 particular former recipient shall be provided with client identifying
14 data deleted), to the state office of temporary and disability assist-
15 ance for the purpose of determining the eligibility of any child in the
16 custody, care and custody or custody and guardianship of a local social
17 services district or of the office of children and family services for
18 federal payments for foster care and adoption assistance pursuant to the
19 provisions of title IV-E of the federal social security act by providing
20 information with respect to the parents, the stepparents, the child and
21 the siblings of the child who were living in the same household as such
22 child during the month that the court proceedings leading to the child's
23 removal from the household were initiated, or the written instrument
24 transferring care and custody of the child pursuant to the provisions of
25 section three hundred fifty-eight-a or three hundred eighty-four-a of
26 the social services law was signed, provided however that the office of
27 temporary and disability assistance shall only use the information
28 obtained pursuant to this subdivision for the purpose of determining the
29 eligibility of such child for federal payments for foster care and
30 adoption assistance pursuant to the provisions of title IV-E of the
31 federal social security act, and to the state department of labor, or
32 other individuals designated by the commissioner of labor, for the
33 purpose of the administration of such department's unemployment insur-
34 ance program, employment services program, federal and state employment
35 and training programs, employment statistics and labor market informa-
36 tion programs, worker protection programs, federal programs for which
37 the department has administrative responsibility or for other purposes
38 deemed appropriate by the commissioner of labor consistent with the
39 provisions of the labor law, and redisclosure of such information in
40 accordance with the provisions of sections five hundred thirty-six and
41 five hundred thirty-seven of the labor law, or the furnishing of infor-
42 mation, which is obtained from the wage reporting system operated pursu-
43 ant to section one hundred seventy-one-a of this chapter, as added by
44 chapter five hundred forty-five of the laws of nineteen hundred seven-
45 ty-eight, to the state office of temporary and disability assistance so
46 that it may furnish such information to public agencies of other juris-
47 dictions with which the state office of temporary and disability assist-
48 ance has an agreement pursuant to paragraph (h) or (i) of subdivision
49 three of section twenty of the social services law, and to the state
50 office of temporary and disability assistance for the purpose of
51 fulfilling obligations and responsibilities otherwise incumbent upon the
52 state department of labor, under section one hundred twenty-four of the
53 federal family support act of nineteen hundred eighty-eight, by giving
54 the federal parent locator service, maintained by the federal department
55 of health and human services, prompt access to such information as
56 required by such act, or to the state department of health to verify

1 eligibility under the child health insurance plan pursuant to subdivi-
2 sions two and two-a of section two thousand five hundred eleven of the
3 public health law, to verify eligibility under the medical assistance
4 and family health plus programs pursuant to subdivision eight of section
5 three hundred sixty-six-a and paragraphs (b) and (d) of subdivision two
6 of section three hundred sixty-nine-ee of the social services law, and
7 to verify eligibility for the program for elderly pharmaceutical insur-
8 ance coverage under title three of article two of the elder law, or to
9 the office of vocational and educational services for individuals with
10 disabilities of the education department, the commission for the blind
11 and visually handicapped and any other state vocational rehabilitation
12 agency, for purposes of obtaining reimbursement from the federal social
13 security administration for expenditures made by such office, commission
14 or agency on behalf of disabled individuals who have achieved economic
15 self-sufficiency or to the higher education services corporation for the
16 purpose of assisting the corporation in default prevention and default
17 collection of education loan debt, including judgments, owed to the
18 federal or New York state government; provided, however, that such
19 information shall be limited to the names, social security numbers, home
20 and/or business addresses, and employer names of defaulted or delinquent
21 student loan borrowers.

22 Provided, however, that with respect to employee information the
23 office of temporary and disability assistance shall only be furnished
24 with the names, social security account numbers and gross wages of those
25 employees who are (A) applicants for or recipients of benefits under the
26 social services law, or similar provision of law of another jurisdiction
27 (pursuant to an agreement under subdivision three of section twenty of
28 the social services law) or, (B) absent parents or other persons legally
29 responsible for the support of applicants for or recipients of public
30 assistance and care under the social services law or similar provision
31 of law of another jurisdiction (pursuant to an agreement under subdivi-
32 sion three of section twenty of the social services law), or (C) persons
33 legally responsible for the support of a recipient of services under
34 section one hundred eleven-g of the social services law or similar
35 provision of law of another jurisdiction (pursuant to an agreement under
36 subdivision three of section twenty of the social services law), or (D)
37 employees about whom wage reporting system information is being
38 furnished to public agencies of other jurisdictions, with which the
39 state office of temporary and disability assistance has an agreement
40 pursuant to paragraph (h) or (i) of subdivision three of section twenty
41 of the social services law, or (E) employees about whom wage reporting
42 system information is being furnished to the federal parent locator
43 service, maintained by the federal department of health and human
44 services, for the purpose of enabling the state office of temporary and
45 disability assistance to fulfill obligations and responsibilities other-
46 wise incumbent upon the state department of labor, under section one
47 hundred twenty-four of the federal family support act of nineteen
48 hundred eighty-eight, and, only if, the office of temporary and disabil-
49 ity assistance certifies to the commissioner that such persons are such
50 applicants, recipients, absent parents or persons legally responsible
51 for support or persons about whom information has been requested by a
52 public agency of another jurisdiction or by the federal parent locator
53 service and further certifies that in the case of information requested
54 under agreements with other jurisdictions entered into pursuant to
55 subdivision three of section twenty of the social services law, that
56 such request is in compliance with any applicable federal law. Provided,

1 further, that where the office of temporary and disability assistance
2 requests employee information for the purpose of evaluating the effects
3 on earnings of participation in employment, training or other programs
4 designed to promote self-sufficiency authorized pursuant to the social
5 services law, the office of temporary and disability assistance shall
6 only be furnished with the quarterly gross wages (excluding any refer-
7 ence to the name, social security number or any other information which
8 could be used to identify any employee or the name or identification
9 number of any employer) paid to employees who are former applicants for
10 or recipients of public assistance and care and who are so certified to
11 the commissioner by the commissioner of the office of temporary and
12 disability assistance. Provided, further, that with respect to employee
13 information, the department of health shall only be furnished with the
14 information required pursuant to the provisions of paragraph (f) of
15 subdivision two and subdivision two-a of section two thousand five
16 hundred eleven of the public health law and subdivision eight of section
17 three hundred sixty-six-a and paragraphs (b) and (d) of subdivision two
18 of section three hundred sixty-nine-ee of the social services law, with
19 respect to those individuals whose eligibility under the child health
20 insurance plan, medical assistance program, and family health plus
21 program is to be determined pursuant to such provisions and with respect
22 to those members of any such individual's household whose income affects
23 such individual's eligibility and who are so certified to the commis-
24 sioner or by the department of health. Provided, further, that wage
25 reporting information shall be furnished to the office of vocational and
26 educational services for individuals with disabilities of the education
27 department, the commission for the blind and visually handicapped and
28 any other state vocational rehabilitation agency only if such office,
29 commission or agency, as applicable, certifies to the commissioner that
30 such information is necessary to obtain reimbursement from the federal
31 social security administration for expenditures made on behalf of dis-
32 abled individuals who have achieved self-sufficiency. Reports and returns
33 shall be preserved for three years and thereafter until the commissioner
34 orders them to be destroyed.

35 § 5. Section 697 of the tax law is amended by adding a new subsection
36 (o) to read as follows:

37 (o) Exchange of information with the office of temporary and disabili-
38 ty assistance.--Notwithstanding any provision of law to the contrary,
39 the department shall furnish to the office of temporary and disability
40 assistance, or as designated by the commissioner of the office of chil-
41 dren and family services, to employees of a local social services
42 district who are engaged in the process of determining the eligibility
43 of children in the custody, care and custody or custody and guardianship
44 of a local social services district for federal payments for foster care
45 and adoption assistance pursuant to the provisions of title IV-E of the
46 federal social security act, the name, social security number and wages
47 of the parents, the stepparents, the child and the siblings of the child
48 who were living in the same household as a child who is in the custody,
49 care and custody or custody and guardianship of a local social services
50 district or of the office of children and family services during the
51 month that the court proceedings leading to the child's removal from the
52 household were initiated, or the written instrument transferring care
53 and custody of the child pursuant to the provisions of section three
54 hundred fifty-eight-a or three hundred eighty-four-a of the social
55 services law was signed; provided however, that the office of temporary
56 and disability assistance or such social services district shall only

use the information obtained pursuant to this subsection for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act.

§ 6. This act shall take effect immediately.

PART W

Section 1. Notwithstanding the time period required for notice pursuant to subdivision fifteen of section five hundred one of the executive law, for the period April 1, 2009 through March 31, 2010, the office of children and family services may, for the purposes of aligning their capacity with their facility and service needs:

(a) close the following facilities: Great Valley residential center, Cattaraugus residential center, Adirondack residential center, Rochester community residential home, Syracuse community residential home, Albany evening reporting center, Syracuse evening reporting center, Buffalo evening reporting center, and Pyramid reception center;

(b) downsize the following facilities: Tryon residential center and Allen residential center.

§ 2. Nothing herein shall be construed to authorize the office of children and family services to close or downsize additional facilities not listed in subdivisions (a) and (b) of section one of this act, pursuant to the provisions of this act.

§ 3. This act shall take effect immediately and shall be deemed to be repealed on April 1, 2010.

PART X

Intentionally omitted.

PART Y

Section 1. Paragraph (a) of subdivision 2 of section 131-a of the social services law, as amended by chapter 77 of the laws of 1989, is amended and three new paragraphs (a-1), (a-2) and (a-3) are added to read as follows:

(a) ~~[The]~~ Through June thirtieth, two thousand nine, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household						
One	Two	Three	Four	Five	Six	
\$112	\$179	\$238	\$307	\$379	\$438	

For each additional person in the household there shall be added an additional amount of sixty dollars monthly.

(a-1) For the period beginning July first, two thousand nine and ending June thirtieth, two thousand ten, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

<u>Number of Persons in Household</u>					
<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>
<u>\$126</u>	<u>\$201</u>	<u>\$268</u>	<u>\$345</u>	<u>\$426</u>	<u>\$492</u>

For each additional person in the household there shall be added an additional amount of sixty-seven dollars monthly.

(a-2) For the period beginning July first, two thousand ten and ending June thirtieth, two thousand eleven, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$141	\$225	\$300	\$386	\$477	\$551

For each additional person in the household there shall be added an additional amount of seventy-five dollars monthly.

(a-3) For the period beginning July first, two thousand eleven and thereafter, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$158	\$252	\$335	\$432	\$533	\$616

For each additional person in the household there shall be added an additional amount of eighty-four dollars monthly.

§ 2. Paragraph (a) of subdivision 3 of section 131-a of the social services law, as amended by section 12 of part B of chapter 436 of the laws of 1997, is amended and three new paragraphs (a-1), (a-2) and (a-3) are added to read as follows:

(a) ~~[Persons]~~ Through June thirtieth, two thousand nine, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$112	\$179	\$238	\$307	\$379	\$438

For each additional eligible needy person in the household there shall be an additional allowance of sixty dollars monthly.

(a-1) For the period beginning July first, two thousand nine and ending June thirtieth, two thousand ten, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$126	\$201	\$268	\$345	\$426	\$492

For each additional person in the household there shall be added an additional amount of sixty-seven dollars monthly.

(a-2) For the period beginning July first, two thousand ten and ending June thirtieth, two thousand eleven, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household

<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>
<u>\$141</u>	<u>\$225</u>	<u>\$300</u>	<u>\$386</u>	<u>\$477</u>	<u>\$551</u>

For each additional person in the household there shall be added an additional amount of seventy-five dollars monthly.

(a-3) For the period beginning July first, two thousand eleven and thereafter, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

<u>Number of Persons in Household</u>					
<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>
<u>\$158</u>	<u>\$252</u>	<u>\$335</u>	<u>\$432</u>	<u>\$533</u>	<u>\$616</u>

For each additional person in the household there shall be added an additional amount of eighty-four dollars monthly.

§ 3. Notwithstanding section one hundred fifty-three of the social services law or any other inconsistent provision of law, for the period beginning July first, two thousand nine and ending March thirty-first, two thousand twelve, the office of temporary and disability assistance shall reimburse social services districts for the additional incremental expenditures for public assistance directly resulting from the changes in standards provided for in section one and section two of this act, after applying any applicable federal reimbursement. The office of temporary and disability assistance shall develop a methodology for determining the reimbursement to social services districts pursuant to this section.

§ 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2009.

PART Z

Section 1. Section 39 of part P2 of chapter 62 of the laws of 2003 amending the state finance law and other laws relating to authorizing and directing the state comptroller to loan money to certain funds and accounts, as amended by section 1 of part K of chapter 57 of the laws of 2008, is amended to read as follows:

§ 39. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2003; provided, however, that sections one, three, four, six, seven through fifteen, and seventeen of this act shall expire March 31, 2004, when upon such date the provisions of such sections shall be deemed repealed; and sections thirty and thirty-one of this act shall expire December 31, [2009] 2011 and the amendments made to section 69-c of the state finance law by section thirty-two of this act shall not affect the expiration and repeal of such section and shall be deemed to be expired therewith.

§ 2. This act shall take effect immediately.

PART AA

Section 1. Subparagraph (vi) of paragraph c of subdivision 4 of section 297 of the executive law, as amended by chapter 166 of the laws of 2000, is amended to read as follows:

(vi) assessing civil fines and penalties, [~~in cases of housing discrimination only,~~] in an amount not to exceed fifty thousand dollars,

1 to be paid to the state by a respondent found to have committed an
 2 unlawful discriminatory act, or not to exceed one hundred thousand
 3 dollars to be paid to the state by a respondent found to have committed
 4 an unlawful discriminatory act which is found to be willful, wanton or
 5 malicious;

6 § 2. Subdivision 4 of section 297 of the executive law is amended by
 7 adding a new paragraph e to read as follows:

8 e. Any civil penalty imposed pursuant to this subdivision shall be
 9 separately stated, and shall be in addition to and not reduce or offset
 10 any other damages or payment imposed upon a respondent pursuant to this
 11 article. In cases of employment discrimination where the employer has
 12 fewer than fifty employees, such civil fine or penalty may be paid in
 13 reasonable installments, in accordance with regulations promulgated by
 14 the division. Such regulations shall require the payment of reasonable
 15 interest resulting from the delay, and in no case permit installments to
 16 be made over a period longer than three years.

17 § 3. This act shall take effect on the ninetieth day after it shall
 18 have become a law.

19 PART BB

20 Section 1. Subdivision 2 of section 904 of the labor law, as amended
 21 by chapter 190 of the laws of 1990, is amended to read as follows:

22 2. Any contractor engaged in an asbestos project involving more than
 23 two hundred sixty linear feet or more than one hundred sixty square feet
 24 of asbestos or asbestos materials shall notify both the United States
 25 Environmental Protection Agency, Region II, Air and Hazardous Material
 26 Division and the commissioner in writing ten days prior to the commence-
 27 ment of work on the project or, if emergency conditions make it impossi-
 28 ble to provide ten days prior notice, as soon as practicable after iden-
 29 tification of the project. The notice to the commissioner shall include
 30 the following information: the name, address and asbestos handling
 31 license number of the contractor working on the project; the address and
 32 description of the building or area, including size, age and prior use
 33 of the building or area; the amount of friable asbestos material present
 34 in square feet and/or linear feet, if applicable; room designation
 35 numbers or other local information where such asbestos material is found
 36 unless such material is found throughout the entire structure; the
 37 scheduled starting and completion dates for removal; the procedures and
 38 equipment, including ventilating systems that will be employed; any
 39 additional information which the commissioner may require; and shall be
 40 accompanied by a project notification fee as follows:

41	Project Size/Linear Feet	Fee
42	260-429	[\$100] <u>\$200</u>
43	430-824	[200] <u>400</u>
44	825-1649	[500] <u>1,000</u>
45	1650 or more	[1000] <u>2,000</u>
46	Project Size/Square Feet	Fee
47	160-259	[\$100] <u>\$200</u>
48	260-499	[200] <u>400</u>
49	500-999	[500] <u>1,000</u>
50	1000 or more	[1000] <u>2,000</u>

1 § 2. Paragraph a of subdivision 8 of section 204 of the labor law, as
2 amended by section 3 of part A of chapter 57 of the laws of 2004, is
3 amended to read as follows:

4 a. All boilers which are inspected by a duly authorized insurance
5 company shall be exempt from inspection by the commissioner and by
6 cities which qualify under the provisions of subdivision seven of this
7 section, under the following conditions: (1) that inspections by the
8 insurance company are made with the same frequency as is required by
9 this section except that, for all such boilers located within a city
10 which qualifies under the provisions of subdivision seven of this
11 section, inspections are made with the same frequency as is required by
12 such city; (2) that the insurance company complies with the rules of the
13 commissioner; (3) that the inspectors of the insurance company hold
14 certificates of competency; (4) that the insurance company gives notice
15 to the owner or lessee of each boiler inspected listing all violations
16 of any provision of the rules of the commissioner; (5) that a certified
17 copy of the report of each inspection is filed with the commissioner or
18 the inspecting agency of such city, as the case may be, within twenty-
19 one days of the inspection, on such forms and in such manner as required
20 by the commissioner or the inspecting agency of such city, as the case
21 may be. A copy filed with the commissioner shall be accompanied by a
22 non-refundable fee of [~~fifty~~] one hundred dollars paid for each boiler
23 inspected. If insurance is refused, cancelled or discontinued for the
24 boiler inspected the report shall so state, together with the reasons
25 therefor; the report shall also list any instances of the failure of an
26 owner or lessee of the boiler to comply with the rules of the commis-
27 sioner.

28 § 3. This act shall take effect immediately.

29

PART CC

30 Section 1. Subdivisions 1 and 2 of section 450 of the labor law,
31 subdivision 1 as amended by chapter 809 of the laws of 1949 and subdivi-
32 sion 2 as amended by chapter 1022 of the laws of 1970, are amended to
33 read as follows:

34 1. This article shall apply to persons engaged in the manufacture,
35 ownership, possession, storage, use, transportation, purchase, sale or
36 gift of explosives as defined in subdivision one of section four hundred
37 fifty-one of this article.

38 2. This article shall not apply to explosives while being transported
39 in conformity with federal law or regulations, nor except as may be
40 herein otherwise provided to persons who manufacture, own, possess,
41 store, use, transport, purchase, sell or give explosives within the
42 territorial boundaries of cities having more than one million inhabit-
43 ants, nor to any of the following while in the performance of their
44 official duties: the armed forces of the United States, the national
45 guard, the state guard and duly constituted police and firefighting
46 forces of the state and its civil and political subdivisions.

47 § 2. Section 451 of the labor law, as amended by chapter 809 of the
48 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of
49 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
50 1970, is amended to read as follows:

51 § 451. Definitions. Whenever used in this article: 1. "Explosives"
52 means gunpowder, powders used for blasting, high explosives, blasting
53 materials, detonating fuses, detonators, pyrotechnics and other detonat-
54 ing agents, fireworks and dangerous fireworks as defined in section

1 270.00 of the penal law, smokeless powder and any chemical compound or
2 any mechanical mixture containing any oxidizing and combustible units,
3 or other ingredients in such proportions, quantities, or packing that
4 ignition by fire, friction, concussion, percussion or detonation of any
5 part thereof may cause and is intended to cause an explosion, but shall
6 not include gasoline, kerosene, naphtha, turpentine, benzine, acetone,
7 ethyl ether, benzol [~~and all~~] or quantities of black powder not exceed-
8 ing five pounds for use in firing of antique firearms or artifacts or
9 replicas thereof. Fixed ammunition and primers for small arms, [~~fire-~~
10 ~~crackers,~~] pyrotechnic devices which are designed for and being used for
11 legitimate wildlife management or controls, safety fuses and matches
12 shall not be deemed to be explosives when, [~~as may be determined by the~~
13 ~~board in its rules~~] as provided by regulation, the individual units
14 contain any of the above-mentioned articles or substances in such limit-
15 ed quantity, of such nature and so packed that it is impossible to
16 produce an explosion of such units to the injury of life, limb or prop-
17 erty.

18 2. "Highway" means any public street, public highway, public alley or
19 navigable [~~stream~~] waterway, which is open for traffic. Navigable
20 [~~streams~~] waterways shall be considered as only those [~~streams~~] suscep-
21 tible of being used, in their ordinary condition, as highways of
22 commerce.

23 3. "Railroad" or "railway" means any railroad [~~which~~] that carries
24 passengers or freight for hire, but shall not include auxiliary tracks,
25 spurs and sidings installed and primarily used in serving any mine,
26 quarry or plant.

27 4. "Building" means any building regularly occupied in whole or in
28 part as a habitation for human beings, and any church, school house,
29 railway station or other building or place where people are accustomed
30 to live, work or assemble, but does not mean or include any of the
31 buildings of a manufacturing plant where the business of manufacturing
32 explosives is carried on.

33 5. "Explosives factory" means any building or other structure in which
34 the manufacture of explosives or any part of the manufacture thereof is
35 carried on.

36 6. "Magazine" means any building or other structure, other than an
37 explosives factory, used to store explosives.

38 7. "Efficient barricade" means natural features of the ground, a dense
39 woods, an artificial mound or a properly revetted wall of earth not less
40 than three feet thick at the top, spaced at least three feet at the
41 bottom from any explosives factory or magazine, the height of which is
42 such that any straight line drawn from the top of any side wall of the
43 explosives factory or magazine to the top of a building or to a point
44 twelve feet above the center of a railroad or highway to be protected
45 will pass through such intervening barricade.

46 8. "Person" includes any natural person, partnership, association or
47 corporation.

48 9. "Manufacturer" means any person who is engaged in the manufacture
49 or production of explosives.

50 10. "Dealer" means any person engaged in the business of buying and
51 selling explosives.

52 11. [~~A "farmer" is a person who occupies and cultivates land.~~] "Pyro-
53 technics" means any combustible or explosive compositions of manufac-
54 tured articles designed and prepared for the purpose of producing audi-
55 ble or visible effects that are commonly referred to as fireworks.

1 § 3. Section 452 of the labor law, as amended by chapter 190 of the
2 laws of 1989, is amended to read as follows:

3 § 452. Packing and labeling. No person shall own, possess, store, deal
4 in, sell, give or purchase explosives unless the packing, or encasement,
5 and the marking and labeling of such explosives shall comply with the
6 ~~[rules of the board]~~ regulations promulgated pursuant to this article.

7 § 4. Section 453 of the labor law, as added by chapter 809 of the laws
8 of 1949, the second undesignated paragraph as amended by chapter 190 of
9 the laws of 1989, is amended to read as follows:

10 § 453. Storage. No person shall store explosives except in a magazine
11 constructed ~~[and]~~, located and certified in accordance with the
12 provisions of this article and the ~~[rules of the board and unless a~~
13 ~~certificate, which]~~ regulations promulgated pursuant to this article.
14 The magazine certificate shall be attached to the magazine on the inside
15 ~~[thereof, has been issued for]~~ of each such magazine. No person shall
16 store more than three hundred thousand pounds of explosives in any one
17 magazine at any time. Explosives not stored in compliance with this
18 section shall be deemed to present a danger to the public, including but
19 not limited to, emergency responders and other persons lawfully frequen-
20 ting the area and as such, are subject to seizure and destruction pursu-
21 ant to subdivision five of section four hundred sixty of this article.

22 This section shall not apply to explosives while being legally blasted
23 or while legally in the custody of a common carrier awaiting shipment or
24 delivery to a consignee during the time permitted by federal law; nor to
25 the storage of such limited amount of sporting or smokeless powders as
26 may be permitted by the ~~[rules of the board]~~ regulations promulgated
27 pursuant to this article.

28 § 5. Section 454 of the labor law, as amended by chapter 477 of the
29 laws of 1943, is amended to read as follows:

30 § 454. Construction of magazines. Unless otherwise prescribed by the
31 ~~[board in its rules]~~ regulations promulgated pursuant to this article,
32 magazines in which explosives shall be lawfully kept or stored shall be
33 constructed of brick, concrete, ~~[iron]~~ metal or wood covered with ~~[iron]~~
34 metal, and shall have no openings except for ventilation and entrance.
35 All explosive magazines, except those in mines and tunnels, shall be
36 located above ground. All explosive magazines shall be kept clean and
37 dry at all times.

38 § 6. Section 455 of the labor law, as amended by chapter 809 of the
39 laws of 1949, is amended to read as follows:

40 § 455. Magazine precautions. 1. No ~~[person]~~ individual shall unlock
41 ~~[or]~~, open the doors of, or access the contents of, explosive magazines,
42 except for the lawful storage or removal of explosives and in accordance
43 with regulations of the commissioner. No employer shall allow any indi-
44 vidual access to the explosive magazines or explosives of the employer
45 unless a license has been issued to the individual by the commissioner
46 as provided in this article, or the individual is under the direct
47 supervision of the license holder.

48 No person shall have matches or fire of any kind in any magazine. No
49 person shall store or keep blasting caps, detonating or fulminating
50 caps, or detonators in a magazine in which any other type of explosive
51 is stored or kept. No person shall open any package of explosives within
52 fifty feet of any magazine, nor shall any explosives be kept in a maga-
53 zine except in the original containers, or as otherwise provided by
54 regulations promulgated under this article. No person shall discharge
55 firearms within five hundred feet of a magazine or explosives factory,
56 or at or against any such building or magazine. Any theft or loss of

1 explosives from a storage magazine or otherwise, shall immediately be
2 reported to the [~~industrial~~] commissioner and the state or local police
3 or county sheriff.

4 § 7. Section 456 of the labor law, as amended by chapter 461 of the
5 laws of 1950, is amended to read as follows:

6 § 456. Location of magazines. The quantity of explosives that may be
7 stored in any explosives factory or magazine shall depend upon its
8 distances from the nearest building, railroad or highway or other maga-
9 zine. The distances that a quantity of explosives may be stored from the
10 nearest magazine, building, railroad or highway, shall be as determined
11 by the [~~rules of the board~~] regulations promulgated pursuant to this
12 article. All such distances may be reduced one-half when the magazine,
13 building, railroad or highway to be protected is adequately screened
14 from the explosives factory or magazine by an efficient barricade as
15 defined in subdivision seven of section four hundred fifty-one of this
16 article.

17 § 8. The labor law is amended by adding a new section 457 to read as
18 follows:

19 § 457. Relocation of magazines. 1. When any magazine is moved from the
20 location for which it was certified according to section four hundred
21 fifty-six of this article, and the magazine is or is intended to be used
22 for the storage of explosives and will be in the new location for more
23 than twenty-four hours, the commissioner shall be notified as to the new
24 location of the magazine. Such notification shall be made no later than
25 one business day prior to the move. The notification shall contain all
26 of the information required by the commissioner.

27 2. The provisions of subdivision one of this section shall not apply
28 where the relocation has been ordered by police, fire or other author-
29 ized emergency personnel, or where the continued storage in the current
30 location would constitute a threat to life or property. In such cases
31 the commissioner shall be notified as soon as practicable after the
32 relocation but in no case more than two business days following such
33 relocation.

34 3. When a magazine is abandoned, sold or removed from service, the
35 certificate holder shall notify the commissioner no later than three
36 business days from the date of such action and shall surrender the
37 certificate to the commissioner.

38 § 9. Section 458 of the labor law, as added by chapter 809 of the laws
39 of 1949, subdivisions 1 and 2 as amended by chapter 61 of the laws of
40 1989, subdivision 3 as amended by section 10 of part A of chapter 57 of
41 the laws of 2004, subdivision 4 as amended by chapter 164 of the laws of
42 2003, subdivisions 5, 6, 7 and 9 as added and subdivisions 10 and 11 as
43 renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
44 added by chapter 150 of the laws of 1971, is amended to read as follows:

45 § 458. Licenses and certificates. 1. No person shall purchase, own,
46 possess, transport or use explosives unless a license therefor shall
47 have been issued as provided in this article.

48 Application for such a license shall be made to the commissioner on
49 forms provided and shall contain such information as the commissioner
50 may require. Where the commissioner finds that the applicant has
51 complied with the requirements of this article and the rules promulgated
52 hereunder, the commissioner shall issue [~~a~~] such license or renewal
53 thereof which shall be valid for not less than one year from the date of
54 issuance. Such application and each renewal thereof shall be accompanied
55 by a non-refundable fee of not less than fifty dollars [~~non-refundable~~]
56 to be payable to the commissioner.

1 2. No person shall manufacture, deal in, sell, give, test, or dispose
2 of explosives unless a license therefor shall have been issued to such
3 person for that purpose by the commissioner as provided in this article,
4 nor shall any person sell, give, test, or dispose of explosives to, or
5 manufacture explosives for any person who does not hold a license as
6 provided by subdivision one of this section.

7 Application for such a license~~[, which shall be renewed annually,]~~
8 shall be made to the commissioner on forms provided and shall contain
9 such information as the commissioner may require. The commissioner,
10 after investigation of the application, shall issue a license or renewal
11 thereof, which shall be valid for not less than one year from the date
12 of issuance, where the commissioner finds that the applicant has
13 complied with the requirements of this article and the rules promulgated
14 hereunder. Each application for such a license, or for its renewal,
15 shall be accompanied by a fee of not less than one hundred dollars non-
16 refundable to be payable to the commissioner.

17 3. No person shall keep or store explosives unless a certificate
18 therefor shall have been issued by the commissioner as ~~[herein]~~
19 provided~~[, but this requirement shall not apply to the storage at any~~
20 ~~one time by farmers of two hundred pounds or less of blasting explosives~~
21 ~~for agricultural purposes]~~ in this section.

22 Application for such a certificate shall be made to the commissioner
23 on forms provided and shall contain such information as the commissioner
24 may require. The commissioner, where it is found that the applicant has
25 complied with the requirements of this article, ~~[and]~~, the rules promul-
26 gated hereunder and all other applicable sections of this chapter and
27 regulations promulgated by the commissioner, shall issue a certificate
28 or a renewal thereof, which shall be valid for not less than one year
29 from the date of issuance. In addition to any other causes for revoca-
30 tion of a certificate hereinafter provided, the commissioner may revoke
31 or modify such certificate because of any change in the conditions under
32 which it was granted, or for failure to pay the ~~[annual]~~ required fee
33 ~~[hereinafter provided]~~. The owner or user of a magazine shall ~~[annually]~~
34 pay to the commissioner ~~[in advance]~~ a fee~~[, subject to the discretion~~
35 ~~of the commissioner and]~~ of not less than fifty dollars, which shall be
36 proportioned according to the quantity and type of explosives authorized
37 by the certificate to be stored in the magazine.

38 4. An application for a license or a certificate pursuant to ~~[subdivi-~~
39 ~~sion one, two or three of]~~ this section ~~[shall be sworn to under oath~~
40 ~~and]~~ shall contain information sufficient to identify the applicant, and
41 the purpose for which and the place where the explosives are to be used,
42 manufactured, dealt in, given, disposed of or stored, as the case may
43 be, and to demonstrate the eligibility of such applicant for the license
44 or certificate requested. The commissioner may require that the applica-
45 tion include, among other things, photographs, fingerprints and personal
46 references. Such fingerprints shall be submitted to the division of
47 criminal justice services for a state criminal history record check, as
48 defined in subdivision one of section three thousand thirty-five of the
49 education law, and may be submitted to the federal bureau of investi-
50 gation for a national criminal history record check. An application for
51 a license or certificate required to be filed with the department pursu-
52 ant to this section shall be signed by the applicant and affirmed by him
53 or her as true under penalty of perjury.

54 5. Before a license or certificate is issued, the commissioner shall
55 investigate the eligibility of the applicant. The commissioner shall
56 have the authority to request and receive from any department, division,

1 board, bureau, commission or agency of the state or local government
2 thereof such assistance and information as will enable ~~[him]~~ the commis-
3 sioner to properly and effectively ~~[to]~~ carry out ~~[his]~~ the powers and
4 duties under this article.

5 6. (a) The investigation prescribed in subdivision five of this
6 section may include, but is not limited to the following:

7 (1) a personal interview of the applicant by a designated agent of the
8 commissioner if the commissioner is unable to make a determination on
9 the basis of the factors contained in the application;

10 (2) an examination as to the applicant's knowledge and ability with
11 respect to basic safety precautions in the possession, handling, stor-
12 age, manufacture and transportation of explosives, and for such purpose
13 the commissioner may prescribe tests which the applicant shall be
14 required to pass as a prerequisite to the issuance of the license or
15 certificate. The test may be administered by any person or agency
16 designated by the commissioner.

17 (b) The investigation prescribed in subdivision five of this section
18 shall include a report from the New York state identification and intel-
19 ligence system, and such other identification services of the state or
20 federal government as may be necessary or appropriate for this purpose.

21 7. The commissioner may waive any of the procedures set forth in para-
22 graph (b) of subdivision six ~~[(a)]~~ of this section with respect to any
23 applicant ~~[who has a license or certificate which was issued pursuant to~~
24 ~~this section at any time prior to March first, nineteen hundred seventy,~~
25 ~~and which was legally valid and effective on such date. The commissioner~~
26 ~~also may waive fingerprinting of an applicant who has a valid license~~
27 ~~for a pistol or revolver in accordance with section 400.00 of the penal~~
28 ~~law] for whom criminal history or other information has been obtained~~
29 from any federal bureau or agency.

30 8. [Exceptions.] Except for the provisions of subdivision eleven of
31 this section, this section shall not apply to smokeless powder.

32 9. Within thirty days after the issuance of a license or certificate
33 under this section, the commissioner shall notify the chief executive
34 officer of the municipality where the licensee resides or where the
35 certificate holder has his or her place of business of the issuance of
36 such license or certificate, and provide such officer with such other
37 information pertaining thereto ~~[as the board may from time to time~~
38 prescribe] as the commissioner may prescribe.

39 10. Agencies of the United States, the state and its political and
40 civil subdivisions which are subject to the requirements of this article
41 and which, in the exercise of their functions, are required to purchase,
42 own, store, use or transport explosives shall not be liable for the
43 payment of any fee required by this section.

44 11. No explosives shall be sold, given or delivered to any ~~[person]~~
45 individual under eighteen years of age, whether such ~~[person]~~ individual
46 is acting for himself, herself or for another person, nor shall any such
47 ~~[person]~~ individual be eligible to obtain any license or certificate
48 required under this section.

49 § 10. Section 459 of the labor law, as added by chapter 809 of the
50 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of
51 1970, is amended to read as follows:

52 § 459. Denial or revocation of license or certificate. 1. A license
53 or certificate, ~~[its]~~ or the renewal ~~[or continuation]~~ thereof may be
54 denied where the commissioner has probable reason to believe, based on
55 knowledge or reliable information, or finds, after ~~[due]~~ investigation,
56 that the applicant or any officer, servant, agent or employee of the

1 applicant is not sufficiently reliable and experienced to be authorized
2 to own, possess, store, transport, use, manufacture, deal in, sell,
3 purchase or otherwise handle, as the case may be, explosives, lacks
4 suitable facilities therefor, has been convicted of a ~~[crime for which~~
5 ~~he has been sentenced to serve one or more years in prison]~~ felony, is
6 disloyal or hostile to the United States ~~[or]~~, has been confined as a
7 patient or inmate in a public or private institution for the treatment
8 of mental diseases or has been convicted under section four hundred
9 eighty-four of the general business law. Whenever the commissioner
10 denies an application for a license or certificate or the renewal there-
11 of, ~~[he shall]~~, within five days of such denial, ~~[give]~~ notice thereof
12 and the reasons therefor shall be provided in writing to the applicant
13 ~~[personally or by mail to the address given in the application]~~. Such
14 denial may be appealed to the commissioner who shall follow the proce-
15 dure provided by subdivision ~~[three]~~ four of this section.

16 2. The commissioner may revoke any certificate or license on any
17 ground or grounds authorized in subdivision one of this section for the
18 denial of a license or certificate, or for a violation of the terms of
19 such license or certificate, or for a violation of any provision of this
20 article or ~~[of the rules of the board]~~ regulations promulgated
21 hereunder, or for non-compliance with any order issued by the commis-
22 sioner within the time specified in such order.

23 ~~[Where the]~~ The commissioner may, where he or she has probable reason
24 to believe, based on knowledge or reliable information, that a licensee
25 or certificate holder is disloyal to the United States, ~~[he may]~~ summar-
26 ily revoke the license or certificate or may~~[, in his discretion]~~, give
27 such licensee or certificate holder notice and opportunity to be heard
28 as provided in subdivision ~~[three]~~ four of this section. Revocation of a
29 license or certificate for any other ground may be ordered only after
30 giving written notice and an opportunity to be heard to the holder ther-
31 eof. Such notice ~~[may be given to the holder personally or by mail and]~~
32 shall specify the ground or grounds on which it is proposed to revoke
33 the license or certificate. When a license or certificate is revoked,
34 the commissioner may direct the seizure and/or disposition of explosives
35 held by such licensee or certificate holder. Upon revocation of a
36 license or certificate by the commissioner, the holder thereof shall
37 surrender ~~[his]~~ the license or certificate to the commissioner at once.

38 3. The commissioner may summarily suspend the license or certificate
39 pending proceedings for revocation or other action, where he or she has
40 reason to believe, based on knowledge or reliable information, that the
41 continued possession of a license or certificate poses a danger to
42 public health, safety or welfare, and incorporates a finding to that
43 effect in his or her order. These proceedings shall be promptly insti-
44 tuted and determined. Such suspension shall be effective on the date
45 specified in the order or upon service of a certified copy of such order
46 on the license or certificate holder, whichever shall be later.

47 ~~[3. Hearings]~~ 4. Unless, within fifteen days from the date of notice,
48 the applicant for a license or certificate or the recipient of a notice
49 stating that the commissioner proposes to revoke a license or certifi-
50 cate held by him or her, shall file a written answer with the commis-
51 sioner denying the ground or grounds on which a license or certificate
52 has been denied or not renewed or ground or grounds on which revocation
53 of a license or certificate is sought, and shall request a hearing, the
54 commissioner may make a final determination respecting the application
55 for a license or certificate, or may revoke a license or certificate
56 forthwith. If, within such fifteen days, the applicant, licensee or

1 certificate holder files such answer and request for hearing, the
2 commissioner shall schedule a hearing. The notice of hearing shall state
3 the time, place, and subject of the hearing, and shall be mailed to the
4 applicant, certificate holder or licensee at his or her last known
5 address at least five days before the date of hearing. Hearings shall be
6 held by the commissioner or his or her representative, and the appli-
7 cant, certificate holder or licensee may appear in person or may be
8 represented by an agent. After such hearing, the commissioner shall
9 render [~~his~~] a decision in writing.

10 § 11. Section 460 of the labor law, as added by chapter 809 of the
11 laws of 1949, is amended to read as follows:

12 § 460. Seizure, impounding, destruction or disposition of explosives.
13 1. The commissioner is hereby authorized and empowered, without applica-
14 tion to any court, to seize and impound any explosives found within this
15 state, except in cities having a population of more than one million
16 inhabitants, which are in apparent violation of any of the provisions of
17 this article, [~~rules of the board~~] regulations promulgated hereunder or
18 laws or regulations of the federal government, or which have been aban-
19 doned or lost, or where the commissioner has reason to believe that
20 public safety is endangered by such explosives. Such explosives may be
21 removed and transported by the commissioner and stored in magazines
22 provided or obtained for that purpose by the state or by the commission-
23 er.

24 2. The owner of such explosives may, within five days of such seizure,
25 make written demand upon the commissioner for a hearing. Upon such
26 demand, the commissioner shall give the owner written notice [~~in person~~
27 ~~or by mail,~~] of the time and place of such hearing to be held not less
28 than ten days thereafter.

29 3. Where no hearing is demanded within the time herein prescribed or
30 where, after hearing, the commissioner finds that there has been a
31 violation of the provisions of this article, [~~rules of the board~~] regu-
32 lations promulgated hereunder or laws or regulations of the federal
33 government, or that public safety is endangered, [~~he~~] the commissioner
34 may destroy or order the destruction of such explosives without liabil-
35 ity, or direct such other disposition of the explosives [~~as he deems~~
36 ~~proper~~]. If the commissioner finds there has been no such violation and
37 that public safety has not been endangered, [~~he shall return~~] such
38 explosives shall be returned to the owner thereof.

39 4. Where such explosives have been abandoned or lost, and no claimant
40 has appeared within thirty days, demanded the return of the explosives
41 and proved, to the satisfaction of the commissioner, [~~his~~] the claim-
42 ant's title to and right of possession of such explosives, the commis-
43 sioner may destroy or direct the destruction thereof, or direct such
44 other disposition thereof as [~~he deems~~] is deemed proper.

45 5. Any provision herein to the contrary notwithstanding, where, in the
46 opinion of the commissioner, the manufacture, condition, storage, pack-
47 ing or location of explosives is such that its continued existence or
48 transportation is a danger to public safety, [~~he~~] the commissioner may,
49 without hearing and without liability therefor to the owner thereof,
50 seize and destroy or direct the seizure and destruction of such
51 explosives.

52 § 12. Section 461 of the labor law, as added by chapter 809 of the
53 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of
54 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,
55 is amended to read as follows:

1 § 461. Record and notice of sales, deliveries or gifts. 1. Every
2 person selling, delivering ~~[or]~~, giving away ~~[an explosive]~~ or otherwise
3 transferring or disposing of explosives shall keep at his or her princi-
4 pal office or place of business within the state, a record of the trans-
5 action, including the name or type and quantity of the explosive, such
6 identification of the explosive as may be required by ~~[rules of the~~
7 ~~board]~~ the regulations promulgated pursuant to this article, the date of
8 each sale, delivery ~~[or]~~, gift, transfer or disposition, the name and
9 business address of the purchaser, donee, recipient or person to whom
10 delivered, the number of the license ~~[to own or possess explosives]~~, if
11 such license is required by section four hundred fifty-eight of this
12 article, and the name and address of the person taking the explosives
13 away. A report of all such transactions, when requested ~~[by him]~~, shall
14 be submitted to the commissioner. Such record shall be open to
15 inspection by the commissioner or by federal, state and local enforce-
16 ment officers at all times. No person shall have in his or her
17 possession any explosives unless he or she has a bill of sale or other
18 evidence of title thereto.

19 2. Any provision in this article to the contrary notwithstanding, no
20 person in a city having more than one million inhabitants shall ship or
21 transport or cause to be shipped or transported explosives from such
22 city to any other place within the state, unless such person shall, at
23 least twenty-four hours prior to such shipment, transmit to the commis-
24 sioner a statement in writing giving the weight, name or brand and type
25 of explosives, the name and address of the person to whom such
26 explosives are to be sold, shipped, transported or delivered and the
27 date thereof. Upon receipt of such statement, the commissioner shall
28 provide immediate written notice of such shipment or transportation of
29 explosives to the mayor of a city having more than one million inhabit-
30 ants, or to the designee of the mayor. No person shall make any such
31 shipment except to a holder of a license issued hereunder.

32 3. No person within the state shall purchase, receive or accept deliv-
33 ery of explosives from any place outside the state, and no person shall
34 bring explosives into the state from any place outside the state,
35 unless, ~~[in addition to holding a license issued hereunder, such person~~
36 ~~shall, not more than twenty four hours thereafter, transmit to the~~
37 ~~commissioner by mail a written statement giving] he or she is in~~
38 possession of a valid license issued by the commissioner. The licensee
39 receiving the explosives shall maintain a record including the weight,
40 name or brand and type of the explosives, the name and address of the
41 shipper and the date of shipment, for a period of three years from the
42 date of receipt or two years from the date of final disposition of the
43 explosives whichever occurs last.

44 § 13. Section 462 of the labor law, as amended by chapter 190 of the
45 laws of 1989, is amended to read as follows:

46 § 462. Rules and regulations. The commissioner may make rules supple-
47 mental to this article as ~~[he shall deem]~~ deemed necessary or desirable
48 to assure the public safety as well as to provide reasonable and
49 adequate protection of the lives, health and safety of persons employed
50 in the manufacture, storage, handling ~~[and]~~, use, purchase, sale, dispo-
51 sition and ownership of explosives. The commissioner may prescribe such
52 regulations as ~~[he may deem]~~ are deemed necessary and proper for the
53 administration of this article. The commissioner shall by rule adopt
54 the codes, standards and recommended practices promulgated by the most
55 recent edition of National Fire Protection Association, 1123 and 1126
56 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proxi-

1 mate Audience, in accordance with the provisions of this article and
2 article twenty-eight-D of the general business law.

3 § 14. Section 463 of the labor law, as added by chapter 809 of the
4 laws of 1949, is amended to read as follows:

5 § 463. Review. All questions of fact arising under this article shall
6 be decided by the commissioner and there shall be no appeal from [~~his~~]
7 ~~such~~ decision on any such question of fact [~~, but there shall be a right~~
8 ~~of review by the board of standards and appeals of any decision of the~~
9 ~~commissioner denying an application for a license or certificate, or~~
10 ~~denying the renewal thereof, or revoking a license or certificate, as~~
11 ~~provided in section one hundred ten, article three of the labor law].~~
12 Upon the entry of an order issued under sections four hundred fifty-nine
13 and four hundred sixty of this article, any party aggrieved thereby may
14 commence a proceeding for review thereof pursuant to article seventy-
15 eight of the civil practice law and rules within thirty days from the
16 notice of the filing of the said order in the office of the commission-
17 er. Said proceeding shall be commenced directly in the appellate divi-
18 sion of the supreme court. Nothing in this section shall in any way
19 limit, qualify or prevent the commissioner from destroying explosives as
20 provided under section four hundred sixty of this article.

21 § 15. Section 464 of the labor law, as amended by chapter 307 of the
22 laws of 1984, is amended to read as follows:

23 § 464. [~~Penalties~~] Costs and penalties. 1. If the commissioner
24 directs the storage, destruction or other disposition of explosives
25 pursuant to the provisions of section four hundred fifty-nine or four
26 hundred sixty of this article, the commissioner may issue an order which
27 shall set forth the costs of such storage, transportation, handling,
28 destruction or other disposition and assess such costs against the owner
29 of such explosives, which shall be in addition to any other penalties
30 imposed.

31 2. (a) If the commissioner determines that any person has violated any
32 provision of this article, section four hundred eighty-two of the gener-
33 al business law relating to blasters and pyrotechnicians, or any rule or
34 regulation promulgated thereunder, the commissioner may issue an order
35 which shall describe the nature of the violation and assess such person
36 a civil penalty of up to ten thousand dollars per violation per day
37 until the violation is corrected. The penalty authorized pursuant to
38 this paragraph shall be paid to the commissioner for deposit in the
39 treasury of the state. In assessing the amount of the penalty, the
40 commissioner shall give due consideration to the size of the person's
41 business, the good faith effort of the person, the gravity of the
42 violation, and the history of previous violations.

43 (b) Whenever the commissioner issues an order under this section
44 against a person, the commissioner shall serve notice of the order by
45 registered mail upon the person at his or her last known address. Within
46 five days of service of the order, the person may make written demand
47 upon the commissioner for a hearing whereupon the commissioner shall
48 give such person written notice of the time and place of the hearing to
49 be held not less than ten days thereafter.

50 (c) Upon the entry of an order issued following a hearing under this
51 section, any party aggrieved by an order issued under this subdivision
52 or subdivision one of this section may commence a proceeding for review
53 thereof pursuant to article seventy-eight of the civil practice law and
54 rules within thirty days from the notice of the filing of the said order
55 in the office of the commissioner. Said proceeding shall be commenced
56 directly in the Appellate Division of the Supreme Court.

1 (d) Provided that no proceeding for judicial review as provided for in
2 this section shall then be pending and the time for initiation of such
3 proceeding shall have expired, the commissioner may file with the county
4 clerk of the county where the person resides or has a place of business,
5 the order of the commissioner, containing the amount of the civil penal-
6 ty. The filing of such order or decision shall have the full force and
7 effect of a judgment duly docketed in the office of such clerk, the
8 order or decision may be enforced by and in the name of the commissioner
9 in the same manner, and with like effect, as that prescribed by the
10 civil practice law and rules for the enforcement of a money judgment.

11 (e) A civil penalty provided for in this subdivision shall be in addi-
12 tion to and may be imposed concurrently with any other penalty or remedy
13 provided for in this article.

14 3. Any person violating any provision of this article, or any rule or
15 regulation made hereunder, shall be guilty of a class E felony;
16 provided, however, that any person who possesses an explosive without
17 being duly licensed or otherwise authorized to do so under the
18 provisions of this article shall be guilty of a class D felony. Whenev-
19 er, as a result of a plea bargaining agreement the charge is reduced to
20 a lesser offense, such offense may, in addition to any term of imprison-
21 ment prescribed by such offense, be punishable by a fine not to exceed
22 twenty-five hundred dollars.

23 § 16. Section 480 of the general business law, as added by chapter 754
24 of the laws of 1975, is amended to read as follows:

25 § 480. Legislative findings. The legislature hereby finds that the use
26 of lasers and radioactive materials, the operation of cranes [and], the
27 detonation of explosives, and the preparation and firing of pyrotechnics
28 involve such elements of potential danger to the lives, health and safe-
29 ty of the citizens of this state and to their property that special
30 regulations are necessary to insure that only persons of proper ability
31 and experience shall engage in such uses and operations.

32 The legislature hereby declares that this article shall be deemed an
33 exercise of the police power of this state for the protection of the
34 lives, health and safety of citizens in this state and of their proper-
35 ty.

36 § 17. Section 481 of the general business law, as added by chapter
37 754 of the laws of 1975, subdivision 3 as amended by chapter 569 of the
38 laws of 1982 and subdivision 5 as amended by section 1 of part B of
39 chapter 58 of the laws of 2006, is amended to read as follows:

40 § 481. Definitions. As used in this article:

41 1. "Laser" means light amplification by simulated emission of radi-
42 ation.

43 2. "Radioactive material" means any material in any form that emits
44 ionizing radiation spontaneously. "Radiation equipment" means any equip-
45 ment or device which can emit ionizing or non-ionizing radiation.

46 3. "Crane" includes but is not limited to cranes and equipment of the
47 following types: a mobile, carrier-mounted, power-operated hoisting
48 machine utilizing a power-operated boom which moves laterally by rota-
49 tion of the machine on the carrier, tower cranes, hydraulic cranes and
50 power-operated derricks; provided, however, that "crane" shall not
51 include public utility company line trucks used by a public utility
52 company in the construction and maintenance of its generation, trans-
53 mission and distribution facilities.

54 4. "Blaster" means a person who performs the act of preparation for
55 detonation and the detonation of an explosive.

1 5. "Pyrotechnician" means a person who performs the preparation for
2 and the firing of pyrotechnics, as defined in article sixteen of the
3 labor law.

4 6. "Commissioner" means the commissioner of labor of the state of New
5 York, except that any reference to the commissioner with respect to
6 radioactive material, as defined in this article, or radiation equip-
7 ment, as defined in this article, shall be a reference to the commis-
8 sioner of health of the state of New York.

9 § 18. Section 482 of the general business law, as amended by section 2
10 of part B of chapter 58 of the laws of 2006, is amended to read as
11 follows:

12 § 482. Licensing and registration. 1. No individual shall use lasers,
13 operate a crane ~~[or]~~, act as a blaster or as a pyrotechnician without
14 holding a valid certificate of competence issued by the commissioner of
15 labor.

16 2. No person shall possess or use any radioactive material without a
17 valid license issued by the commissioner of health. Every installation
18 and mobile source consisting of radiation equipment shall be registered
19 with the commissioner of health.

20 3. No employer, contractor or agent thereof shall knowingly permit any
21 individual to use lasers, operate a crane or act as a blaster or as a
22 pyrotechnician without holding a valid certificate of competence issued
23 by the commissioner of labor.

24 § 19. Paragraph a of subdivision 1 and subdivision 2 of section 483 of
25 the general business law, paragraph a of subdivision 1 as amended by
26 section 3 of part B of chapter 58 of the laws of 2006, subdivision 2 as
27 added by chapter 754 of the laws of 1975, are amended to read as
28 follows:

29 a. The commissioner of labor is hereby authorized and directed to
30 prescribe such rules and regulations as may be necessary and proper for
31 the administration and enforcement of this article with respect to
32 lasers, crane operators ~~[and]~~, blasters and pyrotechnicians.

33 2. Such regulations may provide for examinations, categories of
34 certificates, licenses, or registrations, age and experience require-
35 ments, payment of fees, and may also provide for such limitations and
36 exemptions as the commissioner finds necessary and proper. In the case
37 of blasters and pyrotechnicians, such regulations may require finger-
38 printing, and in the case of users of radioactive material, such regu-
39 lations may require the posting of a bond or other security.

40 § 20. Section 484 of the general business law, as added by chapter 754
41 of the laws of 1975, subdivision 1 as amended by section 4 of part B of
42 chapter 58 of the laws of 2006 and subdivision 2 as amended and subdivi-
43 sion 3 as added by chapter 569 of the laws of 1982, is amended to read
44 as follows:

45 § 484. Enforcement. 1. a. For the purpose of administering and enforc-
46 ing the provisions of this article with respect to lasers, cranes ~~[and]~~,
47 blasters and pyrotechnicians, the commissioner of labor shall have and
48 may use all of the powers conferred upon him or her by the labor law, in
49 addition to the powers conferred herein.

50 b. For the purpose of administering and enforcing the provisions of
51 this article with respect to radioactive material and radiation equip-
52 ment the commissioner of health shall have and may use all of the powers
53 conferred upon him or her by the public health law, in addition to the
54 powers conferred in this article.

55 2. ~~[A violation of]~~ Any person who violates any provision of this
56 article or of any rule or regulation of the commissioner promulgated

1 hereunder or of any rule or regulation promulgated pursuant to paragraph
2 b of subdivision two of section four hundred eighty-five of this article
3 shall be guilty of a misdemeanor, and upon conviction shall be punished,
4 by a fine of not more than one thousand dollars; for a second offense by
5 a fine of not less than one thousand nor more than three thousand
6 dollars, or by imprisonment for not more than one year or by both such
7 fine and imprisonment; for a subsequent offense by a fine of not less
8 than three thousand dollars, or by imprisonment for not more than one
9 year, or by both such fine and imprisonment.

10 3. Where the employer, contractor or agent thereof permitting a
11 violation of any provision of this article or of any rule or regulation
12 of the commissioner promulgated hereunder or of any rule or regulation
13 promulgated pursuant to paragraph b of subdivision two of section four
14 hundred eighty-five of this article shall be a corporation, then in
15 addition to the corporation, the officer or agent of such corporation
16 who knowingly permits the corporation to violate such provisions is
17 guilty of a misdemeanor; and upon conviction thereof shall be punished
18 for a first offense by a fine of not more than one ~~[hundred]~~ thousand
19 dollars; for a second offense by a fine of not less than one ~~[hundred]~~
20 thousand nor more than ~~[five hundred]~~ three thousand dollars, or by
21 imprisonment for not more than ~~[thirty days]~~ one year or by both such
22 fine and imprisonment; for a subsequent offense by a fine of not less
23 than three ~~[hundred]~~ thousand dollars or by imprisonment for not more
24 than ~~[sixty days]~~ one year, or by both such fine and imprisonment.

25 § 21. Subdivisions 2, 3, 3-a and 4 of section 405.00 of the penal law,
26 subdivision 3-a as added by chapter 151 of the laws of 2002, are amended
27 to read as follows:

28 2. Permits for ~~[public]~~ fireworks displays. Notwithstanding the
29 provisions of section 270.00 of this chapter, the permit authority of a
30 state park, county park, city, village or town may ~~[upon application in~~
31 ~~writing,~~ grant a permit for the ~~[public]~~ display of fireworks ~~[by] to~~
32 municipalities, fair associations, amusement parks, persons, or organ-
33 izations of individuals that submit an application in writing. The
34 application for such permit shall set forth:

35 (a) The name of the body sponsoring the display and the names of the
36 persons actually to be in charge of the firing of the display who shall
37 possess a valid certificate of competence as a pyrotechnician as
38 required under the general business law and article sixteen of the labor
39 law. The permit application shall further contain a verified statement
40 from the applicant identifying the individuals who are authorized to
41 fire the display including their certificate numbers, and that such
42 individuals possess a valid certificate of competence as a pyrotechni-
43 cian.

44 (b) The date and time of day at which the display is to be held.

45 (c) The exact location planned for the display.

46 (d) ~~[The age, experience and physical characteristics of the persons~~
47 ~~who are to do the actual discharging of the fireworks.~~

48 ~~(e)]~~ The number and kind of fireworks to be discharged.

49 ~~[(f)]~~ (e) The manner and place of storage of such fireworks prior to
50 the display.

51 ~~[(g)]~~ (f) A diagram of the grounds on which the display is to be held
52 showing the point at which the fireworks are to be discharged, the
53 location of all buildings, highways and other lines of communication,
54 the lines behind which the audience will be restrained and the location
55 of all nearby trees, telegraph or telephone lines or other overhead
56 obstructions.

1 ~~[(h)]~~ (g) Such other information as the permit authority may deem
2 necessary to protect persons or property.

3 3. Applications for permits. All applications for permits for the
4 ~~[public]~~ display of fireworks shall be made at least five days in
5 advance of the date of the display and the permit shall contain
6 provisions that the actual point at which the fireworks are to be fired
7 ~~[shall be at least two hundred feet from the nearest permanent building,~~
8 ~~public highway or railroad or other means of travel and at least fifty~~
9 ~~feet from the nearest above ground telephone or telegraph line, tree or~~
10 ~~other overhead obstruction, that the audience at such display shall be~~
11 ~~restrained behind lines at least one hundred and fifty feet from the~~
12 ~~point at which the fireworks are discharged and only persons in active~~
13 ~~charge of the display shall be allowed inside these lines, that all~~
14 ~~fireworks that fire a projectile shall be so set up that the projectile~~
15 ~~will go into the air as nearby as possible in a vertical direction,~~
16 ~~unless such fireworks are to be fired from the shore of a lake or other~~
17 ~~large body of water, when they may be directed in such manner that the~~
18 ~~falling residue from the deflagration will fall into such lake or body~~
19 ~~of water, that any fireworks that remain unfired after the display is~~
20 ~~concluded shall be immediately disposed of in a way safe for the partic-~~
21 ~~ular type of fireworks remaining, that no fireworks display shall be~~
22 ~~held during any wind storm in which the wind reaches a velocity of more~~
23 ~~than thirty miles per hour,]~~ be in accordance with the rules promulgated
24 by the commissioner of labor pursuant to section four hundred sixty-two
25 of the labor law and that all the persons in actual charge of firing the
26 fireworks shall be over the age of eighteen years, competent and phys-
27 ically fit for the task, that there shall be at least two such operators
28 constantly on duty during the discharge and that at least two ~~[sodaacid~~
29 ~~or other]~~ approved type fire extinguishers ~~[of at least two and one half~~
30 ~~gallons capacity each]~~ shall be kept at as widely separated points as
31 possible within the actual area of the display. The legislative body of
32 a state park, county park, city, village or town may provide for
33 approval of such permit by the head of the police or fire department or
34 both where there are such departments. No permit granted and issued
35 hereunder shall be transferable. After such permit shall have been
36 granted, sales, possession, use and distribution of fireworks for such
37 display shall be lawful solely therefor.

38 3-a. Notwithstanding the provisions of subdivision three of this
39 section, no permit may be issued to conduct a ~~[public]~~ display of fire-
40 works upon any property where the boundary line of such property is less
41 than five hundred yards from the boundary line of any property which is
42 owned, leased or operated by any breeder as defined in subdivision four
43 of section ~~[two hundred forty four]~~ two hundred fifty-one of the racing,
44 pari-mutuel wagering and breeding law.

45 4. Bonds. Before granting and issuing a permit for a ~~[public]~~ display
46 of fireworks as herein provided, the permit authority shall require an
47 adequate bond from the applicant therefor, unless it is a state park,
48 county park, city, village or town, ~~[or from the person to whom a~~
49 ~~contract for such display shall be awarded,]~~ in a sum to be fixed by the
50 permit authority, which, however, shall not be less than ~~[five thousand]~~
51 one million dollars, conditioned for the payment of all damages, which
52 may be caused to a person or persons or to property, by reason of the
53 display so permitted and arising from any acts of the permittee, his
54 agents, employees, contractors or subcontractors. Such bond shall run to
55 the state park, county park, city, village or town in which the permit
56 is granted and issued and shall be for the use and benefit of any person

1 or persons or any owner or owners of any property so injured or damaged,
2 and such person or persons or such owner or owners are hereby authorized
3 to maintain an action thereon, which right of action also shall accrue
4 to the heirs, executors, administrators, successors or assigns of such
5 person or persons or such owner or owners. The permit authority may
6 accept, in lieu of such bond, an indemnity insurance policy with liabil-
7 ity coverage and indemnity protection equivalent to the terms and condi-
8 tions upon which such bond is predicated and for the purposes [herein]
9 provided in this section.

10 § 22. This act shall take effect immediately; provided that:

11 1. section eight of this act shall take effect on the thirtieth day
12 after it shall have become a law, and sections eighteen and twenty-one
13 of this act shall take effect on the one hundred eightieth day after it
14 shall have become a law;

15 2. all licenses and certificates issued pursuant to article 16 of the
16 labor law and article 28-D of the general business law prior to the
17 effective date of this act shall remain in full force and effect until
18 such licenses and certificates expire; and

19 3. sections fifteen and twenty of this act shall apply to offenses
20 committed on or after the effective date of such sections.

21 PART DD

22 Section 1. Section 484 of the general business law is amended by
23 adding a new subdivision 4 to read as follows:

24 4. (a) Any person who operates a crane without a certificate of compe-
25 tence issued by the commissioner of labor as required by section four
26 hundred eighty-two of this article shall be deemed to have violated this
27 article. The commissioner may impose a civil penalty upon such person of
28 no more than one thousand dollars for the initial violation, no more
29 than two thousand dollars for the second violation, and no more than
30 three thousand dollars for a third or subsequent violation.

31 (b) Any employer, contractor or agent thereof who willfully permits a
32 person to operate a crane without a certificate of competence issued by
33 the commissioner of labor as required by section four hundred eighty-two
34 of this article shall be deemed to have violated this article. The
35 commissioner may impose a civil penalty upon such employer, contractor,
36 or agent of no more than five thousand dollars for the initial
37 violation, and no more than ten thousand dollars for a second or subse-
38 quent violation.

39 (c) When two final determinations have been rendered under this
40 section against a person who operates a crane in violation of this arti-
41 cle, such person shall be ineligible to apply for a certificate of
42 competence from the commissioner of labor for a period of two years from
43 the date of the second final determination.

44 § 2. This act shall take effect immediately and shall apply to
45 violations occurring on and after such effective date.

46 PART EE

47 Section 1. Section 604 of the education law is amended by adding a new
48 subdivision 12 to read as follows:

49 12. Continental Airlines flight 3407 memorial scholarships pursuant to
50 section six hundred sixty-eight-g of this title.

51 § 2. The education law is amended by adding a new section 668-g to
52 read as follows:

\$ 668-g. Continental Airlines flight 3407 memorial scholarships. 1. Eligible groups. Notwithstanding subdivisions three and five of section six hundred sixty-one of this part, children, spouses and financial dependents of persons who died as a direct result of the crash of Continental Airlines flight 3407, in Clarence, New York, on February twelfth, two thousand nine, shall be eligible to receive a memorial scholarship for their attendance at an institution located within New York state.

2. Amount. The president shall grant annual scholarships in amounts determined in accordance with subdivision two of section six hundred sixty-eight-d of this subpart.

3. Duration. Awards under this section shall be payable for each of not more than four academic years of undergraduate study or five academic years if a program normally requires five years, as defined by the commissioner pursuant to article thirteen of this title.

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2009, and shall be applicable for awards made for the 2009-10 academic year and each following academic year.

PART FF

Section 1. Subdivision 4 of section 903 of the private housing finance law, as amended by section 1 of part II of chapter 59 of the laws of 2008, is amended to read as follows:

4. Contracts entered into hereunder with neighborhood preservation companies shall be limited in duration to periods of one year, but may thereafter be renewed, extended or succeeded by new contracts from year to year in the discretion of the commissioner; they shall be limited in amount to the sum of one hundred thousand dollars in a single year ~~[and to the aggregate sum of two million one hundred four thousand five hundred dollars for a single neighborhood preservation company]~~, provided that in any year in which the aggregate sum of three hundred thousand dollars shall have been reached and all succeeding years, the annual contract amount shall be subject to a limit of ninety-seven thousand five hundred dollars per year; they shall define with particularity the neighborhood or portion thereof within which the neighborhood preservation activities shall be performed; they shall specify the nature of the neighborhood preservation activities which shall be performed including the approximate number of buildings, residential dwelling units and local retail and service establishments which shall be affected; they shall locate and describe, with as much particularity as is reasonably possible, the buildings with respect to which such activities shall be performed during the contract term; and they shall specify the number of persons, salaries or rates of compensation and a description of duties of those who shall be engaged by the neighborhood preservation company to perform the activities embraced by the contract together with a schedule of other anticipated expenses.

§ 2. Subdivision 4 of section 1003 of the private housing finance law, as amended by section 2 of part II of chapter 59 of the laws of 2008, is amended to read as follows:

4. Contracts pursuant to this section shall be for a period of no more than one year, but may be renewed or extended from year to year, and shall provide for payment by the division of no more than one hundred thousand dollars per year ~~[and shall be limited to the aggregate sum of two million one hundred four thousand five hundred dollars for a single corporation]~~, provided that in any year in which the aggregate sum of

1 three hundred thousand dollars shall have been reached and all succeed-
2 ing years, the annual contract amount shall be subject to a limit of
3 ninety-seven thousand five hundred dollars per year; they shall define
4 with particularity the region or portion thereof within which the hous-
5 ing preservation and community renewal activities shall be performed;
6 they shall specify the nature of the housing preservation and community
7 renewal activities which shall be performed including the approximate
8 number of buildings, residential dwelling units and local retail and
9 service establishments which shall be affected; they shall locate and
10 describe, with as much particularity as is reasonably possible, the
11 buildings with respect to which such activities shall be performed
12 during the contract term; and they shall specify the number of persons,
13 salaries or rates of compensation and a description of duties of those
14 who shall be engaged by the corporation to perform the activities
15 embraced by the contract together with a schedule of other anticipated
16 expenses.

17 § 3. This act shall take effect immediately.

18

PART GG

19 Section 1. Subdivision A of section 6221 of the education law is
20 amended by adding a new paragraph 4-a to read as follows:

21 4-a. Notwithstanding the provision of any law, rule or regulation to
22 the contrary, the city university shall be entitled to annually receive
23 an apportionment and payment of state assistance equal to all moneys
24 derived as a result of the tuition increase, calculated as the differ-
25 ence in the amount generated using the tuition rates authorized by the
26 trustees of the city university for the two thousand eight-two thousand
27 nine academic year and the amount generated using the tuition rates
28 authorized by the trustees of the city university for the two thousand
29 nine-two thousand ten academic year, pursuant to the following schedule:
30 for the two thousand nine-two thousand ten academic year, the city
31 university shall receive an amount equal to twenty percent of such
32 tuition increase; for the two thousand ten-two thousand eleven academ-
33 ic year, the city university shall receive an amount equal to thirty
34 percent of such tuition increase; for the two thousand eleven-two thou-
35 sand twelve academic year, the city university shall receive an amount
36 equal to forty percent of such tuition increase; and for the two thou-
37 sand twelve-two thousand thirteen academic year, the city university
38 shall receive an amount equal to fifty percent of such tuition increase.
39 Such apportionment shall be for the enhanced investment in the city
40 university of the state of New York and shall be used to supplement, not
41 supplant, gross senior college operating budget support, unless the
42 director of the budget determines that state fiscal conditions preclude
43 such an outcome and, in which case, the director shall submit a report
44 regarding the recommended funding levels and whether the tuition
45 increase apportionment provisions of this subdivision have been complied
46 with for the city university of the state of New York to the chairs of
47 the senate finance committee and the assembly ways and means committee
48 and the chairs of the senate higher education committee and the assembly
49 higher education committee no later than fifteen days following the
50 release of the executive budget.

51 § 2. Section 355 of the education law is amended by adding a new
52 subdivision 8-b to read as follows:

53 8-b. Notwithstanding the provision of any law, rule or regulation to
54 the contrary, the state university shall be entitled to annually receive

1 an apportionment and payment of state assistance equal to all moneys
2 derived as a result of the tuition increase, calculated as the differ-
3 ence in the amount generated using the tuition rates authorized by the
4 state university trustees for the two thousand seven--two thousand eight
5 academic year and the amount generated using the tuition rates author-
6 ized by state university trustees for the two thousand nine--two thou-
7 sand ten academic year, pursuant to the following schedule: for the two
8 thousand nine--two thousand ten academic year, the state university
9 shall receive an amount equal to twenty percent of such tuition
10 increase; for the two thousand ten--two thousand eleven academic year,
11 the state university shall receive an amount equal to thirty percent of
12 such tuition increase; for the two thousand eleven--two thousand twelve
13 academic year, the state university shall receive an amount equal to
14 forty percent of such tuition increase; and for the two thousand twelve-
15 two thousand thirteen academic year, the state university shall receive
16 an amount equal to fifty percent of such tuition increase. Such appor-
17 tionment shall be for the enhanced investment in the state university of
18 the state of New York and shall be used to supplement, not supplant,
19 state gross general fund support, unless the director of the budget
20 determines that state fiscal conditions preclude such an outcome and, in
21 which case, the director shall submit a report regarding the recommended
22 funding levels and whether the tuition increase apportionment provisions
23 of this subdivision have been complied with for the state university of
24 the state of New York to the chairs of the senate finance committee and
25 the assembly ways and means committee and the chairs of the senate high-
26 er education committee and the assembly higher education committee no
27 later than fifteen days following the release of the executive budget.
28 § 3. This act shall take effect April 1, 2009.

29

PART HH

30 Section 1. Subdivision B of section 6221 of the education law, as
31 amended by chapter 87 of the laws of 2002, is amended to read as
32 follows:

33 B. Senior college capital costs. Commencing with the twelve-month
34 period beginning July first, nineteen hundred eighty-two and thereafter,
35 the state shall pay one hundred per centum of capital costs exclusive of
36 those financed pursuant to the provisions of article one hundred twen-
37 ty-five-B of this chapter, of the senior colleges of the city university
38 of New York, provided however that commencing with the twelve month
39 period beginning July first, nineteen hundred eighty-two and thereafter,
40 the state shall pay one hundred per centum of capital costs exclusive of
41 those financed pursuant to the provisions of article one hundred twen-
42 ty-five-B of this chapter, of the college of Staten Island, New York
43 city college of technology and, commencing with the twelve month period
44 beginning July first, ~~[nineteen hundred ninety-four]~~ two thousand nine
45 and thereafter, [the state shall pay to the city university of New York
46 fifty per centum of the capital costs of] Medgar Evers college,
47 provided, however, that appropriations authorizing such costs have been
48 approved by the legislature. The advancement of capital projects pursu-
49 ant to this subdivision shall be undertaken only in accordance with the
50 provisions of section ninety-three of the state finance law. ~~[The~~
51 ~~advancement of capital projects at Medgar Evers college shall require~~
52 ~~the prior approval of the mayor of the city of New York.]~~

1 § 2. Paragraph (i) of subdivision E of section 6221 of the education
2 law, as added by chapter 170 of the laws of 1994, is amended to read as
3 follows:

4 (i) in addition to the amounts specified in subparagraph e of para-
5 graph two of subdivision A of this section, the city of New York shall
6 annually appropriate in its expense budget and pay to the city universi-
7 ty of New York as operating aid in support of the programs and services,
8 an amount for each full-time equivalent student in the associate degree
9 program of the college equal to the amount the city of New York is
10 appropriating and paying for each full-time equivalent student in the
11 community colleges; **and**

12 § 3. Paragraph (ii) of subdivision E of section 6221 of the education
13 law is REPEALED and paragraph (iii) is renumbered paragraph (ii).

14 § 4. This act shall take effect immediately, provided that no
15 provision of this act shall be construed to affect the amounts appropri-
16 ated on or before June 30, 2009 by either the state of New York or the
17 city of New York for the capital costs of Medgar Evers college.

18 PART II

19 Section 1. Section 9 of chapter 420 of the laws of 2002 amending the
20 education law relating to the profession of social work, as amended by
21 chapter 433 of the laws of 2003, is amended to read as follows:

22 § 9. Nothing in this act shall prohibit or limit the activities or
23 services on the part of any person in the employ of a program or service
24 operated, regulated, funded, or approved by the department of mental
25 hygiene or the office of children and family services, or a local
26 ~~[government]~~ **governmental** unit as that term is defined in article 41 of
27 the mental hygiene law or a social services district as defined in
28 section 61 of the social services law, provided, however, this section
29 shall not authorize the use of any title authorized pursuant to article
30 154 of the education law, except that this section shall be deemed
31 repealed on ~~[January 1, 2010]~~ **June 1, 2010**.

32 § 2. Section 17-a of chapter 676 of the laws of 2002 amending the
33 education law relating to defining the practice of psychology, as
34 amended by chapter 419 of the laws of 2003, is amended to read as
35 follows:

36 § 17-a. Nothing in this act shall prohibit or limit the activities or
37 services on the part of any person in the employ of a program or service
38 operated, regulated, funded, or approved by the department of mental
39 hygiene or the office of children and family services, or a local
40 ~~[government]~~ **governmental** unit as that term is defined in article 41 of
41 the mental hygiene law or a social services district as defined in
42 section 61 of the social services law, provided, however, this section
43 shall not authorize the use of any title authorized pursuant to article
44 153 or 163 of the education law, except as otherwise provided by such
45 articles, except that this section shall be deemed repealed on ~~[January~~
46 ~~1, 2010]~~ **June 1, 2010**.

47 § 3. This act shall take effect April 1, 2009.

48 PART JJ

49 Section 1. The office of children and family services shall continue
50 the demonstration project, established pursuant to part G of chapter 58
51 of the laws of 2006, as amended, in local social services districts
52 selected by the office of children and family services to determine best

1 practices in portable information technology for child protective
2 services caseworkers to improve the workload of the child protective
3 workforce, including but not limited to the purchase of new information
4 technology, such as laptop computers, personal digital assistants
5 (PDAs), and cellular phones, that permits caseworkers to work from field
6 locations while investigating allegations of child abuse and maltreat-
7 ment. The commissioner of the office of children and family services
8 shall submit a report to the governor, the temporary president of the
9 senate and the speaker of the assembly, no later than January 15, 2010,
10 detailing which local social services districts participated in such
11 demonstration project, the impact by district of such demonstration
12 project on caseworker efficiency and productivity, and the impact on
13 caseload for caseworkers with such technology by district.

14 § 2. This act shall take effect immediately and shall expire and be
15 deemed repealed April 1, 2010.

16 PART KK

17 Section 1. Flexible fund for family services. Notwithstanding any
18 other provision of law to the contrary, where an appropriation is made
19 by a chapter of the laws of 2009 to the office of temporary and disabili-
20 ty assistance under the temporary and disability assistance program
21 from the special revenue fund - federal aid to localities, federal
22 health and human services fund - 265 "for allocation to local social
23 services districts for the flexible fund for family services", subse-
24 quent to the expenditures of such appropriations, the office of tempo-
25 rary and disability assistance shall make available on the agency web
26 site selected data measures on selected programs and services funded by
27 the "flexible fund for family services", including but not limited to
28 TANF Services, TANF employment services and state administered contracts
29 as reflected in original plans submitted by local social services
30 districts to program that portion of their flexible fund for family
31 services allocations. In addition, the office of children and family
32 services shall make available programmatic descriptions for all other
33 programs and services listed under the categories identified as child
34 welfare other than title XX transfer and title XX transfer below 200% as
35 listed in the flexible fund for family services flexible fund plan
36 summary.

37 § 2. This act shall take effect immediately.

38 PART A-1

39 Section 1. Subparagraph (A) of paragraph 1 of subsection (b) of
40 section 605 of the tax law, as amended by chapter 760 of the laws of
41 1992, is amended to read as follows:

42 (A) who is domiciled in this state, unless (i) ~~[he]~~ the taxpayer main-
43 tains no permanent place of abode in this state, maintains a permanent
44 place of abode elsewhere, and spends in the aggregate not more than
45 thirty days of the taxable year in this state, or (ii) (I) within any
46 period of five hundred forty-eight consecutive days ~~[he]~~ the taxpayer is
47 present in a foreign country or countries for at least four hundred
48 fifty days, and (II) during ~~[such]~~ the period of five hundred forty-
49 eight consecutive days ~~[he is]~~ the taxpayer, the taxpayer's spouse
50 (unless the spouse is legally separated) and the taxpayer's minor chil-
51 dren are not present in this state for more than ninety days ~~[and does~~
52 ~~not maintain a permanent place of abode in this state at which his~~

1 ~~spouse (unless such spouse is legally separated) or minor children are~~
2 ~~present for more than ninety days]~~, and (III) during the nonresident
3 portion of the taxable year with or within which ~~[such]~~ the period of
4 five hundred forty-eight consecutive days begins and the nonresident
5 portion of the taxable year with or within which ~~[such]~~ the period ends,
6 ~~[he]~~ the taxpayer is present in this state for a number of days which
7 does not exceed an amount which bears the same ratio to ninety as the
8 number of days contained in ~~[such]~~ that portion of the taxable year
9 bears to five hundred forty-eight, or

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

13 (1) who is domiciled in the city wherein the tax is imposed, unless
14 (A) ~~[he]~~ the taxpayer maintains no permanent place of abode in ~~[such]~~
15 the city, maintains a permanent place of abode elsewhere, and spends in
16 the aggregate not more than thirty days of the taxable year in ~~[such]~~
17 the city, or (B) (i) within any period of five hundred forty-eight
18 consecutive days ~~[he]~~ the taxpayer is present in a foreign country or
19 countries for at least four hundred fifty days, and (ii) during such
20 period of five hundred forty-eight consecutive days ~~[he is]~~ the taxpay-
21 er, the taxpayer's spouse (unless the spouse is legally separated) and
22 the taxpayer's minor children are not present in ~~[such]~~ the city for
23 more than ninety days ~~[and does not maintain a permanent place of abode~~
24 ~~in such city at which his spouse (unless such spouse is legally sepa-~~
25 ~~rated) or minor children are present for more than ninety days]~~, and
26 (iii) during any period of less than twelve months, which would be
27 treated as a separate taxable period pursuant to section thirteen
28 hundred seven, and which period is contained within ~~[such]~~ the period of
29 five hundred forty-eight consecutive days, ~~[he]~~ the taxpayer is present
30 in ~~[such]~~ the city for a number of days which does not exceed an amount
31 which bears the same ratio to ninety as the number of days contained in
32 ~~[such]~~ that period of less than twelve months bears to five hundred
33 forty-eight, or

34 § 3. Subparagraph (A) of paragraph 1 of subdivision (b) of section
35 11-1705 of the administrative code of the city of New York, as amended
36 by chapter 333 of the laws of 1987, is amended to read as follows:

37 (A) who is domiciled in this city, unless (i) ~~[he]~~ the taxpayer main-
38 tains no permanent place of abode in this city, maintains a permanent
39 place of abode elsewhere, and spends in the aggregate not more than
40 thirty days of the taxable year in this city, or (ii) (I) within any
41 period of five hundred forty-eight consecutive days ~~[he]~~ the taxpayer is
42 present in a foreign country or countries for at least four hundred
43 fifty days, and (II) during ~~[such]~~ the period of five hundred forty-
44 eight consecutive days ~~[he is]~~ the taxpayer, the taxpayer's spouse
45 (unless the spouse is legally separated) and the taxpayer's minor chil-
46 dren are not present in this city for more than ninety days ~~[and does~~
47 ~~not maintain a permanent place of abode in this city at which his spouse~~
48 ~~(unless such spouse is legally separated) or minor children are present~~
49 ~~for more than ninety days]~~, and (III) during any period of less than
50 twelve months, which would be treated as a separate taxable period
51 pursuant to section 11-1754, and which period is contained within ~~[such]~~
52 the period of five hundred forty-eight consecutive days, ~~[he]~~ the
53 taxpayer is present in this city for a number of days which does not
54 exceed an amount which bears the same ratio to ninety as the number of
55 days contained in ~~[such]~~ that period of less than twelve months bears to
56 five hundred forty-eight, or

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

(1) who is domiciled in the city wherein the city income tax surcharge is imposed pursuant to the authority of this article, unless (A) [he] the taxpayer maintains no permanent place of abode in such city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in [such] the city, or (B) (i) within any period of five hundred forty-eight consecutive days [he is] the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are present in a foreign country or countries for at least four hundred fifty days, and (ii) during [such] the period of five hundred forty-eight consecutive days [he] the taxpayer is not present in [such] the city for more than ninety days [and does not maintain a permanent place of abode in such city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section thirteen hundred twenty-seven of this article, and which period is contained within [such] the period of five hundred forty-eight consecutive days, [he] the taxpayer is present in [such] the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] that period of less than twelve months bears to five hundred forty-eight, or

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

(1) who is domiciled in the city, unless (A) [he] the taxpayer maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any period of five hundred forty-eight consecutive days [he] the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days [he is] the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in the city for more than ninety days [and does not maintain a permanent place of abode in the city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (iii) during any period of less than twelve months, which would be treated as a separate taxable period based on a change of resident status, and which period is contained within [such] the period of five hundred forty-eight consecutive days, [he] the taxpayer is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] that period of less than twelve months bears to five hundred forty-eight, or

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

PART B-1

Section 1. Subdivision (a) of section 1500 of the tax law, as amended by chapter 188 of the laws of 2003, is amended to read as follows:

(a) The term "insurance corporation" includes a corporation, association, joint stock company or association, person, society, aggregation

1 or partnership, by whatever name known, doing an insurance business,
2 and, notwithstanding the provisions of section fifteen hundred twelve of
3 this article, shall include (1) a risk retention group as defined in
4 subsection (n) of section five thousand nine hundred two of the insur-
5 ance law, (2) the state insurance fund and (3) a corporation, associ-
6 ation, joint stock company or association, person, society, aggregation
7 or partnership doing an insurance business as a member of the New York
8 insurance exchange described in section six thousand two hundred one of
9 the insurance law. The definition of the "state insurance fund"
10 contained in this subdivision shall be limited in its effect to the
11 provisions of this article and the related provisions of this chapter
12 and shall have no force and effect other than with respect to such
13 provisions. The term "insurance corporation" shall also include a
14 captive insurance company doing a captive insurance business, as defined
15 in subsections (c) and (b), respectively, of section seven thousand two
16 of the insurance law; provided, however, "insurance corporation" shall
17 not include the metropolitan transportation authority, or a public bene-
18 fit corporation or not-for-profit corporation formed by a city with a
19 population of one million or more pursuant to subsection (a) of section
20 seven thousand five of the insurance law, each of which is expressly
21 exempt from the payment of fees, taxes or assessments, whether state or
22 local. The term "insurance corporation" shall also include an unauthor-
23 ized insurer operating from an office within the state, pursuant to
24 paragraph five of subsection (b) of section one thousand one hundred one
25 and subsection (i) of section two thousand one hundred seventeen of the
26 insurance law. The term "insurance corporation" also includes a health
27 maintenance organization required to obtain a certificate of authority
28 under article forty-four of the public health law.

29 § 2. Section 1502-a of the tax law, as added by section 2 of part H3
30 of chapter 62 of the laws of 2003, is amended to read as follows:

31 § 1502-a. Tax on non-life insurance corporations. In lieu of the tax
32 imposed by section fifteen hundred one of this article, every domestic
33 insurance corporation, every foreign insurance corporation and every
34 alien insurance corporation, other than such corporations transacting
35 the business of life insurance, (1) authorized to transact business in
36 this state under a certificate of authority from the superintendent of
37 insurance ~~[or]~~, (2) ~~[which]~~ that is a risk retention group as defined in
38 subsection (n) of section five thousand nine hundred two of the insur-
39 ance law, or (3) that is a health maintenance organization required to
40 obtain a certificate of authority under article forty-four of the public
41 health law, shall, for the privilege of exercising corporate franchises
42 or for carrying on business in a corporate or organized capacity within
43 this state, and in addition to any other taxes imposed for such privi-
44 lege, pay a tax on all gross direct premiums, less return premiums ther-
45 eon, written on risks located or resident in this state. The tax
46 imposed by this section shall be computed in the manner set forth in
47 subdivision (a) of section fifteen hundred ten of this article as such
48 subdivision applied to taxable years beginning before January first, two
49 thousand three, except that the rate of tax imposed by this section
50 shall be one and seventy-five hundredths percent on all gross direct
51 premiums, less return premiums thereon, for accident and health insur-
52 ance contracts, including contracts with health maintenance organiza-
53 tions for health services, and two percent on all other such premiums.
54 All the other provisions in section fifteen hundred ten of this article
55 as amended from time to time, other than subdivision (b) of such
56 section, shall apply to the tax imposed by this section. In no event

1 shall the tax imposed under this section be less than two hundred fifty
2 dollars.

3 § 3. Paragraphs 1 and 2 of subdivision (c) of section 1510 of the tax
4 law, as amended by section 7 of part H3 of chapter 62 of the laws of
5 2003, is amended to read as follows:

6 (1) The term "premium" includes all amounts received as consideration
7 for insurance contracts ~~[or]~~, reinsurance contracts or contracts with
8 health maintenance organizations for health services, other than for
9 annuity contracts, and shall include premium deposits, assessments,
10 policy fees, membership fees, any separate costs by carriers assessed
11 upon their policyholders and every other compensation for such contract.
12 In ascertaining the amount of direct premiums upon which a tax is paya-
13 ble under this section there shall be first determined the amount of
14 total gross premiums or deposit premiums or assessments, less returns
15 thereon, on all policies, certificates, renewals, policies subsequently
16 cancelled, insurance and reinsurance executed, issued or delivered on
17 property or risks located or resident in this state, including premiums
18 for reinsurance assumed, and also including premiums written, procured
19 or received in this state on business which cannot specifically be allo-
20 cated or apportioned and reported as taxable premiums or which have been
21 used as a measure of a tax on business of any other state or states.
22 Provided however, in the case of special risk premiums, direct premiums
23 shall include only those premiums written, procured or received in this
24 state on property or risks located or resident in this state. The
25 reporting of premiums for the purpose of the tax imposed by this section
26 shall be on a written basis or on a paid-for basis consistent with the
27 basis required by the annual statement filed with the superintendent of
28 insurance pursuant to section three hundred seven of the insurance law.

29 (2) The term "gross direct premiums," as used in this section, shall
30 not include premiums for policies issued pursuant to section four thou-
31 sand two hundred thirty-six of the insurance law and premiums for insur-
32 ance upon hulls, freights, or disbursements, or upon goods, wares,
33 merchandise and all other personal property and interests therein, in
34 the course of exportation from, importation into any country, or trans-
35 portation coastwise, including transportation by land or water from
36 point of origin to final destination in respect to, appertaining to, or
37 in connection with, any and all risks or perils of navigation, transit
38 or transportation, and while being prepared for, and while awaiting
39 shipment, and during any delays, storage, transshipment or reshipment
40 incident thereto, including war risks and marine builder's risks. The
41 term "gross direct premiums," as used in this section, also shall not
42 include any premiums that this state is prohibited from taxing pursuant
43 to federal law, including (i) subsection (f) of section 8909 of title 5
44 of the united states code, (ii) subsection (g) of section 1395w-24 of
45 title 42 of the united states code, (iii) subsection (g) of section
46 1395w-112 of title 42 of the United States code, and (iv) subparagraph
47 (B) of paragraph (4) of subsection (k) of section 1395mm of title 42 of
48 the United States code.

49 § 4. Subdivision (a) of section 1512 of the tax law is amended by
50 adding a new paragraph 10 to read as follows:

51 (10) any nonprofit health maintenance organization required to obtain
52 a certificate of authority under article forty-four of the public health
53 law.

54 § 5. The state comptroller is hereby authorized and directed to depos-
55 it to the Health Care Reform Act Resources Fund (061) a portion of the
56 premiums tax on non-life insurance companies collected pursuant to

1 section 1502-a of the tax law as are periodically identified by the
2 director of the budget as having been intended for such deposit to
3 support disbursements from the Health Care Reform Act Resources Fund
4 made in pursuance of an appropriation by law.

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

7 PART C-1

8 Section 1. Subdivision 1 of section 187-n of the tax law, as added by
9 chapter 446 of the laws of 2005, is amended to read as follows:

10 (1) Allowance of credit. [A] For taxable years beginning before Janu-
11 ary first, two thousand nine, a taxpayer whose business is not substan-
12 tially engaged in the commercial generation, distribution, transmission,
13 or servicing of energy or energy products shall be allowed a credit
14 against the taxes imposed by sections one hundred eighty-three, one
15 hundred eighty-four and one hundred eighty-five of this article, equal
16 to its qualified fuel cell electric generating equipment expenditures.
17 Provided, however, that the amount of such credit allowable against the
18 tax imposed by section one hundred eighty-four of this article shall be
19 the excess of the amount of such credit over the amount of any credit
20 allowed by this section against the tax imposed by section one hundred
21 eighty-three of this article. This credit shall not exceed one thousand
22 five hundred dollars per generating unit with respect to any taxable
23 year. The credit provided for herein shall be allowed with respect to
24 the taxable year in which the fuel cell electric generating equipment is
25 placed in service.

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

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

36 § 3. Paragraph 1 of subsection (g-2) of section 606 of the tax law, as
37 amended by chapter 446 of the laws of 2005, is amended to read as
38 follows:

39 (1) General. [An] For taxable years beginning before January first,
40 two thousand nine, an individual taxpayer shall be allowed a credit
41 against the tax imposed by this article equal to twenty percent of qual-
42 ified fuel cell electric generating equipment expenditures. This credit
43 shall not exceed one thousand five hundred dollars per generating unit
44 with respect to any taxable year. The credit provided for herein shall
45 be allowed with respect to the taxable year in which the fuel cell elec-
46 tric generating equipment is placed in service.

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

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

1 shall be allowed with respect to the taxable year in which the fuel cell
2 electric generating equipment is placed in service.

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

5 (1) Allowance of credit. [A] For taxable years beginning before Janu-
6 ary first, two thousand nine, a taxpayer shall be allowed a credit
7 against the tax imposed by this article, equal to its qualified fuel
8 cell electric generating equipment expenditures. This credit shall not
9 exceed one thousand five hundred dollars per generating unit with
10 respect to any taxable year. The credit provided for in this subdivision
11 shall be allowed with respect to the taxable year in which the fuel cell
12 electric generating equipment is placed in service.

13 § 6. Subdivision (a) of section 20 of the tax law, as added by section
14 1 of part I of chapter 63 of the laws of 2000, is amended to read as
15 follows:

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

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

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

35
36 The corporation's credit base under
37 With respect to the following section two hundred ten or section
38 credit under this section: fourteen hundred fifty-six of this
chapter is:

39 (i) Investment tax credit under Investment credit base or qualified
40 subsection (a) rehabilitation expenditures under
41 subdivision twelve of section two
42 hundred ten

43 (ii) Empire zone investment Cost or other basis under
44 tax credit under subsection (j) subdivision twelve-B of section
45 two hundred ten

46 (iii) Empire zone wage tax credit Eligible wages under subdivision
47 under subsection (k) nineteen of section two hundred
48 ten or subsection (e) of section
49 fourteen hundred fifty-six

50 (iv) Empire zone capital tax Qualified investments and
51 credit under subsection (l) contributions under subdivision

1		twenty of section two hundred ten
2		or subsection (d) of section
3		fourteen hundred fifty-six
4	<u>(v)</u> Agricultural property tax	Allowable school district property
5	credit under subsection (n)	taxes under subdivision twenty-two
6		of section two hundred ten
7	<u>(vi)</u> Credit for employment of	Qualified first-year wages or
8	persons with disabilities	qualified second-year wages under
9	under subsection (o)	subdivision twenty-three of
10		section two hundred ten or
11		subsection (f) of section
12		fourteen hundred fifty-six
13	<u>(vii)</u> Employment incentive credit	Applicable investment credit base
14	under subsection (a-1)	under subdivision twelve-D of
15		section two hundred ten
16	<u>(viii)</u> Empire zone employment	Applicable investment credit
17	incentive credit under subsection	under subdivision twelve-C of
18	(j-1)	section two hundred ten
19	<u>(ix)</u> Alternative fuels credit	Cost under subdivision twenty-four
20	under subsection (p)	of section two hundred ten
21	<u>(x)</u> Qualified emerging technology	Applicable credit base under
22	company employment credit under	subdivision twelve-E of section
23	subsection (q)	two hundred ten
24	<u>(xi)</u> Qualified emerging technology	Qualified investments under
25	company capital tax credit under	subdivision twelve-F of section
26	subsection (r)	two hundred ten
27	<u>(xii)</u> Credit for purchase of an	Cost of an automated external
28	automated external defibrillator	defibrillator under subdivision
29	under subsection (s)	twenty-five of section two hundred
30		ten or subsection (j) of section
31		fourteen hundred fifty-six
32	<u>(xiii)</u> Low-income housing credit	Credit amount under subdivision
33	under subsection (x)	thirty of section two hundred ten
34		or subsection (l) of section
35		fourteen hundred fifty-six
36	<u>(xiv)</u> Credit for transportation	<u>[Amount] For</u>
37	improvement contributions under	<u>taxable years beginning</u>
38	subsection (z)	<u>before January first, two thousand</u>
39		<u>nine, amount</u> of credit under
40		subdivision thirty-two of
41		section two hundred ten
42		or subsection (n) of section
43		fourteen hundred fifty-six
44	<u>(xv)</u> QEZE credit for real property	Amount of credit under subdivision
45	taxes under subsection (bb)	twenty-seven of section two hundred

1		ten or subsection (o) of section
2		fourteen hundred fifty-six
3	<u>(xvi)</u> QEZE tax reduction credit	Amount of benefit period factor,
4	under subsection (cc)	employment increase factor and zone
5		allocation factor (without regard
6		to pro ration) under subdivision
7		twenty-eight of section two hundred
8		ten or subsection (p) of section
9		fourteen hundred fifty-six and
10		amount of tax factor as determined
11		under subdivision (f) of section
12		sixteen
13	<u>(xvii)</u> Green building credit under	Amount of green building credit
14	subsection (y)	under subdivision thirty-one of
15		section two hundred ten or
16		subsection (m) of section fourteen
17		hundred fifty-six
18	<u>(xviii)</u> Credit for long-term care	Qualified costs under subdivision
19	insurance premiums under subsection	twenty-five-a of section two
20	(aa)	hundred ten or subsection (k) of
21		section fourteen hundred fifty-six
22	<u>(xix)</u> Brownfield redevelopment	Amount of credit under subdivision
23	credit under subsection (dd)	thirty-three of section two hundred
24		ten or subsection (q) of section
25		fourteen hundred fifty-six
26	<u>(xx)</u> Remediated brownfield credit	Amount of credit under subdivision
27	for real property taxes for	thirty-four of section two hundred
28	qualified sites under subsection	ten or subsection (r) of section
29	(ee)	fourteen hundred fifty-six
30	<u>(xxi)</u> Environmental remediation	Amount of credit under subdivision
31	insurance credit under subsection	thirty-five of section two hundred
32	(ff)	ten or subsection (s) of section
33		fourteen hundred fifty-six
34	<u>(xxii)</u> Empire state film production	Amount of credit for qualified
35	credit under subsection (gg)	production costs in production of a
36		qualified film under subdivision
37		thirty-six of section two hundred
38		ten
39	<u>(xxiii)</u> Qualified emerging	Qualifying expenditures and
40	technology company facilities,	development activities under
41	operations and training credit	subdivision twelve-G of section two
42	under subsection (nn)	hundred ten
43	<u>(xxiv)</u> Security training tax credit	Amount of credit under subdivision
44	under subsection (ii)	thirty-seven of section two hundred
45		ten or under subsection (t) of
46		section fourteen hundred fifty-six

1	<u>(xxv)</u> Credit for qualified fuel	[Amount] For
2	cell electric generating	<u>taxable years beginning before</u>
3	equipment expenditures	<u>January first, two thousand nine,</u>
4	under subsection (g-2)	<u>amount</u> of credit under subdivision
5		thirty-seven of section two hundred
6		ten or subsection (t) of section
7		fourteen hundred fifty-six
8	<u>(xxvi)</u> Empire state commercial	Amount of credit for qualified
9	production credit under subsection	production costs in production of
10	(jj)	a qualified commercial under
11		subdivision thirty-eight of
12		section two hundred ten
13	<u>(xxvii)</u> Biofuel production tax	Amount of credit under subdivision
14	credit under subsection (jj)	thirty-eight of section two hundred
15		ten
16	<u>(xxviii)</u> Clean heating fuel credit	Amount of credit under subdivision
17	under subsection (mm)	thirty-nine of section two hundred
18		ten
19	<u>(xxix)</u> Credit for rehabilitation	Amount of credit under subdivision
20	of historic properties under	forty of [subsection] <u>section</u>
21	subsection (oo)	two hundred ten
22	<u>(xxx)</u> Credit for companies who	Amount of credit under subdivision
23	provide transportation to	forty of section two hundred ten
24	individuals with disabilities under	
25	subsection (oo)	

26 § 8. This act shall take effect immediately; provided, however that
 27 the empire state film production credit under subsection (gg), the
 28 empire state commercial production credit under subsection (jj) and the
 29 credit for companies who provide transportation to individuals with
 30 disabilities under subsection (oo) of section 606 of the tax law
 31 contained in section seven of this act shall expire on the same date as
 32 provided in section 9 of part P of chapter 60 of the laws of 2004, as
 33 amended, section 10 of part V of chapter 62 of the laws of 2006, as
 34 amended and section 5 of chapter 522 of the laws of 2006, as amended,
 35 respectively.

36 PART D-1

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

39 § 171-t. Reciprocal offset agreements with the United States or other
 40 states. (1) For the purposes of this section, the definitions provided
 41 for in section one hundred seventy-one-n of this article apply together
 42 with the following:

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

46 (b) "Debt" means (i), for purposes of state debt, a "tax debt" as
 47 defined in section one hundred seventy-one-n of this article and any
 48 other past due legally enforceable obligation owed to a state, which

1 arises from (A) an enforceable judgment of a court of competent juris-
2 isdiction that is no longer subject to judicial review, or (B) an enforce-
3 able determination of an administrative body that is no longer subject
4 to administrative or judicial review, or (C) a determination that has
5 become final or finally and irrevocably fixed and no longer subject to
6 administrative or judicial review; or (ii), for purposes of federal
7 debt, debt means any amount of money, funds or property that has been
8 determined by an appropriate official of the federal government to be
9 owed to the United States by a person, organization, or entity, except
10 another federal agency, to the extent such amount is eligible for offset
11 under federal law. The term includes debt administered by a third party
12 acting as an agent for the federal government.

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

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

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

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

49 (3) The commissioner will calculate the amount of an overpayment and
50 interest thereon that is to be credited against the amount of a past due
51 legally enforceable debt owed by a taxpayer which is certified to the
52 department for collection under this section using the rules in subdivi-
53 sion five of section one hundred seventy-one-f of this article. If a
54 taxpayer or a person owes more than one debt which is certified to the
55 commissioner for collection under this section, any overpayment or
56 vendor payment will be credited against the debts in the order in which

1 the debts accrued. A debt will be considered to have accrued at the time
2 at which the debt became past due.

3 (4) Notwithstanding any other law, the commissioner is authorized to
4 release to a claimant taxpayer information for purposes of implementing
5 and administering an agreement entered into between the claimant and
6 this state under this section.

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

10 (2) The commissioner may implement procedures under which any cost or
11 fee imposed or charged by the United States or any state, with respect
12 to payment or remittance of a taxpayer's overpayment to satisfy a tax
13 debt of the taxpayer, must not be credited by the commissioner to
14 payment or satisfaction of the tax debt, must be deemed to be part of
15 the taxpayer's tax debt, and must be eligible for offset against the
16 taxpayer's overpayment to the extent permitted by law. The commissioner
17 may also implement procedures under which any cost or fee imposed or
18 charged by the United States or any other state, with respect to any
19 other payment or remittance of a taxpayer's overpayment or a vendor
20 payment to satisfy a debt of the taxpayer or the person who is owed the
21 vendor payment as authorized by section one hundred seventy-one-t of
22 this article, must not be credited by the state of New York to payment
23 or satisfaction of the debt, must be deemed to be part of the taxpayer's
24 or person's debt, and must be eligible for offset against the taxpayer's
25 overpayment or the person's vendor payment to the extent permitted by
26 law.

27 § 3. Paragraph (c) of subdivision 1 of section 171-n of the tax law,
28 as added by section 2 of part O of chapter 61 of the laws of 2005, is
29 amended to read as follows:

30 (c) "tax debt" means any past due, legally enforceable tax obligation
31 owed any other state administering that tax, which arises from (i) an
32 enforceable judgment of a court of competent jurisdiction which is no
33 longer subject to judicial review, or (ii) an enforceable determination
34 of an administrative body which is no longer subject to administrative
35 or judicial review, or (iii) an assessment or determination (including
36 self-assessment or self-assessed determination) which has become final
37 or finally and irrevocably fixed and no longer subject to administrative
38 or judicial review~~[, and which has not been delinquent for more than ten~~
39 ~~years];~~ and

40 § 4. This act shall take effect immediately.

41 PART E-1

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

44 11. The term "overcapitalized captive insurance company" means an
45 entity that is treated as an association taxable as a corporation under
46 the internal revenue code (a) more than fifty percent of the voting
47 stock of which is owned or controlled, directly or indirectly, by a
48 single entity that is treated as an association taxable as a corporation
49 under the internal revenue code and not exempt from federal income tax;
50 (b) that is licensed as a captive insurance company under the laws of
51 this state or another jurisdiction; (c) whose business includes provid-
52 ing, directly and indirectly, insurance or reinsurance covering the
53 risks of its parent and/or members of its affiliated group; and (d)
54 fifty percent or less of whose gross receipts for the taxable year

1 consist of premiums. For purposes of this subdivision, "affiliated
2 group" has the same meaning as that term is given in section 1504 of the
3 internal revenue code, except that the term "common parent corporation"
4 in that section is deemed to mean any person, as defined in section 7701
5 of the internal revenue code; references to "at least eighty percent" in
6 section 1504 of the internal revenue code are to be read as "fifty
7 percent or more;" section 1504 of the internal revenue code is to be
8 read without regard to the exclusions provided for in subsection (b) of
9 that section; "premiums" has the same meaning as that term is given in
10 paragraph one of subdivision (c) of section fifteen hundred ten of this
11 chapter, except that it includes consideration for annuity contracts and
12 excludes any part of the consideration for insurance, reinsurance or
13 annuity contracts that do not provide bona fide insurance, reinsurance
14 or annuity benefits; and "gross receipts" includes the amounts included
15 in gross receipts for purposes of section 501(c) (15) of the internal
16 revenue code, except that those amounts also include all premiums as
17 defined in this subdivision.

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

20 (7) (i) For purposes of this subparagraph, the term "closest control-
21 ling stockholder" means the corporation that indirectly owns or controls
22 over fifty percent of the voting stock of an overcapitalized captive
23 insurance company; is subject to tax under this article or article thir-
24 ty-two of this chapter, or is otherwise required to be included in a
25 combined return or report under this article or article thirty-two of
26 this chapter; and is the fewest tiers of corporations away in the owner-
27 ship structure from the overcapitalized captive insurance company. The
28 commissioner is authorized to prescribe by regulation or published guid-
29 ance the criteria for determining the closest controlling stockholder.

30 (ii) An overcapitalized captive insurance company must be included in
31 a combined report with the corporation that directly owns or controls
32 over fifty percent of the voting stock of the overcapitalized captive
33 insurance company if that corporation is subject to tax or required to
34 be included in a combined report under this article.

35 (iii) If over fifty percent of the voting stock of an overcapitalized
36 captive insurance company is not directly owned or controlled by a
37 corporation that is subject to tax or required to be included in a
38 combined report under this article, then the overcapitalized captive
39 insurance company must be included in a combined return or report with
40 the corporation that is the closest controlling stockholder of the over-
41 capitalized captive insurance company. If the closest controlling stock-
42 holder of the overcapitalized captive insurance company is subject to
43 tax or otherwise required to be included in a combined report under this
44 article, then the overcapitalized captive insurance company must be
45 included in a combined report under this article.

46 (iv) If the corporation that directly owns or controls the voting
47 stock of the overcapitalized captive insurance company is described in
48 subparagraph two, three, or five of this paragraph as a corporation not
49 permitted to make a combined report, then the provisions in clause (iii)
50 of this subparagraph must be applied to determine the corporation in
51 whose combined return or report the overcapitalized captive insurance
52 company should be included. If, under clause (iii) of this subparagraph,
53 the corporation that is the closest controlling stockholder of the over-
54 capitalized captive insurance company is described in subparagraph two,
55 three or five of this paragraph as a corporation not permitted to make a
56 combined return, then that corporation is deemed not to be in the owner-

1 ship structure of the overcapitalized captive insurance company, and the
2 closest controlling stockholder will be determined without regard to
3 that corporation.

4 (v) If an overcapitalized captive insurance company is required under
5 this subparagraph to be included in a combined report with another
6 corporation, and that other corporation is also required to be included
7 in a combined report with another related corporation or corporations
8 under this paragraph, then the overcapitalized captive insurance company
9 must be included in that combined report with those corporations.

10 (vi) If an overcapitalized captive insurance company is not required
11 to be included in a combined report with another corporation under
12 clause (ii) or (iii) of this subparagraph, or in a combined return under
13 the provisions of subparagraph (v) of paragraph two of subsection (f) of
14 section fourteen hundred sixty-two of this chapter, then the overcapiti-
15 talized captive insurance company is subject to the opening provisions
16 of this paragraph and the provisions of subparagraph four of this para-
17 graph. The overcapitalized captive insurance company must be included in
18 a combined report under this article with another corporation if either
19 the substantial intercorporate transactions requirement in the opening
20 provisions of this paragraph or the inter-company transactions or agree-
21 ment, understanding, arrangement or transaction requirement of subpara-
22 graph four of this paragraph is satisfied, and both more than fifty
23 percent of the voting stock of the overcapitalized captive insurance
24 company and substantially all of the capital stock of that other corpo-
25 ration are owned and controlled, directly or indirectly, by the same
26 corporation.

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

30 (1) Tax. (i) In the case of a combined report the tax shall be meas-
31 ured by the combined entire net income, combined minimum taxable income,
32 combined pre-nineteen hundred ninety minimum taxable income or combined
33 capital, of all the corporations included in the report, including any
34 captive REIT ~~or~~, captive RIC or overcapitalized captive insurance
35 company; provided, however, in no event shall the tax measured by
36 combined capital exceed the limitation provided for in paragraph (b) of
37 subdivision one of section two hundred ten of this article.

38 (ii) In the case of a captive REIT or captive RIC required under this
39 subdivision to be included in a combined report, entire net income must
40 be computed as required under subdivision five (in the case of a captive
41 REIT) or subdivision seven (in the case of a captive RIC) of section two
42 hundred nine of this article. However, the deduction under the internal
43 revenue code for dividends paid by the captive REIT or captive RIC to
44 any member of the affiliated group that includes the corporation that
45 directly or indirectly owns over fifty percent of the voting stock of
46 the captive REIT or captive RIC shall not be allowed for taxable years
47 beginning on or after January first, two thousand eight. The term
48 "affiliated group" means "affiliated group" as defined in section
49 fifteen hundred four of the internal revenue code, but without regard to
50 the exceptions provided for in subsection (b) of that section.

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

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

4 (d) Corporations taxable under article nine-A. Notwithstanding the
5 provisions of this article, all corporations of classes now or hereto-
6 fore taxable under article nine-A of this chapter shall continue to be
7 taxable under article nine-A, except: (1) corporations organized under
8 article five-A of the banking law; (2) corporations subject to article
9 three-A of the banking law, or registered under the federal bank holding
10 company act of nineteen hundred fifty-six, as amended, or registered as
11 a savings and loan holding company (but excluding a diversified savings
12 and loan holding company) under the federal national housing act, as
13 amended, which make a combined return under the provisions of subsection
14 (f) of section fourteen hundred sixty-two; (3) banking corporations
15 described in paragraph nine of subsection (a) of this section; ~~and~~ (4)
16 any captive REIT or captive RIC that is required to be included in a
17 combined return under the provisions of subsection (f) of section four-
18 teen hundred sixty-two of this article; and (5) any overcapitalized
19 captive insurance company required to be included in a combined return
20 under subsection (f) of section fourteen hundred sixty-two of this arti-
21 cle. Provided, however, that a corporation described in paragraph three
22 of this subsection which was subject to the tax imposed by article
23 nine-A of this chapter for its taxable year ending during nineteen
24 hundred eighty-four may, on or before the due date for filing its return
25 (determined with regard to extensions) for its taxable year ending
26 during nineteen hundred eighty-five, make a one time election to contin-
27 ue to be taxable under such article nine-A. Such election shall continue
28 to be in effect until revoked by the taxpayer. In no event shall such
29 election or revocation be for a part of a taxable year.

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

33 (4) The provisions of this subsection shall not apply to a captive
34 REIT ~~or~~, a captive RIC or an overcapitalized captive insurance
35 company.

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

38 (vi) (A) For purposes of this subparagraph, the term "closest control-
39 ling stockholder" means the corporation that indirectly owns or controls
40 over fifty percent of the voting stock of an overcapitalized captive
41 insurance company, is subject to tax under this article or article
42 nine-A of this chapter or otherwise required to be included in a
43 combined return under this article or article nine-A of this chapter,
44 and is the fewest tiers of corporations away in the ownership structure
45 from the overcapitalized captive insurance company. The commissioner is
46 authorized to prescribe by regulation or published guidance the criteria
47 for determining the closest controlling stockholder.

48 (B) An overcapitalized captive insurance company must be included in a
49 combined return with the banking corporation or bank holding company
50 that directly owns or controls over fifty percent of the voting stock of
51 the overcapitalized captive insurance company if that banking corpo-
52 ration or bank holding company is subject to tax or required to be
53 included in a combined return under this article.

54 (C) If over fifty percent of the voting stock of an overcapitalized
55 captive insurance company is not directly owned or controlled by a bank-
56 ing corporation or bank holding company that is subject to tax or

1 required to be included in a combined return under this article, then
2 the overcapitalized captive insurance company must be included in a
3 combined return or report with the corporation that is the closest
4 controlling stockholder of the overcapitalized captive insurance compa-
5 ny. If the closest controlling stockholder of the overcapitalized
6 captive insurance company is a banking corporation or bank holding
7 company that is subject to tax or otherwise required to be included in a
8 combined return under this article, then the overcapitalized captive
9 insurance company must be included in a combined return under this arti-
10 cle.

11 (D) If the corporation that directly owns or controls the voting stock
12 of the overcapitalized captive insurance company is described in subpar-
13 agraph (ii) or (iv) of paragraph four of this subsection as a corpo-
14 ration not permitted to make a combined return, then the provisions in
15 clause (C) of this subparagraph must be applied to determine the corpo-
16 ration in whose combined return or report the overcapitalized captive
17 insurance company should be included. If, under clause (C) of this
18 subparagraph, the corporation that is the closest controlling stockhold-
19 er of the overcapitalized captive insurance company is described in
20 subparagraph (ii) or (iv) of paragraph four of this subsection as a
21 corporation not permitted to make a combined return, then that corpo-
22 ration is deemed not to be in the ownership structure of the overcapi-
23 talized captive insurance company, and the closest controlling stock-
24 holder will be determined without regard to that corporation.

25 (E) If an overcapitalized captive insurance company is required under
26 this subparagraph to be included in a combined return with another
27 corporation, and that other corporation is required to be included in a
28 combined return with another corporation under other provisions of this
29 subsection, the overcapitalized captive insurance company must be
30 included in that combined return with those corporations.

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

34 (3) (i) In the case of a combined return, the tax shall be measured by
35 the combined entire net income, combined alternative entire net income
36 or combined assets of all the corporations included in the return,
37 including any captive REIT ~~[or]~~, captive RIC or overcapitalized captive
38 insurance company. The allocation percentage shall be computed based on
39 the combined factors with respect to all the corporations included in
40 the combined return. In computing combined entire net income and
41 combined alternative entire net income intercorporate dividends and all
42 other intercorporate transactions shall be eliminated and in computing
43 combined assets intercorporate stockholdings and intercorporate bills,
44 notes and accounts receivable and payable and other intercorporate
45 indebtedness shall be eliminated.

46 (ii) In the case of a captive REIT required under this subsection to
47 be included in a combined return, "entire net income" means "real estate
48 investment trust taxable income" as defined in paragraph two of subdivi-
49 sion (b) of section eight hundred fifty-seven (as modified by section
50 eight hundred fifty-eight) of the internal revenue code, plus the amount
51 taxable under paragraph three of subdivision (b) of section eight
52 hundred fifty-seven of that code, subject to the modifications required
53 by section fourteen hundred fifty-three of this article. In the case of
54 a captive RIC required under this subsection to be included in a
55 combined return, "entire net income" means "investment company taxable
56 income" as defined in paragraph two of subdivision (b) of section eight

1 hundred fifty-two (as modified by section eight hundred fifty-five) of
2 the internal revenue code, plus the amount taxable under paragraph three
3 of subdivision (b) of section eight hundred fifty-two of that code,
4 subject to the modifications required by section fourteen hundred
5 fifty-three of this article. However, the deduction under the internal
6 revenue code for dividends paid by the captive REIT or captive RIC to
7 any member of the affiliated group that includes the corporation that
8 directly or indirectly owns over fifty percent of the voting stock of
9 the captive REIT or captive RIC will be limited to the following
10 percentages: (A) fifty percent for taxable years beginning on or after
11 January first, two thousand eight and before January first, two thousand
12 nine; (B) twenty-five percent for taxable years beginning on or after
13 January first, two thousand nine and before January first, two thousand
14 eleven; and (C) zero percent for taxable years beginning on or after
15 January first, two thousand eleven. The term "affiliated group" means
16 "affiliated group" as defined in section fifteen hundred four of the
17 internal revenue code, but without regard to the exceptions provided for
18 in subsection (b) of such section fifteen hundred four.

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

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

25 (a) The term "insurance corporation" includes a corporation, associ-
26 ation, joint stock company or association, person, society, aggregation
27 or partnership, by whatever name known, doing an insurance business,
28 and, notwithstanding the provisions of section fifteen hundred twelve of
29 this article, shall include (1) a risk retention group as defined in
30 subsection (n) of section five thousand nine hundred two of the insur-
31 ance law, (2) the state insurance fund and (3) a corporation, associ-
32 ation, joint stock company or association, person, society, aggregation
33 or partnership doing an insurance business as a member of the New York
34 insurance exchange described in section six thousand two hundred one of
35 the insurance law. The definition of the "state insurance fund"
36 contained in this subdivision shall be limited in its effect to the
37 provisions of this article and the related provisions of this chapter
38 and shall have no force and effect other than with respect to such
39 provisions. The term "insurance corporation" shall also include a
40 captive insurance company doing a captive insurance business, as defined
41 in subsections (c) and (b), respectively, of section seven thousand two
42 of the insurance law; provided, however, "insurance corporation" shall
43 not include the metropolitan transportation authority, or a public bene-
44 fit corporation or not-for-profit corporation formed by a city with a
45 population of one million or more pursuant to subsection (a) of section
46 seven thousand five of the insurance law, each of which is expressly
47 exempt from the payment of fees, taxes or assessments, whether state or
48 local; and provided further "insurance corporation" does not include any
49 overcapitalized captive insurance company. The term "insurance corpo-
50 ration" shall also include an unauthorized insurer operating from an
51 office within the state, pursuant to paragraph five of subsection (b) of
52 section one thousand one hundred one and subsection (i) of section two
53 thousand one hundred seventeen of the insurance law.

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

1 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen
2 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen
3 hundred ten of this article, every captive insurance company licensed by
4 the superintendent of insurance pursuant to the provisions of article
5 seventy of the insurance law, other than the metropolitan transportation
6 authority and a public benefit corporation or not-for-profit corporation
7 formed by a city with a population of one million or more pursuant to
8 subsection (a) of section seven thousand five of the insurance law, each
9 of which is expressly exempt from the payment of fees, taxes or assess-
10 ments whether state or local, and other than an overcapitalized captive
11 insurance company, shall, for the privilege of exercising its corporate
12 franchise, pay a tax on (1) all gross direct premiums, less return
13 premiums thereon, written on risks located or resident in this state and
14 (2) all assumed reinsurance premiums, less return premiums thereon,
15 written on risks located or resident in this state. The rate of the tax
16 imposed on gross direct premiums shall be four-tenths of one percent on
17 all or any part of the first twenty million dollars of premiums, three-
18 tenths of one percent on all or any part of the second twenty million
19 dollars of premiums, two-tenths of one percent on all or any part of the
20 third twenty million dollars of premiums, and seventy-five thousandths
21 of one percent on each dollar of premiums thereafter. The rate of the
22 tax on assumed reinsurance premiums shall be two hundred twenty-five
23 thousandths of one percent on all or any part of the first twenty
24 million dollars of premiums, one hundred and fifty thousandths of one
25 percent on all or any part of the second twenty million dollars of
26 premiums, fifty thousandths of one percent on all or any part of the
27 third twenty million dollars of premiums and twenty-five thousandths of
28 one percent on each dollar of premiums thereafter. The tax imposed by
29 this section shall be equal to the greater of (i) the sum of the tax
30 imposed on gross direct premiums and the tax imposed on assumed reinsur-
31 ance premiums or (ii) five thousand dollars.

32 § 10. This act shall take effect immediately and apply to taxable
33 years beginning on or after January 1, 2009; provided, however that the
34 amendments to subparagraph 1 of paragraph (b) of subdivision 4 of
35 section 211 of the tax law made by section three of this act shall not
36 affect the expiration of such subparagraph and shall be deemed expired
37 therewith; the amendments to subsection (d) and paragraph 4 of
38 subsection (m) of section 1452 of the tax law made by sections four and
39 five of this act, respectively, shall not affect the expiration and
40 repeal of such subsection and paragraph and shall be deemed expired and
41 repealed therewith; and the amendments to paragraph 3 of subsection (f)
42 of section 1462 of the tax law made by section seven of this act shall
43 not affect the expiration and reversion of such paragraph and shall
44 expire and be deemed repealed therewith.

45 PART F-1

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

49 (1) For purposes of this subparagraph, the term "real property located
50 in this state" includes an interest in a partnership, limited liability
51 corporation, S corporation, or non-publicly traded C corporation with
52 one hundred or fewer shareholders (hereinafter the "entity") that owns
53 real property that is located in New York and has a fair market value
54 that equals or exceeds fifty percent of all the assets of the entity on

1 the date of sale or exchange of the taxpayer's interest in the entity.
2 Only those assets that the entity owned for at least two years before
3 the date of the sale or exchange of the taxpayer's interest in the enti-
4 ty are to be used in determining the fair market value of all the assets
5 of the entity on the date of sale or exchange. The gain or loss derived
6 from New York sources from the taxpayer's sale or exchange of an inter-
7 est in an entity that is subject to the provisions of this subparagraph
8 is the total gain or loss for federal income tax purposes from that sale
9 or exchange multiplied by a fraction, the numerator of which is the fair
10 market value of the real property located in New York on the date of
11 sale or exchange and the denominator of which is the fair market value
12 of all the assets of the entity on the date of sale or exchange.

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

16 PART G-1

17 Section 1. Paragraph (a) of subdivision 1 of section 197-b of the tax
18 law, as amended by section 1 of part JJ-1 of chapter 57 of the laws of
19 2008, is amended to read as follows:

20 (a) For taxable years beginning on or after January first, nineteen
21 hundred seventy-seven, every taxpayer subject to tax under section one
22 hundred eighty-two, one hundred eighty-two-a, former section one hundred
23 eighty-two-b, one hundred eighty-four, one hundred eighty-six-a or one
24 hundred eighty-six-e of this article, must pay in each year an amount
25 equal to (i) twenty-five percent of the tax imposed under each of such
26 sections for the preceding taxable year if the preceding year's tax
27 exceeded one thousand dollars but was equal to or less than one hundred
28 thousand dollars, or (ii) ~~thirty~~ **forty** percent of the tax imposed
29 under any of these sections for the preceding taxable year if the
30 preceding year's tax exceeded one hundred thousand dollars. If the
31 preceding year's tax under section one hundred eighty-four, one hundred
32 eighty-six-a or one hundred eighty-six-e of this article exceeded one
33 thousand dollars and the taxpayer is subject to the tax surcharge
34 imposed by section one hundred eighty-four-a or one hundred eighty-six-c
35 of this article, respectively, the taxpayer must also pay in each such
36 year an amount equal to (i) twenty-five percent of the tax surcharge
37 imposed under such section for the preceding taxable year if the preced-
38 ing year's tax exceeded one thousand dollars but was equal to or less
39 than one hundred thousand dollars, or (ii) ~~thirty~~ **forty** percent of the
40 tax surcharge imposed under that section for the preceding taxable year
41 if the preceding year's tax exceeded one hundred thousand dollars. The
42 amount or amounts must be paid with the return or report required to be
43 filed with respect to the tax or tax surcharge for the preceding taxable
44 year or with an application for extension of the time for filing the
45 return or report.

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

49 (a) First installments for certain taxpayers.--In privilege periods of
50 twelve months ending at any time during the calendar year nineteen
51 hundred seventy and thereafter, every taxpayer subject to the tax
52 imposed by section two hundred nine of this chapter must pay with the
53 report required to be filed for the preceding privilege period, or with
54 an application for extension of the time for filing the report, an

1 amount equal to (i) twenty-five percent of the preceding year's tax if
2 the preceding year's tax exceeded one thousand dollars but was equal to
3 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty
4 percent of the preceding year's tax if the preceding year's tax exceeded
5 one hundred thousand dollars. If the preceding year's tax under section
6 two hundred nine of this chapter exceeded one thousand dollars and the
7 taxpayer is subject to the tax surcharge imposed by section two hundred
8 nine-B of this chapter, the taxpayer must also pay with the tax
9 surcharge report required to be filed for the preceding privilege peri-
10 od, or with an application for extension of the time for filing the
11 report, an amount equal to (i) twenty-five percent of the tax surcharge
12 imposed for the preceding year if the preceding year's tax was equal to
13 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty
14 percent of the tax surcharge imposed for the preceding year if the
15 preceding year's tax exceeded one hundred thousand dollars.

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

19 (a) Every taxpayer subject to the tax imposed by section fourteen
20 hundred fifty-one must pay an amount equal to (i) twenty-five percent of
21 the preceding year's tax if the preceding year's tax exceeded one thou-
22 sand dollars but was equal to or less than one hundred thousand dollars,
23 or (ii) [~~thirty~~] forty percent of the preceding year's tax if the
24 preceding year's tax exceeded one hundred thousand dollars. The amount
25 must be paid with the return required to be filed for the preceding
26 taxable year or with an application for an extension of the time for
27 filing the return. If the preceding year's tax under section fourteen
28 hundred fifty-one of this article exceeded one thousand dollars and the
29 taxpayer is subject to the tax surcharge imposed by section fourteen
30 hundred fifty-five-B of this article, the taxpayer must also pay with
31 the tax surcharge return required to be filed for the preceding taxable
32 year, or with an application for an extension of the time for filing the
33 return, an amount equal to (i) twenty-five percent of the tax surcharge
34 imposed for the preceding year if the preceding year's tax was equal to
35 or less than one hundred thousand dollars, or (ii) [~~thirty~~] forty
36 percent of the tax surcharge imposed for the preceding year if the
37 preceding year's tax exceeded one hundred thousand dollars.

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

41 (1) Except as otherwise provided in paragraph two of this subdivision,
42 for taxable years beginning on or after January first, nineteen hundred
43 seventy-six, every taxpayer subject to tax under this article must pay
44 in each year an amount equal to (i) twenty-five percent of the tax
45 imposed under this article for the preceding taxable year if the preced-
46 ing year's tax exceeded one thousand dollars but was equal to or less
47 than one hundred thousand dollars, or (ii) [~~thirty~~] forty percent of the
48 tax imposed under this article for the preceding taxable year if the
49 preceding year's tax exceeded one hundred thousand dollars. If the
50 preceding year's tax exceeded one thousand dollars and the taxpayer is
51 subject to the tax surcharge imposed by section fifteen hundred five-a
52 of this article, the taxpayer must also pay an amount equal to (i) twen-
53 ty-five percent of the tax surcharge imposed under section fifteen
54 hundred five-a for the preceding taxable year if the preceding year's
55 tax was equal to or less than one hundred thousand dollars, or (ii)
56 [~~thirty~~] forty percent of the tax surcharge imposed for the preceding

1 taxable year if the preceding year's tax exceeded one hundred thousand
2 dollars.

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

5 PART H-1

6 Section 1. Paragraph 3 of subsection (c) of section 658 of the tax
7 law, as amended by section 1 of part AA-1 of chapter 57 of the laws of
8 2008, is amended to read as follows:

9 (3) Filing fees. (A) Every subchapter K limited liability company,
10 every limited liability company that is a disregarded entity for federal
11 income tax purposes, and every ~~[limited liability]~~ partnership ~~[under~~
12 ~~article eight-B of the partnership law and every foreign limited liabil-~~
13 ~~ity partnership,~~] which has any income derived from New York sources,
14 determined in accordance with the applicable rules of section six
15 hundred thirty-one of this article as in the case of a nonresident indi-
16 vidual, shall, within thirty days after the last day of the taxable
17 year, make a payment of a filing fee. The amount of the filing fee is
18 the amount set forth in subparagraph (B) of this paragraph. The minimum
19 filing fee is twenty-five dollars for taxable years beginning in two
20 thousand eight and ~~[after]~~ thereafter. Limited liability companies that
21 are disregarded ~~[entitled]~~ entities for federal income tax purposes must
22 pay a filing fee of twenty-five dollars for taxable years beginning on
23 or after January first, two thousand eight.

24 (B) The filing fee will be based on the New York source gross income
25 of the limited liability company or ~~[limited liability]~~ partnership for
26 the taxable year immediately preceding the taxable year for which the
27 fee is due. If the limited liability company or ~~[limited liability]~~
28 partnership does not have any New York source gross income for the taxa-
29 ble year immediately preceding the taxable year for which the fee is
30 due, the limited liability company or ~~[limited liability]~~ partnership
31 shall pay the minimum filing fee. Partnerships, other than limited
32 liability partnerships under article eight-B of the partnership law and
33 foreign limited liability partnerships, with less than one million
34 dollars in New York source gross income are exempt from the filing fee.
35 New York source gross income is the sum of the partners' or members'
36 shares of federal gross income from the ~~[limited liability]~~ partnership
37 or limited liability company derived from or connected with New York
38 sources, determined in accordance with the provisions of section six
39 hundred thirty-one of this article as if those provisions and any
40 related provisions expressly referred to a computation of federal gross
41 income from New York sources. For this purpose, federal gross income is
42 computed without any allowance or deduction for cost of goods sold.

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

46 If the New York source gross income is:	The fee is:
47 not more than \$100,000	\$25
48 more than \$100,000 but not over \$250,000	\$50
49 more than \$250,000 but not over \$500,000	\$175
50 more than \$500,000 but not over \$1,000,000	\$500
51 more than \$1,000,000 but not over \$5,000,000	\$1,500
52 more than \$5,000,000 but not over \$25,000,000	\$3,000
53 Over \$25,000,000	\$4,500

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

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

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

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

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

43 PART I-1

44 Section 1. Paragraph (a) of subdivision 1 of section 471-b of the tax
45 law, as amended by section 2 of part QQ-1 of chapter 57 of the laws of
46 2008, is amended to read as follows:

47 (a) Such tax on tobacco products other than snuff shall be at the rate
48 of ~~[thirty-seven]~~ forty-six percent of the wholesale price, and is
49 intended to be imposed only once upon the sale of any tobacco products
50 other than snuff.

51 § 2. Section 471-c of the tax law, as separately amended by section 3
52 of part QQ-1 of chapter 57 and chapter 552 of the laws of 2008, is
53 amended to read as follows:

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

10 ~~[(a)]~~ (i) Such tax on tobacco products other than snuff shall be at
11 the rate of ~~[thirty-seven]~~ forty-six percent of the wholesale price.

12 ~~[(b)]~~ (ii) Such tax on snuff shall be at the rate of ninety-six cents
13 per ounce and a proportionate rate on any fractional parts of an ounce,
14 provided that cans or packages of snuff with a net weight of less than
15 one ounce shall be taxed at the equivalent rate of cans or packages
16 weighing one ounce. Such tax shall be computed based on the net weight
17 as listed by the manufacturer.

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

29 § 3. This act shall take effect immediately.

30

PART J-1

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

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

41 § 2. Paragraph 7 of subdivision (b) of section 18 of the tax law, as
42 added by section 2 of part CC of chapter 63 of the laws of 2000, is
43 amended to read as follows:

44 (7) ~~[Bond in lieu of recapture. In the case of a disposition of a~~
45 ~~building or an interest therein, the taxpayer shall be discharged from~~
46 ~~liability for any recapture under this subdivision by reason of such~~
47 ~~disposition if the taxpayer furnishes to the commissioner a bond or~~
48 ~~other security acceptable to the commissioner in an amount satisfactory~~
49 ~~to the commissioner and for the period required by the commissioner,~~
50 ~~and] (A) The credit recapture required under this subdivision will not~~
51 ~~apply solely by reason of the disposition of a building or an interest~~
52 ~~therein if~~ it is reasonably expected that such building will continue to
53 be operated as an eligible low-income building for the remaining compli-
54 ance period with respect to such building.

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

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

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

14 § 3. This act shall take effect immediately.

15 PART K-1

16 Section 1. Section 502 of the tax law is amended by adding a new
17 subdivision 6 to read as follows:

18 6. a. The commissioner may require the use of decals as evidence that
19 a carrier has a valid certificate of registration for each motor vehicle
20 operated or to be operated on the public highways of this state as
21 required by paragraph a of subdivision one of this section. If the
22 commissioner requires the use of decals, the commissioner shall issue
23 for each motor vehicle with a valid certificate of registration a decal
24 that shall be of a size and design and containing such information as
25 the commissioner prescribes. The fee for any decal issued pursuant to
26 this paragraph is four dollars. In the case of the loss, mutilation, or
27 destruction of a decal, the commissioner shall issue a new decal upon
28 proof of the facts and payment of four dollars. The decal shall be firm-
29 ly and conspicuously affixed upon the motor vehicle for which it is
30 issued as closely as practical to the registration or license plates and
31 at all times be visible and legible. No decal is transferable. A decal
32 shall be valid until it expires or is revoked, suspended, or surren-
33 dered.

34 b. The commissioner may require the use of special decals as evidence
35 that an automotive fuel carrier has a valid special certificate of
36 registration for each motor vehicle operated or to be operated on the
37 public highways of this state to transport automotive fuel as required
38 by paragraph b of subdivision one of this section. If the commissioner
39 requires the use of special decals, the commissioner shall issue for
40 each motor vehicle with a valid special certificate of registration a
41 special decal that shall be distinctively colored and of a size and
42 design and containing such information as the commissioner prescribes.
43 The fee for any special decal issued pursuant to this paragraph is four
44 dollars. In the case of the loss, mutilation, or destruction of a
45 special decal, the commissioner shall issue a new special decal upon
46 proof of the facts and payment of four dollars. The special decal shall
47 be firmly and conspicuously affixed upon the motor vehicle for which it
48 is issued pursuant to the rules and regulations prescribed by the
49 commissioner to enable the easy identification of the automotive fuel
50 carrier certificate of registration number and at all times be visible
51 and legible. No special decal is transferable and shall be valid until
52 it expires or is revoked, suspended, or surrendered.

1 c. The suspension or revocation of any certificate of registration
2 issued under this article shall be deemed to include the suspension and
3 revocation of any decal issued under this subdivision.

4 § 2. Subdivision 5-a of section 509 of the tax law, as amended by
5 section 4 of part E of chapter 60 of the laws of 2007, is amended to
6 read as follows:

7 5-a. To take possession of any certificate of registration which has
8 been suspended or revoked under the provisions of this article and any
9 decal issued in conjunction therewith, and any certificate of registra-
10 tion which is being used for a motor vehicle other than the one for
11 which it was issued and any decal that is on a motor vehicle other than
12 the one for which it was issued, or to direct any peace officer, acting
13 pursuant to his or her special duties, or any police officer or any
14 employee of the department to take possession thereof and return the
15 same to the commissioner.

16 § 3. Subdivision 8 of section 509 of the tax law, as amended by
17 section 5 of part E of chapter 60 of the laws of 2007, is amended to
18 read as follows:

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

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

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

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

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

55 § 6. This act shall take effect immediately.

1

PART L-1

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

5 (a) Any racing association or corporation or regional off-track
6 betting corporation, authorized to conduct pari-mutuel wagering under
7 this chapter, desiring to display the simulcast of horse races on which
8 pari-mutuel betting shall be permitted in the manner and subject to the
9 conditions provided for in this article may apply to the board for a
10 license so to do. Applications for licenses shall be in such form as may
11 be prescribed by the board and shall contain such information or other
12 material or evidence as the board may require. No license shall be
13 issued by the board authorizing the simulcast transmission of thorough-
14 bred races from a track located in Suffolk county. The fee for such
15 licenses shall be five hundred dollars per simulcast facility per year
16 payable by the licensee to the board for deposit into the general fund.
17 Except as provided herein, the board shall not approve any application
18 to conduct simulcasting into individual or group residences, homes or
19 other areas for the purposes of or in connection with pari-mutuel wager-
20 ing. The board may approve simulcasting into residences, homes or other
21 areas to be conducted jointly by one or more regional off-track betting
22 corporations and one or more of the following: a franchised corporation,
23 thoroughbred racing corporation or a harness racing corporation or asso-
24 ciation; provided (i) the simulcasting consists only of those races on
25 which pari-mutuel betting is authorized by this chapter at one or more
26 simulcast facilities for each of the contracting off-track betting
27 corporations which shall include wagers made in accordance with section
28 one thousand fifteen, one thousand sixteen and one thousand seventeen of
29 this ~~chapter~~ article; provided further that the contract provisions or
30 other simulcast arrangements for such simulcast facility shall be no
31 less favorable than those in effect on January first, two thousand five;
32 (ii) that each off-track betting corporation having within its geograph-
33 ic boundaries such residences, homes or other areas technically capable
34 of receiving the simulcast signal shall be a contracting party; (iii)
35 the distribution of revenues shall be subject to contractual agreement
36 of the parties except that statutory payments to non-contracting
37 parties, if any, may not be reduced; provided, however, that nothing
38 herein to the contrary shall prevent a track from televising its races
39 on an irregular basis primarily for promotional or marketing purposes as
40 found by the board. For purposes of this paragraph, the provisions of
41 section one thousand thirteen of this article shall not apply. Any
42 agreement authorizing an in-home simulcasting experiment commencing
43 prior to May fifteenth, nineteen hundred ninety-five, may, and all its
44 terms, be extended until June thirtieth, two thousand ~~nine~~ ten;
45 provided, however, that any party to such agreement may elect to termi-
46 nate such agreement upon conveying written notice to all other parties
47 of such agreement at least forty-five days prior to the effective date
48 of the termination, via registered mail. Any party to an agreement
49 receiving such notice of an intent to terminate, may request the board
50 to mediate between the parties new terms and conditions in a replacement
51 agreement between the parties as will permit continuation of an in-home
52 experiment until June thirtieth, two thousand ~~nine~~ ten; and (iv) no
53 in-home simulcasting in the thoroughbred special betting district shall
54 occur without the approval of the regional thoroughbred track.

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

4 (iii) Of the sums retained by a receiving track located in Westchester
5 county on races received from a franchised corporation, for the period
6 commencing January first, two thousand eight and continuing through June
7 thirtieth, two thousand ~~[nine]~~ ten, the amount used exclusively for
8 purses to be awarded at races conducted by such receiving track shall be
9 computed as follows: of the sums so retained, two and one-half percent
10 of the total pools. Such amount shall be increased or decreased in the
11 amount of fifty percent of the difference in total commissions deter-
12 mined by comparing the total commissions available after July twenty-
13 first, nineteen hundred ninety-five to the total commissions that would
14 have been available to such track prior to July twenty-first, nineteen
15 hundred ninety-five.

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

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

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

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

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

47 The provisions of this section shall govern the simulcasting of races
48 conducted at thoroughbred tracks located in another state or country on
49 any day during which a franchised corporation is not conducting a race
50 meeting in Saratoga county at Saratoga thoroughbred racetrack until June
51 thirtieth, two thousand ~~[nine]~~ ten. Every off-track betting corporation
52 branch office and every simulcasting facility licensed in accordance
53 with section one thousand seven that have entered into a written agree-
54 ment with such facility's representative horsemen's organization as
55 approved by the board, one thousand eight or one thousand nine of this
56 article shall be authorized to accept wagers and display the live full-

1 card simulcast signal of thoroughbred tracks (which may include quarter
2 horse or mixed meetings provided that all such wagering on such races
3 shall be construed to be thoroughbred races) located in another state or
4 foreign country, subject to the following provisions; provided, however,
5 no such written agreement shall be required of a franchised corporation
6 licensed in accordance with section one thousand seven of this article:

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

10 Notwithstanding any other provision of this chapter, for the period
11 July twenty-fifth, two thousand one through September [~~ninth~~] eighth,
12 two thousand [~~eight~~] nine, when a franchised corporation is conducting a
13 race meeting within the state at Saratoga Race Course, every off-track
14 betting corporation branch office and every simulcasting facility
15 licensed in accordance with section one thousand seven (that has entered
16 into a written agreement with such facility's representative horsemen's
17 organization as approved by the board), one thousand eight or one thou-
18 sand nine of this article shall be authorized to accept wagers and
19 display the live simulcast signal from thoroughbred tracks located in
20 another state, provided that such facility shall accept wagers on races
21 run at all in-state thoroughbred tracks which are conducting racing
22 programs subject to the following provisions; provided, however, no such
23 written agreement shall be required of a franchised corporation licensed
24 in accordance with section one thousand seven of this article.

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

29 § 32. This act shall take effect immediately and the pari-mutuel tax
30 reductions in section six of this act shall expire and be deemed
31 repealed on July 1, [~~2009~~] 2010; provided, however, that nothing
32 contained herein shall be deemed to affect the application, qualifica-
33 tion, expiration, or repeal of any provision of law amended by any
34 section of this act, and such provisions shall be applied or qualified
35 or shall expire or be deemed repealed in the same manner, to the same
36 extent and on the same date as the case may be as otherwise provided by
37 law; provided further, however, that sections twenty-three and twenty-
38 five of this act shall remain in full force and effect only until May 1,
39 1997 and at such time shall be deemed to be repealed.

40 § 8. Section 54 of chapter 346 of the laws of 1990, amending the
41 racing, pari-mutuel wagering and breeding law and other laws relating to
42 simulcasting and the imposition of certain taxes, as amended by chapter
43 18 of the laws of 2008, is amended to read as follows:

44 § 54. This act shall take effect immediately; provided, however,
45 sections three through twelve of this act shall take effect on January
46 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
47 ing law, as added by section thirty-eight of this act, shall expire and
48 be deemed repealed on July 1, [~~2009~~] 2010; and section eighteen of this
49 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
50 two of this act shall take effect as of the same date as chapter 772 of
51 the laws of 1989 took effect.

52 § 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
53 pari-mutuel wagering and breeding law, as amended by chapter 115 of the
54 laws of 2008, is amended to read as follows:

55 (a) The franchised corporation authorized under this chapter to
56 conduct pari-mutuel betting at a race meeting or races run thereat shall

1 distribute all sums deposited in any pari-mutuel pool to the holders of
2 winning tickets therein, provided such tickets be presented for payment
3 before April first of the year following the year of their purchase,
4 less an amount which shall be established and retained by such fran-
5 chised corporation of between sixteen to seventeen per centum of the
6 total deposits in pools resulting from on-track regular bets, and eigh-
7 teen and one-half to twenty-one per centum of the total deposits in
8 pools resulting from on-track multiple bets and twenty-six per centum of
9 the total deposits in pools resulting from on-track exotic bets and
10 sixteen to thirty-six per centum of the total deposits in pools result-
11 ing from on-track super exotic bets, and twenty-six to thirty-six per
12 centum when such on-track super exotic betting pools are carried
13 forward, plus the breaks. The retention rate to be established is
14 subject to the prior approval of the racing and wagering board. Such
15 rate may not be changed more than once per calendar quarter to be effec-
16 tive on the first day of the calendar quarter. "Exotic bets" and
17 "multiple bets" shall have the meanings set forth in section five
18 hundred nineteen of this chapter. "Super exotic bets" shall have the
19 meaning set forth in section three hundred one of this chapter. For
20 purposes of this section, a "pick six bet" shall mean a single bet or
21 wager on the outcomes of six races. The breaks are hereby defined as the
22 odd cents over any multiple of five for payoffs greater than one dollar
23 five cents but less than five dollars, over any multiple of ten for
24 payoffs greater than five dollars but less than twenty-five dollars,
25 over any multiple of twenty-five for payoffs greater than twenty-five
26 dollars but less than two hundred fifty dollars, or over any multiple of
27 fifty for payoffs over two hundred fifty dollars. Out of the amount so
28 retained there shall be paid by such franchised corporation to the
29 commissioner of taxation and finance, as a reasonable tax by the state
30 for the privilege of conducting pari-mutuel betting on the races run at
31 the race meetings held by such franchised corporation, the following
32 percentages of the total pool for regular and multiple bets five per
33 centum of regular bets and four per centum of multiple bets plus twenty
34 per centum of the breaks; for exotic wagers seven and one-half per
35 centum plus twenty per centum of the breaks, and for super exotic bets
36 seven and one-half per centum plus fifty per centum of the breaks. For
37 the period June first, nineteen hundred ninety-five through September
38 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
39 three per centum and such tax on multiple wagers shall be two and one-
40 half per centum, plus twenty per centum of the breaks. For the period
41 September tenth, nineteen hundred ninety-nine through March thirty-
42 first, two thousand one, such tax on all wagers shall be two and six-
43 tenths per centum and for the period April first, two thousand one
44 through December thirty-first, two thousand ~~[nine]~~ ten, such tax on all
45 wagers shall be one and six-tenths per centum, plus, in each such peri-
46 od, twenty per centum of the breaks. Payment to the New York state
47 thoroughbred breeding and development fund by such franchised corpo-
48 ration shall be one-half of one per centum of total daily on-track pari-
49 mutuel pools resulting from regular, multiple and exotic bets and three
50 per centum of super exotic bets provided, however, that for the period
51 September tenth, nineteen hundred ninety-nine through March thirty-
52 first, two thousand one, such payment shall be six-tenths of one per
53 centum of regular, multiple and exotic pools and for the period April
54 first, two thousand one through December thirty-first, two thousand
55 ~~[nine]~~ ten, such payment shall be seven-tenths of one per centum of such
56 pools.

1 § 10. Paragraph (a) of subdivision 1 of section 238 of the racing,
2 pari-mutuel wagering and breeding law, as amended by chapter 18 of the
3 laws of 2008, is amended to read as follows:

4 (a) The franchised corporation authorized under this chapter to
5 conduct pari-mutuel betting at a race meeting or races run thereat shall
6 distribute all sums deposited in any pari-mutuel pool to the holders of
7 winning tickets therein, provided such tickets be presented for payment
8 before April first of the year following the year of their purchase,
9 less an amount which shall be established and retained by such fran-
10 chised corporation of between twelve to seventeen per centum of the
11 total deposits in pools resulting from on-track regular bets, and four-
12 teen to twenty-one per centum of the total deposits in pools resulting
13 from on-track multiple bets and fifteen to twenty-five per centum of the
14 total deposits in pools resulting from on-track exotic bets and fifteen
15 to thirty-six per centum of the total deposits in pools resulting from
16 on-track super exotic bets, plus the breaks. The retention rate to be
17 established is subject to the prior approval of the racing and wagering
18 board. Such rate may not be changed more than once per calendar quarter
19 to be effective on the first day of the calendar quarter. "Exotic bets"
20 and "multiple bets" shall have the meanings set forth in section five
21 hundred nineteen of this chapter. "Super exotic bets" shall have the
22 meaning set forth in section three hundred one of this chapter. For
23 purposes of this section, a "pick six bet" shall mean a single bet or
24 wager on the outcomes of six races. The breaks are hereby defined as the
25 odd cents over any multiple of five for payoffs greater than one dollar
26 five cents but less than five dollars, over any multiple of ten for
27 payoffs greater than five dollars but less than twenty-five dollars,
28 over any multiple of twenty-five for payoffs greater than twenty-five
29 dollars but less than two hundred fifty dollars, or over any multiple of
30 fifty for payoffs over two hundred fifty dollars. Out of the amount so
31 retained there shall be paid by such franchised corporation to the
32 commissioner of taxation and finance, as a reasonable tax by the state
33 for the privilege of conducting pari-mutuel betting on the races run at
34 the race meetings held by such franchised corporation, the following
35 percentages of the total pool for regular and multiple bets five per
36 centum of regular bets and four per centum of multiple bets plus twenty
37 per centum of the breaks; for exotic wagers seven and one-half per
38 centum plus twenty per centum of the breaks, and for super exotic bets
39 seven and one-half per centum plus fifty per centum of the breaks. For
40 the period June first, nineteen hundred ninety-five through September
41 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
42 three per centum and such tax on multiple wagers shall be two and one-
43 half per centum, plus twenty per centum of the breaks. For the period
44 September tenth, nineteen hundred ninety-nine through March thirty-
45 first, two thousand one, such tax on all wagers shall be two and six-
46 tenths per centum and for the period April first, two thousand one
47 through December thirty-first, two thousand ~~[nine]~~ ten, such tax on all
48 wagers shall be one and six-tenths per centum, plus, in each such peri-
49 od, twenty per centum of the breaks. Payment to the New York state
50 thoroughbred breeding and development fund by such franchised corpo-
51 ration shall be one-half of one per centum of total daily on-track pari-
52 mutuel pools resulting from regular, multiple and exotic bets and three
53 per centum of super exotic bets provided, however, that for the period
54 September tenth, nineteen hundred ninety-nine through March thirty-
55 first, two thousand one, such payment shall be six-tenths of one per
56 centum of regular, multiple and exotic pools and for the period April

1 first, two thousand one through December thirty-first, two thousand
2 [~~eight~~] ten, such payment shall be seven-tenths of one per centum of
3 such pools.

4 § 11. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-
5 ing and breeding law, as amended by chapter 18 of the laws of 2008, is
6 amended to read as follows:

7 5. The provisions of this section shall expire and be of no further
8 force and effect after June thirtieth, two thousand [~~nine~~] ten.

9 § 12. This act shall take effect immediately, provided that the amend-
10 ments to paragraph (a) of subdivision 1 of section 238 of the racing,
11 pari-mutuel wagering and breeding law made by section nine of this act
12 shall be subject to the expiration and reversion of such paragraph
13 pursuant to section 32 of chapter 115 of the laws of 2008, as amended,
14 when upon such date the provisions of section ten of this act shall take
15 effect.

16 PART M-1

17 Section 1. Paragraph 1 of subdivision (j) of section 1111 of the tax
18 law, as amended by section 1 of part E of chapter 85 of the laws of
19 2002, is amended to read as follows:

20 (1) The tax required to be prepaid pursuant to section eleven hundred
21 three of this article shall be computed by multiplying the base retail
22 price by a tax rate of [~~seven~~] eight percent and rounding the result
23 thereof to the nearest whole cent per package.

24 § 2. This act shall take effect June 1, 2009; and shall apply to sales
25 made and uses occurring on or after that date in accordance with appli-
26 cable transitional provisions in article 28 of the tax law.

27 PART N-1

28 Section 1. Paragraph 17 of subdivision (b) of section 1101 of the tax
29 law, as added by chapter 309 of the laws of 1996, is amended to read as
30 follows:

31 (17) Commercial aircraft. Aircraft used primarily (i) to transport
32 persons or property, for hire, (ii) by the purchaser of the aircraft
33 [~~primarily~~] to transport such person's tangible personal property in the
34 conduct of such person's business, or (iii) for both such purposes.
35 Transporting persons for hire does not include transporting agents,
36 employees, officers, members, partners, managers or directors of affil-
37 iated persons. Persons are affiliated persons with respect to each other
38 where one of the persons has an ownership interest of more than five
39 percent, whether direct or indirect, in the other, or where an ownership
40 interest of more than five percent, whether direct or indirect, is held
41 in each of the persons by another person or by a group of other persons
42 that are affiliated persons with respect to each other.

43 § 2. Subdivision 2 of section 1118 of the tax law, as amended by chap-
44 ter 651 of the laws of 1999, is amended to read as follows:

45 (2) In respect to the use of property or services purchased by the
46 user while a nonresident of this state, except in the case of tangible
47 personal property or services which the user, in the performance of a
48 contract, incorporates into real property located in the state. A person
49 while engaged in any manner in carrying on in this state any employment,
50 trade, business or profession, shall not be deemed a nonresident with
51 respect to the use in this state of property or services in such employ-
52 ment, trade, business or profession. This exemption does not apply to

1 the use of qualified property where the qualified property is purchased
2 primarily to carry individuals, whether or not for hire, who are agents,
3 employees, officers, shareholders, members, managers, partners, or
4 directors of (A) the purchaser, where any of those individuals was a
5 resident of this state when the qualified property was purchased or (B)
6 any affiliated person that was a resident when the qualified property
7 was purchased. For purposes of this subdivision: (i) persons are affil-
8 liated persons with respect to each other where one of the persons has an
9 ownership interest of more than five percent, whether direct or indi-
10 rect, in the other, or where an ownership interest of more than five
11 percent, whether direct or indirect, is held in each of the persons by
12 another person or by a group of other persons that are affiliated
13 persons with respect to each other; (ii) "qualified property" means
14 aircraft, vessels and motor vehicles; and (iii) "carry" means to take
15 any person from one point to another, whether for the business purposes
16 or pleasure of that person.

17 § 3. This act shall take effect on June 1, 2009, and shall apply to
18 sales made and uses occurring on or after such date in accordance with
19 the applicable transitional provisions in sections 1106 and 1217 of the
20 tax law.

21 PART O-1

22 Section 1. Subdivision b of section 1612 of the tax law, as amended by
23 chapter 140 of the laws of 2008, clauses (D) and (F) of subparagraph
24 (ii) and subparagraph (iii) of paragraph 1 and paragraph 2 as separately
25 amended by chapter 286 of the laws of 2008 and clause (G) of subpara-
26 graph (ii) of paragraph 1 as added and clause (H) of subparagraph (ii)
27 of paragraph 1 as amended by chapter 286 of the laws of 2008, is amended
28 to read as follows:

29 b. 1. Notwithstanding section one hundred twenty-one of the state
30 finance law, on or before the twentieth day of each month, the division
31 shall pay into the state treasury, to the credit of the state lottery
32 fund created by section ninety-two-c of the state finance law, not less
33 than forty-five percent of the total amount for which tickets have been
34 sold for games defined in paragraph four of subdivision a of this
35 section during the preceding month, not less than thirty-five percent of
36 the total amount for which tickets have been sold for games defined in
37 paragraph three of subdivision a of this section during the preceding
38 month, not less than twenty percent of the total amount for which tick-
39 ets have been sold for games defined in paragraph two of subdivision a
40 of this section during the preceding month, provided however that for
41 games with a prize payout of seventy-five percent of the total amount
42 for which tickets have been sold, the division shall pay not less than
43 ten percent of sales into the state treasury and not less than twenty-
44 five percent of the total amount for which tickets have been sold for
45 games defined in paragraph one of subdivision a of this section during
46 the preceding month; and the balance of the total revenue after payout
47 for prizes for games known as "video lottery gaming," (i) less ten
48 percent of the total revenue wagered after payout for prizes to be
49 retained by the division for operation, administration, and procurement
50 purposes; (ii) less a vendor's fee the amount of which is to be paid for
51 serving as a lottery agent to the track operator of a vendor track:

52 (A) having fewer than one thousand one hundred video gaming machines,
53 at a rate of thirty-six percent for the first fifty million dollars
54 annually, twenty-nine percent for the next hundred million dollars annu-

1 ally, and twenty-six percent thereafter of the total revenue wagered at
2 the vendor track after payout for prizes pursuant to this chapter;

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

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

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

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

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

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

47 ~~[(D) notwithstanding clauses (A), (B) and (C) of this subparagraph,~~
48 ~~when the vendor track is within fifteen miles of a Native American~~
49 ~~gaming facility, at a rate of forty-two percent of the total revenue~~
50 ~~wagered at the vendor track after payout for prizes pursuant to this~~
51 ~~chapter;]~~

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

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

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

51 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-
52 agraph, when a vendor track, is located in Sullivan county and within
53 sixty miles from any gaming facility in a contiguous state such vendor
54 fee shall, for a period of five years commencing April first, two thou-
55 sand eight, be at a rate of forty-two percent of the total revenue
56 wagered at the vendor track after payout for prizes pursuant to this

1 chapter, after which time such rate shall be as for all tracks in clause
2 (C) of this subparagraph.

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

5 (G) notwithstanding any other provisions of this section, when a relo-
6 cated vendor track at which a qualified capital investment has been made
7 and no fewer than two thousand full-time, permanent employees have been
8 newly hired, is located in Sullivan county and is within sixty miles
9 from any gaming facility in a contiguous state, then for a period of
10 forty years the division shall pay into the state treasury, to the cred-
11 it of the state lottery fund created by section ninety-two-c of the
12 state finance law the greater of (i) twenty-five percent of total reven-
13 ue after payout for prizes for "video lottery games" or (ii) for the
14 first eight years of operation thirty-eight million dollars, and begin-
15 ning in the ninth year of operation such amount shall increase annually
16 by the lesser of the increase in the consumer price index or two percent
17 plus the division shall retain an amount equal to all actual expenses
18 related to operations, administration and procurement of the video
19 lottery terminal operation at the relocated vendor track, provided,
20 however, such amount retained by the division shall not exceed seven
21 percent of total revenue after payout of prizes. In addition, in the
22 event the division makes a payment pursuant to subclause (i) of this
23 clause, the division shall pay to the credit of the state lottery fund
24 created by section ninety-two-c of the state finance law 11.11 percent
25 of the amount by which total revenue after payout for prizes exceeds two
26 hundred fifteen million dollars, but in no event shall such payment
27 exceed five million dollars.

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

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

36 For the purposes of this section "qualified capital investment" shall
37 mean an investment of a minimum of one billion dollars as reflected by
38 audited financial statements of which not less than three hundred
39 million dollars shall be comprised of equity and/or mezzanine financing
40 as an initial investment in a county where twelve percent of the popu-
41 lation is below the federal poverty level as measured by the most recent
42 Bureau of Census Statistics prior to the qualified capital investment
43 commencing that results in the construction, development or improvement
44 of at least one eighteen hole golf course, and the construction and
45 issuance of certificates of occupancy for hotels, lodging, convention
46 centers, spas, dining, retail and entertainment venues, parking garages
47 and other capital improvements at or adjacent to the licensed video
48 gaming facility or licensed vendor track which promote or encourage
49 increased attendance at such facilities.

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

1 minimum of thirty-five hours per week for not less than four consecutive
2 weeks and who are entitled to receive the usual and customary fringe
3 benefits extended to other employees with comparable rank and duties.

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

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

10 For the purposes of this section "recapture amount" shall mean the
11 difference between the amount of the vendor's fee paid to a vendor track
12 with a qualified capital investment, and the vendor fee otherwise paya-
13 ble to a vendor track pursuant to clause (F) of this subparagraph, that
14 is reimbursable by the vendor track to the division for payment into the
15 state treasury, to the credit of the state lottery fund created by
16 section ninety-two-c of the state finance law, due to an employment
17 shortfall pursuant to the following schedule only for the period of the
18 employment shortfall:

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

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

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

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

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

29 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
30 this subparagraph, the track operator of a vendor track shall be eligi-
31 ble for a vendor's capital award of up to four percent of the total
32 revenue wagered at the vendor track after payout for prizes pursuant to
33 this chapter, which shall be used exclusively for capital project
34 investments to improve the facilities of the vendor track which promote
35 or encourage increased attendance at the video lottery gaming facility
36 including, but not limited to hotels, other lodging facilities, enter-
37 tainment facilities, retail facilities, dining facilities, events
38 arenas, parking garages and other improvements that enhance facility
39 amenities; provided that such capital investments shall be approved by
40 the division, in consultation with the state racing and wagering board,
41 and that such vendor track demonstrates that such capital expenditures
42 will increase patronage at such vendor track's facilities and increase
43 the amount of revenue generated to support state education programs. The
44 annual amount of such vendor's capital awards that a vendor track shall
45 be eligible to receive shall be limited to two million five hundred
46 thousand dollars, except for Aqueduct racetrack, for which there shall
47 be no vendor's capital awards. Except for tracks having less than one
48 thousand one hundred video gaming machines, each track operator shall be
49 required to co-invest an amount of capital expenditure equal to its
50 cumulative vendor's capital award. For all tracks, except for Aqueduct
51 racetrack, the amount of any vendor's capital award that is not used
52 during any one year period may be carried over into subsequent years
53 ending before April first, two thousand thirteen. Any amount attribut-
54 able to a capital expenditure approved prior to April first, two thou-
55 sand thirteen and completed before April first, two thousand fifteen
56 shall be eligible to receive the vendor's capital award. In the event

1 that a vendor track's capital expenditures, approved by the division
2 prior to April first, two thousand thirteen and completed prior to April
3 first, two thousand fifteen, exceed the vendor track's cumulative capi-
4 tal award during the five year period ending April first, two thousand
5 thirteen, the vendor shall continue to receive the capital award after
6 April first, two thousand thirteen until such approved capital expendi-
7 tures are paid to the vendor track subject to any required co-invest-
8 ment. In no event shall any vendor track that receives a vendor fee
9 pursuant to clause (F) or (G) of this ~~[paragraph]~~ subparagraph be eligi-
10 ble for a vendor's capital award under this section. Any operator of a
11 vendor track which has received a vendor's capital award, choosing to
12 divest the capital improvement toward which the award was applied, prior
13 to ~~[reaching the forty year straightline depreciation value of the~~
14 ~~improvement]~~ the full depreciation of the capital improvement in accord-
15 ance with generally accepted accounting principles, shall reimburse the
16 state in amounts equal to the total of any such awards. Any capital
17 award not approved for a capital expenditure at a video lottery gaming
18 facility by April first, two thousand thirteen shall be deposited into
19 the state lottery fund for education aid; and

20 (iii) less an additional vendor's marketing allowance at a rate of ten
21 percent for the first one hundred million dollars annually and eight
22 percent thereafter of the total revenue wagered at the vendor track
23 after payout for prizes to be used by the vendor track for the marketing
24 and promotion and associated costs of its video lottery gaming oper-
25 ations and pari-mutuel horse racing operations, as long as any such
26 costs associated with pari-mutuel horse racing operations simultaneously
27 encourage increased attendance at such vendor's video lottery gaming
28 facilities, consistent with the customary manner of marketing comparable
29 operations in the industry and subject to the overall supervision of the
30 division; provided, however, that the additional vendor's marketing
31 allowance shall not exceed eight percent in any year for any operator of
32 a racetrack located in the county of Westchester or Queens; provided,
33 however, a vendor track that receives a vendor fee pursuant to clause
34 (G) of ~~[this]~~ subparagraph (ii) of this paragraph shall not receive the
35 additional vendor's marketing allowance. In establishing the vendor fee,
36 the division shall ensure the maximum lottery support for education
37 while also ensuring the effective implementation of section sixteen
38 hundred seventeen-a of this article through the provision of reasonable
39 reimbursements and compensation to vendor tracks for participation in
40 such program. Within twenty days after any award of lottery prizes, the
41 division shall pay into the state treasury, to the credit of the state
42 lottery fund, the balance of all moneys received from the sale of all
43 tickets for the lottery in which such prizes were awarded remaining
44 after provision for the payment of prizes as herein provided. Any reven-
45 ues derived from the sale of advertising on lottery tickets shall be
46 deposited in the state lottery fund.

47 2. As consideration for the operation of a video lottery gaming facil-
48 ity, the division, shall cause the investment in the racing industry of
49 a portion of the vendor fee received pursuant to paragraph one of this
50 subdivision in the manner set forth in this subdivision. With the excep-
51 tion of Aqueduct racetrack, each such track shall dedicate a portion of
52 its vendor fees, received pursuant to clause (A), (B), (C), (D), (E),
53 (F), or (G) of subparagraph (ii) of paragraph one of this subdivision,
54 solely for the purpose of enhancing purses at such track, in an amount
55 equal to eight and three-quarters percent of the total revenue wagered
56 at the vendor track after pay out for prizes. In addition, with the

1 exception of Aqueduct racetrack, one and one-quarter percent of total
2 revenue wagered at the vendor track after pay out for prizes, received
3 pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph
4 (ii) of paragraph one of this subdivision, shall be distributed to the
5 appropriate breeding fund for the manner of racing conducted by such
6 track.

7 Provided, further, that nothing in this paragraph shall prevent each
8 track from entering into an agreement, not to exceed five years, with
9 the organization authorized to represent its horsemen to increase or
10 decrease the portion of its vendor fee dedicated to enhancing purses at
11 such track during the years of participation by such track, or to race
12 fewer dates than required herein.

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

15 § 2. Subdivision a of section 1617-a of the tax law, as amended by
16 section 2 of part Z3 of chapter 62 of the laws of 2003 and paragraph 3
17 as amended by chapter 18 of the laws of 2008, are amended to read as
18 follows:

19 a. The division of the lottery is hereby authorized to license, pursu-
20 ant to rules and regulations to be promulgated by the division of the
21 lottery, the operation of video lottery gaming at Aqueduct, Monticello,
22 Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other
23 racetrack licensed pursuant to article three of the racing, pari-mutuel
24 wagering and breeding law that are located in a county or counties in
25 which video lottery gaming has been authorized pursuant to local law,
26 excluding the licensed racetrack commonly referred to in article three
27 of the racing, pari-mutuel wagering and breeding law as the "New York
28 state exposition" held in Onondaga county and the racetracks of the
29 non-profit racing association known as Belmont Park racetrack and the
30 Saratoga thoroughbred racetrack. Such rules and regulations shall
31 provide, as a condition of licensure, that racetracks to be licensed are
32 certified to be in compliance with all state and local fire and safety
33 codes, that the division is afforded adequate space, infrastructure, and
34 amenities consistent with industry standards for such video gaming oper-
35 ations as found at racetracks in other states, that racetrack employees
36 involved in the operation of video lottery gaming pursuant to this
37 section are licensed by the racing and wagering board, and such other
38 terms and conditions of licensure as the division may establish.
39 Notwithstanding any inconsistent provision of law, video lottery gaming
40 at a racetrack pursuant to this section shall be deemed an approved
41 activity for such racetrack under the relevant city, county, town, or
42 village land use or zoning ordinances, rules, or regulations. No [~~race-~~
43 ~~track~~] entity licensed by the division operating video lottery gaming
44 pursuant to this section may house such gaming activity in a structure
45 deemed or approved by the division as "temporary" for a duration of
46 longer than eighteen-months. Nothing in this section shall prohibit the
47 division from licensing an entity to operate video lottery gaming at an
48 existing racetrack as authorized in this subdivision whether or not a
49 different entity is licensed to conduct horse racing and pari-mutuel
50 wagering at such racetrack pursuant to article two or three of the
51 racing, pari-mutuel wagering and breeding law.

52 The division, in consultation with the racing and wagering board,
53 shall establish standards for approval of the temporary and permanent
54 physical layout and construction of any facility or building devoted to
55 a video lottery gaming operation. In reviewing such application for the
56 construction or reconstruction of facilities related or devoted to the

1 operation or housing of video lottery gaming operations, the division,
2 in consultation with the racing and wagering board, shall ensure that
3 such facility:

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

7 (2) has adequate motor vehicle parking facilities to satisfy patron
8 requirements.

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

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

14 e. The division shall not approve the construction or alteration of
15 any facility or building devoted to the operation or housing of video
16 lottery gaming until the person or entity selected to operate such video
17 lottery gaming shall have submitted to the division a statement of the
18 location of the proposed facility or building, together with a plan of
19 such racetrack, and plans of all existing buildings, seating stands and
20 other structures on the grounds of such racetrack, in such form as the
21 division may prescribe, and such plans shall have been approved by the
22 division. The division, at the expense of the applicant, may order such
23 engineering examination thereof as the division may deem necessary.
24 Such construction or alteration may be made only with the approval of
25 the division and after examination and inspection of the plans thereof
26 and the issuance of a permit therefor by the division.

27 § 4. This act shall take effect immediately and shall be deemed to
28 have been in full force and effect on and after April 1, 2008; provided,
29 however, that the amendment made to section 1617-a of the tax law by
30 sections two and three of this act shall not affect the repeal of such
31 section as provided in section 4 of part C of chapter 383 of the laws of
32 2001, as amended, and shall be deemed repealed therewith.

33 PART P-1

34 Section 1. Clauses (G) and (H) of subparagraph (i) of paragraph 8 of
35 subdivision (b) of section 1101 of the tax law, as amended by chapter 61
36 of the laws of 1989 and as relettered by chapter 190 of the laws of
37 1990, are amended and a new clause (I) is added to read as follows:

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

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

47 (I) A seller of tangible personal property or services, the use of
48 which is taxed by this article if either (I) an affiliated person that
49 is a vendor as otherwise defined in this paragraph uses in the state
50 trademarks, service marks, or trade names that are the same as those the
51 seller uses; or (II) an affiliated person engages in activities in the
52 state that inure to the benefit of the seller, in its development or
53 maintenance of a market for its goods or services in the state, to the
54 extent that those activities of the affiliate are sufficient to satisfy

1 the nexus requirement of the United States constitution. For purposes of
2 this clause, "affiliated person" has the same meaning as in clause (B)
3 of subparagraph (v) of this paragraph. Nothing in this clause shall be
4 construed to narrow the scope of any other provision in this paragraph.

5 § 2. This act shall take effect June 1, 2009 and shall apply to sales
6 made or uses occurring on or after such date in accordance with the
7 applicable transitional provisions of sections 1106 and 1217 of the tax
8 law.

9 PART Q-1

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

12 § 1617. Joint, multi-jurisdiction, and out-of-state lottery. The
13 director may enter into an agreement with a government-authorized group
14 of one or more other jurisdictions providing for the operation and
15 administration of a joint, multi-jurisdiction, and out-of-state
16 lottery[, ~~except the director may not agree to participate in the games~~
17 ~~of more than one such group at any single time~~]. Such a joint, multi-
18 jurisdiction, and out-of-state lottery game or games may include a
19 combined drawing, a combined prize pool, the transfer of sales and prize
20 monies to other jurisdictions as may be necessary, and such other coop-
21 erative arrangements as the director deems necessary or desirable.

22 § 2. This act shall take effect immediately.

23 PART R-1

24 Section 1. Paragraph 1 of subdivision (a) of section 1160 of the tax
25 law, as added by chapter 190 of the laws of 1990, is amended to read as
26 follows:

27 (1) [~~On and after June first, nineteen hundred ninety, in~~] In addition
28 to any tax imposed under any other article of this chapter, there is
29 hereby imposed and there shall be paid a tax of [~~five~~] six percent upon
30 the receipts from every rental of a passenger car which is a retail sale
31 of such passenger car.

32 § 2. Paragraph 2 of subdivision (a) of section 1160 of the tax law, as
33 amended by chapter 166 of the laws of 1991, is amended to read as
34 follows:

35 (2) Except to the extent that a passenger car rental described in
36 paragraph one of this subdivision has already been or will be subject to
37 the tax imposed under such paragraph and except as otherwise exempted
38 under this article, there is hereby imposed on every person and there
39 shall be paid a use tax for the use within this state [~~on and after June~~
40 ~~first, nineteen hundred ninety~~] of any passenger car rented by the user,
41 which is a purchase at retail of such passenger car, but not including
42 any lease of a passenger car to which subdivision (i) of section eleven
43 hundred eleven of this chapter applies. For purposes of this paragraph,
44 the tax shall be at the rate of [~~five~~] six percent of the consideration
45 given or contracted to be given for such property, or for the use of
46 such property, including any charges for shipping or delivery as
47 described in paragraph three of subdivision (b) of section eleven
48 hundred one of this chapter, but excluding any credit for tangible
49 personal property accepted in part payment and intended for resale.

50 § 3. This act shall take effect June 1, 2009, and shall apply to sales
51 made or uses occurring on or after such date in accordance with applica-
52 ble transitional provisions in sections 1106 and 1217 of the tax law.

1

PART S-1

2 Section 1. Section 957 of the general municipal law, as added by chap-
3 ter 686 of the laws of 1986, subdivisions (b) and (f) as amended and
4 subdivisions (c), (g), (i), (j), (k), and (l) as added by chapter 624 of
5 the laws of 1990, subdivision (d) as amended and subdivision (r) as
6 added by section 1 of part HH of chapter 59 of the laws of 2006, para-
7 graphs (iii), (iv), (v) and (vi) of subdivision (d) as added by section
8 5 of part A of chapter 63 of the laws of 2005, subdivision (e) as
9 amended and subdivisions (m), (n) and (o) as added by chapter 708 of the
10 laws of 1993, subdivision (h) as amended by chapter 39 of the laws of
11 2004, subdivision (p) as added by chapter 170 of the laws of 1994,
12 subdivision (q) as amended by chapter 161 of the laws of 2005, subdivi-
13 sions (s) and (t) as added by section 1 of part V-1 of chapter 109 of
14 the laws of 2006, and subdivisions (a), (e), (f), (k), and (m) as
15 further amended pursuant to section 15 of part GG of chapter 63 of the
16 laws of 2000, is amended to read as follows:

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

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

23 (b) "Commissioner" shall mean the commissioner of economic develop-
24 ment.

25 (c) "Minority-owned business enterprise" shall ~~mean a business enter-~~
26 ~~prise, including a sole proprietorship, partnership or corporation, that~~
27 ~~is:~~

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

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

32 ~~(iii) an enterprise in which such minority ownership has and exercises~~
33 ~~the authority to control independently the day to day business decisions~~
34 ~~of the enterprise; and~~

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

38 (d) "Empire zone" shall mean an area within the state that has been
39 designated as an empire zone pursuant to this article and:

40 (i) all empire zones designated under paragraph (i) of subdivision (a)
41 and subdivision (d) of section nine hundred fifty-eight of this article
42 shall be referred to as "investment zones" and shall be wholly contained
43 within up to three distinct and separate contiguous areas; provided,
44 however, that empire zones designated prior to the enactment of this
45 paragraph shall identify up to three distinct and separate contiguous
46 areas, which shall equal up to their total allotted acreage at the time
47 of designation by January first, two thousand six. Provided however, the
48 existing zone must include as much designated acreage into the distinct
49 and separate contiguous areas as possible. Provided, however, notwith-
50 standing the provisions of paragraphs (i) and (ii) of subdivision (a) of
51 section nine hundred fifty-eight and subdivision (d) of section nine
52 hundred fifty-nine of this article a regionally significant project may
53 be located outside of the investment zone's distinct and separate
54 contiguous areas, provided such significant project is located within
55 the zone applicant's municipal boundaries. Provided further however, if

1 the investment zone is located in a county that does not have a develop-
2 ment zone such significant project may be located within the county's
3 boundaries. For the purpose of this article a "regionally significant
4 project" shall mean: a manufacturer projecting the creation of fifty or
5 more jobs; or an agri-business or high tech or biotech business making a
6 capital investment of ten million dollars and creating twenty or more
7 jobs; or a financial or insurance services or distribution center creat-
8 ing three hundred or more jobs; or a clean energy research and develop-
9 ment enterprise shall be eligible as a regionally significant project as
10 determined by the local zone administrative board and commissioner.
11 Other projects may be considered by the zone designation board;

12 (ii) all empire zones designated under subdivisions (b) and (c) of
13 section nine hundred fifty-eight of this article shall be referred to as
14 "development zones" and shall be wholly contained within up to six
15 distinct and separate contiguous areas. However, an empire zone located
16 in more than one county at the time of designation shall be wholly
17 contained in up to twelve distinct and separate contiguous areas.
18 Provided, however, that empire zones designated prior to the enactment
19 of this paragraph shall identify up to six distinct and separate contig-
20 uous areas, which shall equal up to their total allotted acreage at the
21 time of designation, by January first, two thousand six or in the case
22 of an empire zone located in more than one county, at the time of desig-
23 nation shall identify twelve distinct and separate contiguous areas.
24 Provided however, the existing zone must include as much designated
25 acreage into the distinct and separate contiguous areas as possible.
26 Provided, however, a regionally significant project may be located
27 outside of the development zone's distinct and separate contiguous
28 areas. For the purpose of this article a "regionally significant
29 project" shall mean: a manufacturer projecting the creation of fifty or
30 more jobs; or an agri-business or high tech or biotech business making a
31 capital investment of ten million dollars and creating twenty or more
32 jobs; or a financial or insurance services or distribution center creat-
33 ing three hundred or more jobs; or a clean energy research and develop-
34 ment enterprise shall be eligible as a regionally significant project as
35 determined by the local zone administrative board and the commissioner.
36 Other projects may be considered by the zone designation board;

37 (iii) provided, however, a zone may apply to add one additional
38 distinct and separate contiguous area, pursuant to paragraphs (i) and
39 (ii) of this subdivision, to such zone upon the demonstration of need,
40 provided, however, such additional distinct and separate contiguous area
41 shall not result in an empire zone that exceeds the maximum allotted
42 acreage;

43 (iv) a "development zone", pursuant to paragraph (ii) of this subdivi-
44 sion, shall apply, pursuant to subdivisions (a) and (d) of section nine
45 hundred fifty-eight of this article, to have up to three distinct and
46 separate contiguous areas defined as "investment zones", pursuant to
47 this subdivision;

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

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

1 similar means of connecting a non-contiguous area to the zone's distinct
2 and separate contiguous areas.

3 (e) "Local empire zone administrative board" shall mean the entity
4 designated by the applicant that is responsible for recommending busi-
5 ness enterprises for certification pursuant to paragraph (iii) of subdi-
6 vision (a) of section nine hundred fifty-nine of this article and for
7 monitoring, evaluating and coordinating all empire zone benefits on
8 behalf of the applicant. Such entity shall consist of at least six
9 members, [~~none of whom shall be the local empire zone certification~~
10 ~~officer,~~] and shall be representative of local businesses, organized
11 labor, community organizations, financial institutions, local educa-
12 tional institutions and residents of the empire zone.

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

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

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

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

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

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

31 [~~(h)~~] (g) "Locally owned business enterprise" shall mean (i) a busi-
32 ness firm in which the total ownership interest held by individuals who
33 are full time bona fide residents of such zone is more than eighty
34 percent, whose business activities are conducted in a manner whereby at
35 least fifty percent of the assets of such firm are located and utilized
36 in such zone, and at least forty percent of such firm's employees are
37 principally employed in such zone; or (ii) an agricultural cooperative
38 established pursuant to section one hundred eleven of the cooperative
39 corporations law; provided however, for business firms located within
40 zones designated in a city such individuals shall reside within a commu-
41 nity planning board or within traditional neighborhood boundaries and
42 provided further however for business firms located within zones outside
43 of a city such individuals may reside in the county in which the zone is
44 designated.

45 [~~(i)~~] (h) "Chief executive" shall mean (i) a county executive or
46 manager of a county; (ii) in a county not having a county executive or
47 manager, the chairperson or other presiding officer of the county legis-
48 lative body; (iii) a mayor of a city or village, except where a city or
49 village has a manager, it shall mean such a manager; or (iv) a supervi-
50 sor of a town, except where a town has a manager, it shall mean such
51 manager.

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

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

~~(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;~~

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

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

~~(k)~~ (j) "Targeted employee" shall mean a New York resident who receives empire zone wages pursuant to subdivision nineteen of section two hundred ten of the tax law and who is (i) an eligible individual under the provision of the targeted jobs tax credit (section fifty-one of the internal revenue code), (ii) eligible for benefits under the provisions of the job training partnership act (P.L. 97-300, as amended), (iii) a recipient of public assistance benefits, or (iv) an individual whose income is below the most recently established poverty rate promulgated by the United States department of commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency.

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

~~(l)~~ (k) "Single enterprise" means two or more related business enterprises characterized by an absence of arms length relationships found among enterprises that are not integrated. Factors to be considered, among other things, in determining the existence of a single enterprise are interrelation of operations, common management, centralized control of labor relations, common ownership and common financial control.

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

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

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

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

4 ~~[(q)]~~ (p) "Cost benefit analysis" shall mean, for purposes of para-
5 graph (iii) of subdivision (a) of section nine hundred fifty-nine of
6 this article, a method of determining whether to certify a business
7 ~~[pursuant to section nine hundred sixty-three of this article]~~ enter-
8 prise based on the ~~[business']~~ business enterprise's projected job
9 creation and/or investment in the zone versus the total amount of empire
10 zone tax benefits the business enterprise will potentially be allowed to
11 ~~[claim pursuant to sections fourteen, fifteen, and sixteen of the tax~~
12 ~~law.]~~ use and have refunded to it and shall be a ratio of at least 10:1
13 for manufacturing enterprises and 20:1 for all other business enter-
14 prises, the numerator of which is the sum of (i) the estimated value of
15 all wages and benefits paid for the first three years of certification
16 to all existing and projected employees of the business enterprise in
17 the zone and (ii) the estimated value of capital investments for the
18 first three years of certification in the zone, and the denominator of
19 which is the estimated amount of total empire zone tax benefits that may
20 be used and may be refunded for the first three years of certification.

21 ~~[Such cost benefit analysis shall include, but not be limited to, an~~
22 ~~estimate for the first five years commencing in the year in which the~~
23 ~~business is certified, of: (i) the amount of all the state tax credits~~
24 ~~under the empire zones program which may be claimed by the entity or its~~
25 ~~members, partners, or shareholders each year, (ii) the value of the~~
26 ~~sales tax exemption on an annual basis, (iii) the estimated number of~~
27 ~~jobs created, (iv) the total annual remuneration and benefits for the~~
28 ~~employees within the zone location, (v) the cost of construction, reno-~~
29 ~~vation or expansion of the business's location within the zone, and (vi)~~
30 ~~the investment being made with respect to tangible personal property or~~
31 ~~other tangible property which is depreciable pursuant to section 179(d)~~
32 ~~of the Internal Revenue Code. Non quantifiable factors may include a~~
33 ~~business enterprise's positive impact on an area that has high commer-~~
34 ~~cial vacancy rates, and/or is characterized by blight and disinvestment~~
35 ~~or the business enterprise is part of a strategic industry cluster or~~
36 ~~supply chain; or is anticipated to access zone capital credits.]~~

37 (r) "Clean energy research and development enterprise" shall mean any
38 electric generating facility that used pulverized coal technology,
39 circulating fluidized bed technology or integrated gasification combined
40 cycle technology and that is capable of capturing carbon dioxide for
41 sequestration or capable of being retrofitted to capture carbon dioxide
42 for sequestration.

43 (s) "Qualified investment project" shall mean a project (i) located
44 within an empire zone, (ii) at which five hundred or more jobs will be
45 created, provided such jobs are new to the state and are in addition to
46 any other jobs previously created by the owner of such project in the
47 state, and (iii) which will consist of tangible personal property and
48 other tangible property, including buildings and structural components
49 of buildings, described in subparagraphs (i), (ii), (iii), (iv) and
50 clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision
51 twelve-B of section two hundred ten of the tax law, the basis of which
52 for federal income tax purposes will equal or exceed seven hundred fifty
53 million dollars. Provided however, the owner of such project does not
54 employ more than two hundred persons in the state at the time such
55 project is commenced.

1 (t) "Significant capital investment project" shall mean a project (i)
2 located within an empire zone, (ii) which will be either a newly
3 constructed facility or a newly constructed addition to or expansion of
4 a qualified investment project, consisting of tangible personal property
5 and other tangible property, including buildings and structural compo-
6 nents of buildings, described in subparagraphs (i), (ii), (iii), (iv)
7 and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivi-
8 sion twelve-B of section two hundred ten of the tax law, the basis of
9 which for federal income tax purposes will equal or exceed seven hundred
10 fifty million dollars, (iii) which is constructed after the basis for
11 federal income tax purposes of the property comprising such qualified
12 investment project equals or exceeds seven hundred fifty million
13 dollars, and (iv) at which five hundred or more jobs will be created,
14 provided such jobs are new to the state and are in addition to any other
15 jobs previously created by the owner of such project in the state.

16 § 2. Intentionally omitted.

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

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

22 (a) After consultation with the director of the budget, the commis-
23 sioner of labor, and the commissioner of taxation and finance, promul-
24 gate regulations, which, notwithstanding any provisions to the contrary
25 in the state administrative procedure act, may be adopted on an emergen-
26 cy basis, governing (i) criteria of eligibility for empire zone desig-
27 nation, provided, however, that such criteria be approved by the direc-
28 tor of the budget; (ii) the application process; (iii) the [joint]
29 certification by the commissioner~~], the commissioner of labor, and, in~~
30 ~~the case of an empire zone, the local empire zone certification offi-~~
31 ~~cer,~~] as to the eligibility of business enterprises for benefits
32 referred to in section nine hundred sixty-six of this article, which
33 shall be governed by criteria including, but not limited to: (1) whether
34 the business enterprise, if certified, is reasonably likely to create
35 new employment or prevent a loss of employment in the zone, (2) whether
36 such new employment opportunities will be for individuals who will
37 perform a substantial part of their employment activities in the zone,
38 (3) whether certification will have the undesired effect of causing
39 individuals to transfer from existing employment with another business
40 enterprise to similar employment with the business enterprise so certi-
41 fied, and transferring existing employment from one or more other muni-
42 cipalities, towns or villages in the state, or transferring existing
43 employment from one or more other businesses in the zone, (4) whether
44 such enterprise is likely to enhance the economic climate of the zone,
45 (5) whether the commissioner of labor establishes that such business
46 enterprise, during the three years preceding the submission of an appli-
47 cation for certification, has engaged in a substantial violation or a
48 pattern of violations of laws regulating unemployment insurance, workers
49 compensation, public work, child labor, employment of minorities and
50 women, safety and health, or other laws for the protection of workers as
51 determined by final judgment of a judicial or administrative proceeding;
52 (6) whether such business meets the requirements of the cost benefit
53 analysis as established in paragraph (p) of section nine hundred fifty-
54 seven of this article, and (7) if the commissioner of labor establishes
55 that the business enterprise has been found in a criminal proceeding to
56 have violated, in the previous three years, any of the laws referred to

1 in subparagraph five of this paragraph or regulations promulgated pursu-
2 ant to such laws, the conditions of any permit issued thereunder, or
3 similar statute, regulation, order or permit condition of any other
4 government agency, foreign or domestic, such business shall not be
5 certified; provided, however, that a business enterprise that has shift-
6 ed its operations, or some portions thereof, from an area within New
7 York state not designated as an empire zone or zone equivalent area to
8 an area so designated shall not be certified to receive such benefits
9 except where such shift is entirely within a municipality and has been
10 approved by the local governing body of such municipality or in situ-
11 ations where it has been established, after a public hearing, that
12 extraordinary circumstances exist which warrant the relocation of a
13 business, in whole or part, into an empire zone or a zone equivalent
14 area from another municipality and the municipality from which the busi-
15 ness is relocating approves of such relocation; or where such shift in
16 operations is from a business incubator facility operated by a munici-
17 pality or by a public or private not-for-profit entity which provides
18 space and business support services to newly established firms; and (iv)
19 the ~~[joint]~~ decertification by the commissioner, upon the recommendation
20 of the commissioner of labor, so as to revoke the certification of busi-
21 ness enterprises for benefits referred to in section nine hundred
22 sixty-six of this article with respect to an empire zone or zone equiv-
23 alent area upon a finding that the business enterprise has committed
24 substantial violations of laws for the protection of workers including
25 all federal, state and local labor laws, rules or regulations; and (v)
26 the decertification by the commissioner~~[, the commissioner of labor,~~
27 ~~and, in the case of an empire zone, the local empire zone certification~~
28 ~~officer]~~ so as to revoke the certification of business enterprises for
29 benefits referred to in section nine hundred sixty-six of this article
30 with respect to an empire zone or zone equivalent area upon a finding
31 ~~[that]~~ of any one of the following: (1) the business enterprise made
32 material misrepresentations of fact on its application for certification
33 or in any of its business annual reports, or the business enterprise
34 failed to disclose facts in its application for certification that would
35 constitute grounds for not issuing a certification; (2) the business
36 enterprise has failed to construct, expand, rehabilitate or operate or
37 invest in its facility substantially in accordance with the representa-
38 tions contained in its application for certification; (3) the business
39 enterprise has failed to create new employment or prevent a loss of
40 employment in the empire zone or zone equivalent area ~~[provided, howev-~~
41 ~~er, that such failure was not due to economic circumstances or condi-~~
42 ~~tions which such business could not anticipate or which were beyond its~~
43 ~~control];~~ (4) where applicable, the business enterprise has failed to
44 submit an annual report after it has applied for zone ~~[incentives]~~ tax
45 benefits or program assistance based on new hires or investments or
46 failed to submit other information ~~[to the local empire zone certif-~~
47 ~~ication officer]~~ when due; ~~[or]~~ (5) the business enterprise ~~[has commit-~~
48 ~~ted substantial violations of laws for the protection of workers includ-~~
49 ~~ing all federal, state and local labor laws, rules or regulations;], if~~
50 first certified pursuant to this article prior to the first day of
51 August, two thousand two, caused individuals to transfer from existing
52 employment with another business enterprise with similar ownership and
53 located in New York state to similar employment with the certified busi-
54 ness enterprise or if the enterprise acquired, purchased, leased, or had
55 transferred to it real property previously owned by an entity with simi-
56 lar ownership, regardless of form of incorporation or organization; (6)

1 the business enterprise has failed to provide economic returns to the
2 state in the form of total remuneration to its employees (i.e. wages and
3 benefits) and investments in its facility greater in value to the tax
4 benefits the business enterprise used and had refunded to it; or (7) the
5 business enterprise has changed ownership or moved its operations out of
6 the empire zone; said regulations shall provide that whenever any busi-
7 ness enterprise is decertified with respect to an empire zone: (A) the
8 date determined to be the earliest event constituting grounds for revok-
9 ing certification shall be the effective date of decertification; (B)
10 its certified single enterprise, if any, may also be decertified; and
11 (C) the commissioner shall notify the commissioner of taxation and
12 finance that such decertification has occurred, and such notification
13 should include the effective date of such decertification and the zone
14 or zone equivalent area to which such decertification applies;

15 (b) Receive and review applications for designation of areas as empire
16 zones;

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

21 (d) Review new applications to replace any previously designated
22 empire zone the designation of which has been terminated or withdrawn[~~f~~

23 ~~(e) File~~] and file notice of the designation or redesignation of an
24 empire zone or of the revision or termination of such designation with
25 the applicant, the department of taxation and finance, the secretary of
26 state, with the county, city, town or village clerk of each county,
27 city, town, or village, respectively, in which the empire zone is
28 located, with the school district governing body in which the empire
29 zone is located, with the state board of real property services and with
30 other state and local entities; provided, however, that such notice
31 shall specify the date such action was taken and shall contain a
32 description sufficient to identify the empire zone, including the names
33 of the abutting streets, roads, highways, bodies of water, or other
34 identifying physical features;

35 [~~f~~] (e) Request, and shall receive from any department, division,
36 board, bureau, commission, agency or public authority of the state such
37 assistance as may be necessary to establish a procedure whereby applica-
38 tions submitted by business entities, community-based organizations,
39 not-for-profit organizations, human service agencies, labor unions and
40 municipal agencies located within an empire zone requesting financial
41 and other assistance provided by state programs, including, but not
42 limited to, capital development, human resource development, business
43 assistance, job training and job placement shall, consistent with feder-
44 al law, be given priority over applications submitted by entities not
45 located in empire zones;

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

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

1 ~~[(i)]~~ (h) Coordinate with the comptroller and the commissioner of
2 taxation and finance a linked deposit program. The comptroller and the
3 commissioner of taxation and finance are hereby authorized and empowered
4 to enter into agreements with financial institutions located in or serv-
5 ing the empire zones, to provide for the deposit of funds administered
6 jointly by them in such institutions, at reduced rates of return to the
7 state, in return for commitments by such institutions to businesses of
8 loans of comparable amounts, at reduced interest rates, for business
9 development projects in the zones that will create or preserve jobs;

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

16 ~~[(k)]~~ (j) Promulgate regulations, in consultation with the commission-
17 er of labor, for program evaluation and coordinate implementation of an
18 evaluation system, which is capable of compiling and analyzing accurate
19 and consistent information necessary for an assessment of whether statu-
20 tory objectives and criteria are being met;

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

24 ~~[(m)]~~ (l) Assist zone boards and zone administrative entities to
25 effect and implement job training and social services agreements and
26 programs provided for in paragraphs (v), (vi) and (vii) of subdivision
27 ~~[(b)]~~ (a) of section nine hundred sixty-three of this article and
28 request and receive from any agency or authority of the state such
29 assistance as may be necessary to improve the delivery and coordination
30 of human resource development programs to the zones;

31 ~~[(n)]~~ (m) Assist zones in increasing their child care capacity and in
32 planning special care activities, including the provision of technical
33 assistance by the department in planning for the provision of child care
34 services in the zones;

35 ~~[(o)]~~ (n) Coordinate with the department of labor, the state education
36 department, the job training partnership council and agencies of the
37 state the inclusion in annual and biennial plans of such entities strat-
38 egies for increasing and improving human resource development services
39 on a priority basis, consistent with federal statutory and regulatory
40 requirements, to residents of the zones and employees of zone busi-
41 nesses, including, but not limited to, the governor's plan for coordi-
42 nation and special services of the job training partnership council, the
43 jobs plan and Wagner-Peyser annual plan for services of the department
44 of labor, and the career education state plan of the state education
45 department;

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

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

55 ~~[(r)]~~ (q) Systematically enlist other state agencies and authorities
56 to participate in zone programs and projects and in cooperative planning

1 of interagency zone activities in support of zone revitalization
2 efforts;

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

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

12 ~~[(u)]~~ (t) Coordinate with the urban development corporation the
13 creation of a special category of assistance for zones within the
14 regional economic development partnership program, which will make
15 available economic development assistance grants for zone programs and
16 activities, including, but not limited to, planning, service coordi-
17 nation, and local institutional capacity building for human resource
18 development necessary for economic revitalization; planning and develop-
19 ment of small business incubators; job placement and preparedness
20 programs for zones residents; education and training programs for zone
21 businesses; child care programs and projects supportive of business
22 development; technical assistance for minority and women-owned business
23 development; training for zone officials; business and tourism develop-
24 ment and marketing programs; and other innovative programs and activ-
25 ities in support of economic and community development within the zones;
26 [and]

27 ~~[(v)]~~ (u) Assist in the development of a plan, in coordination with
28 the health and insurance departments, to assist zones in obtaining
29 affordable employee health insurance for small business enterprises
30 located within the zone~~[-]~~;

31 ~~[(w)]~~ (v) Approve applications for qualification of a business enter-
32 prise as the owner of a qualified investment project or as the owner of
33 a significant capital investment project, as defined in subdivisions (s)
34 and (t), respectively, of section nine hundred fifty-seven of this arti-
35 cle. As a condition for approval of such application, the commissioner
36 is authorized to specify certain requirements to be satisfied as a
37 condition for approval of such application as the commissioner deems
38 necessary to ensure that the project will make a substantial contrib-
39 ution to the economic development of this state. An application for
40 qualification of a business enterprise as the owner of a qualified
41 investment must be submitted by December thirty-first, two thousand
42 nine. An application for qualification of a business as the owner of a
43 significant capital investment project as defined in subdivision (t) of
44 section nine hundred fifty-seven of this article, which application is
45 submitted by an entity previously qualified by the commissioner as the
46 owner of a qualified investment project or an entity which is a related
47 person, as that term is defined in section 465(b)(3)(c) of the internal
48 revenue code, to an entity previously qualified by the commissioner as
49 the owner of a qualified investment project, must be submitted by June
50 thirtieth, two thousand eleven. No applications submitted after these
51 dates may be approved; and

52 (w) Conduct a review during calendar year two thousand nine of all
53 business enterprises to determine whether the business enterprises
54 should be decertified pursuant to subparagraphs five and six of para-
55 graph (v) of subdivision (a) of this section and the regulations promul-
56 gated under this article. After such review, the commissioner shall

1 issue an empire zone retention certificate to each firm that the commis-
2 sioner determines is not subject to decertification under subparagraphs
3 five and six of paragraph (v) of subdivision (a) of this section. The
4 decertification referred to in subparagraph six of paragraph (v) of
5 subdivision (a) of this section shall be based upon an analysis of data
6 contained in at least three business annual reports filed by the busi-
7 ness enterprise. If any business enterprise fails the analysis
8 described in the immediately preceding sentence, or if the commissioner
9 makes the finding described in subparagraph five of paragraph (v) of
10 subdivision (a) of this section, the commissioner shall revoke the
11 certification of such business enterprise pursuant to paragraph (iv) of
12 subdivision (a) of this section and as specified herein; provided,
13 however, the commissioner may consider, after consultation with the
14 director of the budget, and in his or her sole discretion, other econom-
15 ic, social and environmental factors when evaluating the costs and bene-
16 fits of a project to the state and whether continued certification is
17 warranted based on such factors. The commissioner shall provide written
18 notification to such business enterprise of his or her determination to
19 revoke the certification, including the reasons therefor. Such notifica-
20 tion shall state that the business enterprise may appeal the determi-
21 nation by sending a written notice to the empire zone designation board
22 of such appeal no later than fifteen business days from the date of the
23 commissioner's revocation notification. Provided that the business
24 enterprise appeals the commissioner's determination within fifteen busi-
25 ness days of the commissioner's revocation notification, the business
26 enterprise may present a written submission to the empire zone desig-
27 nation board no later than sixty days following the date the commission-
28 er's revocation notification was sent to the business enterprise
29 explaining why its certification should be continued. The empire zone
30 designation board shall consider the explanation provided by the busi-
31 ness enterprise, but shall only reverse the determination to revoke the
32 business enterprise's certification if the empire zone designation board
33 unanimously finds that there was insufficient evidence presented demon-
34 strating that the commissioner's finding, with respect to subparagraph
35 six of paragraph (v) of subdivision (a) of this section, was in error,
36 or that, with respect to subparagraph five of paragraph (v) of subdivi-
37 sion (a) of this section, any extraordinary circumstances occurred which
38 would justify the continued certification of the business enterprise.

39 § 4. Subdivision (b) of section 959-b of the general municipal law, as
40 added by section 17 of part W1 of chapter 109 of the laws of 2006, is
41 amended to read as follows:

42 (b) The commissioner of economic development shall serve as the sole
43 certification officer for businesses seeking certification as a clean
44 energy enterprise. The commissioner of economic development, after
45 consultation with the executive director of the New York state energy
46 research and development authority, shall promulgate regulations govern-
47 ing (i) criteria of eligibility for designation of a clean energy enter-
48 prise, (ii) the application process, and (iii) the certification by the
49 commissioner of economic development as to the eligibility of business
50 enterprises for benefits referred to in section nine hundred sixty-six
51 of this article. A business so certified shall be deemed to be eligible
52 for such benefits as if such business were located in an investment zone
53 as defined in paragraph (i) of subdivision (d) of section nine hundred
54 fifty-seven of this article. No such certification shall be made after
55 [~~December thirty-first~~] June thirtieth, two thousand [~~eleven~~] ten.

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

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

31 (a-2) The empire zones designation board may consider designating
32 empire zone acreage for other regionally significant projects in accord-
33 ance with section nine hundred fifty-seven of this article, upon appli-
34 cation submitted by the ~~[local zone administrative board and/or the]~~
35 commissioner. Such application shall be made after a public hearing in
36 accordance with section nine hundred sixty-nine of this article and in
37 accordance with findings which shall consider factors including, but not
38 limited to: the creation and retention of a regionally significant
39 number of skilled or otherwise quality jobs; substantial capital invest-
40 ment; or the export of a substantial amount of goods or services beyond
41 the immediate region; and further findings as to why such project cannot
42 be accommodated within the distinct and separate contiguous areas pursu-
43 ant to section nine hundred fifty-seven of this article. Such findings
44 shall be published once a week for four successive weeks, in two newspa-
45 pers of the county of which the project is to be located or if no news-
46 paper is published therein, in the newspaper nearest thereto. Proof of
47 such publication shall be submitted to the board. The board shall not
48 act on such project or projects until thirty days of the final publica-
49 tion of such findings. Provided, however, that the commissioner shall
50 promulgate rules and regulations for the implementation of this subdivi-
51 sion after approval by the empire zones designation board. Provided
52 further, approval of such projects and related regulations requires an
53 affirmative vote by at least five voting members of such board.

54 ~~[An entity independent of the department shall conduct and submit to~~
55 ~~the governor and the legislature by no later than December thirty first,~~
56 ~~two thousand nine, a comprehensive evaluation of the performance of the~~

1 ~~zones program and of individual zones on meeting criteria established~~
2 ~~pursuant to this section. The criteria by which the empire zones program~~
3 ~~and individual zones are to be evaluated shall include, but not be~~
4 ~~limited to, the following:]~~

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

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

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

13 (f) All certified businesses are required to provide a certified annu-
14 al report to the local zone administration board which report shall
15 include but not be limited to the following:

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

21 (ii) Employment numbers calculated in the same manner in which the
22 employment number is required to be calculated by section fourteen of
23 the tax law including: total existing full-time equivalent jobs in the
24 zone as of the date of certification within that zone, total existing
25 jobs in the zone for the year for which the report is being provided,
26 total remuneration paid to employees in the zone each quarter of the
27 reported year, total number of employees in all zones, total annual
28 remuneration in all zones, total annual remuneration paid in New York
29 state for the reported year, total employment number in New York state
30 for the reported year as shown on each business' NYS-45 wage reporting
31 form filed with the department of labor;

32 (iii) Capital investment to include: total investment made in the zone
33 for the reported year~~[, with such investment being made with respect to~~
34 ~~tangible personal property or other tangible property which is deprecia-~~
35 ~~ble pursuant to section one hundred seventy-nine (d) of the internal~~
36 ~~revenue code]~~;

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

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

46 § 9. Subdivision (a) of section 964 of the general municipal law, as
47 amended by chapter 708 of the laws of 1993 and as further amended pursu-
48 ant to section 15 of part GG of chapter 63 of the laws of 2000, is
49 amended to read as follows:

50 (a) No more than three empire zone capital corporations may be estab-
51 lished in each zone for the purpose of raising funds through private and
52 public grants, donations or investments, to be used in making invest-
53 ments in, and loans to, business firms certified pursuant to subdivision
54 (a) of section nine hundred ~~[sixty-three]~~ fifty-nine of this article for
55 the purpose of encouraging the establishment or expansion of businesses
56 and the provision of additional job opportunities within such area. A

1 zone capital corporation may serve one or more zones within an economic
2 development region or zones within two or more regions. Prior to the
3 establishment of a zone capital corporation, the zone board and the
4 commissioner of the department of economic development shall approve the
5 formation of the proposed zone capital corporation, its board of direc-
6 tors and management, and its procedures for making, servicing and moni-
7 toring investments. In no event, however, shall an empire zone capital
8 corporation acquire an ownership interest in any certified business firm
9 which amounts to more than twenty-five percent of the ownership interest
10 of such certified business firm. No loan to or investment in any busi-
11 ness firm shall be made by an empire zone capital corporation located in
12 a zone within a town with a population of more than twenty-five thou-
13 sand, until such corporation has accumulated at least two hundred thou-
14 sand dollars in capital stock. No loan or investment in any business
15 firm shall be made by an empire zone capital corporation located in a
16 zone within a town with a population of less than twenty-five thousand
17 until such corporation has accumulated at least one hundred thousand
18 dollars in capital stock. A zone capital corporation shall submit to the
19 zone board an annual report on its activities.

20 § 10. Subdivision (a) of section 969 of the general municipal law, as
21 amended by section 5 of part A of chapter 63 of the laws of 2005, is
22 amended to read as follows:

23 (a) Except as provided in this section, any designation of an area as
24 an empire zone shall remain in effect during the period beginning on the
25 date of designation and ending June thirtieth, two thousand [eleven]
26 ten.

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

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

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

36 (5-a) Any carry over of a credit from prior taxable years will not be
37 allowed if an empire zone retention certificate is not issued pursuant
38 to subdivision (w) of section nine hundred fifty-nine of the general
39 municipal law to the empire zone enterprise which is the basis of the
40 credit.

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

43 (5-a) Any carry over of a credit from prior taxable years will not be
44 allowed if an empire zone retention certificate is not issued pursuant
45 to subdivision (w) of section nine hundred fifty-nine of the general
46 municipal law to the empire zone enterprise which is the basis of the
47 credit.

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

50 (5-a) Any carry over of a credit from prior taxable years will not be
51 allowed if an empire zone retention certificate is not issued pursuant
52 to subdivision (w) of section nine hundred fifty-nine of the general
53 municipal law to the empire zone enterprise which is the basis of the
54 credit.

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

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

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

8 (4-a) Any carry over of a credit from prior taxable years will not be
9 allowed if an empire zone retention certificate is not issued pursuant
10 to subdivision (w) of section nine hundred fifty-nine of the general
11 municipal law to the empire zone enterprise which is the basis of the
12 credit.

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

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

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

22 (3-a) Any carry over of a credit from prior taxable years will not be
23 allowed to an empire zone enterprise which is the basis of the credit,
24 if an empire zone retention certificate is not issued to such entity
25 pursuant to subdivision (w) of section nine hundred fifty-nine of the
26 general municipal law.

27 § 19. Subdivision 20 of section 210 of the tax law is amended by
28 adding a new paragraph (b-1) to read as follows:

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

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

36 (1-a) Any carry over of a credit from prior taxable years will not be
37 allowed to an empire zone enterprise which is the basis of the credit,
38 if an empire zone retention certificate is not issued to such entity
39 pursuant to subdivision (w) of section nine hundred fifty-nine of the
40 general municipal law.

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

43 (2-a) Any carry over of a credit from prior taxable years will not be
44 allowed to an empire zone enterprise which is the basis of the credit,
45 if an empire zone retention certificate is not issued to such entity
46 pursuant to subdivision (w) of section nine hundred fifty-nine of the
47 general municipal law.

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

50 (2-a) Any carry over of a credit from prior taxable years will not be
51 allowed to an empire zone enterprise which is the basis of the credit,
52 if an empire zone retention certificate is not issued to such entity
53 pursuant to subdivision (w) of section nine hundred fifty-nine of the
54 general municipal law.

55 § 23. Section 1088 of the tax law is amended by adding a new
56 subsection (h) to read as follows:

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

10 § 24. Section 688 of the tax law is amended by adding a new subsection
11 (h) to read as follows:

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

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

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

32 § 26. Subsection (c) of section 689 of the tax law is amended by
33 adding a new paragraph 4 to read as follows:

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

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

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

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

55 (p-2) No penalty will be imposed pursuant to subsection (c) or (p) of
56 this section for a taxable year beginning on or after January first, two

1 thousand eight and before January first, two thousand nine resulting
2 from the denial of an empire zone tax credit claimed by the taxpayer
3 because an empire zone retention certificate was not issued pursuant to
4 subdivision (w) of section nine hundred fifty-nine of the general munic-
5 ipal law to the empire zone enterprise which is the basis for the tax
6 credit or credits claimed on the return.

7 § 29. Subdivision (b) of section 15 of the tax law is amended by
8 adding a new paragraph 3 to read as follows:

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

13 § 30. Subdivision (z) of section 1115 of the tax law is REPEALED.

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

16 (d)(1) Subject to the conditions and limitations provided for in this
17 section, a refund or credit will be allowed for taxes imposed on the
18 retail sale of tangible personal property described in subdivision (a)
19 of section eleven hundred five of this article, and on every sale of
20 services described in subdivisions (b) and (c) of such section, and
21 consideration given or contracted to be given for, or for the use of,
22 such tangible personal property or services, where such tangible
23 personal property or services are sold to a qualified empire zone enter-
24 prise, provided that (A) such tangible personal property or tangible
25 personal property upon which such a service has been performed or such
26 service (other than a service described in subdivision (b) of section
27 eleven hundred five of this article) is directly and predominantly, or
28 such a service described in clause (A) or (D) of paragraph one of such
29 subdivision (b) of section eleven hundred five of this article is
30 directly and exclusively, used or consumed by such enterprise in an area
31 designated as an empire zone pursuant to article eighteen-B of the
32 general municipal law with respect to which such enterprise is certified
33 pursuant to such article eighteen-B, or (B) such a service described in
34 clause (B) or (C) of paragraph one of subdivision (b) of section eleven
35 hundred five of this article is delivered and billed to such enterprise
36 at an address in such empire zone, or (C) the enterprise's place of
37 primary use of the service described in paragraph two of such subdivi-
38 sion (b) of section eleven hundred five is at an address in such empire
39 zone; provided, further, that, in order for a motor vehicle, as defined
40 in subdivision (c) of section eleven hundred seventeen of this article,
41 or tangible personal property related to such a motor vehicle to be
42 found to be used predominantly in such a zone, at least fifty percent of
43 such motor vehicle's use shall be exclusively within such zone or at
44 least fifty percent of such motor vehicle's use shall be in activities
45 originating or terminating in such zone, or both; and either or both
46 such usages shall be computed either on the basis of mileage or hours of
47 use, at the discretion of such enterprise. For purposes of this subdivi-
48 sion, tangible personal property related to such a motor vehicle shall
49 include a battery, diesel motor fuel, an engine, engine components,
50 motor fuel, a muffler, tires and similar tangible personal property used
51 in or on such a motor vehicle.

52 (2) Subject to the conditions and limitations provided for in this
53 section, a refund or credit will be allowed for taxes imposed on the
54 retail sale of, and consideration given or contracted to be given for,
55 or for the use of, tangible personal property sold to a contractor,
56 subcontractor or repairman for use in (A) erecting a structure or build-

1 ing of a qualified empire zone enterprise, (B) adding to, altering or
2 improving real property, property or land of such an enterprise or (C)
3 maintaining, servicing or repairing real property, property or land of
4 such an enterprise, as the terms real property, property or land are
5 defined in the real property tax law; provided, however, no credit or
6 refund will be allowed under this paragraph unless such tangible
7 personal property is to become an integral component part of such struc-
8 ture, building, real property, property or land located in an area
9 designated as an empire zone pursuant to article eighteen-B of the
10 general municipal law in, and with respect to which such enterprise is
11 certified pursuant to such article eighteen-B.

12 (3) Except as otherwise provided by law, the refund or credit provided
13 for in this subdivision will not apply to taxes imposed by paragraph ten
14 of subdivision (c) of section eleven hundred five and eleven hundred
15 seven of this article or to taxes imposed pursuant to the authority of
16 article twenty-nine of this chapter.

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

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

25 (6) Any reference in this chapter to former subdivision (z) of section
26 eleven hundred fifteen of this article will be deemed to be a reference
27 to this subdivision.

28 (7) Notwithstanding any other provision in this article, article twen-
29 ty-nine of this chapter, or any other law to the contrary, a credit or
30 refund for any sale or use under this section shall not be allowed to a
31 person that is first certified under article eighteen-B of the general
32 municipal law on or after April first, two thousand nine, unless that
33 sale or use is eligible for a credit or refund of the county or city
34 sales and compensating use taxes imposed pursuant to the authority of
35 subpart b of part I of article twenty-nine of this chapter.

36 § 32. Paragraph 2 of subdivision (a) of section 14 of the tax law, as
37 amended by section 1 of part AA of chapter 62 of the laws of 2006, is
38 amended to read as follows:

39 (2) for purposes of articles twenty-eight and twenty-nine of this
40 chapter, during the "sales and use tax benefit period." Such period
41 shall consist of one hundred twenty consecutive months beginning on the
42 later of (A) March first, two thousand one, or (B) with regard to busi-
43 ness enterprises certified pursuant to article eighteen-B of the general
44 municipal law prior to April first, two thousand nine, the first day of
45 the month next following the date of issuance of a qualified empire zone
46 enterprise certification by the commissioner under subdivision (h) of
47 this section, or (C) with regard to business enterprises certified
48 pursuant to such article eighteen-B on or after April first, two thou-
49 sand nine, the first day of the month next following the date of certifi-
50 cation under article eighteen-B as an empire zone business. Provided
51 however, such period shall not include any month falling within a taxa-
52 ble year immediately preceded by a taxable year with respect to which
53 the business enterprise did not meet the employment test.

54 § 33. Subdivision (h) of section 14 of the tax law is REPEALED.

1 § 34. Subparagraph (i) of paragraph 1 of subdivision (a) of section
2 1210 of the tax law, as amended by section 4 of part SS1 of chapter 57
3 of the laws of 2008, is amended to read as follows:

4 (i) Either, all of the taxes described in article twenty-eight of this
5 chapter, at the same uniform rate, as to which taxes all provisions of
6 the local laws, ordinances or resolutions imposing such taxes shall be
7 identical, except as to rate and except as otherwise provided, with the
8 corresponding provisions in such article twenty-eight, including the
9 definition and exemption provisions of such article, so far as the
10 provisions of such article twenty-eight can be made applicable to the
11 taxes imposed by such city or county and with such limitations and
12 special provisions as are set forth in this article. The taxes author-
13 ized under this subdivision may not be imposed by a city or county
14 unless the local law, ordinance or resolution imposes such taxes so as
15 to include all portions and all types of receipts, charges or rents,
16 subject to state tax under sections eleven hundred five and eleven
17 hundred ten of this chapter, except as otherwise provided. (i) Any local
18 law, ordinance or resolution enacted by any city of less than one
19 million or by any county or school district, imposing the taxes author-
20 ized by this subdivision, shall, notwithstanding any provision of law to
21 the contrary, exclude from the operation of such local taxes all sales
22 of tangible personal property for use or consumption directly and
23 predominantly in the production of tangible personal property, gas,
24 electricity, refrigeration or steam, for sale, by manufacturing, proc-
25 essing, generating, assembly, refining, mining or extracting; and all
26 sales of tangible personal property for use or consumption predominantly
27 either in the production of tangible personal property, for sale, by
28 farming or in a commercial horse boarding operation, or in both; and,
29 unless such city, county or school district elects otherwise, shall omit
30 the provision for credit or refund contained in clause six of subdivi-
31 sion (a) or subdivision (d) of section eleven hundred nineteen of this
32 chapter. (ii) Any local law, ordinance or resolution enacted by any
33 city, county or school district, imposing the taxes authorized by this
34 subdivision, shall omit the residential solar energy systems equipment
35 exemption provided for in subdivision (ee) [7] and the clothing and foot-
36 wear exemption provided for in paragraph thirty of subdivision (a) [~~and~~
37 ~~the qualified empire zone enterprise exemptions provided for in subdivi-~~
38 ~~sion (z)] of section eleven hundred fifteen of this chapter, unless such~~
39 ~~city, county or school district elects otherwise as to either such resi-~~
40 ~~dential solar energy systems equipment exemption or such clothing and~~
41 ~~footwear exemption [or such qualified empire zone enterprise exemptions;~~
42 ~~provided that if such a city having a population of one million or more~~
43 ~~in which the taxes imposed by section eleven hundred seven of this chap-~~
44 ~~ter are in effect enacts the resolution described in subdivision (k) of~~
45 ~~this section or repeals such resolution or enacts the resolution~~
46 ~~described in subdivision (l) of this section or repeals such resolution~~
47 ~~or enacts the resolution described in subdivision (n) of this section or~~
48 ~~repeals such resolution, such resolution or repeal shall also be deemed~~
49 ~~to amend any local law, ordinance or resolution enacted by such a city~~
50 ~~imposing such taxes pursuant to the authority of this subdivision,~~
51 ~~whether or not such taxes are suspended at the time such city enacts its~~
52 ~~resolution pursuant to subdivision (k), (l) or (n) of this section or at~~
53 ~~the time of any such repeal; provided, further, that any such local law,~~
54 ~~ordinance or resolution and section eleven hundred seven of this chap-~~
55 ~~ter, as deemed to be amended in the event a city of one million or more~~
56 ~~enacts a resolution pursuant to the authority of subdivision (k), (l) or~~

1 ~~(n) of this section, shall be further amended, as provided in section~~
2 ~~twelve hundred eighteen of this subpart, so that the residential solar~~
3 ~~energy systems equipment exemption or the clothing and footwear~~
4 ~~exemption or the qualified empire zone enterprise exemptions in any such~~
5 ~~local law, ordinance or resolution or in such section eleven hundred~~
6 ~~seven are the same, as the case may be, as the residential solar energy~~
7 ~~systems equipment exemption provided for in subdivision (ee), the cloth-~~
8 ~~ing and footwear exemption in paragraph thirty of subdivision (a) or the~~
9 ~~qualified empire zone enterprise exemptions in subdivision (z) of~~
10 ~~section eleven hundred fifteen of this chapter].~~

11 § 35. Paragraph 4 of subdivision (a) of section 1210 of the tax law,
12 as amended by section 5 of part SS1 of chapter 57 of the laws of 2008,
13 is amended to read as follows:

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

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

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

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

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

1 restriction and notice requirement in section twelve hundred twenty-
2 three of this article shall also apply.

3 § 38. Subdivision (1) of section 1210 of the tax law is REPEALED.

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

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

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

37 (a) Any school district which is coterminous with, partly within or
38 wholly within a city having a population of less than one hundred twen-
39 ty-five thousand, is hereby authorized and empowered, by majority vote
40 of the whole number of its school authorities, to impose for school
41 district purposes, within the territorial limits of such school district
42 and without discrimination between residents and nonresidents thereof,
43 the taxes described in subdivision (b) of section eleven hundred five
44 (but excluding the tax on prepaid telephone calling services) and the
45 taxes described in clauses (E) and (H) of subdivision (a) of section
46 eleven hundred ten, including the transitional provisions in subdivision
47 (b) of section eleven hundred six of this chapter, so far as such
48 provisions can be made applicable to the taxes imposed by such school
49 district and with such limitations and special provisions as are set
50 forth in this article, such taxes to be imposed at the rate of one-half,
51 one, one and one-half, two, two and one-half or three percent which rate
52 shall be uniform for all portions and all types of receipts and uses
53 subject to such taxes. In respect to such taxes, all provisions of the
54 resolution imposing them, except as to rate and except as otherwise
55 provided herein, shall be identical with the corresponding provisions in
56 such article twenty-eight of this chapter, including the applicable

1 definition and exemption provisions of such article, so far as the
2 provisions of such article twenty-eight of this chapter can be made
3 applicable to the taxes imposed by such school district and with such
4 limitations and special provisions as are set forth in this article. The
5 taxes described in subdivision (b) of section eleven hundred five (but
6 excluding the tax on prepaid telephone calling service) and clauses (E)
7 and (H) of subdivision (a) of section eleven hundred ten, including the
8 transitional provision in subdivision (b) of such section eleven hundred
9 six of this chapter, may not be imposed by such school district unless
10 the resolution imposes such taxes so as to include all portions and all
11 types of receipts and uses subject to tax under such subdivision (but
12 excluding the tax on prepaid telephone calling service) and clauses.
13 Provided, however, that, where a school district imposes such taxes,
14 such taxes shall omit the ~~[exemptions provided for in subdivision (z) of~~
15 ~~section eleven hundred fifteen]~~ provision for refund or credit contained
16 in subdivision (d) of section eleven hundred nineteen of this chapter
17 with respect to such taxes described in such subdivision (b) of section
18 eleven hundred five unless such school district elects to provide such
19 ~~[exemptions]~~ provision or, if so elected, to repeal such ~~[exemptions]~~
20 provision.

21 (e) A resolution imposing a tax pursuant to this section, increasing
22 or decreasing the rate of such tax, or repealing or suspending such tax
23 must go into effect only on one of the following dates: March first,
24 June first, September first or December first; provided, that a resolu-
25 tion providing for the ~~[exemptions described in subdivision (z) of~~
26 ~~section eleven hundred fifteen]~~ refund or credit described in subdivi-
27 sion (d) of section eleven hundred nineteen of this chapter or repealing
28 such ~~[exemptions so provided]~~ provision must go into effect only on
29 March first. No such resolution shall be effective unless a certified
30 copy of such resolution is mailed by registered or certified mail to the
31 commissioner at the commissioner's office in Albany at least ninety days
32 prior to the date it is to become effective. However, the commissioner
33 may waive and reduce such ninety-day minimum notice requirement to a
34 mailing of such certified copy by registered or certified mail within a
35 period of not less than thirty days prior to such effective date if the
36 commissioner deems such action to be consistent with the commissioner's
37 duties under section twelve hundred fifty of this article and the
38 commissioner acts by resolution.

39 § 41. Notwithstanding any provision of state or local law, ordinance
40 or resolution to the contrary:

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

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

53 § 42. Subdivision (m) of section 14 of the tax law is REPEALED.

54 § 43. The tax law is amended by adding a new section 17 to read as
55 follows:

1 § 17. Empire zones tax benefits report. (a) The department of taxation
2 and finance must publish an empire zones tax benefits report annually by
3 January thirty-first. The first report must be published by January
4 thirty-first, two thousand thirteen.

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

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

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

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

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

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

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

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

28 § 44. This act shall take effect immediately, provided, however, that:

29 (a) sections eleven through twenty-two of this act shall apply to
30 taxable years beginning on and after January 1, 2008;

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

38 (c) section thirty-three of this act shall take effect April 1, 2009;

39 (d) section forty-two of this act shall take effect on January 1,
40 2012; and

41 (e) the amendments to subdivision (u) of section 957 of the general
42 municipal law made by section one of this act shall not affect the
43 repeal of such subdivision and shall be deemed repealed therewith.

44 PART T-1

45 Section 1. Paragraph b of subdivision 1 of section 502 of the tax
46 law, as amended by section 1 of part E of chapter 60 of the laws of
47 2007, is amended to read as follows:

48 b. Every automotive fuel carrier shall apply to the commissioner for a
49 special certificate of registration, in place of the certificate of
50 registration described in paragraph a of this subdivision, for each
51 motor vehicle operated or to be operated by him on the public highways
52 in this state to transport automotive fuel. Provided, however, a special
53 certificate of registration shall not be required under this paragraph
54 for a tractor or other self-propelled device which, except with respect

1 to the fuel in the ordinary fuel tank intended for its propulsion,
2 transports automotive fuel solely by means of a trailer, dolly or other
3 device drawn by such tractor or other self-propelled device if a certifi-
4 cate of registration prescribed by paragraph a of this subdivision has
5 been issued for the self-propelled device. Application shall be made
6 upon an application form prescribed by the commissioner. The applica-
7 tion shall be accompanied by a fee of ~~[five]~~ **fifteen** dollars for each
8 trailer, semi-trailer, dolly or other device ~~[and fifteen dollars for~~
9 ~~each self-propelled device]~~ listed in the application. The commissioner
10 shall issue without further charge such special certificate of registra-
11 tion for each motor vehicle listed in the application or a consolidated
12 certificate of registration for all or any portion of such vehicles of
13 such carrier. All of the provisions of this article with respect to
14 certificates of registration shall be applicable to the special certifi-
15 cates of registration issued to automotive fuel carriers under this
16 paragraph as if those provisions had been set forth in full in this
17 paragraph and expressly referred to the special certificates of regis-
18 tration required by this paragraph except to the extent that any such
19 provision is either inconsistent with a provision of this paragraph or
20 not relevant to the certificates of registration required by this para-
21 graph. Any certificate of registration shall not be transferable, and
22 shall be valid until revoked, suspended or surrendered. Such special
23 certificate of registration shall be maintained in the carrier's regular
24 place of business. Nothing contained in this paragraph shall in any way
25 exempt an automotive fuel carrier from payment of the taxes imposed
26 pursuant to this article.

27 § 2. Subdivision 8 of section 509 of the tax law, as amended by
28 section 5 of part E of chapter 60 of the laws of 2007, is amended to
29 read as follows:

30 8. To issue replacement certificates of registration at such times as
31 the commissioner may deem necessary for the proper and efficient
32 enforcement of the provisions of this article, but not more often than
33 once every year and to require the surrender of the then outstanding
34 certificates of registration. All of the provisions of this article with
35 respect to certificates of registration shall be applicable to replace-
36 ment certificates of registration issued hereunder, except that the
37 replacement certificate of registration shall be issued upon payment of
38 a fee of ~~[four]~~ **fifteen** dollars for each motor vehicle and ~~[two dollars]~~
39 for any trailer, semi-trailer, dolly or other device drawn thereby for
40 which a certificate of registration is required to be issued under this
41 article;

42 § 3. This act shall take effect immediately.

43 PART U-1

44 Section 1. Subdivision (b) of section 1101 of the tax law is amended
45 by adding a new paragraph 34 to read as follows:

46 (34) Transportation service. The service of transporting, carrying or
47 conveying a person or persons by livery service; whether to a single
48 destination or to multiple destinations; and whether the compensation
49 paid by or on behalf of the passenger is based on mileage, trip, time
50 consumed or any other basis. A service that begins and ends in this
51 state is deemed intra-state even if it passes outside this state during
52 a portion of the trip. However, transportation service does not include
53 transportation of persons in connection with funerals. Transportation
54 service includes transporting, carrying, or conveying property of the

1 person being transported, whether owned by or in the care of such
2 person. In addition to what is included in the definition of "receipt"
3 in paragraph three of this subdivision, receipts from the sale of trans-
4 portation service subject to tax include any handling, carrying,
5 baggage, booking service, administrative, mark-up, additional, or other
6 charge, of any nature, made in conjunction with the transportation
7 service. Livery service means service provided by limousine, black car
8 or other motor vehicle, with a driver, but excluding a taxicab and a
9 bus, and excluding any scheduled public service. Limousine means a vehi-
10 cle with a seating capacity of up to fourteen persons, excluding the
11 driver. Black car means a for-hire vehicle dispatched from a central
12 facility.

13 § 2. Subdivision (c) of section 1105 of the tax law is amended by
14 adding a new paragraph 10 to read as follows:

15 (10) Transportation service, whether or not any tangible personal
16 property is transferred in conjunction therewith, and regardless of
17 whether the charge is paid in this state or out of state so long as the
18 service is provided in this state.

19 § 3. Section 1106 of the tax law is amended by adding a new subdivi-
20 sion (1) to read as follows:

21 (1) The tax imposed by paragraph ten of subdivision (c) of section
22 eleven hundred five of this part must be paid with respect to receipts
23 from all sales of services on or after the effective date of such para-
24 graph although rendered or agreed to be rendered under a prior contract.
25 Where a service is sold on a monthly, quarterly, yearly, or other term
26 basis, the charge for the service will be subject to the tax imposed by
27 that paragraph to the extent that the charge is applicable to any period
28 on or after the date the tax becomes effective, and the charge must be
29 apportioned on the basis of the ratio of the number of days falling
30 within the period to the total number of days in the full term or peri-
31 od.

32 § 4. Section 1111 of the tax law is amended by adding a new subdivi-
33 sion (o) to read as follows:

34 (o) (1) If a transportation service subject to tax under paragraph ten
35 of subdivision (c) of section eleven hundred five of this part is
36 provided by vehicle, and the owner or lessor of the vehicle leases or
37 rents the vehicle to an unrelated person who provides the transportation
38 service, such as a limousine driver who drives a limousine owned by
39 another person, then (i) the owner or lessor is deemed to provide the
40 transportation service during the day or other period that the unrelated
41 person uses the vehicle to provide the service, (ii) the owner or lessor
42 is deemed to be the vendor of the service provided by the unrelated
43 person, (iii) the tax imposed by such paragraph ten is deemed to be
44 imposed on the unrelated person, (iv) the owner or lessor, as vendor,
45 must collect the tax from the unrelated person, based on the local
46 jurisdiction where the driver takes delivery of the vehicle and pay over
47 such tax required to be collected with its returns required to be filed
48 under this article, and (v) the receipts subject to the tax equal two
49 hundred percent of the amount that the owner or lessor charges the unre-
50 lated person for the use of the vehicle during the day or other period,
51 including any charge related to insurance, maintenance, repairs, fuel,
52 the use, rental or economic value of any vehicle or business license,
53 and any other charge made by the owner or lessor to the unrelated person
54 for the day or other period, regardless of whether the unrelated person
55 transported, carried or conveyed any person or earned any fares with
56 that vehicle during that day or other period.

1 (2) Notwithstanding any law to the contrary:

2 (i) Any municipality or public corporation that establishes or regu-
3 lates black car, limousine or other vehicle service fares must adjust
4 those fares to include therein the tax imposed by paragraph ten of
5 subdivision (c) of section eleven hundred five of this part and the
6 taxes imposed by other sections of this part and pursuant to the author-
7 ity of article twenty-nine of this chapter on the services taxed by such
8 paragraph ten and must require that any meters or other devices in the
9 vehicles or otherwise that measure fares be adjusted to include these
10 taxes, as the same are from time to time imposed and as the rates of
11 those taxes may change.

12 (ii) Any person that sells the services described in paragraph one of
13 this subdivision must adjust any meters or other devices in the vehicles
14 or otherwise that measure fares so that they timely reflect any change
15 in the rates of the taxes described in subparagraph (i) of this para-
16 graph. Neither the failure of a municipal or other public corporation to
17 adjust fares nor the failure of any person to adjust the meters or
18 devices will relieve any person from the obligation to collect and pay
19 or pay over such taxes timely, at the correct combined rate.

20 (3) For purposes of this subdivision, "unrelated person" means a
21 person other than a related person as defined for purposes of section
22 fourteen of this chapter.

23 § 5. Section 1213 of the tax law, as amended by chapter 651 of the
24 laws of 1999, is amended to read as follows:

25 § 1213. Deliveries outside the jurisdiction where sale is made. Where
26 a sale of tangible personal property or services, including prepaid
27 telephone calling services, but not including other services described
28 in subdivision (b) of section eleven hundred five of this chapter,
29 including an agreement therefor, is made in any city, county or school
30 district, but the property sold, the property upon which the services
31 were performed or prepaid telephone calling or other service is or will
32 be delivered to the purchaser elsewhere, such sale shall not be subject
33 to tax by such city, county or school district. However, if delivery
34 occurs or will occur in a city, county or school district imposing a tax
35 on the sale or use of such property, prepaid telephone calling or other
36 services, the vendor shall be required to collect from the purchaser, as
37 provided in section twelve hundred fifty-four of this article, the
38 aggregate sales or compensating use taxes imposed by the city, if any,
39 county and school district in which delivery occurs or will occur, for
40 distribution by the commissioner to such taxing jurisdiction or juris-
41 dictions. For the purposes of this section delivery shall be deemed to
42 include transfer of possession to the purchaser and the receiving of the
43 property or of the service, including prepaid telephone calling service,
44 by the purchaser. Notwithstanding the foregoing, where a transportation
45 service described in paragraph ten of subdivision (c) of section eleven
46 hundred five of this chapter begins in one jurisdiction but ends in
47 another jurisdiction, any tax imposed by this article shall be due the
48 jurisdiction or jurisdictions where the service commenced.

49 § 6. This act shall take effect June 1, 2009.

50 PART V-1

51 Section 1. This act enacts into law major components of legislation
52 which are necessary to implement the state fiscal plan for the 2009-2010
53 state fiscal year. Each component is wholly contained within a Subpart
54 identified as Subparts A through J. The effective date for each partic-

1 ular provision contained within such Subpart is set forth in the last
2 section of such Subpart. Any provision in any section contained within a
3 Subpart, including the effective date of the Subpart, which makes a
4 reference to a section "of this act", when used in connection with that
5 particular component, shall be deemed to mean and refer to the corre-
6 sponding section of the Subpart in which it is found. Section three of
7 this Part sets forth the general effective date of this Part.

8 SUBPART A

9 Section 1. Section 1135 of the tax law is amended by adding a new
10 subdivision (h) to read as follows:

11 (h) Notwithstanding the provisions of section three hundred five and
12 three hundred nine of the state technology law or any other law, the
13 commissioner may require any person who has elected to maintain in an
14 electronic format any portion of the records required to be maintained
15 by that person under this article, to make the electronic records avail-
16 able and accessible to the commissioner, notwithstanding that the
17 records are also maintained in a hard copy format.

18 § 2. Section 1145 of the tax law is amended by adding a new subdivi-
19 sion (i) to read as follows:

20 (i) Any person required to make or maintain records under this article
21 (but not including the records required under section eleven hundred
22 forty-two-A of this part) who fails to make or maintain or make avail-
23 able to the commissioner these records is subject to a penalty not to
24 exceed one thousand dollars for the first quarter or part thereof for
25 which the failure occurs and not to exceed five thousand dollars for
26 each additional quarterly period or part thereof for which the failure
27 occurs. This penalty is in addition to any other penalty provided for in
28 this article but may not be imposed and collected more than once for
29 failures for the same quarterly period or part thereof. If the commis-
30 sioner determines that a failure to make or maintain or make available
31 records in any quarter was entirely due to reasonable cause and not to
32 willful neglect, the commissioner must remit the penalty imposed for
33 that quarter. These penalties will be paid and disposed of in the same
34 manner as other revenues from this article. These penalties will be
35 determined, assessed, collected, paid and enforced in the same manner as
36 the tax imposed by this article, and all the provisions of this article
37 relating to tax will be deemed also to apply to the penalties imposed by
38 this subdivision. For purposes of the penalty imposed by this subdivi-
39 sion, a person will be considered to have failed to make or maintain the
40 required records when the records made or maintained by that person for
41 a quarterly period make it virtually impossible to verify sales receipts
42 or the taxability of those receipts and to conduct a complete audit.

43 § 3. Section 1145 of the tax law is amended by adding a new subdivi-
44 sion (j) to read as follows:

45 (j) Any person required to make or maintain records under this article
46 who fails to present and make available these records in an auditable
47 form is subject to a penalty not to exceed one thousand dollars for each
48 quarterly period or part thereof for which records maintained by that
49 person are not presented and made available by that person in auditable
50 form, even if these records are adequate to verify credits, receipts,
51 and the taxability thereof and to perform a complete audit. This penalty
52 is in addition to any other penalty provided for in this article, but
53 will not be imposed and collected more than once for these failures for
54 the same quarterly period or part thereof. If the commissioner deter-

1 mines that any failure described in this subdivision for a quarterly
2 period was entirely due to reasonable cause and not to willful neglect,
3 the commissioner must remit the penalty imposed for that quarter. The
4 penalties imposed by this subdivision will be paid and disposed of in
5 the same manner as other revenues from this article. These penalties
6 will be determined, assessed, collected, paid and enforced in the same
7 manner as the tax imposed by this article, and all the provisions of
8 this article relating to tax will be deemed also to apply to the penal-
9 ties imposed by this subdivision. For purposes of the penalty imposed by
10 this subdivision, a person will be considered to have failed to present
11 and make records available in auditable form when the records presented
12 by that person for that quarter lack sufficient organization, such as by
13 date, invoice number, sales receipts, or sequential numbering, or are
14 otherwise inadequate (without reorganizing, reordering or otherwise
15 rearranging the records into an auditable form) to permit direct recon-
16 ciliation of the receipts, invoices or other source documents with the
17 entries for the quarterly period in the books and records and on the
18 returns of that person.

19 § 4. Section 1145 of the tax law is amended by adding a new subdivi-
20 sion (k) to read as follows:

21 (k) Any person who, having elected to maintain in an electronic format
22 any portion or all of the records he or she is required to make and
23 maintain by this article, fails to present and make these records avail-
24 able and accessible to the commissioner in electronic format, is subject
25 to a penalty not to exceed five thousand dollars for each quarterly
26 period or part thereof for which these electronic records are not
27 presented and made available and accessible upon request, notwithstand-
28 ing that the records may also be maintained and available in hard copy
29 format. This penalty is in addition to any other penalty provided for in
30 this article, but may not be imposed and collected more than once for a
31 failure for the same quarterly period or part thereof. Provided, howev-
32 er, nothing in this subdivision will prevent the separate imposition, if
33 applicable, of any penalty imposed by subdivision (i) or (j) of this
34 section for the same quarterly period or part thereof. If the commis-
35 sioner determines that the failure to present and make electronically
36 maintained records available and accessible for a quarterly period was
37 entirely due to reasonable cause and not to willful neglect, the commis-
38 sioner must remit the penalty imposed for that quarter. These penalties
39 will be paid and disposed of in the same manner as other revenues from
40 this article. These penalties will be determined, assessed, collected,
41 paid and enforced in the same manner as the tax imposed by this article,
42 and all the provisions of this article relating to tax will be deemed
43 also to apply to the penalty imposed by this subdivision. For purposes
44 of the penalty imposed by this subdivision, a failure to present and
45 make available and accessible a record maintained in electronic format
46 includes not only the denial of access to the requested records that
47 were maintained electronically, but also the failure to make available
48 to the commissioner the information, knowledge, or means necessary to
49 access and otherwise use the electronically maintained records in the
50 inspection and examination of these records.

51 § 5. This act shall take effect immediately and apply to failures
52 occurring on and after such date, except that subdivision (i) of section
53 1145 of the tax law, as added by section two of this act, shall only
54 apply for records required to be made and maintained for sales tax quar-
55 terly periods commencing on or after such date.

1

SUBPART B

2 Section 1. Subsection (g) of section 685 of the tax law, as amended by
3 chapter 9 of the laws of 1976, is amended to read as follows:

4 (g) Willful failure to collect and pay over tax.-- Any person required
5 to collect, truthfully account for, and pay over the tax imposed by this
6 article who willfully fails to collect such tax or truthfully account
7 for and pay over such tax or willfully attempts in any manner to evade
8 or defeat the tax or the payment thereof, shall, in addition to other
9 penalties provided by law, be liable to a penalty equal to the sum of
10 (i) the total amount of the tax evaded, or not collected, or not
11 accounted for and paid over, and (ii) the interest that has accrued on
12 the total amount of tax evaded on the date this penalty is first imposed
13 until this penalty is paid with interest thereon. No addition to tax
14 under subsections (b) or (e) of this section shall be imposed for any
15 offense to which this subsection applies. The tax commission shall have
16 the power, in its discretion, to waive, reduce or compromise any penalty
17 under this subsection.
18 § 2. This act shall take effect immediately and shall apply to taxable
19 years beginning on or after January 1, 2009.

20

SUBPART C

21 Section 1. Paragraphs (b) and (e) of subdivision 3-a of section 170 of
22 the tax law, as added by chapter 282 of the laws of 1986, are amended to
23 read as follows:

24 (b) A request for a conciliation conference shall be applied for in
25 the manner as set forth by regulation of the commissioner and, notwith-
26 standing any provision of law to the contrary, shall suspend the running
27 of the period of limitations for the filing of a petition protesting
28 such notice and requesting a hearing, except that the recipient of a
29 written notice described in paragraph (h) of this subdivision will have
30 thirty days from the time such request of discontinuance is made to
31 petition the division of tax appeals for a hearing. ~~[To discontinue the~~
32 ~~conciliation proceeding, the recipient of the notice shall make a~~
33 ~~request in writing and such person shall have ninety days from the time~~
34 ~~such request of discontinuance is made to petition the division of tax~~
35 ~~appeals for a hearing.]~~ The commissioner shall notify the division of
36 tax appeals when any person requests a conference or requests to discon-
37 tinue such conference.

38 (e) A conciliation order shall be rendered within thirty days after
39 the proceeding is concluded and such order shall, in the absence of a
40 showing of fraud, malfeasance or misrepresentation of a material fact,
41 be binding upon the department and the person who requested the confer-
42 ence, except such order shall not be binding on such person if such
43 person petitions for the hearing provided for under this chapter within
44 ninety days after the conciliation order is issued, or, for a concil-
45 iation order affirming a written notice described in paragraph (h) of
46 this subdivision, within thirty days after the conciliation order is
47 issued, notwithstanding any other provision of law to the contrary.

48 § 2. Subdivision 3-a of section 170 the tax law is amended by adding a
49 new paragraph (h) to read as follows:

50 (h) Notwithstanding any provision of law to the contrary, any person
51 who seeks review by the bureau of conciliation and mediation services of
52 a written notice that advises that person of (i) the proposed cancella-
53 tion, revocation, or suspension of a license, permit, registration, or

1 other credential issued under the authority of this chapter, (ii) the
2 denial of an application for a license, permit, registration, or other
3 credential issued under the authority of this chapter excluding an
4 application to renew a certificate of authority filed pursuant to para-
5 graph five of subdivision (a) of section one thousand one hundred thir-
6 ty-four of this chapter and any other law, or, (iii) the imposition of a
7 fraud penalty under this chapter, must request a conciliation conference
8 within thirty days of receipt of that notice.

9 § 3. Section 2008 of the tax law, as amended by chapter 401 of the
10 laws of 1987, is amended to read as follows:

11 § 2008. Commencement of proceedings. 1. All proceedings in the divi-
12 sion of tax appeals shall be commenced by the filing of a petition with
13 the division of tax appeals protesting any written notice of the divi-
14 sion of taxation which has advised the petitioner of a tax deficiency, a
15 determination of tax due, a denial of a refund or credit application, a
16 cancellation, revocation or suspension of a license, permit or registra-
17 tion, a denial of an application for a license, permit or registration
18 or any other notice which gives a person the right to a hearing in the
19 division of tax appeals under this chapter or other law.

20 2. Expedited hearings. (a) Notwithstanding any provision of law to the
21 contrary, any person who receives a written notice that advises that
22 person of (i) the proposed cancellation, revocation, or suspension of a
23 license, permit, registration, or other credential issued under the
24 authority of this chapter, (ii) the denial of an application for a
25 license, permit, registration, or other credential issued under the
26 authority of this chapter excluding an application to renew a certif-
27 icate of authority filed pursuant to paragraph five of subdivision (a)
28 of section one thousand one hundred thirty-four of this chapter and any
29 other law, or, (iii) the imposition of a fraud penalty under this chap-
30 ter, must file a petition with the division of tax appeals within thirty
31 days of receipt of that notice (unless that person has requested a
32 conciliation conference as provided in subdivision three-a of section
33 one hundred seventy of this chapter), or the cancellation, revocation,
34 suspension, denial, or penalty will be permanently and irrevocably
35 fixed. An expedited hearing must be scheduled within ten business days
36 of receipt of the petition.

37 (b) In the case of any expedited hearing provided for under this
38 subdivision, the administrative law judge must render a decision within
39 thirty days from receipt of the petition. When exception is taken to an
40 administrative law judge's determination, the tax appeals tribunal must
41 issue its decision within three months from receipt of the petition. Any
42 request by the petitioner that delays the expedited hearing process will
43 extend the time limitations imposed on the tribunal or the administra-
44 tive law judge to issue a decision or determination. The tribunal or
45 administrative law judge may not approve any postponement or other delay
46 without a showing of good cause by the moving party and must render a
47 default determination or decision against the dilatory party for any
48 unwarranted delay.

49 (c) In any case where an expedited hearing is required under this
50 subdivision, if the commissioner believes that the collection of any tax
51 or the public safety will be jeopardized by delay, he or she may imme-
52 diately cancel, revoke, or suspend a license, permit, registration, or
53 other credential issued under the authority of this chapter before the
54 commencement of those proceedings. Written notice of the cancellation,
55 revocation, or suspension must be given to the licensee, permittee,
56 registrant, or otherwise credentialed person by registered or certified

1 mail or personal service as provided by the civil practice law and
2 rules. The license, permit, registration, or other credential will be
3 permanently and irrevocably cancelled, revoked, or suspended, unless the
4 licensee, permittee, registrant, or otherwise credentialed person, with-
5 in thirty days of receipt of the written notice, files a petition with
6 the division of tax appeals to review the cancellation, revocation, or
7 suspension. An expedited hearing must be scheduled within ten business
8 days of receipt of the petition.

9 § 4. This act shall take effect immediately and shall apply to notices
10 issued on and after such date.

11 SUBPART D

12 Section 1. Paragraph a of subdivision twenty-sixth of section 171 of
13 the tax law, as amended by section 1 of part M3 of chapter 62 of the
14 laws of 2003, is amended to read as follows:

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

31 § 2. Subsections (a) and (j) of section 684 of the tax law, as amended
32 by section 6 of part R of chapter 85 of the laws of 2002, are amended to
33 read as follows:

34 (a) General.--If any amount of income tax is not paid on or before the
35 last date prescribed in this article for payment, interest on such
36 amount at the underpayment rate set by the commissioner pursuant to
37 section six hundred ninety-seven of this part, or if no rate is set, at
38 the rate of [~~six per cent~~] seven and one-half percent per annum shall be
39 paid for the period from such last date to the date paid, whether or not
40 any extension of time for payment was granted. Interest under this
41 subsection shall not be paid if the amount thereof is less than one
42 dollar. If the time for filing of a return of tax withheld by an employ-
43 er is extended, the employer shall pay interest for the period for which
44 the extension is granted and may not charge such interest to the employ-
45 ee.

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

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

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

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

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

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

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

45 § 6. Subsections (a) and (j) of section 1084 of the tax law, as
46 amended by section 123 and subsection (j) as relettered by section 148
47 of chapter 61 of the laws of 1989, are amended to read as follows:

48 (a) General.--If any amount of tax is not paid on or before the last
49 date prescribed in article nine or nine-a of this chapter for payment,
50 interest on such amount at the underpayment rate set by the commissioner
51 [~~of taxation and finance~~] pursuant to section one thousand ninety-six of
52 this article, or if no rate is set, at the rate of [~~six~~] seven and one-
53 half percent per annum shall be paid for the period from such last date
54 to the date paid, whether or not any extension of time for payment was
55 granted. Interest under this subsection shall not be paid if the amount
56 thereof is less than one dollar.

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

§ 7. Paragraph 1 of subsection (c) of section 1085 of the tax law, as amended by chapter 57 of the laws of 1993, is amended to read as follows:

(1) If any taxpayer fails to file a declaration of estimated tax under article nine-A of this chapter, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this article, or if no rate is set, at the rate of [~~six~~] seven and one-half percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the third month following the close of the taxable year. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of the preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety-one percent of the tax shown on the return for the taxable year (or if no return was filed, ninety-one percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty percent" were substituted for "ninety-one percent" each place it appears in this subsection, the addition to the tax shall be equal to seventy-five percent of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the termination of existence of the taxpayer.

§ 8. Paragraph 1 of subsection (e) of section 1096 of the tax law, as amended by section 3 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) Authority to set interest rates.---The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant to sections two hundred thirteen, two hundred thirteen-b, two hundred fifty-eight, two hundred sixty-three, two hundred ninety-four, one thousand eighty-four, one thousand eighty-five, one thousand eighty-eight, fourteen hundred sixty-one and fourteen hundred sixty-three of this chapter, but if no such rate or rates of interest are set, such overpayment rate [~~or rates~~] shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subsection, but the underpayment rate shall not be less than [~~six~~] seven and one-half percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with

1 respect to interest computed or computable for periods or portions of
2 periods occurring in the period during which such rates are in effect.

3 § 9. Subparagraph (B) of paragraph 2 of subsection (e) of section 1096
4 of the tax law, as amended by section 11 of part R of chapter 85 of the
5 laws of 2002, is amended to read as follows:

6 (B) Underpayment rate. The underpayment rate set under this subsection
7 shall be the sum of (i) the federal short-term rate as provided under
8 paragraph three of this subsection, plus (ii) ~~[five]~~ seven percentage
9 points.

10 § 10. Subdivision (d) of section 1139 of the tax law, as amended by
11 chapter 61 of the laws of 1989, is amended to read as follows:

12 (d) ~~(1)~~ Except in respect to an overpayment made on a return described
13 in paragraph ~~[(ii)]~~ two of subdivision (a) of section eleven hundred
14 thirty-six ~~[hereof]~~ of this part or on a return described in subdivision
15 (c) of section eleven hundred thirty-seven-A of this part, interest
16 shall be allowed and paid upon any refund made or credit allowed pursu-
17 ant to this section except as otherwise provided in paragraph two of
18 this subdivision or subdivision (e) of this section and except that no
19 interest shall be allowed or paid if the amount thereof would be less
20 than one dollar. Such interest shall be at the overpayment rate set by
21 the commissioner ~~[of taxation and finance]~~ pursuant to section eleven
22 hundred forty-two of this part, or if no rate is set, at the rate of six
23 ~~[per cent]~~ percent per annum from the date when the tax, penalty or
24 interest refunded or credited was paid to a date preceding the date of
25 the refund check by not more than thirty days, provided, however, that
26 for the purposes of this subdivision any tax paid before the last day
27 prescribed for its payment shall be deemed to have been paid on such
28 last day. In the case of a refund or credit claimed on a return of tax
29 which is filed after the last date prescribed for filing such return
30 (determined with regard to extensions), or claimed on an application for
31 refund or credit, no interest shall be allowed or paid for any day
32 before the date on which the return or application is filed. For
33 purposes of this subdivision, a return or application for refund or
34 credit shall not be treated as filed until it is filed in processible
35 form. A return or application is in a processible form if ~~[such return]~~
36 it is filed on a permitted form, and ~~[such return]~~ contains the taxpay-
37 er's name, address and identifying number and the required signatures,
38 and sufficient required information (whether on the return or applica-
39 tion or on required attachments) to permit the mathematical verification
40 of tax liability shown on the return or refund or credit claimed on the
41 application.

42 (2) If a refund is made or a credit is allowed within three months
43 after the last date prescribed or permitted by extension of time for
44 filing a return on which the refund or credit was claimed or within
45 three months after the return was filed, whichever is later, or within
46 three months after an application for refund or credit is filed on which
47 that refund or credit was claimed, no interest will be allowed or paid
48 on that refund or credit.

49 § 11. Subdivision 9 of section 1142 of the tax law, as amended by
50 section 4 of part M3 of chapter 62 of the laws of 2003, is amended to
51 read as follows:

52 9. To set the overpayment and underpayment rates of interest for
53 purposes of sections eleven hundred thirty-nine and eleven hundred
54 forty-five of this part. Such rates shall be the overpayment and under-
55 payment rates of interest set pursuant to subsection (e) of section one
56 thousand ninety-six of this chapter, but the underpayment rate shall not

1 be less than [~~six~~] seven and one-half percent per annum. Any such rates
2 set by the commissioner shall apply to taxes, or any portion thereof,
3 which remain or become due or overpaid on or after the date on which
4 such rates become effective and shall apply only with respect to inter-
5 est computed or computable for periods or portions of periods occurring
6 in the period during which such rates are in effect. In computing the
7 amount of any interest required to be paid under this article by the
8 commissioner or by the taxpayer, or any other amount determined by
9 reference to such amount of interest, such interest and such amount
10 shall be compounded daily. The preceding sentence shall not apply for
11 purposes of computing the amount of any interest for failure to pay
12 estimated tax under subparagraph (iv) of paragraph one of subdivision
13 (a) of section [~~one thousand one~~] eleven hundred forty-five of this
14 [~~article~~] part.

15 § 12. Subparagraph (ii) of paragraph 1 and paragraph 2 of subdivision
16 (a) of section 1145 of the tax law, as amended by section 12 of part R
17 of chapter 85 of the laws of 2002, are amended to read as follows:

18 (ii) If any amount of tax is not paid on or before the last date
19 prescribed in this article for payment, interest on such amount at the
20 rate of fourteen and one-half percent per annum or at the underpayment
21 rate set by the commissioner pursuant to section eleven hundred forty-
22 two of this part, whichever is greater, shall be paid for the period
23 from such last date to the date paid, whether or not any extension of
24 time for payment was granted. Interest under this subparagraph shall
25 not be paid if the amount thereof is less than one dollar.

26 (2) If the failure to pay or pay over any tax to the commissioner
27 within the time required by this article is due to fraud, in lieu of the
28 penalties and interest provided for in subparagraphs (i) and (ii) of
29 paragraph one of this subdivision, there shall be added to the tax (i) a
30 penalty of fifty percent of the amount of the tax due, plus (ii) inter-
31 est on such unpaid tax at the rate of fourteen and one-half percent per
32 annum or the underpayment rate of interest set by the commissioner
33 pursuant to section eleven hundred forty-two of this part, whichever is
34 greater, for the period beginning on the last day prescribed by this
35 article for the payment of such tax (determined without regard to any
36 extension of time for paying) and ending on the day on which such tax is
37 paid, plus (iii) for the period beginning on the last day prescribed by
38 this article for the payment of such tax (determined without regard to
39 any extension of time for paying) and ending on the day the amount of
40 tax due is finally determined or, if earlier, on the day on which such
41 tax is paid, an amount equal to fifty percent of the interest payable
42 under subparagraph (ii) of this paragraph, on that portion of the unpaid
43 tax which is attributable to fraud.

44 § 13. Subdivision 6 of section 72-0201 of the environmental conserva-
45 tion law, as amended by section 14 of part R of chapter 85 of the laws
46 of 2002, is amended to read as follows:

47 6. In addition to any penalty that may be assessed pursuant to subdi-
48 vision five of this section, there shall be collected interest upon the
49 unpaid amount at the underpayment rate set by the commissioner of taxa-
50 tion and finance pursuant to section one thousand ninety-six of the tax
51 law, minus [~~two~~] four percentage points. Such interest shall accrue
52 thirty days from the date prescribed for fee payment until payment is
53 actually made to the department.

54 § 14. Subparagraph (iii) of paragraph 2 of subsection (a) of section
55 1112 of the insurance law, as amended by section 15 of part R of chapter
56 85 of the laws of 2002, is amended to read as follows:

1 (iii) If any insurer fails to pay all or any part of the initial
2 payment or estimated payment due pursuant to subparagraph (i) or (ii) of
3 this paragraph, it shall be deemed to have made an underpayment. There
4 shall be added to the amount due pursuant to paragraph one of this
5 subsection, an amount at the rate set for underpayments by the commis-
6 sioner of taxation and finance pursuant to section one thousand ninety-
7 six of the tax law, minus ~~[two]~~ four percentage points, or if no rate is
8 set, at the rate of six percent per annum upon the amount of the under-
9 payment for the period of the underpayment. In computing the amount of
10 any interest required to be paid, such interest shall not be compounded.
11 The amount of the underpayment shall be, with respect to the initial
12 payment or any estimated payment, the excess of the amount required to
13 be paid over the amount, if any, paid on or before the last day
14 prescribed for such payment. If the superintendent demands payment of
15 the initial payment or any estimated payment, and if such amount is paid
16 within ten days after the date of such demand, interest on the amount so
17 paid shall not be imposed for the period after the date of such demand.
18 No portion of the interest imposed pursuant to this subparagraph may be
19 waived.

20 § 15. Paragraph (a) of subsection 4 of section 9110 of the insurance
21 law, as amended by section 16 of part R of chapter 85 of the laws of
22 2002, is amended to read as follows:

23 (a) Interest. If any amount of tax is not paid on or before the date
24 prescribed for payment thereof in subsection two of this section, inter-
25 est on such amount of tax at the underpayment rate set by the commis-
26 sioner of taxation and finance pursuant to section one thousand ninety-
27 six of the tax law, plus ~~[three]~~ one percentage ~~[points]~~ point, shall be
28 paid to the superintendent for the period from the date prescribed for
29 payment until the date paid.

30 § 16. Paragraph (a) of subsection 4 of section 9111 of the insurance
31 law, as amended by section 17 of part R of chapter 85 of the laws of
32 2002, is amended to read as follows:

33 (a) Interest. If any amount of tax is not paid on or before the date
34 prescribed for payment thereof in subsection two of this section, inter-
35 est on such amount of tax at the underpayment rate set by the commis-
36 sioner of taxation and finance pursuant to section one thousand ninety-
37 six of the tax law, plus ~~[three]~~ one percentage ~~[points]~~ point, shall be
38 paid to the superintendent for the period from the date prescribed for
39 payment until the date paid.

40 § 17. Paragraph 1 of subsection (d) of section 9111-a of the insurance
41 law, as amended by section 18 of part R of chapter 85 of the laws of
42 2002, is amended to read as follows:

43 (1) Interest. If any amount of tax is not paid on or before the date
44 prescribed for payment thereof in paragraph two of this subsection,
45 interest on such amount of tax at the underpayment rate set by the
46 commissioner of taxation and finance pursuant to section one thousand
47 ninety-six of the tax law, plus ~~[three]~~ one percentage ~~[points]~~ point,
48 shall be paid to the superintendent for the period from the date
49 prescribed for payment until the date paid.

50 § 18. Paragraph 1 of subsection (d) of section 9111-b of the insurance
51 law, as amended by section 19 of part R of chapter 85 of the laws of
52 2002, is amended to read as follows:

53 (1) Interest. If any amount of tax is not paid on or before the date
54 prescribed for payment thereof in paragraph two of this subsection,
55 interest on such amount of tax at the underpayment rate set by the
56 commissioner of taxation and finance pursuant to section one thousand

1 ninety-six of the tax law, plus [~~three~~ one] percentage [~~points~~ point],
2 shall be paid to the superintendent for the period from the date
3 prescribed for payment until the date paid.

4 § 19. Paragraph 1 of subsection (d) of section 9111-c of the insurance
5 law, as amended by section 20 of part R of chapter 85 of the laws of
6 2002, is amended to read as follows:

7 (1) Interest. If any amount of tax is not paid on or before the date
8 prescribed for payment thereof in paragraph two of this subsection,
9 interest on such amount of tax at the underpayment rate set by the
10 commissioner of taxation and finance pursuant to section one thousand
11 ninety-six of the tax law, plus [~~three~~ one] percentage [~~points~~ point],
12 shall be paid to the superintendent for the period from the date
13 prescribed for payment until the date paid.

14 § 20. Subparagraph (i) of paragraph (a) of subdivision 3 of section 77
15 of the lien law, as amended by section 21 of part R of chapter 85 of the
16 laws of 2002, is amended to read as follows:

17 (i) Relief to compel an interim or final accounting by the trustee; to
18 identify and recover trust assets in the hands of any person together
19 with interest accrued thereon from the time of the diversion. Interest
20 shall be computed at the rate equal to the underpayment rate set by the
21 commissioner of taxation and finance pursuant to subsection (e) of
22 section one thousand ninety-six of the tax law, minus [~~two~~ four]
23 percentage points; to set aside as a diversion any unauthorized payment,
24 assignment or other transfer, whether voluntary or involuntary; to
25 enjoin a diversion; to recover damages for breach of trust or partic-
26 ipation therein;

27 § 21. Paragraph (a) of subdivision 8 of section 43.04 of the mental
28 hygiene law, as amended by section 22 of part R of chapter 85 of the
29 laws of 2002, is amended to read as follows:

30 (a) If an estimated payment made for a month to which an assessment
31 applies is less than ninety percent of the actual amount due for such
32 month, interest shall be due and payable to the commissioner of the
33 office of mental retardation and developmental disabilities on the
34 difference between the amount paid and the amount due from the day of
35 the month the estimated payment was due until the date of payment. The
36 rate of interest shall be twelve percent per annum or at the rate of
37 interest set by the commissioner of taxation and finance with respect to
38 underpayments of tax pursuant to subsection (e) of section one thousand
39 ninety-six of the tax law minus [~~two~~ four] percentage points. Interest
40 under this paragraph shall not be paid if the amount thereof is less
41 than one dollar. Interest, if not paid by the due date of the following
42 month's estimated payment, may be collected by the commissioner of the
43 office of mental retardation and developmental disabilities pursuant to
44 paragraph (c) of subdivision six of this section in the same manner as
45 an assessment pursuant to subdivision two of this section.

46 § 22. Paragraph (a) of subdivision 8 of section 43.06 of the mental
47 hygiene law, as amended by section 23 of part R of chapter 85 of the
48 laws of 2002, is amended to read as follows:

49 (a) If an estimated payment made for a month to which an assessment
50 applies is less than ninety percent of the actual amount due for such
51 month, interest shall be due and payable to the commissioner on the
52 difference between the amount paid and the amount due from the day of
53 the month the estimated payment was due until the date of payment. The
54 rate of interest shall be twelve percent per annum or at the rate of
55 interest set by the commissioner of taxation and finance with respect to
56 underpayments of tax pursuant to subsection (e) of section one thousand

1 ninety-six of the tax law minus [~~two~~] four percentage points. Interest
2 under this paragraph shall not be paid if the amount thereof is less
3 than one dollar. Interest, if not paid by the due date of the following
4 month's estimated payment, may be collected by the commissioner pursuant
5 to paragraph (c) of subdivision six of this section in the same manner
6 as an assessment pursuant to subdivision two of this section.

7 § 23. Subparagraph (i) of paragraph (c) of subdivision 20 of section
8 2807-c of the public health law, as amended by section 24 of part R of
9 chapter 85 of the laws of 2002, is amended to read as follows:

10 (i) Interest shall be due and payable to the commissioner by a general
11 hospital or by a payor paying directly to a pool on the difference
12 between the amount paid to a pool and the amount due to such pool by the
13 hospital or payor from the day of the month the payment was due until
14 the date of payment. The rate of interest shall be twelve percent per
15 annum or at the rate of interest set by the commissioner of taxation and
16 finance with respect to underpayments of tax pursuant to subsection (e)
17 of section one thousand ninety-six of the tax law minus [~~two~~] four
18 percentage points. Interest under this paragraph shall not be paid if
19 the amount thereof is less than one dollar. Interest may be collected by
20 the commissioner in the same manner as an arrearage pursuant to this
21 subdivision.

22 § 24. Paragraph (a) of subdivision 8 of section 2807-d of the public
23 health law, as amended by section 25 of part R of chapter 85 of the laws
24 of 2002, is amended to read as follows:

25 (a) If an estimated payment made for a month to which an assessment
26 applies is less than ninety percent of the actual amount due for such
27 month, interest shall be due and payable to the commissioner on the
28 difference between the amount paid and the amount due from the day of
29 the month the estimated payment was due until the date of payment. The
30 rate of interest shall be twelve percent per annum or at the rate of
31 interest set by the commissioner of taxation and finance with respect to
32 underpayments of tax pursuant to subsection (e) of section one thousand
33 ninety-six of the tax law minus [~~two~~] four percentage points. Interest
34 under this paragraph shall not be paid if the amount thereof is less
35 than one dollar. Interest, if not paid by the due date of the following
36 month's estimated payment, may be collected by the commissioner pursuant
37 to paragraph (c) of subdivision six of this section in the same manner
38 as an assessment pursuant to subdivision two of this section.

39 § 25. Subparagraph (i) of paragraph (c) of subdivision 4 of section
40 2807-f of the public health law, as amended by section 26 of part R of
41 chapter 85 of the laws of 2002, is amended to read as follows:

42 (i) If a payment made for a month to which a payment factor applies is
43 less than ninety percent of the actual amount due for such month, inter-
44 est shall be due and payable to the commissioner by a health maintenance
45 organization on the difference between the amount paid and the amount
46 due from the day of the month the payment was due until the date of
47 payment. The rate of interest shall be twelve percent per annum or, if
48 greater, at the rate of interest set by the commissioner of taxation and
49 finance with respect to underpayments of tax pursuant to subsection (e)
50 of section one thousand ninety-six of the tax law minus [~~two~~] four
51 percentage points. Interest under this paragraph shall not be paid if
52 the amount thereof is less than one dollar.

53 § 26. Paragraph (a) of subdivision 8 of section 2807-j of the public
54 health law, as amended by section 27 of part R of chapter 85 of the laws
55 of 2002, is amended to read as follows:

1 (a) If a payment made pursuant to this section or to section twenty-
2 eight hundred seven-s or twenty-eight hundred seven-t of this article
3 for a month to which an allowance applies is less than ninety percent of
4 the amount due or which the commissioner estimates, based on available
5 financial and statistical data, is due for such month, interest shall be
6 due and payable to the commissioner by a designated provider of
7 services, or by a third-party payor, other than a state governmental
8 agency, that has elected to pay an allowance directly, on the difference
9 between the amount paid and the amount due or estimated to be due from
10 the day of the month the payment was due until the date of payment. The
11 rate of interest shall be twelve percent per annum or, if greater, at
12 the rate of interest set by the commissioner of taxation and finance
13 with respect to underpayments of tax pursuant to subsection (e) of
14 section one thousand ninety-six of the tax law minus ~~[two]~~ four percent-
15 age points. Interest under this paragraph shall not be paid if the
16 amount thereof is less than one dollar. Interest due from a designated
17 provider of services, if not paid by the due date of the following
18 month's payment, may be collected by the commissioner pursuant to para-
19 graph (c) of subdivision six of this section in the same manner as an
20 allowance pursuant to subdivision two of this section.

21 § 27. Paragraph (a) of subdivision 8 of section 3614-a of the public
22 health law, as amended by section 28 of part R of chapter 85 of the laws
23 of 2002, is amended to read as follows:

24 (a) If an estimated payment made for a month to which an assessment
25 applies is less than ninety percent of the actual amount due for such
26 month, interest shall be due and payable to the commissioner on the
27 difference between the amount paid and the amount due from the day of
28 the month the estimated payment was due until the date of payment. The
29 rate of interest shall be twelve percent per annum or at the rate of
30 interest set by the commissioner of taxation and finance with respect to
31 underpayments of tax pursuant to subsection (e) of section one thousand
32 ninety-six of the tax law minus ~~[two]~~ four percentage points. Interest
33 under this paragraph shall not be paid if the amount thereof is less
34 than one dollar. Interest, if not paid by the due date of the following
35 month's estimated payment, may be collected by the commissioner pursuant
36 to paragraph (c) of subdivision six of this section in the same manner
37 as an assessment pursuant to subdivision two of this section.

38 § 28. Paragraph (a) of subdivision 8 of section 3614-b of the public
39 health law, as amended by section 29 of part R of chapter 85 of the laws
40 of 2002, is amended to read as follows:

41 (a) If an estimated payment made for a month to which assessment
42 applies is less than ninety percent of the actual amount due for such
43 month, interest shall be due and payable to the commissioner on the
44 difference between the amount paid and the amount due from the day of
45 the month the estimated payment was due until the date of the payment.
46 The rate of interest shall be twelve percent per annum or at the rate of
47 interest set by the commissioner of taxation and finance with respect to
48 underpayment of tax pursuant to subsection (e) of section one thousand
49 ninety-six of the tax law minus ~~[two]~~ four percentage points. Interest
50 under this paragraph shall not be paid if the amount thereof is less
51 than one dollar. Interest, if not paid by the due date of the following
52 month's estimated payment, may be collected by the commissioner pursuant
53 to paragraph (c) of subdivision six of this section in the same manner
54 as an assessment pursuant to subdivision two of this section.

1 § 29. Paragraph (a) of subdivision 7 of section 367-i of the social
2 services law, as amended by section 32 of part R of chapter 85 of the
3 laws of 2002, is amended to read as follows:

4 (a) If an estimated payment made for a month to which an assessment
5 applies is less than ninety percent of the actual amount due for such
6 month, interest shall be due and payable to the commissioner of health
7 on the difference between the amount paid and the amount due from the
8 day of the month the estimated payment was due until the date of
9 payment. The rate of interest shall be twelve percent per annum or at
10 the rate of interest set by the commissioner of taxation and finance
11 with respect to underpayments of tax pursuant to subsection (e) of
12 section one thousand ninety-six of the tax law minus ~~[two]~~ four percent-
13 age points. Interest under this paragraph shall not be paid if the
14 amount thereof is less than one dollar. Interest, if not paid by the due
15 date of the following month's estimated payment, may be collected by the
16 commissioner of health pursuant to paragraph (c) of subdivision five of
17 this section in the same manner as an assessment pursuant to subdivision
18 two of this section.

19 § 30. Subdivision 4 of section 18 of the state finance law, as amended
20 by section 33 of part R of chapter 85 of the laws of 2002, is amended to
21 read as follows:

22 4. Unless provided otherwise by contract, statute or regulation, a
23 debtor that fails to make payment of a debt within the period set forth
24 in subdivision three of this section shall pay, in addition to the
25 amount of debt, the greater of: (a) interest on the outstanding balance
26 of the debt, accruing on the date on which the receipt of the first
27 billing invoice or first notice occurs, computed at the underpayment
28 rate which is in effect on the date which the receipt of the first bill-
29 ing invoice or first billing notice occurs; or (b) a late payment charge
30 of ten dollars. For the purposes of this section, the underpayment rate
31 shall be that rate set by the commissioner of taxation and finance and
32 published in the state register pursuant to subsection (e) of section
33 one thousand ninety-six of the tax law minus ~~[two]~~ four percentage
34 points. With respect to specific classes of debt collected by a state
35 agency, the director of the budget or official of a state agency so
36 designated by the director of the budget may approve the assessment of
37 interest or late payment charges at a date later than the thirtieth day
38 following such debtor's receipt of any billing invoice or notice sent by
39 the state agency.

40 § 31. Subdivisions (a) and (j) of section 11-1784 of the administra-
41 tive code of the city of New York, as amended by section 34 of part R of
42 chapter 85 of the laws of 2002, are amended to read as follows:

43 (a) General. If any amount of income tax is not paid on or before the
44 last date prescribed in this chapter for payment, interest on such
45 amount at the underpayment rate set by the commissioner of taxation and
46 finance pursuant to section 11-1797 of this subchapter, or if no rate is
47 set, at the rate of ~~[six]~~ seven and one-half percent per annum shall be
48 paid for the period from such last date to the date paid, whether or not
49 any extension of time for payment was granted. Interest under this
50 subdivision shall not be paid if the amount thereof is less than one
51 dollar. If the time for filing of a return of tax withheld by an employ-
52 er is extended, the employer shall pay interest for the period for which
53 the extension is granted and may not charge such interest to the employ-
54 ee.

55 (j) Interest on erroneous refund. Any portion of tax or other amount
56 which has been erroneously refunded, and which is recoverable by the

1 commissioner of taxation and finance, shall bear interest at the under-
2 payment rate set by such commissioner pursuant to section 11-1797 of
3 this subchapter, or if no rate is set, at the rate of ~~[six]~~ seven and
4 one-half percent per annum from the date of the payment of the refund,
5 but only if it appears that any part of the refund was induced by fraud
6 or a misrepresentation of a material fact.

7 § 32. Paragraph 1 of subdivision (c) of section 11-1785 of the admin-
8 istrative code of the city of New York, as amended by section 35 of part
9 R of chapter 85 of the laws of 2002, is amended to read as follows:

10 (1) Addition to the tax. Except as otherwise provided in this subdivi-
11 sion and subdivision (d) of this section, in the case of any underpay-
12 ment of estimated tax by an individual, there shall be added to the tax
13 under this chapter for the taxable year an amount determined by applying
14 the underpayment rate established under section 11-1797 of this subchap-
15 ter, or if no rate is set, at the rate of ~~[six]~~ seven and one-half
16 percent per annum, to the amount of the underpayment for the period of
17 the underpayment. Such period shall run from the due date for the
18 required installment to the earlier of the fifteenth day of the fourth
19 month following the close of the taxable year or, with respect to any
20 portion of the underpayment, the date on which such portion is paid. For
21 purposes of determining such date, a payment of estimated tax shall be
22 credited against unpaid required installments in the order in which such
23 installments are required to be paid. There shall be four required
24 installments for each taxable year, due on April fifteenth, June
25 fifteenth and September fifteenth of such taxable year and on January
26 fifteenth of the following taxable year.

27 § 33. Paragraph 1 of subdivision (j) of section 11-1797 of the admin-
28 istrative code of the city of New York, as amended by section 5 of part
29 M3 of chapter 62 of the laws of 2003, is amended to read as follows:

30 (1) Authority to set interest rates. The commissioner of taxation and
31 finance shall set the overpayment and underpayment rates of interest to
32 be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this
33 subchapter, but if no such rates of interest are set, such ~~[rates]~~ over-
34 payment rate shall be deemed to be set at six percent per annum and the
35 underpayment rate shall be deemed to be set at seven and one-half
36 percent per annum. Such rates shall be the rates prescribed by para-
37 graphs two and four of this subdivision, but the underpayment rate shall
38 not be less than ~~[six]~~ seven and one-half percent per annum. Any such
39 rates set by such commissioner shall apply to taxes, or any portion
40 thereof, which remain or become due or overpaid on or after the date on
41 which such rates become effective and shall apply only with respect to
42 interest computed or computable for periods or portions of periods
43 occurring in the period during which such rates are in effect.

44 § 34. Subparagraph (B) of paragraph 2 of subdivision (j) of section
45 11-1797 of the administrative code of the city of New York, as amended
46 by section 37 of part R of chapter 85 of the laws of 2002, is amended to
47 read as follows:

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

52 § 35. This act shall take effect immediately, and shall apply to the
53 interest chargeable or due on taxes or on any other amounts, or any
54 portion thereof, that remain or become due or overpaid on that day,
55 except that:

1 (a) Section ten of this act shall take effect on June 1, 2009, and
2 shall apply to refunds or credits claimed on returns or applications for
3 refund or credit filed on or after that date;

4 (b) Provided, however, that the amendments to paragraph (a) of subdi-
5 vision 8 of section 2807-j of the public health law made by section
6 twenty-six of this act shall not affect the expiration of such section
7 and shall be deemed to expire therewith; and

8 (c) Notwithstanding any other provision of law, for the calendar quar-
9 ter in which this act becomes a law, the department of taxation and
10 finance may provide appropriate general notice of the new interest rates
11 for that calendar quarter within twenty days after the date this act has
12 become a law, without needing to have notice of the rates published in
13 advance in the State Register, and shall cause such a notice to be
14 published in the State Register as soon as is practicable.

15 SUBPART E

16 Section 1. Subparagraph (A) of paragraph 4 of subsection (a) of
17 section 674 of the tax law, as amended by chapter 477 of the laws of
18 1998, is amended to read as follows:

19 (A) All employers described in paragraph one of subsection (a) of
20 section six hundred seventy-one of this part, including those whose
21 wages paid are not sufficient to require the withholding of tax from the
22 wages of any of their employees, all employers required to provide the
23 wage reporting information for the employees described in subdivision
24 one of section one hundred seventy-one-a of this chapter, and all
25 employers liable for unemployment insurance contributions or for
26 payments in lieu of such contributions pursuant to article eighteen of
27 the labor law, shall file a quarterly combined withholding, wage report-
28 ing and unemployment insurance return detailing the preceding calendar
29 quarter's withholding tax transactions, such quarter's wage reporting
30 information, such quarter's unemployment insurance contributions, and
31 such other related information as the commissioner of taxation and
32 finance or the commissioner of labor, as applicable, may prescribe. In
33 addition, the return covering the last calendar quarter of each year
34 shall also include withholding reconciliation information for such
35 calendar year. Such returns shall be filed no later than the last day of
36 the month following the last day of each calendar quarter[; ~~provided,~~
37 ~~however, that an employer may provide the wage reporting information~~
38 ~~covering the last calendar quarter of each year, and the withholding~~
39 ~~reconciliation information for such year no later than February twenty-~~
40 ~~eighth of the succeeding year].~~

41 § 2. This act shall take effect immediately.

42 SUBPART F

43 Section 1. Section 702 of the county law is amended by adding a new
44 subdivision 7 to read as follows:

45 7. Notwithstanding any provision of law with respect to the require-
46 ments of residence, a district attorney may appoint one or more attor-
47 neys employed by the department of taxation and finance as special
48 assistant district attorneys with respect to any investigation or prose-
49 cution concerning, in whole or part, a violation of article thirty-seven
50 of the tax law or of the penal law as it applies to the enforcement of
51 any provision of the tax law.

52 § 2. This act shall take effect immediately.

SUBPART G

Section 1. Section 1136 of the tax law is amended by adding a new subdivision (i) to read as follows:

(i) (1) The following persons must file, in addition to any other return required by this chapter, annual information returns with the commissioner providing the information specified below about their transactions with vendors, hotel operators, and recipients of amusement charges:

(A) Every insurer licensed to issue motor vehicle physical damage or motor vehicle property damage liability insurance for motor vehicles registered in this state if, during the period covered by the return, it has paid consideration or an amount under an insurance contract for the servicing or repair of a motor vehicle on behalf of an insured. For each person to whom the insurer has paid the consideration or amount described in the preceding sentence, the return must report the total amount paid for that period, along with the other information required by paragraph two of this subdivision.

(B) Every franchisor, as defined by section six hundred eighty-one of the general business law, that has at least one franchisee, as defined by subdivision four of section six hundred eighty-one of the general business law, that is required to be registered under section eleven hundred thirty-four of this part. For each franchisee, the return must include the gross sales of the franchisee in this state reported by the franchisee to the franchisor, the total amount of sales by the franchisor to the franchisee, and any income reported to the franchisor by each franchisee, along with the information required by paragraph two of this subdivision.

(C) Every wholesaler, as defined by section three of the alcoholic beverage control law, if it has made a sale of an alcoholic beverage, as defined by section four hundred twenty of this chapter, without collecting sales or use tax during the period covered by the return, except (i) a sale to a person that has furnished an exempt organization certificate to the wholesaler for that sale; or (ii) a sale to another wholesaler whose license under the alcoholic beverage control law does not allow it to make retail sales of the alcoholic beverage. For each vendor, operator, or recipient to whom the wholesaler has made a sale without collecting sales or compensating use tax, the return must include the total value of those sales made during the period covered by the return (excepting the sales described in clauses (i) and (ii) of this subparagraph) and the vendor's, operator's or recipient's state liquor authority license number, along with the information required by paragraph two of this subdivision.

(2) The returns required by paragraph one of this subdivision must also include, for each vendor, operator, or recipient about whom information is required to be reported under such paragraph, the name and address, and the certificate of authority or federal identification number, and any other information required by the commissioner. The commissioner may, in the commissioner's discretion, require the reporting of less than all the information otherwise required to be reported by this paragraph and paragraph one of this subdivision.

(3) The returns required by paragraph one of this subdivision must be filed annually on or before March twentieth and must cover the four sales tax quarterly periods immediately preceding such date. Notwithstanding section three hundred five of the state technology law or any

1 other law to the contrary, the returns must be filed electronically in
2 the manner prescribed by the commissioner.

3 (4) Any person required to file a return under paragraph one of this
4 subdivision must, on or before March twentieth, give to each vendor,
5 operator, or recipient about whom information is required to be reported
6 in the return the information pertaining to that person. The commission-
7 er may prescribe a form to be used to provide the information required
8 to be given by this paragraph.

9 (5) Nothing in this subdivision is to be construed to limit the
10 persons from whom the commissioner can secure information or the infor-
11 mation the commissioner can require from those persons pursuant to the
12 commissioner's authority under section eleven hundred forty-three of
13 this part or any other provision of law.

14 § 2. Section 1145 of the tax law is amended by adding a new subdivi-
15 sion (i) to read as follows:

16 (i)(1) Every person required to file an information return by subdivi-
17 sion (i) of section eleven hundred thirty-six of this part who (A) fails
18 to provide any of the information required by paragraph one or two of
19 subdivision (i) of section eleven hundred thirty-six of this part for a
20 vendor, operator, or recipient, or who fails to include any such infor-
21 mation that is true and correct (whether or not such a report is filed)
22 for a vendor, operator, or recipient, or (B) fails to provide the infor-
23 mation required by paragraph four of subdivision (i) of section eleven
24 hundred thirty-six of this part to a vendor, operator, or recipient
25 specified in paragraph four of subdivision (i) of section eleven hundred
26 thirty-six of this part, will, in addition to any other penalty provided
27 in this article or otherwise imposed by law, be subject to a penalty of
28 five hundred dollars for ten or fewer failures, and up to fifty dollars
29 for each additional failure.

30 (2) Every person failing to file an information return required by
31 subdivision (i) of section eleven hundred thirty-six of this part within
32 the time required by subdivision (i) of section eleven hundred thirty-
33 six of this part will, in addition to any other penalty provided for in
34 this article or otherwise imposed by law, be subject to a penalty in an
35 amount not to exceed two thousand dollars for each such failure,
36 provided that the minimum penalty under this paragraph is five hundred
37 dollars.

38 (3) In no event will the penalty imposed by paragraph one, or the
39 aggregate of the penalties imposed under paragraphs one and two of this
40 subdivision, exceed ten thousand dollars for any annual filing period as
41 described by paragraph three of subdivision (i) of section eleven
42 hundred thirty-six of this part.

43 (4) If the commissioner determines that any of the failures that are
44 subject to penalty under this subdivision was entirely due to reasonable
45 cause and not due to willful neglect, the commissioner must remit the
46 penalty imposed under this subdivision. These penalties will be deter-
47 mined, assessed, collected, paid, disposed of and enforced in the same
48 manner as taxes imposed by this article and all the provisions of this
49 article relating thereto will be deemed also to refer to these penal-
50 ties.

51 § 3. This act shall take effect immediately, provided that the first
52 return required by subdivision (i) of section 1136 of the tax law, as
53 added by section one of this act, shall be due on or before September
54 20, 2009 and shall cover the period March 1, 2009 through August 31,
55 2009; provided, further, that the returns required to be filed by such

1 subdivision on or before March 20, 2010, shall cover the period from
2 September 1, 2009 to February 28, 2010.

3 SUBPART H

4 Section 1. Subdivision 4 of section 1700 of the tax law, as added by
5 section 1 of part CC1 of chapter 57 of the laws of 2008, is amended to
6 read as follows:

7 4. To participate in the voluntary disclosure and compliance program,
8 an eligible taxpayer must apply by submitting a disclosure statement in
9 the form and manner prescribed by the commissioner. The disclosure
10 statement shall contain all the information the commissioner reasonably
11 deems necessary to effectively administer the program. As long as all
12 the requirements of the voluntary disclosure and compliance program are
13 met, no application shall be denied solely because the taxpayer has
14 admitted that the delinquency was the result of willful or fraudulent
15 conduct. Except in instances where the taxpayer has failed to comply
16 with the terms of a voluntary disclosure and compliance agreement, the
17 commissioner shall not use the taxpayer's disclosure as evidence in any
18 proceeding brought against the taxpayer or reveal the contents of the
19 disclosure to any law enforcement or other agency. However, the disclo-
20 sure of any returns or reports filed under this program with the secre-
21 tary of the treasury of the United States, his or her delegates, or the
22 proper tax officer of any state or city is permitted as otherwise
23 provided for in this chapter.

24 § 2. This act shall take effect immediately.

25 SUBPART I

26 Section 1. Subdivision 4 of section 20.40 of the criminal procedure
27 law is amended by adding a new paragraph (m) to read as follows:

28 (m) An offense under the tax law or the penal law of filing a false or
29 fraudulent return, report, document, declaration, statement, or filing,
30 or of tax evasion, fraud, or larceny resulting from the filing of a
31 false or fraudulent return, report, document, declaration, or filing in
32 connection with the payment of taxes to the state or a political subdivi-
33 vision of the state, may be prosecuted in any county in which an under-
34 lying transaction reflected, reported or required to be reflected or
35 reported, in whole or part, on such return, report, document, declara-
36 tion, statement, or filing occurred.

37 § 2. Subdivision 1 of section 470.05 of the penal law, as added by
38 chapter 489 of the laws of 2000, is amended to read as follows:

39 1. Knowing that the property involved in one or more financial trans-
40 actions represents the proceeds of criminal conduct:

41 (a) he or she conducts one or more such financial transactions which
42 in fact involve the proceeds of specified criminal conduct:

43 (i) With intent to:

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

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

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

51 (A) conceal or disguise the nature, the location, the source, the
52 ownership or the control of the proceeds of criminal conduct; or

1 (B) avoid any transaction reporting requirement imposed by law; and
2 (b) The total value of the property involved in such financial trans-
3 action or transactions exceeds five thousand dollars; or
4 § 3. Subdivision 1 of section 470.10 of the penal law, as added by
5 chapter 489 of the laws of 2000, is amended to read as follows:
6 1. Knowing that the property involved in one or more financial trans-
7 actions represents:
8 (a) the proceeds of the criminal sale of a controlled substance, he or
9 she conducts one or more such financial transactions which in fact
10 involve the proceeds of the criminal sale of a controlled substance:
11 (i) With intent to:
12 (A) promote the carrying on of specified criminal conduct; or
13 (B) engage in conduct constituting a felony as set forth in section
14 ~~[eighteen hundred two,]~~ eighteen hundred three, eighteen hundred four,
15 eighteen hundred five, ~~[eighteen hundred seven or eighteen hundred~~
16 ~~eight]~~ or eighteen hundred six of the tax law; or
17 (ii) Knowing that the transaction or transactions in whole or in part
18 are designed to:
19 (A) conceal or disguise the nature, the location, the source, the
20 ownership or the control of the proceeds of specified criminal conduct;
21 or
22 (B) avoid any transaction reporting requirement imposed by law; and
23 (iii) The total value of the property involved in such financial tran-
24 saction or transactions exceeds ten thousand dollars; or
25 (b) the proceeds of criminal conduct, he or she conducts one or more
26 such financial transactions which in fact involve the proceeds of speci-
27 fied criminal conduct:
28 (i) With intent to:
29 (A) promote the carrying on of criminal conduct; or
30 (B) engage in conduct constituting a felony as set forth in section
31 ~~[eighteen hundred two,]~~ eighteen hundred three, eighteen hundred four,
32 eighteen hundred five, ~~[eighteen hundred seven or eighteen hundred~~
33 ~~eight]~~ or eighteen hundred six of the tax law; or
34 (ii) knowing that the transaction or transactions in whole or in part
35 are designed to:
36 (A) conceal or disguise the nature, the location, the source, the
37 ownership or the control of the proceeds of criminal conduct; or
38 (B) avoid any transaction reporting requirement imposed by law; and
39 (iii) The total value of the property involved in such financial tran-
40 saction or transactions exceeds fifty thousand dollars; or
41 § 4. Subdivision 1 of section 470.15 of the penal law, as added by
42 chapter 489 of the laws of 2000, is amended to read as follows:
43 1. Knowing that the property involved in one or more financial trans-
44 actions represents:
45 (a) the proceeds of the criminal sale of a controlled substance, he or
46 she conducts one or more such financial transactions which in fact
47 involve the proceeds of the criminal sale of a controlled substance:
48 (i) With intent to:
49 (A) promote the carrying on of specified criminal conduct; or
50 (B) engage in conduct constituting a felony as set forth in section
51 ~~[eighteen hundred two,]~~ eighteen hundred three, eighteen hundred four,
52 eighteen hundred five, ~~[eighteen hundred seven or eighteen hundred~~
53 ~~eight]~~ or eighteen hundred six of the tax law; or
54 (ii) Knowing that the transaction or transactions in whole or in part
55 are designed to:

1 (A) conceal or disguise the nature, the location, the source, the
2 ownership or the control of the proceeds of specified criminal conduct;
3 or

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

5 (iii) The total value of the property involved in such financial tran-
6 saction or transactions exceeds fifty thousand dollars; or

7 (b) the proceeds of specified criminal conduct, he or she conducts one
8 or more such financial transactions which in fact involve the proceeds
9 of specified criminal conduct:

10 (i) With intent to:

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

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

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

18 (A) conceal or disguise the nature, the location, the source, the
19 ownership or the control of the proceeds of specified criminal conduct;
20 or

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

22 (iii) The total value of the property involved in such financial tran-
23 saction or transactions exceeds one hundred thousand dollars; or

24 § 5. Subdivision 1 of section 470.20 of the penal law, as added by
25 chapter 489 of the laws of 2000, is amended to read as follows:

26 1. Knowing that the property involved in one or more financial trans-
27 actions represents:

28 (a) the proceeds of the criminal sale of a controlled substance, he or
29 she conducts one or more such financial transactions which in fact
30 involve the proceeds of the criminal sale of a controlled substance:

31 (i) With intent to:

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

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

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

39 (A) conceal or disguise the nature, the location, the source, the
40 ownership or the control of the proceeds of specified criminal conduct;
41 or

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

43 (iii) The total value of the property involved in such financial tran-
44 saction or transactions exceeds five hundred thousand dollars; or

45 (b) the proceeds of a class A, B or C felony, or of a crime in any
46 other jurisdiction that is or would be a class A, B or C felony under
47 the laws of this state, he or she conducts one or more such financial
48 transactions which in fact involve the proceeds of any such felony:

49 (i) With intent to:

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

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

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

1 (A) conceal or disguise the nature, the location, the source, the
2 ownership or the control of the proceeds of specified criminal conduct;
3 or

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

5 (iii) The total value of the property involved in such financial tran-
6 saction or transactions exceeds one million dollars.

7 § 6. Subdivision 1 of section 470.21 of the penal law, as added by
8 section 18 of part A of chapter 1 of the laws of 2004, is amended to
9 read as follows:

10 1. Knowing that the property involved in one or more financial trans-
11 actions represents either the proceeds of an act of terrorism as defined
12 in subdivision one of section 490.05 of this part, or a monetary instru-
13 ment given, received or intended to be used to support a violation of
14 article four hundred ninety of this part:

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

20 (i) With intent to:

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

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

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

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

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

34 (b) the total value of the property involved in such financial trans-
35 action or transactions exceeds one thousand dollars; or

36 § 7. Subdivision 1 of section 470.22 of the penal law, as added by
37 section 18 of part A of chapter 1 of the laws of 2004, is amended to
38 read as follows:

39 1. Knowing that the property involved in one or more financial trans-
40 actions represents either the proceeds of an act of terrorism as defined
41 in subdivision one of section 490.05 of this part, or a monetary instru-
42 ment given, received or intended to be used to support a violation of
43 article four hundred ninety of this part:

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

49 (i) With intent to:

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

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

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

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

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

7 (b) the total value of the property involved in such financial trans-
8 action or transactions exceeds five thousand dollars; or

9 § 8. Subdivision 1 of section 470.23 of the penal law, as added by
10 section 18 of part A of chapter 1 of the laws of 2004, is amended to
11 read as follows:

12 1. Knowing that the property involved in one or more financial trans-
13 actions represents either the proceeds of an act of terrorism as defined
14 in subdivision one of section 490.05 of this part, or a monetary instru-
15 ment given, received or intended to be used to support a violation of
16 article four hundred ninety of this part:

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

22 (i) With intent to:

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

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

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

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

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

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

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

41 1. Knowing that the property involved in one or more financial trans-
42 actions represents either the proceeds of an act of terrorism as defined
43 in subdivision one of section 490.05 of this part, or a monetary instru-
44 ment given, received or intended to be used to support a violation of
45 article four hundred ninety of this part:

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

51 (i) With intent to:

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

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

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

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

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

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

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

14 5. Except for subdivision [~~(k)~~] (i) of section eighteen hundred four-
15 teen of this chapter, the criminal penalties set forth in article thir-
16 ty-seven of this chapter shall not apply to a violation of this section.

17 § 11. Paragraph 7 of subdivision (m) of section 1111 of the tax law,
18 as added by section 1 of part M1 of chapter 109 of the laws of 2006, is
19 amended to read as follows:

20 (7) Notwithstanding any foregoing provision of this subdivision or
21 other law to the contrary, this subdivision, subdivision (h) of section
22 eleven hundred nine of this part and subdivision [~~(t)~~] (n) of section
23 eighteen hundred seventeen of this chapter, section three hundred nine-
24 ty-two-i of the general business law and other provisions of law which
25 refer or relate to this subdivision shall apply only to (A) motor fuel
26 or diesel motor fuel sold for use directly and exclusively in the engine
27 of a motor vehicle and (B) motor fuel or diesel motor fuel, other than
28 water-white kerosene sold exclusively for heating purposes in containers
29 of no more than twenty gallons, sold by a retail gas station. For
30 purposes of this subdivision and such other provisions of law, "retail
31 gas station" shall mean a filling station where such fuel is stored
32 primarily for sale by delivery directly into the ordinary fuel tank
33 connected with the engine of a motor vehicle to be consumed in the oper-
34 ation of such motor vehicle or where such fuel is stored primarily for
35 sale by delivery directly into the ordinary fuel tank connected with the
36 engine of a vessel to be consumed in the operation of such vessel. The
37 commissioner is hereby authorized to require the use of certificates or
38 other documents, and procedures related thereto, to effect the purposes
39 of this subdivision; and any such certificate or other document so
40 required by the commissioner for a purchaser to tender to a vendor to
41 purchase such fuel subject to tax on the reduced base established by or
42 pursuant to this subdivision is hereby deemed to be an exemption certif-
43 icate as such term is used in subdivision (c) of section eleven hundred
44 thirty-two of this article and as if the provisions of such subdivision
45 (c) referred to such a certificate or document required pursuant to this
46 subdivision.

47 § 12. Paragraph 5 of subdivision (f) of section 1137 of the tax law,
48 as added by chapter 170 of the laws of 1994, is amended to read as
49 follows:

50 (5) (i) Where a person takes a credit pursuant to this subdivision in
51 an amount greater than allowed or under circumstances where the credit
52 is not authorized, or (ii) where a person takes a credit pursuant to
53 this subdivision at the time of filing a return for a quarterly or long-
54 er period and such person later becomes subject to a penalty imposed
55 under subparagraph (vi) of paragraph one of subdivision (a) or under
56 paragraph two of subdivision (a) of section eleven hundred forty-five of

1 this ~~[article]~~ part or is later found guilty of a crime or offense under
2 section eighteen hundred three, eighteen hundred four, eighteen hundred
3 five, eighteen hundred six, or eighteen hundred seventeen of this chap-
4 ter, relating to the period for which the return was filed, the amount
5 of such credit taken in such greater amount, under such circumstances or
6 for such period shall be disallowed and the person shall be required to
7 pay, as tax, an amount equal to the credit so taken, at such time and in
8 such manner as prescribed by the commissioner; provided, however, that
9 such amount shall be paid and disposed of in the same manner as other
10 revenues from this article, and may be determined, assessed, collected
11 and enforced in the same manner as the tax imposed by this article.

12 § 13. Subdivision (c) of section 1800 of the tax law, as added by
13 chapter 65 of the laws of 1985, is amended to read as follows:

14 (c) As used in this article, the term "felony" and the term "misdemeanor"
15 shall have the same meaning as they have in the penal law, and the
16 disposition of such offenses and the sentences imposed therefor shall be
17 as provided in such law except; (1) notwithstanding the provisions of
18 paragraph a of subdivision one of section 80.00 and paragraph (a) of
19 subdivision one of section 80.10 of the penal law relating to the fine
20 for a felony, the court may impose a fine not to exceed the greater of
21 double the amount of the underpaid tax liability resulting from the
22 commission of the crime or fifty thousand dollars, ~~[except that]~~ or, in
23 the case of a corporation the fine may not exceed the greater of double
24 the amount of the underpaid tax liability resulting from the commission
25 of the crime or two hundred fifty thousand dollars and (2) notwithstand-
26 ing the provisions of subdivision one of section 80.05 and paragraph (b)
27 of subdivision one of section 80.10 of the penal law relating to the
28 fine for a class A misdemeanor, the court may impose a fine not to
29 exceed ten thousand dollars, except that in the case of a corporation
30 the fine may not exceed twenty thousand dollars.

31 § 14. The part heading of part 2 of article 37 of the tax law, as
32 added by chapter 65 of the laws of 1985, is amended to read as follows:

33 ~~[INCOME, EARNINGS AND CORPORATE TAXES]~~ TAX FRAUD ACTS AND
34 PENALTIES

35 § 15. Section 1801 of the tax law is REPEALED and a new section 1801
36 is added to read as follows:

37 § 1801. Tax fraud acts. (a) As used in this article, "tax fraud act"
38 means willfully engaging in an act or acts or willfully causing another
39 to engage in an act or acts pursuant to which a person:

40 (1) fails to make, render, sign, certify, or file any return or report
41 required under this chapter or any regulation promulgated under this
42 chapter within the time required by or under the provisions of this
43 chapter or such regulation;

44 (2) knowing that a return, report, statement or other document under
45 this chapter contains any materially false or fraudulent information, or
46 omits any material information, files or submits that return, report,
47 statement or document with the state or any political subdivision of the
48 state, or with any public office or public officer of the state or any
49 political subdivision of the state;

50 (3) knowingly supplies or submits materially false or fraudulent
51 information in connection with any return, audit, investigation, or
52 proceeding or fails to supply information within the time required by or
53 under the provisions of this chapter or any regulation promulgated under
54 this chapter;

55 (4) engages in any scheme to defraud the state or a political subdivi-
56 sion of the state or a government instrumentality within the state by

1 false or fraudulent pretenses, representations or promises as to any
2 material matter, in connection with any tax imposed under this chapter
3 or any matter under this chapter;

4 (5) fails to remit any tax collected in the name of the state or on
5 behalf of the state or any political subdivision of the state when such
6 collection is required under this chapter;

7 (6) fails to collect any tax required to be collected under articles
8 twelve-A, eighteen, twenty, twenty-two or twenty-eight of this chapter,
9 or pursuant to the authority of article twenty-nine of this chapter;

10 (7) with intent to evade any tax fails to pay that tax; or

11 (8) issues an exemption certificate, interdistributor sales certifi-
12 cate, resale certificate, or any other document capable of evidencing a
13 claim that taxes do not apply to a transaction, which he or she does not
14 believe to be true and correct as to any material matter, which omits
15 any material information, or which is false, fraudulent, or counterfeit.

16 (b) For purposes of this subdivision, "this chapter" includes any
17 "related statute" or any "related income or earnings tax statute", as
18 defined in section eighteen hundred of this article.

19 (c) For purposes of this subdivision, the term "willfully" shall be
20 defined to mean acting with either intent to defraud, intent to evade
21 the payment of taxes or intent to avoid a requirement of this chapter, a
22 lawful requirement of the commissioner or a known legal duty.

23 § 16. Section 1802 of the tax law is REPEALED and a new section 1802
24 is added to read as follows:

25 § 1802. Criminal tax fraud in the fifth degree. A person commits crim-
26 inal tax fraud in the fifth degree when he or she commits a tax fraud
27 act. Criminal tax fraud in the fifth degree is a class A misdemeanor.

28 § 17. Section 1803 of the tax law is REPEALED and a new section 1803
29 is added to read as follows:

30 § 1803. Criminal tax fraud in the fourth degree. A person commits
31 criminal tax fraud in the fourth degree when he or she commits a tax
32 fraud act or acts and, with the intent to evade any tax due under this
33 chapter, or to defraud the state or any subdivision thereof, the person
34 pays the state and/or a political subdivision of the state (whether by
35 means of underpayment or receipt of refund or both), in a period of not
36 more than one year in excess of three thousand dollars less than the tax
37 liability that is due. Criminal tax fraud in the fourth degree is a
38 class E felony.

39 § 18. Section 1804 of the tax law is REPEALED and a new section 1804
40 is added to read as follows:

41 § 1804. Criminal tax fraud in the third degree. A person commits crim-
42 inal tax fraud in the third degree when he or she commits a tax fraud
43 act or acts and, with the intent to evade any tax due under this chap-
44 ter, or to defraud the state or any political subdivision of the state,
45 the person pays the state and/or a political subdivision of the state
46 (whether by means of underpayment or receipt of refund or both), in a
47 period of not more than one year in excess of ten thousand dollars less
48 than the tax liability that is due. Criminal tax fraud in the third
49 degree is a class D felony.

50 § 19. Section 1805 of the tax law is REPEALED and a new section 1805
51 is added to read as follows:

52 § 1805. Criminal tax fraud in the second degree. A person commits
53 criminal tax fraud in the second degree when he or she commits a tax
54 fraud act or acts and, with the intent to evade any tax due under this
55 chapter, or to defraud the state or any subdivision of the state, the
56 person pays the state and/or a political subdivision of the state

1 (whether by means of underpayment or receipt of refund or both), in a
2 period of not more than one year in excess of fifty thousand dollars
3 less than the tax liability that is due. Criminal tax fraud in the
4 second degree is a class C felony.

5 § 20. Section 1806 of the tax law is REPEALED and a new section 1806
6 is added to read as follows:

7 § 1806. Criminal tax fraud in the first degree. A person commits crim-
8 inal tax fraud in the first degree when he or she commits a tax fraud
9 act or acts and, with the intent to evade any tax due under this chap-
10 ter, or to defraud the state or any subdivision of the state, the person
11 pays the state and/or a political subdivision of the state (whether by
12 means of underpayment or receipt of refund or both), in a period of not
13 more than one year in excess of one million dollars less than the tax
14 liability that is due. Criminal tax fraud in the first degree is a class
15 B felony.

16 § 21. Section 1807 of the tax law is REPEALED and a new section 1807
17 is added to read as follows:

18 § 1807. Aggregation. For purposes of this article, the payments due
19 and not paid under article one of this chapter pursuant to a common
20 scheme or plan or due and not paid, within one year, may be charged in a
21 single count, and the amount of underpaid tax liability incurred, within
22 one year, may be aggregated in a single count.

23 § 22. Section 1808 of the tax law is REPEALED.

24 § 23. Sections 1809 and 1810 of the tax law are REPEALED.

25 § 24. Section 1811 of the tax law, as amended by section 116, subdivi-
26 sions (a) and (b) as separately amended by section 145 of chapter 190 of
27 the laws of 1990, is amended to read as follows:

28 ~~§ 1811. Estate, gift and transfer taxes.[(a) Failure to file a~~
29 ~~return or report, or pay tax. Any person required under article twenty~~
30 ~~six, twenty six A or twenty six B of this chapter to pay tax, or make~~
31 ~~a return or report, who, with intent to evade tax or any requirement of~~
32 ~~such articles, fails to pay such tax or make such return or report, at~~
33 ~~the time or times so required, shall be guilty of a misdemeanor.~~

34 ~~(b) Fraudulent returns, reports, statements or other documents. (1)~~
35 ~~Any person who, with intent to evade the tax or any requirement of arti-~~
36 ~~cle twenty six, twenty six A or twenty six B of this chapter or any~~
37 ~~lawful requirement of the commissioner of taxation and finance there-~~
38 ~~under, makes and subscribes any return, report, statement or other docu-~~
39 ~~ment which is required to be filed with or furnished to the commissioner~~
40 ~~or to any person, pursuant to or under the provisions of such articles,~~
41 ~~which he does not believe to be true and correct as to every material~~
42 ~~matter shall be guilty of a misdemeanor.~~

43 ~~(2) Any person who, with intent to evade the tax or any requirement of~~
44 ~~article twenty six, twenty six A or twenty six B of this chapter or any~~
45 ~~lawful requirement of the commissioner of taxation and finance there-~~
46 ~~under, who delivers or discloses to the commissioner or to any person,~~
47 ~~pursuant to or under the provisions of such articles, any list, return,~~
48 ~~report, account, statement or other document known by him to be fraudu-~~
49 ~~lent or to be false as to any material matter shall be guilty of a~~
50 ~~misdemeanor.~~

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

55 ~~(c)] Wrongful entry into safe deposit box.--Any person who enters a~~
56 ~~safe deposit box of a decedent, or a box standing in the joint names of~~

1 such a decedent and one or more persons, with knowledge of the death of
2 the lessee of such box, which entry results in an evasion of the tax
3 imposed by article twenty-six of this chapter shall be guilty of a
4 misdemeanor.

5 § 25. Section 1812 of the tax law, as added by chapter 65 of the laws
6 of 1985, paragraphs 4 and 5 of subdivision (c) as added and subdivision
7 (d) as amended by chapter 261 of the laws of 1988 and subdivisions (g)
8 and (h) as added by chapter 276 of the laws of 1986, is amended to read
9 as follows:

10 § 1812. Motor fuel taxes.--(a) Attempt to evade or defeat tax.--Any
11 person who willfully attempts in any manner to evade or defeat any tax
12 imposed by article twelve-A of this chapter or the payment thereof
13 shall, in addition to other penalties provided by law, be guilty of a
14 class E felony.

15 (b) ~~[Willful failure to file a return or report, or pay tax. Any~~
16 ~~person required under article twelve A of this chapter to pay tax, or~~
17 ~~make a return or report, who willfully fails to pay such tax or make~~
18 ~~such return or report, at the time or times so required, shall be guilty~~
19 ~~of a misdemeanor.~~

20 (c) ~~Fraudulent returns, reports, statements or other documents. (1)~~
21 ~~Any person who willfully makes and subscribes any return, report, state-~~
22 ~~ment or other document which is required to be filed with or furnished~~
23 ~~to the tax commission or to any person, pursuant to the provisions of~~
24 ~~article twelve A of this chapter, which he does not believe to be true~~
25 ~~and correct as to every material matter shall be guilty of a class E~~
26 ~~felony.~~

27 (2) ~~Any person who willfully delivers or discloses to the tax commis-~~
28 ~~sion or to any person, pursuant to the provisions of article twelve A of~~
29 ~~this chapter, any list, return, report, account, statement or other~~
30 ~~document known by him to be fraudulent or to be false as to any material~~
31 ~~matter shall be guilty of a misdemeanor.~~

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

36 (4) ~~Any person who willfully issues an exempt transaction certificate~~
37 ~~(or similar document which has been prescribed by the commissioner of~~
38 ~~taxation and finance) or interdistributor sale certificate in order to~~
39 ~~claim an exemption from the taxes imposed on Diesel motor fuel by arti-~~
40 ~~cle twelve A of this chapter which he does not believe to be true and~~
41 ~~correct as to any material matter shall, in addition to any other penal-~~
42 ~~ty provided by law, be guilty of a misdemeanor.~~

43 (5) ~~Any person who willfully accepts an exempt transaction certif-~~
44 ~~icate (or similar document which has been prescribed by the commissioner~~
45 ~~[of taxation and finance]) or interdistributor sale certificate with~~
46 ~~respect to claiming exemption from the taxes imposed on Diesel motor~~
47 ~~fuel by article twelve-A of this chapter which he does not believe to be~~
48 ~~true and correct as to any material matter shall, in addition to any~~
49 ~~other penalty provided by law, be guilty of a misdemeanor.~~

50 (d) (c) Any owner of a filling station who shall willfully and know-
51 ingly have in his custody, possession or under his control any motor
52 fuel or Diesel motor fuel on which (1) the taxes imposed by or pursuant
53 to the authority of such article have not been assumed or paid by a
54 distributor registered as such under such article or (2) the taxes
55 imposed by or pursuant to the authority of such article have not been
56 included in the cost to him of such fuel where such taxes were required

1 to have been passed through to him and included in the cost to him of
2 such fuel, shall in either case, be guilty of a class E felony. For
3 purposes of this subdivision, such owner shall willfully and knowingly
4 have in his custody, possession or under his control any motor fuel or
5 Diesel motor fuel on which such taxes have not been assumed or paid by a
6 distributor registered as such where such owner has knowledge of the
7 requirement that such taxes be paid and where, to his knowledge, such
8 taxes have not been assumed or paid by a registered distributor on such
9 motor fuel or Diesel motor fuel. Such owner shall willfully and knowing-
10 ly have in his custody, possession or under his control any motor fuel
11 or Diesel motor fuel on which such taxes are required to have been
12 passed through to him and have not been included in his cost where such
13 owner has knowledge of the requirement that such taxes be passed through
14 and where to his knowledge such taxes have not been so included.

15 ~~[(e)]~~ (d) Any willful act or omission, other than those described in
16 subdivision (a), (b), or (c) ~~[or (d)]~~ of this section, by any person
17 which constitutes a violation of any provision of article twelve-A of
18 this chapter shall constitute a misdemeanor.

19 ~~[(f)]~~ (e) The provisions of this section shall apply for purposes of
20 the tax imposed pursuant to the authority of section two hundred eight-
21 y-four-b of this chapter.

22 ~~[(g)] Any person who, being duly subpoenaed, pursuant to section one~~
23 ~~hundred seventy four of this chapter or the provisions of the civil~~
24 ~~practice law and rules, in connection with a matter arising under arti-~~
25 ~~cle twelve A of this chapter, to attend as a witness or to produce~~
26 ~~books, accounts, records, memoranda, documents or other papers who (i)~~
27 ~~fails or refuses to attend without lawful excuse, (ii) refuses to be~~
28 ~~sworn, (iii) refuses to answer any material and proper question, or (iv)~~
29 ~~refuses, after reasonable notice, to produce books, accounts, records,~~
30 ~~memoranda, documents or other papers in his possession or under his~~
31 ~~control which constitute material and proper evidence shall be guilty of~~
32 ~~a misdemeanor.~~

33 ~~[(h)]~~ (f) Any person who willfully makes a manifest required by section
34 two hundred eighty-six-b of this chapter which he does not believe to be
35 true and correct as to every material matter or who willfully produces
36 any manifest for inspection as required under section two hundred eight-
37 y-six-b of this chapter which is known to be fraudulent or to be false
38 as to any material matter shall be guilty of a class E felony.

39 § 26. Section 1812-f of the tax law, as added by chapter 190 of the
40 laws of 1990, is amended to read as follows:

41 § 1812-f. Article thirteen-A tax. (a) ~~[Attempt to evade or defeat tax.~~
42 ~~Any person who willfully attempts in any manner to evade or defeat any~~
43 ~~tax imposed by article thirteen A of this chapter or the payment thereof~~
44 ~~shall be guilty of a misdemeanor; provided, however, that if the tax~~
45 ~~liability evaded or defeated as a result of such conduct is equal to or~~
46 ~~greater than one thousand dollars, such person shall be guilty of class~~
47 ~~E felony.~~

48 ~~(b) Willful failure to file a return or report, or pay tax. Any person~~
49 ~~required under article thirteen A of this chapter to pay tax, or make a~~
50 ~~return or report, who willfully fails to pay such tax or make such~~
51 ~~return or report, at the time or times so required, shall be guilty of a~~
52 ~~misdemeanor.~~

53 ~~(c) Fraudulent returns, reports, statements or other documents. (1)~~
54 ~~Any person who willfully makes and subscribes any return, report, state-~~
55 ~~ment or other document which is required to be filed with or furnished~~
56 ~~to the commissioner of taxation and finance or to any person, pursuant~~

1 to the provisions of article thirteen A of this chapter, which he does
2 not believe to be true and correct as to every material matter shall be
3 guilty of a misdemeanor. Provided, however, where such person substan-
4 tially understates on such return, report, statement, or other document
5 his tax liability under such article, such person shall be guilty of a
6 class E felony. For purposes of this subdivision, the term "substantial-
7 ly understates" refers to the excess amount of the tax required to be
8 shown on the return or report for the taxable period over the amount of
9 the tax imposed which is shown on the return, report, statement, or
10 other document, provided that the excess is one thousand dollars or
11 more, and provided that the taxpayer, acting without reasonable ground
12 for believing that his conduct is lawful, intended to evade at least the
13 amount of such excess.

14 (2) Any person who willfully delivers or discloses to the commissioner
15 of taxation and finance or to any person, pursuant to the provisions of
16 article thirteen A of this chapter, any list, return, report, account,
17 statement or other document known by him to be fraudulent or to be false
18 as to any material matter shall be guilty of a misdemeanor.

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

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

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

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

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

53 [(f)] (c) Any person who willfully makes a movement tracking document
54 required pursuant to subdivision (b) of section three hundred fifteen of
55 this chapter, which he does not believe to be true and correct as to
56 every material matter or who willfully produces any such document for

1 inspection as required under subdivision (b) of section three hundred
2 fifteen of this chapter which he knows to be fraudulent or to be false
3 as to any material matter shall be guilty of a misdemeanor; provided,
4 however, that if the tax liability under article thirteen-A of this
5 chapter with respect to the product being transported, is equal to or
6 greater than one thousand dollars, such person shall be guilty of a
7 class E felony.

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

11 § 1813. Alcoholic beverage tax.--(a) ~~[Attempt to evade or defeat tax.--~~
12 ~~Any person who willfully attempts in any manner to evade or defeat any~~
13 ~~tax imposed by article eighteen of this chapter or the payment thereof~~
14 ~~shall, in addition to other penalties provided by law, be guilty of a~~
15 ~~misdemeanor.~~

16 ~~(b) Willful failure to file a return or report, or pay tax. Any~~
17 ~~person required under article eighteen of this chapter to pay or make a~~
18 ~~return or report, who willfully fails to pay such tax or make such~~
19 ~~return or report at the time or times so required, shall be guilty of a~~
20 ~~misdemeanor.~~

21 ~~(c) Fraudulent returns, reports, statements or other documents.--(1)~~
22 ~~Any person who willfully makes and subscribes any return, report, state-~~
23 ~~ment or other document which is required to be filed with or furnished~~
24 ~~to the tax commission or to any person, pursuant to article eighteen of~~
25 ~~this chapter, which he does not believe to be true and correct as to~~
26 ~~every material matter shall be guilty of a class E felony.~~

27 ~~(2) Any person who willfully delivers or discloses to the tax commis-~~
28 ~~sion or to any person, pursuant to article eighteen of this chapter, any~~
29 ~~list, return, report, account, statement or other document known by him~~
30 ~~to be fraudulent or to be false as to any material matter shall be guil-~~
31 ~~ty of a misdemeanor.~~

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

36 ~~(d)]~~ Unlawful use of stamps.--Any person who shall counterfeit stamps
37 prescribed by section four hundred thirty-eight of this chapter or who
38 shall willfully remove or alter or knowingly permit to be removed or
39 altered, the cancellation or defacing marks required to be placed upon
40 any stamp under provisions of article eighteen of this chapter with
41 intent to use such stamp, or who shall willfully open any container of
42 alcoholic beverages without first destroying the stamp affixed thereto
43 or who shall knowingly or willfully buy, prepare for use, use, have in
44 his possession or suffer to be used any washed, restored or counterfeit
45 stamp shall be guilty of a misdemeanor.

46 ~~[(e)]~~ (b) Unlawful use of alcoholic beverages.--Any person who shall
47 willfully sell or use any alcoholic beverages upon which tax has not
48 been paid by the affixation of stamps as prescribed pursuant to section
49 four hundred thirty-eight of this chapter shall be guilty of a misdemea-
50 nor.

51 ~~[(f)]~~ (c) Any willful act or omission, other than those described in
52 section eighteen hundred one of this article or subdivision (a) ~~[7]~~ or
53 ~~(b) [, (c), (d) or (e)]~~ of this section, by any person which constitutes
54 a violation of any provision of article eighteen of this chapter shall
55 constitute a misdemeanor.

1 ~~[(g)]~~ (d) The provisions of this section shall apply for purposes of
2 any tax imposed pursuant to the authority of section four hundred
3 forty-five of this chapter.

4 ~~[(h)]~~ (e) Person not registered as a distributor. (1) Any person
5 required to be registered as a distributor pursuant to the provisions of
6 article eighteen of this chapter who, while not so registered, knowingly
7 imports or causes to be imported into the state, for sale or use there-
8 in, any liquors or, who, except in accordance with clause (i) or (ii) of
9 paragraph (b) of subdivision four of section four hundred twenty of this
10 chapter, knowingly produces, distills, manufactures, compounds, mixes or
11 ferments in this state any such liquors for sale, or who, as a purchaser
12 of a warehouse receipt, knowingly causes liquors covered by such receipt
13 to be removed from a warehouse in this state, shall be guilty of a class
14 A misdemeanor. Provided, however, that any person who has twice been
15 convicted under this section within the preceding five years, shall be
16 guilty of a class E felony for any subsequent violation of this para-
17 graph.

18 (2) Any person who, while not registered as a distributor pursuant to
19 the provisions of article eighteen of this chapter, knowingly and inten-
20 tionally imports or causes to be imported into this state, for sale or
21 use therein, more than three hundred sixty liters of liquors into this
22 state in a one-year period or, except in accordance with clause (i) or
23 (ii) of paragraph (b) of subdivision four of section four hundred twenty
24 of this chapter, knowingly and intentionally produces, distills, manu-
25 factures, compounds, mixes or ferments for sale more than three hundred
26 sixty liters of such liquors within this state in a one-year period, or,
27 as a purchaser of a warehouse receipt, knowingly and intentionally caus-
28 es more than three hundred sixty liters of liquors in a one-year period
29 to be removed from a warehouse in this state, shall be guilty of a class
30 E felony.

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

37 ~~[(i)]~~ (f) Person not registered as a distributor for city purposes.
38 (1) Any person required to be registered as a distributor for city
39 purposes pursuant to the provisions of section four hundred forty-five
40 of article eighteen of this chapter who, while not so registered, know-
41 ingly imports or causes to be imported into such city, for sale or use
42 therein, any liquors or, who, except in accordance with clause (i) or
43 (ii) of paragraph (b) of subdivision four of section four hundred twenty
44 of this chapter as incorporated into such section four hundred forty-
45 five, knowingly produces, distills, manufactures, compounds, mixes or
46 ferments in such city any such liquors for sale, or who, as a purchaser
47 of a warehouse receipt, causes liquors covered by such receipt to be
48 removed from a warehouse in this state, shall be guilty of a class A
49 misdemeanor. Provided, however, that any person who has twice been
50 convicted under this section within the preceding five years shall be
51 guilty of a class E felony for any subsequent violation of this para-
52 graph.

53 (2) Any person who, while not registered as a distributor for city
54 purposes pursuant to the provisions of section four hundred forty-five
55 of article eighteen of this chapter, knowingly and intentionally imports
56 or causes to be imported into such city, for sale or use therein, more

1 than three hundred sixty liters of liquors into such city in a one-year
2 period or, except in accordance with clause (i) or (ii) of paragraph (b)
3 of subdivision four of section four hundred twenty of this chapter as
4 incorporated into such section four hundred forty-five, knowingly and
5 intentionally produces, distills, manufactures, compounds, mixes or
6 ferments for sale more than three hundred sixty liters of such liquors
7 within such city in a one-year period, or, as a purchaser of a warehouse
8 receipt, knowingly and intentionally causes more than three hundred
9 sixty liters of liquors in a one-year period to be removed from a ware-
10 house in this ~~[store]~~ state, shall be guilty of a class E felony.

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

17 ~~[(+)]~~ (g) Any person, other than the distributor registered under
18 article eighteen of this chapter which imported or caused the liquors to
19 be imported into this state, who shall willfully and knowingly have in
20 his custody, possession or under his control liquors with respect to
21 which the taxes imposed by or pursuant to the authority of article eigh-
22 teen of this chapter have not been assumed or paid by a distributor
23 registered as such under such article, shall be guilty of a class B
24 misdemeanor; if such person shall willfully and knowingly have more than
25 ninety liters of such liquors in his custody or possession or under his
26 control, such person shall be guilty of a class A misdemeanor; or if
27 such person shall knowingly and intentionally have more than three
28 hundred sixty liters of such liquors in his custody or possession or
29 under his control, such person shall be guilty of a class E felony. For
30 purposes of this subdivision, such person shall willfully and knowingly
31 have in his custody, possession or under his control any liquors with
32 respect to which such taxes have not been assumed or paid by a distribu-
33 tor registered as such where such person has knowledge of the require-
34 ment of such taxes and where, to his knowledge, such taxes have not been
35 assumed or paid by a registered distributor with respect to such
36 liquors.

37 § 28. Section 1814 of the tax law, as added by chapter 65 of the laws
38 of 1985, the section heading and subdivisions (c), (g) and (h) as
39 amended and subdivision (j) as added by chapter 61 of the laws of 1989,
40 paragraph 2 of subdivision (a) and paragraph 1 of subdivision (e) as
41 amended by chapter 508 of the laws of 2004, subdivisions (d) and (e) as
42 amended by chapter 262 of the laws of 2000 and subdivision (k) as added
43 by chapter 190 of the laws of 1990, is amended to read as follows:

44 § 1814. Cigarette and tobacco products tax.--(a) ~~[Attempt to evade or~~
45 ~~defeat tax. (1) Any person who willfully attempts in any manner to~~
46 ~~evade or defeat any tax imposed by article twenty of this chapter or the~~
47 ~~payment thereof shall, in addition to other penalties provided by law,~~
48 ~~be guilty of a misdemeanor.~~

49 ~~(2)]~~ Any person who willfully attempts in any manner to evade or
50 defeat the taxes imposed by article twenty of this chapter or payment
51 thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand
52 cigars or more, or (iii) four hundred forty pounds of tobacco or more or
53 has previously been convicted two or more times of a violation of para-
54 graph one of this subdivision shall be guilty of a class E felony.

55 (b) ~~[Willful failure to file a return or report, or pay tax. Any~~
56 ~~person required under article twenty of this chapter to pay or make a~~

1 ~~return or report, who willfully fails to pay such tax or make such~~
2 ~~return or report, at the time or times so required, shall be guilty of a~~
3 ~~misdemeanor.~~

4 ~~(c) Fraudulent returns, reports, statements or other documents. (1)~~
5 ~~Any person who willfully makes and subscribes any return, report, state-~~
6 ~~ment or other document which is required to be filed with or furnished~~
7 ~~to the commissioner of taxation and finance or to any person, pursuant~~
8 ~~to article twenty of this chapter, which he does not believe to be true~~
9 ~~and correct as to every material matter shall be guilty of a misdemea-~~
10 ~~nor.~~

11 ~~(2) Any person who willfully delivers or discloses to the commissioner~~
12 ~~of taxation and finance or to any person, pursuant to article twenty of~~
13 ~~this chapter, any list, return, report, account, statement or other~~
14 ~~document known by him to be fraudulent or to be false as to any material~~
15 ~~matter shall be guilty of a misdemeanor.~~

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

20 ~~(d)] Any person, other than an agent licensed by the commissioner, who~~
21 ~~possesses or transports for the purpose of sale any unstamped or unlaw-~~
22 ~~fully stamped packages of cigarettes subject to tax imposed by section~~
23 ~~four hundred seventy-one of this chapter, or who sells or offers for~~
24 ~~sale unstamped or unlawfully stamped packages of cigarettes in violation~~
25 ~~of the provisions of article twenty of this chapter shall be guilty of a~~
26 ~~misdemeanor. Any person who violates the provisions of this subdivision~~
27 ~~after having previously been convicted of a violation of this subdivi-~~
28 ~~sion within the preceding five years shall be guilty of a class E felo-~~
29 ~~ny.~~

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

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

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

1 in this state of more than four hundred cigarettes in unstamped or
2 unlawfully stamped packages by any person other than an agent at any one
3 time shall be presumptive evidence that such cigarettes are subject to
4 tax as provided by article twenty of this chapter.

5 ~~[(g)]~~ (e) Nothing in this section shall apply to common or contract
6 carriers or warehousemen while engaged in lawfully transporting or stor-
7 ing unstamped packages of cigarettes as merchandise, or lawfully trans-
8 porting or storing tobacco products, nor to any employee of such carrier
9 or warehouseman acting within the scope of his employment, nor to public
10 officers or employees in the performance of their official duties
11 requiring possession or control of unstamped or unlawfully stamped pack-
12 ages of cigarettes or possession or control of tobacco products, nor to
13 temporary incidental possession by employees or agents of persons
14 lawfully entitled to possession, nor to persons whose possession is for
15 the purpose of aiding police officers in performing their duties.

16 ~~[(h)]~~ (f) Any willful act or omission, other than those described in
17 section eighteen hundred one of this article or subdivision (a), (b),
18 (c), (d), (e), ~~[(f)]~~, (g), (h) or (i) ~~[or (j)]~~ of this section, by any
19 person which constitutes a violation of any provision of article twenty
20 of this chapter shall constitute a misdemeanor.

21 ~~[(i)]~~ (g) Any person who falsely or fraudulently makes, alters or
22 counterfeits any stamp prescribed by the tax commission under the
23 provisions of article twenty of this chapter, or causes or procures to
24 be falsely or fraudulently made, altered or counterfeited any such
25 stamp, or knowingly and willfully utters, purchases, passes or tenders
26 as true any such false, altered or counterfeited stamp, or knowingly and
27 willfully possesses any cigarettes in packages bearing any such false,
28 altered or counterfeited stamp, and any person who knowingly and will-
29 fully makes, causes to be made, purchases or receives any device for
30 forging or counterfeiting any stamp, prescribed by the tax commission
31 under the provisions of article twenty of this chapter, or who knowingly
32 and willfully possesses any such device, shall be guilty of a class E
33 felony. For the purposes of this subdivision, the words "stamp
34 prescribed by the tax commission" shall include a stamp, impression or
35 imprint made by a metering machine, the design of which has been
36 approved by such commission.

37 ~~[(j)]~~ (h) (1) Any dealer, other than a distributor appointed by the
38 commissioner of taxation and finance under article twenty of this chap-
39 ter, who shall knowingly transport or have in his custody, possession or
40 under his control more than ten pounds of tobacco or more than five
41 hundred cigars upon which the taxes imposed by article twenty of this
42 chapter have not been assumed or paid by a distributor appointed by the
43 commissioner of taxation and finance under article twenty of this chap-
44 ter, or other person treated as a distributor pursuant to section four
45 hundred seventy-one-d of this chapter, shall be guilty of a misdemeanor
46 punishable by a fine of not more than five thousand dollars or by a term
47 of imprisonment not to exceed thirty days.

48 (2) Any person, other than a dealer or a distributor appointed by the
49 commissioner ~~[of taxation and finance]~~ under article twenty of this
50 chapter, who shall knowingly transport or have in his custody,
51 possession or under his control more than fifteen pounds of tobacco or
52 more than seven hundred fifty cigars upon which the taxes imposed by
53 article twenty of this chapter have not been assumed or paid by a
54 distributor appointed by the commissioner ~~[of taxation and finance]~~
55 under article twenty of this chapter, or other person treated as a
56 distributor pursuant to section four hundred seventy-one-d of this chap-

1 ter shall be guilty of a misdemeanor punishable by a fine of not more
2 than five thousand dollars or by a term of imprisonment not to exceed
3 thirty days.

4 (3) Any person, other than a distributor appointed by the commissioner
5 ~~[of taxation and finance]~~ under article twenty of this chapter, who
6 shall knowingly transport or have in his custody, possession or under
7 his control twenty-five hundred or more cigars or fifty or more pounds
8 of tobacco upon which the taxes imposed by article twenty of this chap-
9 ter have not been assumed or paid by a distributor appointed by the
10 commissioner ~~[of taxation and finance]~~ under article twenty of this
11 chapter, or other person treated as a distributor pursuant to section
12 four hundred seventy-one-d of this chapter shall be guilty of a misde-
13 meanor. Provided further, that any person who has twice been convicted
14 under this subdivision shall be guilty of a class E felony for any
15 subsequent violation of this section, regardless of the amount of tobac-
16 co products involved in such violation.

17 (4) For purposes of this subdivision, such person shall knowingly
18 transport or have in his custody, possession or under his control tobac-
19 co or cigars on which such taxes have not been assumed or paid by a
20 distributor appointed by the commissioner ~~[of taxation and finance]~~
21 where such person has knowledge of the requirement of the tax on tobacco
22 products and, where to his knowledge, such taxes have not been assumed
23 or paid on such tobacco products by a distributor appointed by the
24 commissioner of taxation and finance.

25 ~~[(k)]~~ (i) Any person who falsely or fraudulently makes, alters or
26 counterfeits a registration certificate or sticker required under the
27 provisions of section four hundred eighty-a of this chapter, or causes
28 or procures to be falsely or fraudulently made, altered or counterfeited
29 any such registration certificate or sticker, or knowingly and willfully
30 utters, purchases, passes or tenders as true any such false, altered or
31 counterfeited registration certificate or sticker, and any person who
32 knowingly and willfully makes, causes to be made, purchases or receives
33 any device for forging or counterfeiting any registration certificate or
34 sticker required under the provisions of such section, or who knowingly
35 and willfully possesses any such device, shall be guilty of a class B
36 misdemeanor.

37 § 29. Section 1815 of the tax law, as amended by chapter 170 of the
38 laws of 1994, clause (i) of subparagraph (A) of paragraph 1 of subdivi-
39 sion (a) as amended by section 10, subparagraph (B) of paragraph 1 of
40 subdivision (a) as amended by section 11 and subparagraph (C) of para-
41 graph 1 of subdivision (a) as amended by section 12 of part E of chapter
42 60 of the laws of 2007, is amended to read as follows:

43 § 1815. Highway use and fuel use taxes. - (a) Violations. (1) It shall
44 be unlawful for any person to:

45 (A) (i) Use or cause or permit to be used, any public highway in this
46 state for the operation of a motor vehicle subject to the provisions of
47 article twenty-one of this chapter without first applying for and
48 obtaining the certificate of registration required under such article;

49 (ii) Use or cause or permit to be used, any public highway in this
50 state for the operation of a qualified motor vehicle subject to the
51 provisions of article twenty-one-A of this chapter without first obtain-
52 ing the license and decal required pursuant to such article or to carry
53 or cause or permit to be carried upon any qualified motor vehicle a
54 license or decal which has been suspended or revoked or which was issued
55 for a qualified motor vehicle other than the one on which carried. The
56 operation of any qualified motor vehicle on any public highway of this

1 state without carrying thereon the license or decal required under such
2 article shall be presumptive evidence that a license or decal has not
3 been obtained for such qualified motor vehicle;

4 (B) Operate, or cause or permit to be operated, on any public highway
5 any motor vehicle subject to the provisions of article twenty-one of
6 this chapter having an actual gross or unloaded weight in excess of the
7 gross or unloaded weight set forth on the certificate of registration
8 issued for such motor vehicle;

9 (C) Fail to deliver or surrender, pursuant to the provisions of arti-
10 cle twenty-one or twenty-one-A of this chapter or any rule or regulation
11 promulgated by the commissioner, a certificate of registration or
12 license or decal to such commissioner, or any person directed by such
13 commissioner to take possession thereof;

14 (D) Fail [~~to make any return under article twenty one or twenty one A~~
15 ~~of this chapter or~~] to keep records of operations of motor vehicles or
16 qualified motor vehicles as the commissioner shall prescribe;

17 (E) [~~Make any false return; or~~
18 ~~(F)~~] Violate any other provision of article twenty-one or twenty-one-A
19 of this chapter or any rule or regulation promulgated thereunder.

20 (2) Any person who violates any provision of this subdivision, upon a
21 first conviction shall be subject to a fine of not less than one hundred
22 dollars or more than two hundred fifty dollars; and upon a second or
23 subsequent conviction to a fine of not less than two hundred fifty
24 dollars or more than five hundred dollars or by imprisonment for not
25 more than ten days. Except as otherwise provided by law such a violation
26 shall not be a crime and the penalty or punishment imposed therefor
27 shall not be deemed for any purpose a penal or criminal penalty or
28 punishment and shall not impose any disability upon or affect or impair
29 the credibility as a witness, or otherwise, of any person convicted
30 thereof.

31 (3) For the purposes of conferring jurisdiction upon courts and police
32 officers, and on the officers specified in subdivision four of section
33 2.10 of the criminal procedure law and on judicial officers generally,
34 such violations shall be deemed traffic infractions and for such purpose
35 only all provisions of law relating to traffic infractions shall apply
36 to such violations; provided, however, that the commissioner of motor
37 vehicles, any hearing officer appointed by him, or any administrative
38 tribunal authorized to hear and determine any charges or offenses which
39 are traffic infractions shall not have jurisdiction of such infractions.

40 (4) Upon the conviction of any person for a violation of any of the
41 provisions of this subdivision, the trial court or the clerk thereof
42 shall within forty-eight hours certify the facts of the case to the
43 commissioner and such certificate shall be presumptive evidence of the
44 facts recited therein. If any such conviction shall be reversed upon
45 appeal therefrom, the person whose conviction has been so reversed may
46 serve upon the commissioner a certified copy of the order of reversal
47 and the commissioner shall thereupon record the same.

48 (b) [~~Felonies. Any person who files or causes to be filed any return,~~
49 ~~affidavit or statement required or permitted by article twenty one or~~
50 ~~twenty one A of this chapter which is willfully false or fraudulent or~~
51 ~~who willfully fails to file a return with intent to evade the tax is~~
52 ~~guilty of a class E felony.~~

53 (e)] An official weigh slip or ticket issued and certified by any
54 truck weigher in the employ of the department of transportation or by
55 any duly licensed weight master shall constitute prima facie evidence of
56 the information therein set forth and of the operation of the vehicle

1 therein described upon a public highway and shall be admissible before
2 any court in any violation proceeding or criminal proceeding.

3 § 30. Section 1817 of the tax law, as added by chapter 65 of the laws
4 of 1985, paragraph 1 of subdivision (c) as amended by chapter 411 of the
5 laws of 1986, subdivision (e) as amended by chapter 765 of the laws of
6 1985, subdivision (g) as amended by chapter 412 of the laws of 1986,
7 subdivision (h) as amended by chapter 275 of the laws of 1986, subdivi-
8 sion (i) as amended by chapter 261 of the laws of 1988, subdivision (k)
9 as amended by chapter 3 of the laws of 2004, subdivisions (l) and (s) as
10 amended and subdivisions (q) and (r) as added by chapter 2 of the laws
11 of 1995, subdivision (o) as added by chapter 61 of the laws of 1989,
12 subdivision (p) as added by chapter 810 of the laws of 1992 and subdivi-
13 sion (t) as added by section 3 of part A of chapter 35 of the laws of
14 2006, is amended to read as follows:

15 § 1817. Sales and compensating use taxes.--(a) ~~[Willful failure to~~
16 ~~file a return or report. Any person required under article twenty eight~~
17 ~~of this chapter to make a return or report (other than a return of~~
18 ~~compensating use tax), who willfully fails to make such return or~~
19 ~~report, at the time or times so required, shall be guilty of a misdemea-~~
20 ~~nor.~~

21 ~~(b) Fraudulent returns, reports, statements or other documents.--(1)~~
22 ~~Any person who willfully makes and subscribes any return, report, state-~~
23 ~~ment or other document which is required to be filed with or furnished~~
24 ~~to the tax commission or to any person, pursuant to the provisions of~~
25 ~~article twenty eight of this chapter, which he does not believe to be~~
26 ~~true and correct as to every material matter shall be guilty of a misde-~~
27 ~~meanor.~~

28 ~~(2) Any person who willfully delivers or discloses to the tax commis-~~
29 ~~sion or to any person, pursuant to the provisions of article twenty-~~
30 ~~eight of this chapter, any list, return, report, account, statement or~~
31 ~~other document known by him to be fraudulent or to be false as to any~~
32 ~~material matter shall be guilty of a misdemeanor.~~

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

37 ~~(c) Failure to collect tax.--(1) Any person who willfully fails to~~
38 ~~collect the tax imposed under article twenty eight of this chapter from~~
39 ~~a customer shall, in addition to other penalties provided by law, be~~
40 ~~guilty of a misdemeanor.~~

41 ~~(2) A person is guilty of failure to collect sales tax when he fails~~
42 ~~to collect a sales tax required to be collected by article twenty eight~~
43 ~~of this chapter and when (a) he does so with intent to defraud the state~~
44 ~~or a political subdivision thereof and thereby deprives the state or a~~
45 ~~political subdivision thereof, or both together, of ten thousand dollars~~
46 ~~or more, or (b) he does so with intent to defraud the state or a poli-~~
47 ~~tical subdivision thereof through a common scheme or plan consisting of~~
48 ~~ten or more failures to collect the required tax on sales in the amount~~
49 ~~of one hundred dollars or more each. Failure to collect sales tax under~~
50 ~~this paragraph is a class E felony.~~

51 ~~(d)] Any person required to obtain a certificate of authority under~~
52 ~~section eleven hundred thirty-four of this chapter who, without possess-~~
53 ~~ing a valid certificate of authority, willfully (1) sells tangible~~
54 ~~personal property or services subject to tax, receives amusement charges~~
55 ~~or operates a hotel, (2) purchases or sells tangible personal property~~
56 ~~for resale, or (3) sells automotive fuel; and any person who fails to~~

1 surrender a certificate of authority as required by such article shall
2 be guilty of a misdemeanor.

3 ~~[(e)]~~ (b) Any person required to obtain a certificate of authority
4 under section eleven hundred thirty-four of this chapter who within five
5 years after a determination by the tax commission, pursuant to such
6 section, to suspend, revoke or refuse to issue a certificate of authori-
7 ty has become final, and without possession of a valid certificate of
8 authority (1) sells tangible personal property or services subject to
9 tax, receives amusement charges or operates a hotel, (2) purchases or
10 sells tangible personal property for resale, or (3) sells automotive
11 fuel, shall be guilty of a misdemeanor. It shall be an affirmative
12 defense that such person performed the acts described in this subdivi-
13 sion without knowledge of such determination. Any person who violates a
14 provision of this subdivision, upon conviction, shall be subject to a
15 fine in any amount authorized by this article, but not less than five
16 hundred dollars, in addition to any other penalty provided by law.

17 ~~[(f)]~~ (c) Any person who willfully fails to file a notice of a show as
18 required by article twenty-eight of this chapter or who willfully rents,
19 leases or grants a license to use space for a show or operates a show
20 without obtaining a permit pursuant to paragraph two of subdivision (b)
21 of section eleven hundred thirty-four of this chapter shall be guilty of
22 a misdemeanor.

23 ~~[(g)]~~ (d) Any person (1) who willfully fails to charge separately the
24 tax imposed under article twenty-eight of this chapter or to state such
25 tax separately on any bill, statement, memorandum or receipt issued or
26 employed by him upon which the tax is required to be stated separately
27 as provided in subdivision (a) of section eleven hundred thirty-two of
28 this chapter; or (2) who shall refer or cause reference to be made to
29 such tax in a form or manner other than that required by such article
30 twenty-eight, shall be guilty of a misdemeanor.

31 ~~[(h)]~~ (e) Any person willfully failing to file a bond or other securi-
32 ty or deposit taxes in any banking institution where such filing or
33 deposit is required pursuant to the provisions of paragraph two or three
34 of subdivision (e) of section eleven hundred thirty-seven of this chap-
35 ter shall be guilty of a misdemeanor.

36 ~~[(i)]~~ (f) Any owner of a filling station who shall willfully and know-
37 ingly have in his custody, possession or under his control any motor
38 fuel or diesel motor fuel on which (1) the prepaid tax imposed by
39 section eleven hundred two of this chapter has not been assumed or paid
40 by a distributor registered as such under article twelve-A of this chap-
41 ter or (2) the prepaid tax imposed by section eleven hundred two of this
42 chapter was required to have been passed through to him and has not been
43 included in the cost of such fuel to him, shall in either case, be guil-
44 ty of a class E felony. For purposes of this subdivision, such owner
45 shall willfully and knowingly have in his custody, possession or under
46 his control any motor fuel or diesel motor fuel on which such tax has
47 not been assumed or paid by a distributor registered as such where such
48 owner has knowledge of the requirement that such tax be paid and where,
49 to his knowledge, such tax has not been assumed or paid by such regis-
50 tered distributor on such motor fuel or diesel motor fuel. Such owner
51 shall willfully and knowingly have in his custody, possession or under
52 his control motor fuel or diesel motor fuel on which such tax is
53 required to have been passed through to him and has not been included in
54 the cost to him where such owner has knowledge of the requirement that
55 such tax be passed through and where to his knowledge such tax has not
56 been so included.

1 ~~[(j)]~~ (g) Any person who willfully fails to keep any records required
2 by article twenty-eight of this chapter shall be guilty of a misdemea-
3 nor.

4 ~~[(k)]~~ (h) The penalties provided for in this section shall not
5 preclude prosecution pursuant to the penal law with respect to the will-
6 ful failure of any person to pay over to the state any sales tax imposed
7 by section eleven hundred four, eleven hundred five, eleven hundred
8 seven, eleven hundred eight or eleven hundred nine of this chapter or by
9 any local law adopted by any city or county pursuant to article twenty-
10 nine of this chapter, whenever such person has been required to collect
11 and has collected any such sales tax. In any such prosecution under the
12 penal law, a person who has been required to collect and has collected
13 any such tax shall be deemed to have acted in a fiduciary character with
14 respect to the state or a political subdivision thereof, and the tax
15 collected shall be deemed to have been entrusted to such person by the
16 state or a political subdivision thereof.

17 ~~[(l)] Any person who willfully fails to pay sales or compensating use~~
18 ~~tax, or to file a return of compensating use tax imposed by or pursuant~~
19 ~~to the authority of article twenty-eight or twenty-nine of this chapter,~~
20 ~~with respect to the purchase or use of automotive fuel or cigarettes~~
21 ~~shall be guilty of a misdemeanor.~~

22 ~~[(m)] Any person who willfully issues a false or fraudulent resale or~~
23 ~~other exemption certificate or document with intent to evade tax shall~~
24 ~~be guilty of a misdemeanor.~~

25 ~~[(n)] Any person who, being duly subpoenaed, pursuant to section one~~
26 ~~hundred seventy-four of this chapter or the provisions of the civil~~
27 ~~practice law and rules, in connection with a matter arising under arti-~~
28 ~~cle twenty-eight of this chapter, to attend as a witness or to produce~~
29 ~~books, accounts, records, memoranda, documents or other papers who (i)~~
30 ~~fails or refuses to attend without lawful excuse, (ii) refuses to be~~
31 ~~sworn, (iii) refuses to answer any material and proper question, or (iv)~~
32 ~~refuses, after reasonable notice, to produce books, accounts, records,~~
33 ~~memoranda, documents or other papers in his possession or under his~~
34 ~~control which constitute material and proper evidence shall be guilty of~~
35 ~~a misdemeanor.~~

36 ~~[(o)]~~ (i) Any entertainment promoter who willfully authorizes an enter-
37 tainment vendor, to whom such promoter has either directly or indirectly
38 rented, leased, granted a license to use or under any other arrangement
39 made space available in order for such vendor to make taxable sales of
40 tangible personal property at an entertainment event, without first
41 requiring such vendor to obtain a certificate of authority or who will-
42 fully fails to obtain an entertainment promoter certificate as required
43 under article twenty-eight of this chapter shall be guilty of a misde-
44 meanor.

45 ~~[(p)]~~ (j) Any person described in subdivision (a) of section eleven
46 hundred forty-two-A of this chapter who willfully fails to include all
47 information required under such section on a ticket or other memorandum
48 as described in such section shall be guilty of a misdemeanor.

49 ~~[(q)]~~ (k) Any owner of a place of business selling cigarettes at
50 retail who shall willfully and knowingly have in such owner's custody or
51 possession or under such owner's control any cigarettes on which (1) the
52 prepaid tax imposed by section eleven hundred three of this chapter has
53 not been assumed or paid by an agent licensed as such under article
54 twenty of this chapter or (2) the prepaid tax imposed by section eleven
55 hundred three of this chapter was required to have been passed through
56 to such owner and has not been included in the cost of such cigarettes

1 to such owner shall, in either case, be guilty of a misdemeanor.
2 Provided, however, if the amount of cigarettes is twenty thousand or
3 more, such owner shall be guilty of a class E felony. For purposes of
4 this subdivision, such owner shall willfully and knowingly have in such
5 owner's custody or possession or under such owner's control any ciga-
6 rettes on which such tax has not been assumed or paid by an agent
7 licensed as such under such article twenty where such owner has know-
8 ledge of the requirement that such tax be assumed or paid and where, to
9 such owner's knowledge, such tax has not been assumed or paid by such an
10 agent on such cigarettes. Such owner shall willfully and knowingly have
11 in such owner's custody or possession or under such owner's control
12 cigarettes on which such tax is required to have been passed through to
13 such owner and has not been included in the cost to such owner where
14 such owner has knowledge of the requirement that such tax be passed
15 through and where to such owner's knowledge such tax has not been so
16 included.

17 ~~[(+r)]~~ (1) Any person who falsely or fraudulently makes, alters or
18 counterfeits any stamp prescribed by the commissioner under the
19 provisions of article twenty-eight or pursuant to the authority of arti-
20 cle twenty-nine of this chapter, or causes or procures to be falsely or
21 fraudulently made, altered or counterfeited any such stamp, or knowingly
22 and willfully utters, purchases, passes or tenders as true any such
23 false, altered or counterfeited stamp, or knowingly and willfully
24 possesses any cigarettes in packages bearing any such false, altered or
25 counterfeited stamp, and any person who knowingly and willfully makes,
26 causes to be made, purchases or receives any device for forging or coun-
27 terfeiting any stamp prescribed by the commissioner under the provisions
28 of article twenty-eight or pursuant to the authority of article twenty-
29 nine of this chapter, or who knowingly and willfully possesses any such
30 device, shall be guilty of a class E felony. For the purposes of this
31 subdivision, the words "stamp prescribed by the commissioner" shall
32 include a stamp, impression or imprint made by a metering machine, the
33 design of which has been approved by the commissioner.

34 ~~[(+s)]~~ (m) All of the provisions of this section shall apply for
35 purposes of any taxes administered by the commissioner and imposed
36 pursuant to the authority of article twenty-nine of this chapter and for
37 the purposes of any taxes imposed by article twenty-eight-A of this
38 chapter. References in subdivisions ~~[(+i), (+l), (+q) and (+r)]~~ (f), (k),
39 and (1) of this section to taxes imposed by or pursuant to the authority
40 of article twenty-eight or twenty-nine of this chapter include the taxes
41 required to be prepaid pursuant to section eleven hundred two or eleven
42 hundred three of this chapter.

43 ~~[(+t)]~~ (n) (1) Every person engaged in the retail sale of motor fuel
44 and/or diesel motor fuel or a distributor of such fuels, as defined in
45 article twelve-A of this chapter, shall comply with the provisions of
46 section three hundred ninety-two-i of the general business law by reduc-
47 ing the prices charged for motor fuel and diesel motor fuel in an amount
48 equal to any reduction in taxes prepaid by the distributor or imposed on
49 retail customers resulting from computing sales and compensating use
50 taxes at a cents per gallon rate pursuant to the provisions of paragraph
51 two of subdivision (e) and subdivision (m) of section one thousand one
52 hundred eleven of this chapter.

53 (2) The commissioner, in cooperation with the state consumer
54 protection board, shall monitor the prices charged by persons engaged in
55 the retail sale or distribution of motor fuel and diesel motor fuel.

(3) Upon a finding by the commissioner that a person engaged in the retail sale of motor fuel and/or diesel motor fuel or in the distribution of such fuels has violated the provisions of section three hundred ninety-two-i of the general business law, the commissioner shall provide notice of such violation to such person and hold a hearing on such violation, with an opportunity for the accused to be heard, not less than ten days after notice is provided. A violation of section three hundred ninety-two-i of the general business law shall subject the person violating such section to a civil penalty of up to five thousand dollars for each day such violation occurs.

§ 31. Section 1818 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

§ 1818. Real estate transfer tax.--Any willful act or omission, by any person which constitutes a violation of any provision of article thirty-one of this chapter ~~[or any willful attempt to evade or defeat the tax imposed by such article]~~ shall constitute a misdemeanor.

§ 32. Section 1820 of the tax law, as added by chapter 833 of the laws of 1987, is amended to read as follows:

§ 1820. Boxing and wrestling exhibitions tax. Any willful act or omission by any person which constitutes a violation of any provision of article nineteen of this chapter ~~[or any willful attempt to evade or defeat the tax imposed by such article]~~ shall constitute a misdemeanor.

§ 33. The tax law is amended by adding three new sections 1831, 1832 and 1833 to read as follows:

§ 1831. Failure to obey subpoenas. Any person who is duly subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with any matter arising under this chapter, or any related income or earnings tax statute, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers, and who (1) fails or refuses to attend without lawful excuse, (2) refuses to be sworn, (3) without asserting a valid legal privilege refuses to answer any material and proper question, or (4) without asserting a valid legal privilege refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers that constitute material and proper evidence in his or her possession or under his or her control, shall be guilty of a misdemeanor.

§ 1832. Non-preemption; penal law anticipatory offenses and accessory liability apply. (a) Unless expressly stated otherwise, the penalties provided in this chapter shall not preclude prosecution for any offense under the penal law or any other criminal statute.

(b) The offenses specified in title G of the penal law and the provisions of article twenty of the penal law are applicable to all offenses defined in this chapter.

§ 1833. Tax preparer registration. A commercial tax return preparer, as defined by paragraph three of subdivision (a) of section thirty-two of this chapter, who willfully and with the intent to evade the requirements of section thirty-two of this chapter, fails to sign his or her name to any tax return that requires a signature or fails to register as required by such section thirty-two, will be guilty of a class A misdemeanor.

§ 34. This act shall take effect immediately and apply to offenses committed on and after such effective date.

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

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

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

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

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

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

35 (iii) Any person who fails to file a complete informational return
36 must pay a penalty of fifteen hundred dollars for the first violation
37 and a penalty of three thousand dollars for each subsequent violation,
38 unless it can be shown that such failure is due to reasonable cause and
39 not willful neglect.

40 (iv) If any person makes a statement on an informational return and,
41 as of the time of the statement, there was no reasonable basis for that
42 statement, that person must pay a penalty of two thousand dollars for
43 the first violation and a penalty of four thousand dollars for each
44 subsequent violation.

45 § 3. Paragraph (d) of subdivision 1 of section 433 of the tax law, as
46 amended by chapter 61 of the laws of 1989, is amended to read as
47 follows:

48 (d) If the failure to pay any tax within the time required by or
49 pursuant to this article is due to fraud, in lieu of the penalties and
50 interest provided for in paragraphs (a) and (b) of this subdivision,
51 there shall be added to the tax (i) a penalty of [~~fifty per centum of~~
52 two times the amount of tax due, plus (ii) interest on such unpaid tax
53 at the underpayment rate set by the commissioner of taxation and finance
54 pursuant to subdivision twenty-sixth of section one hundred seventy-one
55 of this chapter for the period beginning on the last day prescribed by
56 this article for the payment of such tax (determined without regard to

1 any extension of time for paying) and ending on the day on which such
2 tax is paid[, ~~plus (iii) for the period beginning on the last day~~
3 ~~prescribed by this article for the payment of such tax (determined with-~~
4 ~~out regard to any extension of time for paying) and ending on the day~~
5 ~~the amount of tax due is finally determined or, if earlier, on the day~~
6 ~~on which such tax is paid, an amount equal to fifty per centum of the~~
7 ~~interest payable under subparagraph (ii) of this paragraph on that~~
8 ~~portion of the unpaid tax which is attributable to fraud].~~

9 § 4. Subparagraph (iv) of paragraph (a) of subdivision 1 of section
10 481 of the tax law, as amended by chapter 61 of the laws of 1989, is
11 amended to read as follows:

12 (iv) If the failure to pay any tax within the time required by or
13 pursuant to this article is due to fraud, in lieu of the penalties and
14 interest provided for in subparagraphs (i) and (ii) of this paragraph,
15 there shall be added to the tax (A) a penalty of [~~fifty per centum of~~]
16 two times the amount of tax due, plus (B) interest on such unpaid tax at
17 the underpayment rate set by the commissioner of taxation and finance
18 pursuant to subdivision twenty-sixth of section one hundred seventy-one
19 of this chapter for the period beginning on the last day prescribed by
20 this article for the payment of such tax (determined without regard to
21 any extension of time for paying) and ending on the day on which such
22 tax is paid[, ~~plus (C) for the period beginning on the last day~~
23 ~~prescribed by this article for the payment of such tax (determined with-~~
24 ~~out regard to any extension of time for paying) and ending on the day~~
25 ~~the amount of tax due is finally determined or, if earlier, on the day~~
26 ~~on which such tax is paid, an amount equal to fifty per centum of the~~
27 ~~interest payable under clause (B) of this subparagraph on that portion~~
28 ~~of the unpaid tax which is attributable to fraud].~~

29 § 5. Paragraph (d) of subdivision 1 of section 512 of the tax law, as
30 amended by chapter 61 of the laws of 1989, is amended to read as
31 follows:

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

49 § 6. Subdivision (d) of section 527 of the tax law, as added by chap-
50 ter 170 of the laws of 1994, is amended to read as follows:

51 (d) Fraud. If the failure to pay any tax within the time required by
52 or pursuant to this article is due to fraud, in lieu of the penalties
53 provided for in subdivision (b) of this section, there shall be added to
54 the tax (1) a penalty of [~~fifty percent of~~] two times the amount of tax
55 due[, ~~plus (2) for the period beginning on the last day prescribed by~~
56 ~~this article for the payment of such tax (determined without regard to~~

1 ~~any extension of time for paying) and ending on the day the amount of~~
2 ~~tax due is finally determined or, if earlier, on the day on which such~~
3 ~~tax is paid, an interest penalty equal to fifty percent of the interest~~
4 ~~payable under subdivision (a) of this section on that portion of the~~
5 ~~unpaid tax which is attributable to fraud].~~

6 § 7. Paragraph 1 of subsection (e) of section 685 of the tax law, as
7 amended by chapter 65 of the laws of 1985, is amended to read as
8 follows:

9 (1) If any part of a deficiency is due to fraud, there shall be added
10 to the tax an amount equal to [~~fifty percent of~~] two times the deficien-
11 cy.

12 § 8. Paragraph 2 of subsection (e) of section 685 of the tax law is
13 REPEALED and paragraphs 3 and 4 are renumbered paragraphs 2 and 3.

14 § 9. Subsection (q) of section 685 of the tax law, as added by chapter
15 65 of the laws of 1985, is amended to read as follows:

16 (q) Frivolous tax returns and specified frivolous submissions.-- (1)
17 If any individual files what purports to be a return of any tax imposed
18 by this article but which does not contain information on which the
19 substantial correctness of the self-assessment may be judged, or
20 contains information that on its face indicates that the self-assessment
21 is substantially incorrect; and such conduct is due to a position which
22 is frivolous, including a position identified as frivolous under para-
23 graph three of this subsection, or an intent [~~which appears on the~~
24 ~~purported return~~] to delay or impede the administration of this arti-
25 cle, then such individual shall pay a penalty not exceeding five
26 [~~hundred~~] thousand dollars. This penalty shall be in addition to any
27 other penalty provided by law.

28 (2) Penalty for specified frivolous submissions. (A) Any person who
29 submits a specified frivolous submission shall pay a penalty of five
30 thousand dollars. This penalty shall be in addition to any other penalty
31 provided by law.

32 (B) The term "specified frivolous submission" means a specified
33 submission if any portion of that submission (i) is based on a position
34 that the commissioner has identified as frivolous under paragraph three
35 of this subdivision, or (ii) reflects a desire to delay or impede the
36 administration of this chapter.

37 (C) The term "specified submission" means a request for conciliation
38 conference, a petition to the division of tax appeals, an application
39 for an installment payment agreement, or an offer in compromise.

40 (D) If the commissioner provides an individual with notice that a
41 submission is a specified frivolous submission and that person withdraws
42 the submission within thirty days after such notice, the penalty imposed
43 under this paragraph will not apply with respect to that submission.

44 (3) Listing of frivolous positions. The commissioner will prescribe
45 (and periodically revise) a list of positions that the commissioner has
46 identified as frivolous for purposes of this subsection.

47 (4) Reduction of penalty. The commissioner may reduce the amount of
48 any penalty imposed under this section if the commissioner determines
49 that such a reduction would promote compliance with and administration
50 of this chapter.

51 § 10. Section 685 of the tax law is amended by adding a new subsection
52 (cc) to read as follows:

53 (cc) False or fraudulent document penalty. Any taxpayer that submits a
54 false or fraudulent document to the department will be subject to a
55 penalty of one hundred dollars per document submitted, or five hundred

1 dollars per tax return submitted. This penalty will be in addition to
2 any other penalty or addition provided by law.

3 § 11. Paragraph 1 of subsection (f) of section 1085 of the tax law, as
4 amended by chapter 65 of the laws of 1985, is amended to read as
5 follows:

6 (1) If any part of a deficiency is due to fraud, there shall be added
7 to the tax an amount equal to [~~fifty percent of~~] two times the deficien-
8 cy.

9 § 12. Paragraph 2 of subsection (f) of section 1085 of the tax law is
10 REPEALED and paragraph 3 is renumbered paragraph 2.

11 § 13. Section 1085 of the tax law is amended by adding a new
12 subsection (u) to read as follows:

13 (u) False or fraudulent document penalty. Any taxpayer that submits a
14 false or fraudulent document to the department will be subject to a
15 penalty of one hundred dollars per document submitted, or five hundred
16 dollars per tax return submitted. This penalty will be in addition to
17 any other penalty or addition provided by law.

18 § 14. Paragraph 2 of subdivision (a) of section 1145 of the tax law,
19 as amended by section 12 of part R of chapter 85 of the laws of 2002, is
20 amended to read as follows:

21 (2) If the failure to pay or pay over any tax to the commissioner
22 within the time required by this article is due to fraud, in lieu of the
23 penalties and interest provided for in subparagraphs (i) and (ii) of
24 paragraph one of this subdivision, there shall be added to the tax (i) a
25 penalty of [~~fifty percent of~~] two times the amount of the tax due, plus
26 (ii) interest on such unpaid tax at the rate of fourteen percent per
27 annum or the underpayment rate of interest set by the commissioner
28 pursuant to section eleven hundred forty-two of this part, whichever is
29 greater, for the period beginning on the last day prescribed by this
30 article for the payment of such tax (determined without regard to any
31 extension of time for paying) and ending on the day on which such tax is
32 paid[, plus (iii) for the period beginning on the last day prescribed by
33 this article for the payment of such tax (determined without regard to
34 any extension of time for paying) and ending on the day the amount of
35 tax due is finally determined or, if earlier, on the day on which such
36 tax is paid, an amount equal to fifty percent of the interest payable
37 under subparagraph (ii) of this paragraph, on that portion of the unpaid
38 tax which is attributable to fraud].

39 § 15. Section 1145 of the tax law is amended by adding two new subdi-
40 visions (i) and (j) to read as follows:

41 (i) Aiding or assisting in the giving of fraudulent returns, reports,
42 statements or other documents. Any person who, with the intent that tax
43 be evaded, for a fee or other compensation or as an incident to the
44 performance of other services for which that person receives compen-
45 sation, aids or assists in, or procures, counsels, or advises the prepa-
46 ration or presentation under this article, or in connection with any
47 matter arising under this article, of any return, report, declaration,
48 statement or other document that is fraudulent or false as to any mate-
49 rial matter, or supplies any false or fraudulent information, whether or
50 not such falsity or fraud is with the knowledge or consent of the person
51 authorized or required to present that return, report, declaration,
52 statement or other document, will pay a penalty not exceeding five thou-
53 sand dollars. The definitions in subsection (l) of section ten hundred
54 eighty-five of this chapter apply for the purposes of this penalty.

55 (j) False or fraudulent document penalty. Any taxpayer that submits a
56 false or fraudulent document to the department will be subject to a

1 penalty of one hundred dollars per document submitted, or five hundred
2 dollars per tax return submitted. This penalty will be in addition to
3 any other penalty provided by law.

4 § 16. Subdivision (iii) of section 12 of part N of chapter 61 of the
5 laws of 2005 amending the tax law relating to certain transactions and
6 related information, as amended by section 1 of part DD-1 of chapter 57
7 of the laws of 2008, is amended to read as follows:

8 (iii) provided, further, that the provisions of this act, except
9 section five of this act, shall expire and be deemed repealed July 1,
10 2011. The commissioner of taxation and finance shall cause to be
11 prepared a written report on the tax shelter law. Notwithstanding any
12 other provision of law to the contrary, such report shall include, but
13 not be limited to, statistical information regarding the listed and
14 reportable transactions and avoidance transactions under this act. A
15 copy of such report shall be delivered to the governor, the temporary
16 president of the senate, and the speaker of the assembly no later than
17 April 1, 2007; provided, that, such expiration and repeal shall not
18 affect any requirement imposed pursuant to this act.

19 § 17. This act shall take effect immediately and apply to returns and
20 other documents filed or required to be filed and actions taken and
21 omissions occurring on or after the date this act becomes a law;
22 provided however, that sections seven through thirteen of this act shall
23 apply to taxable years beginning on or after January 1, 2009.

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

33 § 3. This act shall take effect immediately provided, however, that
34 the applicable effective date of Subparts A through J of this act shall
35 be as specifically set forth in the last section of such Subparts.

36 PART W-1

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

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

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

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

53 (B) in the case of a married individual filing a joint return or a
54 surviving spouse, the numerator of which is the lesser of fifty thousand

1 dollars or the excess of such individual's New York adjusted gross
2 income over two hundred thousand dollars and the denominator of which is
3 fifty thousand dollars;

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

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

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

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

27 (ii) one hundred percent of the tax shown on the return of the indi-
28 vidual for the preceding taxable year. Provided, however, the tax shown
29 on such return for taxable years beginning in two thousand two shall be
30 the tax calculated as if such years began in two thousand three.
31 Provided further, however, that the tax shown on such return for taxable
32 years beginning in two thousand eight shall be calculated as if para-
33 graph three of subsection (f) of section six hundred fifteen of this
34 article has been in effect for taxable years beginning in two thousand
35 eight.

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

39 (f) The city itemized deduction otherwise allowable under this section
40 shall be reduced by the sum of the amounts determined under paragraphs
41 one ~~and~~, two and three of this subdivision.

42 (1) An amount equal to the city itemized deduction otherwise allowable
43 under subdivision (a) of this section, multiplied by a percentage, such
44 percentage to be determined by multiplying, for taxable years beginning
45 in nineteen hundred eighty-eight, ten percent, and for taxable years
46 beginning after nineteen hundred eighty-eight, twenty-five percent, by a
47 fraction,

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

53 (B) in the case of a married individual filing a joint return or a
54 surviving spouse, the numerator of which is the lesser of fifty thousand
55 dollars or the excess of such individual's city adjusted gross income

1 over two hundred thousand dollars and the denominator of which is fifty
2 thousand dollars;

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

7 (2) An amount equal to the city itemized deduction of an individual
8 otherwise allowable under subdivision (a) of this section, multiplied by
9 a percentage, such percentage to be determined by multiplying, for taxa-
10 ble years beginning in nineteen hundred eighty-eight, ten percent, and
11 for taxable years beginning after nineteen hundred eighty-eight, twen-
12 ty-five percent, by a fraction, the numerator of which is the lesser of
13 fifty thousand dollars or the excess of such individual's city adjusted
14 gross income over four hundred seventy-five thousand dollars and the
15 denominator of which is fifty thousand dollars.

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

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

27 (ii) one hundred percent of the tax shown on the return of the indi-
28 vidual for the preceding taxable year. Provided, however, that the tax
29 shown on such return for taxable years beginning in two thousand eight
30 shall be calculated as if paragraph three of subdivision (f) of section
31 11-1715 of this chapter was in effect for taxable years beginning in two
32 thousand eight.

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

40 § 6. Notwithstanding any provision of law to the contrary, the commis-
41 sioner of taxation and finance is authorized to prescribe by regulations
42 the method of determining the amount to be deducted and withheld from
43 wages on account of taxes imposed by or pursuant to the authority of
44 article 22 of the tax law in taxable years beginning in 2009 in
45 connection with the implementation of section one of this act. The
46 commissioner of taxation and finance may adjust the withholding tables
47 in regard to taxable years beginning in 2009 to account for the
48 provisions of this act. In prescribing any such regulations, the commis-
49 sioner of taxation and finance may adopt rules on an emergency basis
50 notwithstanding anything to the contrary in section 202 of the state
51 administrative procedure act. In carrying out his duties and responsi-
52 bilities under this section, the commissioner of taxation and finance
53 may accompany any such rule making procedure with a similar procedure
54 with respect to the taxes required to be deducted and withheld by local
55 laws imposing taxes pursuant to the authority of articles 30, 30-A and
56 30-B of the tax law that take effect and become applicable in taxable

1 years beginning in 2009, the provisions of any other law in relation to
2 such a procedure to the contrary notwithstanding.

3 § 7. This act shall take effect immediately.

4 PART X-1

5 Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 1 of
6 section 424 of the tax law, paragraph (a) as amended by section 1 of
7 part V of chapter 63 of the laws of 2000, paragraph (b) as amended by
8 chapter 490 of the laws of 1993 and paragraphs (c) and (d) as amended by
9 chapter 170 of the laws of 1994, are amended to read as follows:

10 (a) [~~Eleven~~ Fourteen cents per gallon upon beers;

11 (b) [~~Eighteen and ninety-three hundredths~~ Thirty cents per gallon
12 upon still wines, except cider containing more than three and two-tenths
13 per centum of alcohol by volume, upon which the tax shall be three and
14 seventy-nine hundredths cents per gallon;

15 (c) [~~Eighteen and ninety-three hundredths~~ Thirty cents per gallon
16 upon artificially carbonated sparkling wines, except artificially carbo-
17 nated sparkling cider containing more than three and two-tenths per
18 centum of alcohol by volume, upon which the tax shall be three and
19 seventy-nine hundredths cents per gallon;

20 (d) [~~Eighteen and ninety-three hundredths~~ Thirty cents per gallon
21 upon natural sparkling wines, except natural sparkling cider containing
22 more than three and two-tenths per centum of alcohol by volume, upon
23 which the tax shall be three and seventy-nine hundredths cents per
24 gallon;

25 § 2. (a) If a contract for the sale of beer and wines was entered into
26 prior to May 1, 2009 and delivery under that contract is made within the
27 state on or after May 1, 2009, the beer and wines sold under that
28 contract will be subject to tax under article 18 of the tax law, as
29 amended by this act, at the time of delivery.

30 (b) In order to subject beer and wines in this state on May 1, 2009 to
31 the increased taxes imposed by section one of this act, a special floor
32 tax is imposed on each wholesaler or retailer (as defined in the alco-
33 holic beverage control law) or other sellers of beer and wine, other
34 than those registered as distributors under article 18 of the tax law,
35 at the rates shown below with respect to all beer and wines in the
36 possession or under the control on May 1, 2009 of those wholesalers,
37 retailers and other sellers of beer and wines for purposes of sale in
38 the state. Additionally, any person who is a distributor or manufacturer
39 under article 18 of the tax law is subject to this special floor tax on
40 any beer and wines in his or her possession or under his or her control
41 on which the tax under article 18 of the tax law was already imposed.
42 The rate of the floor tax will be:

43 (1) On beer, thirteen cents per gallon; and

44 (2) On wines, thirty-two and seven hundredths cents per gallon.

45 This floor tax will be due and payable to the commissioner of taxation
46 and finance on or before July 20, 2009.

47 (c) Except as provided in this section, all the provisions of articles
48 18 and 37 of the tax law will apply to floor taxes imposed by this
49 section.

50 (d) The commissioner of taxation and finance is authorized to
51 prescribe any terms and conditions the commissioner deems advisable and
52 require any reports the commissioner deems necessary to effectuate the
53 provisions of this section.

(e) The commissioner of taxation and finance may request from the state liquor authority, and the state liquor authority is authorized and directed to provide, any cooperation and assistance, including data, that will enable the commissioner to carry out the imposition and implementation of the floor tax.

§ 3. This act shall take effect May 1, 2009.

PART Y-1

Section 1. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 1 of part WW-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(2) The amount of the credit shall be the product (or pro rata share) of the product, in the case of a member of a partnership) of thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the taxable year in which the production of the qualified film is completed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the taxable year in which the production of the qualified film is completed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year.

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

(d) The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional \$350 million in 2009. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section.

1 § 3. The governor's office of motion picture and television develop-
2 ment shall file a report on a quarterly basis with the director of the
3 division of the budget and the chairmen of the assembly ways and means
4 committee and senate finance committee. The report shall be filed within
5 fifteen days after the close of the calendar quarter. The first report
6 shall cover the calendar quarter that begins April 1, 2009. The report
7 must contain the following information for the calendar quarter:

8 (1) the total dollar amount of credits allocated during each month of
9 the calendar quarter, broken down by month;

10 (2) the number of film projects which have been allocated tax credits
11 of less than \$1 million per project and the total dollar amount of cred-
12 its allocated to those projects;

13 (3) the number of film projects which have been allocated tax credits
14 of \$1 million or more but less than \$5 million per project and the total
15 dollar amount of credits allocated to those projects;

16 (4) the number of film projects which have been allocated tax credits
17 of \$5 million or more per project and the total dollar amount of credits
18 allocated to those projects; and

19 (5) a list of each film project which has been allocated a tax credit
20 and for each of those projects (a) the estimated number of employees
21 associated with the project, (b) the estimated qualified costs for the
22 project, and (c) the estimated total costs of the project.

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

24 (a) sections one and two of this act shall apply to taxable years
25 beginning on or after January 1, 2009;

26 (b) any film that started production prior to such effective date but
27 had not received an allocation of tax credit from the governor's office
28 of motion picture and television development prior to that date shall be
29 ineligible for the empire state film production credit;

30 (c) the amendments to section 24 of the tax law made by section one of
31 this act shall not affect the repeal of such section and shall be deemed
32 to be repealed therewith; and

33 (d) the amendments to section 7 of part P of chapter 60 of the laws of
34 2004 made by section two of this act shall not affect the repeal of such
35 part and shall be deemed repealed therewith.

36 PART Z-1

37 Section 1. Subsections (a), (b) and (c) of section 601 of the tax law,
38 as amended by section 1 of part Y3 of chapter 62 of the laws of 2003,
39 are amended to read as follows:

40 (a) Resident married individuals filing joint returns and resident
41 surviving spouses. There is hereby imposed for each taxable year on the
42 New York taxable income of every resident married individual who makes a
43 single return jointly with his spouse under subsection (b) of section
44 six hundred fifty-one and on the New York taxable income of every resi-
45 dent surviving spouse a tax determined in accordance with the following
46 tables:

47 (1) For taxable years beginning after two thousand eight and before
48 two thousand twelve:

49 <u>If the New York taxable income is:</u>	<u>The tax is:</u>
50 <u>Not over \$16,000</u>	<u>4% of the New York taxable</u>
51	<u>income</u>
52 <u>Over \$16,000 but not over \$22,000</u>	<u>\$640 plus 4.5% of excess over</u>

1		<u>\$16,000</u>
2	<u>Over \$22,000 but not over \$26,000</u>	<u>\$910 plus 5.25% of excess over</u>
3		<u>\$22,000</u>
4	<u>Over \$26,000 but not over \$40,000</u>	<u>\$1,120 plus 5.9% of excess over</u>
5		<u>\$26,000</u>
6	<u>Over \$40,000 but not over \$300,000</u>	<u>\$1,946 plus 6.85% of excess over</u>
7		<u>\$40,000</u>
8	<u>Over \$300,000 but not over \$500,000</u>	<u>\$19,756 plus 7.85% of excess over</u>
9		<u>\$300,000</u>
10	<u>Over \$500,000</u>	<u>\$35,456 plus 8.97% of excess over</u>
11		<u>\$500,000</u>

12 ~~[(1)]~~ (2) For taxable years beginning after two thousand five and
 13 before two thousand nine and after two thousand eleven:

14	If the New York taxable income is:	The tax is:
15	Not over \$16,000	4% of the New York taxable
16		income
17	Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over
18		\$16,000
19	Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over
20		\$22,000
21	Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over
22		\$26,000
23	Over \$40,000	\$1,946 plus 6.85% of excess over
24		\$40,000

25 ~~[(2)]~~ (3) For taxable years beginning in two thousand five:

26	If the New York taxable income is:	The tax is:
27	Not over \$16,000	4% of the New York taxable
28		income
29	Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over
30		\$16,000
31	Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over
32		\$22,000
33	Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over
34		\$26,000
35	Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over
36		\$40,000
37	Over \$150,000 but not over \$500,000	\$9,481 plus 7.25% of excess over
38		\$150,000
39	Over \$500,000	\$34,856 plus 7.7% of excess over
40		\$500,000

41 ~~[(3)]~~ (4) For taxable years beginning in two thousand four:

42	If the New York taxable income is:	The tax is:
43	Not over \$16,000	4% of the New York taxable
44		income
45	Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over
46		\$16,000
47	Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over
48		\$22,000
49	Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over

1		\$26,000
2	Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over
3		\$40,000
4	Over \$150,000 but not over \$500,000	\$9,481 plus 7.375% of excess over
5		\$150,000
6	Over \$500,000	\$35,294 plus 7.7% of excess over
7		\$500,000

8 ~~[(4)]~~ (5) For taxable years beginning in two thousand three:

9	If the New York taxable income is:	The tax is:
10	Not over \$16,000	4% of the New York taxable
11		income
12	Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over
13		\$16,000
14	Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over
15		\$22,000
16	Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over
17		\$26,000
18	Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over
19		\$40,000
20	Over \$150,000 but not over \$500,000	\$9,481 plus 7.5% of excess over
21		\$150,000
22	Over \$500,000	\$35,731 plus 7.7% of excess over
23		\$500,000

24 ~~[(5)]~~ (6) For taxable years beginning after nineteen hundred ninety-
25 six and before two thousand three:

26	If the New York taxable income is:	The tax is:
27	Not over \$16,000	4% of the New York taxable
28		income
29	Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over
30		\$16,000
31	Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over
32		\$22,000
33	Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over
34		\$26,000
35	Over \$40,000	\$1,946 plus 6.85% of excess over
36		\$40,000

37 ~~[(6)]~~ (7) For taxable years beginning in nineteen hundred ninety-six:

38	If the New York taxable income is:	The tax is:
39	Not over \$11,000	4% of the New York taxable
40		income
41	Over \$11,000 but not over \$16,000	\$440 plus 5% of excess over
42		\$11,000
43	Over \$16,000 but not over \$22,000	\$690 plus 6% of excess over
44		\$16,000
45	Over \$22,000	\$1,050 plus 7% of excess over
46		\$22,000

47 ~~[(7)]~~ (8) For taxable years beginning in nineteen hundred ninety-five:

48	If the New York taxable income is:	The tax is:
49	Not over \$13,000	4.55% of the New York taxable

1		income
2	Over \$13,000 but not over \$19,000	\$592 plus 5.55% of excess over
3		\$13,000
4	Over \$19,000 but not over \$25,000	\$925 plus 6.55% of excess over
5		\$19,000
6	Over \$25,000	\$1,318 plus 7.5% of excess over
7		\$25,000

8 ~~[(8)]~~ (9) For taxable years beginning after nineteen hundred eighty-
 9 nine and before nineteen hundred ninety-five:

10	If the New York taxable income is:	The tax is:
11	Not over \$11,000	4% of the New York taxable
12		income
13	Over \$11,000 but not over \$16,000	\$440 plus 5% of excess over
14		\$11,000
15	Over \$16,000 but not over \$22,000	\$690 plus 6% of excess over
16		\$16,000
17	Over \$22,000 but not over \$26,000	\$1,050 plus 7% of excess over
18		\$22,000
19	Over \$26,000	\$1,330 plus 7.875% of excess over
20		\$26,000

21 (b) Resident heads of households. There is hereby imposed for each
 22 taxable year on the New York taxable income of every resident head of a
 23 household a tax determined in accordance with the following tables:

24 (1) For taxable years beginning after two thousand eight and before
 25 two thousand twelve:

26	<u>If the New York taxable income is:</u>	<u>The tax is:</u>
27	<u>Not over \$11,000</u>	<u>4% of the New York taxable</u>
28		<u>income</u>
29	<u>Over \$11,000 but not over \$15,000</u>	<u>\$440 plus 4.5% of excess over</u>
30		<u>\$11,000</u>
31	<u>Over \$15,000 but not over \$17,000</u>	<u>\$620 plus 5.25% of excess over</u>
32		<u>\$15,000</u>
33	<u>Over \$17,000 but not over \$30,000</u>	<u>\$725 plus 5.9% of excess over</u>
34		<u>\$17,000</u>
35	<u>Over \$30,000 but not over \$250,000</u>	<u>\$1,492 plus 6.85% of excess over</u>
36		<u>\$30,000</u>
37	<u>Over \$250,000 but not over \$500,000</u>	<u>\$16,562 plus 7.85% of excess over</u>
38		<u>\$250,000</u>
39	<u>Over \$500,000</u>	<u>\$36,187 plus 8.97% of excess over</u>
40		<u>\$500,000</u>

41 ~~[(1)]~~ (2) For taxable years beginning after two thousand five and
 42 before two thousand nine and after two thousand eleven:

43	If the New York taxable income is:	The tax is:
44	Not over \$11,000	4% of the New York taxable
45		income
46	Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over
47		\$11,000
48	Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over
49		\$15,000
50	Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over

1		\$17,000
2	Over \$30,000	\$1,492 plus 6.85% of excess over
3		\$30,000

4 ~~[-2]~~ (3) For taxable years beginning in two thousand five:

5	If the New York taxable income is:	The tax is:
6	Not over \$11,000	4% of the New York taxable
7		income
8	Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over
9		\$11,000
10	Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over
11		\$15,000
12	Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over
13		\$17,000
14	Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over
15		\$30,000
16	Over \$125,000 but not over \$500,000	\$8,000 plus 7.25% of excess over
17		\$125,000
18	Over \$500,000	\$35,187 plus 7.7% of excess over
19		\$500,000

20 ~~[-3]~~ (4) For taxable years beginning in two thousand four:

21	If the New York taxable income is:	The tax is:
22	Not over \$11,000	4% of the New York taxable
23		income
24	Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over
25		\$11,000
26	Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over
27		\$15,000
28	Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over
29		\$17,000
30	Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over
31		\$30,000
32	Over \$125,000 but not over \$500,000	\$8,000 plus 7.375% of excess over
33		\$125,000
34	Over \$500,000	\$35,656 plus 7.7% of excess over
35		\$500,000

36 ~~[-4]~~ (5) For taxable years beginning in two thousand three:

37	If the New York taxable income is:	The tax is:
38	Not over \$11,000	4% of the New York taxable
39		income
40	Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over
41		\$11,000
42	Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over
43		\$15,000
44	Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over
45		\$17,000
46	Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over
47		\$30,000
48	Over \$125,000 but not over \$500,000	\$8,000 plus 7.5% of excess over
49		\$125,000
50	Over \$500,000	\$36,125 plus 7.7% of excess over

1 \$500,000

2 ~~[(5)]~~ (6) For taxable years beginning after nineteen hundred ninety-
3 six and before two thousand three:

4 If the New York taxable income is:	The tax is:
5 Not over \$11,000	4% of the New York taxable
6	income
7 Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over
8	\$11,000
9 Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over
10	\$15,000
11 Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over
12	\$17,000
13 Over \$30,000	\$1,492 plus 6.85% of excess over
14	\$30,000

15 ~~[(6)]~~ (7) For taxable years beginning in nineteen hundred ninety-six:

16 If the New York taxable income is:	The tax is:
17 Not over \$7,500	4% of the New York taxable
18	income
19 Over \$7,500 but not over \$11,000	\$300 plus 5% of excess over
20	\$7,500
21 Over \$11,000 but not over \$15,000	\$475 plus 6% of excess over
22	\$11,000
23 Over \$15,000	\$ 715 plus 7% of excess over
24	\$15,000

25 ~~[(7)]~~ (8) For taxable years beginning in nineteen hundred ninety-five:

26 If the New York taxable income is:	The tax is:
27 Not over \$9,000	4.55% of the New York taxable
28	income
29 Over \$9,000 but not over \$14,000	\$410 plus 5.55% of excess over
30	\$9,000
31 Over \$14,000 but not over \$19,000	\$687 plus 6.55% of excess over
32	\$14,000
33 Over \$19,000	\$1,015 plus 7.5% of excess over
34	\$19,000

35 ~~[(8)]~~ (9) For taxable years beginning after nineteen hundred eighty-
36 nine and before nineteen hundred ninety-five:

37 If the New York taxable income is:	The tax is:
38 Not over \$7,500	4% of the New York taxable
39	income
40 Over \$7,500 but not over \$11,000	\$300 plus 5% of excess over
41	\$7,500
42 Over \$11,000 but not over \$15,000	\$475 plus 6% of excess over
43	\$11,000
44 Over \$15,000 but not over \$17,000	\$715 plus 7% of excess over
45	\$15,000
46 Over \$17,000	\$855 plus 7.875% of excess over
47	\$17,000

(c) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. There is hereby imposed for each taxable year on the New York taxable income of every resident individual who is not a married individual who makes a single return jointly with his spouse under subsection (b) of section six hundred fifty-one or a resident head of a household or a resident surviving spouse, and on the New York taxable income of every resident estate and trust a tax determined in accordance with the following tables:

(1) For taxable years beginning after two thousand eight and before two thousand twelve:

<u>If the New York taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$8,000</u>	<u>4% of the New York taxable income</u>
<u>Over \$8,000 but not over \$11,000</u>	<u>\$320 plus 4.5% of excess over \$8,000</u>
<u>Over \$11,000 but not over \$13,000</u>	<u>\$455 plus 5.25% of excess over \$11,000</u>
<u>Over \$13,000 but not over \$20,000</u>	<u>\$560 plus 5.9% of excess over \$13,000</u>
<u>Over \$20,000 but not over \$200,000</u>	<u>\$973 plus 6.85% of excess over \$20,000</u>
<u>Over \$200,000 but not over \$500,000</u>	<u>\$13,303 plus 7.85% of excess over \$200,000</u>
<u>Over \$500,000</u>	<u>\$36,853 plus 8.97% of excess over \$500,000</u>

~~(1)~~ (2) For taxable years beginning after two thousand five and before two thousand nine and after two thousand eleven:

<u>If the New York taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$8,000</u>	<u>4% of the New York taxable income</u>
<u>Over \$8,000 but not over \$11,000</u>	<u>\$320 plus 4.5% of excess over \$8,000</u>
<u>Over \$11,000 but not over \$13,000</u>	<u>\$455 plus 5.25% of excess over \$11,000</u>
<u>Over \$13,000 but not over \$20,000</u>	<u>\$560 plus 5.9% of excess over \$13,000</u>
<u>Over \$20,000</u>	<u>\$973 plus 6.85% of excess over \$20,000</u>

~~(2)~~ (3) For taxable years beginning in two thousand five:

<u>If the New York taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$8,000</u>	<u>4% of the New York taxable income</u>
<u>Over \$8,000 but not over \$11,000</u>	<u>\$320 plus 4.5% of excess over \$8,000</u>
<u>Over \$11,000 but not over \$13,000</u>	<u>\$455 plus 5.25% of excess over \$11,000</u>
<u>Over \$13,000 but not over \$20,000</u>	<u>\$560 plus 5.9% of excess over \$13,000</u>
<u>Over \$20,000 but not over \$100,000</u>	<u>\$973 plus 6.85% of excess over \$20,000</u>

1		\$20,000
2	Over \$100,000 but not over \$500,000	\$6,453 plus 7.25% of excess over
3		\$100,000
4	Over \$500,000	\$35,453 plus 7.7% of excess over
5		\$500,000

6 ~~[(3)]~~ (4) For taxable years beginning in two thousand four:

7	If the New York taxable income is:	The tax is:
8	Not over \$8,000	4% of the New York taxable
9		income
10	Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over
11		\$8,000
12	Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over
13		\$11,000
14	Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over
15		\$13,000
16	Over \$20,000 but not over \$100,000	\$973 plus 6.85% of excess over
17		\$20,000
18	Over \$100,000 but not over \$500,000	\$6,453 plus 7.375% of excess over
19		\$100,000
20	Over \$500,000	\$35,953 plus 7.7% of excess over
21		\$500,000

22 ~~[(4)]~~ (5) For taxable years beginning in two thousand three:

23	If the New York taxable income is:	The tax is:
24	Not over \$8,000	4% of the New York taxable
25		income
26	Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over
27		\$8,000
28	Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over
29		\$11,000
30	Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over
31		\$13,000
32	Over \$20,000 but not over \$100,000	\$973 plus 6.85% of excess over
33		\$20,000
34	Over \$100,000 but not over \$500,000	\$6,453 plus 7.5% of excess over
35		\$100,000
36	Over \$500,000	\$36,453 plus 7.7% of excess over
37		\$500,000

38 ~~[(5)]~~ (6) For taxable years beginning after nineteen hundred ninety-
39 six and before two thousand three:

40	If the New York taxable income is:	The tax is:
41	Not over \$8,000	4% of the New York taxable
42		income
43	Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over
44		\$8,000
45	Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over
46		\$11,000
47	Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over
48		\$13,000
49	Over \$20,000	\$973 plus 6.85% of excess over

1 \$20,000

2 ~~[(6)]~~ (7) For taxable years beginning in nineteen hundred ninety-six:

3 If the New York taxable income is:	The tax is:
4 Not over \$5,500	4% of the New York taxable
5	income
6 Over \$5,500 but not over \$8,000	\$220 plus 5% of excess over
7	\$5,500
8 Over \$8,000 but not over \$11,000	\$345 plus 6% of excess over
9	\$8,000
10 Over \$11,000	\$525 plus 7% of excess over
11	\$11,000

12 ~~[(7)]~~ (8) For taxable years beginning in nineteen hundred ninety-five:

13 If the New York taxable income is:	The tax is:
14 Not over \$6,500	4.55% of the New York taxable
15	income
16 Over \$6,500 but not over \$9,500	\$296 plus 5.55% of excess over
17	\$6,500
18 Over \$9,500 but not over \$12,500	\$462 plus 6.55% of excess over
19	\$9,500
20 Over \$12,500	\$659 plus 7.5% of excess over
21	\$12,500

22 ~~[(8)]~~ (9) For taxable years beginning after nineteen hundred eighty-
23 nine and before nineteen hundred ninety-five:

24 If the New York taxable	
25 income is:	The tax is:
26 Not over \$5,500	4% of the New York taxable
27	income
28 Over \$5,500 but not over \$8,000	\$220 plus 5% of excess over
29	\$5,500
30 Over \$8,000 but not over \$11,000	\$345 plus 6% of excess over
31	\$8,000
32 Over \$11,000 but not over \$13,000	\$525 plus 7% of excess over
33	\$11,000
34 Over \$13,000	\$665 plus 7.875% of excess over
35	\$13,000

36 § 2. Subparagraphs (B) and (C) of paragraph 2 of subsection (d) of
37 section 601 of the tax law, as amended by section 1 of part R of chapter
38 63 of the laws of 2003, are amended to read as follows:

39 (B) ~~[The]~~ For taxable years beginning after two thousand two and
40 before two thousand six, the fraction is computed as follows: the numer-
41 ator is the lesser of fifty thousand dollars or the excess of New York
42 adjusted gross income for the taxable year over one hundred fifty thou-
43 sand dollars and the denominator is fifty thousand dollars. For taxable
44 years beginning after two thousand eight and before two thousand twelve,
45 the fraction is computed as follows: the numerator is the lesser of
46 fifty thousand dollars or the excess of New York adjusted gross income
47 for the taxable year over three hundred thousand dollars and the denomi-
48 nator is fifty thousand dollars.

1 (C) This paragraph shall only apply to taxable years beginning after
2 two thousand two and before two thousand six and after two thousand
3 eight and before two thousand twelve.

4 § 3. Subparagraphs (B) and (C) of paragraph 3 of subsection (d) of
5 section 601 of the tax law, as amended by section 1 of part R of chapter
6 63 of the laws of 2003, subparagraph (B) as separately amended by
7 section 2 of part R of chapter 63 of the laws of 2003, are amended to
8 read as follows:

9 (B) For such taxpayers with adjusted gross income over five hundred
10 thousand dollars, for taxable years beginning after two thousand eight
11 and before two thousand twelve, the fraction is ~~[one]~~ computed as
12 follows: the numerator is the lesser of fifty thousand dollars or the
13 excess of New York adjusted gross income for the taxable year over five
14 hundred thousand dollars and the denominator is fifty thousand dollars.

15 Provided, however, that the total tax prior to the application of any
16 tax credits shall not exceed the highest rate of tax set forth in the
17 tax table in subsection (a) of this section multiplied by the taxpayer's
18 taxable income.

19 (C) This paragraph shall only apply to taxable years beginning after
20 two thousand two and before two thousand six and after two thousand
21 eight and before two thousand twelve.

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

25 (ii) one hundred percent of the tax shown on the return of the indi-
26 vidual for the preceding taxable year. Provided, however, the tax shown
27 on such return for taxable years beginning in two thousand two shall be
28 the tax calculated as if such years began in two thousand three.
29 Further provided that the tax shown on such return for taxable years
30 beginning in two thousand eight shall be the tax calculated as if such
31 years began in two thousand nine.

32 § 5. Notwithstanding any provision of law to the contrary, the method
33 of determining the amount to be deducted and withheld from wages on
34 account of taxes imposed by or pursuant to the authority of article 22
35 of the tax law in connection with the implementation of the provisions
36 of this act shall be prescribed by regulations of the commissioner of
37 taxation and finance with due consideration to the effect such withhold-
38 ing tables and methods would have on the receipt and amount of revenue.
39 The commissioner of taxation and finance shall adjust such withholding
40 tables and methods in regard to taxable years beginning in 2009 and
41 after in such manner as to result, so far as practicable, in withholding
42 from an employee's wages an amount substantially equivalent to the tax
43 reasonably estimated to be due for such taxable years as a result of the
44 provisions of this act. Provided, however, for tax year 2009 the with-
45 holding tables shall reflect as accurately as practicable the full
46 amount of tax year 2009 liability so that such amount is withheld by
47 December 31, 2009. Any such regulations to implement a change in with-
48 holding tables and methods for tax year 2009 shall be adopted and effec-
49 tive as soon as practicable and the commissioner of taxation and finance
50 may adopt such regulations on an emergency basis notwithstanding
51 anything to the contrary in section 202 of the state administrative
52 procedure act. In carrying out his or her duties and responsibilities
53 under this section, the commissioner of taxation and finance may accom-
54 pany such a rule making procedure with a similar procedure with respect
55 to the taxes required to be deducted and withheld by local laws imposing
56 taxes pursuant to the authority of articles 30, 30-A and 30-B of the tax

1 law, the provisions of any other law in relation to such a procedure to
2 the contrary notwithstanding.

3 § 6. 1. Notwithstanding any provision of law to the contrary, no addi-
4 tion to tax required shall be imposed for failure to pay the estimated
5 tax in subsection (c) of section 685 of the tax law with respect to any
6 underpayment of a required installment due prior to, or within thirty
7 days of, the effective date of this act to the extent that such under-
8 payment was created or increased by the amendments made by this act
9 provided, however, that the taxpayer remits the amount of the underpay-
10 ment with his or her next quarterly estimated tax payment.

11 2. The commissioner of taxation and finance shall take steps to publi-
12 cize the necessary adjustments to estimated tax and, to the extent
13 reasonably possible, to inform the taxpayer of the tax liability changes
14 made by this act.

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

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

26 § 3. This act shall take effect immediately provided, however, that
27 the applicable effective date of Parts A through Z-1 of this act shall
28 be as specifically set forth in the last section of such Parts.
