

2014-15 NEW YORK STATE EXECUTIVE BUDGET
REVENUE ARTICLE VII LEGISLATION

2014-15 NEW YORK STATE EXECUTIVE BUDGET

REVENUE ARTICLE VII LEGISLATION

CONTENTS

PART	DESCRIPTION	STARTING PAGE NUMBER
A	Corporate tax reform	7
B	Allow direct payment of STAR tax savings in certain cases	324
C	Extend fees for the establishment of oil and gas unit of production values	324
D	Increase racing regulatory fee from 0.5 percent to 0.6 percent	325
E	Modify signature requirements on e-filed returns prepared by tax professionals	334
F	Eliminate the Income Threshold Inflation Adjustment For Enhanced STAR Benefits	335
G	Extend the Noncustodial Parent Earned Income Tax Credit for Two Years	336
H	Mandate for professional and business licenses electronic tax clearance upon application or renewal	336
I	Close the resident trust loophole	343
J	Repeal the additional minimum personal income tax	349
K	Establish the Residential Real Property Personal Income Tax Credit	364
L	Establish a renter's personal income tax credit	374
M	Eliminate Prepayment of the Family Tax Relief Credit after Tax Year 2014	382
N	Increase the personal income tax filing threshold to reduce the number of taxpayers who need to file personal income tax returns	383

PART	DESCRIPTION	STARTING PAGE NUMBER
O	Extend the Empire State Commercial Production Tax Credit for Two Years	384
P	Authorize additional credits of \$8 million for the low-income housing credit for each of the next two fiscal years	385
Q	Extend and Reform the Brownfield Cleanup Program	386
R	Establish a 20 percent real property tax credit for manufacturers; eliminate the net income tax on upstate manufacturers; reform the investment tax credit; and repeal the financial services investment tax credit	423
S	Repeal the franchise tax on agriculture cooperatives	451
T	Provide a refundable credit for the excise tax on telecommunication services paid by START-UP NY companies	479
U	Enhance the Youth Works Tax Credit	481
V	Extend the alternative fuels tax exemptions for two years	485
W	Simplify the distribution of motor vehicle fee receipts	486
X	Comprehensive estate tax reform	488
Y	Repeal the Boxing and Wrestling Exhibitions Tax	629
Z	Extend Monticello Raceway Video Lottery Terminal rates for one year	635
AA	Extend certain tax rates and certain simulcasting provisions for one year	635
BB	Extend the Video Lottery Gaming (VLG) vendor's capital awards program for one year	644
CC	Repeal Article 12 of the Tax Law	646
DD	Align mobility and personal income tax filings for the self-employed	654

PART	DESCRIPTION	STARTING PAGE NUMBER
EE	Make technical amendments to the commercial gaming law	657
FF	Provide a two-year property tax freeze through a refundable personal income tax credit	662

Legislative Bill Drafting Commission
12674-01-4

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

BUDGBI

(Enacts into law major components of
legislation necessary to implement
the revenue budget for the 2014-2015
state fiscal year)

BUDGBI. Rev con

AN ACT

to amend the tax law, the general
municipal law, the urban development
corporation act, the business corpo-
ration law, the general associations
law, and the administrative code of
the city of New York, in relation to
reforming taxation of business
corporations; and to repeal various
provisions of the tax law relating
thereto (Part A); to amend the real
property tax law, in relation to the
STAR registration program (Part B);

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s02 Flanagan	s28 Krueger	s55 O'Brien	s51 Seward
s11 Avella	s59 Gallivan	s24 Lanza	s58 O'Mara	s09 Skelos
s40 Ball	s12 Gianaris	s39 Larkin	s21 Parker	s14 Smith
s42 Bonacic	s41 Gipson	s37 Latimer	s13 Peralta	s26 Squadron
s04 Boyle	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s44 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofner	s35 Stewart-
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s46 Tkaczyk
s32 Diaz	s36 Hassell-	s43 Marchione	s56 Robach	s53 Valesky
s18 Dilan	Thompson	s07 Martins	s19 Sampson	s57 Young
s31 Espaillat	s27 Hoylman	s62 Maziarz	s10 Sanders	s03 Zeldin
s49 Farley	s63 Kennedy	s25 Montgomery	s23 Savino	s08
s17 Felder	s34 Klein	s54 Nozzolio	s29 Serrano	s20

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a081 Dinowitz	a074 Kavanagh	a051 Ortiz	a036 Simotas
a092 Abinanti	a147 DiPietro	a142 Kearns	a091 Otis	a104 Skartados
a084 Arroyo	a115 Duprey	a076 Kellner	a132 Palmesano	a099 Skoufis
a035 Aubry	a004 Englebright	a040 Kim	a002 Palumbo	a022 Solages
a120 Barclay	a109 Fahy	a131 Kolb	a088 Paulin	a114 Stec
a106 Barrett	a071 Farrell	a105 Lalor	a141 Peoples-	a110 Steck
a082 Benedetto	a126 Finch	a013 Lavine	Stokes	a127 Stirpe
a117 Blankenbush	a008 Fitzpatrick	a050 Lentol	a058 Perry	a011 Sweeney
a062 Borelli	a124 Friend	a125 Lifton	a086 Pichardo	a112 Tedisco
a055 Boyland	a143 Gabryszak	a102 Lopez, P.	a089 Pretlow	a101 Tenney
a026 Braunstein	a095 Galef	a123 Lupardo	a073 Quart	a001 Thiele
a044 Brennan	a137 Gantt	a010 Lupinacci	a019 Ra	a061 Titone
a119 Brindisi	a007 Garbarino	a121 Magee	a012 Raia	a031 Titus
a138 Bronson	a148 Giglio	a129 Magnarelli	a006 Ramos	a146 Walter
a046 Brook-Krasny	a080 Gjonaj	a064 Malliotakis	a078 Rivera	a041 Weinstein
a093 Buchwald	a066 Glick	a030 Markey	a128 Roberts	a020 Weisenberg
a118 Butler	a023 Goldfeder	a090 Mayer	a056 Robinson	a024 Weprin
a103 Cahill	a150 Goodell	a108 McDonald	a068 Rodriguez	a070 Wright
a043 Camara	a075 Gottfried	a014 McDonough	a072 Rosa	a096 Zebrowski
a145 Ceretto	a005 Graf	a017 McKeivitt	a067 Rosenthal	a054
a033 Clark	a100 Gunther	a107 McLaughlin	a025 Rozic	a059
a047 Colton	a139 Hawley	a038 Miller	a116 Russell	a060
a032 Cook	a083 Heastie	a052 Millman	a149 Ryan	a077
a144 Corwin	a003 Hennessey	a015 Montesano	a009 Saladino	a079
a085 Crespo	a028 Hevesi	a136 Morelle	a111 Santabarbara	a098
a122 Crouch	a048 Hikind	a057 Mosley	a029 Scarborough	a113
a021 Curran	a018 Hooper	a039 Moya	a016 Schimel	a134
a063 Cusick	a042 Jacobs	a133 Nojay	a140 Schimminger	
a045 Cymbrowitz	a097 Jaffee	a037 Nolan	a087 Sepulveda	
a053 Davila	a135 Johns	a130 Oaks	a065 Silver	
a034 DenDekker	a094 Katz	a069 O'Donnell	a027 Simanowitz	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effective date of such chapter (Part C); to amend the racing, pari-mutuel wagering and breeding law, in relation to increasing racing regulatory fees (Part D); to amend the tax law, in relation to modifying the signature requirement on e-filed returns prepared by tax professionals (Part E); to amend the real property tax law, in relation to cost of living adjustments for Enhanced STAR (Part F); to amend part I of chapter 58 of the laws of 2006, relating to providing an enhanced earned income tax credit, in relation to the effectiveness thereof (Part G); to amend the general obligations law and the tax law, in relation to authorizing electronic tax clearances for professional and business licenses (Part H); to amend the tax law and the administrative code of the city of New York, in relation to taxing residents who are grantors of exempt resident trusts that qualify as non-grantor incomplete gift trusts on the income from such trusts and taxing residents who are beneficiaries of all other exempt resident trusts or nonresident trusts on the distributions of accumulated income that they receive from such trusts (Part I); to amend the tax law and the administrative code of the city of New York, in relation to eliminating the personal income tax add-on minimum tax; and to repeal certain provisions of such laws relating thereto (Part J); to amend the tax law, in relation to adding an enhanced real property tax circuit breaker; and to repeal paragraph 14 of subsection (e) of section 606 of the tax law, relating to certain reports (Part K); to amend the tax law, in relation to providing a credit for renters against the personal income tax (Part L); to amend the tax law, in relation to the prepayment element of the family tax relief credit (Part M); to amend the tax law, in

relation to eliminating the personal income tax filing requirement for residents having no liability because income does not exceed the New York standard deduction if they do not file a federal income tax return (Part N); to amend the tax law, in relation to extending the empire state commercial production tax credit (Part O); to amend the public housing law, in relation to extending the credit against income tax for persons or entities investing in low-income housing (Part P); to amend the environmental conservation law, the tax law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, and assignment of the brownfield redevelopment tax credits; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law, the public authorities law and the state finance law, in relation to the environmental restoration program; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part Q); to amend the tax law, in relation to reforming the investment tax credit, reducing the tax rate for upstate manufacturers and providing a tax credit for real property taxes to New York manufacturers; to amend the economic development law, in relation to the excelsior investment tax credit; and to repeal certain provisions of the tax law relating to the financial services investment tax credit (Part R); to amend the economic development law, the tax law, the transportation law, the administrative code of the city of New York and the New York state

urban development corporation act, in relation to repealing the franchise tax on farmers', fruit growers', and other like agricultural corporations organized and operated on a co-operative basis; and to repeal section 185 of the tax law relating to franchise tax on farmers', fruit growers', and other like agricultural corporations organized and operated on a co-operative basis; to repeal sections 187-j, 187-k, 187-l, 187-m, 187-q, 187-r and 187-s of the tax law relating to certain tax credits; to repeal paragraph 1 of subdivision (h) of section 15, paragraph 1 of subdivision (g) of section 31, and certain other provisions of the tax law, in relation to making conforming changes (Part S); to amend the tax law, in relation to providing a credit for excise tax on telecommunication services for businesses located in tax-free NY areas (Part T); to amend the tax law, in relation to reducing the number of hours of part-time work needed by employees for employer qualification for the New York youth works tax credit; and to amend the labor law, in relation to the New York youth works tax credit (Part U); to amend chapter 109 of the laws of 2006 amending the tax law and other laws relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, in relation to extending the alternative fuels tax exemptions for two years (Part V); to amend chapter 63 of the laws of 2000, amending the tax law and other laws relating to modifying the distribution of funds from the motor vehicle fuel excise tax and the vehicle and traffic law, in relation to simplifying the methodology for distribution of motor vehicle receipts (Part W); to amend the tax law, in relation to the estate tax; to repeal section 2 of chapter 1013 of the laws of 1962, amending the tax law relating to imposing a tax on the transfer of estates of decedents dying on or after April first, nineteen hundred

sixty-three, relating to an appendix of applicable internal revenue code provisions, and to repeal article 26-B of the tax law, relating to the generation skipping transfer tax (Part X); to amend the tax law and chapter 912 of the laws of 1920 relating to the regulation of boxing, sparring and wrestling matches, in relation to making technical corrections thereto; to repeal article 19 of the tax law relating to boxing and wrestling exhibitions tax; and to repeal section 1820 of the tax law relating to establishing misdemeanors for certain violations of article 19 of such law (Part Y); to amend the tax law, in relation to vendor fees paid to vendor tracks (Part Z); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part AA); to amend the tax law, in relation to capital awards to vendor tracks (Part BB); to amend the tax law, the banking law, the public authorities law, and the administrative code of the city of New York, in relation to the stock transfer tax, and to repeal certain provisions of the tax law, the state finance law and the administrative code of the city of New York relating thereto (Part CC); to amend the tax law, in relation to conforming the due dates for the metropolitan commuter transportation mobility tax

for taxpayers with income from self-employment with the due dates for the personal income tax (Part DD); to amend the state finance law, the upstate New York gaming economic development act of 2013 and the tax law, in relation to moneys appropriated or transferred from the commercial gaming revenue fund (Part EE); and to amend the tax law, the education law, the general municipal law, and the real property tax law, in relation to a real property tax freeze (Part FF)

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 2014-2015
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through FF. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

12 PART A

13 Section 1. Article 32 of the tax law is REPEALED.

14 § 2. Section 180 of the tax law is REPEALED.

15 § 3. Section 181 of the tax law is REPEALED.

16 § 4. Section 208 of the tax law, as added by chapter 415 of the laws
17 of 1944, subdivision 1 as amended by chapter 576 of the laws of 1994,
18 subdivision 1-A as amended by chapter 166 of the laws of 1991, subdivi-
19 sion 1-B as added by section 45 of part A and paragraph (k) of subdivi-
20 sion 9 as added by section 46 of part A of chapter 389 of the laws of
21 1997, subdivision 3, the opening paragraph, subparagraphs 6 and 11 of
22 paragraph (b), and the opening paragraph of paragraph (g) of subdivision
23 9 as amended and subdivision 8-B and subparagraph 3-a of paragraph (b)
24 of subdivision 9 as added by chapter 817 of the laws of 1987, subdivi-
25 sion 4 as amended by section 1, subdivision 6 as amended by section 2
26 and subparagraph 2 of paragraph (a) of subdivision 9 as amended by

1 section 7 of part M of chapter 407 of the laws of 1999, subdivisions 5
2 and 7, paragraph (a) of subdivision 8-B, subparagraph 10 of paragraph
3 (b) and paragraph (j) of subdivision 9 as amended, paragraph (d) of
4 subdivision 8-B and paragraph (c-1) of subdivision 9 as added and para-
5 graphs (e) and (f) of subdivision 8-B as relettered by chapter 170 of
6 the laws of 1994, subdivisions 8 and 10 as amended by chapter 133 of the
7 laws of 1945, subdivision 8-A as added and subparagraph 1 of paragraph
8 (a) of subdivision 9 as amended by chapter 778 of the laws of 1972,
9 paragraph (b) of subdivision 8-A and paragraph (i) of subdivision 9 as
10 amended by chapter 779 of the laws of 1972, subdivision 9 as amended by
11 chapter 713 of the laws of 1961, paragraph (a) of subdivision 9 as
12 amended by chapter 203 of the laws of 1962, subparagraphs 5, 9 and 10 of
13 paragraph (a) and subparagraphs 8 and 9 of paragraph (b) of subdivision
14 9 as amended by chapter 61 of the laws of 1989 and paragraph (f) of
15 subdivision 9 as separately amended by sections 278 and 347 of chapter
16 61 of the laws of 1989, clause (i) of subparagraph 5 of paragraph (a) of
17 subdivision 9 as amended by section 2 and subparagraph 20 of paragraph
18 (b) of subdivision 9 as added by section 3 of part C of chapter 25 of
19 the laws of 2009, subparagraph 6 of paragraph (a) of subdivision 9 as
20 added by chapter 895 of the laws of 1975 and as renumbered by chapter
21 613 of the laws of 1976, subparagraph 7 of paragraph (a) of subdivision
22 9 as added by chapter 33 of the laws of 1978, subparagraph 8 of para-
23 graph (a) and subparagraph 7 of paragraph (b) of subdivision 9 as
24 amended by chapter 639 of the laws of 1986, subparagraph 11 of paragraph
25 (a) of subdivision 9 as added by chapter 15 of the laws of 1983, subpar-
26 agraph 12 of paragraph (a), subparagraph 4-a of paragraph (b) and
27 subparagraph 2 of paragraph (h) of subdivision 9 as amended and subpara-
28 graph 13 of paragraph (a) of subdivision 9 as added by chapter 760 of

1 the laws of 1992, subparagraph 14 of paragraph (a) of subdivision 9 as
2 added by section 101 and paragraphs (l) and (m) of subdivision 9 as
3 added by section 102 of part A of chapter 56 of the laws of 1998,
4 subparagraph 15 of paragraph (a) of subdivision 9 as amended by section
5 1 of part ZZ of chapter 63 of the laws of 2003, subparagraph 16 of para-
6 graph (a) of subdivision 9 as added by section 1 of part K3, subpara-
7 graph 16 of paragraph (b) of subdivision 9 as added by section 2 of part
8 K3, subparagraph 17 of paragraph (b) of subdivision 9 as added by
9 section 2 of part O3, and paragraphs (o), (p) and (q) of subdivision 9
10 as added by section 3 of part O3 of chapter 62 of the laws of 2003,
11 subparagraph 18 of paragraph (a) of subdivision 9 as added by section 3
12 of part C and paragraph (o) of subdivision 9 as amended by section 2 of
13 part E of chapter 59 of the laws of 2013, subparagraph 3 of paragraph
14 (b) of subdivision 9 as amended by chapter 895 of the laws of 1975,
15 subparagraph 4 of paragraph (b) and subparagraph 4 of paragraph (f) of
16 subdivision 9 as amended by chapter 190 of the laws of 1990, subpara-
17 graph 15 of paragraph (b) of subdivision 9 as added by chapter 309 of
18 the laws of 1996, subparagraph 18 of paragraph (b) of subdivision 9 as
19 added by section 21 of part H of chapter 1 of the laws of 2003, subpara-
20 graph 19 of paragraph (b) of subdivision 9 as added by section 1 of part
21 HH1 of chapter 57 of the laws of 2008, paragraphs (c-2) and (c-3) of
22 subdivision 9 as added by section 10 of part Y of chapter 63 of the laws
23 of 2000, paragraph (g) of subdivision 9 as added by chapter 178 of the
24 laws of 1965, subparagraph 1 and clauses (B) and (C) of subparagraph 3
25 of paragraph (g) of subdivision 9 as amended by chapter 613 of the laws
26 of 1976, clause (A) of subparagraph 1 of paragraph (g) of subdivision 9
27 as separately amended by chapters 675 and 836 of the laws of 1977,
28 clause (B) of subparagraph 1, clause (A) of subparagraph 2 and clause

1 (A) of subparagraph 3 of paragraph (g) of subdivision 9 as amended by
2 chapter 675 of the laws of 1977, item 1 of clause (B) of subparagraph 1
3 of paragraph (g) of subdivision 9 as amended by chapter 972 of the laws
4 of 1984, clause (B) of subparagraph 2 of paragraph (g) of subdivision 9
5 as amended by chapter 365 of the laws of 1979, clause (C) of subpara-
6 graph 2 of paragraph (g) of subdivision 9 as amended by chapter 1005 of
7 the laws of 1970, paragraph (h) of subdivision 9 as amended by chapter
8 606 of the laws of 1984, paragraph (n) of subdivision 9 as added by
9 section 1 of part 0 of chapter 85 of the laws of 2002, subdivision 12 as
10 added by chapter 828 of the laws of 1977, subdivisions 13, 14, and 15 as
11 added by section 1 of LBD number 74021-03-4 and subdivision 19 as added
12 by chapter 681 of the laws of 1997, is amended to read as follows:

13 § 208. Definitions. As used in this article:

14 1. The term "corporation" includes (a) an association within the mean-
15 ing of paragraph three of subsection (a) of section seventy-seven
16 hundred one of the internal revenue code (including a limited liability
17 company), (b) a joint-stock company or association, (c) a publicly trad-
18 ed partnership treated as a corporation for purposes of the internal
19 revenue code pursuant to section seventy-seven hundred four thereof and
20 (d) any business conducted by a trustee or trustees wherein interest or
21 ownership is evidenced by certificate or other written instrument.
22 "DISC" and "former DISC" mean any corporation which meets the require-
23 ments of subsection (a) of section nine hundred ninety-two of the inter-
24 nal revenue code[;].

25 1-A. The term "New York S corporation" means, with respect to any
26 taxable year, a corporation subject to tax under this article for which
27 an election is in effect pursuant to subsection (a) of section six
28 hundred sixty of this chapter for such year, any such year shall be

1 denominated a "New York S year", and such election shall be denominated
2 a "New York S election". The term "New York C corporation" means, with
3 respect to any taxable year, a corporation subject to tax under this
4 article which is not a New York S corporation, and any such year shall
5 be denominated a "New York C year". The term "termination year" means
6 any taxable year of a corporation during which the New York S election
7 terminates on a day other than the first day of such year. The portion
8 of the taxable year ending before the first day for which such termi-
9 nation is effective shall be denominated the "S short year", and the
10 portion of such year beginning on such first day shall be denominated
11 the "C short year". The term "New York S termination year" means any
12 termination year which is not also an S termination year for federal
13 purposes.

14 1-B. The term "QSSS" means a corporation which is a qualified subchap-
15 ter S subsidiary as defined in subparagraph (B) of paragraph three of
16 subsection (b) of section thirteen hundred sixty-one of the internal
17 revenue code. The term "exempt QSSS" means a QSSS exempt from tax under
18 this article as provided in paragraph (k) of subdivision nine of this
19 section, or a QSSS described in subclause (i) of clause (B) of subpara-
20 graph two of paragraph (k) of subdivision nine of this section, wherein
21 the parent corporation of the QSSS is subject to tax under this article,
22 and the assets, liabilities, income and deductions of the QSSS are
23 treated as the assets, liabilities, income and deductions of the parent
24 corporation. Where a QSSS is an exempt QSSS, then for all purposes under
25 this article:

26 (a) the assets, liabilities, income, deductions, property, payroll,
27 receipts, capital, credits, and all other tax attributes and elements of

1 economic activity of the QSSS shall be deemed to be those of the parent
2 corporation,

3 (b) the stocks, bonds and other securities issued by, and any indebt-
4 edness from, the QSSS shall not be [subsidiary,] investment or business
5 capital of the parent corporation,

6 (c) transactions between the parent corporation and the QSSS, includ-
7 ing the payment of interest and dividends, shall not be taken into
8 account, and

9 (d) general executive officers of the QSSS shall be deemed to be
10 general executive officers of the parent corporation.

11 2. The term "taxpayer" means any corporation subject to tax under this
12 article[;].

13 3. The term "subsidiary" means a corporation of which over fifty
14 percent of the number of shares of stock entitling the holders thereof
15 to vote for the election of directors or trustees is owned by the
16 taxpayer[;].

17 4. The term ["subsidiary capital" means investments in the stock of
18 subsidiaries and any indebtedness from subsidiaries, exclusive of
19 accounts receivable acquired in the ordinary course of trade or business
20 for services rendered or for sales of property held primarily for sale
21 to customers, whether or not evidenced by written instrument, on which
22 interest is not claimed and deducted by the subsidiary for purposes of
23 taxation under article nine-A, thirty-two or thirty-three of this chap-
24 ter, provided, however, that, in the discretion of the commissioner,
25 there shall be deducted from subsidiary capital any liabilities which
26 are directly or indirectly attributable to subsidiary capital] "stock"
27 means a direct interest in a corporation that is treated as equity for
28 federal income tax purposes.

1 5. (a) The term "investment capital" means investments in stocks[,
2 bonds and other securities, corporate and governmental,] that are held
3 by the taxpayer for more than six consecutive months but are not held
4 for sale to customers in the regular course of business, [exclusive of
5 subsidiary capital] or, if the taxpayer makes the election provided for
6 in subparagraph one of paragraph (a) of subdivision five of section two
7 hundred ten-a of this article, are not qualified financial instruments
8 as described in subdivision five of section two hundred ten-a of this
9 article. Stock in a corporation that is conducting a unitary business
10 with the taxpayer, stock in a corporation that is included in a combined
11 report with the taxpayer pursuant to the commonly owned group election
12 in subdivision five of section two hundred ten-c of this article, and
13 stock issued by the taxpayer[, provided, however, that, in the
14 discretion of the commissioner, there] shall not constitute investment
15 capital. For purposes of this subdivision, if the taxpayer owns or
16 controls, directly or indirectly, less than twenty percent of the stock
17 of a corporation that entitles the holders thereof to vote for the
18 election of trustees or directors, that corporation will be presumed to
19 be conducting a business that is not unitary with the business of the
20 taxpayer.

21 (b) There shall be deducted from investment capital any liabilities
22 which are directly or indirectly attributable to investment capital[;
23 and provided, further, that investment]. If the amount of those liabil-
24 ities exceeds the amount of investment capital, the amount of investment
25 capital will be zero.

26 (c) Investment capital shall not include any such investments the
27 income from which is excluded from entire net income pursuant to the
28 provisions of paragraph (c-1) of subdivision nine of this section, and

1 that investment capital shall be computed without regard to liabilities
2 directly or indirectly attributable to such investments, but only if air
3 carriers organized in the United States and operating in the foreign
4 country or countries in which the taxpayer has its major base of oper-
5 ations and in which it is organized, resident or headquartered (if not
6 in the same country as its major base of operations) are not subject to
7 any tax based on or measured by capital imposed by such foreign country
8 or countries or any political subdivision thereof, or if taxed, are
9 provided an exemption, equivalent to that provided for herein, from any
10 tax based on or measured by capital imposed by such foreign country or
11 countries and from any such tax imposed by any political subdivision
12 thereof[;].

13 (d) If a taxpayer acquires stock during the second half of its taxable
14 year and owns that stock on the last day of the taxable year, it will be
15 presumed that the taxpayer held that stock for more than six consecutive
16 months during the taxable year. However, if the taxpayer does not in
17 fact hold that stock for more than six consecutive months, the taxpayer
18 must increase its total business capital in the immediately succeeding
19 taxable year by the amount included in investment capital for that
20 stock, net of any liabilities attributable to that stock computed as
21 provided in paragraph (b) of this subdivision.

22 (e) When income or gain from a debt obligation or other security
23 cannot be apportioned to the state using the business allocation
24 percentage as a result of United States constitutional principles, the
25 debt obligation or other security will be included in investment capi-
26 tal.

27 6. (a) The term "investment income" means income, including capital
28 gains in excess of capital losses, from investment capital, to the

1 extent included in computing entire net income, less, [(a)] in the
2 discretion of the commissioner, any interest deductions allowable in
3 computing entire net income which are directly or indirectly attribut-
4 able to investment capital or investment income[, and (b) such portion
5 of any net operating loss deduction allowable in computing entire net
6 income, as the investment income, before such deduction, bears to entire
7 net income, before such deduction,] provided, however, that in no case
8 shall investment income exceed entire net income[;]. If the taxpayer
9 attributes interest deductions to investment income and the amount
10 subtracted exceeds investment income, the excess of the interest
11 deductions over investment income must be added back to entire net
12 income.

13 (b) In lieu of subtracting from investment income the amount of those
14 interest deductions, the taxpayer may elect to reduce its total invest-
15 ment income by forty percent. If the taxpayer makes this election, the
16 taxpayer must also make the elections provided for in paragraphs (b) and
17 (c) of subdivision six-a of this section. A taxpayer which does not make
18 this election because it has no investment capital will not be precluded
19 from making those other elections.

20 6-a. (a) The term "other exempt income" means the sum of exempt
21 subpart F income and exempt unitary corporation dividends.

22 (b) "Exempt subpart F income" means the income, as defined in section
23 952 of the internal revenue code, received from a corporation that is
24 conducting a unitary business with the taxpayer but is not included in a
25 combined report with the taxpayer, less, in the discretion of the
26 commissioner, any interest deductions directly or indirectly attribut-
27 able to that income. In lieu of subtracting from its exempt subpart F
28 income the amount of those interest deductions, the taxpayer may elect

1 to reduce its total exempt subpart F income by forty percent. If the
2 taxpayer makes this election, the taxpayer must also make the elections
3 provided for in paragraph (b) of subdivision six of this section and
4 paragraph (c) of this subdivision. A taxpayer which does not make this
5 election because it has no exempt subpart F income will not be precluded
6 from making those other elections.

7 (c) "Exempt unitary corporation dividends" means those dividends from
8 a corporation that is conducting a unitary business with the taxpayer
9 but is not included in a combined report with the taxpayer, less, in the
10 discretion of the commissioner, any interest deductions directly or
11 indirectly attributable to such income. In lieu of subtracting from
12 this dividend income those interest deductions, the taxpayer may elect
13 to reduce the total amount of this dividend income by forty percent. If
14 the taxpayer makes this election, the taxpayer must also make the
15 elections provided for in paragraph (b) of subdivision six of this
16 section and paragraph (b) of this subdivision. A taxpayer which does not
17 make this election because it has not received any exempt unitary corpo-
18 ration dividends will not be precluded from making those other
19 elections.

20 (d) If the taxpayer attributes interest deductions to other exempt
21 income and the amount subtracted exceeds other exempt income, the excess
22 of the interest deductions over other exempt income must be added back
23 to entire net income. In no case shall other exempt income exceed entire
24 net income.

25 7. (a) The term "business capital" means all assets, other than
26 [subsidiary capital,] investment capital and stock issued by the taxpay-
27 er, less liabilities not deducted from [subsidiary or] investment capi-
28 tal [except that cash on hand and on deposit shall be treated as invest-

1 ment capital or as business capital as the taxpayer may elect].
2 Business capital shall include only those assets the income or expense
3 of which are properly reflected (or would have been properly reflected
4 if not fully depreciated or expensed or depreciated or expensed to a
5 nominal amount) in the computation of entire net income for the taxable
6 year.

7 (b) Provided, however, "business capital" shall not include assets to
8 the extent employed for the purpose of generating income which is
9 excluded from entire net income pursuant to the provisions of paragraph
10 (c-1) of subdivision nine of this section and shall be computed without
11 regard to liabilities directly or indirectly attributable to such
12 assets, but only if air carriers organized in the United States and
13 operating in the foreign country or countries in which the taxpayer has
14 its major base of operations and in which it is organized, resident or
15 headquartered (if not in the same country as its major base of oper-
16 ations) are not subject to any tax based on or measured by capital
17 imposed by such foreign country or countries or any political subdivi-
18 sion thereof, or if taxed, are provided an exemption, equivalent to that
19 provided for herein, from any tax based on or measured by capital
20 imposed by such foreign country or countries and from any such tax
21 imposed by any political subdivision thereof[;].

22 8. The term "business income" means entire net income minus investment
23 income[;] and other exempt income. In no event shall the sum of invest-
24 ment income and other exempt income exceed entire net income. If the
25 taxpayer makes the election provided for in subparagraph one of para-
26 graph (a) of subdivision five of section two hundred ten-a of this arti-
27 cle, then all income from qualified financial instruments shall consti-
28 tute business income.

1 8-A. Provided, however, that with respect to a DISC or a former DISC,
2 the following provisions shall apply:

3 (a) investments in the stocks, bonds or other securities of a DISC or
4 any indebtedness from a DISC shall not be treated as [either subsidiary
5 capital or] investment capital under [subdivisions four or] subdivision
6 five of this section,

7 (b) any amounts deemed distributed from a DISC or a former DISC which
8 are taxable as dividends pursuant to subsection (b) of section nine
9 hundred ninety-five of the internal revenue code of nineteen hundred
10 fifty-four shall be treated as business income, except any such amounts
11 from a former DISC attributable to amounts includible in a taxpayer's
12 entire net income for a prior taxable year under subparagraph (B) of
13 paragraph (i) of subdivision nine of this section shall be excluded from
14 entire net income,

15 (c) any gain recognized for federal income tax purposes on the dispo-
16 sition of stock in a DISC, and any gain recognized on the disposition of
17 stock in a former DISC, includible in gross income as a dividend pursu-
18 ant to subsection (c) of section nine hundred ninety-five of the inter-
19 nal revenue code of nineteen hundred fifty-four, shall be treated as
20 business income, and

21 (d) except as provided in paragraph (i) of subdivision nine of this
22 section, any actual distribution from a DISC or a former DISC shall be
23 treated as business income except an actual distribution which for
24 federal income tax purposes is treated as made out of "other earnings
25 and profits" under section nine hundred ninety-six of the internal
26 revenue code of nineteen hundred fifty-four, in which case such actual
27 distribution shall be treated as [either subsidiary income or] invest-
28 ment income under this article.

1 [8-B. (a) The term "minimum taxable income" shall mean the entire net
2 income of the taxpayer for the taxable year:

3 (1) increased by the amount of the federal items of tax preference set
4 forth in section fifty-seven of the internal revenue code (with the
5 modifications set forth in paragraph (b) of this subdivision), which
6 items of tax preference shall have the same meaning and be computed in
7 the same manner as under section fifty-seven of the internal revenue
8 code,

9 (2) determined with the federal adjustments described in paragraph (c)
10 of this subdivision, which adjustments shall have the same meaning and
11 be computed in the same manner as under sections fifty-six and fifty-
12 eight of the internal revenue code,

13 (3) increased by the net operating loss deduction otherwise allowed
14 under paragraph (f) of subdivision nine of this section, and

15 (4) reduced, for taxable years beginning after nineteen hundred nine-
16 ty-three, by the alternative net operating loss deduction, as defined in
17 paragraph (d) of this subdivision.

18 (b) The federal items of tax preference referred to hereinabove shall
19 be modified by deducting "tax-exempt interest" and "accelerated depreci-
20 ation or amortization on certain property placed in service before Janu-
21 ary 1, 1987", as determined under paragraphs five and seven of
22 subsection (a) of section fifty-seven of the internal revenue code.

23 (c) The adjustments referred to hereinabove shall be:

24 (1) "Depreciation" as determined under paragraph one of subsection (a)
25 of section fifty-six of the internal revenue code. For purposes of this
26 subparagraph, the depreciation item of adjustment provided for here
27 shall not include any amount attributable to property for which the tax
28 benefits of the accelerated cost recovery system are not available under

1 this article by reason of subparagraph ten of paragraph (b) of subdivi-
2 sion nine of this section;

3 (2) "Mining exploration and development costs" as determined under
4 paragraph two of subsection (a) of section fifty-six of the internal
5 revenue code;

6 (3) "Treatment of certain long-term contracts" as determined under
7 paragraph three of subsection (a) of section fifty-six of the internal
8 revenue code;

9 (4) "Installment sales of certain property" as determined under para-
10 graph six of subsection (a) of section fifty-six of the internal revenue
11 code;

12 (5) "Circulation expenditures of personal holding companies" as deter-
13 mined under subparagraph (C) of paragraph two of subsection (b) of
14 section fifty-six of the internal revenue code;

15 (6) "Merchant marine capital construction funds" as determined under
16 paragraph two of subsection (c) of section fifty-six of the internal
17 revenue code;

18 (7) "Disallowance of passive activity loss" as determined under
19 subsection (b) of section fifty-eight of the internal revenue code; and

20 (8) "Adjusted basis", as it appears in paragraph seven of subsection
21 (a) of section fifty-six of the internal revenue code, but without
22 taking into account the references therein to paragraph five of
23 subsection (a) of section fifty-six of the internal revenue code.

24 (d) The term "alternative net operating loss deduction" means the net
25 operating loss deduction allowed for the taxable year under paragraph
26 (f) of subdivision nine of this section, except as provided herein.

27 (1)(A) The net operating loss for any year beginning after nineteen
28 hundred eighty-nine which is included in determining such deduction

1 shall be determined with the adjustments provided in subparagraph two of
2 paragraph (a) of this subdivision, and shall be reduced by the items of
3 tax preference determined under subparagraph one of paragraph (a) of
4 this subdivision, attributable to such year. An item of tax preference
5 shall be taken into account only to the extent such item increased the
6 amount of the net operating loss for the taxable year under paragraph
7 (f) of subdivision nine of this section.

8 (B) In the case of loss years beginning before nineteen hundred nine-
9 ty, the amount of the net operating loss which may be carried over to
10 taxable years beginning after nineteen hundred eighty-nine shall be
11 equal to an amount which may be carried from the loss year to the first
12 taxable year of the taxpayer beginning after nineteen hundred eighty-
13 nine.

14 (2) In determining the amount of such deduction, loss carryforwards
15 and carrybacks shall, subject to the provisions of subparagraph five of
16 paragraph (f) of subdivision nine of this section, be computed in the
17 manner set forth in paragraph two of subsection (b) of section one
18 hundred seventy-two of the internal revenue code, except that, for the
19 reference therein to taxable income, there shall be substituted the
20 phrase "ninety percent of minimum taxable income determined without
21 regard to the alternative net operating loss deduction".

22 (3) The amount of such deduction shall not exceed ninety percent of
23 minimum taxable income determined without regard to such deduction,
24 provided, however, the term "ninety percent" shall be read as "forty-
25 five percent" with respect to taxable years beginning in nineteen
26 hundred ninety-four.

27 (e) The tax commission may, whenever necessary in order to properly
28 reflect the minimum taxable income of any taxpayer, determine the year

1 or period in which any item of income or deduction shall be included,
2 without regard to the method of accounting employed by the taxpayer.

3 (f) If the period covered by a report under this article is other than
4 the period covered by the report to the United States treasury depart-
5 ment, the minimum taxable income shall be appropriately modified pursu-
6 ant to regulations promulgated by the tax commission.]

7 9. The term "entire net income" means total net income from all sourc-
8 es, which shall be presumably the same as the entire taxable income
9 [(but not alternative minimum taxable income)], which, except as herein-
10 after provided in this subdivision,

11 (i) [which] the taxpayer is required to report to the United States
12 treasury department, or

13 (ii) [which] the taxpayer would have been required to report to the
14 United States treasury department if it had not made an election under
15 subchapter s of chapter one of the internal revenue code, or

16 (iii) [which] the taxpayer, in the case of a corporation which is
17 exempt from federal income tax (other than the tax on unrelated business
18 taxable income imposed under section 511 of the internal revenue code)
19 but which is subject to tax under this article, would have been required
20 to report to the United States treasury department but for such
21 exemption, [except as hereinafter provided, and subject to any modifica-
22 tion required by paragraphs (d) and (e) of subdivision three of section
23 two hundred ten of this article] or

24 (iv) in the case of a corporation organized under the laws of a coun-
25 try other than the United States, is effectively connected with the
26 conduct of a trade or business within the United States as determined
27 under section 882 of the Internal Revenue Code,

28 (a) Entire net income shall not include:

1 [(1) income, gains and losses from subsidiary capital which do not
2 include the amount of a recovery in respect of any war loss except for
3 such amounts from a former DISC which are treated as business income
4 under subdivision eight-A of this section,

5 (2) fifty percent of dividends (A) other than from subsidiaries, and
6 (B) other than amounts treated as business income under subdivision
7 eight-A of this section, on shares of stock which conform to the
8 requirements of subsection (c) of section two hundred forty-six of the
9 internal revenue code.]

10 (3) bona fide gifts,

11 (4) income and deductions with respect to amounts received from school
12 districts and from corporations and associations, organized and operated
13 exclusively for religious, charitable or educational purposes, no part
14 of the net earnings of which inures to the benefit of any private share-
15 holder or individual, for the operation of school buses,

16 (5) (i) any refund or credit of a tax imposed under this article,
17 article twenty-three, or former article thirty-two of this chapter, for
18 which tax no exclusion or deduction was allowed in determining the
19 taxpayer's entire net income under this article, article twenty-three,
20 or former article thirty-two of this chapter for any prior year, (ii) a
21 refund or credit of general corporation tax allowed by subdivision elev-
22 en of section 11-604 of the administrative code of the city of New York,
23 or (iii) any refund or credit of a tax imposed under sections one
24 hundred eighty-three, one hundred eighty-three-a, one hundred eighty-
25 four or one hundred eighty-four-a of this chapter, and

26 (6) any amount treated as dividends pursuant to section seventy-eight
27 of the internal revenue code and not [otherwise deductible under subpar-

1 agraphs one and two of this paragraph] treated as other exempt income
2 under subdivision six-a of this section;

3 (7) that portion of wages and salaries paid or incurred for the taxa-
4 ble year for which a deduction is not allowed pursuant to the provisions
5 of section two hundred eighty-C of the internal revenue code.

6 [(8) in the case of a taxpayer who is separately or as a partner of a
7 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, any item of income, gain, loss or deduction of such
10 business which is the taxpayer's distributive or pro rata share for
11 federal income tax purposes or which the taxpayer is required to take
12 into account separately for federal income tax purposes.]

13 (9) for taxable years beginning after December thirty-first, nineteen
14 hundred eighty-one, except with respect to property which is a qualified
15 mass commuting vehicle described in subparagraph (D) of paragraph eight
16 of subsection (f) of section one hundred sixty-eight of the internal
17 revenue code (relating to qualified mass commuting vehicles) and proper-
18 ty of a taxpayer principally engaged in the conduct of aviation (other
19 than air freight forwarders acting as principal and like indirect air
20 carriers) which is placed in service before taxable years beginning in
21 nineteen hundred eighty-nine, any amount which is included in the
22 taxpayer's federal taxable income solely as a result of an election made
23 pursuant to the provisions of such paragraph eight as it was in effect
24 for agreements entered into prior to January first, nineteen hundred
25 eighty-four;

26 (10) for taxable years beginning after December thirty-first, nineteen
27 hundred eighty-one, except with respect to property which is a qualified
28 mass commuting vehicle described in subparagraph (D) of paragraph eight

1 of subsection (f) of section one hundred sixty-eight of the internal
2 revenue code (relating to qualified mass commuting vehicles) and proper-
3 ty of a taxpayer principally engaged in the conduct of aviation (other
4 than air freight forwarders acting as principal and like indirect air
5 carriers) which is placed in service before taxable years beginning in
6 nineteen hundred eighty-nine, any amount which the taxpayer could have
7 excluded from federal taxable income had it not made the election
8 provided for in such paragraph eight as it was in effect for agreements
9 entered into prior to January first, nineteen hundred eighty-four;

10 (11) the amount deductible pursuant to paragraph (j) of this subdivi-
11 sion; and

12 (12) upon the disposition of property to which paragraph (j) of this
13 subdivision applies, the amount, if any, by which the aggregate of the
14 amounts described in subparagraph ten of paragraph (b) of this subdivi-
15 sion attributable to such property exceeds the aggregate of the amounts
16 described in paragraph (j) of this subdivision attributable to such
17 property; and

18 [(13) if the added tax provided for in either (i) former subdivision
19 two of section one hundred eighty-two of this chapter (relating to real
20 estate corporations) or (ii) former subdivision one-a of section two
21 hundred nine of this chapter (relating to real estate corporations) has
22 been imposed upon the taxpayer, any income which has been used in
23 computing such tax.]

24 (14) The amount deductible pursuant to paragraph [(1)] (i) of this
25 subsection.

26 [(15) In the case of an attorney-in-fact, with respect to which a
27 mutual insurance company, which is an interinsurer or a reciprocal
28 insurer and is subject to tax under subdivision (a) of section fifteen

1 hundred ten of this chapter, has made the election provided for under
2 section eight hundred thirty-five of the Internal Revenue Code, an
3 amount equal to the excess, if any, of the amounts paid or incurred by
4 such interinsurer or reciprocal insurer in the taxable year to the
5 attorney-in-fact over the deduction allowed to such interinsurer or
6 reciprocal insurer with respect to amounts paid or incurred in the taxa-
7 ble year to the attorney-in-fact under subsection (b) of such section
8 eight hundred thirty-five of the Internal Revenue Code.]

9 (16) In the case of a taxpayer subject to the modification provided by
10 subparagraph sixteen of paragraph (b) of this subdivision, the amount
11 required to be recaptured pursuant to subsection (d) of section 179 of
12 the internal revenue code with respect to property upon which such
13 modification was based.

14 (17) for taxable years beginning after December thirty-first, two
15 thousand two, the amount deductible pursuant to paragraph (n-1) of this
16 subdivision.

17 (18) the amount of income or gain included in federal taxable income
18 of a taxpayer that is a partner in a qualified entity or is a qualified
19 entity that is located both within and without a New York state inno-
20 vation hot spot, to the extent that the income or gain is attributable
21 to the operations of a qualified entity at or as part of the New York
22 state innovation hot spot as provided in section thirty-eight of this
23 chapter.

24 (19) the amount computed pursuant to paragraph (r) or (s) of this
25 subdivision, but not both such amounts.

26 (b) Entire net income shall be determined without the exclusion,
27 deduction or credit of:

1 (1) [the amount of any specific exemption or credit allowed in any law
2 of the United States imposing any tax on or measured by the income of
3 corporations,] in the case of a corporation organized under the law of a
4 country other than the United States, except as treated as other exempt
5 income under subdivision six-a of this section, (i) any part of any
6 income from dividends or interest on any kind of stock, securities or
7 indebtedness, but only if such income is treated as effectively
8 connected with the conduct of a trade or business in the United States
9 pursuant to section 864 of the internal revenue code, (ii) any income
10 exempt from federal taxable income under any treaty obligation of the
11 United States, but only if such income would be treated as effectively
12 connected in absence of such exemption provided that such treaty obli-
13 gation does not preclude the taxation of such income by a state, or
14 (iii) any income which would be treated as effectively connected if such
15 income were not excluded from gross income pursuant to subsection (a) of
16 section 103 of the internal revenue code;

17 (2) any part of any income from dividends or interest on any kind of
18 stock, securities or indebtedness, [except as provided in clauses (1)
19 and (2) of paragraph (a) hereof] treated as other exempt income under
20 subdivision six-a of this section,

21 (3) taxes on or measured by profits or income paid or accrued to the
22 United States, any of its possessions or to any foreign country, includ-
23 ing taxes in lieu of any of the foregoing taxes otherwise generally
24 imposed by any foreign country or by any possession of the United
25 States,

26 (3-a) taxes on or measured by profits or income, or which include
27 profits or income as a measure, paid or accrued to any other state of
28 the United States, or any political subdivision thereof, or to the

1 District of Columbia, including taxes expressly in lieu of any of the
2 foregoing taxes otherwise generally imposed by any other state of the
3 United States, or any political subdivision thereof, or the District of
4 Columbia;

5 (4) taxes imposed under this article and article thirty-two as in
6 effect on December thirty-first, two thousand fourteen and sections one
7 hundred eighty-three, one hundred eighty-three-a, one hundred eighty-
8 four and one hundred eighty-four-a of this chapter,

9 (4-a) (A) [the entire amount allowable as an exclusion or deduction for
10 stock transfer taxes imposed by article twelve of this chapter in deter-
11 mining the entire taxable income which the taxpayer is required to
12 report to the United States treasury department but only to the extent
13 that such taxes are incurred and paid in market making transactions,
14 (B)] in those instances where a credit for the special additional mort-
15 gage recording tax credit is allowed under [paragraph (a) of] subdivi-
16 sion [seventeen] nine of section two hundred [ten] ten-b of this arti-
17 cle, the amount allowed as an exclusion or deduction for the special
18 additional mortgage recording tax imposed by subdivision one-a of
19 section two hundred fifty-three of this chapter in determining the
20 entire taxable income which the taxpayer is required to report to the
21 United States treasury department, and [(C)] (B) unless the credit
22 allowed pursuant to subdivision [seventeen] nine of section two hundred
23 [ten] ten-b of this article is reflected in the computation of the gain
24 or loss so as to result in an increase in such gain or decrease of such
25 loss, for federal income tax purposes, from the sale or other disposi-
26 tion of the property with respect to which the special additional mort-
27 gage recording tax imposed pursuant to subdivision one-a of section two
28 hundred fifty-three of this chapter was paid, the amount of the special

1 additional mortgage recording tax imposed by subdivision one-a of
2 section two hundred fifty-three of this chapter which was paid and which
3 is reflected in the computation of the basis of the property so as to
4 result in a decrease in such gain or increase in such loss for federal
5 income tax purposes from the sale or other disposition of the property
6 with respect to which such tax was paid.

7 (6) [in the discretion of the tax commission, any amount of interest
8 directly or indirectly and any other amount directly or indirectly
9 attributable as a carrying charge or otherwise to subsidiary capital or
10 to income, gains or losses from subsidiary capital] any amount allowed
11 as a deduction for the taxable year under section 172 of the internal
12 revenue code, including carryovers of deductions from prior taxable
13 years.

14 [(7) in the case of a taxpayer who is separately or as a partner of a
15 partnership doing an insurance business as a member of the New York
16 insurance exchange described in section six thousand two hundred one of
17 the insurance law, such taxpayer's distributive or pro rata share of the
18 allocated entire net income of such business as determined under
19 sections fifteen hundred three and fifteen hundred four of this chapter,
20 provided however, in the event such allocated entire net income is a
21 loss, such taxpayer's distributive or pro rata share of such loss shall
22 not be subtracted from federal taxable income in computing entire net
23 income under this subdivision.]

24 (8) for taxable years beginning after December thirty-first, nineteen
25 hundred eighty-one, except with respect to property which is a qualified
26 mass commuting vehicle described in subparagraph (D) of paragraph eight
27 of subsection (f) of section one hundred sixty-eight of the internal
28 revenue code (relating to qualified mass commuting vehicles) and proper-

1 ty of a taxpayer principally engaged in the conduct of aviation (other
2 than air freight forwarders acting as principal and like indirect air
3 carriers) which is placed in service before taxable years beginning in
4 nineteen hundred eighty-nine, any amount which the taxpayer claimed as a
5 deduction in computing its federal taxable income solely as a result of
6 an election made pursuant to the provisions of such paragraph eight as
7 it was in effect for agreements entered into prior to January first,
8 nineteen hundred eighty-four;

9 (9) for taxable years beginning after December thirty-first, nineteen
10 hundred eighty-one, except with respect to property which is a qualified
11 mass commuting vehicle described in subparagraph (D) of paragraph eight
12 of subsection (f) of section one hundred sixty-eight of the internal
13 revenue code (relating to qualified mass commuting vehicles) and proper-
14 ty of a taxpayer principally engaged in the conduct of aviation (other
15 than air freight forwarders acting as principal and like indirect air
16 carriers) which is placed in service before taxable years beginning in
17 nineteen hundred eighty-nine, any amount which the taxpayer would have
18 been required to include in the computation of its federal taxable
19 income had it not made the election permitted pursuant to such paragraph
20 eight as it was in effect for agreements entered into prior to January
21 first, nineteen hundred eighty-four;

22 (10) in the case of property placed in service in taxable years begin-
23 ning before nineteen hundred ninety-four, for taxable years beginning
24 after December thirty-first, nineteen hundred eighty-one, except with
25 respect to property subject to the provisions of section two hundred
26 eighty-F of the internal revenue code, property subject to the
27 provisions of section one hundred sixty-eight of the internal revenue
28 code which is placed in service in this state in taxable years beginning

1 after December thirty-first, nineteen hundred eighty-four and property
2 of a taxpayer principally engaged in the conduct of aviation (other than
3 air freight forwarders acting as principal and like indirect air carri-
4 ers) which is placed in service before taxable years beginning in nine-
5 teen hundred [eight-nine] eighty-nine, the amount allowable as a
6 deduction determined under section one hundred sixty-eight of the inter-
7 nal revenue code;

8 (11) upon the disposition of property to which paragraph (j) of this
9 subdivision applies, the amount, if any, by which the aggregate of the
10 amounts described in such paragraph (j) attributable to such property
11 exceeds the aggregate of the amounts described in subparagraph ten of
12 this paragraph attributable to such property.

13 (15) Real property taxes paid on qualified agricultural property and
14 deducted in determining federal taxable income, to the extent of the
15 amount of the agricultural property tax credit allowed under subdivision
16 [twenty-two] eleven of section two hundred [ten] ten-b of this article.

17 (16) In the case of a taxpayer which is not an eligible farmer as
18 defined in paragraph (b) of subdivision [twenty-two] eleven of section
19 two hundred [ten] ten-b of this article, the amount of any deduction
20 claimed pursuant to section 179 of the internal revenue code with
21 respect to a sport utility vehicle which is not a passenger automobile
22 as defined in paragraph 5 of subsection (d) of section 280F of the
23 internal revenue code.

24 (17) for taxable years beginning after December thirty-first, two
25 thousand two, in the case of qualified property described in paragraph
26 two of subsection k of section 168 of the internal revenue code, other
27 than qualified resurgence zone property described in paragraph (q) of
28 this subdivision, and other than qualified New York Liberty Zone proper-

1 ty described in paragraph two of subsection b of section 1400L of the
2 internal revenue code (without regard to clause (i) of subparagraph (C)
3 of such paragraph), which was placed in service on or after June first,
4 two thousand three, the amount allowable as a deduction under section
5 167 of the internal revenue code.

6 (18) Premiums paid for environmental remediation insurance, as defined
7 in section twenty-three of this chapter, and deducted in determining
8 federal taxable income, to the extent of the amount of the environmental
9 remediation insurance credit allowed under such section twenty-three and
10 subdivision [thirty-five] nineteen of section two hundred [ten] ten-b of
11 this article.

12 (19) The amount of any deduction allowed pursuant to section one
13 hundred ninety-nine of the internal revenue code.

14 (20) The amount of any federal deduction for taxes imposed under arti-
15 cle twenty-three of this chapter.

16 [(c) Entire net income shall include income within and without the
17 United States;]

18 (c-1) (1) Notwithstanding any other provision of this article, in the
19 case of a taxpayer which is a foreign air carrier holding a foreign air
20 carrier permit issued by the United States department of transportation
21 pursuant to section four hundred two of the federal aviation act of
22 nineteen hundred fifty-eight, as amended, and which is qualified under
23 subparagraph two of this paragraph, entire net income shall not include,
24 and shall be computed without the deduction of, amounts directly or
25 indirectly attributable to, (i) any income derived from the interna-
26 tional operation of aircraft as described in and subject to the
27 provisions of section eight hundred eighty-three of the internal revenue
28 code, (ii) income without the United States which is derived from the

1 operation of aircraft, and (iii) income without the United States which
2 is of a type described in subdivision (a) of section eight hundred
3 eighty-one of the internal revenue code except that it is derived from
4 sources without the United States. Entire net income shall include
5 income described in clauses (i), (ii) and (iii) of this subparagraph in
6 the case of taxpayers not described in the previous sentence.

7 (2) A taxpayer is qualified under this subparagraph if air carriers
8 organized in the United States and operating in the foreign country or
9 countries in which the taxpayer has its major base of operations and in
10 which it is organized, resident or headquartered (if not in the same
11 country as its major base of operations) are not subject to any income
12 tax or other tax based on or measured by income or receipts imposed by
13 such foreign country or countries or any political subdivision thereof,
14 or if so subject to such tax, are provided an exemption from such tax
15 equivalent to that provided for herein.

16 (c-2) Adjustments by qualified public utilities. (1) In the case of a
17 taxpayer which is a qualified public utility, entire net income shall be
18 computed with the adjustments set forth in this paragraph.

19 (2) Definitions. (A) Qualified public utility. The term "qualified
20 public utility" means a taxpayer which: (i) on December thirty-first,
21 nineteen hundred ninety-nine, was subject to the ratemaking supervision
22 of the state department of public service, and (ii) for the year ending
23 on December thirty-first, nineteen hundred ninety-nine, was subject to
24 tax under former section one hundred eighty-six of this chapter.

25 (B) Transition property. The term "transition property" means property
26 placed in service by the taxpayer before January first, two thousand,
27 for which a depreciation deduction is allowed under section one hundred
28 sixty-seven of the internal revenue code.

1 (3) Federal depreciation disallowed. With respect to transition prop-
2 erty, the deduction for federal income tax purposes for depreciation
3 shall not be allowed.

4 (4) New York depreciation. With respect to transition property, a
5 deduction shall be allowed for the depreciation expense shown on the
6 books and records of the taxpayer for the taxable year and determined in
7 accordance with generally accepted accounting principles.

8 (5) Regulatory assets. A deduction shall be allowed for amounts recog-
9 nized as expense on the books and records of the taxpayer for the taxa-
10 ble year, which amounts were recognized as expense for federal income
11 tax purposes in a taxable year ending on or before December thirty-
12 first, nineteen hundred ninety-nine, where: (A) such amounts represent
13 expenditures which, when made, were charged to a deferred debit account
14 or similar asset account on the books and records of the taxpayer, and
15 where (B) the recognition of expense on the books and records of the
16 taxpayer is matched by revenue stemming from a procedure or adjustment
17 allowing the recovery of such expenditures, and where (C) such revenue
18 is recognized for federal income tax purposes in the taxable year.

19 (6) Basis for gain or loss. (A) Recognition transactions. (i) General
20 rule - book basis. Except as provided in subclause (ii) of this clause,
21 where transition property is sold or otherwise disposed of in the taxa-
22 ble year in a transaction of the type requiring recognition of gain or
23 loss for federal income tax purposes, the basis for determining the
24 amount of such gain or loss under this article shall be the cost of the
25 property less the accumulated depreciation on the property determined on
26 the books and records of the taxpayer in accordance with generally
27 accepted accounting principles.

1 (ii) Qualified gain - New York basis. Where a sale or disposition
2 described in subclause (i) of this clause results in recognition of gain
3 for federal income tax purposes, and where either (I) such recognition
4 occurs in a taxable year ending after nineteen hundred ninety-nine and
5 before two thousand ten, or (II) such recognition is with respect to a
6 nuclear electric generating facility, the basis for determining the
7 amount of such gain under this article shall be the cost of the property
8 less the aggregate of the New York depreciation deductions on the prop-
9 erty determined under subparagraph four of this paragraph.

10 (iii) No conversion of gain to loss. In the event that the basis
11 determined under subclause (ii) of this clause results in determination
12 of a loss on the sale or disposition of the property, no gain or loss
13 shall be recognized under this article with respect to such sale or
14 disposition.

15 (B) Nonrecognition transactions. (i) Carryover basis. (I) where tran-
16 sition property is disposed of ("original disposition") in a transaction
17 of a type requiring deferral of recognition of gain or loss for federal
18 income tax purposes, and where (II) there is a subsequent recognition of
19 gain or loss for federal income tax purposes ("clause B gain or loss"),
20 the amount of which is determined by reference, in whole or in part, to
21 the basis of such transition property ("underlying transition proper-
22 ty"), then (III) the amount of such clause B gain or loss under this
23 article shall be adjusted as provided in subclause (ii) or (iii) of this
24 clause.

25 (ii) General rule - book basis adjustment. Except as provided in
26 subclause (iii) of this clause, the amount of clause B gain shall be
27 reduced, or the amount of clause B loss increased, by the amount by
28 which the book basis of the underlying transition property on the date

1 of original disposition (determined using the provisions of subclause
2 (i) of clause (A) of this subparagraph) exceeds the federal income tax
3 basis of such property on such date.

4 (iii) Qualified gain - New York basis adjustment. Where clause B gain
5 either (I) occurs in a taxable year ending after nineteen hundred nine-
6 ty-nine and before two thousand ten, or (II) is with respect to a nucle-
7 ar electric generating facility, the amount of such gain under this
8 article shall be reduced, but not below zero, by the amount by which the
9 New York basis of the underlying transition property on the date of
10 original disposition (determined using the provisions of subclause (ii)
11 of clause (A) of this subparagraph) exceeds the federal income tax basis
12 of such property on such date.

13 (iv) Application to replacement property and transferee taxpayers.
14 This clause shall apply whether the clause B gain or loss: (I) is with
15 respect to either transition property or depreciable property the basis
16 of which is determined by reference to transition property, or (II) is
17 recognized by either a qualified public utility or by a taxpayer which
18 is a transferee of transition property (whether or not such transferee
19 is a qualified public utility, notwithstanding subparagraph one of this
20 paragraph).

21 (c-3) Depreciation adjustments by qualified power producers and pipe-
22 line companies. (1) In the case of a qualified taxpayer, entire net
23 income shall be computed with the depreciation adjustments set forth in
24 this paragraph.

25 (2) Definitions. (A) Qualified taxpayer. The term "qualified taxpayer"
26 means a qualified power producer or a qualified pipeline.

27 (B) Qualified power producer. The term "qualified power producer"
28 means a taxpayer which: (i) on December thirty-first, nineteen hundred

1 ninety-nine, was not subject to the ratemaking supervision of the state
2 department of public service, and (ii) for the year ending on December
3 thirty-first, nineteen hundred ninety-nine, was subject to tax under
4 former section one hundred eighty-six of this chapter on account of its
5 being principally engaged in the business of supplying electricity.

6 (C) Qualified pipeline. The term "qualified pipeline" means a taxpayer
7 which: (i) on December thirty-first, nineteen hundred ninety-nine, was
8 subject to the ratemaking supervision of either the federal energy regu-
9 latory commission or the state department of public service, and (ii)
10 for the year ending on December thirty-first, nineteen hundred ninety-
11 nine, was subject to tax under sections one hundred eighty-three and one
12 hundred eighty-four of this chapter on account of its being principally
13 engaged in the business of pipeline transmission.

14 (D) Transition property. The term "transition property" means property
15 placed in service by a qualified taxpayer before January first, two
16 thousand, for which a depreciation deduction is allowed under section
17 one hundred sixty-seven of the internal revenue code.

18 (3) Federal depreciation disallowed. With respect to transition prop-
19 erty, the deduction for federal income tax purposes for depreciation
20 shall not be allowed.

21 (4) New York depreciation. With respect to transition property, a
22 deduction shall be allowed for the depreciation expense computed as
23 provided in this subparagraph. (A) All transition property shown on the
24 books and records of the taxpayer on January first, two thousand shall
25 be treated as a single asset placed in service on such date. The New
26 York basis for purposes of computing the depreciation deduction on such
27 single asset shall be the net book value of such transition property
28 determined on the first day of the federal taxable year ending in two

1 thousand (or on the date any such property is placed in service, if
2 later) adjusted as provided in clause (B) of this subparagraph.

3 (B) If transition property is sold or otherwise disposed of, the New
4 York basis of the single asset shall be reduced on the date of such sale
5 or disposition by the amount of the adjusted federal tax basis of such
6 property on such date.

7 (C) The New York depreciation deduction allowed for any taxable year
8 with respect to such single asset shall be computed using the straight-
9 line method, a twenty-year life, and a salvage value of zero.

10 (D) For purposes of this subparagraph, the term "net book value" means
11 cost reduced by accumulated depreciation shown on the books and records
12 of the taxpayer and determined, in the case of a qualified power produc-
13 er, in accordance with generally accepted accounting principles; and in
14 the case of a qualified pipeline, in accordance with the taxpayer's
15 regulatory reports filed with the federal energy regulatory commission
16 or state department of public service.

17 (d) The [tax commission] commissioner may, whenever necessary in order
18 properly to reflect the entire net income of any taxpayer, determine the
19 year or period in which any item of income or deduction shall be
20 included, without regard to the method of accounting employed by the
21 taxpayer[;].

22 (e) The entire net income of any bridge commission created by act of
23 congress to construct a bridge across an international boundary means
24 its gross income less the expense of maintaining and operating its prop-
25 erties, the annual interest upon its bonds and other obligations, and
26 the annual charge for the retirement of such bonds or obligations at
27 maturity[;].

1 [(f) A net operating loss deduction shall be allowed which shall be
2 presumably the same as the net operating loss deduction allowed under
3 section one hundred seventy-two of the internal revenue code, or which
4 would have been allowed if the taxpayer had not made an election under
5 subchapter s of chapter one of the internal revenue code, except that in
6 every instance where such deduction is allowed under this article:

7 (1) any net operating loss included in determining such deduction
8 shall be adjusted to reflect the inclusions and exclusions from entire
9 net income required by paragraphs (a), (b) and (g) hereof,

10 (2) such deduction shall not include any net operating loss sustained
11 during any taxable year beginning prior to January first, nineteen
12 hundred sixty-one, or during any taxable year in which the taxpayer was
13 not subject to the tax imposed by this article,

14 (3) such deduction shall not exceed the deduction for the taxable year
15 allowed under section one hundred seventy-two of the internal revenue
16 code, or the deduction for the taxable year which would have been
17 allowed if the taxpayer had not made an election under subchapter s of
18 chapter one of the internal revenue code,

19 (4) in the case of a New York S corporation, such deduction shall not
20 include any net operating loss sustained during a New York C year or
21 during a New York S year beginning prior to nineteen hundred ninety, and
22 in the case of a New York C corporation, such deduction shall not
23 include any net operating loss sustained during a New York S year,
24 provided, however, a New York S year shall be treated as a taxable year
25 for purposes of determining the number of taxable years to which a net
26 operating loss may be carried back or carried forward, and

27 (5) the net operating loss deduction allowed under section one hundred
28 seventy-two of the internal revenue code shall for purposes of this

1 paragraph be determined as if the taxpayer had elected under such
2 section to relinquish the entire carryback period with respect to net
3 operating losses, except with respect to the first ten thousand dollars
4 of each of such losses, sustained during taxable years ending after June
5 thirtieth, nineteen hundred eighty-nine.

6 (g) For taxable years commencing prior to January first, nineteen
7 hundred eighty-seven, at the election of the taxpayer, a deduction shall
8 be allowed for expenditures paid or incurred during the taxable year for
9 the construction, reconstruction, erection or improvement of either
10 industrial waste treatment facilities or air pollution control facili-
11 ties, or, with respect to taxable years beginning on or after January
12 first, nineteen hundred seventy-seven and before January first, nineteen
13 hundred eighty-one, industrial waste treatment controlled process facil-
14 ities or air pollution controlled process facilities.

15 (1) (A) (1) The term "industrial waste treatment facilities" shall
16 mean facilities for the treatment, neutralization or stabilization of
17 industrial waste and other wastes (as the terms "industrial waste" and
18 "other wastes" are defined in section 17-0105 of the environmental
19 conservation law) from a point immediately preceding the point of such
20 treatment, neutralization or stabilization to the point of disposal,
21 including the necessary pumping and transmitting facilities.

22 (2) The term "industrial waste treatment controlled process facility"
23 shall mean such portion of the cost of an industrial production facility
24 designed for the purpose of obviating the need for industrial waste
25 treatment facilities as defined in item one of this clause as shall
26 exceed the cost of an industrial production facility of equal production
27 capacity which if constructed would require industrial waste treatment
28 facilities to meet emission standards in compliance with the provisions

1 of the environmental conservation law and the codes, rules, regulations,
2 permits or orders issued pursuant thereto but only to the extent of the
3 cost of such industrial waste treatment facilities.

4 (B) (1) The term "air pollution control facilities" shall mean facili-
5 ties which remove, reduce, or render less noxious air contaminants emit-
6 ted from an air contamination source (as the terms "air contaminant" and
7 "air contamination source" are defined in section 19-0107 of the envi-
8 ronmental conservation law) from a point immediately preceding the point
9 of such removal, reduction or rendering to the point of discharge of
10 air, meeting emission standards as established by the department of
11 environmental conservation, but excluding such facilities installed for
12 the primary purpose of salvaging materials which are usable in the manu-
13 facturing process or are marketable and excluding those facilities which
14 rely for their efficacy on dilution, dispersion or assimilation of air
15 contaminants in the ambient air after emission. Such term shall further
16 include flue gas desulfurization equipment and attendant sludge disposal
17 facilities, fluidized bed boilers, precombustion coal cleaning facili-
18 ties or other facilities that conform with this subdivision and which
19 comply with the provisions of the state acid deposition control act set
20 forth in title nine of article nineteen of the environmental conserva-
21 tion law.

22 (2) The term "air pollution controlled process facility" shall mean
23 such portion of the cost of an industrial production facility designed
24 for the purpose of obviating the need for air pollution control facili-
25 ties as defined in item one of this clause as shall exceed the cost of
26 an industrial production facility of equal productive capacity which if
27 constructed would require air pollution control facilities to inert
28 emission standards as established pursuant to title three of article

1 nineteen of the environmental conservation law but only to the extent of
2 the cost of such air pollution control facilities.

3 (2) However, such deduction shall be allowed only

4 (A) with respect to tangible property which is depreciable, pursuant
5 to section one hundred sixty-seven of the internal revenue code, having
6 a situs in this state and used in the taxpayer's trade or business, the
7 construction, reconstruction, erection or improvement of which, in the
8 case of industrial waste treatment facilities, is initiated on or after
9 January first, nineteen hundred sixty-five or which, in the case of air
10 pollution control facilities, is initiated on or after January first,
11 nineteen hundred sixty-six, or which in the case of industrial waste
12 treatment controlled process facilities or air pollution controlled
13 process facilities is initiated on and after January first, nineteen
14 hundred seventy-seven, and

15 (B) on condition that such facilities have been certified by the state
16 commissioner of environmental conservation or his designated represen-
17 tative, pursuant to section 19-0309 of the environmental conservation
18 law, as complying with applicable provisions of the environmental
19 conservation law, the public health law, the state sanitary code and
20 codes, rules, regulations, permits or orders issued pursuant thereto,
21 and

22 (C) on condition that entire net income for the taxable year and all
23 succeeding taxable years be computed without any deductions for such
24 expenditures or for depreciation or amortization of the same property
25 other than the deductions allowed by this paragraph (g), except to the
26 extent that the basis of the property may be attributable to factors
27 other than such expenditures, or in case a deduction is allowable pursu-
28 ant to this paragraph for only a part of such expenditures, on condition

1 that any deduction allowed for federal income tax purposes for such
2 expenditures or for depreciation or amortization of the same property be
3 proportionately reduced in computing entire net income for the taxable
4 year and all succeeding taxable years, and

5 (D) where the election provided for in paragraph (d) of subdivision
6 three of section two hundred ten of this chapter has not been exercised
7 in respect to the same property.

8 (3) (A) If expenditures in respect to an industrial waste treatment
9 facility, an air pollution control facility, an industrial waste treat-
10 ment controlled process facility or an air pollution controlled process
11 facility have been deducted as provided herein and if within ten years
12 from the end of the taxable year in which such deduction was allowed
13 such property or any part thereof is used for the primary purpose of
14 salvaging materials which are usable in the manufacturing process or are
15 marketable, the taxpayer shall report such change of use in its report
16 for the first taxable year during which it occurs, and the tax commis-
17 sion may recompute the tax for the year or years for which such
18 deduction was allowed and any carryback or carryover year, and may
19 assess any additional tax resulting from such recomputation within the
20 time fixed by paragraph nine of subsection (c) of section ten hundred
21 eighty-three of this chapter.

22 (B) If a deduction is allowed as herein provided for expenditures paid
23 or incurred during any taxable year on the basis of a temporary certif-
24 icate of compliance issued pursuant to the environmental conservation
25 law and if the taxpayer fails to obtain a permanent certificate of
26 compliance upon completion of the facilities with respect to which such
27 temporary certificate was issued, the taxpayer shall report such failure
28 in its report for the taxable year during which such facilities are

1 completed, and the tax commission may recompute the tax for the year or
2 years for which such deduction was allowed and any carryback or carry-
3 over year, and may assess any additional tax resulting from in such
4 recomputation within the time fixed by paragraph nine of subsection (c)
5 of section ten hundred eighty-three.

6 (C) If a deduction is allowed as herein provided for expenditures paid
7 or incurred during any taxable year in respect to an air pollution
8 control facility on the basis of a certificate of compliance issued
9 pursuant to the environmental conservation law and the certificate is
10 revoked pursuant to subdivision three of section 19-0309 of the environ-
11 mental conservation law, the tax commission may recompute the tax for
12 the year or years for which the facility is not or was not in compliance
13 with the applicable provisions of the environmental conservation law,
14 the state sanitary code or codes, rules, regulations, permits or orders
15 promulgated pursuant thereto, and for which a deduction was allowed, as
16 well as for any carryback or carryover year to which such deduction was
17 carried, and may assess any additional tax resulting from such recompu-
18 tation within the time fixed by paragraph nine of subsection (c) of
19 section ten hundred eighty-three.

20 (4) In any taxable year when property is sold or otherwise disposed
21 of, with respect to which a deduction has been allowed pursuant to this
22 paragraph, such deduction shall be disregarded in computing gain or
23 loss, and the gain or loss on the sale or other disposition of such
24 property shall be the gain or loss entering into the computation of
25 entire taxable income which the taxpayer is required to report to the
26 United States treasury department for such taxable year.]

1 (h) If the period covered by a report under this article is other than
2 the period covered by the report to the United States treasury depart-
3 ment,

4 (1) except as provided in subparagraph two hereof, entire net income
5 shall be determined by multiplying the taxable income reported to such
6 department (as adjusted pursuant to the provisions of this article) by
7 the number of calendar months or major parts thereof covered by the
8 report under this article and dividing by the number of calendar months
9 or major parts thereof covered by the report to such department. If it
10 shall appear that such method of determining entire net income does not
11 properly reflect the taxpayer's income during the period covered by the
12 report under this article, the [tax commission] commissioner shall be
13 authorized in its discretion to determine such entire net income solely
14 on the basis of the taxpayer's income during the period covered by its
15 report under this article[;].

16 (2) [in] In the case of a New York S termination year, an equal
17 portion of entire net income shall be assigned to each day of such year.
18 The portion of such entire net income thereby assigned to the S short
19 year and the C short year shall be included in the respective reports
20 for the S short year and the C short year under this article. However,
21 where paragraph three of subsection (s) of section six hundred twelve of
22 this chapter applies, the portion of such entire net income assigned to
23 the S short year and the C short year shall be determined under normal
24 tax accounting rules.

25 (i) With respect to a DISC which during any taxable year or reporting
26 year (1) received more than five percent of its gross sales from the
27 sale of inventory or other property which it purchased from its stock-
28 holders, (2) received more than five percent of its gross rentals from

1 the rental of property which it purchased or rented from its stockhold-
2 ers or (3) received more than five percent of its total receipts other
3 than sales and rentals from its stockholders, the following provisions
4 shall apply.

5 (A) For any taxable year in which sub-paragraph (B) of this paragraph
6 is in effect and not rendered invalid, a DISC meeting the above test
7 shall be exempt from all taxes imposed by this article.

8 (B) Supplemental to the provisions of subdivision five of section two
9 hundred eleven of this article, any taxpayer required to compute a tax
10 under this article, which during the taxable year being reported was a
11 stockholder in any DISC meeting the test prescribed in this paragraph,
12 shall for any taxable year ending after December thirty-first, nineteen
13 hundred seventy-one adjust each item of its receipts, expenses, assets
14 and liabilities, as otherwise computed under this article, by adding
15 thereto its attributable share of each such DISC's receipts, expenses,
16 assets and liabilities as reportable by each such DISC to the United
17 States Treasury Department for its annual reporting period ending during
18 the current taxable year of such taxpayer; provided, however, (1) that
19 all transactions between the taxpayer and each such DISC shall be elimi-
20 nated from the taxpayer's adjusted receipts, expenses, assets and
21 liabilities; (2) that the taxpayer's entire net income as otherwise
22 computed under this section, shall be reduced by subtracting the amount
23 of the deemed distribution of current income, if any, from each such
24 DISC already included in the entire net income of such taxpayer by
25 virtue of having been included in its entire taxable income for that
26 taxable year as reported to the United States Treasury Department; and
27 (3) that in the event this paragraph should be rendered invalid, all

1 DISC's and their stockholders taxable hereunder shall be taxed instead
2 under the remaining portions of this article.

3 (j) in the case of property placed in service in taxable years begin-
4 ning before nineteen hundred ninety-four, for taxable years beginning
5 after December thirty-first, nineteen hundred eighty-one, except with
6 respect to property subject to the provisions of section two hundred
7 eighty-F of the internal revenue code and property subject to the
8 provisions of section one hundred sixty-eight of the internal revenue
9 code which is placed in service in this state in taxable years beginning
10 after December thirty-first, nineteen hundred eighty-four, and provided
11 a deduction has not been excluded from entire net income pursuant to
12 subparagraph eight of paragraph (b) of this subdivision, a taxpayer
13 shall be allowed with respect to property which is subject to the
14 provisions of section one hundred sixty-eight of the internal revenue
15 code the depreciation deduction allowable under section one hundred
16 sixty-seven of the internal revenue code as such section would have
17 applied to property placed in service on December thirty-first, nineteen
18 hundred eighty. This paragraph shall not apply to property of a taxpayer
19 principally engaged in the conduct of aviation (other than air freight
20 forwarders acting as principal and like indirect air carriers) which is
21 placed in service before taxable years beginning in nineteen hundred
22 eighty-nine.

23 (k) QSSS. (1) New York S corporation. In the case of a New York S
24 corporation which is the parent of a qualified subchapter S subsidiary
25 (QSSS) with respect to a taxable year:

26 (A) where the QSSS is not an excluded corporation,

27 (i) in determining the entire net income of such parent corporation,
28 all assets, liabilities, income and deductions of the QSSS shall be

1 treated as assets, liabilities, income and deductions of the parent
2 corporation, and

3 (ii) the QSSS shall be exempt from all taxes imposed by this article,
4 and

5 (B) where the QSSS is an excluded corporation, the entire net income
6 of the parent corporation shall be determined as if the federal QSSS
7 election had not been made.

8 (2) New York C corporation. In the case of a New York C corporation
9 which is the parent of a QSSS with respect to a taxable year:

10 (A) where the QSSS is a taxpayer,

11 (i) in determining the entire net income of such parent corporation,
12 all assets, liabilities, income and deductions of the QSSS shall be
13 treated as assets, liabilities, income and deductions of the parent
14 corporation, and

15 (ii) the QSSS shall be exempt from all taxes imposed by this article,
16 and

17 (B) where the QSSS is not a taxpayer,

18 (i) if the QSSS is not an excluded corporation, the parent corporation
19 may make a QSSS inclusion election to include all assets, liabilities,
20 income and deductions of the QSSS as assets, liabilities, income and
21 deductions of the parent corporation, and

22 (ii) in the absence of such election, or where the QSSS is an excluded
23 corporation, the entire net income of the parent corporation shall be
24 determined as if the federal QSSS election had not been made.

25 (3) Non-New York S corporation not excluded. In the case of an S
26 corporation which is not a taxpayer and not an excluded corporation, and
27 which is the parent of a QSSS which is a taxpayer, the shareholders of

1 the parent corporation shall be entitled to make the New York S election
2 under subsection (a) of section six hundred sixty of this chapter.

3 (A) For any taxable year for which such election is in effect, the
4 parent corporation shall be subject to tax under this article as a New
5 York S corporation, and the provisions of clause (A) of subparagraph one
6 of this paragraph shall apply.

7 (B) For any taxable year for which such election is not in effect, the
8 QSSS shall be a New York C corporation, and the entire net income of the
9 QSSS shall be determined as if the federal QSSS election had not been
10 made. For purposes of such determination, the taxable year of the parent
11 corporation shall constitute the taxable year of the QSSS, excluding,
12 however, any portion of such year during which the QSSS is not a taxpay-
13 er.

14 (4) S corporation excluded. In the case of an S corporation which is
15 an excluded corporation and which is the parent of a QSSS which is a
16 taxpayer, the QSSS shall be a New York C corporation and the provisions
17 of clause (B) of subparagraph three of this paragraph shall apply.

18 (5) Excluded corporation. The term "excluded corporation" means a
19 corporation subject to tax under sections one hundred eighty-three
20 through one hundred eighty-six, inclusive, or article [thirty-two or]
21 thirty-three of this chapter, or a foreign corporation not taxable by
22 this state which, if it were taxable, would be subject to tax under any
23 of such sections or [articles] article.

24 (6) Taxpayer. For purposes of this paragraph, the term "taxpayer"
25 means a parent corporation or QSSS subject to tax under this article,
26 determined without regard to the provisions of this paragraph.

27 (7) QSSS inclusion election. The election under subclause (i) of
28 clause (B) of subparagraph two of this paragraph shall be effective for

1 the taxable year for which made and for all succeeding taxable years of
2 the corporation until such election is terminated. An election or termi-
3 nation shall be made on such form and in such manner as the commissioner
4 may prescribe by regulation or instruction.

5 (1) Emerging technology investment deferral. In the case of any sale
6 of a qualified emerging technologies investment held for more than thir-
7 ty-six months and with respect to which the taxpayer elects the applica-
8 tion of this paragraph, gain from such sale shall be recognized only to
9 the extent that the amount realized on such sale exceeds the cost of any
10 qualified emerging technologies investment purchased by the taxpayer
11 during the three hundred sixty-five-day period beginning on the date of
12 such sale, reduced by any portion of such cost previously taken into
13 account under this paragraph. For purposes of this paragraph the follow-
14 ing shall apply:

15 (1) A qualified investment is stock of a corporation or an interest,
16 other than as a creditor, in a partnership or limited liability company
17 that was acquired by the taxpayer as provided in Internal Revenue Code §
18 1202(c)(1)(B), except that the reference to the term "stock" in such
19 section shall be read as "investment," or by the taxpayer from a person
20 who had acquired such stock or interest in such a manner.

21 (2) A qualified emerging technology investment is a qualified invest-
22 ment, that was held by the taxpayer for at least thirty-six months, in a
23 company defined in paragraph (c) of subdivision one of section thirty-
24 one hundred two-e of the public authorities law or an investment in a
25 partnership or limited liability company that is taxed as a partnership
26 to the extent that such partnership or limited liability company invests
27 in qualified emerging technology companies.

1 (3) For purposes of determining whether the nonrecognition of gain
2 under this subsection applies to a qualified emerging technologies
3 investment that is sold, the taxpayer's holding period for such invest-
4 ment and the qualified emerging technologies investment that is
5 purchased shall be determined without regard to Internal Revenue Code §
6 1223.

7 (m) Amounts deferred. The amount deferred under paragraph (l) of this
8 subdivision shall be added to entire net income when the reinvestment in
9 the New York qualified emerging technology company which qualified a
10 taxpayer for such deferral is sold.

11 [(n) Qualified gas transportation contracts.

12 (1) Any tax paid under this article allocable to receipts attributable
13 to a "qualified gas transportation contract" shall be deemed to have
14 been paid under article nine of this chapter for all purposes of law for
15 taxable years commencing on or after January first, two thousand,
16 computed as hereinafter provided, if all of the following conditions are
17 met:

18 (i) For periods ending prior to January first, two thousand, the
19 taxpayer paid the franchise tax due under section one hundred eighty-
20 four of this chapter.

21 (ii) For the taxable year, all of the receipts from the pipeline
22 transportation of natural gas attributable to the taxpayer and included
23 in the taxpayer's entire net income (without regard to this paragraph)
24 are solely from the transportation of natural gas for wholesale custom-
25 ers and commercial retail customers.

26 (iii) The taxpayer's franchise tax liability under this article for
27 the taxable year (computed without regard to this paragraph) is deter-
28 mined under paragraph (a) of subdivision one of section two hundred ten

1 of this article, and such tax liability (without regard to this para-
2 graph) is greater than the liability the taxpayer would have incurred
3 under sections one hundred eighty-three and one hundred eighty-four of
4 this chapter (as such sections existed on December thirty-first, nine-
5 teen hundred ninety-nine) based on the same taxable period.

6 (iv) The taxpayer is a party to a "qualified gas transportation
7 contract," as defined herein.

8 (2) The provisions of this paragraph shall apply only for the taxable
9 years during which such qualified gas transportation contract is in full
10 force and effect, and shall apply only to the receipts of the taxpayer
11 less any expenses of the taxpayer (but not less than zero), during the
12 taxable year, to the extent included in entire net income, which are
13 attributable to any such qualified gas transportation contracts.
14 Provided, further, in any event, the characterization hereunder shall
15 expire and be of no further force and effect for taxable years commenc-
16 ing on or after January first, two thousand fifteen.

17 (3) The term "qualified gas transportation contract" shall mean a
18 service agreement for the transportation of natural gas for an end-user
19 which is a qualified cogeneration facility with a rated capacity of one
20 thousand megawatts or more, which (i) was entered into before January
21 first, two thousand, and was in full force and effect and binding on the
22 parties thereto as of such date, (ii) as originally executed, was for a
23 term of at least twenty years, and (iii) the terms of which prohibit the
24 pass-through to such customer of the franchise tax imposed under this
25 article, while allowing the recovery of the gross earnings tax imposed
26 under section one hundred eighty-four of this chapter. A contract shall
27 not qualify as a qualified gas transportation contract if there is: (i)
28 any renewal or extension of an otherwise qualified gas transportation

1 contract occurring on or after January first, two thousand, or (ii) any
2 material amendment to, or supplementation of, an otherwise qualified gas
3 transportation contract on or after such date. Such renewal, extension,
4 or material amendment or supplementation shall have the same force and
5 effect of terminating the characterization hereunder as if the qualify-
6 ing contract had expired by its own terms.

7 (o)] (n-1) For taxable years beginning after December thirty-first,
8 two thousand two, in the case of qualified property described in para-
9 graph two of subsection k of section 168 of the internal revenue code,
10 other than qualified resurgence zone property described in paragraph (q)
11 of this subdivision, and other than qualified New York Liberty Zone
12 property described in paragraph two of subsection b of section 1400L of
13 the internal revenue code (without regard to clause (i) of subparagraph
14 (C) of such paragraph), which was placed in service on or after June
15 first, two thousand three, a taxpayer shall be allowed with respect to
16 such property the depreciation deduction allowable under section 167 of
17 the internal revenue code as such section would have applied to such
18 property had it been acquired by the taxpayer on September tenth, two
19 thousand one.

20 (o) Related members expense add back. (1) Definitions. (A) Related
21 member. "Related member" means a related person as defined in subpara-
22 graph (c) of paragraph three of subsection (b) of section four hundred
23 sixty-five of the internal revenue code, except that "fifty percent"
24 shall be substituted for "ten percent".

25 (B) Effective rate of tax. "Effective rate of tax" means, as to any
26 state or U.S. possession, the maximum statutory rate of tax imposed by
27 the state or possession on or measured by a related member's net income
28 multiplied by the apportionment percentage, if any, applicable to the

1 related member under the laws of said jurisdiction. For purposes of this
2 definition, the effective rate of tax as to any state or U.S. possession
3 is zero where the related member's net income tax liability in said
4 jurisdiction is reported on a combined or consolidated return including
5 both the taxpayer and the related member where the reported transactions
6 between the taxpayer and the related member are eliminated or offset.
7 Also, for purposes of this definition, when computing the effective rate
8 of tax for a jurisdiction in which a related member's net income is
9 eliminated or offset by a credit or similar adjustment that is dependent
10 upon the related member either maintaining or managing intangible prop-
11 erty or collecting interest income in that jurisdiction, the maximum
12 statutory rate of tax imposed by said jurisdiction shall be decreased to
13 reflect the statutory rate of tax that applies to the related member as
14 effectively reduced by such credit or similar adjustment.

15 (C) Royalty payments. Royalty payments are payments directly connected
16 to the acquisition, use, maintenance or management, ownership, sale,
17 exchange, or any other disposition of licenses, trademarks, copyrights,
18 trade names, trade dress, service marks, mask works, trade secrets,
19 patents and any other similar types of intangible assets as determined
20 by the commissioner, and include amounts allowable as interest
21 deductions under section one hundred sixty-three of the internal revenue
22 code to the extent such amounts are directly or indirectly for, related
23 to or in connection with the acquisition, use, maintenance or manage-
24 ment, ownership, sale, exchange or disposition of such intangible
25 assets.

26 (D) Valid Business Purpose. A valid business purpose is one or more
27 business purposes, other than the avoidance or reduction of taxation,
28 which alone or in combination constitute the primary motivation for some

1 business activity or transaction, which activity or transaction changes
2 in a meaningful way, apart from tax effects, the economic position of
3 the taxpayer. The economic position of the taxpayer includes an increase
4 in the market share of the taxpayer, or the entry by the taxpayer into
5 new business markets.

6 (2) Royalty expense add backs. (A) Except where a taxpayer is included
7 in a combined report with a related member pursuant to subdivision four
8 of section two hundred eleven of this article, for the purpose of
9 computing entire net income or other applicable taxable basis, a taxpay-
10 er must add back royalty payments directly or indirectly paid, accrued,
11 or incurred in connection with one or more direct or indirect trans-
12 actions with one or more related members during the taxable year to the
13 extent deductible in calculating federal taxable income.

14 (B) Exceptions. (i) The adjustment required in this paragraph shall
15 not apply to the portion of the royalty payment that the taxpayer estab-
16 lishes, by clear and convincing evidence of the type and in the form
17 specified by the commissioner, meets all of the following requirements:

18 (I) the related member was subject to tax in this state or another state
19 or possession of the United States or a foreign nation or some combina-
20 tion thereof on a tax base that included the royalty payment paid,
21 accrued or incurred by the taxpayer; (II) the related member during the
22 same taxable year directly or indirectly paid, accrued or incurred such
23 portion to a person that is not a related member; and (III) the trans-
24 action giving rise to the royalty payment between the taxpayer and the
25 related member was undertaken for a valid business purpose.

26 (ii) The adjustment required in this paragraph shall not apply if the
27 taxpayer establishes, by clear and convincing evidence of the type and
28 in the form specified by the commissioner, that: (I) the related member

1 was subject to tax on or measured by its net income in this state or
2 another state or possession of the United States or some combination
3 thereof; (II) the tax base for said tax included the royalty payment
4 paid, accrued or incurred by the taxpayer; and (III) the aggregate
5 effective rate of tax applied to the related member in those jurisdic-
6 tions is no less than eighty percent of the statutory rate of tax that
7 applied to the taxpayer under section two hundred ten of this article
8 for the taxable year.

9 (iii) [The adjustment required in this paragraph shall not apply if
10 the taxpayer establishes, by clear and convincing evidence of the type
11 and in the form specified by the commissioner, that: (I) the royalty
12 payment was paid, accrued or incurred to a related member organized
13 under the laws of a country other than the United States; (II) the
14 related member's income from the transaction was subject to a comprehen-
15 sive income tax treaty between such country and the United States; (III)
16 the related member was subject to tax in a foreign nation on a tax base
17 that included the royalty payment paid, accrued or incurred by the
18 taxpayer; (IV) the related member's income from the transaction was
19 taxed in such country at an effective rate of tax at least equal to that
20 imposed by this state; and (V) the royalty payment was paid, accrued or
21 incurred pursuant to a transaction that was undertaken for a valid busi-
22 ness purpose and using terms that reflect an arm's length relationship.

23 (iv)] The adjustment required in this paragraph shall not apply if the
24 taxpayer and the commissioner agree in writing to the application or use
25 of alternative adjustments or computations. The commissioner may, in his
26 or her discretion, agree to the application or use of alternative
27 adjustments or computations when he or she concludes that in the absence

1 of such agreement the income of the taxpayer would not be properly
2 reflected.

3 (p) For taxable years beginning after December thirty-first, two thou-
4 sand two, upon the disposition of property to which paragraph [(o)]
5 (n-1) of this subdivision applies, the amount of any gain or loss inclu-
6 dible in entire net income shall be adjusted to reflect the inclusions
7 and exclusions from entire net income pursuant to subparagraph seventeen
8 of paragraph (a) and subparagraph seventeen of paragraph (b) of this
9 subdivision attributable to such property.

10 (q) For purposes of paragraphs [(o)] (n-1) and (p) of this subdivi-
11 sion, qualified resurgence zone property shall mean qualified property
12 described in paragraph two of subsection k of section 168 of the inter-
13 nal revenue code substantially all of the use of which is in the resur-
14 gence zone, as defined below, and is in the active conduct of a trade or
15 business by the taxpayer in such zone, and the original use of which in
16 the resurgence zone commences with the taxpayer after December thirty-
17 first, two thousand two. The resurgence zone shall mean the area of New
18 York county bounded on the south by a line running from the intersection
19 of the Hudson River with the Holland Tunnel, and running thence east to
20 Canal Street, then running along the centerline of Canal Street to the
21 intersection of the Bowery and Canal Street, running thence in a south-
22 easterly direction diagonally across Manhattan Bridge Plaza, to the
23 Manhattan Bridge and thence along the centerline of the Manhattan Bridge
24 to the point where the centerline of the Manhattan Bridge would inter-
25 sect with the easterly bank of the East River, and bounded on the north
26 by a line running from the intersection of the Hudson River with the
27 Holland Tunnel and running thence north along West Avenue to the inter-
28 section of Clarkson Street then running east along the centerline of

1 Clarkson Street to the intersection of Washington Avenue, then running
2 south along the centerline of Washington Avenue to the intersection of
3 West Houston Street, then east along the centerline of West Houston
4 Street, then at the intersection of the Avenue of the Americas continu-
5 ing east along the centerline of East Houston Street to the easterly
6 bank of the East River.

7 (r) Subtraction modification for qualified residential loan portfo-
8 lios. (1)(A) A taxpayer that is either a thrift institution as defined
9 in subparagraph three of this paragraph or a qualified community bank as
10 defined in subparagraph two of paragraph (s) of this subdivision and
11 maintains a qualified residential loan portfolio as defined in subpara-
12 graph two of this paragraph shall be allowed as a deduction in computing
13 entire net income the amount, if any, by which (i) thirty-two percent of
14 its entire net income determined without regard to this paragraph
15 exceeds (ii) the amounts deducted by the taxpayer pursuant to sections
16 166 and 585 of the Internal Revenue Code less any amounts included in
17 federal taxable income as a result of a recovery of a loan.

18 (B)(i) If the taxpayer is in a combined report, this deduction will be
19 computed on a combined basis. In that instance, the entire net income of
20 the combined group for purposes of this paragraph shall be multiplied by
21 a fraction, the numerator of which is the average total assets of all
22 the thrift institutions or qualified community banks included in the
23 combined report and the denominator of which is the average total assets
24 of all the corporations included in the combined report.

25 (ii) Measurement of assets for purposes of this clause. (I) Total
26 assets are those assets that are properly reflected on a balance sheet,
27 computed in the same manner as is required by the banking regulator of
28 the taxpayers included in the combined return.

1 (II) Assets will only be included if the income or expenses of which
2 are properly reflected (or would have been properly reflected if not
3 fully depreciated or expensed, or depreciated or expensed to a nominal
4 amount) in the computation of the combined group's entire net income for
5 the taxable year. Assets will not include deferred tax assets and intan-
6 gible assets identified as "goodwill".

7 (III) Tangible real and personal property, such as buildings, land,
8 machinery, and equipment shall be valued at cost. Intangible property,
9 such as loans and investments, shall be valued at book value.

10 (IV) Intercompany stockholdings and bills, notes and accounts
11 receivable, and other intercompany indebtedness between the corpo-
12 rations included in the combined report shall be eliminated.

13 (V) Average assets are computed using the assets measured on the first
14 day of the taxable year, and on the last day of each subsequent quarter
15 of the taxable year.

16 (2) Qualified residential loan portfolio. (A) A taxpayer maintains a
17 qualified residential loan portfolio if at least sixty percent of the
18 amount of the total assets at the close of the taxable year of the
19 thrift institution or qualified community bank consists of the assets
20 described in items (i) through (xii) of this clause, with the applica-
21 tion of the rule in item (xiii). If the taxpayer is a member of a
22 combined group, the determination of whether there is a qualified resi-
23 dential loan portfolio will be made by aggregating the assets of the
24 thrift institutions or qualified community banks that are members of the
25 combined group.

26 Assets:

27 (i) cash;

1 (ii) obligations of the United States or of a state or political
2 subdivision thereof, and stock or obligations of a corporation which is
3 an instrumentality or a government sponsored enterprise of the United
4 States or of a state or political subdivision thereof;

5 (iii) loans secured by a deposit or share of a member;

6 (iv) loans secured by an interest in real property which is (or from
7 the proceeds of the loan, will become) residential real property or real
8 property used primarily for church purposes, loans made for the improve-
9 ment of residential real property or real property used primarily for
10 church purposes, provided that for purposes of this item, residential
11 real property shall include single or multi-family dwellings, facilities
12 in residential developments dedicated to public use or property used on
13 a nonprofit basis for residents, and mobile homes not used on a tran-
14 sient basis;

15 (v) property acquired through the liquidation of defaulted loans
16 described in item (iv) of this clause;

17 (vi) any regular or residual interest in a REMIC, as such term is
18 defined in section 860D of the internal revenue code, but only in the
19 proportion which the assets of such REMIC consist of property described
20 in any of the preceding items of this clause, except that if ninety-five
21 percent or more of the assets of such REMIC are assets described in
22 items (i) through (v) of this clause, the entire interest in the REMIC
23 shall qualify;

24 (vii) any mortgage-backed security which represents ownership of a
25 fractional undivided interest in a trust, the assets of which consist
26 primarily of mortgage loans, provided that the real property which
27 serves as security for the loans is (or from the proceeds of the loan,
28 will become) the type of property described in item (iv) of this clause

1 and any collateralized mortgage obligation, the security for which
2 consists primarily of mortgage loans that maintain as security the type
3 of property described in item (iv) of this clause;

4 (viii) certificates of deposit in, or obligations of, a corporation
5 organized under a state law which specifically authorizes such corpo-
6 ration to insure the deposits or share accounts of member associations;

7 (ix) loans secured by an interest in educational, health, or welfare
8 institutions or facilities, including structures designed or used prima-
9 rily for residential purposes for students, residents, and persons under
10 care, employees, or members of the staff of such institutions or facili-
11 ties;

12 (x) loans made for the payment of expenses of college or university
13 education or vocational training;

14 (xi) property used by the taxpayer in support of business which
15 consists principally of acquiring the savings of the public and invest-
16 ing in loans; and

17 (xii) loans for which the taxpayer is the creditor and which are whol-
18 ly secured by loans described in item (iv) of this clause.

19 (xiii) The value of accrued interest receivable and any loss-sharing
20 commitment or other loan guaranty by a governmental agency will be
21 considered part of the basis in the loans to which the accrued interest
22 or loss protection applies.

23 (B) At the election of the taxpayer, the percentage specified in
24 clause (A) of this subparagraph shall be applied on the basis of the
25 average assets outstanding during the taxable year, in lieu of the close
26 of the taxable year. The taxpayer can elect to compute an average using
27 the assets measured on the first day of the taxable year and on the last

1 day of each subsequent quarter, or month or day during the taxable year.

2 This election may be made annually.

3 (C) For purposes of this computation, the definition of assets in
4 clause (B) of subparagraph one of this paragraph applies.

5 (D) For purposes of item (iv) of clause (A) of this subparagraph, if a
6 multifamily structure securing a loan is used in part for nonresidential
7 use purposes, the entire loan is deemed a residential real property loan
8 if the planned residential use exceeds eighty percent of the property's
9 planned use (measured, at the taxpayer's election, by using square
10 footage or gross rental revenue, and determined as of the time the loan
11 is made).

12 (E) For purposes of item (iv) of clause (A) of this subparagraph,
13 loans made to finance the acquisition or development of land shall be
14 deemed to be loans secured by an interest in residential real property
15 if there is a reasonable assurance that the property will become resi-
16 dential real property within a period of three years from the date of
17 acquisition of such land; but this sentence shall not apply for any
18 taxable year unless, within such three year period, such land becomes
19 residential real property. For purposes of determining whether any
20 interest in a REMIC qualifies under item (vi) of clause (A) of this
21 subparagraph, any regular interest in another REMIC held by such REMIC
22 shall be treated as a loan described in a preceding item under princi-
23 ples similar to the principle of such item (vi), except that if such
24 REMICs are part of a tiered structure, they shall be treated as one
25 REMIC for purposes of such item (vi).

26 (3) For purposes of this paragraph, a "thrift institution" is a
27 savings bank, a savings and loan association, or other savings institu-
28 tion chartered and supervised as such under federal or state law.

1 (s) Subtraction modification for community banks. (1) A taxpayer that
2 is a qualified community bank as defined in subparagraph two of this
3 paragraph or a thrift institution as defined in subparagraph three of
4 paragraph (r) of this subdivision shall be allowed a deduction in
5 computing entire net income equal to the amount computed under subpara-
6 graph three of this paragraph.

7 (2) To be a qualified community bank, a taxpayer must satisfy the
8 following conditions.

9 (A) It is a bank or trust company organized under or subject to the
10 provisions of article three of the banking law or a comparable provision
11 of the laws of another state, or a national banking association.

12 (B) The average value during the taxable year of the assets of the
13 taxpayer, or the assets of the affiliated group of the taxpayer, must
14 not exceed eight billion dollars. For purposes of this clause, the
15 affiliated group of the taxpayer includes any corporation that meets the
16 ownership requirements to be included in a combined report specified in
17 paragraph (a) of subdivision two of section two hundred ten-c of this
18 article.

19 (3)(A) The subtraction modification shall be computed as follows:

20 (i) Multiply the taxpayer's net interest income from loans during the
21 taxable year by a fraction, the numerator of which is the gross interest
22 income during the taxable year from qualifying loans and the denominator
23 of which is the gross interest income during the taxable year from all
24 loans.

25 (ii) Multiply the amount determined in clause (i) by forty percent.
26 This product is the amount of the deduction allowed under this para-
27 graph.

1 (B)(i) Net interest income from loans shall mean gross interest income
2 from loans less gross interest expense from loans. Gross interest
3 expense from loans is determined by multiplying gross interest expense
4 by a fraction, the numerator of which is the average total value of
5 loans owned by the thrift institution or community bank during the taxa-
6 ble year and the denominator of which is the average total assets of the
7 thrift institution or community bank during the taxable year.

8 (ii) Measurement of assets for purposes of this clause. (I) Total
9 assets are those assets that are properly reflected on a balance sheet,
10 computed in the same manner as is required by the banking regulator of
11 the taxpayers included in the combined return.

12 (II) Assets will only be included if the income or expenses of which
13 are properly reflected (or would have been properly reflected if not
14 fully depreciated or expensed, or depreciated or expensed to a nominal
15 amount) in the computation of the taxpayer's entire net income for the
16 taxable year. Assets will not include deferred tax assets and intangible
17 assets identified as "goodwill".

18 (III) Tangible real and personal property, such as buildings, land,
19 machinery, and equipment shall be valued at cost. Intangible property,
20 such as loans and investments, shall be valued at book value.

21 (IV) Average assets are computed using the assets measured on the
22 first day of the taxable year, and on the last day of each subsequent
23 quarter of the taxable year.

24 (C) A qualifying loan is a loan that meets the conditions specified in
25 subclause (i) of this clause and subclause (ii) of this clause.

26 (i) The loan is originated or purchased by the qualified community
27 bank or thrift institution immediately after its origination in

1 connection with a commitment to purchase made by the bank prior to the
2 loan's origination.

3 (ii) The loan is a small business loan, the principal amount of the
4 loan is one million dollars or less, where either the borrower is
5 located in this state as determined under section two hundred ten-a of
6 this article and the loan is not secured by real property located in New
7 York, or the loan is secured by real property located in New York.

8 10. The term "calendar year" means a period of twelve calendar months
9 (or any shorter period beginning on the date the taxpayer becomes
10 subject to the tax imposed by this article) ending on the thirty-first
11 day of December, provided the taxpayer keeps its books on the basis of
12 such period or on the basis of any period ending on any day other than
13 the last day of a calendar month, or provided the taxpayer does not keep
14 books, and includes, in case the taxpayer changes the period on the
15 basis of which it keeps its books from a fiscal year to a calendar year,
16 the period from the close of its last old fiscal year up to and includ-
17 ing the following December thirty-first. The term "fiscal year" means a
18 period of twelve calendar months (or any shorter period beginning on the
19 date the taxpayer becomes subject to the tax imposed by this article)
20 ending on the last day of any month other than December, provided the
21 taxpayer keeps its books on the basis of such period, and includes, in
22 case the taxpayer changes the period on the basis of which it keeps it
23 books from a calendar year to a fiscal year or from one fiscal year to
24 another fiscal year, the period from the close of its last old calendar
25 or fiscal year up to the date designated as the close of its new fiscal
26 year.

27 11. The term "tangible personal property" means corporeal personal
28 property, such as machinery, tools, implements, goods, wares and

1 merchandise, and does not mean money, deposits in banks, shares of
2 stock, bonds, notes, credits or evidences of an interest in property and
3 evidences of debt.

4 12. The term elected or appointed officer shall include the chairman,
5 president, vice-president, secretary, assistant secretary, treasurer,
6 assistant treasurer, comptroller, and also any other officer, irrespec-
7 tive of his title, who is charged with and performs any of the regular
8 functions of any such officer, unless the total compensation of such
9 officer is derived exclusively from the receipt of commissions. A direc-
10 tor shall be considered an elected or appointed officer only if he
11 performs duties ordinarily performed by an officer.

12 13. The term "manufacturer" means a taxpayer or, in the case of a
13 combined report, a combined group, that, during the taxable year, is
14 principally engaged in manufacturing. A taxpayer or a combined group is
15 principally engaged in manufacturing if more than fifty percent of the
16 gross receipts of the taxpayer or the combined group, respectively,
17 during the taxable year are derived from the sale of goods produced by
18 manufacturing. In computing a combined group's gross receipts, intercor-
19 porate receipts shall be eliminated. In computing gross receipts for a
20 taxpayer that is a partner in partnership, inter-entity receipts between
21 the taxpayer and such partnership shall be eliminated.

22 14. (a) The term "manufacturing" means the process of working raw
23 materials into wares suitable for use or which gives new shapes, new
24 quality or new combinations to matter which already has gone through
25 some artificial process by the use of machinery, tools, appliances and
26 other similar equipment.

27 (b) Notwithstanding the definition of manufacturing in paragraph (a)
28 of this subdivision:

1 (i) The generation and distribution of electricity, the extraction and
2 distribution of natural gas, and the production of steam associated with
3 the generation of electricity does not constitute manufacturing.

4 (ii) The creation, production or reproduction of a film, television
5 show or commercial does not constitute manufacturing.

6 (iii) The blending of two or more fuels does not constitute manufac-
7 turing.

8 (iv) The mass production of food products for wholesale commercial
9 distribution and sale constitutes manufacturing.

10 15. The term "qualified New York manufacturer" means a manufacturer
11 that has property in the state that is used in manufacturing and either
12 the fair market value of that property at the close of the taxable year
13 is at least ten million dollars or all of its real and personal property
14 is located in New York. A taxpayer or, in the case of a combined report,
15 a combined group, that does not satisfy the criteria in subdivision
16 thirteen of this section may be a qualified New York manufacturer if the
17 taxpayer or the combined group employs during the taxable year at least
18 two thousand five hundred employees in manufacturing in New York and the
19 taxpayer or the combined group has property in the state used in manu-
20 facturing, the adjusted basis of which for federal income tax purposes
21 at the close of the taxable year is at least one hundred million
22 dollars.

23 [19. The term "fulfillment services" shall mean any of the following
24 services performed by an entity on its premises on behalf of a purchas-
25 er:

26 (a) the acceptance of orders electronically or by mail, telephone,
27 telefax or internet;

1 (b) responses to consumer correspondence or inquiries electronically
2 or by mail, telephone, telefax or internet;

3 (c) billing and collection activities; or

4 (d) the shipment of orders from an inventory of products offered for
5 sale by the purchaser.]

6 § 5. Subdivisions 1, 2, 4, 5, 6, 7 and 8 of section 209 of the tax
7 law, subdivisions 1 and 6 as amended by chapter 817 of the laws of 1987,
8 subdivision 2 as amended by chapter 75 of the laws of 1998, subdivision
9 4 as amended by section 27 of LBD number 74024-03-4, subdivisions 5 and
10 7 as amended by section 2 of part FF-1 of chapter 57 of the laws of
11 2008, and subdivision 8 as added by section 1 of part O of chapter 61 of
12 the laws of 2006, are amended to read as follows:

13 1. (a) For the privilege of exercising its corporate franchise, or of
14 doing business, or of employing capital, or of owning or leasing proper-
15 ty in this state in a corporate or organized capacity, or of maintaining
16 an office in this state, or of deriving receipts from activity in this
17 state, for all or any part of each of its fiscal or calendar years,
18 every domestic or foreign corporation, except corporations specified in
19 subdivision four of this section, shall annually pay a franchise tax,
20 upon the basis of its [entire net] business income base, or upon such
21 other basis as may be applicable as hereinafter provided, for such
22 fiscal or calendar year or part thereof, on a report which shall be
23 filed, except as hereinafter provided, on or before the fifteenth day of
24 March next succeeding the close of each such year, or, in the case of a
25 corporation which reports on the basis of a fiscal year, within two and
26 one-half months after the close of such fiscal year, and shall be paid
27 as hereinafter provided.

1 (b) A corporation is deriving receipts from activity in this state if
2 it has receipts within this state of one million dollars or more in the
3 taxable year. For purposes of this section, the term "receipts" means
4 the receipts that are subject to the apportionment rules set forth in
5 section two hundred ten-A of this article, and the term "receipts within
6 this state" means the receipts included in the numerator of the appor-
7 tionment factor determined under section two hundred ten-A of this arti-
8 cle.

9 (c) A corporation is doing business in this state if (i) it has issued
10 credit cards to one thousand or more customers who have a mailing
11 address within this state as of the last day of its taxable year, (ii)
12 it has merchant customer contracts with merchants and the total number
13 of locations covered by those contracts equals one thousand or more
14 locations in this state to whom the corporation remitted payments for
15 credit card transactions during the taxable year, or (iii) the sum of
16 the number of customers described in subparagraph (i) of this paragraph
17 plus the number of locations covered by its contracts described in
18 subparagraph (ii) of this paragraph equals one thousand or more. For
19 purposes of this paragraph, receipts from processing credit card trans-
20 actions for merchants include merchant discount fees received by the
21 corporation. As used in this paragraph, the term "credit card" includes
22 bank, credit, travel and entertainment cards.

23 (d)(i) A corporation with less than one million dollars but at least
24 ten thousand dollars of receipts within this state in a taxable year
25 that is part of a combined reporting group is deriving receipts from
26 activity in this state if the receipts within this state of the members
27 of the combined reporting group that have at least ten thousand dollars

1 of receipts within this state in the aggregate meet the threshold set
2 forth in paragraph (b) of this subdivision.

3 (ii) A corporation that does not meet any of the thresholds set forth
4 in paragraph (c) of this subdivision but has at least ten customers, or
5 locations, or customers and locations, as described in paragraph (c) of
6 this subdivision, and is part of a combined reporting group is doing
7 business in this state if the number of customers, locations, or custom-
8 ers and locations, within this state of the members of the combined
9 reporting group that have at least ten customers, locations, or custom-
10 ers and locations, within this state in the aggregate meets any of the
11 thresholds set forth in paragraph (c) of this subdivision.

12 (e) At the end of each year, the commissioner shall review the cumula-
13 tive percentage change in the consumer price index. The commissioner
14 shall adjust the receipt thresholds set forth in this subdivision if the
15 consumer price index has changed by ten percent or more since January
16 first, two thousand fifteen, or since the date that the thresholds were
17 last adjusted under this subdivision. The thresholds shall be adjusted
18 to reflect that cumulative percentage change in the consumer price
19 index. The adjusted thresholds shall be rounded to the nearest one thou-
20 sand dollars. As used in this paragraph, "consumer price index" means
21 the consumer price index for all urban consumers (CPI-U) available form
22 the bureau of labor statistics of the United States department of labor.
23 Any adjustment shall apply to tax periods that begin after the adjust-
24 ment is made.

25 2. A foreign corporation shall not be deemed to be doing business,
26 employing capital, owning or leasing property, or maintaining an office
27 in this state, or deriving receipts from activity in this state, for the
28 purposes of this article, by reason of (a) the maintenance of cash

1 balances with banks or trust companies in this state, or (b) the owner-
2 ship of shares of stock or securities kept in this state, if kept in a
3 safe deposit box, safe, vault or other receptacle rented for the
4 purpose, or if pledged as collateral security, or if deposited with one
5 or more banks or trust companies, or brokers who are members of a recog-
6 nized security exchange, in safekeeping or custody accounts, or (c) the
7 taking of any action by any such bank or trust company or broker, which
8 is incidental to the rendering of safekeeping or custodian service to
9 such corporation, or (d) the maintenance of an office in this state by
10 one or more officers or directors of the corporation who are not employ-
11 ees of the corporation if the corporation otherwise is not doing busi-
12 ness in this state, and does not employ capital or own or lease property
13 in this state, or (e) the keeping of books or records of a corporation
14 in this state if such books or records are not kept by employees of such
15 corporation and such corporation does not otherwise do business, employ
16 capital, own or lease property or maintain an office in this state, or
17 (f) [the use of fulfillment services of a person other than an affil-
18 iated person and the ownership of property stored on the premises of
19 such person in conjunction with such services, or (g)] any combination
20 of the foregoing activities. [For purposes of this subdivision, persons
21 are affiliated persons with respect to each other where one of such
22 persons has an ownership interest of more than five percent, whether
23 direct or indirect, in the other, or where an ownership interest of more
24 than five percent, whether direct or indirect, is held in each of such
25 persons by another person or by a group of other persons which are
26 affiliated persons with respect to each other. The term "person" in the
27 preceding sentence and in paragraph (f) of this subdivision shall have

1 the meaning ascribed thereto by subdivision (a) of section eleven
2 hundred one of this chapter.]

3 4. Corporations liable to tax under sections one hundred eighty-three
4 to one hundred eighty-four-a, inclusive, corporations taxable under
5 [articles thirty-two and] article thirty-three of this chapter, any
6 trust company organized under a law of this state all of the stock of
7 which is owned by not less than twenty savings banks organized under a
8 law of this state, [bank holding companies filing a combined return in
9 accordance with subsection (f) of section fourteen hundred sixty-two of
10 this chapter,] a captive REIT or a captive RIC filing a combined return
11 under [either subsection (f) of section fourteen hundred sixty-two or]
12 subdivision (f) of section fifteen hundred fifteen of this chapter, and
13 housing companies organized and operating pursuant to the provisions of
14 article two or article five of the private housing finance law and hous-
15 ing development fund companies organized pursuant to the provisions of
16 article eleven of the private housing finance law shall not be subject
17 to tax under this article.

18 5. For any taxable year of a real estate investment trust as defined
19 in section eight hundred fifty-six of the internal revenue code in which
20 such trust is subject to federal income taxation under section eight
21 hundred fifty-seven of such code, such trust shall be subject to a tax
22 computed under either paragraph (a) [, (c)] or (d) of subdivision one of
23 section two hundred ten of this chapter, whichever is [greatest]
24 greater, and shall not be subject to any tax under article [thirty-two
25 or article] thirty-three of this chapter except for a captive REIT
26 required to file a combined return under [subdivision (f) of section
27 fourteen hundred sixty-two or] subdivision (f) of section fifteen
28 hundred fifteen of this chapter. In the case of such a real estate

1 investment trust, including a captive REIT as defined in section two of
2 this chapter, the term "entire net income" means "real estate investment
3 trust taxable income" as defined in paragraph two of subdivision (b) of
4 section eight hundred fifty-seven (as modified by section eight hundred
5 fifty-eight) of the internal revenue code plus the amount taxable under
6 paragraph three of subdivision (b) of section eight hundred fifty-seven
7 of such code, subject to the [modification] modifications required by
8 subdivision nine of section two hundred eight of this article [(other
9 than the modification required by subparagraph two of paragraph (a)
10 thereof) including the modifications required by paragraphs (d) and (e)
11 of subdivision three of section two hundred ten of this article].

12 6. For any taxable year of a DISC, not exempt from tax under paragraph
13 (i) of subdivision nine of section two hundred eight of this article,
14 the taxes imposed by subdivision one of this section shall be computed
15 only under either paragraph (b) or (d) of subdivision one of section two
16 hundred ten of this chapter, whichever is greater[, and paragraph (e) of
17 such subdivision].

18 7. For any taxable year, beginning on or after January first, nineteen
19 hundred eighty of a regulated investment company, as defined in section
20 eight hundred fifty-one of the internal revenue code, in which such
21 company is subject to federal income taxation under section eight
22 hundred fifty-two of such code, such company shall be subject to a tax
23 computed under either paragraph (a) [, (c)] or (d) of subdivision one of
24 section two hundred ten of this chapter, whichever is [greatest]
25 greater, and shall not be subject to any tax under article [thirty-two
26 or article] thirty-three of this chapter except for a captive RIC
27 required to file a combined return under [subdivision (f) of section
28 fourteen hundred sixty-two or] subdivision (f) of section fifteen

1 hundred fifteen of this chapter. In the case of such a regulated invest-
2 ment company, including a captive RIC as defined in section two of this
3 chapter, the term "entire net income" means "investment company taxable
4 income" as defined in paragraph two of subdivision (b) of section eight
5 hundred fifty-two, as modified by section eight hundred fifty-five, of
6 the internal revenue code plus the amount taxable under paragraph three
7 of subdivision (b) of section eight hundred fifty-two of such code
8 subject to the [modification] modifications required by subdivision nine
9 of section two hundred eight of this chapter[, other than the modifica-
10 tion required by subparagraph two of paragraph (a) and by paragraph (f)
11 thereof, including the modification required by paragraphs (d) and (e)
12 of subdivision three of section two hundred ten of this chapter].

13 8. For any taxable year beginning on or after January first, two thou-
14 sand six, a corporation that is no longer doing business, employing
15 capital, or owning or leasing property, or deriving receipts from activ-
16 ity in this state in a corporate or organized capacity that has filed a
17 final tax return with the department for the last tax year it was doing
18 business and has no outstanding tax liability for such final tax return
19 or any tax return for prior tax years shall be exempt from all taxes
20 imposed by paragraph (d) of subdivision one of section two hundred ten
21 of this article for tax years following the last year such corporation
22 was doing business.

23 § 6. Section 209-A of the tax law is REPEALED.

24 § 7. The section heading and subdivision 1 of section 209-B of the tax
25 law, the section heading as amended by chapter 11 of the laws of 1983
26 and subdivision 1 as amended by section 4 of part A of chapter 59 of the
27 laws of 2013, are amended to read as follows:

1 [Temporary metropolitan] Metropolitan transportation business tax
2 surcharge. 1. (a) For the privilege of exercising its corporate fran-
3 chise, or of doing business, or of employing capital, or of owning or
4 leasing property in a corporate or organized capacity, or of maintaining
5 an office, or of deriving receipts from activity in the metropolitan
6 commuter transportation district, for all or any part of its taxable
7 year, there is hereby imposed on every corporation, other than a New
8 York S corporation, subject to tax under section two hundred nine of
9 this article, or any receiver, referee, trustee, assignee or other fidu-
10 ciary, or any officer or agent appointed by any court, who conducts the
11 business of any such corporation, [for the taxable years commencing on
12 or after January first, nineteen hundred eighty-two but ending before
13 December thirty-first, two thousand eighteen,] a tax surcharge, in addi-
14 tion to the tax imposed under section two hundred nine of this article[,
15 to be computed at the rate of eighteen]. Such surcharge shall be the
16 product of twenty-four and one-half percent of the tax imposed under
17 such section two hundred nine for such taxable years or any part of such
18 taxable years [ending before December thirty-first, nineteen hundred
19 eighty-three after the deduction of any credits otherwise allowable
20 under this article, and at the rate of seventeen percent of the tax
21 imposed under such section for such taxable years or any part of such
22 taxable years ending on or after December thirty-first, nineteen hundred
23 eighty-three after] before the deduction of any credits otherwise allow-
24 able under this article; provided, however, that such [rates] rate of
25 tax surcharge shall be applied only to that portion of the tax imposed
26 under section two hundred nine of this article [after] before the
27 deduction of any credits otherwise allowable under this article which is
28 attributable to the taxpayer's business activity carried on within the

1 metropolitan commuter transportation district; and provided, further,
2 [that the tax surcharge imposed by this section shall not be imposed
3 upon any taxpayer for more than four hundred thirty-two months. Provided
4 however, that for taxable years commencing on or after July first, nine-
5 teen hundred ninety-eight, such surcharge shall be calculated as if the
6 tax imposed under section two hundred ten of this article were imposed
7 under the law in effect for taxable years commencing on or after July
8 first, nineteen hundred ninety-seven and before July first, nineteen
9 hundred ninety-eight. Provided however, that for taxable years commenc-
10 ing on or after January first, two thousand seven, such surcharge shall
11 be calculated using the highest of the tax bases imposed pursuant to
12 paragraphs (a), (b), (c) or (d) of subdivision one of section two
13 hundred ten of this article and the amount imposed under paragraph (e)
14 of subdivision one of such section two hundred ten, for the taxable
15 year; and, provided further that, if such highest amount is the tax base
16 imposed under paragraph (a), (b) or (c) of such subdivision, then the
17 surcharge shall be computed as if the tax rates and limitations under
18 such paragraph were the tax rates and limitations under such paragraph
19 in effect for taxable years commencing on or after July first, nineteen
20 hundred ninety-seven and before July first, nineteen hundred ninety-
21 eight] the surcharge computed on a combined report shall include a
22 surcharge on the fixed dollar minimum tax for each member of the
23 combined group subject to the surcharge under this subdivision.

24 (b) A corporation is deriving receipts from activity in the metropol-
25 itan commuter transportation district if it has receipts within the
26 metropolitan commuter transportation district of one million dollars or
27 more in a taxable year. For purposes of this section, the term
28 "receipts" means the receipts that are subject to the apportionment

1 rules set forth in section two hundred ten-A of this article, and the
2 term "receipts within the metropolitan commuter transportation district"
3 means the receipts included in the numerator of the apportionment factor
4 determined under subdivision two of this section.

5 (c) A corporation is doing business in the metropolitan commuter
6 transportation district if (i) it has issued credit cards to one thou-
7 sand or more customers who have a mailing address within the metropol-
8 itan commuter transportation district as of the last day of its taxable
9 year, (ii) it has merchant customer contracts with merchants and the
10 total number of locations covered by those contracts equals one thousand
11 or more locations in the metropolitan commuter transportation district
12 to whom the corporation remitted payments for credit card transactions
13 during the taxable year, or (iii) the sum of the number of customers
14 described in subparagraph (i) of this paragraph plus the number of
15 locations covered by its contracts described in subparagraph (ii) of
16 this paragraph equals one thousand or more. For purposes of this para-
17 graph, receipts from processing credit card transactions for merchants
18 include merchant discount fees received by the corporation. As used in
19 this paragraph, the term "credit card" includes bank, credit, travel and
20 entertainment cards.

21 (d) (i) A corporation with less than one million dollars but at least
22 ten thousand dollars of receipts within the metropolitan commuter trans-
23 portation district in a taxable year that is part of a combined report-
24 ing group is deriving receipts from activity in the metropolitan commu-
25 ter transportation district if the receipts within the metropolitan
26 commuter transportation district of the members of the unitary business
27 group that have at least ten thousand dollars of receipts within the

1 metropolitan commuter transportation district in the aggregate meet the
2 threshold set forth in paragraph (b) of this subdivision.

3 (ii) A corporation that does not meet any of the thresholds set forth
4 in paragraph (c) of this subdivision but has at least ten customers, or
5 locations, or customers and locations, as described in paragraph (c),
6 and is part of a combined reporting group is doing business in the
7 metropolitan commuter transportation district if the number of custom-
8 ers, locations, or customers and locations, within the metropolitan
9 commuter transportation district of the members of the unitary business
10 group that have at least ten customers, locations, or customers and
11 locations, within the metropolitan commuter transportation district in
12 the aggregate meets any of the thresholds set forth in paragraph (c) of
13 this subdivision.

14 (e) At the end of each year, the commissioner shall review the cumula-
15 tive percentage change in the consumer price index. The commissioner
16 shall adjust the receipt thresholds set forth in this subdivision if the
17 consumer price index has changed by ten percent or more since January
18 first, two thousand fifteen, or since the date that the thresholds were
19 last adjusted under this subdivision. The thresholds shall be adjusted
20 to reflect that cumulative percentage change in the consumer price
21 index. The adjusted thresholds shall be rounded to the nearest one thou-
22 sand dollars. As used in this paragraph, "consumer price index" means
23 the consumer price index for all urban consumers (CPI-U) available from
24 the bureau of labor statistics of the United States department of labor.
25 Any adjustment shall apply to tax periods that begin after the adjust-
26 ment is made.

1 § 8. The opening paragraph of subdivision 2 of section 209-B of the
2 tax law, as amended by chapter 11 of the laws of 1983, is amended to
3 read as follows:

4 The portion of the taxpayer's business activity carried on within the
5 metropolitan commuter transportation district shall be determined [by
6 multiplying the tax imposed under section two hundred nine of this arti-
7 cle by a percentage to be determined as follows:] pursuant to the method
8 prescribed in section two hundred ten-A of this article except that the
9 references to "within the state" shall refer to within the metropolitan
10 commuter transportation district and references to "within and without
11 the state" shall refer to within the state.

12 § 9. Paragraphs (a), (b), (c) and (d) of subdivision 2 of section
13 209-B of the tax law are REPEALED.

14 § 10. Subdivisions 2-a and 2-b of section 209-B of the tax law are
15 REPEALED.

16 § 11. Subdivisions 3 and 5 of section 209-B of the tax law, subdivi-
17 sion 3 as amended by chapter 11 of the laws of 1983 and subdivision 5 as
18 amended by chapter 166 of the laws of 1991, are amended to read as
19 follows:

20 3. A corporation shall not be deemed to be doing business, employing
21 capital, owning or leasing property, or maintaining an office, or deriv-
22 ing receipts from activity in the metropolitan commuter transportation
23 district, for the purposes of this section, by reason of (a) the mainte-
24 nance of cash balances with banks or trust companies in the metropolitan
25 commuter transportation district, or (b) the ownership of shares of
26 stock or securities kept in the metropolitan commuter transportation
27 district, if kept in a safe deposit box, safe, vault or other receptacle
28 rented for the purpose, or if pledged as collateral security, or if

1 deposited with one or more banks or trust companies, or brokers who are
2 members of a recognized security exchange, in safekeeping or custody
3 accounts, or (c) the taking of any action by any such bank or trust
4 company or broker, which is incidental to the rendering of safekeeping
5 or custodian service to such corporation, or (d) the maintenance of an
6 office in the metropolitan commuter transportation district by one or
7 more officers or directors of the corporation who are not employees of
8 the corporation if the corporation otherwise is not doing business in
9 the metropolitan commuter transportation district, and does not employ
10 capital or own or lease property in the metropolitan commuter transpor-
11 tation district, or (e) the keeping of books or records of a corporation
12 in the metropolitan commuter transportation district if such books or
13 records are not kept by employees of such corporation and such corpo-
14 ration does not otherwise do business, employ capital, own or lease
15 property or maintain an office in the metropolitan commuter transporta-
16 tion district, or (f) any combination of the foregoing activities.

17 5. The provisions concerning reports under [section] sections two
18 hundred ten-c and two hundred eleven shall be applicable to this
19 section, except that for purposes of an automatic extension for six
20 months for filing a report covering the tax surcharge imposed by this
21 section, such automatic extension shall be allowed only if a taxpayer
22 files with the commissioner an application for extension in such form as
23 said commissioner may prescribe by regulation and pays on or before the
24 date of such filing in addition to any other amounts required under this
25 article, either ninety percent of the entire tax surcharge required to
26 be paid under this section for the applicable period, or not less than
27 the tax surcharge shown on the taxpayer's return for the preceding taxa-
28 ble year, if such preceding taxable year was a taxable year of twelve

1 months; provided, however, that in no event shall such amount be less
2 than the product of the following three amounts: (1) the tax surcharge
3 rate in effect for the taxable year pursuant to subdivision one of this
4 section, (2) the fixed dollar minimum applicable to such taxpayer as
5 determined under paragraph (d) of subdivision one of section two hundred
6 ten of this chapter for the taxable year, and (3) the percentage deter-
7 mined under subdivision two of this section for the preceding taxable
8 year, unless the taxpayer was not subject to the tax surcharge imposed
9 pursuant to this section with respect to such year, in which case such
10 percentage shall be deemed to be one hundred percent. The tax surcharge
11 imposed by this section shall be payable to the commissioner in full at
12 the time the report is required to be filed, and such tax surcharge or
13 the balance thereof, imposed on any taxpayer which ceases to exercise
14 its franchise or be subject to the tax surcharge imposed by this section
15 shall be payable to the commissioner at the time the report is required
16 to be filed, provided such tax surcharge of a domestic corporation which
17 continues to possess its franchise shall be subject to adjustment as the
18 circumstances may require; all other tax surcharges of any such taxpay-
19 er, which pursuant to the foregoing provisions of this section would
20 otherwise be payable subsequent to the time such report is required to
21 be filed, shall nevertheless be payable at such time. All of the
22 provisions of this article presently applicable are applicable to the
23 tax surcharge imposed by this section.

24 § 12. Subdivision 1 of section 210 of the tax law, as added by chapter
25 817 of the laws of 1987, the opening paragraph as amended by section 1
26 of part D and paragraph (g) as amended by section 2 of part A of chapter
27 63 of the laws of 2000, paragraph (a) as amended by section 2 of part N
28 of chapter 60 of the laws of 2007, subparagraphs 2 and 3 of paragraph

1 (b) as amended by section 17 of LBD number 74021-03-4, subparagraph (ii)
2 of paragraph (c) as amended by section 2 of part C and subparagraph 5 of
3 paragraph (d) as added by section 3 of part C of chapter 56 of the laws
4 of 2011, subparagraphs (vi) and (vii) of paragraph (a) as amended by
5 section 16 of LBD number 74021-03-4, subparagraph (iii) of paragraph (c)
6 as added by section 3 of part Z, and subparagraph 6 of paragraph (d) as
7 added by section 4 of part Z of chapter 59 of the laws of 2013, para-
8 graph (b) as amended by section 1 of part GG1, subparagraph 3 of para-
9 graph (d) as amended by section 3 of part AA1, subparagraph 4 of para-
10 graph (d) as added by section 2 of part AA1 and subparagraph 1 of
11 paragraph (g) as amended by section 4 of part AA1 of chapter 57 of the
12 laws of 2008, paragraph (c) as amended by section 10 of part A and
13 subparagraph 1 of paragraph (d) as amended by section 12 of part A of
14 chapter 56 of the laws of 1998, paragraph (d) as amended by chapter 760
15 of the laws of 1992, paragraph (e) as amended by section 1 of part P of
16 chapter 407 of the laws of 1999, paragraph (f) as amended by section 2
17 of part E of chapter 61 of the laws of 2005 and paragraph (h) as added
18 by section 20 of LBD number 74021-03-4, is amended to read as follows:

19 1. The tax imposed by subdivision one of section two hundred nine of
20 this chapter shall be: (A) in the case of each taxpayer other than a New
21 York S corporation or a qualified homeowners association, the [sum of
22 (1) the] highest of the amounts prescribed in paragraphs (a), (b), [(c)]
23 and (d) of this subdivision [and (2) the amount prescribed in paragraph
24 (e) of this subdivision], (B) in the case of each New York S corpo-
25 ration, the amount prescribed in paragraph [(g)] (d) of this subdivi-
26 sion, and (C) in the case of a qualified homeowners association, the
27 [sum of (1) the] highest of the amounts prescribed in paragraphs (a) [,]
28 and (b) [and (c)] of this subdivision [and (2) the amount prescribed in

1 paragraph (e) of this subdivision]. For purposes of this paragraph, the
2 term "qualified homeowners association" means a homeowners association,
3 as such term is defined in subsection (c) of section five hundred twen-
4 ty-eight of the internal revenue code without regard to subparagraph (E)
5 of paragraph one of such subsection (relating to elections to be taxed
6 pursuant to such section), which has no homeowners association taxable
7 income, as such term is defined in subsection (d) of such section.
8 Provided, however, that in the case of a small business taxpayer (other
9 than a New York S corporation) as defined in paragraph (f) of this
10 subdivision, for taxable years beginning before January first, two thou-
11 sand sixteen, if the amount prescribed in such paragraph (b) is higher
12 than the amount prescribed in such paragraph (a) solely by reason of the
13 application of the rate applicable to small business taxpayers, then
14 with respect to such taxpayer the tax referred to in the previous
15 sentence shall be [the sum of (1) the highest] higher of the amounts
16 prescribed in paragraphs (a) [, (c)] and (d) of this subdivision [and (2)
17 the amount prescribed in paragraph (e) of this subdivision].

18 (a) [Entire net] Business income base. [For taxable years beginning
19 before July first, nineteen hundred ninety-nine, the amount prescribed
20 by this paragraph shall be computed at the rate of nine percent of the
21 taxpayer's entire net income base. For taxable years beginning after
22 June thirtieth, nineteen hundred ninety-nine and before July first, two
23 thousand, the amount prescribed by this paragraph shall be computed at
24 the rate of eight and one-half percent of the taxpayer's entire net
25 income base. For taxable years beginning after June thirtieth, two thou-
26 sand and before July first, two thousand one, the amount prescribed by
27 this paragraph shall be computed at the rate of eight percent of the
28 taxpayer's entire net income base. For taxable years beginning after

1 June thirtieth, two thousand one and before January first, two thousand
2 seven, the amount prescribed by this paragraph shall be computed at the
3 rate of seven and one-half percent of the taxpayer's entire net income
4 base.] For taxable years beginning [on or after] before January first,
5 two thousand [seven] sixteen, the amount prescribed by this paragraph
6 shall be computed at the rate of seven and one-tenth percent of the
7 taxpayer's [entire net] business income base. For taxable years begin-
8 ning on or after January first, two thousand sixteen, the amount
9 prescribed by this paragraph shall be six and one-half percent of the
10 taxpayer's business income base. The taxpayer's [entire net] business
11 income base shall mean the portion of the taxpayer's [entire net] busi-
12 ness income allocated within the state as hereinafter provided[, subject
13 to any modification required by paragraphs (d) and (e) of subdivision
14 three of this section]. However, in the case of a small business taxpay-
15 er, as defined in paragraph (f) of this subdivision, the amount
16 prescribed by this paragraph shall be computed pursuant to subparagraph
17 (iv) of this paragraph and in the case of a manufacturer, as defined in
18 subparagraph (vi) of this paragraph, the amount prescribed by this para-
19 graph shall be computed pursuant to subparagraph (vi) of this paragraph.

20 [(i) if the entire net income base is not more than two hundred thou-
21 sand dollars, (1) for taxable years beginning before July first, nine-
22 teen hundred ninety-nine, the amount shall be eight percent of the
23 entire net income base; (2) for taxable years beginning after June thir-
24 tieth, nineteen hundred ninety-nine and before July first, two thousand
25 three, the amount shall be seven and one-half percent of the entire net
26 income base; and (3) for taxable years beginning after June thirtieth,
27 two thousand three and before January first, two thousand five, the
28 amount shall be 6.85 percent of the entire net income base;

1 (ii) if the entire net income base is more than two hundred thousand
2 dollars but not over two hundred ninety thousand dollars, (1) for taxa-
3 ble years beginning before July first, nineteen hundred ninety-nine, the
4 amount shall be the sum of (a) sixteen thousand dollars, (b) nine
5 percent of the excess of the entire net income base over two hundred
6 thousand dollars and (c) five percent of the excess of the entire net
7 income base over two hundred fifty thousand dollars; (2) for taxable
8 years beginning after June thirtieth, nineteen hundred ninety-nine and
9 before July first, two thousand, the amount shall be the sum of (a)
10 fifteen thousand dollars, (b) eight and one-half percent of the excess
11 of the entire net income base over two hundred thousand dollars and (c)
12 five percent of the excess of the entire net income base over two
13 hundred fifty thousand dollars; (3) for taxable years beginning after
14 June thirtieth, two thousand and before July first, two thousand one,
15 the amount shall be the sum of (a) fifteen thousand dollars, (b) eight
16 percent of the excess of the entire net income base over two hundred
17 thousand dollars and (c) two and one-half percent of the excess of the
18 entire net income base over two hundred fifty thousand dollars; (4) for
19 taxable years beginning after June thirtieth, two thousand one and
20 before July first, two thousand three, the amount shall be seven and
21 one-half percent of the entire net income base; and (5) for taxable
22 years beginning after June thirtieth, two thousand three and before
23 January first, two thousand five, the amount shall be the sum of (a)
24 thirteen thousand seven hundred dollars, (b) 7.5 percent of the excess
25 of the entire net income base over two hundred thousand dollars and (c)
26 3.25 percent of the excess of the entire net income base over two
27 hundred fifty thousand dollars;

1 (iii) for taxable years beginning on or after January first, two thou-
2 sand five and ending before January first, two thousand seven, if the
3 entire net income base is not more than two hundred ninety thousand
4 dollars the amount shall be six and one-half percent of the entire net
5 income base; if the entire net income base is more than two hundred
6 ninety thousand dollars but not over three hundred ninety thousand
7 dollars the amount shall be the sum of (1) eighteen thousand eight
8 hundred fifty dollars, (2) seven and one-half percent of the excess of
9 the entire net income base over two hundred ninety thousand dollars but
10 not over three hundred ninety thousand dollars and (3) seven and one-
11 quarter percent of the excess of the entire net income base over three
12 hundred fifty thousand dollars but not over three hundred ninety thou-
13 sand dollars;]

14 (iv) for taxable years beginning [on or after] before January first,
15 two thousand [seven] sixteen, if the [entire net] business income base
16 is not more than two hundred ninety thousand dollars the amount shall be
17 six and one-half percent of the [entire net] business income base; if
18 the [entire net] business income base is more than two hundred ninety
19 thousand dollars but not over three hundred ninety thousand dollars the
20 amount shall be the sum of (1) eighteen thousand eight hundred fifty
21 dollars, (2) seven and one-tenth percent of the excess of the [entire
22 net] business income base over two hundred ninety thousand dollars but
23 not over three hundred ninety thousand dollars and (3) four and thirty-
24 five hundredths percent of the excess of the [entire net] business
25 income base over three hundred fifty thousand dollars but not over three
26 hundred ninety thousand dollars;

27 (v) if the taxable period to which [subparagraphs (i), (ii), (iii),
28 and] subparagraph (iv) of this paragraph [apply] applies is less than

1 twelve months, the amount prescribed by this paragraph shall be computed
2 as follows:

3 (A) Multiply the [entire net] business income base for such taxpayer
4 by twelve;

5 (B) Divide the result obtained in (A) by the number of months in the
6 taxable year;

7 (C) Compute an amount pursuant to [subparagraphs (i) and (ii)] subpar-
8 agraph (iv) as if the result obtained in (B) were the taxpayer's [entire
9 net] business income base;

10 (D) Multiply the result obtained in (C) by the number of months in the
11 taxpayer's taxable year;

12 (E) Divide the result obtained in (D) by twelve.

13 (vi) except as otherwise provided in this subparagraph or subparagraph
14 (vii) of this paragraph, for taxable years beginning on or after January
15 thirty-first, two thousand seven, the amount prescribed by this para-
16 graph for a taxpayer which is a qualified New York manufacturer, as
17 defined in subdivision fifteen of section two hundred eight of this
18 article, shall be computed at the rate of six and one-half (6.5) percent
19 of the taxpayer's [entire net] business income base. [For taxable years
20 beginning on or after January first, two thousand twelve and before
21 January first, two thousand fifteen, the amount prescribed by this para-
22 graph for a taxpayer which is an eligible qualified New York manufactur-
23 er shall be computed at the rate of three and one-quarter (3.25) percent
24 of the taxpayer's entire net income base. The commissioner shall estab-
25 lish guidelines and criteria that specify requirements by which a
26 manufacturer may be classified as an eligible qualified New York
27 manufacturer. Criteria may include but not be limited to factors such as
28 regional unemployment, the economic impact that manufacturing has on the

1 surrounding community, population decline within the region and median
2 income within the region in which the manufacturer is located. In estab-
3 lishing these guidelines and criteria, the commissioner shall endeavor
4 that the total annual cost of the lower rates shall not exceed twenty-
5 five million dollars.]

6 For a qualified New York manufacturer, as defined in subdivision
7 fifteen of section two hundred eight of this article, the rate at which
8 the tax is computed in effect for taxable years beginning on or after
9 January first, two thousand thirteen and before January first, two thou-
10 sand fourteen for qualified New York manufacturers shall be reduced by
11 nine and two-tenths percent for taxable years commencing on or after
12 January first, two thousand fourteen and before January first, two thou-
13 sand fifteen, twelve and three-tenths percent for taxable years commenc-
14 ing on or after January first, two thousand fifteen and before January
15 first, two thousand sixteen, fifteen and four-tenths percent for taxable
16 years commencing on or after January first, two thousand sixteen and
17 before January first, two thousand eighteen, and twenty-five percent for
18 taxable years beginning on or after January first, two thousand eigh-
19 teen.

20 (vii) For a qualified New York manufacturer that has an apportionment
21 factor for purposes of the metropolitan transportation business tax
22 surcharge computed pursuant to subdivision two of section two hundred
23 nine-B of this article equal to zero for the taxable year, the amount
24 prescribed by this paragraph for taxable years beginning on or after
25 January first, two thousand fourteen shall be computed at the rate of
26 zero percent of the taxpayer's entire net income base.

27 (viii) In computing the business income base, a net operating loss
28 deduction shall be allowed. A net operating loss deduction is the amount

1 of net operating loss or losses from one or more taxable years that are
2 carried forward to a particular income year. A net operating loss is the
3 amount of a business loss incurred in a particular tax year multiplied
4 by the apportionment factor for that year as determined under section
5 two hundred ten-A of this article. The maximum net operating deduction
6 that is allowed in a taxable year is the amount that reduces the taxpay-
7 er's tax on allocated business income to the higher of the tax on the
8 capital base or the fixed dollar minimum. Such deduction and loss are
9 determined in accordance with the following:

10 (1) Such net operating loss deduction is not limited to the amount
11 allowed under section one hundred seventy-two of the internal revenue
12 code or the amount that would have been allowed if the taxpayer had not
13 made an election under subchapter S of chapter one of the internal
14 revenue code.

15 (2) Such net operating loss deduction shall not include any net oper-
16 ating loss incurred during any taxable year beginning prior to January
17 first, two thousand fifteen, or during any taxable year in which the
18 taxpayer was not subject to the tax imposed by this article.

19 (3) A taxpayer that files as part of a federal consolidated return but
20 on a separate basis for purposes of this article must compute its
21 deduction and loss as if it were filing on a separate basis for federal
22 income tax purposes.

23 (4) A net operating loss must be carried forward to each of the twenty
24 taxable years following the taxable year of the loss. No carryback of
25 the net operating loss is allowed. A taxpayer must apply both of these
26 limitations in computing such net operating loss deduction.

27 (5) Such net operating loss deduction shall not include any net oper-
28 ating loss incurred during a New York S year; provided, however, a New

1 York S year must be treated as a taxable year for purposes of determin-
2 ing the number of taxable years to which a net operating loss may be
3 carried forward.

4 (6) Where there are two or more allocated net operating losses, or
5 portions thereof, carried forward to be deducted in one particular tax
6 year from allocated business income, the earliest allocated loss
7 incurred must be applied first.

8 (b) Capital base. (1) The [amount prescribed by this paragraph for
9 taxable years beginning before January first, two thousand eight shall
10 be computed at .178 percent for each dollar of the taxpayer's total
11 business and investment capital, or the portion thereof allocated within
12 the state as hereinafter provided. For taxable years beginning on or
13 after January first, two thousand eight, the] amount prescribed by this
14 paragraph shall be computed at .15 percent for each dollar of the
15 taxpayer's total business [and investment] capital, or the portion ther-
16 eof allocated within the state as hereinafter provided. However, in the
17 case of a cooperative housing corporation as defined in the internal
18 revenue code, the applicable rate shall be .04 percent. In no event
19 shall the amount prescribed by this paragraph exceed three hundred fifty
20 thousand dollars for qualified New York manufacturers and for all other
21 taxpayers [ten] five million dollars [for taxable years beginning on or
22 after January first, two thousand eight but before January first, two
23 thousand eleven and one million dollars for taxable years beginning on
24 or after January first, two thousand eleven].

25 (2) For a qualified New York manufacturer, as defined in subdivision
26 fifteen of section two hundred eight of this article, the rate at which
27 the tax is computed in effect for taxable years beginning on or after
28 January first, two thousand thirteen and before January first, two thou-

1 sand fourteen shall be reduced by nine and two-tenths percent for taxa-
2 ble years commencing on or after January first, two thousand fourteen
3 and before January first, two thousand fifteen, twelve and three-tenths
4 percent for taxable years commencing on or after January first, two
5 thousand fifteen and before January first, two thousand sixteen, fifteen
6 and four-tenths percent for taxable years commencing on or after January
7 first, two thousand sixteen and before January first, two thousand eigh-
8 teen, and twenty-five percent for taxable years beginning on or after
9 January first, two thousand eighteen.

10 [(c) Minimum taxable income bases. (i) For taxable years beginning
11 after nineteen hundred eighty-six and before nineteen hundred eighty-
12 nine, the amount prescribed by this paragraph shall be computed at the
13 rate of three and one-half percent of the taxpayer's pre-nineteen
14 hundred ninety minimum taxable income base. For taxable years beginning
15 in nineteen hundred eighty-nine, the amount prescribed by this paragraph
16 shall be computed at the rate of five percent of the taxpayer's pre-
17 nineteen hundred ninety minimum taxable income base. A "taxpayer's pre-
18 nineteen hundred ninety minimum taxable income base" shall mean the
19 portion of the taxpayer's entire net income allocated within the state
20 as hereinafter provided, subject to any modification required by para-
21 graphs (d) and (e) of subdivision three of this section;

22 (ii) (A) For taxable years beginning on or after January first, two
23 thousand seven, the amount prescribed by this paragraph shall be
24 computed at the rate of one and one-half percent of the taxpayer's mini-
25 mum taxable income base. The "taxpayer's minimum taxable income base"
26 shall mean the portion of the taxpayer's minimum taxable income allo-
27 cated within the state as hereinafter provided, subject to any modifica-

1 tions required by paragraphs (d) and (e) of subdivision three of this
2 section.

3 (B) For taxable years beginning on or after January first, two thou-
4 sand twelve and before January first, two thousand fifteen, the amount
5 prescribed by this paragraph for an eligible qualified New York manufac-
6 turer shall be computed at the rate of seventy-five hundredths (.75)
7 percent of the taxpayer's minimum taxable income base. For purposes of
8 this clause, the term "eligible qualified New York manufacturer" shall
9 have the same meaning as in subparagraph (vi) of paragraph (a) of this
10 subdivision.

11 (iii) For a qualified New York manufacturer, as defined in subpara-
12 graph (vi) of paragraph (a) of this subdivision, the rate at which the
13 tax is computed in effect for taxable years beginning on or after Janu-
14 ary first, two thousand thirteen and before January first, two thousand
15 fourteen for qualified New York manufacturers shall be reduced by nine
16 and two-tenths percent for taxable years commencing on or after January
17 first, two thousand fourteen and before January first, two thousand
18 fifteen, twelve and three-tenths percent for taxable years commencing on
19 or after January first, two thousand fifteen and before January first,
20 two thousand sixteen, fifteen and four-tenths percent for taxable years
21 commencing on or after January first, two thousand sixteen and before
22 January first, two thousand eighteen, and twenty-five percent for taxa-
23 ble years beginning on or after January first, two thousand eighteen.]

24 (d) Fixed dollar minimum. (1) The [amount prescribed by this paragraph
25 shall be for a taxpayer which during the taxable year has:

26 (A) a gross payroll of six million two hundred fifty thousand dollars
27 or more, one thousand five hundred dollars;

1 (B) a gross payroll of less than six million two hundred fifty thou-
2 sand dollars but more than one million dollars, four hundred twenty-five
3 dollars;

4 (C) a gross payroll of no more than one million dollars but more than
5 five hundred thousand dollars, three hundred twenty-five dollars;

6 (D) a gross payroll of no more than five hundred thousand dollars but
7 more than two hundred fifty thousand dollars, two hundred twenty-five
8 dollars;

9 (E) a gross payroll of two hundred fifty thousand dollars or less
10 (except as prescribed in clause (F) of this subparagraph), one hundred
11 dollars;

12 (F) a gross payroll of one thousand dollars or less, with total
13 receipts within and without this state of one thousand dollars or less,
14 and the average value of the assets of which are one thousand dollars or
15 less, eight hundred dollars.

16 (2) For purposes of this paragraph:

17 (A) gross payroll shall be the same as the total wages, salaries and
18 other personal service compensation of all the taxpayer's employees,
19 within and without this state, as defined in subparagraph three of para-
20 graph (a) of subdivision three of this section, except that general
21 executive officers shall not be excluded.

22 (B) total receipts shall be the same as receipts within and without
23 this state as defined in subparagraph two of paragraph (a) of subdivi-
24 sion three of this section.

25 (C) average value of the assets shall be the same as prescribed by
26 subdivision two of this section without reduction for liabilities.

27 (3) If the taxable year is less than twelve months, the amount
28 prescribed by this paragraph shall be reduced by twenty-five percent if

1 the period for which the taxpayer is subject to tax is more than six
2 months but not more than nine months and by fifty percent if the period
3 for which the taxpayer is subject to tax is not more than six months.
4 Provided, however, that in determining the amount of gross payroll and
5 total receipts for purposes of subparagraph one of this paragraph, where
6 the taxable year is less than twelve months, the amount of each shall be
7 determined by dividing the amount of each with respect to the taxable
8 year by the number of months in such taxable year and multiplying the
9 result by twelve. If the taxable year is less than twelve months, the
10 amount of New York receipts for purposes of subparagraph four of this
11 paragraph is determined by dividing the amount of the receipts for the
12 taxable year by the number of months in the taxable year and multiplying
13 the result by twelve.

14 (4) Notwithstanding subparagraphs one and two of this paragraph, for
15 taxable years beginning on or after January first, two thousand eight,
16 the] amount prescribed by this paragraph for New York S corporations
17 will be determined in accordance with the following table:

18 If New York receipts are:	The fixed dollar minimum tax is:
19 not more than \$100,000	\$ 25
20 more than \$100,000 but not over \$250,000	\$ 50
21 more than \$250,000 but not over \$500,000	\$ 175
22 more than \$500,000 but not over \$1,000,000	\$ 300
23 more than \$1,000,000 but not over \$5,000,000	\$1,000
24 more than \$5,000,000 but not over \$25,000,000	\$3,000
25 Over \$25,000,000	\$4,500

1 Otherwise the amount prescribed by this paragraph will be determined in
 2 accordance with the following table:

3 Provided further, the amount prescribed by this paragraph for a quali-
 4 fied New York manufacturer, as defined in subdivision fifteen of section
 5 two hundred eight of this article, will be determined in accordance with
 6 the following tables:

7 For tax years beginning on or after January 1, 2014 and before January
 8 1, 2015:

9 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
10 <u>not more than \$100,000</u>	\$ 23
11 <u>more than \$100,000 but not over \$250,000</u>	\$ 68
12 <u>more than \$250,000 but not over \$500,000</u>	\$ 159
13 <u>more than \$500,000 but not over \$1,000,000</u>	\$ 454
14 <u>more than \$1,000,000 but not over \$5,000,000</u>	\$1,362
15 <u>more than \$5,000,000 but not over \$25,000,000</u>	\$3,178
16 <u>Over \$25,000,000</u>	\$4,500

17 For tax years beginning on or after January 1, 2015 and before January
 18 1, 2016:

19 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
20 <u>not more than \$100,000</u>	\$ 22
21 <u>more than \$100,000 but not over \$250,000</u>	\$ 66
22 <u>more than \$250,000 but not over \$500,000</u>	\$ 153
23 <u>more than \$500,000 but not over \$1,000,000</u>	\$ 439
24 <u>more than \$1,000,000 but not over \$5,000,000</u>	\$1,316
25 <u>more than \$5,000,000 but not over \$25,000,000</u>	\$3,070

1 Over \$25,000,000 \$4,385

2 For tax years beginning on or after January 1, 2016 and before January
3 1, 2018:

4 If New York receipts are: The fixed dollar minimum tax is:

5 <u>not more than \$100,000</u>	<u>\$ 21</u>
6 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 63</u>
7 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 148</u>
8 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 423</u>
9 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,269</u>
10 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,961</u>
11 <u>Over \$25,000,000</u>	<u>\$4,230</u>

12 For tax years beginning on or after January 1, 2018:

13 If New York receipts are: The fixed dollar minimum tax is:

14 <u>not more than \$100,000</u>	<u>\$ 19</u>
15 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 56</u>
16 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 131</u>
17 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 375</u>
18 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,125</u>
19 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,625</u>
20 <u>Over \$25,000,000</u>	<u>\$3,750</u>

21 Otherwise the amount prescribed by this paragraph will be determined in
22 accordance with the following table:

1 If New York receipts are:	The fixed dollar minimum tax is:
2 not more than \$100,000	\$ 25
3 more than \$100,000 but not over \$250,000	\$ 75
4 more than \$250,000 but not over \$500,000	\$ 175
5 more than \$500,000 but not over \$1,000,000	\$ 500
6 more than \$1,000,000 but not over \$5,000,000	\$1,500
7 more than \$5,000,000 but not over \$25,000,000	\$3,500
8 <u>[Over] \$25,000,000 but not over \$50,000,000</u>	\$5,000
9 <u>more than \$50,000,000 but not over \$100,000,000</u>	\$10,000
10 <u>more than \$100,000,000 but not over \$250,000,000</u>	\$20,000
11 <u>more than \$250,000,000 but not over \$500,000,000</u>	50,000
12 <u>more than \$500,000,000 but not over \$1,000,000,000</u>	\$100,000
13 <u>Over \$1,000,000,000</u>	\$200,000

14 For purposes of this paragraph, New York receipts are the receipts
 15 [computed in accordance with subparagraph two of paragraph (a) of subdi-
 16 vision three of this] included in the numerator of the apportionment
 17 factor determined under section two hundred ten-A for the taxable year.

18 (2) If the taxable year is less than twelve months, the amount of New
 19 York receipts is determined by dividing the amount of the receipts for
 20 the taxable year by the number of months in the taxable year and multi-
 21 plying the result by twelve. In the case of a termination year of a New
 22 York S corporation, the sum of the tax computed under this paragraph for
 23 the S short year and for the C short year shall not be less than the
 24 amount computed under this paragraph as if the corporation were a New
 25 York C corporation for the entire taxable year.

26 [(5) For taxable years beginning on or after January first, two thou-
 27 sand twelve and before January first, two thousand fifteen, the amounts

1 prescribed in subparagraphs one and four of this paragraph as the fixed
2 dollar minimum tax for an eligible qualified New York manufacturer shall
3 be one-half of the amounts stated in those subparagraphs. For purposes
4 of this subparagraph, the term "eligible qualified New York manufactur-
5 er" shall have the same meaning as in subparagraph (vi) of paragraph (a)
6 of this subdivision.

7 (6) For a qualified New York manufacturer, as defined in subparagraph
8 (vi) of paragraph (a) of this subdivision, the amounts prescribed in
9 subparagraphs one and four of this paragraph in effect for taxable years
10 beginning on or after January first, two thousand thirteen and before
11 January first, two thousand fourteen for qualified New York manufactur-
12 ers shall be reduced by nine and two-tenths percent for taxable years
13 commencing on or after January first, two thousand fourteen and before
14 January first, two thousand fifteen, twelve and three-tenths percent for
15 taxable years commencing on or after January first, two thousand fifteen
16 and before January first, two thousand sixteen, fifteen and four-tenths
17 percent for taxable years commencing on or after January first, two
18 thousand sixteen and before January first, two thousand eighteen, and
19 twenty-five percent for taxable years beginning on or after January
20 first, two thousand eighteen.

21 (e) Subsidiary capital base. (1) The amount prescribed by this para-
22 graph shall be computed at the rate of nine-tenths of a mill for each
23 dollar of the portion of the taxpayer's subsidiary capital allocated
24 within the state as hereinafter provided.

25 (2) For purposes of this paragraph, the amount of such subsidiary
26 capital, prior to allocation, shall be reduced by the applicable
27 percentage of the taxpayer's (i) investments in the stock of, and any
28 indebtedness from, subsidiaries subject to tax under section one hundred

1 eighty-six of this chapter (but only to the extent such indebtedness is
2 included in subsidiary capital), and (ii) investments in the stock of,
3 and any indebtedness from, subsidiaries subject to tax under article
4 thirty-two or thirty-three of this chapter (but only to the extent such
5 indebtedness is included in subsidiary capital). For purposes of clause
6 (i) of this subparagraph, the applicable percentage shall be thirty
7 percent for taxable years beginning in two thousand, and one hundred
8 percent for taxable years beginning after two thousand. For purposes of
9 clause (ii) of this subparagraph, the applicable percentage shall be one
10 hundred percent for taxable years beginning after nineteen hundred nine-
11 ty-nine.]

12 (f) For purposes of this section, the term "small business taxpayer"
13 shall mean a taxpayer (i) which has an entire net income of not more
14 than three hundred ninety thousand dollars for the taxable year; (ii)
15 [which constitutes a small business as defined in section 1244(c)(3) of
16 internal revenue code (without regard to the second sentence of subpara-
17 graph (A) thereof) as of the last day of the taxable year] the aggregate
18 amount of money and other property received by the corporation for
19 stock, as a contribution to capital, and as paid-in surplus, does not
20 exceed one million dollars; [and] (iii) which is not part of an affil-
21 iated group, as defined in section 1504 of the internal revenue code,
22 unless such group, if it had filed a report under this article on a
23 combined basis, would have itself qualified as a "small business taxpay-
24 er" pursuant to this subdivision; and (iv) which has an average number
25 of individuals, excluding general executive officers, employed full-time
26 in the state during the taxable year of one hundred or fewer. If the
27 taxable period to which subparagraph (i) of this paragraph applies is
28 less than twelve months, entire net income under such subparagraph shall

1 be placed on an annual basis by multiplying the entire net income by
2 twelve and dividing the result by the number of months in the period.
3 For purposes of subparagraph (ii) of this paragraph, the amount taken
4 into account with respect to any property other than money shall be the
5 amount equal to the adjusted basis to the corporation of such property
6 for determining gain, reduced by any liability to which the property was
7 subject or which was assumed by the corporation. The determination under
8 the preceding sentence shall be made as of the time the property was
9 received by the corporation. For purposes of subparagraph (iii) of this
10 section, "average number of individuals, excluding general executive
11 officers, employed full-time" shall be computed by ascertaining the
12 number of such individuals employed by the taxpayer on the thirty-first
13 day of March, the thirtieth day of June, the thirtieth day of September
14 and the thirty-first day of December during each taxable year or other
15 applicable period, by adding together the number of such individuals
16 ascertained on each of such dates and dividing the sum so obtained by
17 the number of such dates occurring within such taxable year or other
18 applicable period. An individual employed full-time means an employee in
19 a job consisting of at least thirty-five hours per week, or two or more
20 employees who are in jobs that together constitute the equivalent of a
21 job at least thirty-five hours per week (full-time equivalent). Full-
22 time equivalent employees in the state includes all employees regularly
23 connected with or working out of an office or place of business of the
24 taxpayer within the state.

25 (g) New York S corporations. (1) General. The amount prescribed by
26 this paragraph shall be, in the case of each New York S corporation,
27 [(i) the higher of the amounts prescribed in paragraphs (a) and (d) of
28 this subdivision (other than the amount prescribed in the final clause

1 of subparagraph one of that paragraph (d)) (ii) reduced by the article
2 twenty-two tax equivalent; provided, however, that the amount thus
3 determined shall not be less than the lowest of the amounts prescribed
4 in subparagraph one of that paragraph (d) (applying the provisions of
5 subparagraph three of that paragraph as necessary). Provided, however,
6 notwithstanding any provision of this paragraph, in taxable years begin-
7 ning in two thousand three and before two thousand eight, the amount
8 prescribed by this paragraph shall be the amount prescribed in subpara-
9 graph one of that paragraph (d) (applying the provisions of subparagraph
10 three of that paragraph as necessary) and applying the calculation of
11 that amount in the case of a termination year as set forth in subpara-
12 graph four of this paragraph as necessary. In taxable years beginning in
13 two thousand eight and thereafter, the amount prescribed by this para-
14 graph is] the amount prescribed in subparagraph four of that paragraph
15 (d) [(applying the provisions of subparagraph three of that paragraph as
16 necessary)] and applying the calculation of that amount in the case of a
17 termination year as set forth in subparagraph four of this paragraph as
18 necessary.

19 (2) [Article twenty-two tax equivalent. For taxable years beginning
20 before July first, nineteen hundred ninety-nine, the article twenty-two
21 tax equivalent is the amount computed under paragraph (a) of this subdi-
22 vision by substituting for the rate therein the rate of 7.875 percent.
23 For taxable years beginning after June thirtieth, nineteen hundred nine-
24 ty-nine and before July first, two thousand, the article twenty-two tax
25 equivalent is the amount computed under paragraph (a) of this subdivi-
26 sion by substituting for the rate therein the rate of 7.525 percent. For
27 taxable years beginning after June thirtieth, two thousand and before
28 July first, two thousand one, the article twenty-two tax equivalent is

1 the amount computed under paragraph (a) of this subdivision by substi-
2 tuting for the rate therein the rate of 7.175 percent. For taxable years
3 beginning after June thirtieth, two thousand one and before July first,
4 two thousand three, the article twenty-two tax equivalent is the amount
5 computed under paragraph (a) of this subdivision by substituting for the
6 rate therein the rate of 6.85 percent. For taxable years beginning after
7 June thirtieth, two thousand three, the article twenty-two tax equiv-
8 alent is the amount computed under paragraph (a) of this subdivision by
9 substituting for the rate therein the rate of 7.1425 percent.

10 (3) Small business taxpayers. Notwithstanding the provisions of
11 subparagraphs one and two of this paragraph, in the case of a New York S
12 corporation which is a small business taxpayer, as defined in paragraph
13 (f) of this subdivision, the following provisions shall apply:

14 (A) For taxable years beginning before July first, nineteen hundred
15 ninety-nine, the article twenty-two tax equivalent is the amount
16 computed under paragraph (a) of this subdivision by substituting for the
17 rate therein the rate of 7.875 percent.

18 (B) For taxable years beginning after June thirtieth, nineteen hundred
19 ninety-nine and before July first, two thousand three, the amount
20 computed under paragraph (a) of this subdivision, as referred to in
21 subparagraph one of this paragraph, shall be computed by substituting
22 for the rate therein the rate of 7.5 percent, and the article twenty-two
23 tax equivalent under paragraph (a) of this subdivision shall be computed
24 as follows:

25 (i) if the entire net income base is not more than two hundred thou-
26 sand dollars, the article twenty-two tax equivalent is the amount
27 computed under paragraph (a) of this subdivision by substituting for the
28 rate therein the rate of 7.45 percent;

1 (ii) if the entire net income base is more than two hundred thousand
2 dollars but not over two hundred ninety thousand dollars, the article
3 twenty-two tax equivalent shall be computed as the sum of (I) fourteen
4 thousand nine hundred dollars, (II) six and eighty-five hundredths
5 percent of the first fifty thousand dollars in excess of the entire net
6 income base over two hundred thousand dollars, and (III) three and
7 eighty-five hundredths percent of the excess, if any, of the entire net
8 income base over two hundred fifty thousand dollars.

9 (C) For taxable years beginning after June thirtieth, two thousand
10 three, the amount computed under paragraph (a) of this subdivision, as
11 referred to in subparagraph one of this paragraph, shall be computed by
12 substituting for the rate therein the rate of 7.5 percent, and the arti-
13 cle twenty-two tax equivalent under paragraph (a) of this subdivision
14 shall be computed as follows:

15 (i) if the entire net income base is not more than two hundred thou-
16 sand dollars, the article twenty-two tax equivalent is the amount
17 computed under paragraph (a) of this subdivision by substituting for the
18 rate therein the rate of 7.4725 percent;

19 (ii) if the entire net income base is more than two hundred thousand
20 dollars but not over two hundred ninety thousand dollars, the article
21 twenty-two tax equivalent shall be computed as the sum of (I) fourteen
22 thousand nine hundred forty-five dollars, (II) 7.1425 percent of the
23 first fifty thousand dollars in excess of the entire net income base
24 over two hundred thousand dollars, and (III) 5.4925 percent of the
25 excess, if any, of the entire net income base over two hundred fifty
26 thousand dollars.

27 (4)] Termination year. In the case of a termination year, [the tax for
28 the S short year shall be computed under this paragraph without regard

1 to the fixed dollar minimum tax prescribed in paragraph (d) of this
2 subdivision, and the tax for the C short year shall be computed under
3 the opening paragraph of this subdivision without regard to the fixed
4 dollar minimum tax prescribed under such paragraph (d), but in no event
5 shall] the sum of the tax for the S short year and the tax for the C
6 short year shall not be less than the fixed dollar minimum tax under
7 paragraph (d) of this subdivision computed as if the corporation were a
8 New York C corporation for the entire taxable year.

9 [(h) For purposes of determining whether a taxpayer is an eligible
10 qualified New York manufacturer for purposes of the tax benefits
11 provided in subparagraph (vi) of paragraph (a) of this subdivision,
12 subparagraph (ii) of paragraph (c) of this subdivision, and subparagraph
13 five of paragraph (d) of this subdivision, a taxpayer shall utilize the
14 law, guidelines and criteria in effect on December thirty-first, two
15 thousand thirteen.]

16 § 13. Subdivision 1-c of section 210 of the tax law, as amended by
17 chapter 1043 of the laws of 1981, the opening paragraph and paragraph
18 (a) as amended by chapter 817 of the laws of 1987, and paragraph (b) as
19 amended by section 12 of part Y of chapter 63 of the laws of 2000, is
20 amended to read as follows:

21 1-c. The computations specified in paragraph (b) of subdivision one of
22 this section shall not apply to the first two taxable years of a taxpay-
23 er which, for one or both such years, is a small business [concern. A
24 small business concern:

25 (a) is a taxpayer which is a small business corporation as defined in
26 paragraph three of subsection (c) of section twelve hundred forty-four
27 of the internal revenue code (without regard to the second sentence of
28 subparagraph (A) thereof) as of the last day of the taxable year,

1 (b) is not a corporation over fifty percent of the number of shares of
2 stock of which entitling the holders thereof to vote for the election of
3 directors or trustees is owned by a taxpayer which (1) is subject to tax
4 under this article; section one hundred eighty-three, one hundred eight-
5 y-four or one hundred eighty-five of article nine; article thirty-two or
6 thirty-three of this chapter, and (2) does not qualify as a small busi-
7 ness corporation as defined in paragraph three of subsection (c) of
8 section twelve hundred forty-four of the internal revenue code (without
9 regard to the second sentence of subparagraph (A) thereof) as of the
10 last day of its taxable year ending within or with the taxable year of
11 the taxpayer,

12 (c) is not a corporation which is substantially similar in operation
13 and in ownership to a business entity (or entities) taxable, or previ-
14 ously taxable, under this article; section one hundred eighty-three, one
15 hundred eighty-four, one hundred eighty-five or one hundred eighty-six
16 of article nine; article thirty-two or thirty-three of this chapter;
17 article twenty-three of this chapter or which would have been subject to
18 tax under such article twenty-three (as such article was in effect on
19 January first, nineteen hundred eighty) or the income (or losses) of
20 which is (or was) includable under article twenty-two of this chapter,
21 and

22 (d) at least ninety percent of the assets of such corporation (valued
23 at original cost) were located and employed in this state during the
24 taxable year and eighty percent of the employees of such corporation (as
25 ascertained within the meaning and intent of subparagraph three of para-
26 graph (a) of subdivision three of this section) were principally
27 employed in this state during the taxable year] taxpayer as defined in
28 paragraph (f) of subdivision one of this section.

1 § 14. Subdivision 2 of section 210 of the tax law, as amended by chap-
2 ter 760 of the laws of 1992, is amended to read as follows:

3 2. The amount of [subsidiary capital,] investment capital and business
4 capital shall each be determined by taking the average value of the
5 assets included therein (less liabilities deductible therefrom pursuant
6 to the provisions of subdivisions [four,] five and seven of section two
7 hundred eight), and, if the period covered by the report is other than a
8 period of twelve calendar months, by multiplying such value by the
9 number of calendar months or major parts thereof included in such peri-
10 od, and dividing the product thus obtained by twelve. For purposes of
11 this subdivision, real property and marketable securities shall be
12 valued at fair market value and the value of personal property other
13 than marketable securities shall be the value thereof shown on the books
14 and records of the taxpayer in accordance with generally accepted
15 accounting principles.

16 § 15. Subdivisions 3, 3-a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12-A, 12-B,
17 12-C, 12-D, 12-E, 12-F, 12-G, 13, 14, 15, 16, 17, 18, 19, 20, 21, 21-a,
18 22, 23, 23-a, 24, 25, 25-a, 26, 26-a, 27, 28, 30, 31, 32, 33, 34, 35,
19 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, subdivision 48 as added
20 by section 3 of LBD number 74039-02-4 and subdivision 48 as added by
21 section 2 of LBD number 74021-03-4 of section 210 of the tax law are
22 REPEALED.

23 § 16. The tax law is amended by adding a new section 210-A to read as
24 follows:

25 § 210-A. Apportionment. 1. General. Business income and capital shall
26 be apportioned to the state by the apportionment factor determined
27 pursuant to this section. The apportionment factor is a fraction, deter-
28 mined by including only those receipts, net income, net gains, and other

1 items described in this section that are included in the computation of
2 the taxpayer's business income for the taxable year. The numerator of
3 the apportionment fraction shall be equal to the sum of all the amounts
4 required to be included in the numerator pursuant to the provisions of
5 this section and the denominator of the apportionment fraction shall be
6 equal to the sum of all the amounts required to be included in the
7 denominator pursuant to the provisions of this section.

8 2. Sales of tangible personal property and electricity. (a) Receipts
9 from sales of tangible personal property where shipments are made to
10 points within the state or the destination of the property is a point in
11 the state shall be included in the numerator of the apportionment frac-
12 tion. Receipts from sales of tangible personal property where shipments
13 are made to points within and without the state or the destination is
14 within and without the state shall be included in the denominator of the
15 apportionment fraction.

16 (b) Receipts from sales of electricity delivered to points within the
17 state shall be included in the numerator of the apportionment fraction.
18 Receipts from sales of electricity delivered to points within and with-
19 out the state shall be included in the denominator of the apportionment
20 fraction.

21 (c) Receipts from sales of tangible personal property and electricity
22 that are traded as commodities as described in section 475 of the inter-
23 nal revenue code are included in the apportionment fraction in accord-
24 ance with clause (I) of subparagraph two of paragraph (a) of subdivision
25 five of this section.

26 3. Rentals and royalties. (a) Receipts from rentals of real and tangi-
27 ble personal property located within the state are included in the
28 numerator of the apportionment fraction. Receipts from rentals of real

1 and tangible personal property located within and without the state
2 shall be included in the denominator of the apportionment fraction.

3 (b) Receipts of royalties from the use of patents, copyrights, and
4 similar intangible personal property within the state are included in
5 the numerator of the apportionment fraction. Receipts of royalties from
6 the use of patents, copyrights, trademarks and similar intangibles with-
7 in and without the state are included in the denominator of the appor-
8 tionment fraction.

9 (c) Receipts from the sales of rights for closed-circuit and cable
10 television transmissions of an event (other than events occurring on a
11 regularly scheduled basis) taking place within the state as a result of
12 the rendition of services by employees of the corporation, as athletes,
13 entertainers or performing artists are included in the numerator of the
14 apportionment fraction to the extent that such receipts are attributable
15 to such transmissions received or exhibited within the state. Receipts
16 from all sales of rights for closed-circuit and cable television trans-
17 missions of an event are included in the denominator of the apporportion-
18 ment fraction.

19 4. Digital products. (a) For purposes of determining the apportionment
20 fraction under this section, the term "digital product" means any prop-
21 erty or service, or combination thereof, of whatever nature delivered to
22 the purchaser through the use of wire, cable, fiber-optic, laser, micro-
23 wave, radio wave, satellite or similar successor media, or any combina-
24 tion thereof. Digital product includes, but is not limited to, an audio
25 work, audiovisual work, visual work, book or literary work, graphic
26 work, game, information or entertainment service, storage of digital
27 products and computer software by whatever means delivered. The term
28 "delivered to" includes furnished or provided to or accessed by. A

1 digital product does not include legal, medical, accounting, architec-
2 tural, research, analytical, engineering or consulting services provided
3 by the taxpayer.

4 (b) Receipts from the sale of, licence to use, or granting of remote
5 access to digital products within the state, determined according to the
6 hierarchy of methods set forth in subparagraphs one through four of
7 paragraph (c) of this subdivision, shall be included in the numerator of
8 the apportionment fraction. Receipts from the sale of, license to use,
9 or granting of remote access to digital products within and without the
10 state shall be included in the denominator of the apportionment frac-
11 tion. The taxpayer must exercise due diligence under each method
12 described in paragraph (c) of this subdivision before rejecting it and
13 proceeding to the next method in the hierarchy. If the receipt for a
14 digital product is comprised of a combination of property and services,
15 it cannot be divided into separate components and is considered to be
16 one receipt regardless of whether it is separately stated for billing
17 purposes. The entire receipt must be allocated by this hierarchy.

18 (c) Hierarchy of sourcing methods. (1) Delivery destination of the
19 digital product. A digital product is deemed delivered within the state
20 if the location from which the purchaser or its authorized user accesses
21 or uses the digital product is in the state. Destination may be demon-
22 strated by internet protocol address or other similar or successor indi-
23 cator, the geographic location of the equipment to which the digital
24 product is delivered or from which the digital product is accessed, or
25 the delivery destination indicated on a bill of lading or purchase
26 invoice. A digital product accessed or used by the purchaser or its
27 authorized user during the taxpayer's taxable year in multiple locations

1 is delivered within the state to the extent that the digital product is
2 accessed or used in the state;

3 (2) Billing address of the purchaser;

4 (3) Zip code or other geographic indicator of the purchaser's
5 location; or

6 (4) The apportionment fraction determined pursuant to this subdivision
7 for the preceding taxable year, or, if the taxpayer was not subject to
8 tax in the preceding taxable year, then the apportionment fraction in
9 the current taxable year for those digital products that can be sourced
10 using the hierarchy of sourcing methods in subparagraphs one through
11 three of this subdivision.

12 5. Financial transactions. (a) Financial instruments. A financial
13 instrument is a "qualified financial instrument" if it is marked to
14 market under section 475 or section 1256 of the internal revenue code,
15 provided that loans secured by real property shall not be qualified
16 financial instruments. A financial instrument is a "nonqualified finan-
17 cial instrument" if it is not a qualified financial instrument.

18 (1) Fixed percentage method for qualified financial instruments. In
19 determining the inclusion of receipts and net gains from qualified
20 financial instruments in the apportionment fraction, taxpayers may elect
21 to use the fixed percentage method described in this subparagraph for
22 qualified financial instruments. The election is irrevocable, applies to
23 all qualified financial instruments, and must be made on an annual basis
24 on the taxpayer's original, timely filed return. If the taxpayer elects
25 the fixed percentage method, then all income, gain or loss, from quali-
26 fied financial instruments constitutes business income, gain or loss. If
27 the taxpayer does not elect to use the fixed percentage method, then
28 receipts and net gains are included in the apportionment fraction in

1 accordance with the customer sourcing method described in subparagraph
2 two of this paragraph. Under the fixed percentage method, eight percent
3 of all net income (not less than zero) from qualified financial instru-
4 ments is included in the numerator of the apportionment fraction. All
5 net income (not less than zero) from qualified financial instruments is
6 included in the denominator of the apportionment fraction.

7 (2) Customer sourcing method. Receipts and net gains from qualified
8 financial instruments, in cases where the taxpayer did not elect to use
9 the fixed percentage method described in subparagraph one of this para-
10 graph, and from nonqualified financial instruments are included in the
11 apportionment fraction in accordance with this subparagraph. For
12 purposes of this paragraph, an individual is deemed to be located in the
13 state if his or her billing address is in the state. A business entity
14 is deemed to be located in the state if its commercial domicile is
15 located in the state.

16 (A) Loans. (i) Receipts constituting interest from loans secured by
17 real property located within the state shall be included in the numera-
18 tor of the apportionment fraction. Receipts constituting interest from
19 loans secured by real property located within and without the state
20 shall be included in the denominator of the apportionment fraction.

21 (ii) Receipts constituting interest from loans not secured by real
22 property shall be included in the numerator of the apportionment frac-
23 tion if the borrower is located in the state. Receipts constituting
24 interest from loans not secured by real property, whether the borrower
25 is located within or without the state, shall be included in the denomi-
26 nator of the apportionment fraction.

27 (iii) Net gains (not less than zero) from sales of loans secured by
28 real property are included in the numerator of the apportionment frac-

1 tion as provided in this subclause. The amount of net gains from the
2 sale of loans secured by real property included in the numerator of the
3 apportionment fraction is determined by multiplying the net gains by a
4 fraction the numerator of which is the amount of gross proceeds from
5 sales of loans secured by real property located within the state and the
6 denominator of which is the gross proceeds from sales of loans secured
7 by real property within and without the state. Gross proceeds shall be
8 determined after the deduction of any cost incurred to acquire the loans
9 but shall not be less than zero. Net gains (not less than zero) from
10 sales of loans secured by real property within and without the state are
11 included in the denominator of the apportionment fraction.

12 (iv) Net gains (not less than zero) from sales of loans not secured by
13 real property are included in the numerator of the apportionment frac-
14 tion as provided in this subclause. The amount of net gains from the
15 sale of loans not secured by real property included in the numerator of
16 the apportionment fraction is determined by multiplying the net gains by
17 a fraction, the numerator of which is the amount of gross proceeds from
18 sales of loans not secured by real property to purchasers located within
19 the state and the denominator of which is the amount of gross receipts
20 from sales of loans not secured by real property to purchasers located
21 within and without the state. Gross proceeds shall be determined after
22 the deduction of any cost incurred to acquire the loans but shall not be
23 less than zero. Net gains (not less than zero) from sales of loans not
24 secured by real property are included in the denominator of the appor-
25 tionment fraction.

26 (B) Federal, state, and municipal debt. Receipts constituting interest
27 and net gains from sales of debt instruments issued by the United
28 States, any state, or political subdivision of a state shall not be

1 included in the numerator of the apportionment fraction. Receipts
2 constituting interest and net gains (not less than zero) from sales of
3 debt instruments issued by the United States and the state of New York
4 or its political subdivisions shall be included in the denominator of
5 the apportionment fraction. Fifty percent of the receipts constituting
6 interest and net gains (not less than zero) from sales of debt instru-
7 ments issued by other states or their political subdivisions shall be
8 included in the denominator of the apportionment fraction.

9 (C) Asset backed securities. Eight percent of the interest income from
10 asset backed securities, including securities issued by the Government
11 National Mortgage Association (GNMA), the Federal National Mortgage
12 Association (FNMA), or the Federal Home Loan Mortgage Corporation
13 (FHLMC), the Small Business Administration or other government agency
14 shall be included in the numerator of the apportionment fraction. Eight
15 percent of the net gains (not less than zero) from sales of asset backed
16 securities issued by GNMA, FNMA, or FHLMC, the Small Business Adminis-
17 tration or other government agency and sales of other asset backed secu-
18 rities that are sold through a registered securities broker or dealer or
19 through a licensed exchange shall be included in the numerator of the
20 apportionment fraction. The amount of net gains (not less than zero)
21 from sales of other asset backed securities included in the numerator of
22 the apportionment fraction is determined by multiplying such net gains
23 by a fraction, the numerator of which is the amount of gross proceeds
24 from such sales to purchasers located in the state and the denominator
25 of which is the amount of gross proceeds from such sales to purchasers
26 located within and without the state. Receipts constituting interest
27 from asset backed securities and net gains (not less than zero) from
28 sales of asset backed securities are included in the denominator of the

1 apportionment fraction. Gross proceeds shall be determined after the
2 deduction of any cost to acquire the securities but shall not be less
3 than zero.

4 (D) Corporate bonds. Receipts constituting interest from corporate
5 bonds are included in the numerator of the apportionment fraction if the
6 commercial domicile of the issuing corporation is in the state. Eight
7 percent of the net gains (not less than zero) from sales of corporate
8 bonds sold through a registered securities broker or dealer or through a
9 licensed exchange is included in the numerator of the apportionment
10 fraction. The amount of net gains (not less than zero) from other sales
11 of corporate bonds included in the numerator of the apportionment frac-
12 tion is determined by multiplying such net gains by a fraction, the
13 numerator of which is the amount of gross proceeds from such sales to
14 purchasers located in the state and the denominator of which is the
15 amount of gross proceeds from sales to purchasers located within and
16 without the state. Receipts constituting interest from corporate bonds,
17 whether the issuing corporation's commercial domicile is within or with-
18 out the state, and net gains (not less than zero) from sales of corpo-
19 rate bonds to purchasers within and without the state are included in
20 the denominator of the apportionment fraction. Gross proceeds shall be
21 determined after the deduction of any cost to acquire the bonds but
22 shall not be less than zero.

23 (E) Reverse repurchase agreements and securities borrowing agreements.
24 Eight percent of net interest income (not less than zero) from reverse
25 repurchase agreements and securities borrowing agreements shall be
26 included in the numerator of the apportionment fraction. Net interest
27 income (not less than zero) from reverse repurchase agreements and secu-
28 rities borrowing agreements is included in the denominator of the appor-

1 tionment fraction. Net interest income from reverse repurchase agree-
2 ments and securities borrowing agreements is determined for purposes of
3 this subdivision after the deduction of the interest expense from the
4 taxpayer's repurchase agreements and securities lending agreements but
5 cannot be less than zero. For this calculation, the amount of such
6 interest expense is the interest expense associated with the sum of the
7 value of the taxpayer's repurchase agreements where it is the
8 seller/borrower plus the value of the taxpayer's and securities lending
9 agreements where it is the securities lender, provided such sum is
10 limited to the sum of the value of the taxpayer's reverse repurchase
11 agreements where it is the seller/borrower and the value of the taxpay-
12 er's securities borrowing agreements.

13 (F) Federal funds. Eight percent of the net interest (not less than
14 zero) from federal funds is included in the numerator of the apportion-
15 ment fraction. The net interest (not less than zero) from federal funds
16 is included in the denominator of the apportionment fraction. Net inter-
17 est from federal funds is determined after deduction of interest expense
18 from federal funds.

19 (G) Dividends and net gains from sales of stock or partnership inter-
20 ests. Dividends from stock, net gains (not less than zero) from sales of
21 stock and net gains (not less than zero) from the sale of partnership
22 interests are not included in either the numerator or denominator of the
23 apportionment fraction unless the commissioner determines pursuant to
24 subdivision eleven of this section that inclusion of such dividends and
25 net gains (not less than zero) is necessary to properly reflect the
26 business income or capital of the taxpayer.

27 (H) Other financial instruments. (i) Receipts constituting interest
28 from other financial instruments shall be included in the numerator of

1 the apportionment fraction if the payor is located in the state.
2 Receipts constituting interest from other financial instruments, whether
3 the payor is within or without the state, are included in the denomina-
4 tor of the apportionment fraction.

5 (ii) Net gains (not less than zero) from sales of other financial
6 instruments and other income (not less than zero) from other financial
7 instruments where the purchaser or payor is located in the state are
8 included in the numerator of the apportionment fraction, provided that,
9 if the purchaser or payor is a registered securities broker or dealer or
10 the transaction is made through a licensed exchange, then eight percent
11 of the net gains (not less than zero) or other income (not less than
12 zero) is included in the numerator of the apportionment fraction. Net
13 gains (not less than zero) from sales of other financial instruments and
14 other income (not less than zero) from other financial instruments are
15 included in the denominator of the apportionment fraction.

16 (I) Physical commodities. Net income (not less than zero) from sales
17 of physical commodities are included in the numerator of the apportion-
18 ment fraction as provided in this subparagraph. The amount of net income
19 from sales of physical commodities included in the numerator of the
20 apportionment fraction is determined by multiplying the net income from
21 sales of physical commodities by a fraction, the numerator of which is
22 the amount of receipts from sales of physical commodities actually
23 delivered to points within the state or, if there is no actual delivery
24 of the physical commodity, sold to customers located in the state, and
25 the denominator of which is the amount of receipts from sales of phys-
26 ical commodities actually delivered to points within and without the
27 state or sold to customers located within and without the state. Net
28 income (not less that zero) from sales of physical commodities is

1 included in the denominator of the apportionment fraction. Net income
2 (not less than zero) from sales of physical commodities is determined
3 after the deduction of the cost to acquire or produce the physical
4 commodities.

5 (b) Other receipts from broker or dealer activities. Receipts from
6 securities or commodities broker or dealer activities described in this
7 paragraph shall be deemed to be generated within the state as described
8 in subparagraphs one through eight of this paragraph. Receipts from such
9 activities generated within the state shall be included in the numerator
10 of the apportionment fraction. Receipts from such activities generated
11 within and without the state shall be included in the denominator of the
12 apportionment fraction. For the purposes of this paragraph, the term
13 "securities" shall have the same meaning as in section 475(c)(2) of the
14 internal revenue code and the term "commodities" shall have the same
15 meaning as in section 475(e)(2) of the internal revenue code.

16 (1) Receipts constituting brokerage commissions derived from the
17 execution of securities or commodities purchase or sales orders for the
18 accounts of customers shall be deemed to be generated within the state
19 if the mailing address in the records of the taxpayer of the customer
20 who is responsible for paying such commissions is within the state.

21 (2) Receipts constituting margin interest earned on behalf of broker-
22 age accounts shall be deemed to be generated within the state if the
23 mailing address in the records of the taxpayer of the customer who is
24 responsible for paying such margin interest is within the state.

25 (3)(A) Receipts constituting fees earned by the taxpayer for advisory
26 services to a customer in connection with the underwriting of securities
27 for such customer (such customer being the entity that is contemplating
28 issuing or is issuing securities) or fees earned by the taxpayer for

1 managing an underwriting shall be deemed to be generated within the
2 state if the mailing address in the records of the taxpayer of such
3 customer who is responsible for paying such fees is within the state.

4 (B) Receipts constituting the primary spread of selling concession
5 from underwritten securities shall be deemed to be generated within the
6 state to the extent the customer is located in the state.

7 (C) The term "primary spread" means the difference between the price
8 paid by the taxpayer to the issuer of the securities being marketed and
9 the price received from the subsequent sale of the underwritten securi-
10 ties at the initial public offering price, less any selling concession
11 and any fees paid to the taxpayer for advisory services or any manager's
12 fees, if such fees are not paid by the customer to the taxpayer sepa-
13 rately. The term "public offering price" means the price agreed upon by
14 the taxpayer and the issuer at which the securities are to be offered to
15 the public. The term "selling concession" means the amount paid to the
16 taxpayer for participating in the underwriting of a security where the
17 taxpayer is not the lead underwriter.

18 (4) Receipts constituting account maintenance fees shall be deemed to
19 be generated within the state if the mailing address in the record of
20 the taxpayer of the customer who is responsible for paying such account
21 maintenance fees is within the state.

22 (5) Receipts constituting fees for management or advisory services,
23 including fees for advisory services in relation to merger or acquisi-
24 tion activities, but excluding fees paid for services described in para-
25 graph (d) of this subdivision, shall be deemed to be generated within
26 the state if the mailing address in the records of the taxpayer of the
27 customer who is responsible for paying such fees is within the state.

1 (6) Receipts constituting interest earned by the taxpayer on loans and
2 advances made by the taxpayer to a corporation affiliated with the
3 taxpayer but with which the taxpayer is not permitted or required to
4 file a combined report pursuant to section two hundred ten-c of this
5 article shall be deemed to arise from services performed at the princi-
6 pal place of business of such affiliated corporation.

7 (7) If the taxpayer receives any of the receipts enumerated in subpar-
8 agraphs one through four of this paragraph as a result of a securities
9 correspondent relationship such taxpayer has with another broker or
10 dealer with the taxpayer acting in this relationship as the clearing
11 firm, such receipts shall be deemed to be generated within the state to
12 extent set forth in each of such subparagraphs. The amount of such
13 receipts shall exclude the amount the taxpayer is required to pay to the
14 correspondent firm for such correspondent relationship. If the taxpayer
15 receives any of the receipts enumerated in subparagraphs one through
16 four of this paragraph as as result of a securities correspondent
17 relationship such taxpayer has with another broker or dealer with the
18 taxpayer acting in this relationship as the introducing firm, such
19 receipts shall be deemed to be generated within the state to the extent
20 set forth in each of such subparagraphs.

21 (8) If, for purposes of subparagraphs one, two, clause (A) of subpara-
22 graph three, four, or five of this paragraph the taxpayer is unable from
23 its records to determine the mailing address of the customer, eight
24 percent of the receipts is included in the numerator of the apportion-
25 ment fraction.

26 (c) Receipts from credit card and similar activities. Receipts relat-
27 ing to the bank, credit, travel and entertainment card activities
28 described in this paragraph shall be deemed to be generated within the

1 state as described in subparagraphs one through three of this paragraph.
2 Receipts from such activities generated within the state shall be
3 included in the numerator of the apportionment fraction. Receipts from
4 such activities generated within and without the state shall be included
5 in the denominator of the apportionment fraction.

6 (1) Receipts constituting interest, and fees and penalties in the
7 nature of interest, from bank, credit, travel and entertainment card
8 receivables shall be deemed to be generated within the state if the
9 mailing address of the card holder in the records of the taxpayer is in
10 the state;

11 (2) Receipts from service charges and fees from such cards shall be
12 deemed to be generated within the state if the mailing address of the
13 card holder in the records of the taxpayer is in the state; and

14 (3) Receipts from merchant discounts shall be deemed to be generated
15 within the state if the merchant is located within the state. In the
16 case of a merchant with locations both within and without New York
17 state, only receipts from merchant discounts attributable to sales made
18 from locations within New York state are allocated to New York state. It
19 shall be presumed that the location of the merchant is the address of
20 the merchant shown on the invoice submitted by the merchant to the
21 taxpayer.

22 (d) Receipts from certain services to investment companies. Receipts
23 received from an investment company arising from the sale of management,
24 administration or distribution services to such investment company are
25 included in the denominator of the apportionment fraction. The portion
26 of such receipts included in the numerator of the apportionment fraction
27 (such portion referred to herein as the New York portion) shall be
28 determined as provided in this paragraph.

1 (1) The New York portion shall be the product of the total of such
2 receipts from the sale of such services and a fraction. The numerator of
3 that fraction is the sum of the monthly percentages (as defined herein-
4 after) determined for each month of the investment company's taxable
5 year for federal income tax purposes which taxable year ends within the
6 taxable year of the taxpayer (but excluding any month during which the
7 investment company had no outstanding shares). The monthly percentage
8 for each such month is determined by dividing the number of shares in
9 the investment company that are owned on the last day of the month by
10 shareholders that are domiciled in the state by the total number of
11 shares in the investment company outstanding on that date. The denomi-
12 nator of the fraction is the number of such monthly percentages.

13 (2) (A) For purposes of this paragraph, an individual, estate or trust
14 is deemed to be located in the state if his, her or its mailing address
15 on the records of the investment company is in the state. A business
16 entity is deemed to be located in the state if its commercial domicile
17 is located in the state.

18 (B) For purposes of this paragraph, the term "investment company"
19 means a regulated investment company, as defined in section 851 of the
20 internal revenue code, and a partnership to which section 7704(a) of the
21 internal revenue code applies (by virtue of section 7704(c)(3) of such
22 code) and that meets the requirements of section 851(b) of such code.
23 The preceding sentence shall be applied to the taxable year for federal
24 income tax purposes of the business entity that is asserted to consti-
25 tute an investment company that ends within the taxable year of the
26 taxpayer.

27 (C) For purposes of this paragraph the term "receipts from an invest-
28 ment company" includes amounts received directly from an investment

1 company as well as amounts received from the shareholders in such
2 investment company, in their capacity as such.

3 (D) For purposes of this paragraph, the term "management services"
4 means the rendering of investment advice to an investment company,
5 making determinations as to when sales and purchases of securities are
6 to be made on behalf of an investment company, or the selling or
7 purchasing of securities constituting assets of an investment company,
8 and related activities, but only where such activity or activities are
9 performed pursuant to a contract with the investment company entered
10 into pursuant to section 15(a) of the federal investment company act of
11 nineteen hundred forty, as amended.

12 (E) For purposes of this paragraph, the term "distribution services"
13 means the services of advertising, servicing investor accounts (includ-
14 ing redemptions), marketing shares or selling shares of an investment
15 company, but, in the case of advertising, servicing investor accounts
16 (including redemptions) or marketing shares, only where such service is
17 performed by a person who is (or was, in the case of a closed end compa-
18 ny) also engaged in the service of selling such shares. In the case of
19 an open end company, such service of selling shares must be performed
20 pursuant to a contract entered into pursuant to section 15(b) of the
21 federal investment company act of nineteen hundred forty, as amended.

22 (F) For purposes of this paragraph, the term "administration services"
23 includes clerical, accounting, bookkeeping, data processing, internal
24 auditing, legal and tax services performed for an investment company but
25 only if the provider of such service or services during the taxable year
26 in which such service or services are sold also sells management or
27 distribution services, as defined hereinabove, to such investment compa-
28 ny.

1 (e) For purposes of this subdivision, a taxpayer shall use the follow-
2 ing hierarchy to determine the commercial domicile of a business entity,
3 based on the information known to the taxpayer: (i) the location of the
4 treasury function of the business entity; (ii) the seat of management
5 and control of the business entity; and (iii) the billing address of the
6 business entity in the taxpayer's records. The taxpayer must exercise
7 due diligence before rejecting a method in this hierarchy and proceeding
8 to the next method.

9 (f) For purposes of this subdivision, the term "registered securities
10 broker or dealer" means a broker or dealer registered as such by the
11 securities and exchange commission or the commodities futures trading
12 commission, and shall include an OTC derivatives dealer as defined under
13 regulations of the securities and exchange commission at title 17, part
14 240, section 3b-12 of the code of federal regulations (17 CFR
15 240.3b-12).

16 6. Receipts from railroad and trucking business. Receipts from the
17 conduct of a railroad business (including surface railroad, whether or
18 not operated by steam, subway railroad, elevated railroad, palace car or
19 sleeping car business) or a trucking business are included in the numer-
20 ator of the apportionment fraction as follows. The amount of receipts
21 from the conduct of a railroad business or a trucking business included
22 in the numerator of the apportionment fraction is determined by multi-
23 plying the amount of receipts from such business by a fraction, the
24 numerator of which is the miles in such business within the state during
25 the period covered by the taxpayer's report and the denominator of which
26 is the miles in such business within and without the state during such
27 period. Receipts from the conduct of the railroad business or a truck-

1 ing business are included in the denominator of the apportionment frac-
2 tion.

3 7. Receipts from aviation services. (a) Air freight forwarding.
4 Receipts of a taxpayer from the activity of air freight forwarding
5 acting as principal and like indirect air carrier receipts arising from
6 such activity shall be included in the numerator of the apportionment
7 fraction as follows: one hundred percent of such receipts if both the
8 pickup and delivery associated with such receipts are made in the state
9 and fifty percent of such receipts if either the pickup or delivery
10 associated with such receipts is made in this state. Such receipts,
11 whether the pickup or delivery associated with the receipts is within or
12 without the state, shall be included in the denominator of the appor-
13 tionment fraction.

14 (b) Other aviation services. (1)(A) The portion of receipts of a
15 taxpayer from aviation services (other than services described in para-
16 graph (a) of this subdivision) to be included in the numerator of the
17 apportionment fraction shall be determined by multiplying its receipts
18 from such aviation services by a percentage which is equal to the arith-
19 metic average of the following three percentages:

20 (i) the percentage determined by dividing sixty percent of the
21 aircraft arrivals and departures within this state by the taxpayer
22 during the period covered by its report by the total aircraft arrivals
23 and departures within and without this state during such period;
24 provided, however, arrivals and departures solely for maintenance or
25 repair, refueling (where no debarkation or embarkation of traffic
26 occurs), arrivals and departures of ferry and personnel training flights
27 or arrivals and departures in the event of emergency situations shall
28 not be included in computing such arrival and departure percentage;

1 provided, further, the commissioner may also exempt from such percentage
2 aircraft arrivals and departures of all non-revenue flights including
3 flights involving the transportation of officers or employees receiving
4 air transportation to perform maintenance or repair services or where
5 such officers or employees are transported in conjunction with an emer-
6 gency situation or the investigation of an air disaster (other than on a
7 scheduled flight); provided, however, that arrivals and departures of
8 flights transporting officers and employees receiving air transportation
9 for purposes other than specified above (without regard to remuneration)
10 shall be included in computing such arrival and departure percentage;

11 (ii) the percentage determined by dividing sixty percent of the reven-
12 ue tons handled by the taxpayer at airports within this state during
13 such period by the total revenue tons handled by it at airports within
14 and without this state during such period; and

15 (iii) the percentage determined by dividing sixty percent of the
16 taxpayer's originating revenue within this state for such period by its
17 total originating revenue within and without this state for such period.

18 (B) As used herein the term "aircraft arrivals and departures" means
19 the number of landings and takeoffs of the aircraft of the taxpayer and
20 the number of air pickups and deliveries by the aircraft of such taxpay-
21 er; the term "originating revenue" means revenue to the taxpayer from
22 the transportation or revenue passengers and revenue property first
23 received by the taxpayer either as originating or connecting traffic at
24 airports; and the term "revenue tons handled" by the taxpayer at
25 airports means the weight in tons of revenue passengers (at two hundred
26 pounds per passenger) and revenue cargo first received either as origi-
27 nating or connecting traffic or finally discharged by the taxpayer at
28 airports;

1 (2) All such receipts of a taxpayer from aviation services described
2 in this paragraph are included in the denominator of the apportionment
3 fraction.

4 8. Receipts from sales of advertising. (a) The amount of receipts from
5 sales of advertising in newspapers or periodicals included in the numer-
6 ator of the apportionment fraction is determined by multiplying the
7 total of such receipts by a fraction, the numerator of which is the
8 number of newspapers and periodicals delivered to points within the
9 state and the denominator of which is the number of newspapers and peri-
10 odicals delivered to points within and without the state. The total of
11 such receipts from sales of advertising in newspapers or periodicals is
12 included in the denominator of the apportionment fraction.

13 (b) The amount of receipts from sales of advertising on television or
14 radio included in the apportionment fraction is determined by multiply-
15 ing the total of such receipts by a fraction, the numerator of which is
16 the number of viewers or listeners within the state and the denominator
17 of which is the number of viewers or listeners within and without the
18 state. The total of such receipts from sales of advertising on tele-
19 vision and radio is included in the denominator of the apportionment
20 fraction.

21 (c) The amount of receipts from sales of advertising not described in
22 paragraph (a) or (b) of this subdivision that is furnished, provided or
23 delivered to, or accessed by the viewer or listener through the use of
24 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
25 similar successor media or any combination thereof, included in the
26 numerator of the apportionment fraction is determined by multiplying the
27 total of such receipts by a fraction, the numerator of which is the
28 number of viewers or listeners within the state and the denominator of

1 which is the number of viewers or listeners within and without the
2 state. The total of such receipts from sales of advertising described in
3 this paragraph is included in the denominator of the apportionment frac-
4 tion.

5 9. Receipts from transportation or transmission of gas through pipes.
6 Receipts from the transportation or transmission of gas through pipes
7 are included in the numerator of the apportionment fraction as follows.
8 The amount of receipts from the transportation or transmission of gas
9 through pipes included in the numerator of the apportionment fraction is
10 determined by multiplying the total amount of such receipts by a frac-
11 tion, the numerator of which is the taxpayer's transportation units
12 within the state and the denominator of which is the taxpayer's trans-
13 portation units within and without the state. A transportation unit is
14 the transportation of one cubic foot of gas over a distance of one mile.
15 The total amount of receipts from the transportation or transmission of
16 gas through pipes is included in the denominator of the apportionment
17 fraction.

18 10. (a) Receipts from other services and other business receipts.
19 Receipts from services not addressed in subdivisions one through nine of
20 this section and other business receipts not addressed in such subdivi-
21 sions shall be included in the numerator of the apportionment fraction
22 if the location of the customer is within the state. Such receipts from
23 customers within and without the state are included in the denominator
24 of the apportionment fraction. Whether the receipts are included in the
25 numerator of the apportionment fraction is determined according to the
26 hierarchy of method set forth in paragraph (b) of this subdivision. The
27 taxpayer must exercise due diligence under each method described in

1 paragraph (b) before rejecting it and proceeding to the next method in
2 the hierarchy.

3 (b) Hierarchy of methods. (1) Delivery destination. Receipts for
4 services performed for a customer's particular location, such as where a
5 delivery is made to that location, as may be indicated on a bill of
6 lading or purchase invoice, are sourced to that location.

7 (2) Billing address of the customer.

8 (3) Zip code or other geographic indicator of the customer's location.

9 (4) Percentage of the taxpayer's receipts within the state determined
10 pursuant to this subdivision for the preceding taxable year or, if the
11 taxpayer was not subject to tax in the preceding taxable year, then the
12 percentage of the taxpayer's receipts within the state in the current
13 taxable year determined pursuant to this subdivision.

14 11. If it shall appear to the commissioner that the apportionment
15 fraction determined pursuant to this section does not result in a proper
16 reflection of the taxpayer's business income or capital within the
17 state, the commissioner is authorized in his or her discretion to adjust
18 it by (a) excluding one or more items in such determination, (b) includ-
19 ing one or more other items in such determination, or (c) any other
20 similar or different method calculated to effect a fair and proper
21 apportionment of the business income and capital reasonably attributed
22 to the state.

23 § 17. The tax law is amended by adding a new section 210-B to read as
24 follows:

25 § 210-B. Credits. 1. Investment tax credit (ITC). (a) A taxpayer shall
26 be allowed a credit, to be computed as hereinafter provided, against the
27 tax imposed by this article. The amount of the credit shall be the
28 percent provided for hereinbelow of the investment credit base. The

1 investment credit base is the cost or other basis for federal income tax
2 purposes of tangible personal property and other tangible property,
3 including buildings and structural components of buildings, described in
4 paragraph (b) of this subdivision, less the amount of the nonqualified
5 nonrecourse financing with respect to such property to the extent such
6 financing would be excludible from the credit base pursuant to section
7 46(c)(8) of the internal revenue code (treating such property as section
8 thirty-eight property irrespective of whether or not it in fact consti-
9 tutes section thirty-eight property). If, at the close of a taxable year
10 following the taxable year in which such property was placed in service,
11 there is a net decrease in the amount of nonqualified nonrecourse
12 financing with respect to such property, such net decrease shall be
13 treated as if it were the cost or other basis of property described in
14 paragraph (b) of this subdivision acquired, constructed, reconstructed
15 or erected during the year of the decrease in the amount of nonqualified
16 nonrecourse financing. In the case of a combined report the term invest-
17 ment credit base shall mean the sum of the investment credit base of
18 each corporation included on such report. The percentage to be used to
19 compute the credit allowed pursuant to this subdivision shall be five
20 percent with respect to the first three hundred fifty million dollars of
21 the investment credit base, and four percent with respect to the invest-
22 ment credit base in excess of three hundred fifty million dollars,
23 except in the case of research and development property at the option of
24 the taxpayer the applicable percentage shall be nine.

25 (b) Qualifying property. (i) A credit shall be allowed under this
26 subdivision to a qualified New York manufacturer, a qualified New York
27 agricultural business or a qualified New York mining business with
28 respect to tangible personal property and other tangible property

1 including buildings and structural components of buildings, which (A)
2 are depreciable pursuant to section one hundred sixty-seven of the
3 internal revenue code, (B) have a useful life of four years or more, (C)
4 are acquired by purchase as defined in section one hundred seventy-nine
5 (d) of the internal revenue code, (D) have not been previously the
6 subject of an investment tax credit or empire zone investment credit
7 allowed to another taxpayer, (E) have a situs in this state and (F) are
8 principally used by the taxpayer in the production of goods for sale or
9 are research and development property.

10 (ii) For purposes of this paragraph, the following definitions shall
11 apply:

12 (A) Property used in the production of goods for sale shall include
13 machinery, equipment or other tangible property which is principally
14 used in the repair and service of other machinery, equipment or other
15 tangible property used principally in the production of goods for sale
16 and shall include all facilities used in the production operation
17 including storage of material to be used in production and of the
18 products that are produced.

19 (B) Research and development property shall mean property which is
20 used for purposes of research and development in the experimental or
21 laboratory sense. Such purposes shall not be deemed to include the ordi-
22 nary testing or inspection of materials or products for quality control,
23 efficiency surveys, management studies, consumer surveys, advertising,
24 promotions, or research in connection with literary, historical or simi-
25 lar projects.

26 (C) A qualified New York agricultural business shall mean a taxpayer
27 or combined group principally engaged in farming, agriculture, horticul-
28 ture, floriculture, viticulture or commercial fishing in the state. A

1 taxpayer or a combined group is principally engaged in farming, agricul-
2 ture, horticulture, floriculture, viticulture or commercial fishing in
3 the state if more than fifty percent of the gross receipts of the
4 taxpayer or the combined group, respectively, during the taxable year
5 are derived from the sale of goods produced by any of the activities
6 specified in this sentence that are conducted in New York. In computing
7 a combined group's gross receipts, intercorporate receipts shall be
8 eliminated. In computing gross receipts for a taxpayer that is a partner
9 in partnership, inter-entity receipts between the taxpayer and such
10 partnership shall be eliminated.

11 (D) A qualified New York mining business shall mean a taxpayer or
12 combined group principally engaged in mining in the state. A taxpayer or
13 combined group is principally engaged in mining in the state if more
14 than fifty percent of the gross receipts of the taxpayer or the combined
15 group, respectively, during the taxable year are derived from the sale
16 of goods produced by mining activities that are conducted in the state.
17 In computing a combined group's gross receipts, intercorporate receipts
18 shall be eliminated. In computing gross receipts for a taxpayer that is
19 a partner in partnership, inter-entity receipts between the taxpayer and
20 such partnership shall be eliminated.

21 (iii) In order to properly administer the credit authorized by this
22 subdivision, the department may disclose information about the allowance
23 to another taxpayer of an investment tax credit or an empire zone
24 investment tax credit under this chapter with respect to the same prop-
25 erty.

26 (c) Nonqualifying property. A taxpayer shall not be allowed a credit
27 under this subdivision with respect to tangible personal property and
28 other tangible property, including buildings and structural components

1 of buildings, which it leases to any other person or corporation. For
2 purposes of the preceding sentence, any contract or agreement to lease
3 or rent or for a license to use such property shall be considered a
4 lease. Provided, however, in determining whether a taxpayer shall be
5 allowed a credit under this subdivision with respect to such property,
6 any election made with respect to such property pursuant to the
7 provisions of paragraph eight of subsection (f) of section one hundred
8 sixty-eight of the internal revenue code, as such paragraph was in
9 effect for agreements entered into prior to January first, nineteen
10 hundred eighty-four, shall be disregarded.

11 (d) Carryover. Except as otherwise provided in this paragraph, the
12 credit allowed under this subdivision for any taxable year shall not
13 reduce the tax due for such year to less than the fixed dollar minimum
14 amount prescribed in paragraph (d) of subdivision one of section two
15 hundred ten of this article. However, if the amount of credit allowable
16 under this subdivision for any taxable year reduces the tax to such
17 amount, any amount of credit allowed for a taxable year and not deduct-
18 ible in such year may be carried over to the fifteen taxable years next
19 following such taxable year and may be deducted from the taxpayer's tax
20 for such year or years. In lieu of such carryover, any such taxpayer
21 which qualifies as a new business under paragraph (f) of this subdivi-
22 sion may elect to treat the amount of such carryover as an overpayment
23 of tax to be credited or refunded in accordance with the provisions of
24 section one thousand eighty-six of this chapter, provided, however, the
25 provisions of subsection (c) of section one thousand eighty-eight of
26 this chapter notwithstanding, no interest shall be paid thereon.

27 (e) Recapture. (i) With respect to property which is depreciable
28 pursuant to section one hundred sixty-seven of the internal revenue code

1 but is not subject to the provisions of section one hundred sixty-eight
2 of such code and which is disposed of or ceases to be in qualified use
3 prior to the end of the taxable year in which the credit is to be taken,
4 the amount of the credit shall be that portion of the credit provided
5 for in this subdivision which represents the ratio which the months of
6 qualified use bear to the months of useful life. If property on which
7 credit has been taken is disposed of or ceases to be in qualified use
8 prior to the end of its useful life, the difference between the credit
9 taken and the credit allowed for actual use must be added back in the
10 year of disposition. Provided, however, if such property is disposed of
11 or ceases to be in qualified use after it has been in qualified use for
12 more than twelve consecutive years, it shall not be necessary to add
13 back the credit as provided in this subparagraph. The amount of credit
14 allowed for actual use shall be determined by multiplying the original
15 credit by the ratio which the months of qualified use bear to the months
16 of useful life. For purposes of this paragraph, useful life of property
17 shall be the same as the taxpayer uses for depreciation purposes when
18 computing his federal income tax liability.

19 (ii) Except with respect to that property to which paragraph (iv) of
20 this subdivision applies, with respect to three-year property, as
21 defined in subsection (e) of section one hundred sixty-eight of the
22 internal revenue code, which is disposed of or ceases to be in qualified
23 use prior to the end of the taxable year in which the credit is to be
24 taken, the amount of the credit allowed shall be that portion of the
25 credit provided for in this subdivision which represents the ratio which
26 the months of qualified use bear to thirty-six. If property on which
27 credit has been taken is disposed of or ceases to be in qualified use
28 prior to the end of thirty-six months, the difference between the credit

1 taken and the credit allowed for actual use must be added back in the
2 year of disposition. The amount of credit allowed for actual use shall
3 be determined by multiplying the original credit by the ratio which the
4 months of qualified use bear to thirty-six.

5 (iii) Except with respect to that property to which paragraph (iv) of
6 this subdivision applies, with respect to property subject to the
7 provisions of section one hundred sixty-eight of the internal revenue
8 code, other than three-year property as defined in subsection (e) of
9 such section one hundred sixty-eight which is disposed of or ceases to
10 be in qualified use prior to the end of the taxable year in which the
11 credit is to be taken, the amount of the credit shall be that portion of
12 the credit provided for in this subdivision which represents the ratio
13 which the months of qualified use bear to sixty. If property on which
14 credit has been taken is disposed of or ceases to be in qualified use
15 prior to the end of sixty months, the difference between the credit
16 taken and the credit allowed for actual use must be added back in the
17 year of disposition. The amount of credit allowed for actual use shall
18 be determined by multiplying the original credit by the ratio which the
19 months of qualified use bear to sixty.

20 (iv) With respect to any property to which section one hundred sixty-
21 eight of the internal revenue code applies, which is a building or a
22 structural component of a building and which is disposed of or ceases to
23 be in qualified use prior to the end of the taxable year in which the
24 credit is to be taken, the amount of the credit shall be that portion of
25 the credit provided for in this subdivision which represents the ratio
26 which the months of qualified use bear to the total number of months
27 over which the taxpayer chooses to deduct the property under the inter-
28 nal revenue code. If property on which credit has been taken is disposed

1 of or ceases to be in qualified use prior to the end of the period over
2 which the taxpayer chooses to deduct the property under the internal
3 revenue code, the difference between the credit taken and the credit
4 allowed for actual use must be added back in the year of disposition.
5 Provided, however, if such property is disposed of or ceases to be in
6 qualified use after it has been in qualified use for more than twelve
7 consecutive years, it shall not be necessary to add back the credit as
8 provided in this subparagraph. The amount of credit allowed for actual
9 use shall be determined by multiplying the original credit by the ratio
10 which the months of qualified use bear to the total number of months
11 over which the taxpayer chooses to deduct the property under the inter-
12 nal revenue code.

13 (v) For purposes of this paragraph, property (I) which is described in
14 subparagraph (ii), (iii) or (iv) of this paragraph, and (II) which is
15 subject to subparagraph eleven of paragraph (a) of subdivision nine and
16 subparagraph ten of paragraph (b) of subdivision nine of section two
17 hundred eight of this article, shall be treated as property which is
18 depreciable pursuant to section one hundred sixty-seven of the internal
19 revenue code but is not subject to section one hundred sixty-eight of
20 such code.

21 (vi) For each taxable year, the amount required to be added back
22 pursuant to this paragraph shall be augmented by an amount equal to the
23 product of such amount and the underpayment rate of interest (without
24 regard to compounding), set by the commissioner pursuant to subsection
25 (e) of section one thousand ninety-six, in effect on the last day of the
26 taxable year.

27 (vii) If, as of the close of the taxable year, there is a net increase
28 with respect to the taxpayer in the amount of nonqualified nonrecourse

1 financing (within the meaning of section 46(c)(8) of the internal reven-
2 ue code) with respect to any property with respect to which the credit
3 under this subdivision was limited based on attributable nonqualified
4 nonrecourse financing, then an amount equal to the decrease in such
5 credit which would have resulted from reducing, by the amount of such
6 net increase, the cost or other basis taken into account with respect to
7 such property must be added back in such taxable year. The amount of
8 nonqualified nonrecourse financing shall not be treated as increased by
9 reason of a transfer of (or agreement to transfer) any evidence of an
10 indebtedness if such transfer occurs (or such agreement is entered into)
11 more than one year after the date such indebtedness was incurred.

12 (viii)(A) Where property with respect to which credit has been allowed
13 under this subdivision is disposed of by transfer to the taxpayer in a
14 qualified transaction, and such disposition requires, pursuant to this
15 paragraph (without regard to this subparagraph) that such credit be
16 decreased (where the disposition occurs in the taxable year in which the
17 property is placed in service by the transferor) or that a portion of
18 such credit be added back by the transferor, then clause (B) or clause
19 (C) of this subparagraph shall apply.

20 (B) If the taxpayer and the transferor jointly elect, at such time and
21 in such manner as the commissioner may prescribe, the following shall
22 apply:

23 (I) such portion shall not be required to be added back by the
24 transferor,

25 (II) the amount of unused credit shall not be deducted from tax other-
26 wise due by the transferor on any return (including an amended return),
27 and shall not be so deducted as part of any audit adjustment or any
28 other determination, and

1 (III) the amount of unused credit shall be treated as an amount of
2 credit of the taxpayer under this subdivision carried forward by the
3 taxpayer to its taxable year in which such transfer occurred, as if the
4 credit allowed to the transferor with respect to such property had
5 originally been allowed to the taxpayer both as to amount and first date
6 of qualified use, and as if the period of qualified use by the transfe-
7 ror prior to the transfer had been a period of such use by the taxpayer.
8 Any amount of credit treated as carried forward to the taxable year
9 pursuant to this subparagraph shall be applied as provided in clause (H)
10 of this subparagraph.

11 (C) If the taxpayer and the transferor do not make the election
12 described in clause (B) of this subparagraph, then the amount of credit
13 required pursuant to this paragraph to be added back by the transferor
14 shall be treated as an amount of credit of the taxpayer under this
15 subdivision to be carried forward by the taxpayer to its taxable year in
16 which such transfer occurred, as if the credit allowed to the transferor
17 with respect to such property had originally been allowed to the taxpay-
18 er both as to amount and first date of qualified use, and as if the
19 period of qualified use by the transferor prior to the transfer had been
20 a period of such use by the taxpayer. Any amount of credit treated as
21 carried forward to the taxable year pursuant to this subparagraph shall
22 be applied as provided in clause (H) of this subparagraph.

23 (D) The term "qualified transaction" shall mean a transaction which is
24 a reorganization described in section 368(a)(1)(D) of the internal
25 revenue code, wherein (i) substantially all of the assets of the
26 transferor necessary to continue the operation of a division or divi-
27 sions of the transferor are transferred to the taxpayer in a transaction
28 to which section 351 of such code applies, and (ii) stock or securities

1 of the taxpayer held by the transferor are distributed pursuant to
2 section 355 of such code.

3 (E) The term "unused credit" shall mean the amount of credit shown as
4 carried forward to the transaction year on the transferor's tax return
5 for its taxable year immediately preceding the transaction year with
6 respect to the property described in clause (A) of this subparagraph.

7 (F) The term "transaction year" means the taxable year in which the
8 qualified transaction occurs.

9 (G) Notwithstanding any other provision of law to the contrary, in the
10 case of allowance of credit pursuant to this subparagraph to a taxpayer
11 the commissioner shall have the authority to reveal to the taxpayer any
12 information, with respect to the credit of the transferor, which is the
13 basis for the denial in whole or in part of the credit claimed by such
14 taxpayer.

15 (H) Where a credit is allowed to a taxpayer pursuant to this subpara-
16 graph, the taxpayer may treat the amount of such credit as an overpay-
17 ment of tax to be credited or refunded in accordance with the provisions
18 of section one thousand eighty-six of this chapter, provided, however,
19 the provisions of subsection (c) of section one thousand eighty-eight of
20 this chapter notwithstanding, no interest shall be paid thereon. Such
21 credit shall be allowed against the tax imposed by this article with
22 respect to the second succeeding taxable year next following the trans-
23 action year, provided that not more than one-fourth of the amount of
24 such credit may be applied by the taxpayer, whether to reduce tax other-
25 wise due or to be treated as an overpayment to be credited or refunded,
26 with respect to such second succeeding taxable year and each of the next
27 three taxable years following such second succeeding taxable year.

1 (f) New business. For purposes of paragraph (d) of this subdivision, a
2 new business shall include any corporation, except a corporation which:

3 (i) over fifty percent of the number of shares of stock entitling the
4 holders thereof to vote for the election of directors or trustees is
5 owned or controlled, either directly or indirectly, by a taxpayer
6 subject to tax under this article; section one hundred eighty-three or
7 one hundred eighty-four of article nine; or article thirty-three of this
8 chapter; or

9 (ii) is substantially similar in operation and in ownership to a busi-
10 ness entity (or entities) taxable, or previously taxable, under this
11 article; section one hundred eighty-three, one hundred eighty-four,
12 former section one hundred eighty-five or former section one hundred
13 eighty-six of article nine; article thirty-two of this chapter (as such
14 article was in effect on December thirty-first, two thousand fourteen);
15 article thirty-three of this chapter; article twenty-three of this chap-
16 ter or which would have been subject to tax under such article twenty-
17 three (as such article was in effect on January first, nineteen hundred
18 eighty) or the income (or losses) of which is (or was) includable under
19 article twenty-two of this chapter whereby the intent and purpose of
20 this paragraph and paragraph (d) of this subdivision with respect to
21 refunding of credit to new business would be evaded; or

22 (iii) has been subject to tax under this article or under former arti-
23 cle thirty-two of this chapter for more than five taxable years (exclud-
24 ing short taxable years).

25 2. Employment Incentive Credit (EIC). (a)(i) Application of credit.
26 Where a taxpayer is allowed a credit under subdivision one of this
27 section, other than at the optional rate applicable to research and
28 development property, the taxpayer shall be allowed a credit for each of

1 the two years next succeeding the taxable year for which the credit
 2 under such subdivision one is allowed with respect to such property,
 3 whether or not deductible in such taxable year or in subsequent taxable
 4 years pursuant to paragraph (d) of such subdivision one. Provided,
 5 however, that the credit allowable under this subdivision for any taxa-
 6 ble year shall be allowed only if the average number of employees during
 7 such taxable year is at least one hundred one percent of the average
 8 number of employees during the employment base year. The employment base
 9 year shall be the taxable year immediately preceding the taxable year
 10 for which the credit under such subdivision one is allowed except that
 11 if the taxpayer was not subject to tax and did not have a taxable year
 12 immediately preceding the taxable year for which the credit under such
 13 subdivision one of this section is allowed, the employment base year
 14 shall be the taxable year in which the credit under such subdivision one
 15 is allowed.

16 (ii) Amount of credit. The amount of the credit allowed under this
 17 subdivision shall be as set forth in the following table:

<u>Average number of employees during the</u> <u>taxable year expressed as a percentage</u> <u>of average employees in employment</u> <u>base years</u>	<u>Credit allowed under this</u> <u>subdivision expressed as a</u> <u>percentage of the applicable</u> <u>investment credit basis</u>
<u>Less than 102%</u>	<u>1.5%</u>
<u>At least 102% and less than 103%</u>	<u>2%</u>
<u>At least 103%</u>	<u>2.5%</u>

25 (b) Average number of employees. The average number of employees in a
 26 taxable year shall be computed by ascertaining the number of employees
 27 within the state, except general executive officers, employed by the
 28 taxpayer on the thirty-first day of March, the thirtieth day of June,

1 the thirtieth day of September and the thirty-first day of December in
2 the taxable year, by adding together the number of employees ascertained
3 on each of such dates and dividing the sum so obtained by the number of
4 such above mentioned dates occurring within the taxable year. However,
5 with respect to the employment base year, there shall be excluded there-
6 from any employee with respect to whom a credit provided for under
7 subdivision six of this section is claimed, for the taxable year, based
8 on employment within a zone equivalent area designated as such pursuant
9 to article eighteen-B of the general municipal law.

10 (c) Carryover. In no event shall the credit herein provided for be
11 allowed in an amount which will reduce the tax payable to less than the
12 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
13 one of section two hundred ten of this article. However, if the amount
14 of credit allowable under this subdivision for any taxable year reduces
15 the tax to such amount, any amount of credit not deductible in such
16 taxable year may be carried over to the fifteen taxable years immediate-
17 ly following such taxable year and may be deducted from the taxpayer's
18 tax for such year or years.

19 3. Empire zone investment tax credit (EZ-ITC). (a) A taxpayer shall be
20 allowed a credit, to be computed as herein provided, against the tax
21 imposed by this article if the taxpayer has been certified pursuant to
22 article eighteen-B of the general municipal law. The amount of the cred-
23 it shall be ten percent of the cost or other basis for federal income
24 tax purposes of tangible personal property and other tangible property,
25 including buildings and structural components of buildings, described in
26 paragraph (b) of this subdivision, which is located within an empire
27 zone designated as such pursuant to article eighteen-B of such law, but
28 only if the acquisition, construction, reconstruction or erection of

1 such property occurred or was commenced on or after the date of such
2 designation and prior to the expiration thereof. Provided, however, that
3 in the case of an acquisition, construction, reconstruction or erection
4 which was commenced during such period and continued or completed subse-
5 quently, such credit shall be ten percent of the portion of the cost or
6 other basis for federal income tax purposes attributable to such period,
7 which portion shall be ascertained by multiplying such cost or basis by
8 a fraction the numerator of which shall be the expenditures paid or
9 incurred during such period for such purposes and the denominator of
10 which shall be the total of all expenditures paid or incurred for such
11 acquisition, construction, reconstruction or erection.

12 (b) Qualified property. A credit shall be allowed under this subdivi-
13 sion with respect to tangible personal property and other tangible prop-
14 erty, including buildings and structural components of buildings, which

15 (i) are depreciable pursuant to section one hundred sixty-seven of the
16 internal revenue code,

17 (ii) have a useful life of four years or more,

18 (iii) are acquired by purchase as defined in section one hundred
19 seventy-nine (d) of the internal revenue code,

20 (iv) have a situs in an empire zone designated as such pursuant to
21 article eighteen-B of the general municipal law, and

22 (v) are (A) principally used by the taxpayer in the production of
23 goods by manufacturing, processing, assembling, refining, mining,
24 extracting, farming, agriculture, horticulture, floriculture, viticul-
25 ture or commercial fishing,

26 (B) industrial waste treatment facilities or air pollution control
27 facilities used in the taxpayer's trade or business,

28 (C) research and development property,

1 (D) principally used in the ordinary course of the taxpayer's trade or
2 business as a broker or dealer in connection with the purchase or sale
3 (which shall include but not be limited to the issuance, entering into,
4 assumption, offset, assignment, termination, or transfer) of stocks,
5 bonds or other securities as defined in section four hundred seventy-
6 five (c)(2) of the Internal Revenue Code, or of commodities as defined
7 in section four hundred seventy-five (e) of the Internal Revenue Code,

8 (E) principally used in the ordinary course of the taxpayer's trade or
9 business of providing investment advisory services for a regulated
10 investment company as defined in section eight hundred fifty-one of the
11 Internal Revenue Code, or lending, loan arrangement, or loan origination
12 services to customers in connection with the purchase or sale (which
13 shall include but not be limited to the issuance, entering into, assump-
14 tion, offset, assignment, termination or transfer) of securities as
15 defined in section four hundred seventy-five (c)(2) of the Internal
16 Revenue Code,

17 (E-1) principally used in the ordinary course of the taxpayer's trade
18 or business of providing investment advisory services or the service of
19 managing investment portfolios to achieve specific investment objectives
20 for accounts over one million dollars of accredited investors (as that
21 term is defined in rule 501 of regulation D of the Securities Act of
22 1933), if the taxpayer satisfies the following criteria:

23 (I) the taxpayer is a regulated broker or dealer or an affiliate of a
24 regulated broker or dealer,

25 (II) the taxpayer is registered as an investment adviser under section
26 two hundred three of the Investment Advisers Act of 1940, as amended,
27 and

1 (III) at least one client of the taxpayer is a regulated investment
2 company as defined in section eight hundred fifty-one of the internal
3 revenue code that has assets of one hundred million dollars, or

4 (F) principally used in the ordinary course of the taxpayer's business
5 as an exchange registered as a national securities exchange within the
6 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of
7 1934 or a board of trade as defined in subdivision one of paragraph (a)
8 of section fourteen hundred ten of the not-for-profit corporation law or
9 as an entity that is wholly owned by one or more such national securi-
10 ties exchanges or boards or trade and that provides automation or tech-
11 nical services thereto.

12 (vi) For purposes of clauses (D), (E), (E-1) and (F) of subparagraph
13 (v) of this paragraph, property purchased by a taxpayer affiliated with
14 a regulated broker, dealer, registered investment adviser, national
15 securities exchange or board of trade is allowed a credit under this
16 subdivision if the property is used by its affiliated regulated broker,
17 dealer, registered investment adviser or national securities exchange or
18 board of trade in accordance with this subdivision. For purposes of
19 determining if the property is principally used in qualifying uses, the
20 uses by the taxpayer described in clauses (D), (E) and (E-1) of subpara-
21 graph (v) of this paragraph may be aggregated. In addition, the uses by
22 the taxpayer, its affiliated regulated broker, dealer and registered
23 investment adviser under any of those clauses may be aggregated.
24 Provided, however, a taxpayer shall not be allowed the credit provided
25 by clauses (D), (E), (E-1) and (F) of subparagraph (v) of this paragraph
26 unless

1 (I) eighty percent or more of the employees performing the administra-
2 tive and support functions resulting from or related to the qualifying
3 uses of such equipment are located in this state, or

4 (II) the average number of employees that perform the administrative
5 and support functions resulting from or related to the qualifying uses
6 of such equipment and are located in this state during the taxable year
7 for which the credit is claimed is equal to or greater than ninety-five
8 percent of the average number of employees that perform these functions
9 and are located in this state during the thirty-six months immediately
10 preceding the year for which the credit is claimed, or

11 (III) the number of employees located in this state during the taxable
12 year for which the credit is claimed is equal to or greater than ninety
13 percent of the number of employees located in this state on December
14 thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not
15 a calendar year taxpayer in nineteen hundred ninety-eight, the last day
16 of its first taxable year ending after December thirty-first, nineteen
17 hundred ninety-eight. If the taxpayer becomes subject to tax in this
18 state after the taxable year beginning in nineteen hundred ninety-eight,
19 then the taxpayer is not required to satisfy the employment test
20 provided in the preceding sentence of this subparagraph for its first
21 taxable year.

22 (vii) For the purposes of clause (III) of subparagraph (vi) of this
23 paragraph the employment test will be based on the number of employees
24 located in this state on the last day of the first taxable year the
25 taxpayer is subject to tax in this state. If the uses of the property
26 must be aggregated to determine whether the property is principally used
27 in qualifying uses, then either each affiliate using the property must
28 satisfy this employment test or this employment test must be satisfied

1 through the aggregation of the employees of the taxpayer, its affiliated
2 regulated broker, dealer, and registered investment adviser using the
3 property.

4 (viii) For the purpose of this subdivision, the term "goods" shall not
5 include electricity.

6 (ix) For purposes of this subdivision, "manufacturing" shall mean the
7 process of working raw materials into wares suitable for use or which
8 gives new shapes, new quality or new combinations to matter which
9 already has gone through some artificial process by the use of machin-
10 ery, tools, appliances and other similar equipment. Property used in the
11 production of goods shall include machinery, equipment or other tangible
12 property which is principally used in the repair and service of other
13 machinery, equipment or other tangible property used principally in the
14 production of goods and shall include all facilities used in the
15 production operation, including storage of material to be used in
16 production and of the products that are produced. For purposes of this
17 subdivision, the terms "research and development property", "industrial
18 waste treatment facilities", and "air pollution control facilities"
19 shall have the meanings ascribed thereto by clauses (B), (C) and (D),
20 respectively, of subparagraph (iv) of paragraph (b) of subdivision one
21 of this section, and the provisions of subparagraph (v) of such para-
22 graph (b) shall apply.

23 (c) Nonqualified property. A taxpayer shall not be allowed a credit
24 under this subdivision with respect to any tangible personal property
25 and other tangible property, including buildings and structural compo-
26 nents of buildings, which it leases to any other person or corporation
27 except where a taxpayer leases property to an affiliated regulated
28 broker, dealer, registered investment adviser, national securities

1 exchange or board of trade or other entity described in clause (F) of
2 subparagraph (v) of paragraph (b) of this subdivision that uses such
3 property in accordance with clause (D), (E), (E-1) or (F) of subpara-
4 graph (v) of paragraph (b) of this subdivision. For purposes of the
5 preceding sentence, any contract or agreement to lease or rent or for a
6 license to use such property shall be considered a lease. Provided,
7 however, in determining whether a taxpayer shall be allowed a credit
8 under this subdivision with respect to such property, any election made
9 with respect to such property pursuant to the provisions of paragraph
10 eight of subsection (f) of section one hundred sixty-eight of the inter-
11 nal revenue code, as such paragraph was in effect for agreements entered
12 into prior to January first, nineteen hundred eighty-four, shall be
13 disregarded.

14 (d) Carryover. The credit allowed under this subdivision for any taxa-
15 ble year shall not reduce the tax due for such year to less than the
16 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
17 one of section two hundred ten of this article. Provided, however, that
18 if the amount of credit allowed under this subdivision for any taxable
19 year reduces the tax to such amount, any amount of credit not deductible
20 in such taxable year may be carried over to the following year or years
21 and may be deducted from the taxpayer's tax for such year or years. In
22 lieu of such carryover, any such taxpayer which qualifies as a new busi-
23 ness under paragraph (f) of subdivision one of this section may elect,
24 on its report for its taxable year with respect to which such credit is
25 allowed, to treat fifty percent of the amount of such carryover as an
26 overpayment of tax to be credited or refunded in accordance with the
27 provisions of section one thousand eighty-six of this chapter. In addi-
28 tion, any taxpayer which is approved as the owner of a qualified invest-

1 ment project or a significant capital investment project pursuant to
2 subdivision (w) of section nine hundred fifty-nine of the general munic-
3 ipal law, on its report for its taxable year with respect to which such
4 credit is allowed, in lieu of such carryover, may elect to treat fifty
5 percent of the amount of such carryover which is attributable to the
6 credit allowed under this subdivision for property which is part of such
7 project as an overpayment of tax to be credited or refunded in accord-
8 ance with the provisions of section one thousand eighty-six of this
9 chapter. Provided, however, such owner shall be allowed such refund for
10 a maximum of ten taxable years with respect to such qualified investment
11 project and each significant capital investment project, starting with
12 the first taxable year in which property comprising such project is
13 placed in service. Provided, further, however, the provisions of
14 subsection (c) of section one thousand eighty-eight of this chapter
15 notwithstanding, no interest shall be paid thereon.

16 (d-1) Any carryover of a credit from prior taxable years will not be
17 allowed if an empire zone retention certificate is not issued pursuant
18 to subdivision (w) of section nine hundred fifty-nine of the general
19 municipal law to the empire zone enterprise which is the basis of the
20 credit.

21 (e) At the option of the taxpayer, the taxpayer may choose to claim
22 the credit described in paragraph (a) of this subdivision for property
23 which also qualifies for the credit provided under subdivision one of
24 this section. A taxpayer shall not be allowed a credit under this subdivi-
25 vision with respect to any property described in paragraph (a) of this
26 subdivision if a credit is taken pursuant to subdivision one of this
27 section.

1 (f) Recapture. (i) With respect to property which is depreciable
2 pursuant to section one hundred sixty-seven of the internal revenue code
3 but is not subject to the provisions of section one hundred sixty-eight
4 of such code and which is disposed of or ceases to be in qualified use
5 prior to the end of the taxable year in which the credit is to be taken,
6 the amount of the credit shall be that portion of the credit provided
7 for in this subdivision which represents the ratio which the months of
8 qualified use bear to the months of useful life. If property on which
9 credit has been taken is disposed of or ceases to be in qualified use
10 prior to the end of its useful life, the difference between the credit
11 taken and the credit allowed for actual use must be added back in the
12 year of disposition. Provided, however, if such property is disposed of
13 or ceases to be in qualified use after it has been in qualified use for
14 more than twelve consecutive years, it shall not be necessary to add
15 back the credit as provided in this subparagraph. The amount of credit
16 allowed for actual use shall be determined by multiplying the original
17 credit by the ratio which the months of qualified use bear to the months
18 of useful life. For purposes of this subparagraph, useful life of prop-
19 erty shall be the same as the taxpayer uses for depreciation purposes
20 when computing his federal income tax liability.

21 (ii) Except with respect to that property to which subparagraph (iv)
22 of this paragraph applies, with respect to three-year property, as
23 defined in subsection (e) of section one hundred sixty-eight of the
24 internal revenue code, which is disposed of or ceases to be in qualified
25 use prior to the end of the taxable year in which the credit is to be
26 taken, the amount of the credit shall be that portion of the credit
27 provided for in this subdivision which represents the ratio which the
28 months of qualified use bear to thirty-six. If property on which credit

1 has been taken is disposed of or ceases to be in qualified use prior to
2 the end of thirty-six months, the difference between the credit taken
3 and the credit allowed for actual use must be added back in the year of
4 disposition. The amount of credit allowed for actual use shall be deter-
5 mined by multiplying the original credit by the ratio which the months
6 of qualified use bear to thirty-six.

7 (iii) Except with respect to that property to which subparagraph (iv)
8 of this paragraph applies, with respect to property subject to the
9 provisions of section one hundred sixty-eight of the internal revenue
10 code other than three-year property as defined in subsection (e) of such
11 section one hundred sixty-eight which is disposed of or ceases to be in
12 qualified use prior to the end of the taxable year in which the credit
13 is to be taken, the amount of the credit shall be that portion of the
14 credit provided for in this subdivision which represents the ratio which
15 the months of qualified use bear to sixty. If property on which credit
16 has been taken is disposed of or ceases to be in qualified use prior to
17 the end of sixty months, the difference between the credit taken and the
18 credit allowed for actual use must be added back in the year of disposi-
19 tion. The amount of credit allowed for actual use shall be determined by
20 multiplying the original credit by the ratio which the months of quali-
21 fied use bear to sixty.

22 (iv) With respect to any property to which section one hundred sixty-
23 eight of the internal revenue code applies, which is a building or a
24 structural component of a building and which is disposed of or ceases to
25 be in qualified use prior to the end of the taxable year in which the
26 credit is to be taken, the amount of the credit shall be that portion of
27 the credit provided for in this subdivision which represents the ratio
28 which the months of qualified use bear to the total number of months

1 over which the taxpayer chooses to deduct the property under the inter-
2 nal revenue code. If property on which credit has been taken is disposed
3 of or ceases to be in qualified use prior to the end of the period over
4 which the taxpayer chooses to deduct the property under the internal
5 revenue code, the difference between the credit taken and the credit
6 allowed for actual use must be added back in the year of disposition.
7 Provided, however, if such property is disposed of or ceases to be in
8 qualified use after it has been in qualified use for more than twelve
9 consecutive years, it shall not be necessary to add back the credit as
10 provided in this subparagraph. The amount of credit allowed for actual
11 use shall be determined by multiplying the original credit by the ratio
12 which the months of qualified use bear to the total number of months
13 over which the taxpayer chooses to deduct the property under the inter-
14 nal revenue code.

15 (v) For purposes of this paragraph, disposal or cessation of qualified
16 use shall not be deemed to have occurred solely by reason of the termi-
17 nation or expiration of an empire zone's designation as such.

18 (vi) (A) For purposes of this paragraph, the decertification of a busi-
19 ness enterprise with respect to an empire zone shall constitute a
20 disposal or cessation of qualified use of the property on which the
21 credit was taken which is located in the zone to which the decertif-
22 ication applies, on the effective date of such decertification.

23 (B) Where a business enterprise has been decertified based on a find-
24 ing pursuant to clause one, two, or five of subdivision (a) of section
25 nine hundred fifty-nine of the general municipal law, the amount
26 required to be added back by reason of this paragraph shall be (I) the
27 amount of credit, with respect to the property which is disposed of or
28 ceases to be in qualified use, which was deducted from the taxpayer's

1 tax otherwise due under this article for all prior taxable years,
2 reduced (but not below zero) by (II) the credit allowed for actual use.
3 For purposes of this subparagraph, the attribution to specific property
4 of credit amounts deducted from tax shall be established in accordance
5 with the date of placement in service of such property in the empire
6 zone.

7 (C) In no event shall the amount of the credit allowed pursuant to
8 this subdivision be rendered, solely by reason of clause (A) of this
9 subparagraph, less than the amount of the credit to which the taxpayer
10 would otherwise be entitled under subdivision one of this section.

11 (D) Notwithstanding any other provision of this subdivision, in the
12 case of a business enterprise which has been decertified, any amount of
13 credit allowed with respect to the property of such business enterprise
14 located in the zone to which the decertification applies which is
15 carried over pursuant to paragraph (d) of this subdivision shall not be
16 carried over beyond the seventh taxable year next following the taxable
17 year with respect to which the credit provided for in this subdivision
18 was allowed.

19 (vii) For purposes of this paragraph, where a credit is allowed with
20 respect to an air pollution control facility on the basis of a certif-
21 icate of compliance issued pursuant to the environmental conservation
22 law and the certificate is revoked pursuant to subdivision three of
23 section 19-0309 of the environmental conservation law, such revocation
24 shall constitute a disposal or cessation of qualified use, except with
25 respect to property contained in or comprising such facility which is
26 described in clause (A), (B), or (C) of subparagraph (v) of paragraph
27 (b) of this subdivision other than as part of or comprising an air
28 pollution control facility. Also for purposes of this paragraph, the use

1 of an air pollution control facility or an industrial waste treatment
2 facility for the primary purpose of salvaging materials which are usable
3 in the manufacturing process or are marketable shall constitute a cessa-
4 tion of qualified use, except with respect to property contained in or
5 comprising such facility which is described in clause (A) or (C) of
6 subparagraph (v) of paragraph (b) of this subdivision.

7 (viii) Except as provided in this subparagraph, this paragraph shall
8 not apply to a credit allowed by this subdivision to a taxpayer that is
9 a partner in a partnership in the case of manufacturing property;
10 provided, at the time such property was placed in service by such part-
11 nership in an empire zone the basis for federal income tax purposes for
12 such property (or a project that includes such property) equaled or
13 exceeded three hundred million dollars and such partner owned its part-
14 nership interest for at least three years from the date such property
15 was placed in service. If such property ceases to be in qualified use
16 after it is placed in service, this paragraph shall apply to such part-
17 ner in the year such property ceases to be in qualifying use.

18 (ix) If a taxpayer, which is approved by the commissioner of economic
19 development as the owner of a qualified investment project or a signif-
20 icant capital investment project pursuant to subdivision (w) of section
21 nine hundred fifty-nine of the general municipal law, fails to (A)
22 create at least the minimum number of jobs at such project as required
23 by the provisions of subdivision (s) or (t) of section nine hundred
24 fifty-seven and subdivision (w) of section nine hundred fifty-nine of
25 the general municipal law or (B) place in service property comprising
26 such qualified investment project or significant capital investment
27 project with a basis for federal income tax purposes equaling or exceed-
28 ing the applicable minimum required basis as provided in such subdivi-

1 sion (s) or (t), whichever is relevant, by the last day of the fifth
2 taxable year following the taxable year in which a credit is first
3 allowed under this subdivision for the property which comprises such
4 qualified investment project or such significant capital investment
5 project, the total amount of the credit allowed under this subdivision
6 for all taxable years with respect to the property which comprises such
7 project which has been refunded to such taxpayer shall be added back in
8 such taxable year.

9 (g) Notwithstanding the expiration of the empire zones program under
10 article eighteen-B of the general municipal law, a taxpayer that is
11 certified as a qualified investment project pursuant to such article
12 eight-B on the day immediately preceding the day the empire zones
13 program expired shall continue to be deemed certified under such article
14 eighteen-B for purposes of this subdivision for the remainder of the
15 taxable year in which the expiration occurred and for the next succeed-
16 ing nine taxable years. In addition, the areas designated as empire
17 zones in which the taxpayer is certified as a qualified investment
18 project on the day immediately preceding the day the empire zones
19 program expired shall continue to be deemed empire zones for purposes of
20 this subdivision for the remainder of the taxable year in which the
21 expiration occurred and for the next succeeding nine taxable years.

22 (h) Notwithstanding the expiration of the empire zones program under
23 article eighteen-B of the general municipal law and except as provided
24 in paragraph (g) of this subdivision, a taxpayer that is certified as an
25 empire zone business pursuant to such article eighteen-B on the day
26 immediately preceding the day the empire zone program expired shall
27 continue to be deemed certified under such article eighteen-B for
28 purposes of this subdivision until April first, two thousand fourteen.

1 In addition, the areas designated as empire zones in which the taxpayer
2 is certified as an empire zone business on the day immediately preceding
3 the day the empire zones program expired shall continue to be deemed
4 empire zones for purposes of this subdivisions until April first, two
5 thousand fourteen.

6 4. Empire zone employment incentive credit (EZ-EIC). (a) Application
7 of credit. Where a taxpayer is allowed a credit under subdivision three
8 of this section, the taxpayer shall be allowed a credit for each of the
9 three years next succeeding the taxable year for which the credit under
10 such subdivision three is allowed, with respect to such property, wheth-
11 er or not deductible in such taxable year or in subsequent taxable years
12 pursuant to paragraph (d) of such subdivision three, of thirty percent
13 of the credit allowable under such subdivision three; provided, however,
14 that the credit allowable under this subdivision for any taxable year
15 shall only be allowed if the average number of employees employed by the
16 taxpayer in the empire zone, designated pursuant to article eighteen-B
17 of the general municipal law, in which such property is located during
18 such taxable year is at least one hundred one percent of the average
19 number of employees employed by the taxpayer in such empire zone, during
20 the taxable year immediately preceding the taxable year for which the
21 credit under such subdivision three is allowed and provided, further,
22 that if the taxpayer was not subject to tax and did not have a taxable
23 year immediately preceding the taxable year for which the credit under
24 subdivision three of this section is allowed, the credit allowable under
25 this subdivision for any taxable year shall be allowed if the average
26 number of employees employed in such empire zone in such taxable year is
27 at least one hundred one percent of the average number of such employees

1 during the taxable year in which the credit under such subdivision three
2 is allowed.

3 (b) Average number of employees. The average number of employees
4 employed in an empire zone in a taxable year shall be computed by ascer-
5 taining the number of such employees within such zone except general
6 executive officers, employed by the taxpayer on the thirty-first day of
7 March, the thirtieth day of June, the thirtieth day of September and the
8 thirty-first day of December in the taxable year, by adding together the
9 number of employees ascertained on each of such dates and dividing the
10 sum so obtained by the number of such above-mentioned dates occurring
11 within the taxable year.

12 (c) Carryover. In no event shall the credit herein provided for be
13 allowed in an amount which will reduce the tax payable to less than the
14 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
15 one of section two hundred ten of this article. Provided, however, that
16 if the amount of credit allowable under this subdivision for any taxable
17 year reduces the tax to such amount, any amount of credit not deductible
18 in such taxable year may be carried over to the following year or years
19 and may be deducted from the taxpayer's tax for such year or years. In
20 lieu of such carryover, any such taxpayer, which is approved as the
21 owner of a qualified investment project or a significant capital invest-
22 ment project pursuant to subdivision (v) of section nine hundred fifty-
23 nine of the general municipal law, may elect, on its report for its
24 taxable year with respect to which such credit is allowed, to treat
25 fifty percent of the amount of such carryover as an overpayment of tax
26 to be credited or refunded in accordance with the provisions of section
27 one thousand eighty-six of this chapter. Provided, however, in the case
28 of such owner of a qualified investment project or a significant capital

1 investment project, only fifty percent of the amount of such carryover
2 which is attributable to the credit allowed under this subdivision with
3 respect to property which is part of such project shall be allowed to be
4 credited or refunded and such owner shall be allowed such credit or
5 refund only for those taxable years in which such owner would be allowed
6 a credit or refund of the empire zone investment tax credit pursuant to
7 paragraph (d) of subdivision three of this section. Provided, further,
8 however, the provisions of subsection (c) of section one thousand eight-
9 y-eight of this chapter notwithstanding, no interest shall be paid ther-
10 eon.

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

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

1 (e) Notwithstanding the expiration of the empire zones program under
2 article eighteen-B of the general municipal law and except as provided
3 in paragraph (d) of this subdivision, a taxpayer that is certified as an
4 empire zone business pursuant to such article eighteen-B on the day
5 immediately preceding the day the empire zones program expired shall
6 continue to be deemed in the empire zone in which the taxpayer was
7 certified as an empire zone business on the day immediately preceding
8 the day the empire zones program expired for each of the three years
9 next succeeding the taxable year for which the credit under subdivision
10 three of this section is allowed.

11 5. QEZE credit for real property taxes. (a) Allowance of credit. A
12 taxpayer which is a qualified empire zone enterprise shall be allowed a
13 credit for eligible real property taxes, to be computed as provided in
14 section fifteen of this chapter, against the tax imposed by this arti-
15 cle.

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

27 6. QEZE tax reduction credit. (a) Allowance of credit. A taxpayer
28 which is a qualified empire zone enterprise shall be allowed a QEZE tax

1 reduction credit, to be computed as provided in section sixteen of this
2 chapter, against the tax imposed by this article.

3 (b) Application of credit. The credit allowed under this subdivision
4 for any taxable year shall not reduce the tax due for such year to less
5 than the fixed dollar minimum amount prescribed in paragraph (d) of
6 subdivision one of section two hundred ten of this article. Provided,
7 however, this paragraph shall not apply to a taxpayer with a zone allo-
8 cation factor of one hundred percent.

9 7. Qualified emerging technology company employment credit. (a) Appli-
10 cation of credit. A taxpayer shall be allowed a credit, to be computed
11 as hereinafter provided, against the tax imposed by this article,
12 provided:

13 (i) the taxpayer is a qualified emerging technology company pursuant
14 to the provisions of section thirty-one hundred two-e of the public
15 authorities law; and

16 (ii) the average number of individuals employed full time by the
17 taxpayer in New York state during the taxable year is at least one
18 hundred one percent of the taxpayer's base year employment. For the
19 purposes of this subdivision, "base year employment" means the average
20 number of individuals employed full-time by the taxpayer in the state
21 during the three taxable years immediately preceding the first taxable
22 year in which the credit is claimed. Where the taxpayer provided full-
23 time employment within the state during only a portion of such three-
24 year period, then the first effective date for the company to take
25 advantage of this credit shall be the next year following the first full
26 taxable year that the company had full-time employment in New York
27 state. For the purposes of this paragraph the term "three years" shall
28 be deemed to refer instead to the prior year's full-time employment

1 after the first year and the average of the first eight quarters of
2 employment after the first two taxable years in New York state.

3 (b) Credit limitation. The credit shall be allowed only in the first
4 taxable year in which the credit is claimed and in each of the next two
5 taxable years, provided that the conditions of paragraph (a) of this
6 subdivision are satisfied in each taxable year.

7 (c) Average number of individuals employed full-time. For the purposes
8 of this subdivision, average number of individuals employed full-time
9 shall be computed by adding the number of such individuals employed by
10 the taxpayer at the end of each quarter during each taxable year or
11 other applicable period and dividing the sum so obtained by the number
12 of such quarters occurring within such taxable year or other applicable
13 period; provided however, except that in computing base year employment,
14 there shall be excluded therefrom any employee with respect to whom a
15 credit provided for under subdivision six of this section is claimed for
16 the taxable year.

17 (d) Amount of credit. The amount of the credit shall equal the product
18 of one thousand dollars times the number of individuals employed full-
19 time by the taxpayer in the taxable year that are in excess of one
20 hundred percent of the taxpayer's base year employment.

21 (e) Carryover. The credit allowed under this subdivision for any taxa-
22 ble year shall not reduce the tax due for such year to less than the
23 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
24 one of section two hundred ten of this article. However, if the amount
25 of credit allowed under this subdivision for any taxable year reduces
26 the tax to such amount, any amount of credit thus not deductible in such
27 taxable year shall be treated as an overpayment of tax to be credited or
28 refunded in accordance with the provisions of section one thousand

1 eighty-six of this chapter. Provided, however, the provisions of
2 subsection (c) of section one thousand eighty-eight of this chapter
3 notwithstanding, no interest shall be paid thereon.

4 8. Qualified emerging technology company capital tax credit. (a)
5 Amount of credit. A taxpayer shall be allowed a credit against the tax
6 imposed by this article. The amount of the credit shall be equal to one
7 of the following percentages, per each qualified investment in a quali-
8 fied emerging technology company as defined in section thirty-one
9 hundred two-e of the public authorities law, made during the taxable
10 year, and certified by the commissioner, either:

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

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

1 (b) Qualified investment. "Qualified investment" means the contrib-
2 ution of property to a corporation in exchange for original issue capi-
3 tal stock or other ownership interest, the contribution of property to a
4 partnership in exchange for an interest in the partnership, and similar
5 contributions in the case of a business entity not in corporate or part-
6 nership form in exchange for an ownership interest in such entity. The
7 total amount of credit allowable to a taxpayer under this provision for
8 all years, taken in the aggregate, shall not exceed one hundred fifty
9 thousand dollars in the case of investments made pursuant to subpara-
10 graph one of paragraph (a) of this subdivision and shall not exceed
11 three hundred thousand dollars in the case of investments made pursuant
12 to subparagraph two of paragraph (a) of this subdivision.

13 (c) Carryover. In no event shall the credit and carryover of such
14 credit allowed under this subdivision for any taxable year, in the
15 aggregate, reduce the tax due for such year to less than the fixed
16 dollar minimum amount prescribed in paragraph (d) of subdivision one of
17 section two hundred ten of this chapter. However, if the amount of cred-
18 it or carryovers of such credit, or both, allowed under this subdivision
19 for any taxable year reduces the tax to such amount, or if any part of
20 the credit or carryovers of such credit may not be deducted from the tax
21 otherwise due by reason of the final sentence of this paragraph, any
22 amount of credit or carryovers of such credit thus not deductible in
23 such taxable year may be carried over to the following year or years and
24 may be deducted from the tax for such year or years. In addition, the
25 amount of such credit, and carryovers of such credit to the taxable
26 year, deducted from the tax otherwise due may not, in the aggregate,
27 exceed fifty percent of the tax imposed under section two hundred nine

1 of this article computed without regard to any credit provided for by
2 this section.

3 (d) Recapture. (1) Where a taxpayer sells, transfers or otherwise
4 disposes of corporate stock, a partnership interest or other ownership
5 interest arising from the making of a qualified investment which was the
6 basis, in whole or in part, for the allowance of the credit provided for
7 under subparagraph one of paragraph (a) of this subdivision, or where an
8 investment which was the basis for such allowance is, in whole or in
9 part, recovered by such taxpayer, and such disposition or recovery
10 occurs during the taxable year or within forty-eight months from the
11 close of the taxable year with respect to which such credit is allowed,
12 the taxpayer shall add back, with respect to the taxable year in which
13 the disposition or recovery described above occurred, the required
14 portion of the credit originally allowed.

15 (2) Where a taxpayer sells, transfers or otherwise disposes of corpo-
16 rate stock, a partnership interest or other ownership interest arising
17 from the making of a qualified investment which was the basis, in whole
18 or in part, for the allowance of the credit provided for under subpara-
19 graph two of paragraph (a) of this subdivision, or where an investment
20 which was the basis for such allowance is in any manner, in whole or in
21 part, recovered by such taxpayer, and such disposition or recovery
22 occurs during the taxable year or within one hundred eight months from
23 the close of the taxable year with respect to which such credit is
24 allowed, the taxpayer shall add back, with respect to the taxable year
25 in which the disposition or recovery described in subparagraph one of
26 this paragraph occurred the required portion of the credit originally
27 allowed.

1 (3) The required portion of the credit originally allowed shall be the
2 product of (A) the portion of such credit attributable to the property
3 disposed of and (B) the applicable percentage.

4 (4) The applicable percentage shall be:

5 (A) for credits allowed pursuant to subparagraph one of paragraph (a)
6 of this subdivision:

7 (i) one hundred percent, if the disposition or recovery occurs within
8 the taxable year with respect to which the credit is allowed or within
9 twelve months of the end of such taxable year,

10 (ii) seventy-five percent, if the disposition or recovery occurs more
11 than twelve but not more than twenty-four months after the end of the
12 taxable year with respect to which the credit is allowed,

13 (iii) fifty percent, if the disposition or recovery occurs more than
14 twenty-four months but not more than thirty-six months after the end of
15 the taxable year with respect to which the credit is allowed, or

16 (iv) twenty-five percent, if the disposition or recovery occurs more
17 than thirty-six months but not more than forty-eight months after the
18 end of the taxable year with respect to which the credit is allowed; or

19 (B) for credits allowed pursuant to subparagraph two of paragraph (a)
20 of this subdivision:

21 (i) one hundred percent, if the disposition or recovery occurs within
22 the taxable year with respect to which the credit is allowed or within
23 twelve months of the end of such taxable year,

24 (ii) eighty percent, if the disposition or recovery occurs more than
25 twelve but not more than forty-eight months after the end of the taxable
26 year with respect to which the credit is allowed,

1 (iii) sixty percent, if the disposition or recovery occurs more than
2 forty-eight months but not more than seventy-two months after the end of
3 the taxable year with respect to which the credit is allowed,

4 (iv) forty percent, if the disposition or recovery occurs more than
5 seventy-two months but not more than ninety-six months after the end of
6 the taxable year with respect to which the credit is allowed, or

7 (v) twenty percent, if the disposition or recovery occurs more than
8 ninety-six months but not more than one hundred eight months after the
9 end of the taxable year with respect to which the credit is allowed.

10 9. Credit for the special additional mortgage recording tax. (a)
11 Application of credit. A taxpayer shall be allowed a credit, to be cred-
12 ited against the tax imposed by this article, equal to the amount of the
13 special additional mortgage recording tax paid by the taxpayer pursuant
14 to the provisions of subdivision one-a of section two hundred fifty-
15 three of this chapter or mortgages recorded. Provided, however, no cred-
16 it shall be allowed with respect to a mortgage of real property princi-
17 pally improved or to be improved by one or more structures containing in
18 the aggregate not more than six residential dwelling units, each dwell-
19 ing unit having its own separate cooking facilities, where the real
20 property is located in one or more of the counties comprising the metro-
21 politan commuter transportation area. Provided further, however, no
22 credit shall be allowed with respect to a mortgage of real property
23 principally improved or to be improved by one or more structures
24 containing in the aggregate not more than six residential dwelling
25 units, each dwelling unit having its own separate cooking facilities,
26 where the real property is located in the county of Erie.

27 (b) Carryover. In no event shall the credit herein provided for be
28 allowed in an amount which will reduce the tax payable to less than the

1 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
2 one of section two hundred ten of this article. If, however, the amount
3 of credit allowable under this subdivision for any taxable year, includ-
4 ing any credit carried over from a prior taxable year, reduces the tax
5 to such amount, any amount of credit not deductible in such taxable year
6 may be carried over to the following year or years and may be deducted
7 from the taxpayer's tax for such year or years.

8 10. Credit for servicing certain mortgages. (a) General. Every taxpay-
9 er meeting the requirements of the state of New York mortgage agency
10 applicable to the servicing of mortgages acquired by such agency pursu-
11 ant to the state of New York mortgage agency act, which shall have
12 entered into a contract with the state of New York mortgage agency to
13 service mortgages acquired by such agency pursuant to the state of New
14 York mortgage agency act, shall have credited to it or an amount equal
15 to two and ninety-three one hundredths per centum of the total principal
16 and interest collected by the taxpayer during its taxable year on each
17 such mortgage secured by a lien on real estate improved by a one-family
18 to four-family residential structure and an amount equal to the interest
19 collected by the taxpayer during its taxable year on each such mortgage
20 secured by a lien on real property improved by a structure occupied as
21 the residence of five or more families living independently of each
22 other, multiplied by a fraction the denominator of which shall be the
23 interest rate payable on the mortgage (computed to five decimal places)
24 and the numerator of which shall be .00125 in the case of such a mort-
25 gage acquired by such agency for less than one million dollars, and
26 .00100 in the case of such a mortgage acquired by such agency for one
27 million dollars or more. In no event shall the credit allowed under this
28 subdivision reduce the tax to less than the fixed dollar minimum amount

1 prescribed in paragraph (d) of subdivision one of section two hundred
2 ten of this article. In computing such tax credit for the servicing of
3 mortgages on one-family to four-family residential structures, the
4 taxpayer shall not be entitled to credit for the collection of curtail-
5 ment or payments in discharge of any such mortgage. For the purposes of
6 this subdivision,

7 (b) (i) a "curtailment" shall mean amounts paid by mortgagors

8 (A) in excess of the monthly constant due during the month of
9 collection and

10 (B) in reduction of the unpaid principal balance of the mortgage; in
11 the absence of clear evidence to the contrary, amounts paid in excess of
12 the monthly constant due during the month of collection shall be deemed
13 to be in reduction of the unpaid principal balance of the mortgage; and

14 (ii) "monthly constant" shall mean the amount of principal and inter-
15 est which is due and payable according to the mortgage documents on each
16 periodic payment date.

17 11. Agricultural property tax credit. (a) General. In the case of a
18 taxpayer which is an eligible farmer or an eligible farmer who has paid
19 taxes pursuant to a land contract, there shall be allowed a credit for
20 the allowable school district property taxes. The term "allowable school
21 district property taxes" means the school district property taxes paid
22 during the taxable year on qualified agricultural property, subject to
23 the acreage limitation provided in paragraph (e) of this subdivision and
24 the income limitation provided in paragraph (f) of this subdivision.

25 (b) Eligible farmer. For purposes of this subdivision, the term
26 "eligible farmer" means a taxpayer whose federal gross income from farm-
27 ing for the taxable year is at least two-thirds of excess federal gross
28 income. The term "eligible farmer" also includes a corporation other

1 than the taxpayer of record for qualified agricultural land which has
2 paid the school district property taxes on such land pursuant to a
3 contract for the future purchase of such land; provided that such corpo-
4 ration has a federal gross income from farming for the taxable year
5 which is at least two-thirds of excess federal gross income; and
6 provided further that, in determining such income eligibility, a taxpay-
7 er may, for any taxable year, use the average of such federal gross
8 income from farming for that taxable year and such income for the two
9 consecutive taxable years immediately preceding such taxable year.
10 Excess federal gross income means the amount of federal gross income
11 from all sources for the taxable year in excess of thirty thousand
12 dollars. For the purposes of this paragraph, payments from the state's
13 farmland protection program, administered by the department of agricul-
14 ture and markets, shall be included as federal gross income from farming
15 for otherwise eligible farmers.

16 (c) School district property taxes. For purposes of this subdivision,
17 the term "school district property taxes" means all property taxes,
18 special ad valorem levies and special assessments, exclusive of penal-
19 ties and interest, levied for school district purposes on the qualified
20 agricultural property owned by the taxpayer.

21 (d) Qualified agricultural property. For purposes of this subdivision,
22 the term "qualified agricultural property" means land located in this
23 state which is used in agricultural production, and land improvements,
24 structures and buildings (excluding buildings used for the taxpayer's
25 residential purpose) located on such land which are used or occupied to
26 carry out such production. Qualified agricultural property also includes
27 land set aside or retired under a federal supply management or soil
28 conservation program or land that at the time it becomes subject to a

1 conservation easement, as defined under subdivision twenty-eight of this
2 section, met the requirements under this paragraph.

3 (e) Acreage limitation. (i) Eligible taxes. In the event that the
4 qualified agricultural property owned by the taxpayer includes land in
5 excess of the base acreage as provided in this paragraph, the amount of
6 school district property taxes eligible for credit under this subdivi-
7 sion shall be that portion of the school district property taxes which
8 bears the same ratio to the total school district property taxes paid
9 during the taxable year, as the acreage allowable under this paragraph
10 bears to the entire acreage of such land.

11 (ii) Allowable acreage. The allowable acreage is the sum of the base
12 acreage set forth below and fifty percent of the incremental acreage.
13 The incremental acreage is the excess of the entire acreage of qualified
14 agricultural land owned by the taxpayer over the base acreage. Except as
15 provided in subparagraph (iii) of this paragraph, the base acreage is
16 three hundred fifty acres.

17 The total base acreage may be increased by any acreage enrolled or
18 participating during the taxable year in a federal environmental conser-
19 vation acreage reserve program pursuant to title three of the federal
20 agriculture improvement and reform act of nineteen hundred ninety-six.

21 (iii) Base acreage of related persons. Where the taxpayer and one or
22 more related persons each own qualified agricultural property on the
23 first day of March of any year, the base acreage under subparagraph (ii)
24 of this paragraph shall be divided equally and allotted among the
25 taxpayer and such related persons, and the taxpayer's base acreage for
26 the taxable year which includes such March first shall be limited to its
27 allotted share. Provided, however, if the taxpayer and all such related
28 persons consent (at such time and in such manner as the commissioner may

1 prescribe) to an unequal division, the taxpayer's base acreage for such
2 taxable year shall be limited to its allotted share under such unequal
3 division.

4 (iv) Related persons. (A) For purposes of subparagraph (iii) of this
5 paragraph, the term "related person" means:

6 (I) a corporation subject to tax under this article, where the taxpay-
7 er and the corporation are members of the same controlled group, as
8 defined in section 267(f) of the internal revenue code;

9 (II) an individual, partnership, estate or trust, where more than
10 fifty percent in value of the outstanding stock of the taxpayer is
11 owned, directly or indirectly, by or for such individual, partnership,
12 estate or trust or by or for the grantor of such trust;

13 (III) a corporation subject to tax under this article, or a partner-
14 ship, estate or trust, if the same person owns more than fifty percent
15 in value of the outstanding stock of the taxpayer and more than fifty
16 percent in value of the outstanding stock of the corporation, or more
17 than fifty percent of the capital or profits interest in the partner-
18 ship, or more than fifty percent of the beneficial interest in the
19 estate or trust;

20 (IV) a partnership, estate or trust of which the taxpayer owns,
21 directly or indirectly, more than fifty percent of the capital, profits
22 or beneficial interest.

23 (B) In determining whether a person is a related person within the
24 meaning of this subparagraph:

25 (I) stock owned, directly or indirectly, by or for a corporation,
26 partnership, estate or trust shall be considered as being owned propor-
27 tionately by or for its shareholders, partners or beneficiaries;

1 (II) an individual shall be considered as owning the stock owned,
2 directly or indirectly, by or for his spouse;

3 (III) stock constructively owned by a person by reason of the applica-
4 tion of item (I) of this clause shall, for the purpose of applying item
5 (I) or (II) of this clause, be treated as actually owned by such person.

6 (f) Income limitation. (i) In the event that the modified entire net
7 income of the taxpayer exceeds two hundred thousand dollars, the allow-
8 able school district property taxes under paragraph (a) of this subdivi-
9 sion shall be the eligible taxes under subparagraph (i) of paragraph (e)
10 of this subdivision reduced by the product of the amount of such eligi-
11 ble taxes and a percentage, such percentage to be determined by multi-
12 plying one hundred percent by a fraction, the numerator of which is the
13 lesser of one hundred thousand dollars or the excess of the taxpayer's
14 modified entire net income over two hundred thousand dollars and the
15 denominator of which is one hundred thousand dollars. For purposes of
16 the preceding sentence, the term "eligible taxes", where the acreage
17 limitation of paragraph (e) of this subdivision does not apply, shall
18 mean the total school district property taxes paid during the taxable
19 year.

20 (ii) The term "modified entire net income" means the entire net income
21 for the taxable year reduced by the amount of principal paid on farm
22 indebtedness during the taxable year. The term "farm indebtedness" means
23 debt incurred or refinanced which is secured by farm property, where the
24 proceeds of the debt are disbursed for expenditures incurred in the
25 business of farming.

26 (g) Carryover. In no event shall the credit provided herein be allowed
27 in an amount which will reduce the tax payable to less than the fixed
28 dollar minimum amount prescribed in paragraph (d) of subdivision one of

1 section two hundred ten of this article. If, however, the amount of
2 credit allowable under this subdivision for any taxable year reduces the
3 tax to such amount, any amount of credit not deductible in such taxable
4 year may be carried over to the following year or years and may be
5 deducted from the taxpayer's tax for such year or years. Provided,
6 however, in lieu of carrying over the unused portion of such credit, the
7 taxpayer may elect to treat such unused portion as an overpayment of tax
8 to be credited or refunded in accordance with the provisions of section
9 one thousand eighty-six of this chapter except that no interest shall be
10 paid on such overpayment.

11 (h) Nonqualified use. (i) No credit in conversion year. In the event
12 that qualified agricultural property is converted by the taxpayer to
13 nonqualified use, credit under this subdivision shall not be allowed
14 with respect to such property for the taxable year of conversion (the
15 conversion year).

16 (ii) Credit recapture. If the conversion by the taxpayer of qualified
17 agricultural property to nonqualified use occurs during the period of
18 the two taxable years following the taxable year for which the credit
19 under this subdivision was first claimed with respect to such property,
20 the credit allowed with respect to such property for the taxable years
21 prior to the conversion year must be added back in the conversion year.
22 Where the property converted includes land, and where the conversion is
23 of only a portion of such land, the credit allowed with respect to the
24 property converted shall be determined by multiplying the entire credit
25 under this subdivision for the taxable years prior to the conversion
26 year by a fraction, the numerator of which is the acreage converted and
27 the denominator of which is the entire acreage of such land owned by the
28 taxpayer immediately prior to the conversion.

1 (iii) Exception to recapture. Subparagraph (ii) of this paragraph
2 shall not apply to the conversion of property where the conversion is by
3 reason of involuntary conversion, within the meaning of section one
4 thousand thirty-three of the internal revenue code.

5 (iv) Conversion to nonqualified use. For purposes of this paragraph, a
6 sale or other disposition of qualified agricultural property alone shall
7 not constitute a conversion to a nonqualified use.

8 (i) Special rules. For purposes of this subdivision, the term "federal
9 gross income from farming" shall include gross income from the
10 production of maple syrup, cider, Christmas trees derived from a managed
11 Christmas tree operation whether dug for transplanting or cut from the
12 stump, or from a commercial horse boarding operation as defined in
13 subdivision thirteen of section three hundred one of the agriculture and
14 markets law, or from the sale of wine from a licensed farm winery as
15 provided for in article six of the alcoholic beverage control law, or
16 from the sale of cider from a licensed farm cidery as provided for in
17 section fifty-eight-c of the alcoholic beverage control law.

18 (j) Election to deem gross income of New York C corporation to share-
19 holders. For purposes of this subdivision, federal gross income from
20 farming shall be zero for any taxable year of a New York C corporation
21 for which the election under paragraph nine of subsection (n) of section
22 six hundred six of this chapter is in effect.

23 12. Credit for employment of persons with disabilities. (a) Allowance
24 of credit. A taxpayer shall be allowed a credit, to be computed as here-
25 inafter provided, against the tax imposed by this article, for employing
26 within the state a qualified employee.

27 (b) Qualified employee. A qualified employee is an individual:

1 (1) who is certified by the education department, or in the case of an
2 individual who is blind or visually handicapped, by the state agency
3 responsible for provision of vocational rehabilitation services to the
4 blind and visually handicapped: (i) as a person with a disability which
5 constitutes or results in a substantial handicap to employment and (ii)
6 as having completed or as receiving services under an individualized
7 written rehabilitation plan approved by the education department or
8 other state agency responsible for providing vocational rehabilitation
9 services to such individual; and

10 (2) who has worked on a full-time basis for the employer who is claim-
11 ing the credit for at least one hundred eighty days or four hundred
12 hours.

13 (c) Amount of credit. Except as provided in paragraph (d) of this
14 subdivision, the amount of credit shall be thirty-five percent of the
15 first six thousand dollars in qualified first-year wages earned by each
16 qualified employee. "Qualified first-year wages" means wages paid or
17 incurred by the taxpayer during the taxable year to qualified employees
18 which are attributable, with respect to any such employee, to services
19 rendered during the one-year period beginning with the day the employee
20 begins work for the taxpayer.

21 (d) Credit where federal work opportunity tax credit applies. With
22 respect to any qualified employee whose qualified first-year wages under
23 paragraph (c) of this subdivision also constitute qualified first-year
24 wages for purposes of the work opportunity tax credit for vocational
25 rehabilitation referrals under section fifty-one of the internal revenue
26 code, the amount of credit under this subdivision shall be thirty-five
27 percent of the first six thousand dollars in qualified second-year wages
28 earned by each such employee. "Qualified second-year wages" means wages

1 paid or incurred by the taxpayer during the taxable year to qualified
2 employees which are attributable, with respect to any such employee, to
3 services rendered during the one-year period beginning one year after
4 the employee begins work for the taxpayer.

5 (e) Carryover. The credit allowed under this subdivision for any taxa-
6 ble year shall not reduce the tax due for such year to less than the
7 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
8 one of section two hundred ten of this chapter. However, if the amount
9 of credit allowable under this subdivision for any taxable year reduces
10 the tax to such amount, any amount of credit not deductible in such
11 taxable year may be carried over to the following year or years, and may
12 be deducted from the taxpayer's tax for such year or years.

13 (f) Coordination with federal work opportunity tax credit. The
14 provisions of section fifty-one and fifty-two of the internal revenue
15 code, as such sections applied on October first, nineteen hundred nine-
16 ty-six, that apply to the federal work opportunity tax credit for voca-
17 tional rehabilitation referrals shall apply to the credit under this
18 subdivision to the extent that such sections are consistent with the
19 specific provisions of this subdivision, provided that in the event of a
20 conflict the provisions of this subdivision shall control.

21 13. Credit for purchase of an automated external defibrillator. A
22 taxpayer shall be allowed a credit, to be computed as hereinafter
23 provided, against the tax imposed by this article, for the purchase,
24 other than for resale, of an automated external defibrillator, as such
25 term is defined in section three thousand-b of the public health law.
26 The amount of credit shall be the cost to the taxpayer of automated
27 external defibrillators purchased during the taxable year, such credit
28 not to exceed five hundred dollars with respect to each unit purchased.

1 The credit allowed under this subdivision for any taxable year shall not
2 reduce the tax due for such year to less than the fixed dollar minimum
3 amount prescribed in paragraph (d) of subdivision one of section two
4 hundred ten of this chapter.

5 14. Credit for purchase of long-term care insurance. (a) General. A
6 taxpayer shall be allowed a credit against the tax imposed by this arti-
7 cle equal to twenty percent of the premium paid during the taxable year
8 for long-term care insurance. In order to qualify for such credit, the
9 taxpayer's premium payment must be for the purchase of or for continuing
10 coverage under a long-term care insurance policy that qualifies for such
11 credit pursuant to section one thousand one hundred seventeen of the
12 insurance law.

13 (b) Carryover. The credit allowed under this subdivision for any year
14 shall not reduce the tax due for such year to less than the fixed dollar
15 minimum amount prescribed in paragraph (d) of subdivision one of section
16 two hundred ten of this article. If, however, the amount of credit
17 allowable under this subdivision for any taxable year reduces the tax to
18 such amount, any amount of credit not deductible in such taxable year
19 may be carried over to the following year or years and may be deducted
20 from the taxpayer's tax for such year or years.

21 15. Low-income housing credit. (a) Allowance of credit. A taxpayer
22 shall be allowed a credit against the tax imposed by this article with
23 respect to the ownership of eligible low-income buildings, computed as
24 provided in section eighteen of this chapter.

25 (b) Application of credit. The credit and carryovers of such credit
26 allowed under this subdivision for any taxable year shall not, in the
27 aggregate, reduce the tax due for such year to less than the fixed
28 dollar minimum amount prescribed in paragraph (d) of subdivision one of

1 section two hundred ten of this article. However, if the amount of cred-
2 it or carryovers of such credit, or both, allowed under this subdivision
3 for any taxable year reduces the tax to such amount, any amount of cred-
4 it or carryovers of such credit thus not deductible in such taxable year
5 may be carried over to the following year or years and may be deducted
6 from the tax for such year or years.

7 (c) Credit recapture. For provisions requiring recapture of credit,
8 see subdivision (b) of section eighteen of this chapter.

9 16. Green building credit. (a) Allowance of credit. A taxpayer shall
10 be allowed a credit, to be computed as provided in section nineteen of
11 this chapter, against the tax imposed by this article.

12 (b) Carryovers. The credit and carryovers of such credit allowed under
13 this subdivision for any taxable year shall not, in the aggregate,
14 reduce the tax due for such year to less than the fixed dollar minimum
15 amount prescribed in paragraph (d) of subdivision one of section two
16 hundred ten of this article. However, if the amount of credit or carry-
17 overs of such credit, or both, allowed under this subdivision for any
18 taxable year reduces the tax to such amount, any amount of credit or
19 carryovers of such credit thus not deductible in such taxable year may
20 be carried over to the following year or years and may be deducted from
21 the tax for such year or years.

22 17. Brownfield redevelopment tax credit. (a) Allowance of credit. A
23 taxpayer shall be allowed a credit, to be computed as provided in
24 section twenty-one of this chapter, against the tax imposed by this
25 article.

26 (b) Application of credit. The credit allowed under this subdivision
27 for any taxable year shall not reduce the tax due for such year to less
28 than the fixed dollar minimum amount prescribed in paragraph (d) of

1 subdivision one of section two hundred ten of this article. However, if
2 the amount of credits allowed under this subdivision for any taxable
3 year reduces the tax to such amount, any amount of credit thus not
4 deductible in such taxable year shall be treated as an overpayment of
5 tax to be credited or refunded in accordance with the provisions of
6 section one thousand eighty-six of this chapter. Provided, however, the
7 provisions of subsection (c) of section one thousand eighty-eight of
8 this chapter notwithstanding, no interest shall be paid thereon.

9 18. Remediated brownfield credit for real property taxes for qualified
10 sites. (a) Allowance of credit. A taxpayer which is a developer of a
11 qualified site shall be allowed a credit for eligible real property
12 taxes, to be computed as provided in subdivision (b) of section twenty-
13 two of this chapter, against the tax imposed by this article. For
14 purposes of this subdivision, the terms "qualified site" and "developer"
15 shall have the same meaning as set forth in paragraphs two and three,
16 respectively, of subdivision (a) of section twenty-two of this chapter.

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

1 19. Environmental remediation insurance credit. (a) Allowance of cred-
2 it. A taxpayer shall be allowed a credit, to be computed as provided in
3 section twenty-three of this chapter, against the tax imposed by this
4 article.

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

16 20. Empire state film production credit. (a) Allowance of credit. A
17 taxpayer who is eligible pursuant to section twenty-four of this chapter
18 shall be allowed a credit to be computed as provided in such section
19 twenty-four against the tax imposed by this article.

20 (b) Application of credit. The credit allowed under this subdivision
21 for any taxable year shall not reduce the tax due for such year to less
22 than the fixed dollar minimum amount prescribed in paragraph (d) of
23 subdivision one of section two hundred ten of this article. Provided,
24 however, that if the amount of the credit allowable under this subdivi-
25 sion for any taxable year reduces the tax to such amount, the excess
26 shall be treated as an overpayment of tax to be credited or refunded in
27 accordance with the provisions of section one thousand eighty-six of
28 this chapter. Provided, however, the provisions of subsection (c) of

1 section one thousand eighty-eight of this chapter notwithstanding, no
2 interest shall be paid thereon.

3 21. Security training tax credit. (a) Allowance of credit. A taxpayer
4 shall be allowed a credit, to be computed as provided in section twen-
5 ty-six of this chapter, against the tax imposed by this article.

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

17 22. Conservation easement tax credit. (a) Credit allowed. In the case
18 of a taxpayer who owns land that is subject to a conservation easement
19 held by a public or private conservation agency, there shall be allowed
20 a credit for twenty-five percent of the allowable school district, coun-
21 ty and town real property taxes on such land. In no such case shall the
22 credit allowed under this subdivision in combination with any other
23 credit for such school district, county and town real property taxes
24 under this section exceed such taxes.

25 (b) Conservation easement. For purposes of this subdivision, the term
26 "conservation easement" means a perpetual and permanent conservation
27 easement as defined in article forty-nine of the environmental conserva-
28 tion law that serves to protect open space, scenic, natural resources,

1 biodiversity, agricultural, watershed and/or historic preservation
2 resources. Any conservation easement for which a tax credit is claimed
3 under this subdivision shall be filed with the department of environ-
4 mental conservation, as provided for in article forty-nine of the envi-
5 ronmental conservation law and such conservation easement shall comply
6 with the provisions of title three of such article, and the provisions
7 of subdivision (h) of section 170 of the internal revenue code. Dedi-
8 cations of land for open space through the execution of conservation
9 easements for the purpose of fulfilling density requirements to obtain
10 subdivision or building permits shall not be considered a conservation
11 easement under this subdivision.

12 (c) Land. For purposes of this subdivision, the term "land" means a
13 fee simple title to real property located in this state, with or without
14 improvements thereon; rights of way; water and riparian rights; ease-
15 ments; privileges and all other rights or interests of any land or
16 description in, relating to or connected with real property, excluding
17 buildings, structures, or improvements.

18 (d) Public or private conservation agency. For purposes of this subdivi-
19 vision, the term "public or private conservation agency" means any
20 state, local, or federal governmental body; or any private not-for-pro-
21 fit charitable corporation or trust which is authorized to do business
22 in the state of New York, is organized and operated to protect land for
23 natural resources, conservation or historic preservation purposes, is
24 exempt from federal income taxation under section 501(c)(3) of the
25 internal revenue code, and has the power to acquire, hold and maintain
26 land and/or interests in land for such purposes.

1 (e) Credit limitation. The amount of the credit that may be claimed by
2 a taxpayer pursuant to this subsection shall not exceed five thousand
3 dollars in any given year.

4 (f) Application of the credit. The credit allowed under this subdivi-
5 sion for any taxable year shall not reduce the tax due for such year to
6 less than the fixed dollar minimum amount prescribed in paragraph (d) of
7 subdivision one of section two hundred ten of this article. However, if
8 the amount of the credit allowed under this subdivision for any taxable
9 year reduces the tax to such amount, any amount of the credit thus not
10 deductible in such taxable year shall be treated as an overpayment of
11 tax to be credited or refunded in accordance with the provisions of
12 subsection (c) of section one thousand eighty-eight of this chapter,
13 except that, no interest shall be paid thereon.

14 23. Empire state commercial production credit. (a) Allowance of cred-
15 it. A taxpayer that is eligible pursuant to provisions of section twen-
16 ty-eight of this chapter shall be allowed a credit to be computed as
17 provided in such section against the tax imposed by this article.

18 (b) Application of credit. The credit allowed under this subdivision
19 for any taxable year shall not reduce the tax due for such year to less
20 than the fixed dollar minimum amount prescribed in paragraph (d) of
21 subdivision one of section two hundred ten of this article. Provided,
22 however, that if the amount of the credit allowable under this subdivi-
23 sion for any taxable year reduces the tax to such amount, fifty percent
24 of the excess shall be treated as an overpayment of tax to be credited
25 or refunded in accordance with the provisions of section one thousand
26 eighty-six of this chapter. Provided, however, the provisions of
27 subsection (c) of section one thousand eighty-eight of this chapter
28 notwithstanding, no interest shall be paid thereon. The balance of such

1 credit not credited or refunded in such taxable year may be carried over
2 to the immediately succeeding taxable year and may be deducted from the
3 taxpayer's tax for such year. The excess, if any, of the amount of cred-
4 it over the tax for such succeeding year shall be treated as an overpay-
5 ment of tax to be credited or refunded in accordance with the provisions
6 of section one thousand eighty-six of this chapter. Provided, however,
7 the provisions of subsection (c) of section one thousand eighty-eight of
8 this chapter notwithstanding, no interest shall be paid thereon.

9 (c) Expiration of credit. The credit allowed under this subdivision
10 shall not be applicable to taxable years beginning on or after December
11 thirty-first, two thousand seventeen.

12 24. Biofuel production credit. (a) General. A taxpayer shall be
13 allowed a credit, to be computed as provided in section twenty-eight of
14 this chapter added as part X of chapter sixty-two of the laws of two
15 thousand six, against the tax imposed by this article. The credit
16 allowed under this subdivision for any taxable year shall not reduce the
17 tax due for such year to less than the fixed dollar minimum amount
18 prescribed in paragraph (d) of subdivision one of section two hundred
19 ten of this article. However, if the amount of credit allowed under
20 this subdivision for any taxable year reduces the tax to such amount,
21 any amount of credit thus not deductible in such taxable year shall be
22 treated as an overpayment of tax to be credited or refunded in accord-
23 ance with the provisions of section one thousand eighty-six of this
24 chapter. Provided, however, the provisions of subsection (c) of section
25 one thousand eighty-eight of this chapter notwithstanding, no interest
26 shall be paid thereon. The tax credit allowed pursuant to this section
27 shall apply to taxable years beginning before January first, two thou-
28 sand twenty.

1 25. Clean heating fuel credit. (a) General. A taxpayer shall be
2 allowed a credit against the tax imposed by this article. Such credit,
3 to be computed as hereinafter provided, shall be allowed for bioheat,
4 used for space heating or hot water production for residential purposes
5 within this state purchased before January first, two thousand seven-
6 teen. Such credit shall be \$0.01 per percent of biodiesel per gallon of
7 bioheat, not to exceed twenty cents per gallon, purchased by such
8 taxpayer.

9 (b) Definitions. For purposes of this subdivision, the following defi-
10 nitions shall apply:

11 (i) "Biodiesel" shall mean a fuel comprised exclusively of mono-alkyl
12 esters of long chain fatty acids derived from vegetable oils or animal
13 fats, designated B100, which meets the specifications of American Socie-
14 ty of Testing and Materials designation D 6751.

15 (ii) "Bioheat" shall mean a fuel comprised of biodiesel blended with
16 conventional home heating oil, which meets the specifications of the
17 American Society of Testing and Materials designation D 396 or D 975.

18 (c) Application of credit. The credit allowed under this subdivision
19 for any taxable year shall not reduce the tax due for such year to less
20 than the fixed dollar minimum amount prescribed in paragraph (d) of
21 subdivision one of section two hundred ten of this article. However, if
22 the amount of credit allowed under this subdivision for any taxable year
23 reduces the tax to such amount, any amount of credit thus not deductible
24 in such taxable year shall be treated as an overpayment of tax to be
25 credited or refunded in accordance with the provisions of section one
26 thousand eighty-six of this chapter. Provided, however, the provisions
27 of subsection (c) of section one thousand eighty-eight of this chapter
28 notwithstanding, no interest shall be paid thereon.

1 26. Credit for rehabilitation of historic properties. (a) Application
2 of credit. (i) For taxable years beginning on or after January first,
3 two thousand ten, and before January first, two thousand twenty, a
4 taxpayer shall be allowed a credit as hereinafter provided, against the
5 tax imposed by this article, in an amount equal to one hundred percent
6 of the amount of credit allowed the taxpayer for the same taxable year
7 with respect to a certified historic structure under subsection (c)(2)
8 of section 47 of the internal revenue code with respect to a certified
9 historic structure located within the state. Provided, however, the
10 credit shall not exceed five million dollars.

11 (ii) For taxable years beginning on or after January first, two thou-
12 sand twenty, a taxpayer shall be allowed a credit as hereinafter
13 provided, against the tax imposed by this article, in an amount equal to
14 thirty percent of the amount of credit allowed the taxpayer for the same
15 taxable year with respect to a certified historic structure under
16 subsection (c)(3) of section 47 of the internal revenue code with
17 respect to a certified historic structure located within the state.
18 Provided, however, the credit shall not exceed one hundred thousand
19 dollars.

20 (B) If the taxpayer is a partner in a partnership or a shareholder in
21 a New York S corporation, then the credit caps imposed in subparagraph
22 (A) of this paragraph shall be applied at the entity level, so that the
23 aggregate credit allowed to all the partners or shareholders of each
24 such entity in the taxable year does not exceed the credit cap that is
25 applicable in that taxable year.

26 (b) Tax credits allowed pursuant to this subdivision shall be allowed
27 in the taxable year that the qualified rehabilitation is placed in
28 service under section 167 of the federal internal revenue code.

1 (c) If the credit allowed the taxpayer pursuant to section 47 of the
2 internal revenue code with respect to a qualified rehabilitation is
3 recaptured pursuant to subsection (a) of section 50 of the internal
4 revenue code, a portion of the credit allowed under this subsection must
5 be added back in the same taxable year and in the same proportion as the
6 federal credit.

7 (d) The credit allowed under this subdivision for any taxable year
8 shall not reduce the tax due for such year to less than the amount
9 prescribed in paragraph (d) of subdivision one of section two hundred
10 ten of this article. However, if the amount of the credit allowed under
11 this subdivision for any taxable year reduces the tax to such amount,
12 any amount of credit thus not deductible in such taxable year shall be
13 treated as an overpayment of tax to be recredited or refunded in accord-
14 ance with the provisions of section one thousand eighty-six of this
15 chapter. Provided, however, the provisions of subsection (c) of section
16 one thousand eighty-eight of this chapter notwithstanding, no interest
17 shall be paid thereon.

18 (e) To be eligible for the credit allowable under this subdivision,
19 the rehabilitation project shall be in whole or in part located within a
20 census tract which is identified as being at or below one hundred
21 percent of the state median family income as calculated as of January
22 first of each year using the most recent five year estimate from the
23 American community survey published by the United States Census bureau.

24 27. Credits of New York S corporations. (a) General. Notwithstanding
25 the provisions of this section, no carryover of credit allowable in a
26 New York C year shall be deducted from the tax otherwise due under this
27 article in a New York S year, and no credit allowable in a New York S
28 year, or carryover of such credit, shall be deducted from the tax

1 imposed by this article. However, a New York S year shall be treated as
2 a taxable year for purposes of determining the number of taxable years
3 to which a credit may be carried over under this section. Notwithstand-
4 ing the first sentence of this subdivision, however, the credit for the
5 special additional mortgage recording tax shall be allowed as provided
6 in subdivision fifteen of this section, and the carryover of any such
7 credit shall be determined without regard to whether the credit is
8 carried from a New York C year to a New York S year or vice-versa.

9 28. Net operating loss conversion credit. (a) Base year designation.
10 For the purposes of this subdivision, the term "base year" means the
11 last taxable year beginning on or after January first, two thousand
12 thirteen and before January first, two thousand fourteen.

13 (b) Allowance of credit. A taxpayer which has any unabsorbed net oper-
14 ating loss carryover, referred to in this subdivision as a "NOL", after
15 calculating its entire net income under article nine-A or article thir-
16 ty-two for the base year shall be allowed a credit against the tax
17 imposed by this article for taxable years beginning on or after January
18 first, two thousand fifteen.

19 (c) Calculation of credit. The total amount of the NOL conversion
20 credit shall be the product of:

21 (i) any unabsorbed portion of net operating loss as calculated under
22 paragraph (f) of subdivision nine of section two hundred eight of this
23 article or subsection (k-1) of section fourteen hundred fifty-three of
24 article thirty-two, as such sections were in effect on December thirty-
25 first, two thousand fourteen, that was not deductible in previous taxa-
26 ble years and was eligible for carryover on the last day of the base
27 year, including any net operating loss sustained by the taxpayer during
28 the base year;

1 (ii) the taxpayer's business allocation percentage as calculated under
2 paragraph (a) of subdivision three of section two hundred ten of this
3 article for the base year, or the taxpayer's allocation percentage as
4 calculated under section fourteen hundred fifty-four of article thirty-
5 two for purposes of allocating entire net income for the base year (such
6 allocation percentages referred to in this subdivision as "BAP"), as
7 such sections were in effect on December thirty-first, two thousand
8 fourteen; and

9 (iii) the taxpayer's tax rate for the base year as calculated under
10 paragraph (a) of subdivision one of section two hundred ten of this
11 article or subsection (a) of section fourteen hundred fifty-five of
12 article thirty-two, as such sections were in effect on December thirty-
13 first, two thousand fourteen.

14 (d) Application of credit. A taxpayer, other than a small business
15 corporation as defined in paragraph (e) of this subdivision, is allowed
16 an annual NOL conversion credit that is equal to one-tenth of the total
17 NOL conversion credit as calculated in paragraph (c) of this subdivi-
18 sion. Such credit shall not be allowed against the tax computed under
19 paragraph (b) or (d) of subdivision one of section two hundred ten of
20 this article.

21 (e) Small business provisions. (i) For purposes of this subdivision, a
22 small business corporation is a corporation defined in paragraph three
23 of subsection (c) of section twelve hundred forty-four of the internal
24 revenue code (without regard to the second sentence of subparagraph (A)
25 thereof) as of the last day of the base year.

26 (ii) Application of credit. A small business corporation is allowed to
27 claim the total NOL conversion credit as calculated in paragraph (c) of
28 this subdivision in a taxable year. Such credit shall not be allowed

1 against the tax computed under paragraph (b) or (d) of subdivision one
2 of section two hundred ten of this article.

3 (f) Carryover. (i) The credit allowed by this subdivision for any
4 taxable year may only reduce the tax due for such year to the higher of
5 the amount prescribed in paragraph (b) or (d) of subdivision one of
6 section two hundred ten of this article.

7 (ii) However, if the amount of credit allowable under this subdivision
8 for any taxable year reduces the tax to such amount, or, if the taxpayer
9 is required to pay a tax under paragraph (b) of subdivision one of
10 section two hundred ten of this article, any remaining amount of credit
11 allowed for that taxable year may be carried over to the next taxable
12 year or years following such taxable year and may be deducted from the
13 taxpayer's tax for such year or years.

14 (g) Combined groups. (i) Where a taxpayer was properly included or
15 required to be included in a combined report for the base year pursuant
16 to subdivision four of section two hundred eleven of this article, the
17 combined group shall calculate its credit using the combined group's
18 total NOL, BAP, and tax rate according to paragraph (c) of this subdivi-
19 sion.

20 (ii) If the members of the combined group in a combined report for the
21 base year are the same as the members of the combined group in a
22 combined report for the taxable year immediately succeeding the base
23 year, the credit shall be calculated using the combined group's NOL, BAP
24 and applicable tax rate according to paragraph (c) of this subdivision.
25 If a taxpayer was properly included in a combined report for the base
26 year and files a separate report in a subsequent taxable year, then the
27 amount of remaining NOL conversion credit allowed to the separate filer
28 shall be proportionate to the amount that such taxpayer contributed to

1 the original NOL conversion credit on a combined basis, and the remain-
2 ing NOL conversion credit allowed to the remaining members of the
3 combined group shall be reduced by the amount of proportionate NOL
4 conversion credit allowed to the taxpayer or taxpayers filing separate-
5 ly. If a combined group includes additional members in the taxable year
6 immediately succeeding the base year who were not included in the
7 combined group during the base year, each individual combined group and
8 separately filing taxpayer shall calculate its credit for the base year
9 and the sum of the credits shall be the combined NOL conversion credit
10 of the combined group.

11 (h) Expiration of credit. The credit allowed under this subdivision
12 shall not be applicable to taxable years beginning on or after January
13 first, two thousand thirty-five.

14 29. Hire a vet credit. (a) Allowance of credit. For taxable years
15 beginning on or after January first, two thousand fifteen and before
16 January first, two thousand seventeen, a taxpayer shall be allowed a
17 credit, to be computed as provided in this subdivision, against the tax
18 imposed by this article, for hiring and employing, for not less than one
19 year and for not less than thirty-five hours each week, a qualified
20 veteran within the state. The taxpayer may claim the credit in the year
21 in which the qualified veteran completes one year of employment by the
22 taxpayer. If the taxpayer claims the credit allowed under this subdivi-
23 sion, the taxpayer may not use the hiring of a qualified veteran that is
24 the basis for this credit in the basis of any other credit allowed under
25 this article.

26 (b) Qualified veteran. A qualified veteran is an individual:

27 (1) who served on active duty in the United States army, navy, air
28 force, marine corps, coast guard or the reserves thereof, or who served

1 in active military service of the United States as a member of the army
2 national guard, air national guard, New York guard or New York naval
3 militia; who was released from active duty by general or honorable
4 discharge after September eleventh, two thousand one;

5 (2) who commences employment by the qualified taxpayer on or after
6 January first, two thousand fourteen, and before January first, two
7 thousand sixteen; and

8 (3) who certifies by signed affidavit, under penalty of perjury, that
9 he or she has not been employed for thirty-five or more hours during any
10 week in the one hundred eighty day period immediately prior to his or
11 her employment by the taxpayer.

12 (c) Employer prohibition. An employer shall not discharge an employee
13 and hire a qualifying veteran solely for the purpose of qualifying for
14 this credit.

15 (d) Amount of credit. The amount of the credit shall be ten percent of
16 the total amount of wages paid to the qualified veteran during the
17 veteran's first full year of employment. Provided, however, that, if the
18 qualified veteran is a disabled veteran, as defined in paragraph (b) of
19 subdivision one of section eighty-five of the civil service law, the
20 amount of the credit shall be fifteen percent of the total amount of
21 wages paid to the qualified veteran during the veteran's first full year
22 of employment. The credit allowed pursuant to this subdivision shall not
23 exceed in any taxable year, five thousand dollars for any qualified
24 veteran and fifteen thousand dollars for any qualified veteran who is a
25 disabled veteran.

26 (e) Carryover. The credit allowed under this subdivision for any taxa-
27 ble year shall not reduce the tax due for such year to less than the
28 amount prescribed in paragraph (d) of subdivision one of section two

1 hundred ten of this article. However, if the amount of credit allowable
2 under this subdivision for any taxable year reduces the tax to such
3 amount, any amount of credit not deductible in such taxable year may be
4 carried over to the following three years and may be deducted from the
5 taxpayer's tax for such year or years.

6 30. Alternative fuels and electric vehicle recharging property credit.

7 (a) General. A taxpayer shall be allowed a credit, to be computed as
8 hereinafter provided, against the tax imposed by this article for alter-
9 native fuel vehicle refueling and electric vehicle recharging property
10 placed in service during the taxable year.

11 (b) Alternative fuel vehicle refueling property and electric vehicle
12 recharging property. The credit under this subdivision for alternative
13 fuel vehicle refueling property and electric vehicle recharging property
14 shall equal for each installation of property the lesser of five thou-
15 sand dollars or fifty percent of the cost of any such property:

16 (i) which is located in this state;

17 (ii) which constitutes alternative fuel vehicle refueling property or
18 electric vehicle recharging property; and

19 (iii) for which none of the cost has been paid for from the proceeds
20 of grants, including grants from the New York state energy research and
21 development authority or the New York power authority.

22 (c) Definitions. (i) The term "alternative fuel vehicle refueling
23 property" means all of the equipment needed to dispense any fuel at
24 least eighty-five percent of the volume of which consists of one or more
25 of the following: natural gas, liquified natural gas, liquified petrole-
26 um, or hydrogen.

1 (ii) The term "electric vehicle recharging property" means all of the
2 equipment needed to convey electric power from the electric grid or
3 another power source to an onboard vehicle energy storage system.

4 (d) Carryovers. In no event shall the credit under this subdivision be
5 allowed in an amount which will reduce the tax payable to less than the
6 amount prescribed in paragraph (d) of subdivision one of section two
7 hundred ten of this article. Provided, however, that if the amount of
8 credit allowable under this subdivision for any taxable year reduces the
9 tax to such amount, any amount of credit not deductible in such taxable
10 year may be carried over to the following year or years and may be
11 deducted from the taxpayer's tax for such year or years.

12 (e) Credit recapture. If, at any time before the end of its recovery
13 period, alternative fuel vehicle refueling or electric vehicle recharg-
14 ing property ceases to be qualified, a recapture amount must be added
15 back in the year in which such cessation occurs.

16 (i) Alternative fuel vehicle refueling property or electric vehicle
17 recharging property ceases to be qualified if:

18 (I) the property no longer qualifies as alternative fuel vehicle refu-
19 eling property or electric vehicle recharging property; or

20 (II) fifty percent or more of the use of the property in a taxable
21 year is other than in a trade or business in this state; or

22 (III) the taxpayer receiving the credit under this subdivision sells
23 or disposes of the property and knows or has reason to know that the
24 property will be used in a manner described in clauses (I) and (II) of
25 this subparagraph.

26 (ii) Recapture amount. The recapture amount is equal to the credit
27 allowable under this subdivision multiplied by a fraction, the numerator
28 of which is the total recovery period for the property minus the number

1 of recovery years prior to, but not including, the recapture year, and
2 the denominator of which is the total recovery period.

3 (f) Termination. The credit allowed by paragraph (b) of this subdivi-
4 sion shall not apply in taxable years beginning after December thirty-
5 first, two thousand seventeen.

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

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

20 32. Empire state film post production credit. (a) Allowance of credit.
21 A taxpayer who is eligible pursuant to section thirty-one of this chap-
22 ter shall be allowed a credit to be computed as provided in such section
23 thirty-one against the tax imposed by this article.

24 (b) Application of credit. The credit allowed under this subdivision
25 for any taxable year shall not reduce the tax due for such year to less
26 than the amount prescribed in paragraph (d) of subdivision one of
27 section two hundred ten of this article. Provided, however, that if the
28 amount of the credit allowable under this subdivision for any taxable

1 year reduces the tax to such amount, fifty percent of the excess shall
2 be treated as an overpayment of tax to be credited or refunded in
3 accordance with the provisions of section one thousand eighty-six of
4 this chapter. Provided, however, the provisions of subsection (c) of
5 section one thousand eighty-eight of this chapter notwithstanding, no
6 interest shall be paid thereon. The balance of such credit not credited
7 or refunded in such taxable year may be a carryover to the immediately
8 succeeding taxable year and may be deducted from the taxpayer's tax for
9 such year. The excess, if any, of the amount of the credit over the tax
10 for such succeeding year shall be treated as an overpayment of tax to be
11 credited or refunded in accordance with the provisions of section one
12 thousand eighty-six of this chapter. Provided, however, the provisions
13 of subsection (c) of section one thousand eighty-eight of this chapter
14 notwithstanding, no interest shall be paid thereon.

15 33. Temporary deferral nonrefundable payout credit. (a) Allowance of
16 credit. A taxpayer shall be allowed a credit, to be computed as provided
17 in subdivision one of section thirty-four of this chapter, against the
18 tax imposed by this article.

19 (b) Application of credit. The credit allowed under this subdivision
20 for any taxable year shall not reduce the tax due for that year to less
21 than the amount prescribed in paragraph (d) of subdivision one of
22 section two hundred ten of this article. However, if the amount of cred-
23 it allowed under this subdivision for any taxable year reduces the tax
24 to such amount, any amount of credit thus not deductible in such taxable
25 year may be carried over to the following year or years and may be
26 deducted from the taxpayer's tax for such year or years.

27 34. Temporary deferral refundable payout credit. (a) Allowance of
28 credit. A taxpayer shall be allowed a credit, to be computed as provided

1 in subdivision two of section thirty-four of this chapter, against the
2 tax imposed by this article.

3 (b) Application of credit. In no event shall the credit under this
4 subdivision be allowed in an amount which will reduce the tax to less
5 than the amount prescribed in paragraph (d) of subdivision one of
6 section two hundred ten of this article. If, however, the amount of
7 credit allowed under this subdivision for any taxable year reduces the
8 tax to such amount, any amount of credit not deductible in such taxable
9 year shall be treated as an overpayment of tax to be refunded in accord-
10 ance with the provisions of section one thousand eighty-six of this
11 chapter, provided however, that no interest shall be paid thereon.

12 35. Economic transformation and facility redevelopment program tax
13 credit. (a) Allowance of credit. A taxpayer shall be allowed a credit,
14 to be computed as provided in section thirty-five of this chapter,
15 against the tax imposed by this article.

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

27 36. New York youth works tax credit. (a) A taxpayer that has been
28 certified by the commissioner of labor as a qualified employer pursuant

1 to section twenty-five-a of the labor law shall be allowed a credit
2 against the tax imposed by this article equal to (i) five hundred
3 dollars per month for up to six months for each qualified employee the
4 employer employs in a full-time job or two hundred fifty dollars per
5 month for up to six months for each qualified employee the employer
6 employs in a part-time job of at least twenty hours per week or ten
7 hours per week when the qualified employee is enrolled in high school
8 full-time, (ii) one thousand dollars for each qualified employee who is
9 employed for at least an additional six months by the qualified employer
10 in a full-time job or five hundred dollars for each qualified employee
11 who is employed for at least an additional six months by the qualified
12 employer in a part-time job of at least twenty hours per week or ten
13 hours per week when the qualified employee is enrolled in high school
14 full-time, and (iii) an additional one thousand dollars for each quali-
15 fied employee who is employed for at least an additional year after the
16 first year of the employee's employment by the qualified employer in a
17 full-time job or five hundred dollars for each qualified employee who is
18 employed for at least an additional year after the first year of the
19 employee's employment by the qualified employer in a part-time job of at
20 least twenty hours per week or ten hours per week when the qualified
21 employee is enrolled in high school full-time. For purposes of this
22 subdivision, the term "qualified employee" shall have the same meaning
23 as set forth in subdivision (b) of section twenty-five-a of the labor
24 law. The portion of the credit described in subparagraph (i) of this
25 paragraph shall be allowed for the taxable year in which the wages are
26 paid to the qualified employee, and the portion of the credit described
27 in subparagraph (ii) of this paragraph shall be allowed in the taxable
28 year in which the additional six month period ends.

1 (b) The credit allowed under this subdivision for any taxable year may
2 not reduce the tax due for that year to less than the amount prescribed
3 in paragraph (d) of subdivision one of section two hundred ten of this
4 article. However, if the amount of the credit allowed under this subdivi-
5 vision for any taxable year reduces the tax to that amount, any amount
6 of credit not deductible in that taxable year will be treated as an
7 overpayment of tax to be credited or refunded in accordance with the
8 provisions of section one thousand eighty-six of this chapter. Provided,
9 however, no interest will be paid thereon.

10 (c) The taxpayer may be required to attach to its tax return its
11 certificate of eligibility issued by the commissioner of labor pursuant
12 to section twenty-five-a of the labor law. In no event shall the taxpay-
13 er be allowed a credit greater than the amount of the credit listed on
14 the certificate of eligibility. Notwithstanding any provision of this
15 chapter to the contrary, the commissioner and the commissioner's desig-
16 nees may release the names and addresses of any taxpayer claiming this
17 credit and the amount of the credit earned by the taxpayer. Provided,
18 however, if a taxpayer claims this credit because it is a member of a
19 limited liability company or a partner in a partnership, only the amount
20 of credit earned by the entity and not the amount of credit claimed by
21 the taxpayer may be released.

22 37. Empire state jobs retention program credit. (a) Allowance of cred-
23 it. A taxpayer will be allowed a credit, to be computed as provided in
24 section thirty-six of this chapter, against the taxes imposed by this
25 article.

26 (b) Application of credit. The credit allowed under this subdivision
27 for any taxable year will not reduce the tax due for such year to less
28 than the amount prescribed in paragraph (d) of subdivision one of

1 section two hundred ten of this article. However, if the amount of cred-
2 it allowed under this subdivision for any taxable year reduces the tax
3 to such amount, any amount of credit thus not deductible in such taxable
4 year will be treated as an overpayment of tax to be credited or refunded
5 in accordance with the provisions of section one thousand eighty-six of
6 this chapter. Provided, however, the provisions of subsection (c) of
7 section one thousand eighty-eight of this chapter notwithstanding, no
8 interest will be paid thereon.

9 38. Credit for companies who provide transportation to individuals
10 with disabilities. (a) Allowance and amount of credit. A taxpayer, who
11 provides a taxicab service as defined in section one hundred forty-
12 eight-a of the vehicle and traffic law, or a livery service as defined
13 in section one hundred twenty-one-e of the vehicle and traffic law,
14 shall be allowed a credit, to be computed as provided in this subdivi-
15 sion, against the tax imposed by this article. The amount of the credit
16 shall be equal to the incremental cost associated with upgrading a vehi-
17 cle so that it is accessible by individuals with disabilities as defined
18 in paragraph (b) of this subdivision. Provided, however, that such cred-
19 it shall not exceed ten thousand dollars per vehicle. For purposes of
20 this subdivision, purchases of new vehicles that are initially manufac-
21 tured to be accessible for individuals with disabilities and for which
22 there is no comparable make and model that does not include the equip-
23 ment necessary to provide accessibility to individuals with disabili-
24 ties, the credit shall be ten thousand dollars per vehicle.

25 (b) Definition. The term "accessible by individuals with disabilities"
26 shall, for the purposes of this subdivision, refer to a vehicle that
27 complies with federal regulations promulgated pursuant to the Americans
28 with Disabilities Act applicable to vans under twenty-two feet in

1 length, by the federal Department of Transportation, in Code of Federal
2 Regulations, title 49, parts 37 and 38, and by the federal Architecture
3 and Transportation Barriers Compliance Board, in Code of Federal Regu-
4 lations, title 36, section 1192.23, and the Federal Motor Vehicle Safety
5 Standards, Code of Federal Regulations, title 49, part 57.

6 (c) Application of credit. In no event shall the credit allowed under
7 this subdivision for any taxable year reduce the tax due for such year
8 to less than the amount prescribed in paragraph (d) of subdivision one
9 of section two hundred ten of this article. However, if the amount of
10 credit allowed under this subdivision for any taxable year reduces the
11 tax to such amount, any amount of credit thus not deductible in such
12 taxable year shall be carried over to the following year or years, and
13 may be deducted from the taxpayer's tax for such year or years.

14 39. Beer production credit. A taxpayer shall be allowed a credit, to
15 be computed as provided in section thirty-seven of this chapter, against
16 the tax imposed by this article. In no event shall the credit allowed
17 under this subdivision for any taxable year reduce the tax due for such
18 year to less than the amount prescribed in paragraph (d) of subdivision
19 one of section two hundred ten of this article. However, if the amount
20 of credit allowed under this subdivision for any taxable year reduces
21 the tax to such amount, any amount of credit thus not deductible in such
22 taxable year shall be treated as an overpayment of tax to be credited or
23 refunded in accordance with the provisions of section one thousand
24 eighty-six of this chapter. Provided, however, the provisions of
25 subsection (c) of section one thousand eighty-eight of this chapter
26 notwithstanding, no interest shall be paid thereon.

27 40. Minimum wage reimbursement credit. (a) Allowance of credit. A
28 taxpayer shall be allowed a credit, to be computed as provided in

1 section thirty-eight of this chapter, against the tax imposed by this
2 article.

3 (b) Application of credit. The credit allowed under this subdivision
4 for any taxable year may not reduce the tax due for such year to less
5 than the amount prescribed in paragraph (d) of subdivision one of
6 section two hundred ten of this article. However, if the amount of cred-
7 it allowed under this subdivision for any taxable year reduces the tax
8 to such amount, any amount of credit thus not deductible in such taxable
9 year will be treated as an overpayment of tax to be credited or refunded
10 in accordance with the provisions of section one thousand eighty-six of
11 this chapter. Provided, however, the provisions of subsection (c) of
12 section one thousand eighty-eight of this chapter notwithstanding, no
13 interest will be paid thereon.

14 41. The tax-free NY area tax elimination credit. A taxpayer shall be
15 allowed a credit to be computed as provided in section forty of this
16 chapter, against the tax imposed by this article. Unless the taxpayer
17 has a tax-free NY area allocation factor of one hundred percent, the
18 credit allowed under this subdivision for any taxable year shall not
19 reduce the tax due for such year to less than the amount prescribed in
20 paragraph (d) of subdivision one of section two hundred ten of this
21 article. However, any amount of credit not deductible in such taxable
22 year shall be treated as an overpayment of tax to be credited or
23 refunded in accordance with the provisions of section one thousand
24 eighty-six of this chapter. Provided, however, the provisions of
25 subsection (c) of section one thousand eighty-eight of this chapter
26 notwithstanding, no interest shall be paid thereon.

27 42. Alternative base credit. (a) If the tax imposed on a taxpayer by
28 subdivision one of section two hundred nine of this article is the

1 amount prescribed in paragraph (b) of subdivision one of section two
2 hundred ten of this article, the taxpayer shall be allowed a credit
3 against the tax imposed under this article equal to the amount of tax
4 paid to another state computed on a tax base identical to the tax base
5 prescribed in such paragraph (b). If the tax imposed on a taxpayer by
6 subdivision one of section two hundred nine of this article is the
7 amount prescribed in paragraph (d) of subdivision one of section two
8 hundred ten of this article, the taxpayer shall be allowed a credit
9 against the tax imposed under this article equal to the amount of tax
10 paid to another state computed on a tax base identical to the tax base
11 prescribed in such paragraph (d).

12 (b) In no event shall the credit allowed under this subdivision for
13 any taxable year reduce the tax due for such year to less than the
14 amount prescribed in paragraph (d) of subdivision one of section two
15 hundred ten of this article. However, if the amount of credit allowed
16 under this subdivision for any taxable year reduces the tax to such
17 amount, any amount of credit thus not deductible in such taxable year
18 shall be carried over to the following year or years, and may be
19 deducted from the taxpayer's tax for such year or years.

20 43. Real property tax credit for manufacturers. (a) A qualified New
21 York manufacturer, as defined in subdivision fifteen of section two
22 hundred eight of this article, will be allowed a credit equal to twenty
23 percent of the real property tax it paid during the taxable year for
24 real property owned by such manufacturer in New York which was princi-
25 pally used during the taxable year for manufacturing to the extent not
26 deducted in determining entire net income. This credit will not be
27 allowed if the real property taxes that are the basis for this credit

1 are included in the calculation of another credit claimed by the taxpay-
2 er.

3 (b) For purposes of this subdivision, the term real property tax means
4 a charge imposed upon real property by or on behalf of a county, city,
5 town, village or school district for municipal or school district
6 purposes, provided that the charge is levied for the general public
7 welfare by the proper taxing authorities at a like rate against all
8 property over which such authorities have jurisdiction, and provided
9 that where taxes are levied pursuant to article eighteen or nineteen of
10 the real property tax law, the property must have been taxed at the rate
11 determined for the class in which it is contained, as provided by such
12 article eighteen or nineteen, whichever is applicable. The term real
13 property tax does not include a charge for local benefits, including any
14 portion of that charge that is properly allocated to the costs attribut-
15 able to maintenance or interest, when (1) the property subject to the
16 charge is limited to the property that benefits from the charge, or (2)
17 the amount of the charge is determined by the benefit to the property
18 assessed, or (3) the improvement for which the charge is assessed tends
19 to increase the property value. The term real property tax does not
20 include a payment in lieu of taxes made by the qualified New York
21 manufacturer.

22 (c) Credit recapture. Where a qualified New York manufacturer's real
23 property taxes which were the basis for the allowance of the credit
24 provided for under this subdivision are subsequently reduced as a result
25 of a final order in any proceeding under article seven of the real prop-
26 erty tax law or other provision of law, the taxpayer shall add back, in
27 the taxable year in which such final order is issued, the excess of (1)
28 the amount of credit originally allowed for a taxable year over (2) the

1 amount of credit determined based upon the reduced real property taxes.
2 If such final order reduces real property taxes for more than one year,
3 the taxpayer must determine how much of such reduction is attributable
4 to each year covered by such final order and calculate the amount of
5 credit which is required by this subdivision to be recaptured for each
6 year based on such reduction.

7 (d) The credit allowed under this subdivision for any taxable year
8 shall not reduce the tax due for such year to less than the amount
9 prescribed in paragraph (d) of subdivision one of section two hundred
10 ten of this chapter. However, any amount of credit not deductible in
11 such taxable year shall be treated as an overpayment of tax to be cred-
12 ited or refunded in accordance with the provisions of section one thou-
13 sand eighty-six of this chapter. Provided, however, the provisions of
14 subsection (c) of section one thousand eighty-eight of this chapter
15 notwithstanding, no interest shall be paid thereon.

16 44. The tax-free NY area excise tax on telecommunication services
17 credit. A taxpayer that is a business or owner of a business that is
18 located in a tax-free NY area approved pursuant to article twenty-one of
19 the economic development law shall be allowed a credit equal to the
20 excise tax on telecommunication services imposed by section one hundred
21 eighty-six-e of this chapter and passed through to such business during
22 the taxable year to the extent not otherwise deducted in computing tax
23 under this article. However, any amount of credit not deductible in such
24 taxable year shall be treated as an overpayment of tax to be credited or
25 refunded in accordance with the provisions of section one thousand
26 eighty-six of this chapter. This credit may be claimed only where any
27 tax imposed by such section one hundred eighty-six-e has been separately
28 stated on a bill from the provider of telecommunication services and

1 paid by such business during the taxable year. Unless the taxpayer has a
2 tax-free NY area allocation factor of one hundred percent, the credit
3 allowed under this subdivision for any taxable year shall not reduce the
4 tax due for such year to less than the amount prescribed in paragraph
5 (d) of subdivision one of section two hundred ten of this chapter.
6 Provided, however, the provisions of subsection (c) of section one thou-
7 sand eighty-eight of this chapter notwithstanding, no interest shall be
8 paid thereon.

9 45. Order of credits. (a) Credits allowable under this article which
10 cannot be carried over and which are not refundable shall be deducted
11 first. The credit allowable under subdivision six of this section shall
12 be deducted immediately after the deduction of all credits allowable
13 under this article which cannot be carried over and which are not
14 refundable, whether or not a portion of such credit is refundable.
15 Credits allowable under this article which can be carried over, and
16 carryovers of such credits, shall be deducted next after the deduction
17 of the credit allowable under subdivision six of this section, and among
18 such credits, those whose carryover is of limited duration shall be
19 deducted before those whose carryover is of unlimited duration. Credits
20 allowable under this article which are refundable (other than the credit
21 allowable under subdivision six of this section) shall be deducted last.

22 46. Notwithstanding the repeal of the credit provisions contained in
23 section two hundred ten of this article and the enactment of this
24 section by a chapter of the laws of two thousand fourteen:

25 (a) A taxpayer shall be allowed to utilize any carryforward amounts of
26 credits to which the taxpayer was entitled as of the close of the taxa-
27 ble year beginning on or after January first, two thousand fourteen and
28 before January first, two thousand fifteen, other than the carryforward

1 amount of the minimum tax credit provided under subdivision thirteen of
2 section two hundred ten, as that subdivision was in effect on December
3 thirty-first, two thousand fourteen.

4 (b) A taxpayer shall be required in a taxable year beginning on or
5 after January first, two thousand fifteen, to recapture all or a portion
6 of a credit allowed under a credit provision in section two hundred ten
7 for a taxable year beginning prior to January first, two thousand
8 fifteen if recapture would have been required under such credit
9 provision.

10 47. In any taxable year, a taxpayer must first claim any of the cred-
11 its specified in this section on its originally filed report for such
12 taxable year. A taxpayer shall not first claim a credit on an amended
13 report.

14 § 18. The tax law is amended by adding a new section 210-C to read as
15 follows:

16 § 210-C. Combined reports. 1. Tax. The tax on a combined report shall
17 be the highest of the products of (i) the combined business income base
18 multiplied by the tax rate specified in paragraph (a) of subdivision one
19 of section two hundred ten of this article; (ii) the combined capital
20 base multiplied by the tax rate specified in paragraph (b) of subdivi-
21 sion one of section two hundred ten of this article, but not exceeding
22 the limitation provided for in that paragraph (b); or (iii) the fixed
23 dollar minimum that is attributable to the designated agent of the
24 combined group. In addition, the tax on a combined report shall include
25 the fixed dollar minimum tax specified in paragraph (d) of subdivision
26 one of section two hundred ten of this article for each member of the
27 combined group, other than the designated agent, that is a taxpayer.

1 (b) The combined business income base is the amount of the combined
2 business income of the combined group that is apportioned to the state,
3 reduced by any net operating loss deduction for the combined group. The
4 combined capital base is the amount of the combined capital of the
5 combined group that is apportioned to the state.

6 2. Combined reports required. (a) Except as provided in paragraph (c)
7 of this subdivision, any taxpayer (i) which owns or controls either
8 directly or indirectly more than fifty percent of the capital stock of
9 one or more other corporations, or (ii) more than fifty percent of the
10 capital stock of which is owned or controlled either directly or indi-
11 rectly by one or more other corporations, or (iii) more than fifty
12 percent of the capital stock of which and the capital stock of one or
13 more other corporations, is owned or controlled, directly or indirectly,
14 by the same interests, and (iv) that is engaged in a unitary business
15 with those corporations, shall make a combined report with those other
16 corporations.

17 (b) A corporation required to make a combined report within the mean-
18 ing of this section shall also include (i) a captive REIT and a captive
19 RIC if the captive REIT or captive RIC is not required to be included in
20 a combined report under article thirty-three of this chapter; (ii) a
21 combinable captive insurance company; and (iii) an alien corporation
22 that satisfies the conditions in paragraph (a) of this subdivision if
23 (I) under any provision of the internal revenue code, that corporation
24 is treated as a "domestic corporation" as defined in section seven thou-
25 sand seven hundred one of the internal revenue code, or (II) it has
26 effectively connected income for the taxable year pursuant to clause
27 (iv) of the opening paragraph of subdivision nine of section two hundred
28 eight of this article.

1 (c) A corporation required or permitted to make a combined report
2 under this section does not include (i) a corporation that is taxable
3 under article nine or thirty-three of this chapter; (ii) a REIT that is
4 not a captive REIT, and a RIC that is not a captive RIC; (iii) a New
5 York S corporation; (iv) a corporation that is subject to tax under this
6 article solely as a result of its ownership of a limited partner inter-
7 est in a limited partnership that is doing business, employing capital,
8 owning or leasing property, maintaining an office in this state, or
9 deriving receipts from activity in this state, provided that the corpo-
10 ration is not otherwise required to file a combined report pursuant to
11 this section; or (v) an alien corporation that has no effectively
12 connected income for the taxable year pursuant to clause (iv) of the
13 opening paragraph of subdivision nine of section two hundred eight of
14 this article.

15 (d) A combined report shall be filed by the designated agent of the
16 combined group as determined under subdivision seven of this section.

17 3. Commonly owned group election. (a) Subject to the provisions of
18 paragraph (c) of subdivision two of this section, a taxpayer may elect
19 to treat as its combined group all corporations that meet the ownership
20 requirements described in paragraph (a) of subdivision two of this
21 section (such corporations collectively referred to in this subdivision
22 as the "commonly owned group"). If that election is made, the commonly
23 owned group shall calculate the combined business income, combined capi-
24 tal, and fixed dollar minimum bases of all members of the group in
25 accordance with paragraph four of this subdivision, whether or not that
26 business income or business capital is from a single unitary business.

27 (b) The election under this subdivision shall be made on an original,
28 timely filed return of the combined group. Any corporation entering a

1 commonly owned group subsequent to the year of election shall be
2 included in the combined group and is considered to have waived any
3 objection to its inclusion in the combined group.

4 (c) The election shall be irrevocable, and binding for and applicable
5 to the taxable year for which it is made and for the next six taxable
6 years. The election will automatically be renewed for another seven
7 taxable years after it has been in effect for seven taxable years unless
8 it is affirmatively revoked. The revocation shall be made on an
9 original, timely filed return for the first taxable year after the
10 completion of a seven year period for which an election under this
11 subdivision was in place. In the case of a revocation, a new election
12 under this subdivision shall not be permitted in any of the immediately
13 following three taxable years. In determining the seven and three year
14 periods described in this paragraph, short taxable years shall not be
15 considered or counted.

16 4. Computation of tax bases on a combined report. (a) In computing the
17 tax bases for a combined report, the combined group shall generally be
18 treated as a single corporation, except as otherwise provided, and
19 subject to any regulations or guidance issued by the commissioner or the
20 department.

21 (b)(i) In computing combined business income, all intercorporate divi-
22 dends shall be eliminated, and all other intercorporate transactions
23 shall be deferred in a manner similar to the rules relating to intercom-
24 pany transactions under section fifteen hundred two of the internal
25 revenue code.

26 (ii) In computing combined capital, all intercorporate stockholdings,
27 intercorporate bills, intercorporate notes receivable and payable,

1 intercorporate accounts receivable and payable, and other intercorporate
2 indebtedness, shall be eliminated.

3 (c) Qualification for credits, including any limitations thereon,
4 shall be determined separately for each of the members of the combined
5 group, and shall not be determined on a combined group basis, except as
6 otherwise provided. However, the credits shall be applied against the
7 combined tax of the group.

8 (d)(i) A net operating loss deduction is allowed in computing the
9 combined business income base. Such deduction may reduce the tax on the
10 combined business income base to the higher of the tax on the combined
11 capital base or the fixed dollar minimum. A combined net operating loss
12 deduction is equal to the amount of combined net operating loss or loss-
13 es from one or more taxable years that are carried forward to a partic-
14 ular income year. A combined net operating loss is the combined business
15 loss incurred in a particular taxable year multiplied by the combined
16 apportionment fraction for that year determined as provided in subdivi-
17 sion five of this section.

18 (ii) The combined net operating loss deduction and combined net oper-
19 ating loss are also subject to the provisions contained in clauses one
20 through six of subparagraph (viii) of paragraph (a) of subdivision one
21 of section two hundred ten of this article.

22 (iii) In the case of a corporation that files a combined report,
23 either in the year the net operating loss is incurred or in the year in
24 which a deduction is claimed on account of the loss, the combined net
25 operating loss deduction is determined as if the combined group is a
26 single corporation and is subject to the same limitations that would
27 apply for federal income tax purposes under the internal revenue code
28 and the code of federal regulations as if such corporation had filed for

1 such taxable year a consolidated federal income tax return with the same
2 corporations included in the combined report. If a corporation files a
3 combined report, regardless of whether it filed a separate return or
4 consolidated return for federal income tax purposes, the net operating
5 loss and net operating loss deduction for the combined group must be
6 computed as if the corporation had filed a consolidated return for the
7 same corporations for federal income tax purposes.

8 (iv) In general, any net operating loss carryover from a year in which
9 a combined report was filed shall be based on the combined net operating
10 loss of the group of corporations filing such report. The portion of the
11 combined loss attributable to any member of the group that files a sepa-
12 rate report for a succeeding taxable year will be an amount bearing the
13 same relation to the combined loss as the net operating loss of such
14 corporation bears to the total net operating loss of all members of the
15 group having such losses to the extent that they are taken into account
16 in computing the combined net operating loss.

17 (e) Any election made pursuant to paragraph (b) of subdivision six,
18 and paragraphs (b) and (c) of subdivision six-a of section two hundred
19 eight of this article shall apply to all members of the combined group.

20 (f)(i) In the case of a captive REIT or captive RIC required under
21 this section to be included in a combined report, entire net income
22 shall be computed as required under subdivision five (in the case of a
23 captive REIT) or subdivision seven (in the case of a captive RIC) of
24 section two hundred nine of this article. However, the deduction under
25 the internal revenue code for dividends paid by the captive REIT or
26 captive RIC to any member of the affiliated group that includes the
27 corporation that directly or indirectly owns over fifty percent of the
28 voting stock of the captive REIT or captive RIC shall not be allowed.

1 For purposes of this subparagraph, the term "affiliated group" means
2 "affiliated group" as defined in section fifteen hundred four of the
3 internal revenue code, but without regard to the exceptions provided for
4 in subsection (b) of that section.

5 (ii) In the case of a combinable captive insurance company required
6 under this section to be included in a combined report, entire net
7 income shall be computed as required by subdivision nine of section two
8 hundred eight of this article.

9 5. Apportionment on a combined report. (a) In determining the appor-
10 tionment factor for a combined report, the receipts, net income, net
11 gains and other items of all members of the combined group, whether or
12 not they are a taxpayer, are included and intercorporate receipts,
13 income and gains are eliminated. Receipts, net income, net gains and
14 other items are sourced as provided in section two hundred ten-a of this
15 article.

16 (b) An election made to apportion income and gains from qualifying
17 financial instruments pursuant to subparagraph one of paragraph (a) of
18 subdivision five of section two hundred ten-a of this article shall
19 apply to all members of the combined group.

20 6. Liability of combined group members. Every member of the combined
21 group that is subject to tax under this article shall be jointly and
22 severally liable for the tax due pursuant to a combined report.

23 7. Designated agent. Each combined group shall have one designated
24 agent, which shall be a taxpayer. The designated agent is the parent
25 corporation of the combined group. If there is no such parent corpo-
26 ration, or the parent corporation is not a taxpayer, then another member
27 of the combined group that is a taxpayer may be appointed as the desig-

1 nated agent. Only the designated agent may act on behalf of the members
2 of the combined group for matters relating to the combined report.

3 § 19. Subdivisions 2-a, 3, 4 and 5 of section 211 of the tax law,
4 subdivision 2-a as added and subdivision 5 as amended by chapter 817 of
5 the laws of 1987, subdivision 3 as amended by chapter 770 of the laws of
6 1992, subdivision 4 as amended by section 2 of part T of chapter 407 of
7 the laws of 1999, the opening paragraph and the second undesignated
8 paragraph of paragraph (a) of subdivision 4 as amended by section 1,
9 subparagraph 4 of paragraph (a) of subdivision 4 as amended by section
10 2, and subparagraph 5 of paragraph (a) of subdivision 4 as amended by
11 section 3 of part J of chapter 60 of the laws of 2007, subparagraph 6 of
12 paragraph (a) of subdivision 4 as added by section 3 of part FF1 of
13 chapter 57 of the laws of 2008, subparagraph 7 of paragraph (a) of
14 subdivision 4 as added by section 2 and subparagraph 1 of paragraph (b)
15 of subdivision 4 as amended by section 3 of part E1 of chapter 57 of the
16 laws of 2009, are amended to read as follows:

17 2-a. The [tax commission] commissioner may prescribe regulations and
18 instructions requiring returns of information to be made and filed in
19 conjunction with the reports required to be filed pursuant to [section
20 two hundred eleven] this article, relating to payments made to share-
21 holders owning, directly or indirectly, individually or in the aggre-
22 gate, more than fifty percent of the issued capital stock of the taxpay-
23 er, where such payments are treated as payments of interest in the
24 computation of entire net income [or minimum taxable income] reported on
25 such reports.

26 3. If the amount of taxable income [or alternative minimum taxable
27 income] for any year of any taxpayer (including any taxpayer which has
28 elected to be taxed under subchapter s of chapter one of the internal

1 revenue code), as returned to the United States treasury department is
2 changed or corrected by the commissioner of internal revenue or other
3 officer of the United States or other competent authority, or where a
4 renegotiation of a contract or subcontract with the United States
5 results in a change in taxable income [or alternative minimum taxable
6 income], such taxpayer shall report such changed or corrected taxable
7 income [or alternative minimum taxable income], or the results of such
8 renegotiation, within ninety days (or one hundred twenty days, in the
9 case of a taxpayer making a combined report under this article for such
10 year) after the final determination of such change or correction or
11 renegotiation, or as required by the commissioner, and shall concede the
12 accuracy of such determination or state wherein it is erroneous. The
13 allowance of a tentative carryback adjustment based upon a net operating
14 loss carryback or net capital loss carryback pursuant to section sixty-
15 four hundred eleven of the internal revenue code, as amended, shall be
16 treated as a final determination for purposes of this subdivision. Any
17 taxpayer filing an amended return with such department shall also file
18 within ninety days (or one hundred twenty days, in the case of a taxpay-
19 er making a combined report under this article for such year) thereafter
20 an amended report with the commissioner.

21 4. [(a) Combined reports permitted or required. Any taxpayer, which
22 owns or controls either directly or indirectly substantially all the
23 capital stock of one or more other corporations, or substantially all
24 the capital stock of which is owned or controlled either directly or
25 indirectly by one or more other corporations or by interests which own
26 or control either directly or indirectly substantially all the capital
27 stock of one or more other corporations, (hereinafter referred to in
28 this paragraph as "related corporations"), shall make a combined report

1 covering any related corporations if there are substantial intercorpo-
2 rate transactions among the related corporations, regardless of the
3 transfer price for such intercorporate transactions. It is not necessary
4 that there be substantial intercorporate transactions between any one
5 corporation and every other related corporation. It is necessary, howev-
6 er, that there be substantial intercorporate transactions between the
7 taxpayer and a related corporation or collectively, a group of such
8 related corporations. The report shall set forth such information as the
9 commissioner may require, subject to the provisions of subparagraphs one
10 through five of this paragraph.

11 In determining whether there are substantial intercorporate trans-
12 actions, the commissioner shall consider and evaluate all activities and
13 transactions of the taxpayer and its related corporations. Activities
14 and transactions that will be considered include, but are not limited
15 to: (i) manufacturing, acquiring goods or property, or performing
16 services, for related corporations; (ii) selling goods acquired from
17 related corporations; (iii) financing sales of related corporations;
18 (iv) performing related customer services using common facilities and
19 employees for related corporations; (v) incurring expenses that benefit,
20 directly or indirectly, one or more related corporations, and (vi)
21 transferring assets, including such assets as accounts receivable,
22 patents or trademarks from one or more related corporations.

23 (1) Any corporation which owns or controls either directly or indi-
24 rectly substantially all the capital stock of a DISC not exempt from tax
25 under paragraph (i) of subdivision nine of section two hundred eight of
26 this article shall be allowed, at the election of such corporation, to
27 make a report on a combined basis covering such DISC, but the failure of
28 such corporation to make such election shall not prohibit the commis-

1 sioner from requiring a combined report covering such corporation and
2 such DISC.

3 (2)(i) No taxpayer may be permitted to make a report on a combined
4 basis covering any such other corporations where such taxpayer or any
5 such other corporation allocates in accordance with clause (A) of
6 subparagraph seven of paragraph (a) of subdivision three of section two
7 hundred ten of this article (relating to aviation corporations) and such
8 taxpayer or any such other corporation does not so allocate, unless such
9 taxpayer or such other corporation is a qualified air freight forwarder
10 with respect to such other corporation or such taxpayer, respectively,
11 and all taxpayers included on such combined report elect, by filing such
12 combined report, to have such qualified air freight forwarder so
13 included.

14 (ii) A corporation is a qualified air freight forwarder with respect
15 to another corporation:

16 (A) if it owns or controls either directly or indirectly all of the
17 capital stock of such other corporation, or if all of its capital stock
18 is owned or controlled either directly or indirectly by such other
19 corporation, or if all of the capital stock of both corporations is
20 owned or controlled either directly or indirectly by the same interests,

21 (B) if it is principally engaged in the business of air freight
22 forwarding, and

23 (C) if its air freight forwarding business is carried on principally
24 with the airline or airlines operated by such other corporation.

25 (3) No taxpayer may be permitted to make a report on a combined basis
26 covering any such other corporations where such taxpayer or any such
27 other corporation allocates in accordance with subparagraph eight of
28 paragraph (a) of subdivision three of section two hundred ten of this

1 article (relating to railroad and trucking corporations) and such
2 taxpayer or any such other corporation does not so allocate.

3 (4) Except as provided in the first undesignated paragraph of this
4 paragraph, no combined report covering any corporation shall be required
5 unless the commissioner deems such a report necessary, because of
6 inter-company transactions or some agreement, understanding, arrangement
7 or transaction referred to in subdivision five of this section, in order
8 properly to reflect the tax liability under this article.

9 (5) A corporation organized under the laws of a country other than the
10 United States shall not be required or permitted to make a report on a
11 combined basis.

12 (6) (i) For purposes of this subparagraph, the term "closest control-
13 ling stockholder" means the corporation that indirectly owns or controls
14 over fifty percent of the voting stock of a captive REIT or captive RIC,
15 is subject to tax under this article, article thirty-two or thirty-three
16 of this chapter or otherwise required to be included in a combined
17 return or report under this article, article thirty-two or thirty-three
18 of this chapter, and is the fewest tiers of corporations away in the
19 ownership structure from the captive REIT or captive RIC. The commis-
20 sioner is authorized to prescribe by regulation or published guidance
21 the criteria for determining the closest controlling stockholder.

22 (ii) A captive REIT or a captive RIC must be included in a combined
23 report with the corporation that directly owns or controls over fifty
24 percent of the voting stock of the captive REIT or captive RIC if that
25 corporation is subject to tax or required to be included in a combined
26 report under this article.

27 (iii) If over fifty percent of the voting stock of a captive REIT or
28 captive RIC is not directly owned or controlled by a corporation that is

1 subject to tax or required to be included in a combined report under
2 this article, then the captive REIT or captive RIC must be included in a
3 combined return or report with the corporation that is the closest
4 controlling stockholder of the captive REIT or captive RIC. If the clos-
5 est controlling stockholder of the captive REIT or captive RIC is
6 subject to tax or otherwise required to be included in a combined report
7 under this article, then the captive REIT or captive RIC must be
8 included in a combined report under this article.

9 (iv) If the corporation that directly owns or controls the voting
10 stock of the captive REIT or captive RIC is described in subparagraph
11 two, three or five of this paragraph as a corporation not permitted to
12 make a combined report, then the provisions in clause (iii) of this
13 subparagraph must be applied to determine the corporation in whose
14 combined return or report the captive REIT or captive RIC should be
15 included. If, under clause (iii) of this subparagraph, the corporation
16 that is the closest controlling stockholder of the captive REIT or
17 captive RIC is described in subparagraph two, three or five of this
18 paragraph as a corporation not permitted to make a combined return, then
19 that corporation is deemed to not be in the ownership structure of the
20 captive REIT or captive RIC, and the closest controlling stockholder
21 will be determined without regard to that corporation.

22 (v) If a captive REIT owns the stock of a qualified REIT subsidiary
23 (as defined in paragraph two of subsection (i) of section eight hundred
24 fifty-six of the internal revenue code), then the qualified REIT subsid-
25 iary must be included in a combined report with the captive REIT.

26 (vi) If a captive REIT or a captive RIC is required under this subpar-
27 agraph to be included in a combined report with another corporation, and
28 that other corporation is also required to be included in a combined

1 report with another related corporation or corporations under this para-
2 graph, then the captive REIT or the captive RIC must be included in that
3 combined report with those corporations.

4 (vii) If a captive REIT or a captive RIC is not required to be
5 included in a combined report with another corporation under clause (ii)
6 or (iii) of this subparagraph, or in a combined return under the
7 provisions of either subparagraph (v) of paragraph two of subsection (f)
8 of section fourteen hundred sixty-two or paragraph four of subdivision
9 (f) of section fifteen hundred fifteen of this chapter, then the captive
10 REIT or captive RIC is subject to the opening provisions of this para-
11 graph and the provisions of subparagraph four of this paragraph. The
12 captive REIT or captive RIC must be included in a combined report under
13 this article with another corporation if either the substantial inter-
14 corporate transactions requirement in the opening provisions of this
15 paragraph or the inter-company transactions or agreement, understanding,
16 arrangement or transaction requirement of subparagraph four of this
17 paragraph is satisfied and more than fifty percent of the voting stock
18 of the captive REIT or the captive RIC and substantially all of the
19 capital stock of that other corporation are owned and controlled,
20 directly or indirectly, by the same corporation.

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

1 commissioner is authorized to prescribe by regulation or published guid-
2 ance the criteria for determining the closest controlling stockholder.

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

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

19 (iv) If the corporation that directly owns or controls the voting
20 stock of the overcapitalized captive insurance company is described in
21 subparagraph two, three, or five of this paragraph as a corporation not
22 permitted to make a combined report, then the provisions in clause (iii)
23 of this subparagraph must be applied to determine the corporation in
24 whose combined return or report the overcapitalized captive insurance
25 company should be included. If, under clause (iii) of this subparagraph,
26 the corporation that is the closest controlling stockholder of the over-
27 capitalized captive insurance company is described in subparagraph two,
28 three or five of this paragraph as a corporation not permitted to make a

1 combined return, then that corporation is deemed not to be in the owner-
2 ship structure of the overcapitalized captive insurance company, and the
3 closest controlling stockholder will be determined without regard to
4 that corporation.

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

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

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

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

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

26 (2) Tax bases. In computing combined entire net income, combined mini-
27 mum taxable income or combined pre-nineteen hundred ninety minimum taxa-
28 ble income intercorporate dividends shall be eliminated, in computing

1 combined business and investment capital intercorporate stockholdings
2 and intercorporate bills, notes and accounts receivable and payable and
3 other intercorporate indebtedness shall be eliminated and in computing
4 combined subsidiary capital intercorporate stockholdings shall be elimi-
5 nated, provided, however, that intercorporate dividends from a DISC or a
6 former DISC not exempt from tax under paragraph (i) of subdivision nine
7 of section two hundred eight of this article which are taxable as busi-
8 ness income under this article shall not be eliminated.

9 (3) Air freight forwarders: allocation. Notwithstanding any provision
10 of law to the contrary, where a combined report includes a qualified air
11 freight forwarder and a corporation described in subparagraph seven of
12 paragraph (a) of subdivision three of section two hundred ten of this
13 chapter (relating to aviation corporations), in computing the combined
14 business allocation percentage such subparagraph seven shall be applied
15 with respect to such qualified air freight forwarder] For provisions
16 relating to combined reports, see section two hundred ten-c of this
17 article.

18 5. In case it shall appear to the [tax commission] commissioner that
19 any agreement, understanding or arrangement exists between the taxpayer
20 and any other corporation or any person or firm, whereby the activity,
21 business, income or capital of the taxpayer within the state is improv-
22 erly or inaccurately reflected, the [tax commission] commissioner is
23 authorized and empowered, in [its] the commissioner's discretion and in
24 such manner as [it] the commissioner may determine, to adjust items of
25 income, deductions and capital, and to eliminate assets in computing any
26 [allocation] apportionment percentage provided only that any income
27 directly traceable thereto be also excluded from entire net income,
28 [minimum taxable income or pre-nineteen hundred ninety minimum taxable

1 income,] so as equitably to determine the tax. Where (a) any taxpayer
2 conducts its activity or business under any agreement, arrangement or
3 understanding in such manner as either directly or indirectly to benefit
4 its members or stockholders, or any of them, or any person or persons
5 directly or indirectly interested in such activity or business, by
6 entering into any transaction at more or less than a fair price which,
7 but for such agreement, arrangement or understanding, might have been
8 paid or received therefor, or (b) any taxpayer, a substantial portion of
9 whose capital stock is owned either directly or indirectly by another
10 corporation, enters into any transaction with such other corporation on
11 such terms as to create an improper loss or net income, the [tax commis-
12 sion] commissioner may include in the entire net income[, minimum taxa-
13 ble income or pre-nineteen hundred ninety minimum taxable income] of the
14 taxpayer the fair profits which, but for such agreement, arrangement or
15 understanding, the taxpayer might have derived from such transaction.
16 Where any taxpayer owns, directly or indirectly, more than fifty percent
17 of the capital stock of another corporation subject to tax under section
18 fifteen hundred two-a of this chapter and fifty percent or less of whose
19 gross receipts for the taxable year consist of premiums, the commission-
20 er may include in the entire net income of the taxpayer, as a deemed
21 distribution, the amount of the net income of the other corporation that
22 is in excess of its net premium income.

23 § 19-a. Subdivision 13 of section 211 of the tax law is REPEALED.

24 § 20. Subdivision 11 of section 2 of the tax law, as added by section
25 1 of part E-1 of chapter 57 of the laws of 2009, is amended to read as
26 follows:

27 11. The term "[overcapitalized] combinable captive insurance company"
28 means an entity that is treated as an association taxable as a corpo-

1 ration under the internal revenue code (a) more than fifty percent of
2 the voting stock of which is owned or controlled, directly or indirect-
3 ly, by a single entity that is treated as an association taxable as a
4 corporation under the internal revenue code and not exempt from federal
5 income tax; (b) that is licensed as a captive insurance company under
6 the laws of this state or another jurisdiction; and (c) whose business
7 includes providing, directly and indirectly, insurance or reinsurance
8 covering the risks of its parent and/or members of its affiliated
9 group[; and (d) fifty percent or less of whose gross receipts for the
10 taxable year consist of premiums]. For purposes of this subdivision,
11 "affiliated group" has the same meaning as that term is given in section
12 1504 of the internal revenue code, except that the term "common parent
13 corporation" in that section is deemed to mean any person, as defined in
14 section 7701 of the internal revenue code[;] and references to "at least
15 eighty percent" in section 1504 of the internal revenue code are to be
16 read as "fifty percent or more;" section 1504 of the internal revenue
17 code is to be read without regard to the exclusions provided for in
18 subsection (b) of that section[; "premiums" has the same meaning as that
19 term is given in paragraph one of subdivision (c) of section fifteen
20 hundred ten of this chapter, except that it includes consideration for
21 annuity contracts and excludes any part of the consideration for insur-
22 ance, reinsurance or annuity contracts that do not provide bona fide
23 insurance, reinsurance or annuity benefits; and "gross receipts"
24 includes the amounts included in gross receipts for purposes of section
25 501(c) (15) of the internal revenue code, except that those amounts also
26 include all premiums as defined in this subdivision].

1 § 21. Subdivision (a) of section 1500 of the tax law, as separately
2 amended by section 1 of part B-1 and section 8 of part E-1 of chapter 57
3 of the laws of 2009, is amended to read as follows:

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

1 ance corporation" shall also include an unauthorized insurer operating
2 from an office within the state, pursuant to paragraph five of
3 subsection (b) of section one thousand one hundred one and subsection
4 (i) of section two thousand one hundred seventeen of the insurance law.
5 The term "insurance corporation" also includes a health maintenance
6 organization required to obtain a certificate of authority under article
7 forty-four of the public health law.

8 § 22. Subdivision (a) of section 1502-b of the tax law, as amended by
9 section 9 of part E-1 of chapter 57 of the laws of 2009 and as further
10 amended by section 104 of part A of chapter 62 of the laws of 2011, is
11 amended to read as follows:

12 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen
13 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen
14 hundred ten of this article, every captive insurance company licensed by
15 the superintendent of financial services pursuant to the provisions of
16 article seventy of the insurance law, other than the metropolitan trans-
17 portation authority and a public benefit corporation or not-for-profit
18 corporation formed by a city with a population of one million or more
19 pursuant to subsection (a) of section seven thousand five of the insur-
20 ance law, each of which is expressly exempt from the payment of fees,
21 taxes or assessments whether state or local, and other than [an overcap-
22 italized] combinable captive insurance company, shall, for the privilege
23 of exercising its corporate franchise, pay a tax on (1) all gross direct
24 premiums, less return premiums thereon, written on risks located or
25 resident in this state and (2) all assumed reinsurance premiums, less
26 return premiums thereon, written on risks located or resident in this
27 state. The rate of the tax imposed on gross direct premiums shall be
28 four-tenths of one percent on all or any part of the first twenty

1 million dollars of premiums, three-tenths of one percent on all or any
2 part of the second twenty million dollars of premiums, two-tenths of one
3 percent on all or any part of the third twenty million dollars of premi-
4 ums, and seventy-five thousandths of one percent on each dollar of
5 premiums thereafter. The rate of the tax on assumed reinsurance premiums
6 shall be two hundred twenty-five thousandths of one percent on all or
7 any part of the first twenty million dollars of premiums, one hundred
8 and fifty thousandths of one percent on all or any part of the second
9 twenty million dollars of premiums, fifty thousandths of one percent on
10 all or any part of the third twenty million dollars of premiums and
11 twenty-five thousandths of one percent on each dollar of premiums there-
12 after. The tax imposed by this section shall be equal to the greater of
13 (i) the sum of the tax imposed on gross direct premiums and the tax
14 imposed on assumed reinsurance premiums or (ii) five thousand dollars.

15 § 23. Paragraph 4 of subdivision (f) of section 1515 of the tax law,
16 as amended by section 16 of part FF-1 of chapter 57 of the laws of 2008,
17 is amended to read as follows:

18 (4) (i) For purposes of this paragraph, the term "closest controlling
19 stockholder" means the corporation that indirectly owns or controls over
20 fifty percent of the voting stock of a captive REIT or captive RIC, is
21 subject to tax under section fifteen hundred one of this article[,] or
22 article nine-A [or article thirty-two] of this chapter or required to be
23 included in a combined return or report under this article[,] or article
24 nine-A [or article thirty-two] of this chapter, and is the fewest tiers
25 of corporations away in the ownership structure from the captive REIT or
26 captive RIC. The commissioner is authorized to prescribe by regulation
27 or published guidance the criteria for determining the closest control-
28 ling stockholder.

1 (ii) A captive REIT or a captive RIC must be included in a combined
2 return with the corporation that directly owns or controls over fifty
3 percent of the voting stock of the captive REIT or captive RIC if that
4 corporation is a life insurance corporation and is subject to tax or
5 required to be included in a combined return under this article.

6 (iii) If over fifty percent of the voting stock of a captive REIT or
7 captive RIC is not directly owned or controlled by a life insurance
8 corporation that is subject to tax or required to be included in a
9 combined return under this article, [then the captive REIT or captive
10 RIC must be included in a combined report or return with the corporation
11 that is the closest controlling stockholder of the captive REIT or
12 captive RIC. If] and the closest controlling stockholder of the captive
13 REIT or captive RIC is a life insurance corporation that is subject to
14 tax or required to be included in a combined return under this article,
15 then the captive REIT or captive RIC must be included in a combined
16 return with the closest controlling stockholder under this article.

17 (iv) If a captive REIT owns the stock of a qualified REIT subsidiary
18 (as defined in paragraph two of subsection (i) of section eight hundred
19 fifty-six of the internal revenue code) and the captive REIT is required
20 to be included in a combined return under subparagraphs (ii) or (iii) of
21 this paragraph, then the qualified REIT subsidiary must be included in
22 any combined return required to be made by the captive REIT that owns
23 the stock of the qualified REIT subsidiary.

24 (v) If a captive REIT or a captive RIC is required under this para-
25 graph to be included in a combined return with another corporation, and
26 that other corporation is required to be included in a combined return
27 with another [related] corporation under this subdivision, then the

1 captive REIT or the captive RIC must be included in that combined return
2 with the other [related] corporation.

3 § 24. Subdivisions (a), (b) and (c) of section 12 of the tax law, as
4 added by chapter 615 of the laws of 1998, are amended to read as
5 follows:

6 (a) For purposes of subdivision (b) of this section, the term "person"
7 shall mean a corporation, joint stock company or association, insurance
8 corporation, or banking corporation, as such terms are defined in
9 section one hundred eighty-three, one hundred eighty-four, or one
10 hundred eighty-six, or in article nine-A[, thirty-two] or thirty-three
11 of this chapter, imposing tax on such entities.

12 (b) No person shall be subject to the taxes imposed under section one
13 hundred eighty-three, one hundred eighty-four or one hundred eighty-six,
14 or article nine-A[, thirty-two] or thirty-three of this chapter, solely
15 by reason of (1) having its advertising stored on a server or other
16 computer equipment located in this state (other than a server or other
17 computer equipment owned or leased by such person), or (2) having its
18 advertising disseminated or displayed on the Internet by an individual
19 or entity subject to tax under section one hundred eighty-three, one
20 hundred eighty-four or one hundred eighty-six, or article nine-A, twen-
21 ty-two[, thirty-two] or thirty-three of this chapter.

22 (c) A person, as such term is defined in subdivision (a) of section
23 eleven hundred one of this chapter, shall not be deemed to be a vendor,
24 for purposes of article twenty-eight of this chapter, solely by reason
25 of (1) having its advertising stored on a server or other computer
26 equipment located in this state (other than a server or other computer
27 equipment owned or leased by such person), or (2) having its advertising
28 disseminated or displayed on the Internet by an individual or entity

1 subject to tax under section one hundred eighty-three, one hundred
2 eighty-four or one hundred eighty-six, or article nine-A, twenty-two[,
3 thirty-two] or thirty-three of this chapter.

4 § 25. Paragraph 1 of subdivision (a) of section 14 of the tax law, as
5 amended by section 3 of part V1 of chapter 109 of the laws of 2006, is
6 amended to read as follows:

7 (1) except as provided in paragraphs one-a and one-b of this subdivi-
8 sion, for purposes of section one hundred eighty-seven-j and articles
9 nine-A, twenty-two[, thirty-two] and thirty-three of this chapter, for
10 each of the taxable years within the "business tax benefit period,"
11 which period shall consist of (A) in the case of a business enterprise
12 with a test date occurring on or before December thirty-first, two thou-
13 sand one, the first fifteen taxable years beginning on or after January
14 first, two thousand one, (B) in the case of a business enterprise with a
15 test date occurring on or after January first, two thousand two, but
16 prior to April first, two thousand five, the fifteen taxable years next
17 following the business enterprise's test year, and (C) in the case of a
18 business enterprise which is first certified under article eighteen-B of
19 the general municipal law on or after April first, two thousand five,
20 the ten taxable years starting with the taxable year in which the busi-
21 ness enterprise's first date of certification under article eighteen-B
22 of the general municipal law occurs, but only with respect to each of
23 such business tax benefit period years for which the employment test is
24 met,

25 § 26. Subdivision (f) of section 14 of the tax law, as amended by
26 section 10 of part CC of chapter 85 of the laws of 2002, is amended to
27 read as follows:

1 (f) Taxable year. The term "taxable year" means the taxable year of
2 the business enterprise under section one hundred eighty-three, one
3 hundred eighty-four, one hundred eighty-five or former section one
4 hundred eighty-six of article nine, or under article nine-A, twenty-
5 two[, thirty-two] or thirty-three of this chapter. If a business enter-
6 prise does not have a taxable year because it is exempt from taxation or
7 otherwise not required to file a return under any of such sections of
8 article nine or under article nine-A, twenty-two[, thirty-two] or thir-
9 ty-three, then the term "taxable year" means (i) the business enter-
10 prise's federal taxable year, or, (ii) if the enterprise does not have a
11 federal taxable year, the calendar year.

12 § 27. Paragraph 1 of subdivision (i) of section 14 of the tax law, as
13 amended by section 5 of part A of chapter 63 of the laws of 2005, is
14 amended to read as follows:

15 (1) for purposes of section one hundred eighty-seven-j of article
16 nine, and articles nine-A, twenty-two[, thirty-two] and thirty-three of
17 this chapter, on the first day of the taxable year during which revoca-
18 tion of its certification under article eighteen-B of the general munic-
19 ipal law occurs, and

20 § 28. Paragraphs 1 and 2 of subdivision (j) of section 14 of the tax
21 law, as amended by section 10 of part CC of chapter 85 of the laws of
22 2002, are amended to read as follows:

23 (1) A new business shall include any corporation, except a corporation
24 which is substantially similar in operation and in ownership to a busi-
25 ness entity (or entities) taxable, or previously taxable, under section
26 one hundred eighty-three, one hundred eighty-four, one hundred eighty-
27 five or one hundred eighty-six of article nine; article nine-A[, article
28 thirty-two] or thirty-three of this chapter; article twenty-three of

1 this chapter or which would have been subject to tax under such article
2 twenty-three (as such article was in effect on January first, nineteen
3 hundred eighty), article thirty-two of this chapter or which would have
4 been subject to tax under such article thirty-two (as such article was
5 in effect on December thirty-first, two thousand fourteen) or the income
6 (or losses) of which is (or was) includable under article twenty-two of
7 this chapter.

8 (2) For purposes of article twenty-two of this chapter, an individual
9 who is either a sole proprietor or a member of a partnership shall qual-
10 ify as an owner of a new business unless the business of which the indi-
11 vidual is an owner is substantially similar in operation and in owner-
12 ship to a business entity taxable, or previously taxable, under section
13 one hundred eighty-three, one hundred eighty-four, one hundred eighty-
14 five or one hundred eighty-six of article nine; article nine-A[, thir-
15 ty-two] or article thirty-three of this chapter; article twenty-three of
16 this chapter or which would have been subject to tax under such article
17 twenty-three (as such article was in effect on January first, nineteen
18 hundred eighty); article thirty-two of this chapter or which would have
19 been subject to tax under such article thirty-two as such article was in
20 effect on December thirty-first, two thousand ten or the income (or
21 losses) of which is (or was) includable under article twenty-two.

22 § 29. Clauses (i) and (ii) of subparagraph (A) of paragraph 4 of
23 subdivision (j) of section 14 of the tax law, as added by section 5 of
24 part A of chapter 63 of the laws of 2005, are amended to read as
25 follows:

26 (i) Notwithstanding paragraphs one and two of this subdivision, a new
27 business shall include any corporation which is identical in operation
28 and ownership to a business entity (or entities) taxable under section

1 one hundred eighty-three, one hundred eighty-four or one hundred eight-
2 y-five of article nine; article nine-A[, article thirty-two] or thirty-
3 three of this chapter or the income (or losses) of which is includable
4 under article twenty-two of this chapter, provided such corporation and
5 such business entity or entities are operating in different counties in
6 the state.

7 (ii) Notwithstanding paragraphs one and two of this subdivision, an
8 individual who is either a sole proprietor or a member of a partnership
9 shall qualify as an owner of a new business if the business of which the
10 individual is an owner is identical in operation and in ownership to a
11 business entity (or entities) taxable under section one hundred eighty-
12 three, one hundred eighty-four or one hundred eighty-five of article
13 nine; article nine-A[, article thirty-two] or thirty-three of this chap-
14 ter or the income (or losses) of which is includable under article twen-
15 ty-two of this chapter, provided such business and such business entity
16 or entities are operating in different counties in the state.

17 § 30. Subparagraph (B) of paragraph 4 of subdivision (j) of section 14
18 of the tax law, as amended by chapter 161 of the laws of 2005, is
19 amended to read as follows:

20 (B) Notwithstanding any provisions of this subdivision to the contrary
21 and notwithstanding subdivision c of section eighteen of part CC of
22 chapter eighty-five of the laws of two thousand two, a corporation or
23 partnership, which was first certified under article eighteen-B of the
24 general municipal law before August first, two thousand two, has a base
25 period of zero years or zero employment for its base period, and is
26 similar in operation and in ownership to a business entity or entities
27 taxable, or previously taxable, under sections specified in paragraph
28 one or two of this subdivision or which would have been subject to tax

1 under article twenty-three of this chapter (as such article was in
2 effect on January first, nineteen hundred eighty) or which would have
3 been subject to tax under article thirty-two of this chapter (as such
4 article was in effect on December thirty-first, two thousand fourteen)
5 or the income or losses of which is or was includable under article
6 twenty-two of this chapter shall not be deemed a new business if it was
7 not formed for a valid business purpose, as such term is defined in
8 clause (D) of subparagraph one of paragraph (o) of subdivision nine of
9 section two hundred eight of this chapter and was formed solely to gain
10 empire zone benefits.

11 § 31. Subdivision (k) of section 14 of the tax law, as amended by
12 section 5 of part A of chapter 63 of the laws of 2005, is amended to
13 read as follows:

14 (k) If the designation of an area as an empire zone is no longer in
15 effect because section nine hundred sixty-nine of the general municipal
16 law was not amended to extend the effective date of such designation so
17 that the designations of all empire zones pursuant to article eighteen-B
18 of the general municipal law have expired, a business enterprise that
19 was certified pursuant to article eighteen-B of the general municipal
20 law on the day immediately preceding the day on which such designation
21 expired shall be deemed to continue to be certified under such article
22 eighteen-B for purposes of this section, and sections fifteen, sixteen,
23 section one hundred eighty-seven-j, subdivisions [twenty-seven] five and
24 [twenty-eight] six of section two hundred [ten] ten-b, subsections (bb)
25 and (cc) of section six hundred six, subdivision (z) of section eleven
26 hundred fifteen[, subsections (o) and (p) of section fourteen hundred
27 fifty-six,] and subdivisions (r) and (s) of section fifteen hundred
28 eleven of this chapter. In addition, if the designation of an area as an

1 empire zone is no longer in effect because section nine hundred sixty-
2 nine of the general municipal law was not amended to extend the effec-
3 tive date of such designation so that the designations of all empire
4 zones pursuant to article eighteen-B of the general municipal law have
5 expired, all references to empire zones in the provisions of this chap-
6 ter listed in the previous sentence shall be read as meaning areas
7 designated as empire zones on the day immediately preceding the day on
8 which such designation expired.

9 § 32. Subdivisions (a) and (h) of section 15 of the tax law, as
10 amended by section 5 of part A of chapter 63 of the laws of 2005, are
11 amended to read as follows:

12 (a) Allowance of credit. A taxpayer which is a qualified empire zone
13 enterprise (QEZE), or which is a sole proprietor of a QEZE or a member
14 of a partnership which is a QEZE, and which is subject to tax under
15 article nine-A, twenty-two[, thirty-two] or thirty-three of this chap-
16 ter, shall be allowed a credit against such tax, pursuant to the
17 provisions referenced in subdivision (h) of this section, for eligible
18 real property taxes.

19 (h) Definitions and cross-references. For definitions of terms used in
20 this section see section fourteen of this article. For application of
21 the credit provided for in this section, see the following provisions of
22 this chapter:

23 (1) Article 9: Section 187-j.

24 (2) Article 9-A: Section [210] 210-B: subdivision [27] 5.

25 (3) Article 22: Section 606: subsections (i) and (bb).

26 (4) [Article 32: Section 1456: subsection (o).

27 (5)] Article 33: Section 1511: subdivision (r).

1 § 33. Subdivision (a) of section 16 of the tax law, as added by
2 section 2 of part GG of chapter 63 of the laws of 2000, is amended to
3 read as follows:

4 (a) Allowance of credit. A taxpayer which is a qualified empire zone
5 enterprise (QEZE), or which is a sole proprietor of a QEZE or a member
6 of a partnership which is a QEZE, and which is subject to tax under
7 article nine-A, twenty-two[, thirty-two] or thirty-three of this chap-
8 ter, shall be allowed a credit against such tax, pursuant to the
9 provisions referenced in subdivision (g) of this section, to be computed
10 as hereinafter provided.

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

15 (1) General. The tax factor shall be, in the case of article nine-A of
16 this chapter, the [larger of the amounts] amount of tax determined for
17 the taxable year under [paragraphs] paragraph (a) [and (c)] of subdivi-
18 sion one of section two hundred ten of such article. The tax factor
19 shall be, in the case of article twenty-two of this chapter, the tax
20 determined for the taxable year under subsections (a) through (d) of
21 section six hundred one of such article. [The tax factor shall be, in
22 the case of article thirty-two of this chapter, the larger of the
23 amounts of tax determined for the taxable year under subsection (a) and
24 paragraph two of subsection (b) of section fourteen hundred fifty-five
25 of such article.] The tax factor shall be, in the case of article thir-
26 ty-three of this chapter, the larger of the amounts of tax determined
27 for the taxable year under paragraphs one and three of subdivision (a)
28 of section fifteen hundred two of such article.

1 (ii) For purposes of article nine-A[, thirty-two or thirty-three] of
2 this chapter, the term "partner's income from the partnership" means
3 partnership items of income, gain, loss and deduction, and New York
4 modifications thereto, entering into [entire net] business income[,
5 minimum taxable income, alternative entire net income or entire net
6 income plus compensation] and the term "partner's entire income" means
7 [entire net] business income[, minimum taxable income, alternative
8 entire net income or entire net income plus compensation,] allocated
9 within the state. For purposes of article thirty-three of this chapter,
10 the term "partner's income from the partnership" means partnership items
11 of income, gain, loss and deduction, and New York modifications thereto,
12 entering into entire net income or entire net income plus compensation
13 and the term "partner's entire income" means entire net income, or
14 entire net income plus compensation, allocated within the state. For
15 purposes of article twenty-two of this chapter, the term "partner's
16 income from the partnership" means partnership items of income, gain,
17 loss and deduction, and New York modifications thereto, entering into
18 New York adjusted gross income, and the term "partner's entire income"
19 means New York adjusted gross income.

20 (A) Where the taxpayer is a qualified empire zone enterprise and is
21 required or permitted to make a return or report on a combined basis
22 under article nine-A[, thirty-two] or article thirty-three of this chap-
23 ter, the taxpayer's tax factor shall be the amount determined in para-
24 graph one of this subdivision which is attributable to the income of the
25 qualified empire zone enterprise. Such attribution shall be made in
26 accordance with the ratio of the qualified empire zone enterprise's
27 income allocated within the state to the combined group's income, or in
28 accordance with such other methods as the commissioner may prescribe as

1 providing an apportionment which reasonably reflects the portion of the
2 combined group's tax attributable to the income of the qualified empire
3 zone enterprise. In no event may the ratio so determined exceed 1.0.

4 § 35. Subdivision (g) of section 16 of the tax law, as added by
5 section 2 of part GG of chapter 63 of the laws of 2000, is amended to
6 read as follows:

7 (g) Definitions and cross-references. For definitions of terms used in
8 this section see sections fourteen and fifteen of this article. For
9 application of the credit provided for in this section, see the follow-
10 ing provisions of this chapter:

11 (1) Article 9-A: Section [210] 210-B: subdivision [28]6.

12 (2) Article 22: Section 606: subsections (i) and (cc).

13 (3) [Article 32: Section 1456: subsection (p).

14 (4)] Article 33: Section 1511: subdivision (s).

15 § 36. Paragraph 1 of subdivision (b) of section 17 of the tax law, as
16 added by section 43 of part S1 of chapter 57 of the laws of 2009, is
17 amended to read as follows:

18 (1) The empire zones tax benefits report must contain the following
19 information about the empire zone tax credits claimed under articles
20 nine, nine-A, twenty-two[, thirty-two] and thirty-three of this chapter
21 during the previous calendar year:

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

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

24 § 37. Subdivisions (a) and (d) of section 18 of the tax law, as added
25 by section 2 of part CC of chapter 63 of the laws of 2000, are amended
26 to read as follows:

27 (a) Allowance of credit. A taxpayer subject to tax under article
28 nine-A, twenty-two[, thirty-two] or thirty-three of this chapter shall

1 be allowed a credit against such tax, pursuant to the provisions refer-
2 enced in subdivision (d) of this section, with respect to the ownership
3 of eligible low-income buildings for which an eligibility statement has
4 been issued by the commissioner of housing and community renewal. The
5 amount of the credit shall be the credit amount for each such building
6 allocated by such commissioner as provided in article two-A of the
7 public housing law. The credit amount shall be allowed for each of the
8 ten taxable years in the credit period, and any reduction in first-year
9 credit as provided in subdivision two of section twenty-two of such law
10 shall be allowed in the eleventh taxable year.

11 (d) Cross-references. For application of the credit provided for in
12 this section, see the following provisions of this chapter:

13 (1) Article 9-A: Section [210] 210-B: subdivision [30] 15,

14 (2) Article 22: Section 606: subsections (i) and (x),

15 (3) [Article 32: Section 1456: subsection (1),

16 (4)] Article 33: Section 1511: subdivision (n).

17 § 38. Subparagraph (A) of paragraph 1 of subdivision (a) and subdivi-
18 sion (f) of section 19 of the tax law, as added by section 2 of part II
19 of chapter 63 of the laws of 2000, are amended to read as follows:

20 (A) Green building credit. A taxpayer subject to tax under article
21 nine, nine-A, twenty-two[, thirty-two] or thirty-three of this chapter
22 shall be allowed a green building credit against such tax, pursuant to
23 the provisions referenced in subdivision (f) of this section. Provided,
24 however, no credit shall be allowed under this section unless the
25 taxpayer has complied with the applicable requirements of paragraph two
26 of subdivision (d) of this section (relating to reports to DEC). The
27 amount of the credit shall be the sum of the credit components specified
28 in paragraphs two through seven of this subdivision. Provided, however,

1 the amount of each such credit component shall not exceed the limit set
2 forth in the initial credit component certificate obtained pursuant to
3 subdivision (c) of this section. In the determination of such credit
4 components, no cost paid or incurred by the taxpayer shall be the basis
5 for more than one such component.

6 (f) Cross-references. For application of the credit provided for in
7 this section, see the following provisions of this chapter:

8 (1) Article nine: Section one hundred eighty-seven-d;

9 (2) Article nine-A: Subdivision [thirty-one] sixteen of section two
10 hundred [ten] ten-B;

11 (3) Article twenty-two: Subsections (i) and (y) of section six hundred
12 six;

13 (4) [Article thirty-two: Subsection (m) of section fourteen hundred
14 fifty-six;

15 (5)] Article thirty-three: Subdivision (o) of section fifteen hundred
16 eleven.

17 § 39. Paragraphs 1 and 5 of subdivision (a) of section 21 of the tax
18 law, as amended by section 1 of part H of chapter 577 of the laws of
19 2004, are amended to read as follows:

20 (1) General. A taxpayer subject to tax under article nine, nine-A,
21 twenty-two[, thirty-two] or thirty-three of this chapter shall be
22 allowed a credit against such tax, pursuant to the provisions referenced
23 in subdivision (f) of this section. Such credit shall be allowed with
24 respect to a qualified site, as such term is defined in paragraph one of
25 subdivision (b) of this section. The amount of the credit in a taxable
26 year shall be the sum of the credit components specified in paragraphs
27 two, three and four of this subdivision applicable in such year.

1 (5) Applicable percentage. For purposes of paragraphs two, three and
2 four of this subdivision, the applicable percentage shall be twelve
3 percent in the case of credits claimed under article nine, nine-A[,
4 thirty-two] or thirty-three of this chapter, and ten percent in the case
5 of credits claimed under article twenty-two of this chapter, except that
6 where at least fifty percent of the area of the qualified site relating
7 to the credit provided for in this section is located in an environ-
8 mental zone as defined in paragraph six of subdivision (b) of this
9 section, the applicable percentage shall be increased by an additional
10 eight percent. Provided, however, as afforded in section 27-1419 of the
11 environmental conservation law, if the certificate of completion indi-
12 cates that the qualified site has been remediated to Track 1 as that
13 term is described in subdivision four of section 27-1415 of the environ-
14 mental conservation law, the applicable percentage set forth in the
15 first sentence of this paragraph shall be increased by an additional two
16 percent.

17 § 39-a. Subdivisions (c) and (f) of section 21 of the tax law, as
18 added by section 1 of part H of chapter 1 of the laws of 2003, are
19 amended to read as follows:

20 (c) Qualifying property. Property which qualifies for the credit
21 provided for under this section and also for a credit provided for (1)
22 under either subdivision [twelve] one or subdivision [twelve-B] three of
23 section two hundred [ten] ten-B of this chapter, or both, or (2)
24 subsection (a) or subsection (j) of section six hundred six of this
25 chapter, or both[, (3) the credit provided for under subsection (i) of
26 section fourteen hundred fifty-six of this chapter, or (4) the credit
27 provided under subdivision (q) of section fifteen hundred eleven of this
28 chapter] may be the basis for either the credit provided for under this

1 section or one of the credits enumerated in paragraph one[,] or two[,]
2 three or four] of this subdivision, but not both.

3 (f) Cross-references. For application of the credit provided for in
4 this section, see the following provisions of this chapter:

5 (1) Article 9: Section 187-g

6 (2) Article 9-A: Section [210] 210-B, subdivision [33] 17

7 (3) Article 22: Section 606, subsections (i) and (dd)

8 (4) [Article 32: Section 1456, subsection (q)

9 (5)] Article 33: Section 1511, subdivision (u).

10 § 40. Paragraph 3 of subdivision (a) and paragraphs 1 and 9 of subdi-
11 vision (b) of section 22 of the tax law, as amended by section 4 of part
12 H of chapter 577 of the laws of 2004, are amended to read as follows:

13 (3) Developer. (i) A "developer" is a taxpayer under article nine,
14 nine-A, twenty-two[, thirty-two] or thirty-three of this chapter who or
15 which either (I) has been issued a certificate of completion with
16 respect to a qualified site or (II) has purchased or in any other way
17 has been conveyed all or any portion of a qualified site from a taxpayer
18 or any other party who or which has been issued a certificate of
19 completion with respect to such site provided, such purchase or convey-
20 ance occurs within seven years of the effective date of the certificate
21 of completion issued with respect to such qualified site. Provided
22 further, that the taxpayer who or which is purchasing all or any portion
23 of a qualified site and the taxpayer or any other party who or which has
24 been issued a certificate of completion with respect to such site may
25 not be related persons, as such term is defined in subparagraph (C) of
26 paragraph three of subsection (b) of section four hundred sixty-five of
27 the internal revenue code.

1 (ii) Where the entity to whom a certificate of completion has been
2 issued is a partnership, or where the entity which has purchased all or
3 any portion of a qualified site from a taxpayer who or which has been
4 issued a certificate of completion with respect to such site within the
5 applicable time limit is a partnership, any partner in such partnership
6 who or which is taxable under article nine, nine-A, twenty-two[, thir-
7 ty-two] or thirty-three of this chapter shall be a developer under this
8 paragraph. Where the entity to whom a certificate of completion has been
9 issued is a New York S corporation, or where the entity which has
10 purchased all or any portion of a qualified site from a taxpayer who or
11 which has been issued a certificate of completion with respect to such
12 site within the applicable time limit is a New York S corporation, any
13 shareholder in such New York S corporation shall be a developer under
14 this paragraph.

15 (1) Allowance of credit. A developer of a qualified site who or which
16 is subject to tax under article nine, nine-A, twenty-two[, thirty-two]
17 or thirty-three of this chapter, shall be allowed a credit against such
18 tax, pursuant to the provisions referenced in paragraph nine of this
19 subdivision, for eligible real property taxes imposed on such site.

20 (9) Cross-references. For application of the credit provided for in
21 this subdivision, see the following provisions of this chapter:

22 (i) Article 9: Section 187-h.

23 (ii) Article 9-A: Section [210] 210-B: subdivision [34] 18.

24 (iii) Article 22: Section 606: subsections (i) and (ee).

25 (iv) [Article 32: Section 1456: subsection (r).

26 (v)] Article 33: Section 1511: subdivision (v).

1 § 41. Subdivision (a) of section 23 of the tax law, as amended by
2 section 10 of part H chapter 577 of the laws of 2004, is amended to read
3 as follows:

4 (a) Allowance of credit. General. A taxpayer subject to tax under
5 article nine, nine-A, twenty-two[, thirty-two] or thirty-three of this
6 chapter shall be allowed a credit against such tax, pursuant to the
7 provisions referenced in subdivision (e) of this section. The amount of
8 such credit shall be equal to the lesser of thirty thousand dollars or
9 fifty percent of the premiums paid on or after the date of the brown-
10 field site cleanup agreement executed by the taxpayer and the department
11 of environmental conservation pursuant to section 27-1409 of the envi-
12 ronmental conservation law by the taxpayer for environmental remediation
13 insurance issued with respect to a qualified site.

14 § 42. Subdivision (e) of section 23 of the tax law, as added by
15 section 19 of part H of chapter 1 of the laws of 2003, is amended to
16 read as follows:

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

- 19 (1) Article 9: Section 187-i
- 20 (2) Article 9-A: Section [210] 210-B, subdivision [35] 19
- 21 (3) Article 22: Section 606, subsections (i) and (ff)
- 22 (4) [Article 32: Section 1456, subsection (s)
- 23 (5)] Article 33: Section 1511, subdivision (w).

24 § 43. Paragraphs 1 and 2 of subdivision (a) and clause (i) of subpara-
25 graph (D) of paragraph 1 of subdivision (b) of section 25 of the tax
26 law, as added by section 1 of part N of chapter 61 of the laws of 2005,
27 are amended to read as follows:

1 (1) Every taxpayer, or person as defined in section seven thousand
2 seven hundred one of the internal revenue code, required to file a
3 disclosure statement with the internal revenue service pursuant to
4 section six thousand eleven of the internal revenue code, or the regu-
5 lations promulgated thereunder, related to a reportable transaction or a
6 listed transaction, as those terms are defined in such section or regu-
7 lations, must attach a duplicate of such disclosure statement to the
8 return or report required to be filed by such taxpayer or person for the
9 taxable year under article nine, nine-A, twenty-two[, thirty-two] or
10 thirty-three of this chapter, and provide such other information related
11 to such disclosure as prescribed by the commissioner. Such disclosure
12 shall be made notwithstanding that one member of an affiliated group, as
13 defined by section fifteen hundred four of the internal revenue code,
14 may file such disclosure statement with the internal revenue service on
15 behalf of its affiliates including such taxpayer or person.

16 (2) Every taxpayer or such person who participates in a New York
17 reportable transaction for a taxable year must disclose such partic-
18 ipation with its return or report required to be filed under article
19 nine, nine-A, twenty-two[, thirty-two] or thirty-three of this chapter
20 for the taxable year in a form prescribed by the commissioner, and
21 provide such other information related to such transaction as prescribed
22 by the commissioner. A New York reportable transaction is a transaction
23 that has the potential to be a tax avoidance transaction as determined
24 by the commissioner.

25 (i) the list required to be maintained by such person pursuant to
26 section six thousand one hundred twelve of the internal revenue code
27 identifies or is required to identify a taxpayer subject to tax under

1 article nine, nine-A, twenty-two[, thirty-two] or thirty-three of this
2 chapter, and

3 § 44. Subdivisions (a) and (f) of section 26 of the tax law, as added
4 by chapter 537 of the laws of 2005, are amended to read as follows:

5 (a) Allowance of credit. A taxpayer, which is subject to tax under
6 article nine, nine-A, twenty-two[, thirty-two] or thirty-three of this
7 chapter and which is a qualified building owner, shall be allowed a
8 credit against such tax. The amount of the credit allowed under this
9 section shall equal the sum of the number of qualified security officers
10 providing protection to a building or buildings owned by the taxpayer
11 multiplied by three thousand dollars. Provided, however, that in the
12 case of a worker not so employed for a full year, such amount shall be
13 prorated to reflect the length of such employment under regulations of
14 the commissioner.

15 (f) Cross-references. For application of the credit provided for in
16 this section, see the following provisions of this chapter:

17 (1) article 9: section 187-n.

18 (2) article 9-A: section [210] 210-B: subdivision [37] 21.

19 (3) article 22: section 606: subsection (ii).

20 (4) [article 32: section 1456: subsection (t).

21 (5)] article 33: section 1511: subdivision (x).

22 § 45. Paragraph 3 of subdivision (a) and subdivision (c) of section 28
23 of the tax law, as added by section 2 of part V of chapter 62 of the
24 laws of 2006, are amended to read as follows:

25 (3) No qualified production costs used by a taxpayer either as the
26 basis for the allowance of the credit provided for under this section or
27 used in the calculation of the credit provided for under this section

1 shall be used by such taxpayer to claim any other credit allowed pursu-
2 ant to this chapter.

3 Notwithstanding any provisions of this section to the contrary, a
4 corporation or partnership, which otherwise qualifies as a qualified
5 commercial production company, and is similar in operation and in owner-
6 ship to a business entity or entities taxable, or previously taxable,
7 under section one hundred eighty-three, one hundred eighty-four or one
8 hundred eighty-five of article nine; article nine-A[, article thirty-
9 two] or thirty-three of this chapter or which would have been subject to
10 tax under article twenty-three of this chapter (as such article was in
11 effect on January first, nineteen hundred eighty) or which would have
12 been subject to tax under article thirty-two of this chapter (as such
13 article was in effect on December thirty-first, two thousand fourteen)
14 or the income or losses of which is or was includable under article
15 twenty-two of this chapter shall not be deemed a new or separate busi-
16 ness, and therefore shall not be eligible for empire state commercial
17 production benefits, if it was not formed for a valid business purpose,
18 as such term is defined in clause (D) of subparagraph one of paragraph
19 (o) of subdivision nine of section two hundred eight of this chapter and
20 was formed solely to gain empire state commercial production credit
21 benefits.

22 (c) Cross-references. For application of the credit provided for in
23 this section, see the following provision of this chapter:

24 (1) article 9-A: section [210] 210-B: subdivision [38] 23.

25 (2) article 22: section 606: subsection (jj).

26 § 46. Subdivision (d) of section 28 of the tax law, as added by
27 section 1 of part X of chapter 62 of the laws of 2006, is amended to
28 read as follows:

1 (d) Cross-references. For application of the credit provided for in
2 this section, see the following provisions of this chapter:

3 (1) Article 9: Section 187-c.

4 (2) Article 9-A: Section [210] 210-B, subdivision [38] 24.

5 (3) Article 22: Section 606, subsections (i) and (jj).

6 § 47. The opening paragraph of subdivision (a) and subdivisions (c)
7 and (g) of section 31 of the tax law, the opening paragraph of subdivi-
8 sion (a) and subdivision (g) as amended by section 7 of part G of chap-
9 ter 61 of the laws of 2011, subdivision (c) as added by section 2 of
10 part MM of chapter 59 of the laws of 2010, are amended to read as
11 follows:

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

18 (c) Election of credit. A taxpayer who or which is qualified to claim
19 the excelsior investment tax credit component and is also qualified to
20 claim the investment tax credit provided for under subdivision [twelve]
21 one of section two hundred [ten,] ten-B or subsection (a) of section six
22 hundred six[, or subsection (i) of section fourteen hundred fifty-six]
23 of this chapter, may claim either the excelsior investment tax credit
24 component or the investment tax credit, but not both with regard to a
25 particular piece of property. In addition, a taxpayer who or which is
26 qualified to claim the excelsior investment tax credit component and is
27 also qualified to claim the brownfield tangible property credit compo-
28 nent under section twenty-one of this article, as added by chapter one

1 of the laws of two thousand three, may claim either the excelsior
2 investment tax credit component or such tangible property credit compo-
3 nent, but not both with regard to a particular piece of property. The
4 election to claim the excelsior investment tax credit component, the
5 investment tax credit or the brownfield tangible property credit compo-
6 nent, with regard to the same property, is irrevocable.

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

9 (1) article 9: section 187-q.

10 (2) article 9-A: section [210] 210-B: subdivision [41] 31.

11 (3) article 22: section 606: subsection (qq).

12 (4) [article 32: section 1456: subsection (u).

13 (5)] article 33: section 1511: subdivision (y).

14 § 48. Subdivision (d) of section 31 of the tax law, as added by
15 section 12 of part Q of chapter 57 of the laws of 2010, is amended to
16 read as follows:

17 (d) Cross-references. For application of the credit provided for in
18 this section, see the following provisions of this chapter:

19 (1) article 9-A: section [210] 210-B: subdivision [41] 32.

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

21 § 49. Subdivision 3 of section 34 of the tax law, as added by section
22 2 of part Y of chapter 57 of the laws of 2010, is amended to read as
23 follows:

24 3. (a) For application of the temporary deferral nonrefundable payout
25 credit, see the following provisions of this chapter:

26 (1) Article 9: section 187-0

27 (2) Article 9-A: section [210(41)] 210-B(33)

28 (3) Article 22: section 606(qq)

1 (4) [Article 32: section 1456(v)

2 (5)] Article 33: section 1511(y)

3 (b) For application of the temporary deferral refundable payout cred-
4 it, see the following provisions of this chapter:

5 (1) Article 9: section 187-p

6 (2) Article 9-A: section [210(42)] 210-B(34)

7 (3) Article 22: section 606(rr)

8 (4) [Article 32: section 1456(w)

9 (5)] Article 33: section 1511(z)

10 § 50. The opening paragraph of subdivision (a), subparagraph (C) of
11 paragraph 2 of subdivision (e), and subdivision (f) of section 35 of the
12 tax law, as added by section 3 of part V of chapter 61 of the laws of
13 2011, are amended to read as follows:

14 A taxpayer which is a participant or the owner of a participant in the
15 economic transformation and facility redevelopment program under article
16 eighteen of the economic development law that is subject to tax under
17 section one hundred eighty-five of article nine, or article nine-A,
18 twenty-two[, thirty-two] or thirty-three of this chapter shall be
19 allowed the sum of following components against such tax, pursuant to
20 the provisions referenced in subdivision (f) of this section.

21 (C) the business entity must not be substantially similar in ownership
22 and operation to another taxpayer taxable or previously taxable under
23 section one hundred eighty-three, one hundred eighty-four or one hundred
24 eighty-five of article nine, former section one hundred eighty-six of
25 this chapter or article nine-A, twenty-two[, thirty-two] or thirty-three
26 of this chapter or former article thirty-two of this chapter or the
27 income or losses of which is or was includable under article twenty-two
28 of this chapter;

1 (f) Cross-references. For application of the credits provided for in
2 this section, see the following provisions of this chapter:

- 3 (1) section 185: section 187-r.
- 4 (2) article 9-A: section [210(43)] 210-B(35).
- 5 (3) article 22: section 606 (ss).
- 6 (4) [article 32: section 1456(x).
- 7 (5)] article 33: section 1511 (aa).

8 § 51. Subdivisions (a) and (e) of section 36 of the tax law, as added
9 by section 2 of part E of chapter 56 of the laws of 2011, are amended to
10 read as follows:

11 (a) Allowance of credit. A taxpayer subject to tax under article
12 nine-A, twenty-two[, thirty-two] or thirty-three of this chapter shall
13 be allowed a credit against such tax, pursuant to the provisions refer-
14 enced in subdivision (e) of this section. The amount of the credit,
15 allowable for ten consecutive tax years, is equal to the amount deter-
16 mined pursuant to section four hundred twenty-five of the economic
17 development law.

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

- 20 (1) article 9-A: section [210] 210-B, subdivision [44] 37;
- 21 (2) article 22: section 606, subsection (tt);
- 22 (3) [article 32: section 1456, subsection (y);
- 23 (4)] article 33, section 1511, subdivision (bb).

24 § 52. Subdivision (c) of section 37 of the tax law, as added by chap-
25 ter 109 of the laws of 2012, is amended to read as follows:

26 (c) Cross-references. For application of the credit provided for in
27 this section, see the following provisions of this chapter:

- 28 (1) Article 9-A: Section [210] 210-B, subdivision [45] 39.

1 (2) Article 22: Section 606, subsections (i) and (uu).

2 § 52-a. Subdivision (c) of section 39 of the tax law is REPEALED.

3 § 53. Paragraphs 2, 3 and 4 of subdivision (k) of section 39 of the
4 tax law, paragraphs 2 and 3 as added by section 2 of part A of chapter
5 68 of the laws of 2013, paragraph 4 as amended by section 2 of LBD
6 number 74039-02-4, are amended to read as follows:

7 [(2) Article 9: section 180, subdivision 3.

8 (3) Article 9: section 181, subdivision 3.]

9 (4) Article 9-A: section [210] 210-B, subdivision [47] 41 and subdivi-
10 sion [48] 44.

11 § 54. Subdivision 1 of section 171-a of the tax law, as amended by
12 section 1 of part R of chapter 60 of the laws of 2004, is amended to
13 read as follows:

14 1. All taxes, interest, penalties and fees collected or received by
15 the commissioner or the commissioner's duly authorized agent under arti-
16 cles nine (except section one hundred eighty-two-a thereof and except as
17 otherwise provided in section two hundred five thereof), nine-A,
18 twelve-A (except as otherwise provided in section two hundred eighty-
19 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
20 section three hundred twelve thereof), eighteen, nineteen, twenty
21 (except as otherwise provided in section four hundred eighty-two there-
22 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight
23 (except as otherwise provided in section eleven hundred two or eleven
24 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise
25 provided in section fourteen hundred twenty-one thereof), [thirty-two,]
26 thirty-three and thirty-three-A of this chapter shall be deposited daily
27 in one account with such responsible banks, banking houses or trust
28 companies as may be designated by the comptroller, to the credit of the

1 comptroller. Such an account may be established in one or more of such
2 depositories. Such deposits shall be kept separate and apart from all
3 other money in the possession of the comptroller. The comptroller shall
4 require adequate security from all such depositories. Of the total
5 revenue collected or received under such articles of this chapter, the
6 comptroller shall retain in the comptroller's hands such amount as the
7 commissioner may determine to be necessary for refunds or reimbursements
8 under such articles of this chapter [and article ten thereof] out of
9 which amount the comptroller shall pay any refunds or reimbursements to
10 which taxpayers shall be entitled under the provisions of such articles
11 of this chapter [and article ten thereof]. The commissioner and the
12 comptroller shall maintain a system of accounts showing the amount of
13 revenue collected or received from each of the taxes imposed by such
14 articles. The comptroller, after reserving the amount to pay such
15 refunds or reimbursements, shall, on or before the tenth day of each
16 month, pay into the state treasury to the credit of the general fund all
17 revenue deposited under this section during the preceding calendar month
18 and remaining to the comptroller's credit on the last day of such
19 preceding month, (i) except that the comptroller shall pay to the state
20 department of social services that amount of overpayments of tax imposed
21 by article twenty-two of this chapter and the interest on such amount
22 which is certified to the comptroller by the commissioner as the amount
23 to be credited against past-due support pursuant to subdivision six of
24 section one hundred seventy-one-c of this [chapter] article, (ii) and
25 except that the comptroller shall pay to the New York state higher
26 education services corporation and the state university of New York or
27 the city university of New York respectively that amount of overpayments
28 of tax imposed by article twenty-two of this chapter and the interest on

1 such amount which is certified to the comptroller by the commissioner as
2 the amount to be credited against the amount of defaults in repayment of
3 guaranteed student loans and state university loans or city university
4 loans pursuant to subdivision five of section one hundred seventy-one-d
5 and subdivision six of section one hundred seventy-one-e of this [chap-
6 ter] article, (iii) and except further that, notwithstanding any law,
7 the comptroller shall credit to the revenue arrearage account, pursuant
8 to section ninety-one-a of the state finance law, that amount of over-
9 payment of tax imposed by article nine, nine-A, twenty-two, thirty,
10 thirty-A, thirty-B[, thirty-two] or thirty-three of this chapter, and
11 any interest thereon, which is certified to the comptroller by the
12 commissioner as the amount to be credited against a past-due legally
13 enforceable debt owed to a state agency pursuant to paragraph (a) of
14 subdivision six of section one hundred seventy-one-f of this article,
15 provided, however, he shall credit to the special offset fiduciary
16 account, pursuant to section ninety-one-c of the state finance law, any
17 such amount creditable as a liability as set forth in paragraph (b) of
18 subdivision six of section one hundred seventy-one-f of this article,
19 (iv) and except further that the comptroller shall pay to the city of
20 New York that amount of overpayment of tax imposed by article nine,
21 nine-A, twenty-two, thirty, thirty-A, thirty-B[, thirty-two,] or thir-
22 ty-three of this chapter and any interest thereon that is certified to
23 the comptroller by the commissioner as the amount to be credited against
24 city of New York tax warrant judgment debt pursuant to section one
25 hundred seventy-one-l of this article, (v) and except further that the
26 comptroller shall pay to a non-obligated spouse that amount of overpay-
27 ment of tax imposed by article twenty-two of this chapter and the inter-
28 est on such amount which has been credited pursuant to section one

1 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-
2 one-e, one hundred seventy-one-f or one hundred seventy-one-l of this
3 article and which is certified to the comptroller by the commissioner as
4 the amount due such non-obligated spouse pursuant to paragraph six of
5 subsection (b) of section six hundred fifty-one of this chapter; and
6 (vi) the comptroller shall deduct a like amount which the comptroller
7 shall pay into the treasury to the credit of the general fund from
8 amounts subsequently payable to the department of social services, the
9 state university of New York, the city university of New York, or the
10 higher education services corporation, or the revenue arrearage account
11 or special offset fiduciary account pursuant to section ninety-one-a or
12 ninety-one-c of the state finance law, as the case may be, whichever had
13 been credited the amount originally withheld from such overpayment, and
14 (vii) with respect to amounts originally withheld from such overpayment
15 pursuant to section one hundred seventy-one-l of this article and paid
16 to the city of New York, the comptroller shall collect a like amount
17 from the city of New York.

18 § 55. Subdivision 2 of section 171-a of the tax law, as amended by
19 chapter 57 of the laws of 1993, is amended to read as follows:

20 2. Notwithstanding subdivision one of this section or any other
21 provision of law to the contrary, the taxes imposed pursuant to sections
22 one hundred eighty-three-a, one hundred eighty-four-a, [one hundred
23 eighty-six-b,] one hundred eighty-six-c, [one hundred eighty-nine-a,]
24 two hundred nine-B[, fourteen hundred fifty-five-b] and fifteen hundred
25 five-a of this chapter, reduced by an amount for administrative costs,
26 shall be deposited to the credit of the metropolitan mass transportation
27 operating assistance account in the mass transportation operating
28 assistance fund, created pursuant to section eighty-eight-a of the state

1 finance law, as such taxes are received. The amount for administrative
2 costs shall be determined by the commissioner to represent reasonable
3 costs of the department of taxation and finance in administering,
4 collecting, determining and distributing such taxes. Of the total reven-
5 ue collected or received under such sections of this chapter, the comp-
6 troller shall retain in his hands such amount as the commissioner may
7 determine to be necessary for refunds or reimbursements under such
8 sections of this chapter out of which amount the comptroller shall pay
9 any refunds or reimbursements to which taxpayers shall be entitled under
10 provisions of such sections. The tax commissioner and the comptroller
11 shall maintain a system of accounts showing the amount of revenue
12 collected or received from each of the taxes imposed by such sections.

13 § 56. Paragraphs (b) and (c) of subdivision 1 of section 171-f of the
14 tax law, as amended by chapter 81 of the laws of 1995, are amended to
15 read as follows:

16 (b) "taxpayer" shall mean a corporation, association, company, part-
17 nership, estate, trust, liquidator, fiduciary or other entity or indi-
18 vidual who or which is liable for any tax or other imposition imposed by
19 or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thir-
20 ty-B[, thirty-two,] or thirty-three of this chapter or article two-E of
21 the general city law, which tax or other imposition is administered by
22 the commissioner of taxation and finance, or who or which is under a
23 duty to perform an act under or pursuant to such tax or imposition,
24 excluding a state agency, a municipal corporation or a district corpo-
25 ration; and (c) "overpayment" shall mean an overpayment which has been
26 requested or determined to be refunded, a refund or a reimbursement, of
27 a tax or other imposition imposed by or pursuant to article nine,
28 nine-A, twenty-two, thirty, thirty-A, thirty-B[, thirty-two,] or thir-

1 ty-three of this chapter or article two-E of the general city law, which
2 is administered by the commissioner of taxation and finance.

3 § 57. Subdivision 2 of section 171-f of the tax law, as added by chap-
4 ter 55 of the laws of 1992, is amended to read as follows:

5 (2) The commissioner of taxation and finance, upon agreement with the
6 state comptroller and acting as an agent for the state comptroller,
7 shall set forth the procedures for crediting any overpayment by a
8 taxpayer of any tax or other imposition imposed by or authorized to be
9 imposed pursuant to article nine, nine-A, twenty-two, thirty, thirty-A,
10 thirty-B[, thirty-two,] or thirty-three of this chapter or article two-E
11 of the general city law, which is administered by the commissioner of
12 taxation and finance, and the interest on any such overpayments, against
13 the amount of a past-due legally enforceable debt owed by such taxpayer
14 to a state agency. An implementation plan shall be developed by the
15 division of the budget and the department of taxation and finance which
16 shall provide, but not be limited to, guidance with respect to coordi-
17 nation of debt collection pursuant to this section and subdivision twen-
18 ty-seventh of section one hundred seventy-one of this article. This
19 section shall not be deemed to abrogate or limit in any way the powers
20 and authority of the state comptroller to set off debts owed the state
21 against payments from the state, under the constitution of the state or
22 any other law.

23 § 58. Paragraphs (a) and (b) of subdivision 1 of section 171-1 of the
24 tax law, as added by section 6 of part R of chapter 60 of the laws of
25 2004, are amended to read as follows:

26 (a) "taxpayer" shall mean a corporation, association, company, part-
27 nership, estate, trust, liquidator, fiduciary or other entity or indi-
28 vidual who or which is liable for any tax or other imposition imposed by

1 or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thir-
2 ty-B[, thirty-two,] or thirty-three of this chapter, which tax or other
3 imposition is administered by the commissioner of taxation and finance,
4 or who or which is under a duty to perform an act under or pursuant to
5 such tax or imposition, excluding a state agency, a municipal corpo-
6 ration or a district corporation;

7 (b) "overpayment" shall mean an overpayment which has been requested
8 or determined to be refunded, a refund or a reimbursement, of a tax or
9 other imposition imposed by or pursuant to article nine, nine-A, twen-
10 ty-two, thirty, thirty-A, thirty-B[, thirty-two,] or thirty-three of
11 this chapter, which is administered by the commissioner of taxation and
12 finance; and

13 § 59. Paragraph (b) of subdivision 1 of section 183 of the tax law, as
14 amended by section 1 of part Y of chapter 63 of the laws of 2000, is
15 amended to read as follows:

16 (b) For the privilege of exercising its corporate franchise, or of
17 doing business, or of employing capital, or of owning or leasing proper-
18 ty in this state in a corporate or organized capacity, or of maintaining
19 an office in this state, every domestic corporation, joint-stock company
20 or association formed for or principally engaged in the conduct of
21 canal, steamboat, ferry (except a ferry company operating between any of
22 the boroughs of the city of New York under a lease granted by the city),
23 express, navigation, pipe line, transfer, baggage express, omnibus,
24 taxicab, telegraph, or telephone business, or formed for or principally
25 engaged in the conduct of two or more of such businesses, and every
26 domestic corporation, joint-stock company or association formed for or
27 principally engaged in the conduct of a railroad, palace car, sleeping
28 car or trucking business or formed for or principally engaged in the

1 conduct of two or more of such businesses and which has made an election
2 pursuant to subdivision ten of this section, and every other domestic
3 corporation, joint-stock company or association principally engaged in
4 the conduct of a transportation or transmission business, except a
5 corporation, joint-stock company or association formed for or principal-
6 ly engaged in the conduct of a railroad, palace car, sleeping car or
7 trucking business or formed for or principally engaged in the conduct of
8 two or more of such businesses and which has not made the election
9 provided for in subdivision ten of this section, and except a corpo-
10 ration, joint-stock company or association principally engaged in the
11 conduct of aviation (including air freight forwarders acting as princi-
12 pal and like indirect air carriers) and except a corporation principally
13 engaged in providing telecommunication services between aircraft and
14 dispatcher, aircraft and air traffic control or ground station and
15 ground station (or any combination of the foregoing), at least ninety
16 percent of the voting stock of which corporation is owned, directly or
17 indirectly, by air carriers and which corporation's principal function
18 is to fulfill the requirements of (i) the federal aviation adminis-
19 tration (or the successor thereto) or (ii) the international civil
20 aviation organization (or the successor thereto), relating to the exist-
21 ence of a communication system between aircraft and dispatcher, aircraft
22 and air traffic control or ground station and ground station (or any
23 combination of the foregoing) for the purposes of air safety and naviga-
24 tion [and except a corporation, joint-stock company or association
25 subject to taxation under article thirty-two of this chapter,] shall
26 pay, in advance, an annual tax to be computed upon the basis of the
27 amount of its capital stock within this state during the preceding year,
28 and upon each dollar of such amount. Provided, however, a corporation,

1 joint-stock company or association formed for or principally engaged in
2 the transportation, transmission or distribution of gas, electricity or
3 steam shall not be subject to tax under this section or section one
4 hundred eighty-four of this article.

5 § 60. Subdivision 10 of section 183 of the tax law, as added by chap-
6 ter 309 of the laws of 1996, is amended to read as follows:

7 10. Election. [With respect to taxable years beginning after nineteen
8 hundred ninety-seven, every] Every corporation, joint-stock company or
9 association formed for or principally engaged in the conduct of a rail-
10 road (including surface railroad, whether or not operated by steam,
11 subway railroad or elevated railroad), palace car, sleeping car or
12 trucking business or formed for or principally engaged in the conduct of
13 two or more of such businesses, which would be subject to article nine-A
14 [or thirty-two] of this chapter if the election provided for under this
15 subdivision were not made, may elect to be subject to the provisions of
16 this section and, as applicable, section one hundred eighty-four of this
17 article, rather than the provisions of such article nine-A [or thirty-
18 two]. [In the case of such a corporation, joint-stock company or associ-
19 ation subject to the tax imposed under this section and, as applicable,
20 section one hundred eighty-four of this article, for the taxable year
21 ending December thirty-first, nineteen hundred ninety-seven, such corpo-
22 ration, joint-stock company or association must make such election on or
23 before March fifteenth, nineteen hundred ninety-eight, and such election
24 shall apply to the taxable year ending on December thirty-first, nine-
25 teen hundred ninety-eight and to succeeding taxable years, until
26 revoked. In the case of such a corporation, joint-stock company or asso-
27 ciation which is not subject to the tax imposed under this section and,
28 as applicable, section one hundred eighty-four of this article for the

1 taxable year ending December thirty-first, nineteen hundred ninety-sev-
2 en, but thereafter would be subject to article nine-A or thirty-two of
3 this chapter if the election provided for under this subdivision were
4 not made, such] Such corporation, joint-stock company or association
5 must make such election by the first day on which such corporation,
6 joint-stock company or association would be required to file a return or
7 report (without regard to extensions) under this section or section one
8 hundred eighty-four of this article, or section one hundred eighty-
9 three-a or one hundred[-]eighty-four-a of this article, or article
10 nine-A [or thirty-two] of this chapter. An election made pursuant to
11 this subdivision shall continue to be in effect until revoked by the
12 taxpayer. A revocation of the election to be subject to this section
13 and, as applicable, section one hundred eighty-four of this article,
14 shall be irrevocable. Such election, and a revocation thereof, shall be
15 made in the manner prescribed by the commissioner, whether by regulation
16 or otherwise. Such revocation shall apply as of the first day of January
17 next following the end of a taxable year with respect to which the
18 taxpayer had been subject to this section and, as applicable, section
19 one hundred eighty-four of this article, by reason of an election made
20 pursuant to this subdivision.

21 § 61. The section heading and subdivisions 1 and 5 of section 183-a of
22 the tax law, the section heading as added by chapter 931 of the laws of
23 1982, subdivision 1 as amended by section 1 of part A of chapter 59 of
24 the laws of 2013 and subdivision 5 as amended by chapter 945 of the laws
25 of 1990, are amended to read as follows:

26 [Temporary metropolitan] Metropolitan transportation business tax
27 surcharge on transportation and transmission corporations and associ-
28 ations. 1. The term "corporation" as used in this section shall include

1 an association, within the meaning of paragraph three of subsection (a)
2 of section seventy-seven hundred one of the internal revenue code
3 (including a limited liability company), a publicly traded partnership
4 treated as a corporation for purposes of the internal revenue code
5 pursuant to section seventy-seven hundred four thereof and any business
6 conducted by a trustee or trustees wherein interest or ownership is
7 evidenced by certificates or other written instruments. Every corpo-
8 ration, joint-stock company or association formed for or principally
9 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-
10 ny operating between any of the boroughs of the city of New York under a
11 lease granted by the city), express, navigation, pipe line, transfer,
12 baggage express, omnibus, taxicab, telegraph, or telephone business, or
13 formed for or principally engaged in the conduct of two or more such
14 businesses, and every corporation, joint-stock company or association
15 formed for or principally engaged in the conduct of a railroad, palace
16 car, sleeping car or trucking business or formed for or principally
17 engaged in the conduct of two or more of such businesses and which has
18 made an election pursuant to subdivision ten of section one hundred
19 eighty-three of this article, and every other corporation, joint-stock
20 company or association principally engaged in the conduct of a transpor-
21 tation or transmission business, except a corporation, joint-stock
22 company or association formed for or principally engaged in the conduct
23 of a railroad, palace car, sleeping car or trucking business or formed
24 for or principally engaged in the conduct of two or more of such busi-
25 nesses and which has not made the election provided for in subdivision
26 ten of section one hundred eighty-three of this article, and except a
27 corporation, joint-stock company or association principally engaged in
28 the conduct of aviation (including air freight forwarders acting as

1 principal and like indirect air carriers) and except a corporation prin-
2 cipally engaged in providing telecommunication services between aircraft
3 and dispatcher, aircraft and air traffic control or ground station and
4 ground station (or any combination of the foregoing), at least ninety
5 percent of the voting stock of which corporation is owned, directly or
6 indirectly, by air carriers and which corporation's principal function
7 is to fulfill the requirements of (i) the federal aviation adminis-
8 tration (or the successor thereto) or (ii) the international civil
9 aviation organization (or the successor thereto), relating to the exist-
10 ence of a communication system between aircraft and dispatcher, aircraft
11 and air traffic control or ground station and ground station (or any
12 combination of the foregoing) for the purposes of air safety and naviga-
13 tion [and except a corporation, joint-stock company or association which
14 is liable to taxation under article thirty-two of this chapter], shall
15 pay for the privilege of exercising its corporate franchise, or of doing
16 business, or of employing capital, or of owning or leasing property in
17 the metropolitan commuter transportation district in such corporate or
18 organized capacity, or of maintaining an office in such district, a tax
19 surcharge [for all or any part of its years commencing on or after Janu-
20 ary first, nineteen hundred eighty-two but ending before December thir-
21 ty-first, two thousand eighteen], which tax surcharge, in addition to
22 the tax imposed by section one hundred eighty-three of this article,
23 shall be computed at the rate of [eighteen percent of the tax imposed
24 under such section one hundred eighty-three for such years or any part
25 of such years ending before December thirty-first, nineteen hundred
26 eighty-three after the deduction of any credits otherwise allowable
27 under this article, and at the rate of] seventeen percent of the tax
28 imposed under such section for such years or any part of such years

1 [ending on or after December thirty-first, nineteen hundred eighty-
2 three] after the deduction of any credits otherwise allowable under this
3 article; provided, however, that such rates of tax surcharge shall be
4 applied only to that portion of the tax imposed under section one
5 hundred eighty-three of this article after the deduction of any credits
6 otherwise allowable under this article which is attributable to the
7 taxpayer's business activity carried on within the metropolitan commuter
8 transportation district as so determined in the manner prescribed by the
9 rules and regulations promulgated by the commissioner[; and provided,
10 further, that the tax surcharge imposed by this section shall not be
11 imposed upon any taxpayer for more than four hundred thirty-two months].

12 5. [The report covering the tax surcharge which must be calculated
13 pursuant to this section based upon the tax reportable on the report due
14 by March fifteenth, nineteen hundred eighty-two under section one
15 hundred eighty-three of this article shall be filed on or before March
16 fifteenth, nineteen hundred eighty-three. The report covering the tax
17 surcharge which must be calculated pursuant to this section based upon
18 the tax reportable on the report due by March fifteenth, nineteen
19 hundred eighty-three under section one hundred eighty-three of this
20 article shall be filed on or before March fifteenth, nineteen hundred
21 eighty-four. The report covering the tax surcharge which must be calcu-
22 lated pursuant to this section based upon the tax reportable on the
23 report due by March fifteenth, nineteen hundred eighty-four under
24 section one hundred eighty-three of this article shall be filed on or
25 before March fifteenth, nineteen hundred eighty-five. The report cover-
26 ing the tax surcharge which must be calculated pursuant to this section
27 based upon the tax reportable on the report due by March fifteenth,
28 nineteen hundred eighty-five under section one hundred eighty-three of

1 this article shall be filed on or before March fifteenth, nineteen
2 hundred eighty-six. The report covering the tax surcharge which must be
3 calculated pursuant to this section based upon the tax reportable on the
4 report due by March fifteenth, nineteen hundred eighty-six under section
5 one hundred eighty-three of this article shall be filed on or before
6 March fifteenth, nineteen hundred eighty-seven. The report covering the
7 tax surcharge which must be calculated pursuant to this section based
8 upon the tax reportable on the report due by March fifteenth, nineteen
9 hundred eighty-seven under section one hundred eighty-three of this
10 article shall be filed on or before March fifteenth, nineteen hundred
11 eighty-eight. The report covering the tax surcharge which must be calcu-
12 lated pursuant to this section based upon the tax reportable on the
13 report due by March fifteenth, nineteen hundred eighty-eight under
14 section one hundred eighty-three of this article shall be filed on or
15 before March fifteenth, nineteen hundred eighty-nine. The report cover-
16 ing the tax surcharge which must be calculated pursuant to this section
17 based upon the tax reportable on the report due by March fifteenth,
18 nineteen hundred eighty-nine under section one hundred eighty-three of
19 this article shall be filed on or before March fifteenth, nineteen
20 hundred ninety.] The report covering the tax surcharge which must be
21 calculated pursuant to this section based upon the tax reportable on the
22 report due by March fifteenth of any year [subsequent to nineteen
23 hundred eighty-nine] under section one hundred eighty-three of this
24 article shall be filed on or before March fifteenth of the year next
25 succeeding such year. An extension pursuant to section one hundred nine-
26 ty-three of this article shall be allowed only if a taxpayer files with
27 the commissioner an application for extension in such form as said
28 commissioner may prescribe by regulation and pays on or before the date

1 of such filing in addition to any other amounts required under this
2 article, either ninety percent of the entire tax surcharge required to
3 be paid under this section for the applicable period, or not less than
4 the tax surcharge shown on the taxpayer's report for the preceding year,
5 if such preceding year consisted of twelve months. The tax surcharge
6 imposed by this section shall be payable to the commissioner in full at
7 the time the report is required to be filed, and such tax surcharge or
8 the balance thereof, imposed on any taxpayer which ceases to exercise
9 its franchise or be subject to the tax surcharge imposed by this section
10 shall be payable to the commissioner at the time the report is required
11 to be filed, provided such tax surcharge of a domestic corporation which
12 continues to possess its franchise shall be subject to adjustment as the
13 circumstances may require; all other tax surcharges of any such taxpay-
14 er, which pursuant to the foregoing provisions of this section would
15 otherwise be payable subsequent to the time such report is required to
16 be filed, shall nevertheless be payable at such time. All of the
17 provisions of this article presently applicable to section one hundred
18 eighty-three of this article are applicable to the tax surcharge imposed
19 by this section except for section one hundred ninety-two of this arti-
20 cle.

21 § 62. Subdivision 1 of section 184 of the tax law, as amended by
22 section 2 of part Y of chapter 63 of the laws of 2000, is amended to
23 read as follows:

24 1. The term "corporation" as used in this section shall include an
25 association, within the meaning of paragraph three of subsection (a) of
26 section seventy-seven hundred one of the internal revenue code (includ-
27 ing a limited liability company), a publicly traded partnership treated

1 as a corporation for purposes of the internal revenue code pursuant to
2 section seventy-seven hundred four thereof.

3 Every corporation, joint-stock company or association formed for or
4 principally engaged in the conduct of canal, steamboat, ferry (except a
5 ferry company operating between any of the boroughs of the city of New
6 York under a lease granted by the city), express, navigation, pipe line,
7 transfer, baggage express, omnibus, taxicab, telegraph or local tele-
8 phone business, or formed for or principally engaged in the conduct of
9 two or more of such businesses, and every corporation, joint-stock
10 company or association formed for or principally engaged in the conduct
11 of surface railroad, whether or not operated by steam, subway railroad,
12 elevated railroad, palace car, sleeping car or trucking business or
13 formed for or principally engaged in the conduct of two or more such
14 businesses and which has made an election pursuant to subdivision ten of
15 section one hundred eighty-three of this article, and every other corpo-
16 ration, joint-stock company or association formed for or principally
17 engaged in the conduct of a transportation or transmission business
18 (other than a telephone business), except a corporation, joint-stock
19 company or association formed for or principally engaged in the conduct
20 of a surface railroad, whether or not operated by steam, subway rail-
21 road, elevated railroad, palace car, sleeping car or trucking business
22 or formed for or principally engaged in the conduct of two or more of
23 such businesses and which has not made the election provided for in
24 subdivision ten of section one hundred eighty-three of this article,
25 and, except a corporation, joint-stock company or association principal-
26 ly engaged in the conduct of aviation (including air freight forwarders
27 acting as principal and like indirect air carriers) and except a corpo-
28 ration principally engaged in providing telecommunication services

1 between aircraft and dispatcher, aircraft and air traffic control or
2 ground station and ground station (or any combination of the foregoing),
3 at least ninety percent of the voting stock of which corporation is
4 owned, directly or indirectly, by air carriers and which corporation's
5 principal function is to fulfill the requirements of (i) the federal
6 aviation administration (or the successor thereto) or (ii) the interna-
7 tional civil aviation organization (or the successor thereto), relating
8 to the existence of a communication system between aircraft and
9 dispatcher, aircraft and air traffic control or ground station and
10 ground station (or any combination of the foregoing) for the purposes of
11 air safety and navigation and [except a corporation, joint-stock company
12 or association which is liable to taxation under article thirty-two of
13 this chapter,] for the privilege of exercising its corporate franchise,
14 or of doing business, or of employing capital, or of owning or leasing
15 property in this state in a corporate or organized capacity, or main-
16 taining an office in this state, shall pay a franchise tax which shall
17 be equal to [(i) three-quarters of one percent for taxable years ending
18 before two thousand one, provided that for a taxable year ending in two
19 thousand the rate shall be reduced to three-eighths of one percent
20 effective July first, two thousand with the result that for purposes of
21 implementation of such change in rate the applicable rate for such a
22 year shall be nine-sixteenths of one percent, and (ii)] three-eighths of
23 one percent for taxable years commencing after two thousand, upon its
24 gross earnings from all sources within this state; except that, [for
25 taxable years commencing on or after January first, nineteen hundred
26 eighty-five and ending on or before December thirty-first, nineteen
27 hundred eighty-nine, every corporation, joint-stock company or associ-
28 ation formed for or principally engaged in the conduct of telephone or

1 telegraph business shall pay a franchise tax which shall be equal to
2 three-tenths of one per centum upon its gross earnings from all sources
3 within this state and,] for taxable years commencing on or after January
4 first, nineteen hundred ninety, every corporation, joint-stock company
5 or association formed for or principally engaged in the conduct of local
6 telephone business, or telegraph business shall pay a franchise tax
7 which shall be equal to [(i) three-quarters of one percent for taxable
8 years ending before two thousand one, provided that for a taxable year
9 ending in two thousand the rate shall be reduced to three-eighths of one
10 percent effective July first, two thousand with the result that for
11 purposes of implementation of such change in rate the applicable rate
12 for such a year shall be nine-sixteenths of one percent, and (ii)]
13 three-eighths of one percent for taxable years commencing after two
14 thousand, upon its gross earnings from all sources within this state,
15 except that a corporation, joint-stock company or association formed for
16 or principally engaged in the conduct of a local telephone business
17 shall exclude the following earnings (but not in any event earnings
18 derived by such taxpayer from the provision of carrier access services)
19 derived by such taxpayer from sales for ultimate consumption of telecom-
20 munications service to its customers (i) thirty percent of separately
21 charged intra-LATA toll service (which shall also include interregion
22 regional calling plan service) and (ii) one hundred percent of separate-
23 ly charged inter-LATA, interstate or international telecommunications
24 service; and except that [corporations, joint-stock companies or associ-
25 ations formed for or principally engaged in the conduct of surface rail-
26 road, whether or not operated by steam, subway railroad, elevated rail-
27 road, palace car or sleeping car, business or any other corporation
28 formed for or principally engaged in the conduct of a railroad business,

1 for taxable years prior to nineteen hundred ninety-seven, and] corpo-
2 rations, joint-stock companies or associations formed for or principally
3 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-
4 ny operating between any of the boroughs of the city of New York under a
5 lease granted by the city), navigation or any corporation formed for or
6 principally engaged in the operation of vessels, shall pay a franchise
7 tax which shall be equal to three-quarters of one per centum upon its
8 gross earnings from all sources within this state, excluding earnings
9 derived from business of an interstate or foreign character; except that
10 for taxable years beginning in nineteen hundred ninety-seven or there-
11 after, in the case of a corporation, joint-stock company or association
12 which, with respect to taxable years beginning after nineteen hundred
13 ninety-seven, has made an election pursuant to subdivision ten of
14 section one hundred eighty-three of this article and which is formed for
15 or principally engaged in the conduct of surface railroad, whether or
16 not operated by steam, subway railroad, elevated railroad, palace car,
17 sleeping car or trucking business or formed for or principally engaged
18 in the conduct of two or more of such businesses, such corporation,
19 joint-stock company or association shall pay a franchise tax which shall
20 be equal to [(i) six-tenths of one percent for taxable years ending
21 before two thousand one, provided that for a taxable year ending in two
22 thousand the rate shall be reduced to three-eighths of one percent
23 effective July first, two thousand with the result that for purposes of
24 implementation of such change in rate the applicable rate for such a
25 year shall be thirty-nine eightieths of one percent, and (ii)] three-
26 eighths of one percent for taxable years commencing after two thousand,
27 upon its gross earnings from all sources within this state, provided
28 that in the case of a corporation, joint-stock company or association

1 formed for or principally engaged in the conduct of surface railroad,
2 whether or not operated by steam, subway railroad, elevated railroad,
3 palace car or sleeping car business, or formed for or principally
4 engaged in the conduct of two or more of such businesses, such gross
5 earnings shall not include earnings derived from business of an inter-
6 state or foreign character.

7 Provided, however, with respect to railroad, elevated railroad, palace
8 car or sleeping car business or any other corporation formed for or
9 principally engaged in the conduct of a railroad business and canal,
10 steamboat, ferry (except a ferry company operating between any of the
11 boroughs of the city of New York under a lease granted by the city),
12 navigation or any corporation formed for or principally engaged in the
13 operation of vessels where the gross earnings from such transportation
14 business both originating and terminating within this state and travers-
15 ing both this state and another state or states or country shall be
16 subject to the franchise tax imposed by this section (except where such
17 corporation, joint-stock company or association is formed for or princi-
18 pally engaged in the conduct of a railroad (including surface railroad,
19 whether or not operated by steam, subway railroad or elevated railroad),
20 palace car or sleeping car business or formed for or principally engaged
21 in the conduct of two or more of such businesses, and has not made the
22 election provided for under subdivision ten of section one hundred
23 eighty-three of this article) and such earnings shall be allocated to
24 this state in the same ratio that the mileage within the state bears to
25 the total mileage of such business. Provided, further, a corporation,
26 joint-stock company or association formed for or principally engaged in
27 the transportation, transmission or distribution of gas, electricity or

1 steam shall not be subject to tax under this section or section one
2 hundred eighty-three of this article.

3 The term "local telephone business" means the provision or furnishing
4 of telecommunication services for hire wherein the service furnished by
5 the provider thereof consists of carrier access service or the service
6 originates and terminates within the same local access and transport
7 area ("LATA"), a local access and transport area being that geographic
8 area as established and approved, and as so set and in existence on July
9 first, nineteen hundred ninety-four, pursuant to the modification of
10 final judgment in United States v. Western Electric Company (civil
11 action no. 82-0192) in the United States district court for the District
12 of Columbia or within the LATA-like Rochester non-associated independent
13 area.

14 The term "telecommunication services" shall have the meaning ascribed
15 to such term in section one hundred eighty-six-e of this article.

16 § 63. The section heading and the opening paragraph of subdivision 1
17 of section 184-a of the tax law, the section heading as added by chapter
18 931 of the laws of 1982 and the opening paragraph of subdivision 1 as
19 amended by section 2 of part A of chapter 59 of the laws of 2013, are
20 amended to read as follows:

21 Additional [temporary] metropolitan transportation business tax
22 surcharge on transportation and transmission corporations and associ-
23 ations services.

24 The term "corporation" as used in this section shall include an asso-
25 ciation, within the meaning of paragraph three of subsection (a) of
26 section seventy-seven hundred one of the internal revenue code (includ-
27 ing a limited liability company), and a publicly traded partnership
28 treated as a corporation for purposes of the internal revenue code

1 pursuant to section seventy-seven hundred four thereof. Every corpo-
2 ration, joint-stock company or association formed for or principally
3 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-
4 ny operating between any of the boroughs of the city of New York under a
5 lease granted by the city), express, navigation, pipe line, transfer,
6 baggage express, omnibus, taxicab, telegraph or local telephone busi-
7 ness, or formed for or principally engaged in the conduct of two or more
8 such businesses, and every corporation, joint-stock company or associ-
9 ation formed for or principally engaged in the conduct of a surface
10 railroad, whether or not operated by steam, subway railroad, elevated
11 railroad, palace car, sleeping car or trucking business or principally
12 engaged in the conduct of two or more such businesses and which has made
13 an election pursuant to subdivision ten of section one hundred eighty-
14 three of this article, and every other corporation, joint-stock company
15 or association formed for or principally engaged in the conduct of a
16 transportation or transmission business (other than a telephone busi-
17 ness) except a corporation, joint-stock company or association formed
18 for or principally engaged in the conduct of a surface railroad, whether
19 or not operated by steam, subway railroad, elevated railroad, palace
20 car, sleeping car or trucking business or principally engaged in the
21 conduct of two or more such businesses and which has not made the
22 election provided for in subdivision ten of section one hundred eighty-
23 three of this article, and except a corporation, joint-stock company or
24 association principally engaged in the conduct of aviation (including
25 air freight forwarders acting as principal and like indirect air carri-
26 ers) and except a corporation principally engaged in providing telecom-
27 munication services between aircraft and dispatcher, aircraft and air
28 traffic control or ground station and ground station (or any combination

1 of the foregoing), at least ninety percent of the voting stock of which
2 corporation is owned, directly or indirectly, by air carriers and which
3 corporation's principal function is to fulfill the requirements of (i)
4 the federal aviation administration (or the successor thereto) or (ii)
5 the international civil aviation organization (or the successor there-
6 to), relating to the existence of a communication system between
7 aircraft and dispatcher, aircraft and air traffic control or ground
8 station and ground station (or any combination of the foregoing) for the
9 purposes of air safety and navigation [and except a corporation, joint-
10 stock company or association which is liable to taxation under article
11 thirty-two of this chapter], shall pay for the privilege of exercising
12 its corporate franchise, or of doing business, or of employing capital,
13 or of owning or leasing property in the metropolitan commuter transpor-
14 tation district in such corporate or organized capacity, or of maintain-
15 ing an office in such district, a tax surcharge [for all or any part of
16 its taxable years commencing on or after January first, nineteen hundred
17 eighty-two, but ending before December thirty-first, two thousand eigh-
18 teen], which tax surcharge, in addition to the tax imposed by section
19 one hundred eighty-four of this article, shall be computed at the rate
20 of [eighteen percent of the tax imposed under such section one hundred
21 eighty-four for such taxable years or any part of such taxable years
22 ending before December thirty-first, nineteen hundred eighty-three after
23 the deduction of any credits otherwise allowable under this article, and
24 at the rate of] seventeen percent of the tax imposed under such section
25 for such taxable years or any part of such taxable years [ending on or
26 after December thirty-first, nineteen hundred eighty-three] after the
27 deduction of any credits otherwise allowable under this article;
28 provided, however, that such rates of tax surcharge shall be applied

1 only to that portion of the tax imposed under section one hundred eight-
2 y-four of this article after the deduction of any credits otherwise
3 allowable under this article which is attributable to the taxpayer's
4 business activity carried on within the metropolitan commuter transpor-
5 tation district[; and provided, further, that the tax surcharge imposed
6 by this section on corporations, joint-stock companies and associations
7 formed for or principally engaged in the conduct of telephone or tele-
8 graph business shall be computed in accordance with this subdivision and
9 paragraph (c) of subdivision two of this section as if the three-quar-
10 ters of one percent rate of tax provided for in subdivision one of
11 section one hundred eighty-four of this article were applicable to such
12 telephone and telegraph businesses for taxable years commencing on or
13 after January first, nineteen hundred eighty-five and ending on or
14 before December thirty-first, nineteen hundred eighty-nine; and
15 provided, further, that the tax surcharge imposed by this section shall
16 not be imposed upon any taxpayer for more than four hundred thirty-two
17 months]. Provided, however, that for taxable years beginning in two
18 thousand and thereafter, for purposes of this subdivision the tax
19 imposed under section one hundred eighty-four of this article shall be
20 deemed to have been imposed at the rate of three-quarters of one
21 percent, except that in the case of a corporation, joint-stock company
22 or association which has made an election pursuant to subdivision ten of
23 section one hundred eighty-three of this article, for purposes of this
24 subdivision the tax imposed under section one hundred eighty-four of
25 this article shall be deemed to have been imposed at the rate of six-
26 tenths of one percent.

27 § 64. Subdivision 8 of section 186-a of the tax law is REPEALED.

1 § 65. The section heading and subdivision 1 of section 186-c of the
2 tax law, the section heading as amended by chapter 2 of the laws of
3 1995, subdivision 1 as amended by section 3 of part II-1 of chapter 57
4 of the laws of 2008, subparagraph 1 of paragraph (a) of subdivision 1 as
5 amended by section 3 of part A of chapter 59 f the laws of 2013, are
6 amended to read as follows:

7 [Temporary metropolitan] Metropolitan transportation business tax
8 surcharge on utility services and excise tax on sale of telecommuni-
9 cation services. 1. (a) (1) Every utility doing business in the metro-
10 politan commuter transportation district shall pay a tax surcharge, in
11 addition to the tax imposed by section one hundred eighty-six-a of this
12 article[, for all or any parts of its taxable years commencing on or
13 after January first, nineteen hundred eighty-two but ending before
14 December thirty-first, two thousand eighteen], to be computed [at the
15 rate of eighteen percent of the tax imposed under section one hundred
16 eighty-six-a of this article for such taxable years or any part of such
17 taxable years ending before December thirty-first, nineteen hundred
18 eighty-three after the deduction of any credits otherwise allowable
19 under this article, and] at the rate of seventeen percent of the tax
20 imposed under such section [for such taxable years or any part of such
21 taxable years ending on or after December thirty-first, nineteen hundred
22 eighty-three] after the deduction of credits otherwise allowable under
23 this article except any utility credit provided for by article thir-
24 teen-A of this chapter; provided, however, that such rates of tax
25 surcharge shall be applied only to that portion of the tax imposed under
26 section one hundred eighty-six-a of this article after the deduction of
27 credits otherwise allowable under this article, except any utility cred-
28 it provided for by article thirteen-A of this chapter, which is attrib-

1 utable to the taxpayer's gross income or gross operating income from
2 business activity carried on within the metropolitan commuter transpor-
3 tation district[; and provided, further, that the tax surcharge imposed
4 by this section shall not be imposed upon any taxpayer for more than
5 four hundred thirty-two months].

6 (2) Provided however, that [commencing January first, two thousand,]
7 in the case of the tax imposed under paragraph (a) of subdivision one of
8 section one hundred eighty-six-a of this article (relating to providers
9 of telecommunications services) such tax surcharge shall be calculated
10 as if the tax imposed under section one hundred eighty-six-a of this
11 article were imposed at a rate of three and one-half percent.

12 (b) In addition to the surcharge imposed by paragraph (a) of this
13 subdivision, there is hereby imposed a surcharge on the gross receipts
14 from telecommunication services relating to the metropolitan commuter
15 transportation district at the rate of seventeen percent of the state
16 tax rate under section one hundred eighty-six-e of this article [for all
17 or part of taxable years commencing on and after January first, nineteen
18 hundred ninety-five but ending before December thirty-first, two thou-
19 sand thirteen]. All the definitions and other provisions of section one
20 hundred eighty-six-e of this article shall apply to the tax imposed by
21 this paragraph with such modification and limitation as may be necessary
22 (including substituting the words "metropolitan commuter transportation
23 district" for "state" where appropriate) in order to adapt the language
24 of such section one hundred eighty-six-e of this article to the
25 surcharge imposed by this paragraph within such metropolitan commuter
26 transportation district so as to include (1) any intra-district telecom-
27 munication services, except any telecommunication services the gross
28 receipts from which are subject to tax under subparagraph four of this

1 paragraph, (2) any inter-district telecommunication services which orig-
2 inate or terminate in such district and are charged to a service address
3 therein regardless of where the amounts charged for such services are
4 billed or ultimately paid, except any telecommunications services the
5 gross receipts from which are subject to tax under subparagraph four of
6 this paragraph, (3) as apportioned to such district, private telecommu-
7 nication services, except any telecommunication services the gross
8 receipts from which are subject to tax under subparagraph four of this
9 paragraph, and (4) mobile telecommunications service provided by a home
10 service provider where the place of primary use is within such metropol-
11 itan commuter transportation district. Provided however, [commencing
12 October first, nineteen hundred ninety-eight] such tax surcharge shall
13 be calculated as if the tax imposed under section one hundred eighty-
14 six-e of this article were imposed at a rate of three and one-half
15 percent.

16 § 66. Clause (iii) of subparagraph (D) of paragraph 3 of subsection
17 (b) of section 605 of the tax law, as added by chapter 658 of the laws
18 of 2003, is amended to read as follows:

19 (iii) Provided further, that for the purposes of item (I) of clause
20 (i) of this subparagraph, a trustee which is a banking corporation as
21 defined in subsection (a) of section fourteen hundred fifty-two of this
22 chapter, as such section was in effect on December thirty-first, two
23 thousand fourteen, and which is domiciled outside the state of New York
24 at the time it becomes a trustee of the trust shall be deemed to contin-
25 ue to be a trustee domiciled outside the state of New York notwithstand-
26 ing that it thereafter otherwise becomes a trustee domiciled in the
27 state of New York by virtue of being acquired by, or becoming an office

1 or branch of, a corporate trustee domiciled within the state of New
2 York.

3 § 67. Subparagraph (A) of paragraph 10 of subsection (a) of section
4 606 of the tax law, as amended by section 3 of part CC of chapter 85 of
5 the laws of 2002, is amended to read as follows:

6 (A) the business of which the individual is an owner is substantially
7 similar in operation and in ownership to a business entity taxable, or
8 previously taxable, under section one hundred eighty-three, one hundred
9 eighty-four[,] or one hundred eighty-five [or one hundred eighty-six] of
10 article nine; article nine-A[, thirty-two] or thirty-three of this chap-
11 ter; article twenty-three of this chapter or which would have been
12 subject to tax under such article twenty-three (as such article was in
13 effect on January first, nineteen hundred eighty), article thirty-two of
14 this chapter or which would have been subject to tax under such article
15 thirty-two (as such article was in effect on December thirty-first, two
16 thousand fourteen) or the income (or losses) of which is (or was)
17 includable under article twenty-two of this chapter whereby the intent
18 and purpose of this paragraph and paragraph five of this subsection with
19 respect to refunding of credit to new business would be evaded; or

20 § 68. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
21 of the tax law, as amended by section 7 of part C-1 of chapter 57 of the
22 laws of 2009, clause (ix) as amended by section 4 of part G of chapter
23 59 of the laws of 2013, clause (xxxi) as added by section 5 of part MM
24 of chapter 59 of the laws of 2010, clause (xxxi) as added by section 14
25 of part Q of chapter 57 of the laws of 2010, clause (xxxii) as added by
26 section 6 of part V of chapter 61 of the laws of 2011, clause (xxxiii)
27 as added by section 4 of part D of chapter 56 of the laws of 2011,
28 clause (xxxiii) as added by section 5 of part E of chapter 56 of the

1 laws of 2011, clause (xxxiii) as added by chapter 604 of the laws of
2 2011, clause (xxxiv) as added by chapter 109 of the laws of 2012, clause
3 (xxxv) as added by section 2 of part AA of chapter 59 of the laws of
4 2013, clause (xxxv) as added by section 4 of part EE of chapter 59 of
5 the laws of 2013 and clause (xxxvi) as added by section 8 of part A of
6 chapter 68 of the laws of 2013, clause (xxxvii) as added by section 3 of
7 LBD number 74021-03-4, and clause (xxxvii) as added by section 5 of LBD
8 number 74039-02-4, is amended to read as follows:

9 (B) shall be treated as the owner of a new business with respect to
10 such share if the corporation qualifies as a new business pursuant to
11 paragraph [(j)] (f) of subdivision [twelve] one of section two hundred
12 [ten] ten-B of this chapter.

13 With respect to the following The corporation's credit base under
14 credit under this section: section two hundred [ten or section
15 fourteen hundred fifty-six] ten-B
16 of this chapter is:

17 (i) Investment tax credit under Investment credit base or qualified
18 subsection (a) rehabilitation expenditures under
19 subdivision [twelve] one of section
20 two hundred [ten] ten-B

21 (ii) Empire zone investment Cost or other basis under
22 tax credit under subsection (j) subdivision [twelve-B] three
23 of section two hundred [ten] ten-B

24 [(iii) Empire zone wage tax credit Eligible wages under subdivision

1 under subsection (k) nineteen of section two hundred
2 ten or subsection (e) of section
3 fourteen hundred fifty-six

4 (iv) Empire zone capital tax Qualified investments and
5 credit under subsection (l) contributions under subdivision
6 twenty of section two hundred ten
7 or subsection (d) of section
8 fourteen hundred fifty-six]

9 (v) Agricultural property tax Allowable school district property
10 credit under subsection (n) taxes under subdivision
11 [twenty-two] eleven of
12 section two hundred [ten]
13 ten-B

14 (vi) Credit for employment of Qualified first-year wages or
15 persons with disabilities qualified second-year wages under
16 under subsection (o) subdivision [twenty-three] twelve
17 of section two hundred [ten or
18 subsection (f) of section
19 fourteen hundred fifty-six] ten-B

20 (vii) Employment incentive credit Applicable investment credit base
21 under subsection (a-1) under subdivision [twelve-D] two
22 of section two hundred [ten]
23 ten-B

1	(viii) Empire zone employment	Applicable investment credit
2	incentive credit under subsection	under subdivision [twelve-C]
3	(j-1)	<u>four</u> of section
4		two hundred [ten] <u>ten-B</u>
5	(ix) Alternative fuels	Amount of credit under subdivision
6	and electric vehicle	[twenty-four] <u>thirty</u> of section
7	recharging property	two hundred [ten] <u>ten-B</u>
8	credit under subsection (p)	
9	(x) Qualified emerging technology	Applicable credit base under
10	company employment credit under	subdivision [twelve-E] <u>seven</u>
11	subsection (q)	of section two hundred [ten] <u>ten-B</u>
12	(xi) Qualified emerging technology	Qualified investments under
13	company capital tax credit under	subdivision [twelve-F] <u>eight</u>
14	subsection (r)	of section two hundred [ten] <u>ten-B</u>
15	(xii) Credit for purchase of an	Cost of an automated external
16	automated external defibrillator	defibrillator under subdivision
17	under subsection (s)	[twenty-five] <u>thirteen</u> of section
18		two hundred [ten or subsection
19		(j) of section fourteen hundred
20		fifty-six] <u>ten-B</u>
21	(xiii) Low-income housing credit	Credit amount under subdivision
22	under subsection (x)	[thirty] <u>fifteen</u> of section
23		two hundred [ten or subsection

1 (1) of section fourteen
2 hundred fifty-six] ten-B

3 [(xiv) Credit for transportation For taxable years beginning
4 improvement contributions under before January first, two thousand
5 subsection (z) nine, amount of credit under
6 subdivision thirty-two of
7 section two hundred ten
8 or subsection (n) of section
9 fourteen hundred fifty-six]

10 (xv) QEZE credit for real property Amount of credit under subdivision
11 taxes under subsection (bb) [twenty-seven] five of
12 section two hundred [ten
13 or subsection (o) of section
14 fourteen hundred fifty-six]
15 ten-B

16 (xvi) QEZE tax reduction credit Amount of benefit period factor,
17 under subsection (cc) employment increase factor and zone
18 allocation factor (without regard
19 to pro ration) under subdivision
20 [twenty-eight] six of
21 section two hundred [ten
22 or subsection (p) of section
23 fourteen hundred fifty-six]
24 ten-B and amount
25 of tax factor as determined under

1 subdivision (f) of section sixteen

2 (xvii) Green building credit under Amount of green building credit
3 subsection (y) under subdivision [thirty-one]
4 sixteen of section two
5 hundred [ten or subsection (m)
6 of section fourteen hundred
7 fifty-six] ten-B

8 (xviii) Credit for long-term care Qualified costs under subdivision
9 insurance premiums under subsection [twenty-five-a] fourteen
10 (aa) of section two hundred [ten
11 or subsection (k) of
12 section fourteen hundred fifty-six]
13 ten-B

14 (xix) Brownfield redevelopment Amount of credit under subdivision
15 credit under subsection (dd) [thirty-three] seventeen
16 of section two hundred
17 [ten or subsection (q) of section
18 fourteen hundred fifty-six]
19 ten-B

20 (xx) Remediated brownfield credit Amount of credit under subdivision
21 for real property taxes for [thirty-four] eighteen
22 qualified sites under subsection of section two hundred
23 (ee) [ten of subsection (r) of section
24 fourteen hundred fifty-six]

1 ten-B

2 (xxi) Environmental remediation Amount of credit under subdivision
3 insurance credit under subsection [thirty-five] nineteen
4 (ff) of section two hundred
5 [ten or subsection (s) of section
6 fourteen hundred fifty-six]
7 ten-B

8 (xxii) Empire state film Amount of credit for qualified
9 production credit under production costs in production of a
10 subsection (gg) qualified film under subdivision
11 [thirty-six] twenty of
12 section two hundred [ten] ten-B

13 [(xxiii) Qualified emerging Qualifying expenditures and
14 technology company facilities, development activities under
15 operations and training credit subdivision twelve-G of section two
16 under subsection (nn) hundred ten]

17 (xxiv) Security training tax credit Amount of credit under subdivision
18 under subsection (ii) [thirty-seven] twenty-one
19 of section two hundred
20 [ten or under subsection (t) of
21 section fourteen hundred fifty-six]
22 ten-B

23 [(xxv) Credit for qualified fuel For taxable years beginning before

1 cell electric generating January first, two thousand nine,
2 equipment expenditures amount of credit under subdivision
3 under subsection (g-2) thirty-seven of section two hundred
4 ten or subsection (t) of section
5 fourteen hundred fifty-six]

6 (xxvi) Empire state commercial Amount of credit for qualified
7 production credit under subsection production costs in production of
8 (jj) a qualified commercial under
9 subdivision [thirty-eight]
10 twenty-three of
11 section two hundred [ten]
12 ten-B

13 (xxvii) Biofuel production tax Amount of credit under subdivision
14 credit under subsection (jj) [thirty-eight] twenty-four
15 of section two hundred [ten]
16 ten-B

17 (xxviii) Clean heating fuel credit Amount of credit under subdivision
18 under subsection (mm) [thirty-nine] twenty-five of
19 section two hundred [ten]
20 ten-B

21 (xxix) Credit for rehabilitation Amount of credit under subdivision
22 of historic properties under [forty] twenty-six of
23 subsection (oo) section two hundred [ten]
24 ten-B

1 (xxxi) Excelsior jobs program tax Amount of credit under subdivision
2 credit under subsection (qq) [forty-one] thirty-one of
3 section two hundred [ten
4 or under subdivision (u) of
5 section fourteen hundred fifty-six]
6 ten-B

7 (xxxi) Empire state film Amount of credit for
8 post production credit under qualified post production
9 subsection (qq) costs of a qualified film
10 under subdivision [forty-one]
11 thirty-two of section
12 two hundred [ten] ten-B

13 (xxxii) Economic transformation Amount of credit under subdivision
14 and facility redevelopment credit [forty-three] thirty-five
15 of section [210 or under
16 subsection (x) of section fourteen
17 hundred fifty-six] two hundred
18 ten-B

19 (xxxiii) New York youth works Amount of credit under
20 tax credit subdivision [forty-four] thirty-six
21 of section two hundred [ten]
22 ten-B

23 (xxxiii) Empire state jobs Amount of credit under
24 retention program credit subdivision [forty-four]

1 thirty-seven of section
2 two hundred [ten or under
3 subsection (y) of section
4 fourteen hundred fifty-six]
5 ten-B

6 (xxxiii) Credit for companies who Amount of credit under
7 provide transportation to subdivision [forty-four]
8 individuals with disabilities thirty-eight of section
9 under subsection (tt) two hundred [ten] ten-B

10 (xxxiv) Beer production credit Amount of credit under
11 under subsection (uu) [subdivision] subdivision
12 [forty-five] thirty-nine of
13 section two hundred [ten]
14 ten-B

15 (xxxv) Hire a vet credit Amount of credit under subdivision
16 under subsection (a-2) [twenty-three-a] twenty-nine
17 of section two hundred [ten
18 or subsection (e-1) of
19 of section fourteen hundred
20 fifty-six] ten-B

21 (xxxv) Minimum wage reimbursement Amount of credit under subdivision
22 credit under subsection (aaa) [forty-six] forty
23 of section two hundred
24 [ten or subsection (z) of

1 section fourteen hundred
2 fifty-six] ten-B

3 (xxxvi) Tax-free NY area tax Amount of credit under
4 elimination credit subdivision [forty-seven] forty-one
5 of section two hundred [ten]
6 ten-B

7 (xxxvii) Real property tax Amount of credit under
8 credit for manufacturers subdivision [forty-eight]
9 under subsection (xx) forty-three of section
10 two hundred [ten] ten-B

11 (xxxvii) Tax-free NY area Amount of credit under
12 excise tax on subdivision [forty-eight]
13 telecommunications services forty-four of section
14 credit under subsection (xx) two hundred [ten] ten-B

15 § 69. Subparagraphs (A) and (B) of paragraph 3 of subsection (i) of
16 section 606 of the tax law, as added by chapter 170 of the laws of 1994,
17 are amended to read as follows:

18 (A) Credit carryover. Any excess credit under subparagraph (A) of
19 paragraph one of this subsection, as it was in effect for taxable years
20 beginning before nineteen hundred ninety-four, may be carried over to
21 the shareholder's following year or years and may be deducted from such
22 shareholder's tax for such year or years, except that any excess credit
23 attributable to subdivision [twelve] one of section two hundred [ten]

1 ten-B of this chapter shall in no event be carried over beyond the ten
2 taxable years next following the taxable year of origin.

3 (B) Credit recapture. Any redetermination of credit required by this
4 subsection as it was in effect for taxable years beginning before nine-
5 teen hundred ninety-four, upon disposition or cessation of qualified use
6 of property pursuant to paragraph [(g)] (e) of subdivision [twelve] one,
7 or paragraph (f) of subdivision [twelve-B or paragraph (f) of subdivi-
8 sion eighteen] three of section two hundred [ten] ten-B of this chapter
9 shall be attributed in pro rata shares to the shareholders who were
10 allowed credit under this subsection with respect to such property, and
11 the reduction of a shareholder's proportionate stock interest shall be
12 treated as a disposition of property for which a redetermination of
13 credit under such paragraphs is required with respect to such sharehold-
14 er.

15 § 70. Subparagraph (B) of paragraph 3 and paragraph 21 of subsection
16 (b) and paragraph 21 of subsection (c) of section 612 of the tax law,
17 subparagraph (B) of paragraph 3 of subsection (b) as amended by section
18 57, paragraph 21 of subsection (b) as amended by section 59 and para-
19 graph 21 of subsection (c) as amended by section 60 of part A of chapter
20 389 of the laws of 1997, are amended to read as follows:

21 (B) Shareholders of S corporations. In the case of a shareholder of an
22 S corporation, with respect to taxes imposed upon or payable by the
23 corporation, the term "income taxes" in subparagraph (A) of this para-
24 graph shall also include the taxes imposed under [articles] article
25 nine-A [and thirty-two] of this chapter, regardless of the measure of
26 such tax, but shall not otherwise include taxes imposed by this or any
27 other state of the United States, or any political subdivision of this
28 or any other state, or the District of Columbia.

1 (21) In relation to the disposition of stock or indebtedness of a
2 corporation which elected under subchapter s of chapter one of the
3 internal revenue code for any taxable year of such corporation begin-
4 ning, in the case of a corporation taxable under article nine-A of this
5 chapter, after December thirty-first, nineteen hundred eighty, [and in
6 the case of a corporation taxable under article thirty-two of this chap-
7 ter, after December thirty-first, nineteen hundred ninety-six,] the
8 amount required to be added to federal adjusted gross income pursuant to
9 subsection (n) of this section.

10 (21) In relation to the disposition of stock or indebtedness of a
11 corporation which elected under subchapter s of chapter one of the
12 internal revenue code for any taxable year of such corporation begin-
13 ning, in the case of a corporation taxable under article nine-A of this
14 chapter, after December thirty-first, nineteen hundred eighty, [and in
15 the case of a corporation taxable under article thirty-two of this chap-
16 ter, after December thirty-first, nineteen hundred ninety-six,] the
17 amounts required to be subtracted from federal adjusted gross income
18 pursuant to subsection (n) of this section.

19 § 71. Paragraph 2 of subsection (a) of section 632 of the tax law, as
20 amended by section 2 of part C of chapter 57 of the laws of 2010, is
21 amended to read as follows:

22 (2) In determining New York source income of a nonresident shareholder
23 of an S corporation where the election provided for in subsection (a) of
24 section six hundred sixty of this article is in effect, there shall be
25 included only the portion derived from or connected with New York sourc-
26 es of such shareholder's pro rata share of items of S corporation
27 income, loss and deduction entering into his federal adjusted gross
28 income, increased by reductions for taxes described in paragraphs two

1 and three of subsection (f) of section thirteen hundred sixty-six of the
2 internal revenue code, as such portion shall be determined under regu-
3 lations of the commissioner consistent with the applicable methods and
4 rules for allocation under article nine-A [or thirty-two] of this chap-
5 ter, regardless of whether or not such item or reduction is included in
6 entire net income under article nine-A [or thirty-two] for the tax year.
7 If a nonresident is a shareholder in an S corporation where the election
8 provided for in subsection (a) of section six hundred sixty of this
9 article is in effect, and the S corporation has distributed an install-
10 ment obligation under section 453(h)(1)(A) of the Internal Revenue Code,
11 then any gain recognized on the receipt of payments from the installment
12 obligation for federal income tax purposes will be treated as New York
13 source income allocated in a manner consistent with the applicable meth-
14 ods and rules for allocation under article nine-A [or thirty-two] of
15 this chapter in the year that the assets were sold. In addition, if the
16 shareholders of the S corporation have made an election under section
17 338(h)(10) of the Internal Revenue Code, then any gain recognized on the
18 deemed asset sale for federal income tax purposes will be treated as New
19 York source income allocated in a manner consistent with the applicable
20 methods and rules for allocation under article nine-A [or thirty-two] of
21 this chapter in the year that the shareholder made the section
22 338(h)(10) election. For purposes of a section 338(h)(10) election, when
23 a nonresident shareholder exchanges his or her S corporation stock as
24 part of the deemed liquidation, any gain or loss recognized shall be
25 treated as the disposition of an intangible asset and will not increase
26 or offset any gain recognized on the deemed assets sale as a result of
27 the section 338(h)(10) election.

1 § 72. Subparagraph (A) of paragraph 4 of subsection (c) of section 658
2 of the tax law, as amended by section 1 of part DD of chapter 686 of the
3 laws of 2003, is amended to read as follows:

4 (A) General. Every entity which is a partnership, other than a public-
5 ly traded partnership as defined in section 7704 of the federal Internal
6 Revenue Code, subchapter K limited liability company or an S corporation
7 for which the election provided for in subsection (a) of section six
8 hundred sixty of this [article] part is in effect, which has partners,
9 members or shareholders who are nonresident individuals, as defined
10 under subsection (b) of section six hundred five of this article, or C
11 corporations, and which has any income derived from New York sources,
12 determined in accordance with the applicable rules of section six
13 hundred thirty-one of this article as in the case of a nonresident indi-
14 vidual, shall pay estimated tax on such income on behalf of such part-
15 ners, members or shareholders in the manner and at the times prescribed
16 by subsection (c) of section six hundred eighty-five of this article.
17 For purposes of this paragraph, the term "estimated tax" shall mean a
18 partner's, member's or shareholder's distributive share or pro rata
19 share of the entity income derived from New York sources, multiplied by
20 the highest rate of tax prescribed by section six hundred one of this
21 article for the taxable year of any partner, member or shareholder who
22 is an individual taxpayer, or paragraph (a) of subdivision one of
23 section two hundred ten of this chapter for the taxable year of any
24 partner, member or shareholder which is a C corporation, whether or not
25 such C corporation is subject to tax under article nine, nine-A[, thir-
26 ty-two,] or thirty-three of this chapter, and reduced by the distribu-
27 tive share or pro rata share of any credits determined under section one
28 hundred eighty-seven, one hundred eighty-seven-a, six hundred six[,

1 fourteen hundred fifty-six] or fifteen hundred eleven of this chapter,
2 whichever is applicable, derived from the entity.

3 § 73. Subsections (a) and (h) of section 660 of the tax law,
4 subsection (a) as amended by section 50 and subsection (h) as amended by
5 section 66 of part A of chapter 389 of the laws of 1997, are amended to
6 read as follows:

7 (a) Election. If a corporation is an eligible S corporation, the
8 shareholders of the corporation may elect in the manner set forth in
9 subsection (b) of this section to take into account, to the extent
10 provided for in this article (or in article thirteen of this chapter, in
11 the case of a shareholder which is a taxpayer under such article), the S
12 corporation items of income, loss, deduction and reductions for taxes
13 described in paragraphs two and three of subsection (f) of section thir-
14 teen hundred sixty-six of the internal revenue code which are taken into
15 account for federal income tax purposes for the taxable year. No
16 election under this subsection shall be effective unless all sharehold-
17 ers of the corporation have so elected. An eligible S corporation is (i)
18 an S corporation which is subject to tax under article nine-A [or thir-
19 ty-two] of this chapter, or (ii) an S corporation which is the parent of
20 a qualified subchapter S subsidiary subject to tax under article nine-A,
21 where the shareholders of such parent corporation are entitled to make
22 the election under this subsection by reason of subparagraph three of
23 paragraph (k) of subdivision nine of section two hundred eight of this
24 chapter[; or (iii) an S corporation which is the parent of a qualified
25 subchapter S corporation subject to tax under article thirty-two, where
26 the shareholders of such parent are entitled to make the election under
27 this subsection by reason of paragraph three of subsection (o) of
28 section fourteen hundred fifty-three of this chapter].

1 (h) Cross reference. For definitions relating to S corporations, see
2 subdivision one-A of section two hundred eight [and subsections (f) and
3 (g) of section fourteen hundred fifty] of this chapter.

4 § 74. Paragraph 1 of subsection (i) of section 660 of the tax law, as
5 added by section 1 of part L of chapter 60 of the laws of 2007, is
6 amended to read as follows:

7 (1) Notwithstanding the provisions in subsection (a) of this section,
8 in the case of an eligible S corporation for which the election under
9 subsection (a) of this section is not in effect for the current taxable
10 year, the shareholders of an eligible S corporation are deemed to have
11 made that election effective for the eligible S corporation's entire
12 current taxable year, if the eligible S corporation's investment income
13 for the current taxable year is more than fifty percent of its federal
14 gross income for such year [provided that this subsection shall not
15 apply to an eligible S corporation that is subject to tax under article
16 thirty-two of this chapter]. In determining an eligible S corporation's
17 investment income, the investment income of a qualified subchapter S
18 subsidiary owned directly or indirectly by the eligible S corporation
19 shall be included.

20 § 75. Paragraph 3 of subsection (c) of section 1085 of the tax law, as
21 amended by section 15 of part Y of chapter 63 of the laws of 2000, is
22 amended to read as follows:

23 (3) The provisions of this subsection and subsections (d) and (e) of
24 this section shall apply to the failure of a taxpayer to file a declara-
25 tion of estimated tax surcharge or the failure to pay all or any part of
26 an amount which is applied as an installment against such estimated tax
27 surcharge pursuant to sections one hundred ninety-seven-a, one hundred
28 ninety-seven-b, two hundred thirteen-a, two hundred thirteen-b, [four-

1 teen hundred sixty, fourteen hundred sixty-one,] fifteen hundred thir-
2 teen and fifteen hundred fourteen of this chapter. For purposes of
3 applying this section and subsections (d) and (e) of this section to the
4 estimated tax surcharge, where appropriate the term "tax" shall be read
5 to mean "tax surcharge," and the terms "amount required to be paid,"
6 "amount which would be required to be paid," and "amount which would
7 have been required to be paid" shall be computed as the product of (1)
8 such amount computed without regard to the tax surcharges imposed under
9 sections one hundred eighty-four-a, one hundred eighty-six-c, one
10 hundred eighty-eight, two hundred nine-A, two hundred nine-B, [fourteen
11 hundred fifty-five-A, fourteen hundred fifty-five-B,] fifteen hundred
12 five-a, and fifteen hundred twenty of this chapter, and (2) the MTA
13 percentage. The term "MTA percentage" shall mean the product of (A) the
14 tax rate applicable under such sections imposing such surcharges and (B)
15 the percentage utilized in determining the portion of the taxpayer's
16 business activity carried on within the metropolitan commuter transpor-
17 tation district under such sections.

18 § 76. The opening paragraph of subparagraph (A) of paragraph 3 of
19 subsection (d) of section 1085 of the tax law, as amended by chapter 170
20 of the laws of 1994, is amended to read as follows:

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

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

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

8 § 78. Paragraph 5 of subsection (d) of section 1085 of the tax law, as
9 added by chapter 61 of the laws of 1989, is amended to read as follows:

10 (5) In the case of any declaration installment, any reduction in such
11 installment resulting from the application of paragraph three or four of
12 this subsection shall be recaptured by increasing the amount of the next
13 installment determined under paragraph one or two of this subsection or
14 paragraph one of subsection (c) of this section by the amount of such
15 reduction (and by increasing subsequent installments to the extent that
16 the reduction has not previously been recaptured under this paragraph).
17 For purposes of the preceding sentence, a declaration installment means
18 any installment of estimated tax other than the mandatory first install-
19 ment required under paragraph (a) of subdivision one of section one
20 hundred ninety-seven-b, subdivision (a) of section two hundred thir-
21 teen-b[, subsection (a) of section fourteen hundred sixty-one] or subdi-
22 vision (a) of section fifteen hundred fourteen of this chapter.

23 § 79. Paragraph 1 of subsection (e) of section 1085 of the tax law, as
24 amended by section 28-p of part H-3 of chapter 62 of the laws of 2003,
25 is amended to read as follows:

26 (1) Paragraphs (1) and (2) of subsection (d) of this section shall not
27 apply in the case of any corporation (or any predecessor corporation)
28 which had [entire net] business income, or the portion thereof allocated

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

13 § 80. Subsections (m) and (o) of section 1085 of the tax law are
14 REPEALED.

15 § 81. Clause (ii) of subparagraph (B) of paragraph 2 of subsection
16 (q), paragraph 3 of subsection (s) and the closing paragraph of para-
17 graph 1 of subsection (t) of section 1085 of the tax law, as added by
18 section 10 of part N of chapter 61 of the laws of 2005, are amended to
19 read as follows:

20 (ii) fifty percent of the gross income that the organizer or material
21 advisor derived with respect to activities that were the basis for the
22 requirement to file, disclose or provide information pursuant to section
23 six thousand eleven of the internal revenue code, to the extent such
24 gross income is attributable to the avoidance of any tax imposed under
25 article nine, nine-A[, thirty-two,] or thirty-three of this chapter.

26 (3) For purposes of this subsection, the term "understatement of
27 liability" means any understatement of the net amount payable with
28 respect to any tax imposed under article nine, nine-A[, thirty-two,] or

1 thirty-three of this chapter or any overstatement of the net amount
2 creditable or refundable with respect to any such tax.
3 shall pay, with respect to each activity described in subparagraph (A)
4 of this paragraph, a penalty equal to one thousand dollars or, if the
5 person establishes that it is lesser, one hundred percent of the gross
6 income derived (or to be derived) by such person from such activity to
7 the extent such gross income is attributed to the avoidance of any tax
8 imposed under articles nine, nine-A[, thirty-two] or thirty-three of
9 this chapter; provided, however, that if an activity with respect to
10 which a penalty imposed under this subsection involves a statement
11 described in clause (i) of subparagraph (B) of paragraph one of this
12 subsection, the penalty shall be equal to fifty percent of the gross
13 income derived (or to be derived) from that activity within the state by
14 the person on which the penalty is imposed. For purposes of the preced-
15 ing sentence, activities described in clause (i) of subparagraph (A) of
16 this paragraph with respect to each entity or arrangement shall be
17 treated as a separate activity and participation in each sale described
18 in clause (ii) of subparagraph (A) of this paragraph shall be so treat-
19 ed.

20 § 82. The opening paragraph of subsection (c) of section 1087 of the
21 tax law, as separately amended by chapters 760 and 770 of the laws of
22 1992, is amended to read as follows:

23 If a taxpayer is required by subdivision three of section two hundred
24 eleven[, subsection (e) of section fourteen hundred sixty-two] or para-
25 graph one of subdivision (e) of section fifteen hundred fifteen of this
26 chapter, to file a report or amended return in respect of (i) a decrease
27 or increase in federal taxable income or federal alternative minimum
28 taxable income or federal tax, or (ii) a federal change or correction or

1 renegotiation, or computation or recomputation of tax, which is treated
2 in the same manner as if it were an overpayment for federal income tax
3 purposes, claim for credit or refund of any resulting overpayment of tax
4 shall be filed by the taxpayer within two years from the time such
5 report or amended return was required to be filed with the commissioner
6 [of taxation and finance]. If the report or amended return required by
7 any such provision of law is not filed within the period therein speci-
8 fied, no interest shall be payable on any claim for credit or refund of
9 the overpayment attributable to the federal change or correction. The
10 amount of such credit or refund--

11 § 83. Subsection (g) of section 1088 of the tax law, as amended by
12 chapter 61 of the laws of 1989 and relettered by chapter 55 of the laws
13 of 1992, is amended to read as follows:

14 (g) Cross-reference.--For provision with respect to interest after
15 failure to file a report or amended return under subdivision three of
16 section two hundred eleven[, subsection (e) of section fourteen hundred
17 sixty-two] or paragraph one of subdivision (e) of section fifteen
18 hundred fifteen, see subsection (c) of section one thousand eighty-sev-
19 en.

20 § 84. Paragraph 2 of subsection (b) of section 1096 of the tax law, as
21 amended by chapter 411 of the laws of 1986, is amended to read as
22 follows:

23 (2) The [tax commission] commissioner may take any action under para-
24 graph one of this subdivision to inquire into the commission of an
25 offense connected with the administration or enforcement of this article
26 or article nine, [nine-a] nine-A, thirteen, [thirteen-a, thirty-two,]
27 thirteen-A or thirty-three of this chapter, provided, however, that
28 notwithstanding the provisions of section one hundred seventy-four of

1 this chapter no such action shall be taken when a referral by the
2 department or the [tax commission] commissioner to the attorney general,
3 a district attorney or any other prosecutorial agency is in effect.
4 Provided, however, the [tax commission] commissioner shall have power,
5 during the period when such referral is in effect, to examine or to
6 cause to have examined, by any agent or representative designated by it
7 for that purpose, any books, papers, records or memoranda bearing upon
8 the matters required to be included in the return, where such books,
9 papers, records or memoranda are in its possession, or where such books,
10 papers, records or memoranda are in the possession of the attorney
11 general, district attorney or other prosecutorial agency to which such
12 referral is made.

13 § 85. Paragraph 1 of subsection (e) of section 1096 of the tax law, as
14 amended by section 8 of subpart D of part V1 of chapter 57 of the laws
15 of 2009, is amended to read as follows:

16 (1) Authority to set interest rates.---The commissioner shall set the
17 overpayment and underpayment rates of interest to be paid pursuant to
18 sections two hundred thirteen, two hundred thirteen-b, two hundred
19 fifty-eight, two hundred sixty-three, two hundred ninety-four, one thou-
20 sand eighty-four, one thousand eighty-five[,] and one thousand eighty-
21 eight[, fourteen hundred sixty-one and fourteen hundred sixty-three] of
22 this chapter, but if no such rate or rates of interest are set, such
23 overpayment rate shall be deemed to be set at six percent per annum and
24 such underpayment rate shall be deemed to be set at seven and one-half
25 percent per annum. Such overpayment and underpayment rates shall be the
26 rates prescribed in paragraph two of this subsection, but the underpay-
27 ment rate shall not be less than seven and one-half percent per annum.
28 Any such rates set by the commissioner shall apply to taxes, or any

1 portion thereof, which remain or become due or overpaid on or after the
2 date on which such rates become effective and shall apply only with
3 respect to interest computed or computable for periods or portions of
4 periods occurring in the period during which such rates are in effect.

5 § 86. Subdivision (b) of section 1201-a of the tax law, as amended by
6 section 5 of part Y of chapter 62 of the laws of 2006, is amended to
7 read as follows:

8 (b) Empire state film production credit. Any city in this state having
9 a population of one million or more, acting through its local legisla-
10 tive body, is hereby authorized to adopt and amend local laws to allow a
11 credit against the general corporation tax and the unincorporated busi-
12 ness tax imposed pursuant to the authority of chapter seven hundred
13 seventy-two of the laws of nineteen hundred sixty-six which shall be
14 substantially identical to the credit allowed under section twenty-four
15 of this chapter, except that (A) the percentage of qualified production
16 costs used to calculate such credit shall be five percent, (B) whenever
17 such section twenty-four references the state, such words shall be read
18 as referencing the city, (C) such credit shall be allowed only to a
19 taxpayer which is a qualified film production company, and (D) the
20 effective date of such credit shall be July first, two thousand six.
21 Such credit shall be applied in a manner consistent with the credit
22 allowed under subdivision [thirty-six] twenty of section two hundred
23 [ten] ten-B of this chapter except as may be necessary to take into
24 account differences between the general corporation tax and the unincor-
25 porated business tax.

26 § 87. Subdivision (c) of section 1201-a of the tax law, as amended by
27 chapter 300 of the laws of 2007, is amended to read as follows:

1 (c) Empire state commercial production credit. Any city in this state
2 having a population of one million or more, acting through its local
3 legislative body, is hereby authorized to adopt and amend local laws to
4 allow a credit against the general corporation tax and the unincorporat-
5 ed business tax imposed pursuant to the authority of chapter seven
6 hundred seventy-two of the laws of nineteen hundred sixty-six which
7 shall be substantially identical to the credit allowed under the
8 provisions of section twenty-eight of this chapter, except that (A) the
9 percentage of qualified production costs used to calculate such credit
10 shall be five percent, (B) whenever such section twenty-eight references
11 the state, such words shall be read as referencing the city, (C) such
12 credit shall be allowed only to a taxpayer that is a qualified commer-
13 cial production company, and (D) the effective date of such credit shall
14 be as provided in local laws. Such credit shall be applied in a manner
15 consistent with the credit allowed under subdivision [thirty-eight]
16 twenty-three of section two hundred [ten] ten-B of this chapter except
17 as may be necessary to take into account differences between the general
18 corporation tax and unincorporated business tax.

19 § 88. The section heading and paragraphs 1 and 3 of subdivision (a) of
20 section 1505-a of the tax law, the section heading as added by chapter
21 11 of the laws of 1983 and paragraphs 1 and 3 of subdivision (a) as
22 amended by section 6 of part A of chapter 59 of the laws of 2013, are
23 amended to read as follows:

24 [Temporary metropolitan] Metropolitan transportation business tax
25 surcharge on insurance corporations.

26 (1) Every domestic insurance corporation and every foreign or alien
27 insurance corporation, and every life insurance corporation described in
28 subdivision (b) of section fifteen hundred one of this article, for the

1 privilege of exercising its corporate franchise, or of doing business,
2 or of employing capital, or of owning or leasing property in the metro-
3 politan commuter transportation district in a corporate or organized
4 capacity, or of maintaining an office in the metropolitan commuter
5 transportation district, [for all or any part of its taxable years
6 commencing on or after January first, nineteen hundred eighty-two, but
7 ending before December thirty-first, two thousand eighteen,] except
8 corporations specified in subdivision (c) of section fifteen hundred
9 twelve of this article, shall annually pay, in addition to the taxes
10 otherwise imposed by this article, a tax surcharge on the taxes imposed
11 under this article after the deduction of any credits otherwise allow-
12 able under this article as allocated to such district. Such taxes shall
13 be allocated to such district for purposes of computing such tax
14 surcharge upon taxpayers subject to tax under subdivision (b) of section
15 fifteen hundred ten of this article by applying the methodology, proce-
16 dures and computations set forth in subdivisions (a) and (b) of section
17 fifteen hundred four of this article, except that references to terms
18 denoting New York premiums, and total wages, salaries, personal service
19 compensation and commissions within New York shall be read as denoting
20 within the metropolitan commuter transportation district and terms
21 denoting total premiums and total wages, salaries, personal service
22 compensation and commissions shall be read as denoting within the state.
23 If it shall appear to the commissioner that the application of the meth-
24 odology, procedures and computations set forth in such subdivisions (a)
25 and (b) does not properly reflect the activity, business or income of a
26 taxpayer within the metropolitan commuter transportation district, then
27 the commissioner shall be authorized, in the commissioner's discretion,

1 to adjust such methodology, procedures and computations for the purpose
2 of allocating such taxes by:

3 (A) excluding one or more factors therein;

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

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

14 (3) Such tax surcharge shall be computed at the rate of [eighteen
15 percent of the taxes imposed under sections fifteen hundred one and
16 fifteen hundred ten of this article as limited by section fifteen
17 hundred five of this article, as allocated to such district, for such
18 taxable years or any part of such taxable years ending before December
19 thirty-first, nineteen hundred eighty-three after the deduction of any
20 credits otherwise allowable under this article, at the rate of seventeen
21 percent of the taxes imposed under such sections as limited by section
22 fifteen hundred five of this article, as allocated to such district, for
23 such taxable years or any part of such taxable years ending on or after
24 December thirty-first, nineteen hundred eighty-three and before January
25 first, two thousand three after the deduction of any credits otherwise
26 allowable under this article, and at the rate of] seventeen percent of
27 the taxes imposed under sections fifteen hundred one, fifteen hundred
28 two-a, and fifteen hundred ten of this article, as limited or otherwise

1 determined by subdivision (a) or (b) of section fifteen hundred five of
2 this article, as allocated to such district, [for such taxable years or
3 any part of such taxable years ending after December thirty-first, two
4 thousand two] after the deduction of any credits otherwise allowable
5 under this article[; provided, however, that the tax surcharge imposed
6 by this section shall not be imposed upon any taxpayer for more than
7 four hundred thirty-two months]. Provided however, that for taxable
8 years commencing on or after July first, two thousand, and in the case
9 of taxpayers subject to tax under section fifteen hundred two-a of this
10 article, for taxable years of such taxpayers beginning on or after July
11 first, two thousand and before January first, two thousand three, such
12 surcharge shall be calculated as if (i) the rate of the tax computed
13 under paragraph one of subdivision (a) of section fifteen hundred two of
14 this article was nine percent and (ii) the rate of the limitation on tax
15 set forth in section fifteen hundred five of this article for domestic,
16 foreign and alien insurance corporations except life insurance corpo-
17 rations was two and six-tenths percent.

18 § 89. Section 1825 of the tax law, as amended by section 2 of part E
19 of chapter 25 of the laws of 2009, is amended to read as follows:

20 § 1825. Violation of secrecy provisions of the tax law.--Any person
21 who violates the provisions of subdivision (b) of section twenty-one,
22 subdivision one of section two hundred two, subdivision eight of section
23 two hundred eleven, subdivision (a) of section three hundred fourteen,
24 subdivision one or two of section four hundred thirty-seven, section
25 four hundred eighty-seven, subdivision one or two of section five
26 hundred fourteen, subsection (e) of section six hundred ninety-seven,
27 subsection (a) of section nine hundred ninety-four, subdivision (a) of
28 section eleven hundred forty-six, section twelve hundred eighty-seven,

1 subdivision (a) of section fourteen hundred eighteen, [subsection (a) of
2 section fourteen hundred sixty-seven,] subdivision (a) of section
3 fifteen hundred eighteen, subdivision (a) of section fifteen hundred
4 fifty-five of this chapter, and subdivision (e) of section 11-1797 of
5 the administrative code of the city of New York shall be guilty of a
6 misdemeanor.

7 § 90. Subdivisions (s) and (t) of section 957 of the general municipal
8 law, as amended by section 1 of part S1 of chapter 57 of the laws of
9 2009, are amended to read as follows:

10 (s) "Qualified investment project" shall mean a project (i) located
11 within an empire zone, (ii) at which five hundred or more jobs will be
12 created, provided such jobs are new to the state and are in addition to
13 any other jobs previously created by the owner of such project in the
14 state, and (iii) which will consist of tangible personal property and
15 other tangible property, including buildings and structural components
16 of buildings, described in subparagraphs (i), (ii), (iii), (iv) and
17 clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision
18 [twelve-B] three of section two hundred [ten] ten-B of the tax law, the
19 basis of which for federal income tax purposes will equal or exceed
20 seven hundred fifty million dollars. Provided however, the owner of such
21 project does not employ more than two hundred persons in the state at
22 the time such project is commenced.

23 (t) "Significant capital investment project" shall mean a project (i)
24 located within an empire zone, (ii) which will be either a newly
25 constructed facility or a newly constructed addition to or expansion of
26 a qualified investment project, consisting of tangible personal property
27 and other tangible property, including buildings and structural compo-
28 nents of buildings, described in subparagraphs (i), (ii), (iii), (iv)

1 and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivi-
2 sion [twelve-B] three of section two hundred [ten] ten-B of the tax law,
3 the basis of which for federal income tax purposes will equal or exceed
4 seven hundred fifty million dollars, (iii) which is constructed after
5 the basis for federal income tax purposes of the property comprising
6 such qualified investment project equals or exceeds seven hundred fifty
7 million dollars, and (iv) at which five hundred or more jobs will be
8 created, provided such jobs are new to the state and are in addition to
9 any other jobs previously created by the owner of such project in the
10 state.

11 § 91. Subclauses (III) and (IV) of clause (ii) of subparagraph (B) of
12 paragraph 6 of subdivision (a) of section 292 of the tax law, as amended
13 by section 3 of part E of chapter 59 of the laws of 2013, are amended to
14 read as follows:

15 (III) [The adjustment required in this paragraph shall not apply if
16 the taxpayer establishes, by clear and convincing evidence of the type
17 and in the form specified by the commissioner, that: (a) the royalty
18 payment was paid, accrued or incurred to a related member organized
19 under the laws of a country other than the United States; (b) the
20 related member's income from the transaction was subject to a comprehen-
21 sive income tax treaty between such country and the United States; (c)
22 the related member was subject to tax in a foreign nation on a tax base
23 that included the royalty payment paid, accrued or incurred by the
24 taxpayer; (d) the related member's income from the transaction was taxed
25 in such country at an effective rate of tax at least equal to that
26 imposed by this state; and (e) the royalty payment was paid, accrued or
27 incurred pursuant to a transaction that was undertaken for a valid busi-
28 ness purpose and using terms that reflect an arm's length relationship.

1 (IV)] The adjustment required in this paragraph shall not apply if the
2 taxpayer and the commissioner agree in writing to the application or use
3 of alternative adjustments or computations. The commissioner may, in his
4 or her discretion, agree to the application or use of alternative
5 adjustments or computations when he or she concludes that in the absence
6 of such agreement the income of the taxpayer would not be properly
7 reflected.

8 § 92. Clauses (iii) and (iv) of subparagraph (B) of paragraph 2 of
9 subsection (r) of section 612 of the tax law, as amended by section 5 of
10 part E of chapter 59 of the laws of 2013, are amended to read as
11 follows:

12 (iii) [The adjustment required in this subsection shall not apply if
13 the taxpayer establishes, by clear and convincing evidence of the type
14 and in the form specified by the commissioner, that: (I) the royalty
15 payment was paid, accrued or incurred to a related member organized
16 under the laws of a country other than the United States; (II) the
17 related member's income from the transaction was subject to a comprehen-
18 sive income tax treaty between such country and the United States; (III)
19 the related member was subject to tax in a foreign nation on a tax base
20 that included the royalty payment paid, accrued or incurred by the
21 taxpayer; (IV) the related member's income from the transaction was
22 taxed in such country at an effective tax rate at least equal to that
23 imposed by this state; and (V) the royalty payment was paid, accrued or
24 incurred pursuant to a transaction that was undertaken for a valid busi-
25 ness purpose and using terms that reflect an arm's length relationship.

26 (iv)] The adjustment required in this subsection shall not apply if
27 the taxpayer and the commissioner agree in writing to the application or
28 use of alternative adjustments or computations. The commissioner may, in

1 his or her discretion, agree to the application or use of alternative
2 adjustments or computations when he or she concludes that in the absence
3 of such agreement the income of the taxpayer would not be properly
4 reflected.

5 § 93. Intentionally omitted.

6 § 94. Subclauses (III) and (IV) of clause (ii) of subparagraph (B) of
7 paragraph 14 of subdivision (b) of section 1503 of the tax law, as
8 amended by section 8 of part E of chapter 59 of the laws of 2013, are
9 amended to read as follows:

10 (III) [The adjustment required in this paragraph shall not apply if
11 the taxpayer establishes, by clear and convincing evidence of the type
12 and in the form specified by the commissioner, that: (a) the royalty
13 payment was paid, accrued or incurred to a related member organized
14 under the laws of a country other than the United States; (b) the
15 related member's income from the transaction was subject to a comprehen-
16 sive income tax treaty between such country and the United States; (c)
17 the related member was subject to tax in a foreign nation on a tax base
18 that included the royalty payment paid, accrued or incurred by the
19 taxpayer; (d) the related member's income from the transaction was taxed
20 in such country at an effective rate of tax at least equal to that
21 imposed by this state; and (e) the royalty payment was paid, accrued or
22 incurred pursuant to a transaction that was undertaken for a valid busi-
23 ness purpose and using terms that reflect an arm's length relationship.

24 (IV)] The adjustment required in this paragraph shall not apply if the
25 taxpayer and the commissioner agree in writing to the application or use
26 of alternative adjustments or computations. The commissioner may, in his
27 or her discretion, agree to the application or use of alternative
28 adjustments or computations when he or she concludes that in the absence

1 of such agreement the income of the taxpayer would not be properly
2 reflected.

3 § 95. Clauses (iii) and (iv) of subparagraph (B) of paragraph 2 of
4 subdivision (e) of section 11-506 of the administrative code of the city
5 of New York, as amended by section 9 of part E of chapter 59 of the laws
6 of 2013, are amended to read as follows:

7 (iii) [The adjustment required in this subdivision shall not apply if
8 the taxpayer establishes, by clear and convincing evidence of the type
9 and in the form specified by the commissioner of finance, that: (I) the
10 royalty payment was paid, accrued or incurred to a related member organ-
11 ized under the laws of a country other than the United States; (II) the
12 related member's income from the transaction was subject to a comprehen-
13 sive income tax treaty between such country and the United States; (III)
14 the related member was subject to tax in a foreign nation on a tax base
15 that included the royalty payment paid, accrued or incurred by the
16 taxpayer; (IV) the related member's income from the transaction was
17 taxed in such country at an effective rate of tax at least equal to that
18 imposed by this city; and (V) the royalty payment was paid, accrued or
19 incurred pursuant to a transaction that was undertaken for a valid busi-
20 ness purpose and using terms that reflect an arm's length relationship.

21 (iv)] The adjustment required in this subdivision shall not apply if
22 the taxpayer and the commissioner of finance agree in writing to the
23 application or use of alternative adjustments or computations. The
24 commissioner of finance may, in his or her discretion, agree to the
25 application or use of alternative adjustments or computations when he or
26 she concludes that in the absence of such agreement the income of the
27 taxpayer would not be properly reflected.

1 § 96. Subclauses (iii) and (iv) of clause (B) of subparagraph 2 of
2 paragraph (n) of subdivision 8 of section 11-602 of the administrative
3 code of the city of New York, as amended by section 10 of part E of
4 chapter 59 of the laws of 2013, are amended to read as follows:

5 (iii) [The adjustment required in this paragraph shall not apply if
6 the taxpayer establishes, by clear and convincing evidence of the type
7 and in the form specified by the commissioner of finance, that: (I) the
8 royalty payment was paid, accrued or incurred to a related member organ-
9 ized under the laws of a country other than the United States; (II) the
10 related member's income from the transaction was subject to a comprehen-
11 sive income tax treaty between such country and the United States; (III)
12 the related member was subject to tax in a foreign nation on a tax base
13 that included the royalty payment paid, accrued or incurred by the
14 taxpayer; (IV) the related member's income from the transaction was
15 taxed in such country at an effective rate of tax at least equal to that
16 imposed by this city; and (V) the royalty payment was paid, accrued or
17 incurred pursuant to a transaction that was undertaken for a valid busi-
18 ness purpose and using terms that reflect an arm's length relationship.

19 (iv)] The adjustment required in this paragraph shall not apply if the
20 taxpayer and the commissioner of finance agree in writing to the appli-
21 cation or use of alternative adjustments or computations. The commis-
22 sioner of finance may, in his or her discretion, agree to the applica-
23 tion or use of alternative adjustments or computations when he or she
24 concludes that in the absence of such agreement the income of the
25 taxpayer would not be properly reflected.

26 § 97. Clauses (iii) and (iv) of subparagraph (B) of paragraph 2 of
27 subdivision (q) of section 11-641 of the administrative code of the city

1 of New York, as amended by section 11 of part E of chapter 59 of the
2 laws of 2013, are amended to read as follows:

3 (iii) [The adjustment required in this subdivision shall not apply if
4 the taxpayer establishes, by clear and convincing evidence of the type
5 and in the form specified by the commissioner of finance, that: (I) the
6 royalty payment was paid, accrued or incurred to a related member organ-
7 ized under the laws of a country other than the United States; (II) the
8 related member's income from the transaction was subject to a comprehen-
9 sive income tax treaty between such country and the United States; (III)
10 the related member was subject to tax in a foreign nation on a tax base
11 that included the royalty payment paid, accrued or incurred by the
12 taxpayer; (IV) the related member's income from the transaction was
13 taxed in such country at an effective rate of tax at least equal to that
14 imposed by this city; and (V) the royalty payment was paid, accrued or
15 incurred pursuant to a transaction that was undertaken for a valid busi-
16 ness purpose and using terms that reflect an arm's length relationship.

17 (iv)] The adjustment required in this subdivision shall not apply if
18 the taxpayer and the commissioner of finance agree in writing to the
19 application or use of alternative adjustments or computations. The
20 commissioner of finance may, in his or her discretion, agree to the
21 application or use of alternative adjustments or computations when he or
22 she concludes that in the absence of such agreement the income of the
23 taxpayer would not be properly reflected.

24 § 98. Clauses (iii) and (iv) of subparagraph (B) of paragraph 2 of
25 subdivision (t) of section 11-1712 of the administrative code of the
26 city of New York, as amended by section 12 of part E of chapter 59 of
27 the laws of 2013, are amended to read as follows:

1 (iii) [The adjustment required in this subdivision shall not apply if
2 the taxpayer establishes, by clear and convincing evidence of the type
3 and in the form specified by the commissioner of finance, that: (I) the
4 royalty payment was paid, accrued or incurred to a related member organ-
5 ized under the laws of a country other than the United States; (II) the
6 related member's income from the transaction was subject to a comprehen-
7 sive income tax treaty between such country and the United States; (III)
8 the related member was subject to tax in a foreign nation on a tax base
9 that included the royalty payment paid, accrued or incurred by the
10 taxpayer; (IV) the related member's income from the transaction was
11 taxed in such country at an effective rate of tax at least equal to that
12 imposed by this city; and (V) the royalty payment was paid, accrued or
13 incurred pursuant to a transaction that was undertaken for a valid busi-
14 ness purpose and using terms that reflect an arm's length relationship.

15 (iv)] The adjustment required in this subdivision shall not apply if
16 the taxpayer and the commissioner of finance agree in writing to the
17 application or use of alternative adjustments or computations. The
18 commissioner of finance may, in his or her discretion, agree to the
19 application or use of alternative adjustments or computations when he or
20 she concludes that in the absence of such agreement the income of the
21 taxpayer would not be properly reflected.

22 § 99. Notwithstanding any provisions of law to the contrary and
23 notwithstanding the repeal of article 32 of the tax law by section one
24 of this act, the repeal of section 180 of the tax law by section two of
25 this act and the repeal of section 181 of the tax law by section three
26 of this act, all provisions of such article and such sections, in
27 respect to the imposition, exemption, assessment, payment, payment over,
28 determination, collection, and credit or refund of tax, interest and

1 penalty imposed thereunder, the filing of forms and returns, the preser-
2 vation of records for the purposes of such tax, the secrecy of returns,
3 the disposition of revenues, and the civil and criminal penalties appli-
4 cable to the violation of the provisions of such article 32 and such
5 sections 180 and 181, shall continue in full force and effect with
6 respect to all such tax accrued for taxable years beginning before Janu-
7 ary 1, 2015; and all actions and proceedings, civil or criminal,
8 commenced or authorized to be commenced under or by virtue of any
9 provision of such article 32 or by virtue of any provision of such
10 section 180 or 181 so repealed, and pending or able to be commenced
11 immediately prior to the taking effect of such repeal, may be commenced,
12 prosecuted and defended to final effect in the same manner as they might
13 if such provisions were not so repealed.

14 § 100. Subdivision 1 of section 187 of the tax law, as amended by
15 chapter 2 of the laws of 1995, is amended to read as follows:

16 1. A taxpayer shall be allowed a credit, to be credited against the
17 taxes imposed by this article, other than the taxes and fees imposed by
18 sections [one hundred eighty, one hundred eighty-one,] one hundred
19 eighty-six-a and one hundred eighty-six-e of this chapter. The amount of
20 the credit shall be the amount of the special additional mortgage
21 recording tax paid by the taxpayer pursuant to the provisions of subdi-
22 vision one-a of section two hundred fifty-three of this chapter on mort-
23 gages recorded on and after January first, nineteen hundred seventy-
24 nine. Provided, however, that the amount of such credit allowable
25 against the tax imposed by section one hundred eighty-four of this chap-
26 ter shall be the excess of the amount of such special additional mort-
27 gage recording tax paid over the amount of any credit allowed by this
28 section against the tax imposed by section one hundred eighty-three of

1 this chapter. Provided further, however, no credit shall be allowed with
2 respect to a mortgage of real property principally improved or to be
3 improved by one or more structures containing in the aggregate not more
4 than six residential dwelling units, each dwelling unit having its own
5 separate cooking facilities, where the real property is located in one
6 or more of the counties comprising the metropolitan commuter transporta-
7 tion district and where the mortgage is recorded on or after May first,
8 nineteen hundred eighty-seven. Provided further, however, no credit
9 shall be allowed with respect to a mortgage of real property principally
10 improved or to be improved by one or more structures containing in the
11 aggregate not more than six residential dwelling units, each dwelling
12 unit having its own separate cooking facilities, where the real property
13 is located in the county of Erie and where the mortgage is recorded on
14 or after May first, nineteen hundred eighty-seven.

15 § 101. Subdivision 1 of section 187-a of the tax law, as added by
16 chapter 142 of the laws of 1997, is amended to read as follows:

17 1. Allowance of credit. A taxpayer shall be allowed a credit, to be
18 computed as hereinafter provided, against the taxes imposed by this
19 article, other than the taxes imposed by sections [one hundred eighty,
20 one hundred eighty-one,] one hundred eighty-six-a, one hundred eighty-
21 six-e and one hundred eighty-nine of this article, for employing within
22 the state a qualified employee. Provided, however, the amount of credit
23 allowed by this section against the tax imposed by section one hundred
24 eighty-four of this article shall be the excess of the credit computed
25 under this section over the amount of credit allowed by this section
26 against the tax imposed by section one hundred eighty-three of this
27 article.

1 § 102. Subdivision 1 of section 190 of the tax law, as amended by
2 section 17 of part B of chapter 58 of the laws of 2004, is amended to
3 read as follows:

4 1. General. A taxpayer shall be allowed a credit against the tax
5 imposed by this article[, other than the taxes and fees imposed by
6 sections one hundred eighty and one hundred eighty-one of this article,]
7 equal to twenty percent of the premium paid during the taxable year for
8 long-term care insurance. In order to qualify for such credit, the
9 taxpayer's premium payment must be for the purchase of or for continuing
10 coverage under a long-term care insurance policy that qualifies for such
11 credit pursuant to section one thousand one hundred seventeen of the
12 insurance law.

13 § 103. Subdivision 5 of section 192 of the tax law is REPEALED.

14 § 104. Clauses 1 and 2 of subparagraph (A) and subparagraph (B) of
15 paragraph (iii) of subdivision 9 of section 16-v of section 1 of chapter
16 174 of the laws of 1968 constituting the urban development corporation
17 act, as added by section 1 of part C of chapter 59 of the laws of 2013,
18 is amended to read as follows:

19 (1) over fifty percent of the number of shares of stock entitling the
20 holders thereof to vote for the election of directors or trustees is
21 owned or controlled, either directly or indirectly, by a taxpayer
22 subject to tax under the following provisions of the tax law: article
23 nine-A; section one hundred eighty-three, or one hundred eighty-four [or
24 one hundred eighty-five] of article nine; [article thirty-two] or arti-
25 cle thirty-three; or

26 (2) is substantially similar in operation and in ownership to a busi-
27 ness entity (or entities) taxable or previously taxable under the
28 following provisions of the tax law: article nine-A; section one hundred

1 eighty-three, one hundred eighty-four, former section one hundred eight-
2 y-five or former section one hundred eighty-six of article nine; former
3 article thirty-two; article thirty-three; article twenty-three, or would
4 have been subject to tax under such article twenty-three (as such arti-
5 cle was in effect on January first, nineteen hundred eighty) or the
6 income (or losses) of which is (or was) includable under article twen-
7 ty-two; or

8 (B) a sole proprietorship, partnership, limited partnership, limited
9 liability company, or New York subchapter S corporation that is not
10 substantially similar in operation and in ownership to a business entity
11 (or entities) taxable, or previously taxable, under article nine-A of
12 the tax law, section one hundred eighty-three, one hundred eighty-four,
13 former section one hundred eighty-five or former section one hundred
14 eighty-six of article nine of the tax law, former article thirty-two or
15 article thirty-three of the tax law, article twenty-three of the tax law
16 or which would have been subject to tax under such article twenty-three
17 (as such article was in effect on January first, nineteen hundred
18 eighty) or the income (or losses) of which is (or was) includable under
19 article twenty-two of the tax law; and

20 § 105. Section 206 of the tax law, as added by chapter 69 of the laws
21 of 1978, is amended to read as follows:

22 § 206. Deposit and disposition of revenue. The [license fees,]
23 taxes, percentage, interest and other charges imposed by this article
24 shall be collected and deposited and receipts therefor issued by the
25 [tax commission, except that such license fees, taxes, percentage,
26 interest and other charges imposed by section one hundred eighty of this
27 chapter shall be collected and deposited and receipts therefor issued by
28 the proper state officer in accordance with the provisions of subdivi-

1 sion two of section one hundred eighty of this chapter,] commissioner
2 and all revenues so collected or received shall be deposited and
3 disposed of pursuant to the provisions of section one hundred seventy-
4 one-a of this chapter.

5 § 106. Subsection (a) of section 1080 of the tax law, as added by
6 chapter 188 of the laws of 1964, is amended to read as follows:

7 (a) General.---- The provisions of this article shall apply to the
8 administration of and the procedures with respect to the taxes imposed
9 by articles nine [(except section one hundred eighty)], and nine-a[,
10 nine-b and nine-c] of this chapter for taxable years or periods ending
11 on or after December thirty-first, nineteen hundred sixty-four.

12 § 107. Subdivisions (a) and (c) of section 1809 of the tax law, as
13 added by section 1 of subpart A of part S of chapter 57 of the laws of
14 2010, are amended to read as follows:

15 (a) Any person who, with intent to evade payment of any tax imposed
16 under article nine [(other than under section one hundred eighty or one
17 hundred eighty-one)], nine-A, thirteen, [thirty-two,] thirty-three or
18 thirty-three-A of this chapter, fails to file a return or report for
19 three consecutive taxable years shall be guilty of a class E felony,
20 provided that such person had an unpaid tax liability, in excess of the
21 threshold amount with respect to each of the three consecutive taxable
22 years. The threshold amount in the case of a taxable year under article
23 nine-A of this chapter ending after June thirtieth, nineteen hundred
24 eighty-nine is the applicable fixed dollar minimum prescribed under
25 paragraph (d) of subdivision one of section two hundred ten of this
26 chapter. In the event such fixed dollar minimum is less than two hundred
27 fifty dollars, the threshold amount in the case of such taxable year is

1 two hundred fifty dollars. In all other cases the threshold amount is
2 two hundred fifty dollars.

3 (c) As used in this section, the terms "return" and "report" shall
4 mean a return or report required under section one hundred ninety-two,
5 two hundred eleven, two hundred ninety-four, [fourteen hundred sixty-
6 two,] fifteen hundred fifteen or fifteen hundred fifty-four of this
7 chapter. It shall not include any return or report referred to in
8 section one hundred ninety-seven-a, two hundred thirteen-a, [fourteen
9 hundred sixty] or fifteen hundred thirteen of this chapter.

10 § 108. Paragraphs (d), (e), (g), (h) and (q) of section 104-A of the
11 business corporation law, subdivisions (d), (e) and (q) as amended by
12 chapter 166 of the laws of 1991, subdivision (g) as added by chapter 591
13 of the laws of 1982, and subdivision (h) as amended by chapter 117 of
14 the laws of 1986, are amended to read as follows:

15 (d) For filing a certificate of incorporation pursuant to section four
16 hundred two of this chapter, one hundred twenty-five dollars [plus the
17 tax on shares prescribed by section one hundred eighty of the tax law].

18 (e) For filing a certificate of amendment pursuant to section eight
19 hundred five of this chapter, sixty dollars [plus the tax on shares
20 prescribed by section one hundred eighty of the tax law if such certif-
21 icate shows a change of shares].

22 (g) For filing a restated certificate of incorporation pursuant to
23 section eight hundred seven of this chapter, sixty dollars [plus the tax
24 on shares prescribed by section one hundred eighty of the tax law if
25 such certificate shows a change of shares].

26 (h) For filing a certificate of merger or consolidation pursuant to
27 section nine hundred four of this chapter, or a certificate of exchange
28 pursuant to section nine hundred thirteen (other than paragraph (g) of

1 section nine hundred thirteen) of this chapter, sixty dollars [plus the
2 tax on shares prescribed by section one hundred eighty of the tax law if
3 such certificate shows a change of shares].

4 (q) For filing a certificate of incorporation by a professional
5 service corporation pursuant to section fifteen hundred three of this
6 chapter, one hundred twenty-five dollars [plus the tax on shares
7 prescribed by section one hundred eighty of the tax law].

8 § 109. Subdivision 8 of section 7-a of the general associations law,
9 as added by chapter 575 of the laws of 1964, is amended to read as
10 follows:

11 8. The provisions of section ninety-six of the executive law prescrib-
12 ing the fee to be collected by the department of state for filing a
13 certificate of incorporation under the business corporation law shall
14 apply to the certificate of incorporation to be filed pursuant to this
15 section[, and the organization tax payable under section one hundred
16 eighty of the tax law in respect of a corporation formed under the busi-
17 ness corporation law shall be paid before the department of state shall
18 file such certificate of incorporation].

19 § 110. Severability. If any provision of this act shall for any reason
20 be finally adjudged by any court of competent jurisdiction to be inval-
21 id, such judgment shall not affect, impair, or invalidate the remainder
22 of this act, but shall be confined in its operation to the provision
23 directly involved in the controversy in which such judgment shall have
24 been rendered. It is hereby declared to be in the intent of the legisla-
25 ture that this act would have been enacted even if such invalid
26 provision had not been included in this act. Provided further, if a
27 court of final, competent jurisdiction adjudges the tax rates imposed on
28 qualified New York manufacturers to be invalid, qualified New York

1 manufacturers shall be subject to the same tax rates as all other
2 taxpayers subject to tax under article 9-A of the tax law. Provided
3 further, if a court of final, competent jurisdiction adjudges that any
4 of the tax credits provided by this act to be invalid, such credit or
5 credits shall be deemed repealed and shall be of no force and effect as
6 to any taxpayers.

7 § 111. This act shall take effect January 1, 2015 and shall apply to
8 taxable years commencing on or after such date; provided that the amend-
9 ments to section 25 of the tax law made by section forty-three of this
10 act shall not affect the repeal of such section and shall be deemed
11 repealed therewith; provided, further, that the amendments to the open-
12 ing paragraph of subdivision (a), subparagraph (C) of paragraph 2 of
13 subdivision (e) and subdivision (f) of section 35 of the tax law made by
14 section fifty of this act shall not affect the repeal of such provisions
15 and shall be deemed repealed therewith; provided, further, that the
16 amendments to clause (xxxii) of subparagraph (B) of paragraph 1 of
17 subsection (i) of section 606 of the tax law made by section sixty-eight
18 of this act shall not affect the repeal of such clause and shall be
19 deemed repealed therewith; provided, further, that the amendments to
20 clause (xxxiii) of subparagraph (B) of paragraph 1 of subsection (i) of
21 section 606 of the tax law made by section sixty-eight of this act shall
22 not affect the repeal of such clause and shall be deemed repealed there-
23 with; and provided, further, that the amendments to clause (ii) of
24 subparagraph (B) of paragraph 2 of subsection (q), paragraph 3 of
25 subsection (s) and the closing paragraph of paragraph 1 of subsection
26 (t) of section 1085 of the tax law made by section eighty-one of this
27 act shall not affect the repeal of such provisions and shall be deemed
28 repealed therewith.

1

PART B

2 Section 1. Subparagraph (iii) of paragraph (a) of subdivision 14 of
3 section 425 of the real property tax law, as added by section 1 of part
4 J of chapter 57 of the laws of 2013, is amended to read as follows:

5 (iii) An owner who fails to register by the registration deadline so
6 established shall be permitted to file a petition with the commissioner
7 requesting that the commissioner excuse such failure and accept a late
8 registration, provided that such petition shall explain why such failure
9 occurred and shall be filed no later than one year after such deadline,
10 and provided further that if the commissioner accepts a late registra-
11 tion after having directed the removal of the Basic STAR exemption from
12 the property to which the registration pertains, then in lieu of direct-
13 ing the exemption to be restored, the commissioner is authorized in his
14 or her discretion to remit directly to the property owner or owners the
15 tax savings that the exemption would have yielded had it not been
16 removed, and to further direct the assessor to restore the exemption on
17 a prospective basis without a new application unless the assessor has
18 reason to believe that the property owner is no longer eligible for
19 reasons other than a failure to register;

20 § 2. This act shall take effect immediately and shall be deemed to
21 have been in full force and effect on and after April 1, 2014.

22

PART C

23 Section 1. Section 2 of chapter 540 of the laws of 1992, amending the
24 real property tax law relating to oil and gas charges, as amended by

1 section 1 of part A of chapter 59 of the laws of 2012, is amended to
2 read as follows:

3 § 2. This act shall take effect immediately and shall be deemed to
4 have been in full force and effect on and after April 1, 1992; provided,
5 however that any charges imposed by section 593 of the real property tax
6 law as added by section one of this act shall first be due for values
7 for assessment rolls with tentative completion dates after July 1, 1992,
8 and provided further, that this act shall remain in full force and
9 effect until March 31, [2015] 2018, at which time section 593 of the
10 real property tax law as added by section one of this act shall be
11 repealed.

12 § 2. This act shall take effect immediately.

13 PART D

14 Section 1. Subdivision 1 of section 236 of the racing, pari-mutuel
15 wagering and breeding law, as amended by chapter 18 of the laws of 2008,
16 is amended to read as follows:

17 1. Every corporation authorized under this chapter to conduct pari-mu-
18 tuel betting at a race meeting on races run thereat, except as provided
19 in section two hundred thirty-eight of this article with respect to the
20 franchised corporation, shall distribute all sums deposited in any pari-
21 mutuel pool to the holders of winning tickets therein, providing such
22 tickets be presented for payment before April first of the year follow-
23 ing the year of their purchase, less an amount which shall be estab-
24 lished and retained by such racing corporation of between fourteen to
25 twenty per centum of the total deposits in pools resulting from regular
26 on-track bets and less sixteen to twenty-two per centum of the total

1 deposits in pools resulting from multiple on-track bets and less twenty
2 to thirty per centum of the total deposits in pools resulting from exot-
3 ic on-track bets and less twenty to thirty-six per centum of the total
4 pools resulting from super exotic on-track bets, plus the breaks. The
5 retention rate to be established is subject to the prior approval of the
6 [racing and wagering board] commission. Such rate may not be changed
7 more than once per calendar quarter to be effective on the first day of
8 the calendar quarter. "Exotic bets" and "multiple bets" shall have the
9 meanings set forth in section five hundred nineteen of this chapter and
10 breaks are hereby defined as the odd cents over any multiple of ten, or
11 for exotic bets over any multiple of fifty, or for super exotic bets,
12 over any multiple of one hundred, calculated on the basis of one dollar,
13 otherwise payable to a patron provided, however, that effective after
14 October fifteenth, nineteen hundred ninety-four breaks are hereby
15 defined as the odd cents over any multiple of five for payoffs greater
16 than one dollar five cents but less than five dollars, over any multiple
17 of ten for payoffs greater than five dollars but less than twenty-five
18 dollars, over any multiple of twenty-five for payoffs greater than twen-
19 ty-five dollars but less than two hundred fifty dollars, or over any
20 multiple of fifty for payoffs over two hundred fifty dollars. "Super
21 exotic bets" shall have the meaning set forth in section three hundred
22 one of this chapter. Of the amount so retained there shall be paid by
23 such corporation to the department of taxation and finance as a reason-
24 able tax by the state for the privilege of conducting pari-mutuel
25 betting on the races run at the race meeting held by such corporation,
26 which tax is hereby levied, the following percentages of the total pool,
27 plus fifty-five per centum of the breaks; the applicable rates for regu-
28 lar and multiple bets shall be one and one-half per centum; the applica-

1 ble rates for exotic bets shall be six and three-quarter per centum and
2 the applicable rate for super exotic bets shall be seven and three-quar-
3 ter per centum. Effective on and after September first, nineteen hundred
4 ninety-four, the applicable tax rate shall be one per centum of all
5 wagers, provided that, an amount equal to one-half the difference
6 between the taxation rate for on-track regular, multiple and exotic bets
7 as of December thirty-first, nineteen hundred ninety-three and the rates
8 on such on-track wagers as herein provided shall be used exclusively for
9 purses. Provided, however, that for any twelve-month period beginning on
10 April first in nineteen hundred ninety and any year thereafter, each of
11 the applicable rates set forth above shall be increased by one-quarter
12 of one per centum on all on-track bets of any such racing corporation
13 that did not expend an amount equal to at least one-half of one per
14 centum of its on-track bets during the immediately preceding calendar
15 year for enhancements consisting of capital improvements as defined by
16 section two hundred thirty-seven of this article, repairs to its phys-
17 ical plant, structures, and equipment used in its racing or wagering
18 operations as certified by the [state racing and wagering board] commis-
19 sion to the commissioner of taxation and finance no later than eighty
20 days after the close of such calendar year, and five special events at
21 each track in each calendar year, not otherwise conducted in the ordi-
22 nary course of business, the purpose of which shall be to encourage,
23 attract and promote track attendance and encourage new and continued
24 patronage, which events shall be approved by the [racing and wagering
25 board] commission for purposes of this subdivision. In the determination
26 of the amounts expended for such enhancements, the [board] commission
27 may consider the immediately preceding twelve month calendar period or
28 the average of the two immediately preceding twelve month calendar peri-

1 ods. Provided further, however, that of the portion of the increased
2 amounts retained by such corporation above those amounts retained in
3 nineteen hundred eighty-four, an amount of such increase shall be
4 distributed to purses in the same proportion as commissions and purses
5 were distributed during nineteen hundred eighty-four as certified by the
6 [board] commission. Such corporation in the second zone shall receive a
7 credit against the daily tax imposed by this subdivision in an amount
8 equal to one per centum of total daily pools resulting from the simul-
9 cast of such corporation's races to licensed facilities operated by
10 regional off-track betting corporations in accordance with section one
11 thousand eight of this chapter, provided however, that sixty per centum
12 of the amount of such credit shall be used exclusively to increase purs-
13 es for overnight races conducted by such corporation; and, provided
14 further, that in no event shall such total daily credit exceed one per
15 centum of the total daily pool of such corporation. Provided, however,
16 that on and after September first, nineteen hundred ninety-four such
17 credit shall be four-tenths percent of total daily pools resulting from
18 such simulcasting and that in no event shall such total daily credit
19 equal four-tenths percent of the total daily pool of such corporation.

20 Such corporation shall pay to the New York state thoroughbred breeding
21 and development fund one-half of one per centum of the total daily
22 on-track pari-mutuel pools from regular, multiple and exotic bets, and
23 three per centum of super exotic bets. The corporation shall receive
24 credit as a reduction of the tax by the state for the privilege of
25 conducting pari-mutuel betting for the amounts, except amounts paid from
26 super exotic betting pools, paid to the New York state thoroughbred
27 breeding and development fund after January first, nineteen hundred
28 seventy-eight.

1 Such corporation shall distribute to purses an amount equal to fifty
2 per centum of any compensation it receives from simulcasting or from
3 wagering conducted outside the United States. Such corporation shall pay
4 to the [racing and wagering board] commission as a regulatory fee, which
5 fee is hereby levied, [fifty] sixty hundredths of one per centum of the
6 total daily on-track pari-mutuel pools of such corporation.

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

10 (d) The pari-mutuel tax rate authorized by paragraph (a) of this
11 subdivision shall be effective so long as a franchised corporation noti-
12 fies the [racing and wagering board] commission by August fifteenth of
13 each year that such pari-mutuel tax rate is effective of its intent to
14 conduct a race meeting at Aqueduct racetrack during the months of Decem-
15 ber, January, February, March and April. For purposes of this paragraph
16 such race meeting shall consist of not less than ninety-five days of
17 racing. Not later than May first of each year that such pari-mutuel tax
18 rate is effective, the [racing and wagering board] commission shall
19 determine whether a race meeting at Aqueduct racetrack consisted of the
20 number of days as required by this paragraph. In determining the number
21 of race days, cancellation of a race day because of an act of God, which
22 the [racing and wagering board] commission approves or because of weath-
23 er conditions that are unsafe or hazardous which the [racing and wager-
24 ing board] commission approves shall not be construed as a failure to
25 conduct a race day. Additionally, cancellation of a race day because of
26 circumstances beyond the control of such franchised corporation for
27 which the [racing and wagering board] commission gives approval shall
28 not be construed as a failure to conduct a race day. If the [racing and

1 wagering board] commission determines that the number of days of racing
2 as required by this paragraph have not occurred then the pari-mutuel tax
3 rate in paragraph (a) of this subdivision shall revert to the pari-mutu-
4 el tax rates in effect prior to January first, nineteen hundred ninety-
5 five. Such franchised corporation shall pay to the [racing and wagering
6 board] commission as a regulatory fee, which fee is hereby levied,
7 [fifty] sixty hundredths of one per centum of the total daily on-track
8 pari-mutuel pools of such franchised corporation.

9 § 3. Paragraph d of subdivision 1 of section 318 of the racing, pari-
10 mutuel wagering and breeding law, as amended by section 3 of part B of
11 chapter 59 of the laws of 2005, is amended to read as follows:

12 d. Every harness racing association or corporation shall pay to the
13 [board] commission as a regulatory fee, which fee is hereby levied,
14 [fifty] sixty hundredths of one percent of the total daily on-track
15 pari-mutuel pools of such association or corporation.

16 § 4. The opening paragraph of subdivision 1 of section 527 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 disposition of the retained commission from pools resulting from
20 regular, multiple or exotic bets, as the case may be, whether placed on
21 races run within a region or outside a region, conducted by racing
22 corporations, harness racing associations or corporations, quarter horse
23 racing associations or corporations or races run outside the state shall
24 be governed by the tables in paragraphs a and b of this subdivision. The
25 rate denominated "state tax" shall represent the rate of a reasonable
26 tax imposed upon the retained commission for the privilege of conducting
27 off-track pari-mutuel betting, which tax is hereby levied and shall be
28 payable in the manner set forth in this section. Each off-track betting

1 corporation shall pay to the [racing and wagering board] commission as a
2 regulatory fee, which fee is hereby levied, [fifty] sixty hundredths of
3 one percent of the total daily pools of such corporation. Each corpo-
4 ration shall also pay twenty per centum of the breaks derived from bets
5 on harness races and fifty per centum of the breaks derived from bets on
6 all other races to the agriculture and New York State horse breeding and
7 development fund and to the thoroughbred breeding and development fund,
8 the total of such payments to be apportioned fifty per centum to each
9 such fund. For the purposes of this section, the New York city, Suffolk,
10 Nassau, and the Catskill regions shall constitute a single region and
11 any thoroughbred track located within the Capital District region shall
12 be deemed to be within such single region. A "regional meeting" shall
13 refer to either harness or thoroughbred meetings, or both, except that a
14 franchised corporation shall not be a regional track for the purpose of
15 receiving distributions from bets on thoroughbred races conducted by a
16 thoroughbred track in the Catskill region conducting a mixed meeting.
17 With the exception of a harness racing association or corporation first
18 licensed to conduct pari-mutuel wagering at a track located in Tioga
19 county after January first, two thousand five, racing corporations first
20 licensed to conduct pari-mutuel racing after January first, nineteen
21 hundred eighty-six or a harness racing association or corporation first
22 licensed to conduct pari-mutuel wagering at a track located in Genesee
23 County after January first, two thousand five, and quarter horse tracks
24 shall not be "regional tracks"; if there is more than one harness track
25 within a region, such tracks shall evenly divide payments made pursuant
26 to the tables in paragraphs a and b of this subdivision when neither
27 track is running. In the event a track elects to reduce its retained
28 percentage from any or all of its pari-mutuel pools, the payments to the

1 track holding the race and the regional track required by paragraphs a
2 and b of this subdivision shall be reduced in proportion to such
3 reduction. Nothing in this section shall be construed to authorize the
4 conduct of off-track betting contrary to the provisions of section five
5 hundred twenty-three of this article.

6 § 5. Paragraph a of subdivision 1 of section 904 of the racing, pari-
7 mutuel wagering and breeding law, as amended by chapter 18 of the laws
8 of 2008, is amended to read as follows:

9 a. The applicable state tax provided for in paragraphs a and b of
10 subdivision one of section five hundred twenty-seven of this chapter
11 shall be one-half per centum for regular, multiple and exotic bets. Any
12 harness racing or association or corporation, or thoroughbred racing
13 corporation authorized pursuant to this section shall pay to the [racing
14 and wagering board] commission as a regulatory fee, which fee is hereby
15 levied, [fifty] sixty hundredths of one percent of the total daily pari-
16 mutuel pools.

17 § 6. Paragraph g of subdivision 3 of section 1007 of the racing, pari-
18 mutuel wagering and breeding law, as amended by chapter 18 of the laws
19 of 2008, is amended to read as follows:

20 g. Any harness racing or association or corporation, or thoroughbred
21 racing corporation authorized pursuant to this section shall pay to the
22 [racing and wagering board] commission as a regulatory fee, which fee is
23 hereby levied, [fifty] sixty hundredths of one percent of the total
24 daily pari-mutuel pools.

25 § 7. Paragraph b of subdivision 3 of section 1008 of the racing, pari-
26 mutuel wagering and breeding law, as amended by section 7 of part B of
27 chapter 59 of the laws of 2005, is amended to read as follows:

1 b. Of the sums received by the sending track, fifty percent shall be
2 distributed to purses in addition to moneys distributed pursuant to
3 section five hundred twenty-seven of this chapter. The off-track betting
4 corporation shall pay to the [racing and wagering board] commission as a
5 regulatory fee, which fee is hereby levied, [fifty] sixty hundredths of
6 one percent of the total daily pools.

7 § 8. Paragraph d of subdivision 4 of section 1009 of the racing, pari-
8 mutuel wagering and breeding law, as amended by section 8 of part B of
9 chapter 59 of the laws of 2005, is amended to read as follows:

10 d. The operator shall pay to the [racing and wagering board] commis-
11 sion as a regulatory fee, which fee is hereby levied, [fifty] sixty
12 hundredths of one percent of the total daily pools.

13 § 9. Subparagraph (iv) of paragraph i of subdivision 1 of section 1014
14 of the racing, pari-mutuel wagering and breeding law, as amended by
15 chapter 18 of the laws of 2008, is amended to read as follows:

16 (iv) Any thoroughbred racing corporation or harness racing association
17 or corporation or off-track betting corporation authorized pursuant to
18 this section shall pay to the [racing and wagering board] commission as
19 a regulatory fee, which fee is hereby levied, [fifty] sixty hundredths
20 of one percent of all wagering pools.

21 § 10. Paragraph e of subdivision 3 of section 1015 of the racing,
22 pari-mutuel wagering and breeding law, as amended by chapter 18 of the
23 laws of 2008, is amended to read as follows:

24 e. Any thoroughbred racing corporation or harness racing association
25 or corporation or off-track betting corporation authorized pursuant to
26 this section shall pay to the [racing and wagering board] commission as
27 a regulatory fee, which fee is hereby levied, [fifty] sixty hundredths
28 of one percent of all wagering pools.

1 § 11. Clause (B) of subparagraph 2 of paragraph b of subdivision 1 of
2 section 1016 of the racing, pari-mutuel wagering and breeding law, as
3 amended by chapter 18 of the laws of 2008, is amended to read as
4 follows:

5 (B) Any harness racing or association or corporation or thoroughbred
6 racing corporation authorized pursuant to this section shall pay to the
7 [racing and wagering board] commission as a regulatory fee, which fee is
8 hereby levied, [fifty] sixty hundredths of one percent of the total
9 daily pari-mutuel pools.

10 § 12. Paragraph b of subdivision 2 of section 1018 of the racing,
11 pari-mutuel wagering and breeding law, as amended by chapter 18 of the
12 laws of 2008, is amended to read as follows:

13 b. Any thoroughbred racing corporation or harness racing association
14 or corporation or off-track betting corporation shall pay to the [racing
15 and wagering board] commission as a regulatory fee, which fee is hereby
16 levied, [fifty] sixty hundredths of one percent of all wagering pools.

17 § 13. This act shall take effect immediately.

18 PART E

19 Section 1. Subsection (a) of section 653 of the tax law, as amended by
20 chapter 65 of the laws of 1985, is amended to read as follows:

21 (a) General. (1) Any return, statement or other document required to
22 be made pursuant to this article shall be signed in accordance with
23 regulations or instructions prescribed by the [tax commission] commis-
24 sioner. The fact that an individual's name is signed to a return,
25 statement, or other document, shall be prima facie evidence for all

1 purposes that the return, statement or other document was actually
2 signed by him or her.

3 (2) In the case of an electronically filed individual's personal
4 income tax return prepared by a tax preparer, an authorization to file
5 any return, statement or other document required to be made pursuant to
6 this article signed by the taxpayer in accordance with the regulations
7 or instructions prescribed by the commissioner and received electron-
8 ically by the tax preparer shall satisfy the signature requirements
9 under this article.

10 § 2. This act shall take effect immediately and shall apply to returns
11 filed for taxable years beginning on or after January 1, 2014.

12 PART F

13 Section 1. Clause (C) of subparagraph (i) of paragraph (b) of subdivi-
14 sion 4 of section 425 of the real property tax law, as amended by
15 section 3 of part E of chapter 83 of the laws of 2002, is amended to
16 read as follows:

17 (C) For final assessment rolls to be completed in [each ensuing year]
18 the years two thousand four through two thousand fourteen, the applica-
19 ble income tax year, cost-of-living-adjustment percentage and applicable
20 increase percentage shall all be advanced by one year, and the income
21 standard shall be the previously-applicable income standard increased by
22 the new cost-of-living-adjustment percentage. If there should be a year
23 for which there is no applicable increase percentage due to a general
24 benefit increase as defined by subdivision three of subsection (i) of
25 section four hundred fifteen of title forty-two of the United States
26 code, the applicable increase percentage for purposes of this computa-

1 tion shall be deemed to be the percentage which would have yielded that
2 general benefit increase. For final assessment rolls to be completed in
3 two thousand fifteen and thereafter, the applicable income tax year
4 shall be advanced by one year, and eligibility for the enhanced
5 exemption shall be based upon the income standard applied for final
6 assessment rolls completed in two thousand fourteen.

7 § 2. This act shall take effect immediately and shall apply to assess-
8 ment rolls completed in 2015 and thereafter.

9 PART G

10 Section 1. Section 2 of part I of chapter 58 of the laws of 2006,
11 relating to providing an enhanced earned income tax credit, as amended
12 by section 1 of part L of chapter 59 of the laws of 2012, is amended to
13 read as follows:

14 § 2. This act shall take effect immediately and shall apply to taxable
15 years beginning on or after January 1, 2006 and before January 1, [2015]
16 2017.

17 § 2. This act shall take effect immediately.

18 PART H

19 Section 1. The general obligations law is amended by adding a new
20 section 3-505 to read as follows:

21 § 3-505. Enforcement of delinquent tax liabilities through electronic
22 tax clearances for occupational, professional and business licenses.

23 1. As used in this section:

1 a. "Government entity" means the state of New York, or any of its
2 agencies, political subdivisions, instrumentalities, public corporations
3 (including a public corporation created pursuant to agreement or compact
4 with another state or Canada), or combination thereof, responsible for
5 determining whether a license shall be issued or renewed.

6 b. "Electronic license application" means any electronic data form
7 that must be completed by an applicant to obtain or renew a license, or
8 an electronic data process which is used by a government entity to proc-
9 ess data received from an applicant seeking to receive or renew a
10 license.

11 c. "Electronic tax clearance" means an electronic communication from
12 the department of taxation and finance indicating that an applicant had
13 no past-due tax liabilities, as that term is defined in section one
14 hundred seventy-one-w of the tax law, or that no conclusive match could
15 be made.

16 d. "License" means any certificate, license, permit or grant of
17 permission required by law or agency regulation as a condition for the
18 lawful practice of any occupation, employment, trade, vocation, busi-
19 ness, or profession, including any registration required by law or agen-
20 cy regulation as a condition for such lawful practice. This shall
21 include, but is not limited to, any license granted to an individual or
22 entity by the state education department, the department of state, or
23 the office of court administration. Provided, however, that "license"
24 shall not, for the purposes of this section, include any license or
25 permit to own, possess, carry, or fire any explosive, pistol, handgun,
26 rifle, shotgun, other firearm or ammunition.

27 2. Notwithstanding any other provision of law, and when not already
28 required by another provision of law or regulation, any government enti-

1 ty may elect to condition the issuance or renewal of a license on the
2 absence of past-due tax liabilities and to make such determination
3 through the receipt of an electronic tax clearance from the department
4 of taxation and finance as provided for in section one hundred seventy-
5 one-w of the tax law.

6 3. Any applicant for a license subject to electronic tax clearance
7 shall be required to provide any information deemed necessary by the
8 government entity and the department of taxation and finance to effi-
9 ciently and accurately provide an electronic tax clearance, and the
10 failure by the applicant to provide such information shall render the
11 application incomplete.

12 4. The application for a license subject to electronic tax clearance,
13 or the instructions for such application, shall clearly inform the
14 applicant that an electronic tax clearance will be performed and that,
15 if the tax clearance is denied, the applicant must contact the depart-
16 ment of taxation and finance to resolve any past-due tax liabilities
17 before the application for a license or renewal may be resubmitted.

18 5. If an electronic tax clearance is denied by the department of taxa-
19 tion and finance, the government entity shall deny issuance or renewal
20 of the requested license and shall electronically notify the applicant
21 to contact the department of taxation and finance to resolve the past-
22 due tax liabilities and that no license may be issued or renewed until
23 the tax liabilities are resolved.

24 6. Any tax clearance or related communications shall be by secure
25 electronic communication between the department of taxation and finance
26 and the requesting government entity such that processing of the elec-
27 tronic application is not delayed if the electronic tax clearance is
28 received. Notwithstanding any other law to the contrary, a government

1 entity shall be authorized to share any applicant data or information
2 with the department of taxation and finance that is necessary to ensure
3 the proper matching of the applicant to the tax records maintained by
4 the department of taxation and finance.

5 7. No fee shall be charged to the applicant for the purposes of
6 receiving an electronic tax clearance.

7 § 2. The tax law is amended by adding a new section 171-w to read as
8 follows:

9 § 171-w. Enforcement of delinquent tax liabilities through electronic
10 tax clearances for occupational, professional and business licenses. 1.
11 In accordance with section 3-505 of the general obligations law, the
12 commissioner shall cooperate with any government entity that elects to
13 require an electronic tax clearance as a part of an electronic license
14 application process for which the government entity is responsible. For
15 the purposes of this section, the term "tax liabilities" shall mean any
16 tax, surcharge, or fee administered by the commissioner, or any penalty
17 or interest owed by an individual or entity. The term "past-due tax
18 liabilities" means any unpaid tax liabilities equal to or in excess of
19 five hundred dollars which have become fixed and final such that the
20 taxpayer no longer has any right to administrative or judicial review.
21 For the purposes of this section, the terms "government entity," "elec-
22 tronic license application," and "license" shall have the same meaning
23 as provided in section 3-505 of the general obligations law.

24 2. The commissioner, or his or her designee, shall cooperate with any
25 government entity exercising its authority pursuant to section 3-505 of
26 the general obligations law to establish procedures by which the depart-
27 ment shall electronically receive a tax clearance request as an elec-
28 tronic license application is processed, and electronically transmit

1 such tax clearance to the government entity. These procedures shall
2 include the identification of owners, officers or responsible persons
3 subject to electronic tax clearance in conjunction with an application
4 by an entity, and any other procedures deemed necessary to carry out the
5 provisions of this section.

6 3. In any instance where a license or license renewal provided by the
7 government entity is of a type that may be issued only to an individual
8 or entity that is a person required to register pursuant to section one
9 thousand one hundred thirty-four of this chapter, the department shall
10 also verify that the applicant is registered pursuant to such section,
11 and no electronic tax clearance may be issued unless the applicant is
12 registered pursuant to such section.

13 4. If a tax clearance is denied, the government entity processing the
14 application shall provide notice to the applicant to contact the depart-
15 ment. When the applicant contacts the department, the department shall
16 inform the applicant (a) what past-due tax liabilities are at issue; (b)
17 that an electronic tax clearance may be received by fully satisfying the
18 past-due tax liabilities or by making payment arrangements satisfactory
19 to the commissioner or, if the applicant needs to register for sales tax
20 purposes, by registering pursuant to section one thousand one hundred
21 thirty-four of this chapter; and (c) the grounds for challenging the
22 denial of an electronic tax clearance listed in subdivision five of this
23 section. The government entity shall also inform the applicant that an
24 application may be resubmitted after payment for the past-due tax
25 liabilities has cleared, or, if a payment plan is agreed to, after the
26 first payment pursuant to such plan has cleared.

27 5. (a) Notwithstanding any other provision of law, and except as
28 specifically provided herein, an applicant denied an electronic tax

1 clearance shall have no right to commence a court action or proceeding
2 or seek any other legal recourse against the department or the govern-
3 ment entity related to the denial of an electronic tax clearance by the
4 department. An applicant may challenge such denial of an electronic tax
5 clearance only on the grounds that:

6 (i) the individual or entity denied the electronic tax clearance is
7 not the individual or entity with the past-due tax liabilities at issue;
8 (ii) the past-due tax liabilities were satisfied; (iii) the applicant's
9 wages are being garnished for the payment of child support or combined
10 child and spousal support pursuant to an income execution issued pursu-
11 ant to section five thousand two hundred forty-one or five thousand two
12 hundred forty-two of the civil practice law and rules or another state's
13 income withholding order as authorized under part five of article five-B
14 of the family court act, or garnished by the department for the payment
15 of the past-due tax liabilities at issue; (iv) the applicant is making
16 child support payments or combined child and spousal support payments
17 pursuant to a satisfactory payment arrangement under section one hundred
18 eleven-b of the social services law with a support collection unit or
19 otherwise making periodic payments in accordance with section four
20 hundred forty of the family court act; or (v) if the only basis for the
21 denial of an electronic tax clearance was the applicant's failure to
22 register pursuant to section one thousand one hundred thirty-four of
23 this chapter, that the applicant was properly registered pursuant to
24 such section one thousand one hundred thirty-four.

25 (b) An applicant seeking to challenge the denial of an electronic tax
26 clearance must protest to the department or the division of tax appeals
27 no later than sixty days from the date of the electronic notification to

1 the applicant, pursuant to subdivision four of section 3-505 of the
2 general obligations law, that the electronic tax clearance was denied.

3 (c) Nothing in this subdivision is intended to limit any applicant
4 from seeking relief from joint and several liability pursuant to section
5 six hundred fifty-four of this chapter, to the extent that he or she is
6 eligible pursuant to that section, or establishing to the department
7 that the enforcement of the underlying tax liabilities has been stayed
8 by the filing of a petition pursuant to the Bankruptcy Code of 1978
9 (Title Eleven of the United States Code).

10 6. Notwithstanding any other provision of law, the department may
11 exchange with a government entity any data or information necessary
12 that, in the discretion of the commissioner, is necessary for the imple-
13 mentation of any electronic tax clearance. However, no other agency may
14 re-disclose this information to any other entity or person, other than
15 for the purpose of informing the applicant that the application for a
16 license or the renewal of such license will not be processed due to the
17 lack of a required tax clearance authorized by any provision of law
18 unless otherwise permitted by law.

19 7. Except as otherwise provided in this section, the activities to
20 collect past-due tax liabilities undertaken by the department pursuant
21 to this section shall not in any way limit, restrict or impair the
22 department from exercising any other authority to collect or enforce tax
23 liabilities under any other applicable provision of law.

24 8. Except as otherwise provided in this section, the provisions of
25 this section are not applicable to the tax clearance required by section
26 one hundred seventy-one-v of this chapter.

27 § 3. This act shall take effect June 1, 2014; provided, however, that
28 the department of taxation and finance and any government entity elect-

1 ing to receive an electronic tax clearance from the department of taxa-
2 tion and finance may work to execute the necessary procedures and tech-
3 nical changes to support the electronic tax clearance process as
4 described in sections one and two of this act before that date;
5 provided, further, that this effective date will not impact the adminis-
6 tration of any electronic tax clearance program authorized by another
7 provision of law.

8 PART I

9 Section 1. Subsection (b) of section 612 of the tax law is amended by
10 adding a new paragraph 40 to read as follows:

11 (40) in the case of a beneficiary of a nonresident trust or a trust
12 not subject to tax pursuant to subparagraph (D) of paragraph three of
13 subsection (b) of section six hundred five of this article (except for
14 an incomplete gift non-grantor trust, as defined by paragraph forty-one
15 of this subsection), the amount of any accumulation distribution as
16 described in subsection (b) of section six hundred sixty-five of the
17 internal revenue code for the tax year, such amount to be determined
18 without regard to the penultimate sentence of such subsection that
19 references section six hundred sixty-seven of such code, and without
20 regard to subsection (c) of section six hundred sixty-five of the inter-
21 nal revenue code, to the extent not already included in federal gross
22 income for the tax year.

23 § 2. Subsection (b) of section 612 of the tax law is amended by adding
24 a new paragraph 41 to read as follows:

25 (41) In the case of a taxpayer who transferred property to an incom-
26 plete gift non-grantor trust, the income of the trust, less any

1 deductions of the trust, to the extent such income and deductions of
2 such trust would be taken into account in computing the taxpayer's
3 federal taxable income if such trust in its entirety were treated as a
4 grantor trust for federal tax purposes. For purposes of this paragraph,
5 an "incomplete gift non-grantor trust" means a resident trust that meets
6 the following conditions: (i) the trust does not qualify as a grantor
7 trust under section six hundred seventy-one through six hundred seven-
8 ty-nine of the internal revenue code, and (2) the grantor's transfer of
9 assets to the trust is treated as an incomplete gift under section twen-
10 ty-five hundred eleven of the internal revenue code, and the regulations
11 thereunder.

12 § 3. Section 621 of the tax law, as added by chapter 272 of the laws
13 of 1963 and subsection (a) as amended by chapter 267 of the laws of
14 1987, is amended to read as follows:

15 § 621. [Credit] Credits to trust beneficiary receiving accumulation
16 distribution. (a) General. A resident beneficiary of a trust whose New
17 York adjusted gross income includes all or part of an accumulation
18 distribution by such trust, as defined in section six hundred sixty-five
19 of the internal revenue code, including a beneficiary who is required to
20 make the modification required by paragraph forty of subsection (b) of
21 section six hundred twelve of this part, shall be allowed (1) a credit
22 against the tax otherwise due under this article for all or a propor-
23 tionate part of any tax paid by the trust under this article or under
24 former article sixteen of this chapter (as such article was in effect on
25 or before December thirtieth, nineteen hundred sixty), for any preceding
26 taxable year which would not have been payable if the trust had in fact
27 made distributions to its beneficiaries at the times and in the amounts
28 specified in section six hundred sixty-six of the internal revenue code;

1 and (2) a credit against the taxes imposed by this article for the taxa-
2 ble year for any income tax imposed on the trust for the taxable year or
3 any prior taxable year by another state of the United States, a poli-
4 tical subdivision thereof, or the District of Columbia, upon income both
5 derived therefrom and subject to tax under this article, provided that
6 the amount of the credit shall not exceed the percentage of the tax
7 otherwise due under this article determined by dividing the portion of
8 the income that is both taxable to the trust in such other jurisdiction
9 and taxable to the beneficiary under this article by the total amount of
10 the beneficiary's New York income.

11 (b) Limitation. The [credit] credits under this section shall not
12 reduce the tax otherwise due from the beneficiary under this article to
13 an amount less than would have been due if the accumulation distribution
14 or his part thereof were excluded from his New York adjusted gross
15 income.

16 § 4. Section 658 of the tax law is amended by adding a new subsection
17 (f) to read as follows:

18 (f) (1) Every nonresident trust or a trust described by subparagraph
19 (D) of paragraph three of subsection (b) of section six hundred five of
20 this article shall make a return for any taxable year in which it makes
21 an accumulation distribution within the meaning of subdivision (b) of
22 section six hundred sixty-five of the internal revenue code to a benefi-
23 ciary who is a resident, which return shall include (i) information
24 identifying such resident, (ii) the amount of such accumulation distrib-
25 ution, and (iii) such other information as the commissioner may require.

26 (2) Every resident trust that does not file the return required by
27 section six hundred fifty-one of this part on the ground that it is not
28 subject to tax pursuant to subparagraph (D) of paragraph three of

1 subsection (b) of section six hundred five of this article for the taxa-
2 ble year shall make a return for such taxable year substantiating its
3 entitlement to that exemption and providing such other information as
4 the commissioner may require.

5 (3) The returns required by this subsection shall be filed on or
6 before the fifteenth day of the fourth month following the close of each
7 taxable year. For purposes of this paragraph, "taxable year" means a
8 year or a period which would be a taxable year of the trust if it were
9 subject to tax under this article.

10 § 5. Paragraph 2 of subsection (h) of section 685 of the tax law, as
11 amended by chapter 190 of the laws of 1990, is amended to read as
12 follows:

13 (2) If any partnership [or], S corporation, or trust required to file
14 a return or report under subsection (c) or subsection (f) of section six
15 hundred fifty-eight or under section six hundred fifty-nine of this
16 article for any taxable year fails to file such return or report at the
17 time prescribed therefor (determined with regard to any extension of
18 time for filing), or files a return or report which fails to show the
19 information required under such subsection (c) or section six hundred
20 fifty-nine of this article, unless it is shown that such failure is due
21 to reasonable cause and not due to willful neglect, there shall, upon
22 notice and demand by the commissioner and in the same manner as tax, be
23 paid by the partnership or S corporation a penalty for each month (or
24 fraction thereof) during which such failure continues (but not to exceed
25 five months). The amount of such penalty for any month is the product of
26 fifty dollars, multiplied by the number of partners in the partnership
27 or shareholders in the S corporation during any part of the taxable year
28 who were subject to tax under this article during any part of such taxa-

1 ble year, except that, in the case of a trust, the penalty shall be
2 equal to one hundred fifty dollars a month up to a maximum of fifteen
3 hundred dollars per taxable year.

4 § 6. Subdivision (b) of section 11-1712 of the administrative code of
5 the city of New York is amended by adding a new paragraph 36 to read as
6 follows:

7 (36) in the case of a beneficiary of a nonresident trust or a trust
8 not subject to tax pursuant to subparagraph (D) of paragraph three of
9 subsection (b) of section 11-1705 of this chapter (except for an incom-
10 plete gift non-grantor trust, as defined by paragraph thirty-seven of
11 this subdivision), the amount of any accumulation distribution as
12 described in subsection (b) of section six hundred sixty-five of the
13 internal revenue code for the tax year, such amount to be determined
14 without regard to the penultimate sentence of such subsection that
15 references section six hundred sixty-seven of such code and without
16 regard to subsection (c) of section six hundred sixty-five of the inter-
17 nal revenue code, to the extent not already included in federal gross
18 income for the tax year.

19 § 7. Subdivision (b) of section 11-1712 of the administrative code of
20 the city of New York is amended by adding a new paragraph 37 to read as
21 follows:

22 (37) In the case of a taxpayer who transferred property to an incom-
23 plete gift non-grantor trust, the income of the trust, less any
24 deductions of such trust, to the extent such income and deductions of
25 such trust would be taken into account in computing the taxpayer's
26 federal taxable income if such trust in its entirety were treated as a
27 grantor trust for federal tax purposes. For purposes of this paragraph,
28 an "incomplete gift non-grantor trust" means a resident trust that meets

1 the following conditions: (i) the trust does not qualify as a grantor
2 trust under section six hundred seventy-one through six hundred seven-
3 ty-nine of the internal revenue code, and (2) the grantor's transfer of
4 assets to the trust is treated as an incomplete gift under section twen-
5 ty five hundred eleven of the internal revenue code, and the regulations
6 thereunder.

7 § 8. Section 11-1721 of the administrative code of the city of New
8 York, subdivisions (a) and (b) as amended by section 72 and such section
9 as renumbered by section 43 of chapter 639 of the laws of 1986, is
10 amended to read as follows:

11 § 11-1721 [Credit] Credits to trust beneficiary receiving accumulation
12 distribution. (a) General. A city resident beneficiary of a trust whose
13 city adjusted gross income includes all or part of an accumulation
14 distribution by such trust, as defined in section six hundred sixty-five
15 of the internal revenue code, including a beneficiary who is required to
16 make the modification required by paragraph thirty-six of subdivision
17 (b) of section 11-1712 of this subchapter, shall be allowed (1) a credit
18 against the tax otherwise due under this chapter for all or a propor-
19 tionate part of any tax paid by the trust under this chapter or under
20 former title T of chapter forty-six of this code, as it was in effect
21 prior to September first, nineteen hundred eighty-six, for any preceding
22 taxable year which would not have been payable if the trust had in fact
23 made distributions to its beneficiaries at the times and in the amounts
24 specified in section six hundred sixty-six of the internal revenue code;
25 and (2) a credit against the taxes imposed by this chapter for the taxa-
26 ble year for any income tax imposed for the taxable year or any prior
27 taxable year by another state of the United States, a political subdivi-
28 sion thereof, or the District of Columbia, upon income both derived

1 therefrom and subject to tax under this chapter, provided that the
2 amount of the credit shall not exceed the percentage of the tax other-
3 wise due under this chapter determined by dividing the portion of the
4 income that is both taxable to the trust in such other jurisdiction and
5 taxable to the beneficiary under this chapter by the total amount of the
6 beneficiary's New York city income.

7 (b) Limitation. The [credit] credits under this section shall not
8 reduce the tax otherwise due from the beneficiary under this chapter to
9 an amount less than would have been due if the accumulation distribution
10 or his or her part thereof were excluded from his or her city adjusted
11 gross income.

12 § 9. This act shall take effect immediately and shall apply to taxable
13 years beginning on or after January 1, 2014, provided that sections one
14 and six of this act shall not apply to income of an exempt resident
15 trust paid to a beneficiary before June 1, 2014, and sections two and
16 seven of this act shall not apply to income from a trust that is liqui-
17 dated before June 1, 2014.

18 PART J

19 Section 1. Section 602 of the tax law is REPEALED.

20 § 2. Paragraph 4 of subsection (c) and paragraph 4 of subsection (d)
21 of section 606 of the tax law, paragraph 4 of subsection (c) as added by
22 chapter 309 of the laws of 1996 and paragraph 4 of subsection (d) as
23 amended by chapter 2 of the laws of 1995, are amended to read as
24 follows:

25 (4) Part-year residents. In the case of a part-year resident taxpayer,
26 the credit under this subsection shall be allowed against the tax deter-

1 mined under subsections (a) through (d) of section six hundred one
2 reduced by the credit permitted under subsection (b) of this section,
3 and any excess credit after such application shall be allowed against
4 the [taxes] tax imposed by [sections six hundred two and] section six
5 hundred three. Any remaining excess, after such application, shall be
6 refunded as provided in paragraph two hereof, provided, however, that
7 any overpayment under such paragraph shall be limited to the amount of
8 the remaining excess multiplied by a fraction, the numerator of which is
9 federal adjusted gross income for the period of residence, computed as
10 if the taxable year for federal income tax purposes were limited to the
11 period of residence, and the denominator of which is federal adjusted
12 gross income for the taxable year.

13 (4) Part-year residents. In the case of a part-year resident taxpayer,
14 the credit under this subsection shall be allowed against the tax deter-
15 mined under subsections (a) through (d) of section six hundred one
16 reduced by the credits permitted under subsections (b), (c) and (m) of
17 this section, and any excess credit after such application shall be
18 allowed against the [taxes] tax imposed by [sections six hundred two
19 and] section six hundred three. Any remaining excess, after such appli-
20 cation, shall be refunded as provided in paragraph two hereof, provided,
21 however, that any overpayment under such paragraph shall be limited to
22 the amount of the remaining excess multiplied by a fraction, the numera-
23 tor of which is federal adjusted gross income for the period of resi-
24 dence, computed as if the taxable year for federal income tax purposes
25 were limited to the period of residence, and the denominator of which is
26 federal adjusted gross income for the taxable year.

27 § 3. Section 622 of the tax law is REPEALED.

28 § 4. Section 636 of the tax law is REPEALED.

1 § 5. Subsections (a), (b) and (c) of section 639 of the tax law, as
2 added by chapter 170 of the laws of 1994, are amended to read as
3 follows:

4 (a) If an individual changes status from resident to nonresident he
5 shall, regardless of his method of accounting, accrue to the period of
6 residence any items of income, gain, loss, deduction, [items of tax
7 preference] or ordinary income portion of a lump sum distribution accru-
8 ing prior to the change of status, with the applicable modifications and
9 adjustments to federal adjusted gross income[,] and itemized deductions
10 [and items of tax preference] under sections six hundred twelve[,] and
11 six hundred fifteen [and six hundred twenty-two], if not otherwise prop-
12 erly includible or allowable for New York income tax purposes for such
13 period or a prior taxable year under his method of accounting.

14 (b) If an individual changes status from nonresident to resident he
15 shall, regardless of his method of accounting, accrue to the period of
16 nonresidence any items of income, gain, loss or deduction, [items of tax
17 preference] or ordinary income portion of a lump sum distribution accru-
18 ing prior to the change of status, with the applicable modifications and
19 adjustments to federal adjusted gross income[,] and itemized deductions
20 [and items of tax preference] under sections six hundred twelve[,] and
21 six hundred fifteen [and six hundred twenty-two], other than items
22 derived from or connected with New York sources, if not otherwise prop-
23 erly includible or allowable for New York income tax purposes for such
24 period or for a prior taxable year under his method of accounting.

25 (c) No item of income, gain, loss, deduction, [item of tax prefer-
26 ence,] ordinary income portion of a lump sum distribution or modifica-
27 tion or adjustment which is accrued under this section shall be taken

1 into account in determining the tax under this article for any subse-
2 quent taxable year.

3 § 6. Paragraphs 1, 2, 3 and 4 of subsection (a) of section 651 of the
4 tax law, paragraph 1 as amended by chapter 333 of the laws of 1987,
5 paragraph 2 as amended by chapter 28 of the laws of 1987, and paragraphs
6 3 and 4 as amended by chapter 170 of the laws of 1994, are amended to
7 read as follows:

8 (1) every resident individual (A) required to file a federal income
9 tax return for the taxable year, or (B) having federal adjusted gross
10 income for the taxable year, increased by the modifications under
11 subsection (b) of section six hundred twelve, in excess of four thousand
12 dollars, or in excess of his New York standard deduction, if lower, or
13 (C) [subject to tax under section six hundred two, or (D)] having
14 received during the taxable year a lump sum distribution any portion of
15 which is subject to tax under section six hundred three;

16 (2) every resident estate or trust required to file a federal income
17 tax return for the taxable year, or having any New York taxable income
18 for the taxable year, determined under section six hundred eighteen, [or
19 subject to tax under section six hundred two,] or having received during
20 the taxable year a lump sum distribution any portion of which is subject
21 to tax under section six hundred three;

22 (3) every nonresident or part-year resident individual having New York
23 source income for the taxable year, determined under part III of this
24 article, and having New York adjusted gross income for the taxable year,
25 determined under part II of this article, in excess of the taxpayer's
26 New York standard deduction, [or subject to tax under section six
27 hundred two,] or having received during the taxable year a lump sum

1 distribution any portion of which is subject to tax under section six
2 hundred three; and

3 (4) every nonresident estate or trust or part-year resident trust
4 having New York source income for the taxable year, determined under
5 part III of this article, and having New York adjusted gross income for
6 the taxable year, determined under paragraph four of subsection (e) of
7 section six hundred one, [or subject to tax under section six hundred
8 two,] or having received during the taxable year a lump sum distribution
9 any portion of which is subject to tax under section six hundred three.

10 § 7. Paragraph 6 of subsection (b) of section 654 of the tax law, as
11 added by section 5 of part Q of chapter 407 of the laws of 1999, is
12 amended to read as follows:

13 (6) In subparagraph (B) of paragraph two of subsection (d), the phrase
14 "section 1 or 55" shall be read as "section six hundred one [or six
15 hundred two] of this article".

16 § 8. Section 659 of the tax law, as amended by chapter 577 of the laws
17 of 1997, is amended to read as follows:

18 § 659. Report of federal changes, corrections or disallowances. If
19 the amount of a taxpayer's federal taxable income, [federal items of tax
20 preference,] total taxable amount or ordinary income portion of a lump
21 sum distribution or includible gain of a trust reported on his federal
22 income tax return for any taxable year, or the amount of a taxpayer's
23 earned income credit or credit for employment-related expenses set forth
24 on such return, or the amount of any federal foreign tax credit affect-
25 ing the calculation of the credit for Canadian provincial taxes under
26 section six hundred twenty or six hundred twenty-A of this article, or
27 the amount of any claim of right adjustment, is changed or corrected by
28 the United States internal revenue service or other competent authority

1 or as the result of a renegotiation of a contract or subcontract with
2 the United States, or the amount an employer is required to deduct and
3 withhold from wages for federal income tax withholding purposes is
4 changed or corrected by such service or authority or if a taxpayer's
5 claim for credit or refund of federal income tax is disallowed in whole
6 or in part, the taxpayer or employer shall report such change or
7 correction or disallowance within ninety days after the final determi-
8 nation of such change, correction, renegotiation or disallowance, or as
9 otherwise required by the commissioner, and shall concede the accuracy
10 of such determination or state wherein it is erroneous. The allowance
11 of a tentative carryback adjustment based upon a net operating loss
12 carryback pursuant to section sixty-four hundred eleven of the internal
13 revenue code shall be treated as a final determination for purposes of
14 this section. Any taxpayer filing an amended federal income tax return
15 and any employer filing an amended federal return of income tax withheld
16 shall also file within ninety days thereafter an amended return under
17 this article, and shall give such information as the commissioner may
18 require. The commissioner may by regulation prescribe such exceptions
19 to the requirements of this section as he or she deems appropriate. For
20 purposes of this section, (i) the term "taxpayer" shall include a part-
21 nership having a resident partner or having any income derived from New
22 York sources, and a corporation with respect to which the taxable year
23 of such change, correction, disallowance or amendment is a year with
24 respect to which the election provided for in subsection (a) of section
25 six hundred sixty of this article is in effect, and (ii) the term
26 "federal income tax return" shall include the returns of income required
27 under sections six thousand thirty-one and six thousand thirty-seven of
28 the internal revenue code. In the case of such a corporation, such

1 report shall also include any change or correction of the taxes
2 described in paragraphs two and three of subsection (f) of section thir-
3 teen hundred sixty-six of the internal revenue code. Reports made under
4 this section by a partnership or corporation shall indicate the portion
5 of the change in each item of income, gain, loss or deduction (and, in
6 the case of a corporation, of each change in, or disallowance of a claim
7 for credit or refund of, a tax referred to in the preceding sentence)
8 allocable to each partner or shareholder and shall set forth such iden-
9 tifying information with respect to such partner or shareholder as may
10 be prescribed by the commissioner.

11 § 9. Subsection (d) of section 683 of the tax law, as amended by chap-
12 ter 170 of the laws of 1994, is amended to read as follows:

13 (d) Omission of income, [item of tax preference,] total taxable amount
14 or ordinary income portion of a lump sum distribution on return.--The
15 tax may be assessed at any time within six years after the return was
16 filed if--

17 (1) an individual omits from his New York adjusted gross income, [the
18 sum of his items of tax preference,] or the total taxable amount or
19 ordinary income portion of a lump sum distribution an amount properly
20 includible therein which is in excess of twenty-five percent of the
21 amount of New York adjusted gross income, [the sum of the items of tax
22 preference,] or the total taxable amount or ordinary income portion of a
23 lump sum distribution stated in the return, or

24 (2) an estate or trust omits from its New York adjusted gross income,
25 [the sum of its items of tax preference,] or the total taxable amount or
26 ordinary income portion of a lump sum distribution an amount properly
27 includible therein which is in excess of twenty-five percent of the
28 amount stated in the return of New York adjusted gross income determined

1 in accordance with paragraph four of subsection (e) of section six
2 hundred one, [or the sum of the items of tax preference,] or the total
3 taxable amount or ordinary income portion of a lump sum distribution,
4 respectively. For purposes of this subsection there shall not be taken
5 into account any amount which is omitted in the return if such amount is
6 disclosed in the return, or in a statement attached to the return, in a
7 manner adequate to apprise the commissioner of the nature and amount of
8 the item of income, [tax preference,] total taxable amount or ordinary
9 income portion of a lump sum distribution.

10 § 10. Subparagraph (B) of paragraph 4 of subsection (c) of section 685
11 of the tax law, as amended by chapter 28 of the laws of 1987, is amended
12 to read as follows:

13 (B) Determination of annualized income installment.--In the case of
14 any required installment, the annualized income installment is the
15 excess, if any, of an amount equal to the applicable percentage of the
16 tax for the taxable year computed by placing on an annualized basis the
17 taxable income [and minimum taxable income] for months in the taxable
18 year ending before the due date for the installment, over the aggregate
19 amount of any prior required installments for the taxable year. The
20 applicable percentage of the tax shall be twenty-two and one-half
21 percent in the case of the first installment, forty-five percent in the
22 case of the second installment, sixty-seven and one-half percent in the
23 case of the third installment and ninety percent in the case of the
24 fourth installment, and shall be computed without regard to any increase
25 in the rates applicable to the taxable year unless such increase was
26 enacted at least thirty days prior to the due date of the installment.

1 § 11. Paragraphs 2 and 3 of subsection (a) of section 1301 of the tax
2 law, as amended by chapter 209 of the laws of 2011, are amended to read
3 as follows:

4 (2) [for taxable years beginning before two thousand fifteen, a city
5 minimum income tax on such residents, and

6 (3)] for taxable years beginning after nineteen hundred seventy-six, a
7 separate tax on the ordinary income portion of lump sum distributions of
8 such residents, at the rates provided for herein, such taxes to be
9 administered, collected and distributed by the commissioner as provided
10 for in this article.

11 § 12. Section 1301-A of the tax law is REPEALED.

12 § 13. Subsection (a) of section 1302 of the tax law, as amended by
13 chapter 333 of the laws of 1987, is amended to read as follows:

14 (a) Imposition of tax. The city personal income tax (other than the
15 [city minimum income tax and the] city separate tax on the ordinary
16 income portion of lump sum distributions) imposed pursuant to the
17 authority of this article shall be imposed for each taxable year on the
18 city taxable income of every city resident individual, estate and trust.
19 A taxpayer's taxable year for purposes of a tax imposed pursuant to the
20 authority of this article shall be the same as his taxable year under
21 article twenty-two of this chapter.

22 § 14. The opening paragraph of subsection (a) of section 1304 of the
23 tax law, as amended by section 134 of part A of chapter 389 of the laws
24 of 1997, is amended to read as follows:

25 A tax (other than the [city minimum income tax, the] city separate tax
26 relating to qualified higher education funds and the city separate tax
27 on the ordinary income portion of lump sum distributions) imposed pursu-

1 ant to the authority of section thirteen hundred one of this article
2 shall be determined as follows:

3 § 15. Subsection (c) of section 1307 of the tax law, as amended by
4 chapter 712 of the laws of 2004, is amended to read as follows:

5 (c) When an individual changes his status from city resident to city
6 nonresident, or from city nonresident to city resident, he shall,
7 regardless of his method of accounting, accrue any items of income,
8 gain, loss, deduction[, items of tax preference] or ordinary income
9 portion of a lump sum distribution accruing prior to the change of
10 status, with the applicable modifications and adjustments to federal
11 adjusted gross income[, and itemized deductions [and items of tax pref-
12 erence] under sections six hundred twelve[, and six hundred fifteen
13 [and six hundred twenty-two], if not otherwise properly includible or
14 allowable for New York income tax purposes for such period or a prior
15 taxable year under his method of accounting. Such accruals shall be made
16 as provided in section six hundred thirty-nine of this chapter.

17 § 16. Subsection (a) of section 1306 of the tax law, as amended by
18 chapter 333 of the laws of 1987, is amended to read as follows:

19 (a) General. On or before the fifteenth day of the fourth month
20 following the close of a taxable year, an income tax return under a city
21 tax imposed pursuant to the authority of this article shall be made and
22 filed by or for every city resident individual, estate or trust required
23 to file a New York state personal income tax (including [a minimum
24 income tax and] a city separate tax on the ordinary income portion of
25 lump sum distributions) return for the taxable year.

26 § 17. Section 11-1702 of the administrative code of the city of New
27 York is REPEALED.

1 § 18. Subdivision (a) of section 11-1704 of the administrative code of
2 the city of New York, as amended by chapter 17 of the laws of 1997, is
3 amended to read as follows:

4 (a) In addition to the taxes imposed by sections 11-1701[, 11-1702]
5 and 11-1703, there is hereby imposed for each taxable year beginning
6 after nineteen hundred eighty-nine but before nineteen hundred ninety-
7 nine, a tax surcharge on the city taxable income of every city resident
8 individual, estate and trust.

9 § 19. Subdivision (c) of section 11-1704 of the administrative code of
10 the city of New York, as amended by chapter 271 of the laws of 1991, is
11 amended to read as follows:

12 (c) The tax surcharge imposed pursuant to this section shall be admin-
13 istered, collected and distributed by the commissioner of taxation and
14 finance in the same manner as the taxes imposed pursuant to sections
15 11-1701[, 11-1702] and 11-1703, and all of the provisions of this chap-
16 ter, including sections 11-1706, 11-1721 and 11-1773, shall apply to the
17 tax surcharge imposed by this section.

18 § 20. Section 11-1722 of the administrative code of the city of New
19 York is REPEALED.

20 § 21. Subdivision (a) of section 11-1751 of the administrative code of
21 the city of New York, as amended by chapter 333 of the laws of 1987, is
22 amended to read as follows:

23 (a) General. On or before the fifteenth day of the fourth month
24 following the close of a taxable year, an income tax return under this
25 chapter shall be made and filed by or for every city resident individ-
26 ual, estate or trust required to file a New York state personal income
27 tax (including a [minimum income tax and] separate tax on the ordinary
28 income portion of lump sum distributions) return for the taxable year.

1 § 22. Subdivision (b) of section 11-1754 of the administrative code of
2 the city of New York, as amended by chapter 712 of the laws of 2004, is
3 amended to read as follows:

4 (b) City taxable income [and city minimum taxable income] as city
5 resident. The city taxable income [and city minimum taxable income] for
6 the portion of the year during which he or she is a city resident shall
7 be determined, except as provided in subdivision (c), as if his or her
8 taxable year for federal income tax purposes were limited to the period
9 of his or her city resident status.

10 § 23. Paragraph 6 of subdivision (b) of section 11-1755 of the admin-
11 istrative code of the city of New York, as added by section 17 of part Q
12 of chapter 407 of the laws of 1999, is amended to read as follows:

13 (6) In subparagraph (B) of paragraph two of subsection (d), the phrase
14 "section 1 or 55" shall be read as "section 11-1701 [or 11-1702] of this
15 chapter".

16 § 24. Section 11-1759 of the administrative code of the city of New
17 York, as amended by chapter 577 of the laws of 1997, is amended to read
18 as follows:

19 § 11-1759 Report of federal changes, corrections or disallowances. If
20 the amount of a taxpayer's federal taxable income, [federal items of tax
21 preference,] total taxable amount or ordinary income portion of a lump
22 sum distribution or includible gain of a trust reported on his federal
23 income tax return for any taxable year, or the amount of any claim of
24 right adjustment, is changed or corrected by the United States internal
25 revenue service or other competent authority, or as the result of a
26 renegotiation of a contract or subcontract with the United States or the
27 amount an employer is required to deduct and withhold from wages for
28 federal income tax withholding purposes is changed or corrected by such

1 service or authority or if a taxpayer's claim for credit or refund of
2 federal income tax is disallowed in whole or in part, the taxpayer or
3 employer shall report such change or correction or disallowance within
4 ninety days after the final determination of such change, correction,
5 renegotiation, or disallowance, or as otherwise required by the commis-
6 sioner, and shall concede the accuracy of such determination or state
7 wherein it is erroneous. The allowance of a tentative carryback adjust-
8 ment based upon a net operating loss carryback pursuant to section
9 sixty-four hundred eleven of the internal revenue code shall be treated
10 as a final determination for purposes of this section. Any taxpayer
11 filing an amended federal income tax return and any employer filing an
12 amended federal return of income tax withheld shall also file within
13 ninety days thereafter an amended return under this chapter, and shall
14 give such information as the commissioner may require. The commissioner
15 may by regulation prescribe such exceptions to the requirements of this
16 section as he or she deems appropriate. For purposes of this section,
17 (i) the term "taxpayer" shall include a partnership having a resident
18 partner or having any income derived from New York sources, and a corpo-
19 ration with respect to which the taxable year of such change,
20 correction, disallowance or amendment is a year with respect to which
21 the election provided for in subsection (a) of section six hundred sixty
22 of the tax law is in effect, and (ii) the term "federal income tax
23 return" shall include the returns of income required under sections six
24 thousand thirty-one and six thousand thirty-seven of the internal reven-
25 ue code. In the case of such a corporation, such report shall also
26 include any change or correction of the taxes described in paragraphs
27 two and three of subsection (f) of section thirteen hundred sixty-six of
28 the internal revenue code. Reports made under this section by a partner-

1 ship or corporation shall indicate the portion of the change in each
2 item of income, gain, loss or deduction (and, in the case of a corpo-
3 ration, of each change in, or disallowance of a claim for credit or
4 refund of, a tax referred to in the preceding sentence) allocable to
5 each partner or shareholder and shall set forth such identifying infor-
6 mation with respect to such partner or shareholder as may be prescribed
7 by the commissioner.

8 § 25. Subdivision (d) of section 11-1783 of the administrative code of
9 the city of New York, as amended by chapter 170 of the laws of 1994, is
10 amended to read as follows:

11 (d) Omission of income, [item of tax preference,] total taxable amount
12 or ordinary income portion of a lump sum distribution on return. The tax
13 may be assessed at any time within six years after the return was filed
14 if:

15 (1) an individual omits from his city adjusted gross income[, the sum
16 of his items of tax preference, or] the total taxable amount or ordinary
17 income portion of a lump sum distribution an amount properly includible
18 therein which is in excess of twenty-five percent of the amount of city
19 adjusted gross income[, the sum of the items of tax preference] or the
20 total taxable amount or ordinary income portion of a lump sum distrib-
21 ution stated in the return, or

22 (2) an estate or trust omits from its city adjusted gross income, [the
23 sum of its items of tax preference,] or the total taxable amount or
24 ordinary income portion of a lump sum distribution an amount properly
25 includible therein which is in excess of twenty-five percent of the
26 amount stated in the return of city adjusted gross income, [or the sum
27 of the items of tax preference,] or the total taxable amount or ordinary
28 income portion of a lump sum distribution, respectively. For purposes of

1 this paragraph, city adjusted gross income means New York adjusted gross
2 income as determined under paragraph four of subsection (e) of section
3 six hundred one of the tax law.

4 For purposes of this subdivision there shall not be taken into account
5 any amount which is omitted in the return if such amount is disclosed in
6 the return, or in a statement attached to the return, in a manner
7 adequate to apprise the commissioner of the nature and amount of the
8 item of income, [tax preference,] the total taxable amount or ordinary
9 income portion of a lump sum distribution.

10 § 26. Subparagraph (B) of paragraph 4 of subdivision (c) of section
11 11-1785 of the administrative code of the city of New York, as amended
12 by chapter 333 of the laws of 1987, is amended to read as follows:

13 (B) Determination of annualized income installment. In the case of any
14 required installment, the annualized income installment is the excess,
15 if any, of an amount equal to the applicable percentage of the tax for
16 the taxable year computed by placing on an annualized basis the taxable
17 income [and minimum taxable income] for months in the taxable year
18 ending before the due date for the installment, over the aggregate
19 amount of any prior required installments for the taxable year. The
20 applicable percentage of the tax shall be twenty-two and one-half
21 percent in the case of the first installment, forty-five percent in the
22 case of the second installment, sixty-seven and one-half percent in the
23 case of the third installment and ninety percent in the case of the
24 fourth installment, and shall be computed without regard to any increase
25 in the rates applicable to the taxable year unless such increase was
26 enacted at least thirty days prior to the due date of the installment.

27 § 27. This act shall take effect immediately and apply to taxable
28 years beginning on or after January 1, 2014.

1 PART K

2 Section 1. Subsection (e-1) of section 606 of the tax law is relet-
3 tered subsection (e-2).

4 § 2. Section 606 of the tax law is amended by adding a new subsection
5 (e-1) to read as follows:

6 (e-1) Enhanced real property tax circuit breaker credit. (1) For
7 purposes of this subsection:

8 (A) "Qualified taxpayer" means a resident individual of the state who
9 has occupied the same residence for six months or more of the taxable
10 year, and is required or chooses to file a return under this article.

11 (B) "Household" or "members of the household" means a qualified
12 taxpayer and all other persons, not necessarily related, who have the
13 same residence and share its furnishings, facilities and accommodations.
14 Such terms shall not include a tenant, subtenant, roomer or boarder who
15 is not related to the qualified taxpayer in any degree specified in
16 paragraphs one through eight of subsection (a) of section one hundred
17 fifty-two of the internal revenue code. Provided, however, no person
18 may be a member of more than one household at one time.

19 (C) "Household gross income" means the aggregate adjusted gross income
20 of all members of the household for the taxable year as reported for
21 federal income tax purposes, or which would be reported as adjusted
22 gross income if a federal income tax return were required to be filed,
23 with the modifications in subsection (b) of section six hundred twelve
24 of this article but without the modifications in subsection (c) of such
25 section, plus any portion of the gain from the sale or exchange of prop-
26 erty otherwise excluded from such amount; earned income from sources
27 without the United States excludable from federal gross income by

1 section nine hundred eleven of the internal revenue code; support money
2 not included in adjusted gross income; nontaxable strike benefits;
3 supplemental security income payments; the gross amount of any pension
4 or annuity benefits to the extent not included in such adjusted gross
5 income (including, but not limited to, railroad retirement benefits and
6 all payments received under the federal social security act and veter-
7 ans' disability pensions); nontaxable interest received from the state
8 of New York, its agencies, instrumentalities, public corporations, or
9 political subdivisions (including a public corporation created pursuant
10 to agreement or compact with another state or Canada); workers' compen-
11 sation; the gross amount of "loss-of-time" insurance; and the amount of
12 cash public assistance and relief, other than medical assistance for the
13 needy, paid to or for the benefit of the qualified taxpayer or members
14 of his or her household. Household gross income shall not include
15 surplus foods or other relief in kind or payments made to individuals
16 because of their status as victims of Nazi persecution as defined in
17 P.L. 103-286. Provided, further, household gross income shall only
18 include all such income received by all members of the household while
19 members of such household. In computing household gross income, the net
20 amount of loss reported on Federal Schedule C, D, E, or F shall not
21 exceed three thousand dollars per schedule. In addition, the net amount
22 of any other separate category of loss shall not exceed three thousand
23 dollars. The aggregate amount of all losses included in computing house-
24 hold gross income shall not exceed fifteen thousand dollars.

25 (D) "Residence" means a dwelling in this state owned by the taxpayer,
26 and so much of the land abutting it, not exceeding one acre, as is
27 reasonably necessary for use of the dwelling as a home, and may consist
28 of a part of a multi-dwelling or multi-purpose building including a

1 cooperative or condominium. Residence includes a trailer or mobile
2 home, used exclusively for residential purposes and defined as real
3 property pursuant to paragraph (g) of subdivision twelve of section one
4 hundred two of the real property tax law.

5 (E) "Qualifying real property taxes" means all real property taxes,
6 special ad valorem levies and special assessments, exclusive of penal-
7 ties and interest, levied by a taxing jurisdiction with a cap-compliant
8 budget on the residence of a qualified taxpayer and paid during the
9 taxable year.

10 (i) For the purposes of this subsection, a "cap-compliant budget" for
11 a school district subject to section two thousand twenty-three-a of the
12 education law means a budget for which the chief executive officer of
13 such school district has certified, no later than the twenty-first day
14 of the fiscal year to which it applies, to the state comptroller, the
15 commissioner of taxation and finance and the commissioner of education,
16 in a form and manner prescribed by the state comptroller in consultation
17 with the commissioner of taxation and finance and the commissioner of
18 education, that the budget so adopted does not exceed the tax levy limit
19 prescribed by such section. A "cap-compliant budget" for a local govern-
20 ment subject to section three-c of the general municipal law shall mean
21 a budget for which the chief executive officer or budget officer of such
22 local government unit has certified, no later than the twenty-first day
23 of the fiscal year to which it applies, to the state comptroller and the
24 commissioner of taxation and finance, in a form and manner prescribed by
25 the state comptroller in consultation with the commissioner of taxation
26 and finance, that the adopted budget of such local government did not
27 require and the governing body of such local government did not enact or
28 approve a local law or resolution to override the tax levy limit

1 prescribed by such section, or, if the governing body of the local
2 government did enact a local law or approve a resolution to override
3 such tax levy limit, that such local law or resolution was subsequently
4 repealed. If a certification required by this paragraph has been made
5 and the actual tax levy of the taxing jurisdiction exceeds the applica-
6 ble tax levy limit, the excess amount shall be placed in reserve and
7 used in the manner prescribed by subdivision five of section twenty
8 thousand twenty-three-a of the education law or subdivision six of
9 section three-c of the general municipal law, whichever is applicable,
10 even if a tax levy in excess of the tax levy limit had been duly author-
11 ized for the applicable fiscal year in accordance with such section.

12 (ii) For tax year two thousand fourteen, only real property taxes
13 levied by school districts with cap-compliant budgets constitute quali-
14 ifying real property taxes.

15 (iii) In a city with a population of one million or more, the
16 restriction in clause (i) of this subparagraph that taxes must be levied
17 by a taxing jurisdiction with a cap-compliant budget does not apply.
18 However, real property taxes, special ad valorem levies, and special
19 assessments levied by such city shall constitute qualifying real proper-
20 ty taxes only if taxes levied in the state outside such city are
21 required for purposes of this credit to be levied by taxing jurisdic-
22 tions with cap-compliant budgets.

23 (iv) A qualified taxpayer may elect to include any additional amount
24 that would have been levied in the absence of an exemption from real
25 property taxation pursuant to section four hundred sixty-seven of the
26 real property tax law. If tenant-stockholders in a cooperative housing
27 corporation have met the requirements of section two hundred sixteen of
28 the internal revenue code by which they are allowed a deduction for real

1 estate taxes, the amount of taxes so allowable, or which would be allow-
2 able if the taxpayer had filed returns on a cash basis, shall be quali-
3 ifying real property taxes. If a residence is owned by two or more indi-
4 viduals as joint tenants or tenants in common, and one or more than one
5 individual is not a member of the household, qualifying real property
6 taxes is that part of such taxes on the residence which reflects the
7 ownership percentage of the qualified taxpayer and members of his or her
8 household. If a residence is an integral part of a larger unit, qualify-
9 ing real property taxes shall be limited to that amount of such taxes
10 paid as may be reasonably apportioned to such residence. If a household
11 owns and occupies two or more residences during different periods in the
12 same taxable year, qualifying real property taxes shall be the sum of
13 the prorated qualifying real property taxes attributable to the house-
14 hold during the periods such household occupies each of such residences.
15 If the household owns and occupies a residence for part of the taxable
16 year and rents a residence for part of the same taxable year, it may
17 include the proration of qualifying real property taxes on the residence
18 owned. Provided, however, for purposes of the credit allowed under this
19 subsection, qualifying real property taxes may be included by a quali-
20 fied taxpayer only to the extent that such taxpayer or the spouse of
21 such taxpayer, occupying such residence for one hundred eighty-three
22 days or more of the taxable year, owns or has owned the residence and
23 paid such taxes.

24 (2) A qualified taxpayer shall be allowed a credit as provided in
25 paragraph three hereof against the taxes imposed by this article reduced
26 by the credits permitted by this article. If the credit exceeds the tax
27 as so reduced for such year under this article, the excess shall be
28 treated as an overpayment, to be credited or refunded, without interest.

1 If a qualified taxpayer is not required to file a return pursuant to
 2 section six hundred fifty-one of this article, a qualified taxpayer may
 3 nevertheless receive the full amount of the credit to be credited or
 4 refunded as an overpayment, without interest.

5 (3) Determination of credit. (A) For taxable years beginning in two
 6 thousand fourteen, the amount of the credit allowable under this
 7 subsection shall be determined as follows:

<u>If the household</u> <u>gross income for the</u> <u>taxable year is:</u>	<u>Excess real property</u> <u>taxes are the excess</u> <u>of qualifying real</u> <u>property taxes over</u> <u>the following</u> <u>percentage of</u> <u>household gross income:</u>	<u>The credit amount is</u> <u>the following</u> <u>percentage of the</u> <u>excess real property</u> <u>taxes:</u>
15 <u>Less than \$120,000</u>	2.4%	6.25%
16 <u>\$120,000 to less</u> 17 <u>than \$150,000</u>	3.2%	4.75%
18 <u>\$150,000 to less</u> 19 <u>than \$200,000</u>	4.0%	3.25%

20 Notwithstanding the foregoing provisions, the maximum credit deter-
 21 mined under this subparagraph may not exceed five hundred dollars.

22 (B) For taxable years beginning in two thousand fifteen, the amount of
 23 the credit allowable under this subsection shall be determined as
 24 follows:

<u>If the household</u> <u>gross income for the</u> <u>taxable year is:</u>	<u>Excess real property</u> <u>taxes are the excess</u> <u>of qualifying real</u> <u>property taxes over</u>	<u>The credit amount is</u> <u>the following</u> <u>percentage of the</u> <u>excess real property</u>
25 <u>Less than \$120,000</u>	2.4%	6.25%
26 <u>\$120,000 to less</u> 27 <u>than \$150,000</u> 28 <u>\$150,000 to less</u>	3.2%	4.75%

1	<u>the following</u>	<u>taxes:</u>
2	<u>percentage of</u>	
3	<u>household gross income:</u>	
4	<u>Less than \$120,000</u>	<u>3.0%</u> <u>8.25%</u>
5	<u>\$120,000 to less</u>	
6	<u>than \$150,000</u>	<u>4.0%</u> <u>6.00%</u>
7	<u>\$150,000 to less</u>	
8	<u>than \$200,000</u>	<u>5.0%</u> <u>3.75%</u>

9 Notwithstanding the foregoing provisions, the maximum credit deter-
10 mined under this subparagraph may not exceed seven hundred fifty
11 dollars.

12 (C) For taxable years beginning after two thousand fifteen, the amount
13 of the credit allowable under this subsection shall be determined as
14 follows:

15	<u>If the household</u>	<u>Excess real property</u>	<u>The credit amount is</u>
16	<u>gross income for the</u>	<u>taxes are the excess</u>	<u>the following</u>
17	<u>taxable year is:</u>	<u>of qualifying real</u>	<u>percentage of the</u>
18		<u>property taxes over</u>	<u>excess real property</u>
19		<u>the following</u>	<u>taxes:</u>
20		<u>percentage of</u>	
21		<u>household gross income:</u>	
22	<u>Less than \$120,000</u>	<u>3.0%</u>	<u>20.0%</u>
23	<u>\$120,000 to less</u>		
24	<u>than \$150,000</u>	<u>4.0%</u>	<u>15.0%</u>
25	<u>\$150,000 to less</u>		
26	<u>than \$200,000</u>	<u>5.0%</u>	<u>10.0%</u>

27 Notwithstanding the foregoing provisions, the maximum credit deter-
28 mined under this subparagraph may not exceed one thousand dollars.

1 (4) If a qualified taxpayer occupies a residence for a period of less
2 than twelve months during the taxable year or occupies two or more resi-
3 dences during different periods in such taxable year, the credit allowed
4 pursuant to this subsection shall be computed in such manner as the
5 commissioner may prescribe in order to properly reflect the credit or
6 portion thereof attributable to such residence or residences and such
7 period or periods.

8 (5) The commissioner may prescribe that the credit under this
9 subsection shall be determined in whole or in part by the use of tables
10 prescribed by such commissioner. Such tables shall set forth the credit
11 to the nearest dollar.

12 (6) Only one credit per household and per qualified taxpayer shall be
13 allowed per taxable year under this subsection. When two or more members
14 of a household are able to meet the qualifications for a qualified
15 taxpayer, the credit shall be equally divided between or among such
16 individuals unless such individuals file with the commissioner a written
17 agreement among such individuals setting forth a different division.

18 (A) Provided, however, where a joint income tax return has been filed
19 pursuant to the provisions of section six hundred fifty-one of this
20 article by a qualified taxpayer and his or her spouse (or where both
21 spouses are qualified taxpayers and have filed such joint return), the
22 credit, or the portion of the credit if divided, to which the spouses
23 are entitled shall be applied against the tax of both spouses and any
24 overpayment shall be made to both spouses.

25 (B) Where any return required to be filed pursuant to the provisions
26 of section six hundred fifty-one of this article is combined with any
27 return of tax imposed pursuant to the authority of this chapter or any
28 other law if such tax is administered by the commissioner, the credit or

1 the portion of the credit if divided, allowed to the qualified taxpayer
2 may be applied by the commissioner toward any liability for the afore-
3 mentioned taxes.

4 (7) No credit shall be granted under this subsection:

5 (A) If household gross income for the taxable year equals or exceeds
6 two hundred thousand dollars.

7 (B) To a property owner unless: (i) the property is used for residen-
8 tial purposes, (ii) not more than twenty percent of the rental income,
9 if any, from the property is from rental for nonresidential purposes and
10 (iii) the property is occupied as a residence in whole or in part by one
11 or more of the owners of the property.

12 (C) To an individual with respect to whom a deduction under subsection
13 (c) of section one hundred fifty-one of the internal revenue code is
14 allowable to another taxpayer for the taxable year.

15 (D) With respect to a residence that is wholly exempted from real
16 property taxation.

17 (E) To an individual who is not a resident individual of the state for
18 the entire taxable year.

19 (8) The right to claim a credit or the portion of a credit, where such
20 credit has been divided under this subsection, shall be personal to the
21 qualified taxpayer and shall not survive his or her death, but such
22 right may be exercised on behalf of a claimant by his or her legal guar-
23 dian or attorney in fact during his or her lifetime.

24 (9) Returns. If a qualified taxpayer is not required to file a return
25 pursuant to section six hundred fifty-one of this article, a claim for a
26 credit may be taken on a return filed with the commissioner within three
27 years from the time it would have been required that a return be filed
28 pursuant to such section had the qualified taxpayer had a taxable year

1 ending on December thirty-first. Returns under this paragraph shall be
2 in such form as shall be prescribed by the commissioner, who shall make
3 available such forms and instructions for filing such returns.

4 (10) Proof of claim. The commissioner may require a qualified taxpayer
5 to furnish the following information in support of his or her claim for
6 credit under this subsection: household gross income, real property
7 taxes levied or that would have been levied in the absence of an
8 exemption from real property tax pursuant to section four hundred
9 sixty-seven of the real property tax law, the names of members of the
10 household and other qualifying taxpayers occupying the same residence
11 and their identifying numbers including social security numbers, house-
12 hold gross income, size and nature of property claimed as residence and
13 all other information which may be required by the commissioner to
14 determine the credit.

15 (11) Administration. The provisions of this article, including the
16 provisions of section six hundred fifty-three, six hundred fifty-eight,
17 and six hundred fifty-nine and the provisions of part six of this arti-
18 cle relating to procedure and administration, including the judicial
19 review of the decisions of the commissioner, except so much of section
20 six hundred eighty-seven which permits a claim for credit or refund to
21 be filed after the period provided for in paragraph nine of this
22 subsection and except sections six hundred fifty-seven, six hundred
23 eighty-eight and six hundred ninety-six, shall apply to the provisions
24 of this subsection in the same manner and with the same force and effect
25 as if the language of those provisions had been incorporated in full
26 into this subsection and had expressly referred to the credit allowed or
27 returns filed under this subsection, except to the extent that any such
28 provision is either inconsistent with a provision of this subsection or

1 is not relevant to this subsection. As used in such sections and such
2 part, the term "taxpayer" shall include a qualified taxpayer under this
3 subsection and, notwithstanding the provisions of subsection (e) of
4 section six hundred ninety-seven, where a qualified taxpayer has
5 protested the denial of a claim for credit under this subsection and the
6 time to file a petition for redetermination of a deficiency or for
7 refund has not expired, he or she shall, subject to such conditions as
8 may be set by the commissioner, receive such information (A) that is
9 contained in any return filed under this article by a member of his or
10 her household for the taxable year for which the credit is claimed, and
11 (B) that the commissioner finds is relevant and material to the issue of
12 whether such claim was properly denied.

13 (12) Notwithstanding any other provision of this article, the credit
14 allowed under this subsection shall be determined after the determi-
15 nation and application of any other credits permitted under the
16 provisions of this article. A taxpayer shall be allowed either the
17 credit provided by this subsection or the real property tax circuit
18 breaker credit provided by subsection (e) of this section, whichever is
19 greater.

20 § 3. Paragraph 14 of subsection (e) of section 606 of the tax law is
21 REPEALED.

22 § 4. This act shall take effect immediately and shall apply to taxable
23 years beginning on or after January 1, 2014.

24 PART L

25 Section 1. Section 606 of the tax law is amended by adding a new
26 subsection (b-1) to read as follows:

1 (b-1) Renters' credit.

2 (1) For the purposes of this subsection:

3 (A) "Qualified taxpayer" means a resident individual of the state who
4 has occupied and paid rent for his or her primary residence in this
5 state for six months or more of the taxable year, is required or chooses
6 to file a return under this article, and (i) is sixty-five years of age
7 or older, (ii) is filing a joint return with a spouse who is sixty-five
8 years of age or older, (iii) is a head of household, (iv) is a married
9 individual filing a joint return with a spouse and has at least one
10 dependent, (v) is a married individual filing a separate return and has
11 at least one dependent, or (vi) is a surviving spouse and has at least
12 one dependent. An individual cannot be a qualified taxpayer if he or she
13 is an individual with respect to whom a deduction under subsection (c)
14 of section 151 of the internal revenue code is allowable to another
15 taxpayer for the taxable year or pays rent for his or her primary resi-
16 dence to a family member sharing the same primary residence. A family
17 member of an individual is the individual's spouse, brother, sister,
18 parent, grandparent, child, grandchild, uncle, aunt, nephew, or niece,
19 related to the individual by blood, marriage or adoption.

20 (B) "Residence" means a dwelling in this state and may consist of a
21 part of a multi-dwelling or multi-purpose building including a cooper-
22 ative or condominium, and rental units within a single dwelling. Resi-
23 dence includes a trailer or mobile home, used exclusively for residen-
24 tial purposes and defined as real property pursuant to paragraph (g) of
25 subdivision twelve of section one hundred two of the real property tax
26 law.

27 (2) (A) A qualified taxpayer shall be allowed a credit as provided in
28 this subsection against the taxes imposed by this article reduced by the

1 credits permitted by this article. If the credit exceeds the tax as so
2 reduced for such year under this article, the excess shall be treated as
3 an overpayment of tax to be credited or refunded in accordance with the
4 provisions of section six hundred eighty-six of this article, provided,
5 however, that no interest shall be paid thereon. If a qualified taxpayer
6 is not required to file a return pursuant to section six hundred fifty-
7 one of this article but otherwise qualifies for a credit under this
8 subsection, a claim for a credit may be taken on a return filed with the
9 commissioner within three years from the time that a return would have
10 been required to be filed pursuant to such section had such qualified
11 taxpayer had a taxable year ending on December thirty-first. Returns
12 shall be in such form as prescribed by the commissioner. A qualified
13 taxpayer must provide any information the commissioner deems necessary
14 to determine the credit allowed.

15 (B) If more than one qualified taxpayer pays rent for the same primary
16 residence and has a federal adjusted gross income for which a credit
17 would otherwise be due, each such qualified taxpayer shall divide the
18 base amount of the credit allowed for his or her income level by the
19 total number of individuals or married couples filing a joint return who
20 are paying the rent, whether or not eligible for a credit, to determine
21 the amount of credit allowed to that qualified taxpayer. Any additional
22 amount of credit determined based on the number of exemptions claimed by
23 such taxpayer shall not be so divided.

24 (C) A qualified taxpayer shall be allowed the credit under this
25 subsection or the credit under subsection (e) of this section, whichever
26 is the higher amount.

27 (3) (A) For any qualified taxpayer who is sixty-five years of age or
28 older with a filing status of single, the amount of the credit allowed

1 number which is one
2 less than the number
3 of exemptions for
4 which the taxpayer
5 (or in the case
6 of a married couple
7 filing a joint return,
8 taxpayers) is entitled
9 to a deduction for the
10 taxable year for federal
11 income tax purposes
12 under subsections (b)
13 and (c) of section 151
14 of the internal revenue code

15 Over \$25,000 but not over \$45,000 \$65 plus an amount
16 equal to \$24
17 multiplied by a number
18 which is one less than
19 the number of exemptions
20 for which the taxpayer
21 (or in the case of
22 a married couple filing a
23 joint return, taxpayers)
24 is entitled to a
25 deduction for the taxable
26 year for federal income
27 tax purposes under

1 subsections (b) and (c)
2 of section 151 of the
3 internal revenue code

4 Over \$45,000 but not over \$65,000 \$55 plus an amount
5 equal to \$12 multiplied
6 by a number which is one
7 less than the number
8 of exemptions for
9 which the taxpayer (or
10 in the case of a married
11 couple filing a joint return,
12 taxpayers) is entitled
13 to a deduction for the
14 taxable year for federal
15 income tax purposes under
16 subsections (b) and (c)
17 of section 151 of the
18 internal revenue code

19 Over \$65,000 but not over \$100,000 \$45 plus an amount
20 equal to \$12 multiplied
21 by a number which is one
22 less than the number
23 of exemptions for which
24 the taxpayer (or in the
25 case of a married couple
26 filing a joint return,

1 taxpayers) is entitled to
2 a deduction for the taxable
3 year for federal income tax
4 purposes under subsections
5 (b) and (c) of section 151
6 of the internal revenue code

7 For taxable years beginning in or
8 after 2015, if federal adjusted gross
9 income is:

10 \$25,000 or less

The credit shall be:
\$160 plus an
amount equal to \$70
multiplied by a number which
is one less than the
number of exemptions
for which the taxpayer
(or in the case of a
married couple filing a
joint return, taxpayers)
is entitled to a deduction
for the taxable year for
federal income tax purposes
under subsections (b) and
(c) of section 151 of the
internal revenue code

25 Over \$25,000 but not over \$45,000

\$130 plus an amount
equal to \$48

26

1 multiplied by a number
2 which is one less than
3 the number of exemptions
4 for which the taxpayer
5 (or in the case of
6 a married couple filing
7 a joint return, taxpayers)
8 is entitled to a deduction
9 for the taxable year for
10 federal income tax purposes
11 under subsections (b)
12 and (c) of section 151
13 of the internal revenue code

14 Over \$45,000 but not over \$65,000 \$110 plus an amount
15 equal to \$24 multiplied
16 by a number which is one
17 less than the number
18 of exemptions for
19 which the taxpayer (or
20 in the case of a married
21 couple filing a joint return,
22 taxpayers) is entitled to a
23 deduction for the taxable
24 year for federal income tax
25 purposes under subsections
26 (b) and (c) of section 151
27 of the internal revenue code

1 than three hundred thousand dollars, and (d) [had] have a tax liability
2 as determined under paragraph three of this subsection of greater than
3 or equal to zero.

4 4. [For each year this credit is allowed, on or before October
5 fifteenth of such year, the commissioner shall determine the taxpayer's
6 eligibility for this credit utilizing the information available to the
7 commissioner on the taxpayer's personal income tax return filed for the
8 taxable year two years prior to the taxable year in which the credit is
9 allowed. For those taxpayers whom the commissioner has determined eligi-
10 ble for this credit, the commissioner shall advance a payment of three
11 hundred fifty dollars. When a taxpayer files his or her return for the
12 taxable year, such taxpayer shall properly reconcile that payment on his
13 or her return.

14 5.] If the amount of the credit allowed under this subsection shall
15 exceed the taxpayer's tax for the taxable year, the excess shall be
16 treated as an overpayment of tax to be credited or refunded in accord-
17 ance with the provisions of section six hundred eighty-six of this arti-
18 cle, provided, however, that no interest shall be paid thereon.

19 § 2. This act shall take effect immediately and apply to taxable years
20 beginning on or after January 1, 2015.

21 PART N

22 Section 1. Paragraph 1 of subsection (a) of section 651 of the tax
23 law, as amended by chapter 333 of the laws of 1987, is amended to read
24 as follows:

25 (1) every resident individual (A) required to file a federal income
26 tax return for the taxable year, or (B) having federal adjusted gross

1 income for the taxable year, increased by the modifications under
2 subsection (b) of section six hundred twelve of this article, in excess
3 of [four thousand dollars, or in excess of] his or her New York standard
4 deduction, [if lower,] or (C) subject to tax under section six hundred
5 two of this article, or (D) having received during the taxable year a
6 lump sum distribution any portion of which is subject to tax under
7 section six hundred three of this article;

8 § 2. This act shall take effect immediately and apply to taxable years
9 beginning on or after January 1, 2014.

10 PART O

11 Section 1. Paragraph 1 of subdivision (a) of section 28 of the tax
12 law, as amended by section 1 of part I of chapter 59 of the laws of
13 2012, is amended to read as follows:

14 (1) A taxpayer which is a qualified commercial production company, or
15 which is a sole proprietor of a qualified commercial production company,
16 and which is subject to tax under article nine-A or twenty-two of this
17 chapter, shall be allowed a credit against such tax, pursuant to the
18 provisions referenced in subdivision (c) of this section, to be computed
19 as provided in this section. Provided, however, to be eligible for such
20 credit, at least seventy-five percent of the production costs (excluding
21 post production costs) paid or incurred directly and predominantly in
22 the actual filming or recording of the qualified commercial must be
23 costs incurred in New York state. The tax credit allowed pursuant to
24 this section shall apply to taxable years beginning before January
25 first, two thousand [fifteen] seventeen.

1 § 2. Paragraph (a) of subdivision 38 of section 210 of the tax law, as
2 amended by section 3 of part I of chapter 59 of the laws of 2012, is
3 amended to read as follows:

4 (a) Allowance of credit. A taxpayer that is eligible pursuant to
5 provisions of section twenty-eight of this chapter shall be allowed a
6 credit to be computed as provided in such section against the tax
7 imposed by this article. The tax credit allowed pursuant to this section
8 shall apply to taxable years beginning before January first, two thou-
9 sand [fifteen] seventeen.

10 § 3. Paragraph 1 of subsection (jj) of section 606 of the tax law, as
11 amended by section 4 of part I of chapter 59 of the laws of 2012, is
12 amended to read as follows:

13 (1) Allowance of credit. A taxpayer that is eligible pursuant to the
14 provisions of section twenty-eight of this chapter shall be allowed a
15 credit to be computed as provided in such section against the tax
16 imposed by this article. The tax credit allowed pursuant to this section
17 shall apply to taxable years beginning before January first, two thou-
18 sand [fifteen] seventeen.

19 § 4. This act shall take effect immediately.

20 PART P

21 Section 1. Subdivision 4 of section 22 of the public housing law, as
22 amended by section 2 of part J of chapter 59 of the laws of 2012, is
23 amended to read as follows:

24 4. Statewide limitation. The aggregate dollar amount of credit which
25 the commissioner may allocate to eligible low-income buildings under
26 this article shall be [forty-eight] fifty-six million dollars. The limi-

1 tation provided by this subdivision applies only to allocation of the
2 aggregate dollar amount of credit by the commissioner, and does not
3 apply to allowance to a taxpayer of the credit with respect to an eligi-
4 ble low-income building for each year of the credit period.

5 § 2. Subdivision 4 of section 22 of the public housing law, as amended
6 by section one of this act, is amended to read as follows:

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

14 § 3. This act shall take effect immediately; provided, however, that
15 section two of this act shall take effect April 1, 2015.

16 PART Q

17 Section 1. Subdivision (b) of section 27-1318 of the environmental
18 conservation law, as amended by section 2 of part E of chapter 577 of
19 the laws of 2004, is amended to read as follows:

20 (b) Within [sixty] one hundred eighty days of commencement of the
21 remedial design, the owner of an inactive hazardous waste disposal site,
22 and/or any person responsible for implementing a remedial program at
23 such site, where institutional or engineering controls are employed
24 pursuant to this title, shall execute an environmental easement pursuant
25 to title thirty-six of article seventy-one of this chapter.

1 § 2. Subdivision 2 of section 27-1405 of the environmental conserva-
2 tion law, as amended by section 2 of part A of chapter 577 of the laws
3 of 2004, is amended to read as follows:

4 2. "Brownfield site" or "site" shall mean any real property[, the
5 redevelopment or reuse of which may be complicated by the presence or
6 potential presence of] where a contaminant is present at levels exceed-
7 ing the soil cleanup objectives or other health-based or environmental
8 standards promulgated by the department that are applicable based on the
9 reasonably anticipated use of the property, as determined by the depart-
10 ment. Such term shall not include real property:

11 (a) listed in the registry of inactive hazardous waste disposal sites
12 under section 27-1305 of this article at the time of application to this
13 program and given a classification as described in subparagraph one or
14 two of paragraph b of subdivision two of section 27-1305 of this arti-
15 cle; provided, however [except until July first, two thousand five],
16 real property listed in the registry of inactive hazardous waste
17 disposal sites under subparagraph two of paragraph b of subdivision two
18 of section 27-1305 of this article [prior to the effective date of this
19 article], where such real property is owned by a volunteer or under
20 contract to be transferred to a volunteer and the department has not
21 identified any responsible parties for that property having the ability
22 to pay for the investigation or cleanup of the property, shall not be
23 deemed ineligible to participate and further provided that the status of
24 any such site as listed in the registry shall not be altered prior to
25 the issuance of a certificate of completion pursuant to section 27-1419
26 of this title. The department's assessment of eligibility under this
27 paragraph shall not constitute a finding concerning liability with
28 respect to the property;

1 (b) listed on the national priorities list established under authority
2 of 42 U.S.C. section 9605;

3 (c) subject to an enforcement action under title seven or nine of this
4 article, [except] or permitted as a treatment, storage or disposal
5 facility [subject to a permit]; provided, that nothing herein contained
6 shall be deemed otherwise to exclude from the scope of the term "brown-
7 field site" a hazardous waste treatment, storage or disposal facility
8 having interim status according to regulations promulgated by the
9 commissioner;

10 (d) subject to an order for cleanup pursuant to article twelve of the
11 navigation law or pursuant to title ten of article seventeen of this
12 chapter except such property shall not be deemed ineligible if it is
13 subject to a stipulation agreement; or

14 (e) subject to any other on-going state or federal environmental
15 enforcement action related to the contamination which is at or emanating
16 from the site subject to the present application.

17 § 3. Subdivision 1 of section 27-1407 of the environmental conserva-
18 tion law, as amended by section 3 of part A of chapter 577 of the laws
19 of 2004, is amended and a new subdivision 1-a is added to read as
20 follows:

21 1. A person who seeks to participate in this program shall submit a
22 request to the department on a form provided by the department. Such
23 form shall include information to be determined by the department suffi-
24 cient to allow the department to determine eligibility and the current,
25 intended and reasonably anticipated future land use of the site pursuant
26 to section 27-1415 of this title. Any such person shall submit an
27 investigation report sufficient to demonstrate that the site requires
28 remediation in order to meet the remedial requirements of this title;

1 and, for any strategic site located within a brownfield opportunity area
2 designated by the secretary of state pursuant to section nine hundred
3 seventy-r of the general municipal law, a certification that the devel-
4 opment of the site will be in conformance with such brownfield opportu-
5 nity area plan.

6 1-a. If the person is also seeking to receive the tangible property
7 credit component of the brownfield redevelopment tax credit pursuant to
8 paragraph three of subdivision (a) of section twenty-one of the tax law
9 such person shall submit information sufficient to demonstrate that (1)
10 the site has: (i) been a vacant lot for fifteen or more years, or (ii) a
11 building or buildings that have been vacant for fifteen or more years,
12 or (iii) a lot or buildings have been both vacant and tax delinquent for
13 ten or more years, (2) the projected cost of the investigation and reme-
14 diation which is protective for the anticipated use of the site exceeds
15 the certified appraised value of the property absent contamination, or
16 (3) the project is a priority economic development project as determined
17 by the department of economic development that has received a resolution
18 from the municipality within which the site is located stating the
19 proposed project is consistent with the municipality's local revitaliza-
20 tion or development plan. "Priority economic development project" means
21 (a) a manufacturer creating at least one hundred net new jobs in the
22 state and making significant capital investment in the state; (b) a
23 business creating at least one hundred net new jobs in agriculture in
24 the state and making significant capital investment in the state; (c) a
25 financial services firm, distribution center, or back office operation
26 creating at least three hundred net new jobs in the state and making
27 significant capital investment in the state; (d) a scientific research
28 and development firm creating at least one hundred net new jobs in the

1 state, and making significant capital investment in the state; (e) the
2 corporate headquarters of a firm creating at least one hundred net new
3 jobs in the state, and making significant capital investment in the
4 state; or (f) a software development or new media firm creating at least
5 fifty net new jobs in the state, and making significant capital invest-
6 ment in the state. Other businesses creating three hundred or more net
7 new jobs in the state and making significant capital investment in the
8 state may be considered eligible as priority economic development
9 project by the commissioner of economic development as well. An appli-
10 cant may request an eligibility determination for tangible property
11 credits from the commissioner of economic development for a priority
12 economic development project when it can demonstrate that it meets such
13 criteria any time from application to three years from the date the site
14 receives a certificate of completion pursuant to section 27-1419 of this
15 title. The commissioner of economic development shall promulgate regu-
16 lations to determine what constitutes significant capital investment for
17 each of the project categories indicated in this subdivision and what
18 additional criteria a business must meet to be eligible as a priority
19 economic development project.

20 Sites are not eligible for tangible property tax credits if (1) the
21 contamination is solely emanating from property other than the site
22 subject to the present application; or (2) the department has determined
23 that the property has previously been remediated such that it may be
24 developed for its then intended use.

25 § 4. Subdivision 3 of section 27-1407 of the environmental conserva-
26 tion law, as amended by section 3 of part A of chapter 577 of the laws
27 of 2004, is amended to read as follows:

1 3. The department shall notify the person requesting participation in
2 this program within [ten] thirty days after receiving such request that
3 such request is either complete or incomplete. In the event the applica-
4 tion is determined to be incomplete the department shall specify in
5 writing the missing necessary information required pursuant to this
6 article to complete the application and shall have ten days after
7 receipt of the missing information to issue a written determination if
8 the application is complete.

9 § 5. Subdivision 6 of section 27-1407 of the environmental conserva-
10 tion law, as added by section 1 of part A of chapter 1 of the laws of
11 2003, is amended to read as follows:

12 6. The department shall use all best efforts to expeditiously notify
13 the applicant within forty-five days after receiving [their request] a
14 complete application for participation that such request is either
15 accepted or rejected, and, for any applicant seeking to receive the
16 tangible property credit component of the brownfield redevelopment tax
17 credit pursuant to paragraph three of subdivision (a) of section twen-
18 ty-one of the tax law, whether the criteria for receiving such component
19 as set forth in subdivision one of this section have been met.

20 § 6. Subdivision 9 of section 27-1407 of the environmental conserva-
21 tion law is amended by adding a new paragraph (g) to read as follows:

22 (g) The person's participation in any remedial program under the
23 department's oversight was terminated by the department or by a court
24 for failure to substantially comply with an agreement or order.

25 § 7. Subdivision 2 of section 27-1409 of the environmental conserva-
26 tion law, as amended by section 4 of part A of chapter 577 of the laws
27 of 2004, is amended to read as follows:

1 2. One requiring (a) the [applicant] participant to pay for state
2 costs, including the recovery of state costs incurred before the effec-
3 tive date of such agreement; provided, however, that such costs may be
4 based on a reasonable flat-fee for oversight, which shall reflect the
5 projected future state costs incurred in negotiating and overseeing
6 implementation of such agreement; and

7 (b) with respect to a brownfield site which the department has deter-
8 mined constitutes a significant threat to the public health or environ-
9 ment the department may include a provision requiring the applicant to
10 provide a technical assistance grant, as described in subdivision four
11 of section 27-1417 of this title and under the conditions described
12 therein, to an eligible party in accordance with procedures established
13 under such program, with the cost of such a grant incurred by a volun-
14 teer serving as an offset against such state costs[. Where the applicant
15 is a participant, the department shall include provisions relating to
16 recovery of state costs incurred before the effective date of such
17 agreement];

18 § 8. Section 27-1411 of the environmental conservation law is amended
19 by adding two new subdivisions 6 and 7 to read as follows:

20 6. An applicant shall commence implementation of any work plan within
21 ninety days of approval of the plan by the department and complete the
22 activities provided for in such work plan in accordance with the sched-
23 ule set forth therein, or as otherwise approved by the department in
24 writing.

25 7. An applicant shall include with every report submitted to the
26 department a schedule for the submission of any subsequent work plan
27 required to meet the requirements of this title.

1 § 9. Subdivision 2 of section 27-1413 of the environmental conserva-
2 tion law, as amended by section 6 of part A of chapter 577 of the laws
3 of 2004, is amended to read as follows:

4 2. For all [other] sites seeking to receive the tangible property
5 credit component pursuant to paragraph three of subdivision (a) of
6 section twenty-one of the tax law, the applicant shall develop and eval-
7 uate at least two remedial alternatives, one of which would achieve a
8 Track 1 cleanup. The department shall have the discretion to require the
9 evaluation of additional alternatives at a site that has been determined
10 to pose a significant threat. The applicant shall submit the alterna-
11 tives analysis [as a part of the remedial work plan] to the department
12 for review, approval, modification or rejection.

13 § 10. Subdivision 4 of section 27-1415 of the environmental conserva-
14 tion law, as amended by section 7 of part A of chapter 577 of the laws
15 of 2004, is amended to read as follows:

16 4. Tracks. The commissioner, in consultation with the commissioner of
17 health, shall propose within twelve months and thereafter timely promul-
18 gate regulations which create a multi-track approach for the remediation
19 of contamination, and, commencing on the effective date of such regu-
20 lations, utilize such multi-track approach. Such regulations shall
21 provide that groundwater use in Tracks 2, 3 or 4 can be either
22 restricted or unrestricted. The tracks shall be as follows:

23 Track 1: The remedial program shall achieve a cleanup level that will
24 allow the site to be used for any purpose without restriction and with-
25 out reliance on the long-term employment of institutional or engineering
26 controls, and shall achieve contaminant-specific remedial action objec-
27 tives for soil which conform with those contained in the generic table
28 of contaminant-specific remedial action objectives for unrestricted use

1 developed pursuant to subdivision six of this section. Provided, howev-
2 er, that volunteers whose proposed remedial program [for the remediation
3 of groundwater] (1)(i) may require the long-term employment of institu-
4 tional or engineering controls for the remediation of groundwater after
5 the bulk reduction of groundwater contamination to asymptotic levels has
6 been achieved or (ii) may require an institutional or engineering
7 control for more than five years solely to address soil vapor intrusion
8 but (2) whose program would otherwise conform with the requirements
9 necessary to qualify for Track 1, shall qualify for Track 1.

10 Track 2: The remedial program may include restrictions on the use of
11 the site or reliance on the long-term employment of engineering and/or
12 institutional controls, but shall achieve contaminant-specific remedial
13 action objectives for soil which conform with those contained in one of
14 the generic tables developed pursuant to subdivision six of this section
15 without the use of institutional or engineering controls to reach such
16 objectives.

17 Track 3: The remedial program shall achieve contaminant-specific reme-
18 dial action objectives for soil which conform with the criteria used to
19 develop the generic tables for such objectives developed pursuant to
20 subdivision six of this section but may use site specific data to deter-
21 mine such objectives.

22 Track 4: The remedial program shall achieve a cleanup level that will
23 be protective for the site's current, intended or reasonably anticipated
24 residential, commercial, or industrial use with restrictions and with
25 reliance on the long-term employment of institutional or engineering
26 controls to achieve such level. The regulations shall include a
27 provision requiring that a cleanup level which poses a risk in excee-
28 dance of an excess cancer risk of one in one million for carcinogenic

1 end points and a hazard index of one for non-cancer end points for a
2 specific contaminant at a specific site may be approved by the depart-
3 ment without requiring the use of institutional or engineering controls
4 to eliminate exposure only upon a site specific finding by the commis-
5 sioner, in consultation with the commissioner of health, that such level
6 shall be protective of public health and environment. Such finding shall
7 be included in the draft remedial work plan for the site and fully
8 described in the notice and fact sheet provided for such work plan.

9 § 11. Paragraphs (b), (c) and (d) of subdivision 7 of section 27-1415
10 of the environmental conservation law are relettered paragraphs (c), (d)
11 and (e) and a new paragraph (b) is added to read as follows:

12 (b) Within one hundred eighty days of commencement of the remedial
13 design or at least three months prior to the date of the anticipated
14 issuance of the certificate of completion, the owner of a brownfield
15 site, and/or any person responsible for implementing a remedial program
16 at such site, where institutional or engineering controls are employed
17 pursuant to this title, shall execute an environmental easement pursuant
18 to title thirty-six of article seventy-one of this chapter.

19 § 12. Paragraph (h) of subdivision 3 of section 27-1417 of the envi-
20 ronmental conservation law is REPEALED, paragraph (i) is relettered
21 paragraph (h) and paragraph (f), as amended by section 8 of part A of
22 chapter 577 of the laws of 2004, is amended to read as follows:

23 (f) Before the department [finalizes] selects a proposed [remedial
24 work plan] remedy from the alternatives set forth in the alternatives
25 analysis as prescribed by section 27-1413 of this title or makes a
26 determination that site conditions meet the requirements of this title
27 without the necessity for remediation pursuant to section 27-1411 of
28 this title, the department, in consultation with the applicant, must

1 notify individuals on the brownfield site contact list. Such notice
2 shall include a fact sheet describing such plan and provide for a
3 forty-five day public comment period. The commissioner shall hold a
4 public meeting if requested by the affected community and the commis-
5 sioner has found that the site constitutes a significant threat to the
6 public health or the environment. Further, the affected community may
7 request a public meeting at sites that do not constitute a significant
8 threat. (1) To the extent that the department has determined that site
9 conditions do not pose a significant threat and the site is being
10 addressed by a volunteer, the notice shall state that the department has
11 determined that no remediation is required for the off-site areas and
12 that the department's determination of a significant threat is subject
13 to this forty-five day comment period. (2) If the [remedial work plan]
14 remedy includes a Track 2, Track 3 or Track 4 remedy at a non-signifi-
15 cant threat site, such comment period shall apply both to the approval
16 of the alternatives analysis by the department, if applicable, and the
17 proposed remedy selected by the applicant.

18 § 13. Paragraph (a) of subdivision 2 and subdivision 3 of section
19 27-1419 of the environmental conservation law, paragraph (a) of subdivi-
20 sion 2 as added by section 1 of part A of chapter 1 of the laws of 2003,
21 subdivision 3 as amended by chapter 390 of the laws of 2008, are amended
22 to read as follows:

23 (a) a description of the remediation activities completed pursuant to
24 the remedial work plan and any interim remedial measures for the brown-
25 field site and the costs paid for those activities;

26 3. Upon receipt of the final engineering report, the department shall
27 review such report and the data submitted pursuant to the brownfield
28 site cleanup agreement as well as any other relevant information regard-

1 ing the brownfield site. Upon satisfaction of the commissioner that the
2 remediation requirements set forth in this title have been or will be
3 achieved in accordance with the timeframes, if any, established in the
4 remedial work plan, the commissioner shall issue a written certificate
5 of completion[, such]. The certificate shall include such information as
6 determined by the department of taxation and finance, including but not
7 limited to the brownfield site boundaries included in the final engi-
8 neering report, the date of the brownfield site cleanup agreement
9 [pursuant to section 27-1409 of this title], identification of the enti-
10 ty or entities eligible for credits pursuant to sections twenty-one,
11 twenty-two or twenty-three of the tax law, and the applicable percent-
12 ages available as of the date of the certificate of completion for that
13 site for purposes of section twenty-one of the tax law[, with such
14 percentages to be determined as follows with respect to such qualified
15 site]. For those sites for which the department has issued a notice to
16 the applicant on or after July first, two thousand fourteen that its
17 request for participation has been accepted under subdivision six of
18 section 27-1407 of this title, the tangible property credit component of
19 the brownfield redevelopment tax credit pursuant to paragraph three of
20 subdivision (a) of section twenty-one of the tax law shall only be
21 available to the taxpayer if the notice includes a determination that
22 the criteria for receiving such tax component have been met. For those
23 sites for which the department has issued a notice to the taxpayer after
24 June twenty-third, two thousand eight that its request for participation
25 has been accepted under subdivision six of section 27-1407 of this
26 title[:

27 For the purposes of calculating], the applicable percentage for the
28 site preparation credit component pursuant to paragraph two of subdivi-

1 sion (a) of section twenty-one of the tax law, and the on-site groundwa-
2 ter remediation credit component pursuant to paragraph four of subdivi-
3 sion (a) of section twenty-one of the tax law[, the applicable
4 percentage] shall be based on the level of cleanup achieved pursuant to
5 subdivision four of section 27-1415 of this title and the level of
6 cleanup of soils to contaminant-specific soil cleanup objectives promul-
7 gated pursuant to subdivision six of section 27-1415 of this title, up
8 to a maximum of fifty percent, as follows:

9 (a) soil cleanup for unrestricted use, the protection of groundwater
10 or the protection of ecological resources, the applicable percentage
11 shall be fifty percent;

12 (b) soil cleanup for residential use, the applicable percentage shall
13 be forty percent, except for Track 4 which shall be twenty-eight
14 percent;

15 (c) soil cleanup for commercial use, the applicable percentage shall
16 be thirty-three percent, except for Track 4 which shall be twenty-five
17 percent;

18 (d) soil cleanup for industrial use, the applicable percentage shall
19 be twenty-seven percent, except for Track 4 which shall be twenty-two
20 percent.

21 § 14. Subdivision 5 of section 27-1419 of the environmental conserva-
22 tion law, as amended by section 9 of part A of chapter 577 of the laws
23 of 2004, is amended to read as follows:

24 5. A certificate of completion issued pursuant to this section may be
25 transferred [to the applicant's successors or assigns upon transfer or
26 sale of the brownfield site] by the applicant or subsequent holder of
27 the certificate of completion to a successor to a real property inter-
28 est, including legal title, equitable title or leasehold, in all or a

1 part of the brownfield site for which the certificate of completion was
2 issued; provided, however, any transfer of a certificate of completion
3 to a responsible party shall not provide relief from liability. Further,
4 a certificate of completion may be modified or revoked by the commis-
5 sioner upon a finding that:

6 (a) Either the applicant, or the applicant's successors or assigns,
7 has failed to comply with the terms and conditions of the brownfield
8 site cleanup agreement;

9 (b) The applicant made a misrepresentation of a material fact tending
10 to demonstrate that (i) it was qualified as a volunteer or (ii) met the
11 criteria set forth in subdivision one-a of section 27-1407 of this title
12 for the purpose of receiving the tangible property credit component of
13 the brownfield redevelopment tax credit pursuant to paragraph three of
14 subdivision (a) of section twenty-one of the tax law;

15 (c) Either the applicant, or the applicant's successors or assigns,
16 made a misrepresentation of a material fact tending to demonstrate that
17 the cleanup levels identified in the brownfield site cleanup agreement
18 were reached; [or]

19 (d) The environmental easement created and recorded pursuant to title
20 thirty-six of article seventy-one of this chapter no longer provides an
21 effective or enforceable means of ensuring the performance of mainte-
22 nance, monitoring or operating requirements, or the restrictions on
23 future uses, including restrictions on drilling for or withdrawing
24 groundwater; or

25 (e) There is good cause for such modification or revocation.

26 § 15. Section 27-1423 of the environmental conservation law is
27 REPEALED.

1 § 16. Section 27-1429 of the environmental conservation law, as
2 amended by section 13 of part A of chapter 577 of the laws of 2004, is
3 amended to read as follows:

4 § 27-1429. Permit waivers.

5 The department[, by and through the commissioner,] shall be exempt,
6 and shall be authorized to exempt a person from the requirement to
7 obtain any state or local permit or other authorization for any activity
8 needed to implement a program for the investigation and/or remediation
9 of contamination at or emanating from a brownfield site; provided that
10 the activity is conducted in a manner which satisfies all substantive
11 technical requirements applicable to like activity conducted pursuant to
12 a permit.

13 § 17. Subdivision 1 of section 27-1431 of the environmental conserva-
14 tion law is amended by adding a new paragraph c to read as follows:

15 c. to inspect for compliance with the site management plan approved by
16 the department, including (i) inspection of the performance of mainte-
17 nance, monitoring and operational activities required as part of the
18 remedial program for the site, (ii) inspection for the purpose of ascer-
19 taining current uses of the site, and (iii) taking samples in accordance
20 with paragraph a of this subdivision.

21 § 17-a. Section 27-1435 of the environmental conservation law is
22 REPEALED.

23 § 18. The environmental conservation law is amended by adding a new
24 section 27-1437 to read as follows:

25 § 27-1437. BCP-EZ Program.

26 1. Notwithstanding the provisions of this title or any other provision
27 of law, the department is authorized to exempt a volunteer from proce-
28 dural requirements of this title that the department may specify which

1 are otherwise applicable to implementation of an investigation and/or
2 remediation of contamination, provided that:

3 (a) the department has determined that the brownfield site does not
4 pose a significant threat pursuant to section 27-1411 of this title;

5 (b) the applicant has waived in writing any claim for tax credits
6 pursuant to section twenty-one of the tax law on a form prescribed by
7 the department; and

8 (c) the activity is conducted in a manner which satisfies all substan-
9 tive technical requirements applicable to like activity conducted pursu-
10 ant to this title.

11 2. Where a waiver has been granted, the approved work plan for a
12 brownfield site shall include the procedural requirements the department
13 determines appropriate based on site specific considerations and consid-
14 eration of section 27-1417 of this title.

15 3. For any site accepted into the BCP-EZ program pursuant to this
16 section which is pursuing a Track 4 remediation, if a contaminant is
17 identified in soil in excess of the remedial action objectives contained
18 in an applicable generic table developed pursuant to subdivision six of
19 section 27-1415 of this title, the applicant may use site-specific data
20 to demonstrate to the department that the concentration of the contam-
21 inant in the soils reflects background conditions and, in that case, a
22 contaminant-specific action objective for such contaminant equal to such
23 background concentration may be established.

24 § 19. The opening paragraph of subdivision 10 of section 71-3605 of
25 the environmental conservation law, as added by section 2 of part A of
26 chapter 1 of the laws of 2003, is amended to read as follows:

27 An environmental easement may be enforced in law or equity by its
28 grantor, by the state, or any affected local government as defined in

1 section 71-3603 of this title. Such easement is enforceable against the
2 owner of the burdened property, any lessees, and any person using the
3 land. Enforcement shall not be defeated because of any subsequent
4 adverse possession, laches, estoppel, reversion or waiver. No general
5 law of the state which operates to defeat the enforcement of any inter-
6 est in real property shall operate to defeat the enforcement of any
7 environmental easement unless such general law expressly states the
8 intent to defeat the enforcement of such easement or provides for the
9 exercise of the power of eminent domain. It is not a defense in any
10 action to enforce an environmental easement that:

11 § 20. Paragraph 2 of subdivision (a) of section 21 of the tax law, as
12 amended by section 1 of part H of chapter 577 of the laws of 2004, is
13 amended to read as follows:

14 (2) Site preparation credit component. The site preparation credit
15 component shall be equal to the applicable percentage of the site prepa-
16 ration costs paid [or incurred] by the taxpayer with respect to a quali-
17 fied site. The credit component amount so determined with respect to a
18 site's qualification for a certificate of completion shall be allowed
19 for the taxable year in which the effective date of the certificate of
20 completion occurs. The credit component amount determined other than
21 with respect to such qualification shall be allowed for the taxable year
22 in which the improvement to which the applicable costs apply is placed
23 in service for up to five taxable years after the issuance of such
24 certificate of completion.

25 § 21. Paragraph 3 of subdivision (a) of section 21 of the tax law, as
26 amended by chapter 390 of the laws of 2008, is amended to read as
27 follows:

1 (3) Tangible property credit component. The tangible property credit
2 component shall be equal to the applicable percentage of the cost or
3 other basis for federal income tax purposes of tangible personal proper-
4 ty and other tangible property, including buildings and structural
5 components of buildings, which constitute qualified tangible property;
6 provided[, however,] that in determining the cost or other basis of such
7 property, the taxpayer shall exclude the acquisition cost of any item of
8 property with respect to which a credit under this section was allowable
9 to another taxpayer. With respect to any qualified site for which the
10 department of environmental conservation has issued a notice to the
11 taxpayer on or after July first, two thousand fourteen that its request
12 for participation has been accepted under subdivision six of section
13 27-1407 of the environmental conservation law, the taxpayer may also
14 include the costs incurred in connection with preparing a site for the
15 erection of a building or a component of a building, such as the cost of
16 excavation, demolition, temporary electric wiring, scaffolding, fencing
17 and security facilities, to the extent that such costs are not used as a
18 basis for computing the site preparation component of the brownfield
19 redevelopment tax credit pursuant to paragraph two of this subdivision;
20 and provided further that, in the case of qualified sites eligible for
21 the five percent affordable housing tangible property credit component
22 pursuant to clause (iii) of subparagraph (B) of paragraph five of this
23 subdivision, that portion of the tangible property credit component will
24 be determined by multiplying the total costs qualified for the tangible
25 property credit component by a fraction, the numerator of which shall be
26 the square footage of space of the affordable housing units dedicated to
27 residential occupancy and the denominator of which shall be the total
28 square footage of the site. The credit component amount so determined

1 shall be allowed for the taxable year in which such qualified tangible
2 property is first placed in service on a qualified site with respect to
3 which a certificate of completion has been issued to the taxpayer, or
4 for the taxable year in which the certificate of completion is issued if
5 the qualified tangible property is placed in service prior to the issu-
6 ance of the certificate of completion, for up to [ten] five consecutive
7 taxable years [after] from the start of the redevelopment of the site
8 provided that the redevelopment starts within ten years of the date of
9 the issuance of such certificate of completion. The tangible property
10 credit component shall be allowed with respect to property leased to a
11 second party only if such second party is either (i) not a party respon-
12 sible for the disposal of hazardous waste or the discharge of petroleum
13 at the site according to applicable principles of statutory or common
14 law liability, or (ii) a party responsible according to applicable prin-
15 ciples of statutory or common law liability if such party's liability
16 arises solely from operation of the site subsequent to the disposal of
17 hazardous waste or the discharge of petroleum, and is so certified by
18 the commissioner of environmental conservation at the request of the
19 taxpayer, pursuant to section 27-1419 of the environmental conservation
20 law. Notwithstanding any other provision of law to the contrary, in the
21 case of allowance of credit under this section to such a lessor, the
22 commissioner shall have the authority to reveal to such lessor any
23 information, with respect to the issue of qualified use of property by
24 the lessee, which is the basis for the denial in whole or in part, or
25 for the recapture, of the credit claimed by such lessor. For purposes of
26 the tangible property credit component allowed under this section the
27 taxpayer to whom the certificate of completion is issued, as provided
28 for under subdivision five of section 27-1419 of the environmental

1 conservation law, may transfer the benefits and burdens of the certif-
2 icate of completion, which run with the land and to the applicant's
3 successors or assigns upon transfer or sale of all or any portion of an
4 interest or estate in the qualified site. However, the taxpayer to whom
5 certificate's benefits and burdens are transferred shall not include the
6 cost of acquiring all or any portion of an interest or estate in the
7 site and the amounts included in the cost or other basis for federal
8 income tax purposes of qualified tangible property already claimed by
9 the previous taxpayer pursuant to this section. The tangible property
10 credit component shall not include costs paid to a related party or
11 parties, as such term "related person" is defined in subparagraph (c) of
12 paragraph three of subdivision (b) of section four hundred sixty-five of
13 the internal revenue code. Eligible costs for the tangible property
14 credit component are limited to costs associated with actual
15 construction of tangible property incorporated as part of the physical
16 structure, and costs associated with the preparation of the site for
17 erection of a building or a component of a building that are not proper-
18 ly included in the site preparation component.

19 § 22. Subparagraph (A) of paragraph 3-a of subdivision (a) of section
20 21 of the tax law, as added by chapter 390 of the laws of 2008, is
21 amended to read as follows:

22 (A) Notwithstanding any other provision of law to the contrary, the
23 tangible property credit component available for any qualified site
24 pursuant to paragraph three of this subdivision shall not exceed thir-
25 ty-five million dollars or three times the sum of the costs included in
26 the calculation of the site preparation credit component and the on-site
27 groundwater remediation credit component under paragraphs two and four,
28 respectively, of this subdivision, and the costs that would have been

1 included in the calculation of such components if not treated as an
2 expense and deducted pursuant to section one hundred ninety-eight of the
3 internal revenue code, whichever is less; provided, however, that: (1)
4 in the case of a qualified site to be used primarily for manufacturing
5 activities, the tangible property credit component available for any
6 qualified site pursuant to paragraph three of this subdivision shall not
7 exceed forty-five million dollars or six times the sum of the costs
8 included in the calculation of the site preparation credit component and
9 the on-site groundwater remediation credit component under paragraphs
10 two and four, respectively, of this subdivision, and the costs that
11 would have been included in the calculation of such components if not
12 treated as an expense and deducted pursuant to section one hundred nine-
13 ty-eight of the internal revenue code, whichever is less; and (2) the
14 provisions of this paragraph shall not apply to any qualified site for
15 which the department of environmental conservation has issued a notice
16 to the taxpayer before June twenty-third, two thousand eight that its
17 request for participation has been accepted under subdivision six of
18 section 27-1407 of the environmental conservation law.

19 § 23. Subparagraph (D) of paragraph 3-a of subdivision (a) of section
20 21 of the tax law, as added by chapter 390 of the laws of 2008, is
21 amended to read as follows:

22 (D) [If] With respect to any qualified site for which the department
23 of environmental conservation has issued a notice to the taxpayer before
24 July first, two thousand fourteen that its request for participation has
25 been accepted under subdivision six of section 27-1407 of the environ-
26 mental conservation law, or where the taxpayer has either been issued or
27 received a certificate of completion from another taxpayer under section
28 27-1419 of the environmental conservation law before July first, two

1 thousand fourteen, if the qualifying site is located in a brownfield
2 opportunity area and is developed in conformance with the goals and
3 priorities established for that applicable brownfield opportunity area
4 as designated pursuant to section nine hundred seventy-r of the general
5 municipal law, the applicable percentage of the tangible property credit
6 component will be increased by two percent.

7 § 24. Paragraph 4 of subdivision (a) of section 21 of the tax law, as
8 amended by section 1 of part H of chapter 577 of the laws of 2004, is
9 amended to read as follows:

10 (4) On-site groundwater remediation credit component. The on-site
11 groundwater remediation credit component shall be equal to the applica-
12 ble percentage of the on-site groundwater remediation costs paid [or
13 incurred] by the taxpayer with respect to a qualified site (to the
14 extent that such groundwater remediation costs are not included in the
15 determination of the site preparation credit or the cost or other basis
16 included in the determination of the tangible property credit). The
17 credit component so determined for costs [incurred and] paid with
18 respect to and prior to the issuance of a certificate of completion
19 shall be allowed for the taxable year in which the effective date of the
20 issuance of a certificate of completion occurs. The credit component
21 amount determined in taxable years after the effective date of the issu-
22 ance of a certificate of completion shall be allowed in the taxable year
23 such qualified costs are [incurred and] paid for up to five taxable
24 years after the issuance of such certificate of completion.

25 § 25. Paragraph 5 of subdivision (a) of section 21 of the tax law, as
26 amended by section 1 of part H of chapter 577 of the laws of 2004, is
27 amended to read as follows:

1 (5) Applicable percentage. (A) For purposes of computing the site
2 preparation and on-site groundwater remediation credit components pursu-
3 ant to paragraphs two[, three] and four of this subdivision, with
4 respect to such qualified sites for which the department of environ-
5 mental conservation has issued a notice to the taxpayer before June
6 twenty-third, two thousand eight that its request for participation has
7 been accepted under subdivision six of section 27-1407 of the environ-
8 mental conservation law, or where the taxpayer has either been issued or
9 received a certificate of completion from another taxpayer under section
10 27-1419 of the environmental conservation law before June twenty-third,
11 two thousand eight, and, for purposes of computing the tangible property
12 component pursuant to paragraph three of this subdivision with respect
13 to such qualified sites for which the department of environmental
14 conservation has issued a notice to the taxpayer before July first, two
15 thousand fourteen that its request for participation has been accepted
16 under subdivision six of section 27-1407 of the environmental conserva-
17 tion law, or where the taxpayer has either been issued or received a
18 certificate of completion from another taxpayer under section 27-1419 of
19 the environmental conservation law before July first, two thousand four-
20 teen, the applicable percentage shall be twelve percent in the case of
21 credits claimed under article nine, nine-A, thirty-two or thirty-three
22 of this chapter, and ten percent in the case of credits claimed under
23 article twenty-two of this chapter, except that where at least fifty
24 percent of the area of the qualified site relating to the credit
25 provided for in this section is located in an environmental zone as
26 defined in paragraph six of subdivision (b) of this section, the appli-
27 cable percentage shall be increased by an additional eight percent.
28 Provided, however, as afforded in section 27-1419 of the environmental

1 conservation law, if the certificate of completion indicates that the
2 qualified site has been remediated to Track 1 as that term is described
3 in subdivision four of section 27-1415 of the environmental conservation
4 law, the applicable percentage set forth in the first sentence of this
5 paragraph shall be increased by an additional two percent.

6 (B) With respect to such qualified site for which the department of
7 environmental conservation has issued a notice to the taxpayer on or
8 after July first, two thousand fourteen that its request for partic-
9 ipation has been accepted under subdivision six of section 27-1407 of
10 the environmental conservation law, the applicable percentage for the
11 tangible property credit component of the brownfield redevelopment tax
12 credit pursuant to paragraph three of subdivision (a) of this section
13 shall be the sum of ten percent and the following additional percent-
14 ages, provided that the total percentage of the tangible property credit
15 component shall not exceed twenty-four percent and is otherwise subject
16 to the limitations set forth in paragraphs three and three-a of subdivi-
17 sion (a) of this section:

18 (i) ten percent for a site within an environmental zone;

19 (ii) five percent for a strategic site located within a designated
20 brownfield opportunity area if the proposed development of the site is
21 certified to be in conformance with such brownfield opportunity area
22 plan pursuant to section nine hundred seventy-r of the general municipal
23 law; and

24 (iii) five percent for sites developed as affordable housing, defined
25 as having at least twenty percent of its residential units subject to an
26 agreement with a municipality, the state, the federal government, or an
27 instrumentality thereof, where such agreement restricts occupancy of
28 those units to residents who qualify in accordance with an income test.

1 (C) The taxpayer shall submit, in the manner prescribed by the commis-
2 sioner, information sufficient to demonstrate that the site qualifies
3 for any credit components available under clauses (i) through (iii) of
4 subparagraph (B) of this paragraph. If the site is a priority economic
5 development project, the taxpayer must also demonstrate that the project
6 has been approved by the department of economic development.

7 § 26. Paragraph 6 of subdivision (a) of section 21 of the tax law, as
8 amended by section 1 of part H of chapter 577 of the laws of 2004, is
9 amended to read as follows:

10 (6) Site preparation costs and on-site groundwater remediation costs
11 paid [or incurred] by the taxpayer with respect to a qualified site and
12 the cost or other basis for federal income tax purposes of tangible
13 personal property and other tangible property, including buildings and
14 structural components of buildings, which constitute qualified tangible
15 property shall only include costs paid [or incurred] by the taxpayer on
16 or after the date of the brownfield site cleanup agreement executed by
17 the taxpayer and the department of environmental conservation pursuant
18 to section 27-1409 of the environmental conservation law.

19 § 27. Paragraphs 2, 4 and 6 of subdivision (b) of section 21 of the
20 tax law, as amended by section 1 of part H of chapter 577 of the laws of
21 2004 and subparagraph (B) and the closing paragraph of paragraph 6 as
22 amended by section 1 of part G of chapter 62 of the laws of 2006, are
23 amended to read as follows:

24 (2) Site preparation costs. The term "site preparation costs" shall
25 mean all amounts properly [chargeable] charged to a capital account, (i)
26 which are paid [or incurred] in connection with a site's qualification
27 for a certificate of completion and attributable to activities specified
28 in a decision document issued by the department of environmental conser-

1 vation under section 27-1411 of the environmental conservation law and
2 which may include costs attributable to activities undertaken under the
3 oversight of the department of health or the department of labor to
4 remediate regulated materials including asbestos, lead or polychlorinat-
5 ed biphenyls in buildings which will remain on the site, and (ii) with
6 respect to any qualified site for which the department of environmental
7 conservation has issued a notice to the taxpayer before July first, two
8 thousand fourteen that its request for participation has been accepted
9 under subdivision six of section 27-1407 of the environmental conserva-
10 tion law, all other site preparation costs paid [or incurred] in
11 connection with preparing a site for the erection of a building or a
12 component of a building, or otherwise to establish a site as usable for
13 its industrial, commercial (including the commercial development of
14 residential housing), recreational or conservation purposes. [Site] For
15 purposes of subparagraph (ii) of this paragraph, site preparation costs
16 shall include, but not be limited to, the costs of excavation, temporary
17 electric wiring, scaffolding, demolition costs, and the costs of fencing
18 and security facilities. Site preparation costs shall not include the
19 cost of acquiring the site and shall not include amounts included in the
20 cost or other basis for federal income tax purposes of qualified tangi-
21 ble property, as described in paragraph three of this subdivision.
22 "Site preparation costs" shall not include costs paid to a related party
23 or parties, as such term "related person" is defined in subparagraph (c)
24 of paragraph three of subdivision (b) of section four hundred sixty-five
25 of the internal revenue code. Eligible site preparation costs are
26 limited to costs directly associated with actual site preparation-relat-
27 ed construction.

1 (4) On-site groundwater remediation costs. The term "on-site groundwa-
2 ter remediation costs" shall mean all amounts properly [chargeable]
3 charged to a capital account, (i) which are paid [or incurred] in
4 connection with a site's qualification for a certificate of completion,
5 and (ii) include costs which are paid [or incurred] in connection with
6 the remediation of on-site groundwater contamination and [incurred] paid
7 to implement a requirement of the remedial work plan or an interim reme-
8 dial measure work plan for a qualified site which are imposed pursuant
9 to subdivisions two and three of section 27-1411 of the environmental
10 conservation law. "On-site groundwater remediation costs" shall not
11 include costs paid to a related party or parties, as such term "related
12 person" is defined in subparagraph (c) of paragraph three of subdivision
13 (b) of section four hundred sixty-five of the internal revenue code. On
14 site groundwater remediation costs are limited to costs directly associ-
15 ated with actual groundwater remediation activities.

16 (6) Environmental zones (EN-Zones). An "environmental zone" shall mean
17 an area designated as such by the commissioner of [economic development]
18 labor. Such areas so designated are areas which are census tracts and
19 block numbering areas which, as of the [two thousand] most recent
20 census, satisfy either of the following criteria:

21 (A) areas that have both:

22 (i) a poverty rate of at least twenty percent for the year to which
23 the data relate; and

24 (ii) an unemployment rate of at least one and one-quarter times the
25 statewide unemployment rate for the year to which the data relate, or;

26 (B) areas that have a poverty rate of at least two times the poverty
27 rate for the county in which the areas are located for the year to which
28 the data relate [provided, however, that a qualified site shall only be

1 deemed to be located in an environmental zone under this subparagraph
2 (B) if such site was the subject of a brownfield site cleanup agreement
3 pursuant to section 27-1409 of the environmental conservation law that
4 was entered into prior to September first, two thousand ten].

5 Such designation shall be made and a list of all such environmental
6 zones shall be established by the commissioner of [economic development]
7 labor no later than [December thirty-first, two thousand four provided,
8 however, that a qualified site shall only be deemed to be located in an
9 environmental zone under subparagraph (B) of this paragraph if such site
10 was the subject of a brownfield site cleanup agreement pursuant to
11 section 27-1409 of the environmental conservation law that was entered
12 into prior to September first, two thousand ten] ninety days following
13 the official publication of the most recent census.

14 § 28. Paragraph 2 of subdivision (b) of section 22 of the tax law, as
15 amended by section 4 of part H of chapter 577 of the laws of 2004, is
16 amended to read as follows:

17 (2) Amount of credit. The amount of the credit shall be twenty-five
18 percent of the product of (i) the benefit period factor, (ii) the
19 employment number factor, and (iii) the eligible real property taxes
20 paid [or incurred] by the developer of the qualified site during the
21 taxable year (or the pro rata share of such taxes in the case of a part-
22 ner in a partnership or a shareholder in a New York S corporation),
23 except that if the real property which is the subject of the credit
24 provided for under this section is attributed to a qualified site
25 located in an environmental zone as defined in paragraph five of subdivi-
26 sion (a) of this section, the amount of the credit shall be the prod-
27 uct of the factors and taxes referred to in subparagraphs (i), (ii) and
28 (iii) of this paragraph. However, the amount of the credit may not

1 exceed the credit limitation set forth in paragraph seven of this subdi-
2 vision.

3 § 29. Section 171-r of the tax law is amended by adding a new subdivi-
4 sion (e) to read as follows:

5 (e) The commissioner, in consultation with the commissioner of envi-
6 ronmental conservation, shall publish by January thirty-first, two thou-
7 sand fifteen a supplemental brownfield credit report containing the
8 information required by this section about the credits claimed for the
9 years two thousand five, two thousand six, and two thousand seven.

10 § 30. Section 171-s of the tax law is REPEALED.

11 § 31. Section 970-r of the general municipal law is amended by adding
12 a new subdivision 10 to read as follows:

13 10. The secretary shall establish criteria for brownfield opportunity
14 area conformance determinations for purposes of the brownfield cleanup
15 program pursuant to title fourteen of article twenty-seven of the envi-
16 ronmental conservation law and the brownfield redevelopment tax credits
17 pursuant to section twenty-one of the tax law. In establishing crite-
18 ria, the secretary shall be guided by, but not limited to, the following
19 considerations: how the proposed use and development advances the desig-
20 nated brownfield opportunity area plan's vision statement, goals and
21 objectives for revitalization; how the density of development and asso-
22 ciated buildings and structures advances the plan's objectives, desired
23 redevelopment and priorities for investment; and how the project
24 complies with zoning and other local laws and standards to guide and
25 ensure appropriate use of the project site.

26 § 32. Section 31 of part H of chapter 1 of the laws of 2003, amending
27 the tax law relating to brownfield redevelopment tax credits, remediated
28 brownfield credit for real property taxes for qualified sites and envi-

1 ronmental remediation insurance credits, as amended by chapter 474 of
2 the laws of 2012, is amended to read as follows:

3 § 31. The tax credits allowed under section [21,] 22 or 23 of the tax
4 law and the corresponding provisions in articles 9, 9-A, 22, 32 and 33
5 of the tax law, as added by the provisions of sections one through twen-
6 ty-nine of this act, shall not be applicable [if] to any site accepted
7 into the brownfield cleanup program on and after July 1, 2014. The tax
8 credits allowed under section 21 of the tax law and the corresponding
9 provisions in articles 9, 9-A, 22, 32 and 33 of the tax law, as added by
10 the provisions of sections one through twenty-nine of this act, shall
11 not be applicable to any site accepted into the brownfield cleanup
12 program after December 31, 2022, provided, however that any sites
13 accepted on or before December 31, 2022 must have received the [remedi-
14 ation] certificate of completion required to qualify for any of such
15 credits [is issued after] by December 31, [2015] 2025.

16 § 33. Any site for which a brownfield cleanup agreement with the
17 department of environmental conservation was entered into (1) prior to
18 June 23, 2008 and which has not received a certificate of completion by
19 December 31, 2015 or (2) on or after June 23, 2008 and prior to July 1,
20 2014 which has not received a certificate of completion by December 31,
21 2017, shall be terminated from the brownfield cleanup program. If such a
22 site reapplies for acceptance into the brownfield cleanup program, it
23 shall be accepted into the program subject to all the requirements of
24 title 14 of article 27 of the environmental conservation law in effect
25 at the time of acceptance.

26 § 34. Paragraph c of subdivision 3 of section 27-0923 of the environ-
27 mental conservation law, as amended by section 5 of part I of chapter
28 577 of the laws of 2004, is amended to read as follows:

1 c. For the purpose of this section, generation of hazardous waste
2 shall not include retrieval or creation of hazardous waste which must be
3 disposed of under an order of or agreement with the department pursuant
4 to title thirteen or title fourteen of this article or under a contract
5 or agreement with the department pursuant to title five of article
6 fifty-six of this chapter or under an order of or agreement with the
7 United States environmental protection agency or an order of a court of
8 competent jurisdiction, related to a facility addressed pursuant to the
9 Comprehensive Environmental Response, Compensation and Liability Act (42
10 U.S.C. 9601 et seq.) or under a written agreement with a municipality
11 which is subject to a memorandum of agreement with the department
12 related to the remediation of brownfield sites.

13 § 35. Subparagraphs (i) and (vi) of paragraph d of subdivision 1 of
14 section 72-0402 of the environmental conservation law, as amended by
15 chapter 99 of the laws of 2010, are amended to read as follows:

16 (i) under a contract with the department, or with the department's
17 written approval and in compliance with department regulations, or
18 pursuant to an order of the department, the United States environmental
19 protection agency or a court of competent jurisdiction, related to the
20 cleanup or remediation of a hazardous materials or hazardous waste
21 spill, discharge, or surficial cleanup, pursuant to this chapter; or

22 (vi) under a brownfield site cleanup agreement with the department
23 pursuant to section 27-1409 of this chapter or under an agreement with a
24 municipality which is subject to a memorandum of agreement with the
25 department related to the remediation of brownfield sites; or

26 § 36. Subdivision 1 of section 1285-q of the public authorities law,
27 as added by section 6 of part I of chapter 1 of the laws of 2003, is
28 amended to read as follows:

1 1. Subject to chapter fifty-nine of the laws of two thousand, but
2 notwithstanding any other provisions of law to the contrary, in order to
3 assist the corporation in undertaking the administration and the financ-
4 ing of hazardous waste site remediation projects for payment of the
5 state's share of the costs of the remediation of hazardous waste sites,
6 in accordance with title thirteen of article twenty-seven of the envi-
7 ronmental conservation law and section ninety-seven-b of the state
8 finance law, and for payment of state costs associated with the remedi-
9 ation of offsite contamination at significant threat sites as provided
10 in section 27-1411 of the environmental conservation law, and for envi-
11 ronmental restoration projects pursuant to title five of article fifty-
12 six of the environmental conservation law pursuant to capital appropri-
13 ations made to the department of environmental conservation, the
14 director of the division of budget and the corporation are each author-
15 ized to enter into one or more service contracts, none of which shall
16 exceed twenty years in duration, upon such terms and conditions as the
17 director and the corporation may agree, so as to annually provide to the
18 corporation in the aggregate, a sum not to exceed the annual debt
19 service payments and related expenses required for any bonds and notes
20 authorized pursuant to section twelve hundred ninety of this title. Any
21 service contract entered into pursuant to this section shall provide
22 that the obligation of the state to fund or to pay the amounts therein
23 provided for shall not constitute a debt of the state within the meaning
24 of any constitutional or statutory provision and shall be deemed execu-
25 tory only to the extent of moneys available for such purposes, subject
26 to annual appropriation by the legislature. Any such service contract or
27 any payments made or to be made thereunder may be assigned and pledged

1 by the corporation as security for its bonds and notes, as authorized
2 pursuant to section twelve hundred ninety of this title.

3 § 37. Section 56-0501 of the environmental conservation law, as added
4 by chapter 413 of the laws of 1996, is amended to read as follows:

5 § 56-0501. Allocation of moneys.

6 1. Of the moneys received by the state from the sale of bonds pursuant
7 to the Clean Water/Clean Air Bond Act of 1996, two hundred million
8 dollars (\$200,000,000) shall be available for disbursements for environ-
9 mental restoration projects.

10 2. Environmental restoration projects may be funded using the proceeds
11 of bonds issued pursuant to section twelve hundred eighty-five-q of the
12 public authorities law.

13 § 38. Subdivision 6 of section 56-0502 of the environmental conserva-
14 tion law, as amended by section 2 of part D of chapter 577 of the laws
15 of 2004, is amended to read as follows:

16 6. "State assistance", for purposes of this title, shall mean in the
17 case of a contract authorized by subdivision one of section 56-0503 of
18 this title, payments made to a municipality to reimburse the munici-
19 pality for the state share of the costs incurred by the municipality to
20 undertake an environmental restoration project or in the case of an
21 agreement authorized by subdivision three of section 56-0503 of this
22 title, costs incurred by the state to undertake an environmental resto-
23 ration project but not reimbursed by a municipality.

24 § 39. Paragraph (c) of subdivision 2 of section 56-0503 of the envi-
25 ronmental conservation law, as amended by section 4 of part D of chapter
26 1 of the laws of 2003, is amended and a new subdivision 3 is added to
27 read as follows:

1 (c) A provision that the municipality shall assist in identifying a
2 responsible party by searching local records, including property tax
3 rolls, or document reviews, and if, in accordance with the required
4 departmental approval of any settlement with a responsible party, any
5 responsible party payments become available to the municipality, before,
6 during or after the completion of an environmental restoration project,
7 which were not included when the state share was calculated pursuant to
8 this section, the state assistance share shall be recalculated, and the
9 municipality shall pay to the state, for deposit into the environmental
10 restoration project account of the hazardous waste remedial fund estab-
11 lished under section ninety-seven-b of the state finance law, the
12 difference between the original state assistance payment and the recal-
13 culated state share. Recalculation of the state share shall be done each
14 time a payment from a responsible party is received by the municipality;

15 3. The department may undertake an environmental restoration project
16 on behalf of a municipality upon request. If the department undertakes
17 the project on behalf of the municipality, the state shall enter into an
18 agreement with the municipality and the agreement shall require the
19 municipality to periodically provide its share to the state for costs
20 incurred during the progress of such project. The municipality's share
21 shall be the same as would be required under subdivision one of this
22 section. The agreement shall include all provisions specified in subdi-
23 vision two of this section as appropriate. For purposes of projects
24 subject to agreements under this subdivision, all references to
25 contracts in this title shall also apply to agreements under this subdi-
26 vision as appropriate.

1 § 40. Subdivision 4 of section 56-0505 of the environmental conserva-
2 tion law, as amended by section 5 of part D of chapter 1 of the laws of
3 2003, is amended to read as follows:

4 4. After completion of such project, the municipality may use the
5 property for public purposes or may dispose of it. If the municipality
6 shall dispose of such property by sale to a responsible party, such
7 party shall pay to such municipality, in addition to such other consid-
8 eration, an amount of money constituting the amount of state assistance
9 provided [to the municipality] under this title plus accrued interest
10 and transaction costs and the municipality shall deposit that money into
11 the environmental restoration project account of the hazardous waste
12 remedial fund established under section ninety-seven-b of the state
13 finance law.

14 § 41. Subdivisions 3 and 4 of section 56-0508 of the environmental
15 conservation law, as added by section 7 of part D of chapter 1 of the
16 laws of 2003, are amended to read as follows:

17 3. such temporary incidents of ownership by such taxing district shall
18 also qualify it as being the owner of such property [for the purposes of
19 obtaining] to be eligible for funding from the state of New York for
20 such environmental restoration investigation project under this article
21 or for such funding from any source pursuant to any other state, feder-
22 al, or local law, but such incidents of ownership shall not be suffi-
23 cient to qualify it as the owner of such property for the purposes of
24 holding it wholly or partially liable for any damages, past, present, or
25 future from any release of any hazardous material, substance, or contam-
26 inant into the air, ground, or water, unless such release was caused by
27 such taxing district.

1 4. within thirty days of the completion of the environmental restora-
2 tion investigation project and the receipt by the taxing jurisdiction of
3 the final report of such investigation, such taxing jurisdiction shall
4 file such report with the court on notice to the court and all other
5 parties of record, and the stay of the foreclosure shall be lifted
6 (unless lifted earlier by a prior court order), and all incidents of
7 temporary ownership of the taxing jurisdiction that was awarded such
8 taxing district, except any right [to receive funding] for the environ-
9 mental restoration investigation project to be funded, shall cease to
10 exist, and nothing in this subdivision shall preclude the taxing juris-
11 diction that conducted the environmental restoration investigation
12 project or the taxing jurisdiction that commenced the foreclosure
13 action, if it is a different taxing jurisdiction than the taxing juris-
14 diction which conducted the investigation, from withdrawing the parcel
15 from foreclosure pursuant to section eleven hundred thirty-eight of the
16 real property tax law.

17 § 42. Subdivision 2 and paragraph (f) of subdivision 3 of section 97-b
18 of the state finance law, as amended by section 4 of part I of chapter 1
19 of the laws of 2003, are amended to read as follows:

20 2. Such fund shall consist of all of the following:

21 (a) moneys appropriated for transfer to the fund's site investigation
22 and construction account; (b) all fines and other sums accumulated in
23 the fund prior to April first, nineteen hundred eighty-eight pursuant to
24 section 71-2725 of the environmental conservation law for deposit in the
25 fund's site investigation and construction account; (c) all moneys
26 collected or received by the department of taxation and finance pursuant
27 to section 27-0923 of the environmental conservation law for deposit in
28 the fund's industry fee transfer account; (d) all moneys paid into the

1 fund pursuant to section 72-0201 of the environmental conservation law
2 which shall be deposited in the fund's industry fee transfer account;
3 (e) all moneys paid into the fund pursuant to section one hundred eight-
4 y-six of the navigation law which shall be deposited in the fund's
5 industry fee transfer account; (f) [all moneys paid into the fund by
6 municipalities for repayment of landfill closure loans made pursuant to
7 title five of article fifty-two of the environmental conservation law
8 for deposit in the fund's site investigation and construction account;
9 (g)] all monies recovered under sections 56-0503, 56-0505 and 56-0507 of
10 the environmental conservation law into the fund's environmental resto-
11 ration project account; [(h) all] (g) fees paid into the fund pursuant
12 to section [72-0403] 72-0402 of the environmental conservation law which
13 shall be deposited in the fund's industry fee transfer account; [(i)]
14 (h) payments received for all state costs incurred in negotiating and
15 overseeing the implementation of brownfield site cleanup agreements
16 pursuant to title fourteen of article twenty-seven of the environmental
17 conservation law shall be deposited in the hazardous waste remediation
18 oversight and assistance account; and [(j)] (i) other moneys credited or
19 transferred thereto from any other fund or source for deposit in the
20 fund's site investigation and construction account.

21 (f) to undertake such remedial measures as the department of environ-
22 mental conservation may determine necessary due to environmental condi-
23 tions related to the property subject to an agreement [to provide state
24 assistance] or contract under title five of article fifty-six of the
25 environmental conservation law [that were unknown to such department at
26 the time of its approval of such agreement which indicates that condi-
27 tions on such property are not sufficiently protective of human health
28 for its reasonably anticipated uses or due to information received, in

1 whole or in part, after such department's approval of such agreement's
2 final engineering report and certification], which indicates that such
3 agreement's remedial activities are not sufficiently protective of human
4 health for such property's reasonably anticipated uses; and, [respecting
5 the monies in the environmental restoration project account in excess of
6 ten million dollars,] shall provide state assistance under title five of
7 article fifty-six of the environmental conservation law;

8 § 43. Severability. If any clause, sentence, paragraph, subdivision,
9 section or part of this act shall be adjudged by any court of competent
10 jurisdiction to be invalid, such judgment shall not affect, impair or
11 invalidate the remainder thereof, but shall be confined in its operation
12 to the clause, sentence, paragraph, subdivision, section or part thereof
13 directly involved in the controversy in which such judgment shall have
14 been rendered. It is hereby declared to be the intent of the legislature
15 that this act would have been enacted even if such invalid provisions
16 had not been included herein.

17 § 44. This act shall take effect July 1, 2014; provided, however, that
18 the department of environmental conservation shall not charge volunteers
19 in the brownfield cleanup program for oversight costs for any sites in
20 the program incurred on or after July 1, 2014.

21 PART R

22 Section 1. Section 208 of the tax law is amended by adding three new
23 subdivisions 13, 14 and 15 to read as follows:

24 13. The term "manufacturer" means a taxpayer or, in the case of a
25 combined report, a combined group, that, during the taxable year, is
26 principally engaged in manufacturing. A taxpayer or a combined group is

1 principally engaged in manufacturing if more than fifty percent of the
2 gross receipts of the taxpayer or the combined group, respectively,
3 during the taxable year are derived from the sale of goods produced by
4 manufacturing. In computing a combined group's gross receipts, intercor-
5 porate receipts shall be eliminated. In computing gross receipts for a
6 taxpayer that is a partner in partnership, inter-entity receipts between
7 the taxpayer and such partnership shall be eliminated.

8 14. (a) The term "manufacturing" means the process of working raw
9 materials into wares suitable for use or which gives new shapes, new
10 quality or new combinations to matter which already has gone through
11 some artificial process by the use of machinery, tools, appliances and
12 other similar equipment.

13 (b) Notwithstanding the definition of manufacturing in paragraph (a)
14 of this subdivision:

15 (i) The generation and distribution of electricity, the extraction and
16 distribution of natural gas, and the production of steam associated with
17 the generation of electricity does not constitute manufacturing.

18 (ii) The creation, production or reproduction of a film, television
19 show or commercial does not constitute manufacturing.

20 (iii) The blending of two or more fuels does not constitute manufac-
21 turing.

22 (iv) The mass production of food products for wholesale commercial
23 distribution and sale constitutes manufacturing.

24 15. The term "qualified New York manufacturer" means a manufacturer
25 that has property in the state that is used in manufacturing and either
26 the fair market value of that property at the close of the taxable year
27 is at least ten million dollars or all of its real and personal property
28 is located in New York. A taxpayer or, in the case of a combined report,

1 a combined group, that does not satisfy the criteria in subdivision
2 thirteen of this section may be a qualified New York manufacturer if the
3 taxpayer or the combined group employs during the taxable year at least
4 two thousand five hundred employees in manufacturing in New York and the
5 taxpayer or the combined group has property in the state used in manu-
6 facturing, the adjusted basis of which for federal income tax purposes
7 at the close of the taxable year is at least one hundred million
8 dollars.

9 § 2. Section 210 of the tax law is amended by adding a new subdivision
10 48 to read as follows:

11 48. Real property tax credit for manufacturers. (a) A qualified New
12 York manufacturer, as defined in subdivision fifteen of section two
13 hundred eight of this article, will be allowed a credit equal to twenty
14 percent of the real property tax it paid during the taxable year for
15 real property owned by such manufacturer in New York which was princi-
16 pally used during the taxable year for manufacturing to the extent not
17 deducted in determining entire net income. This credit will not be
18 allowed if the real property taxes that are the basis for this credit
19 are included in the calculation of another credit claimed by the taxpay-
20 er.

21 (b) For purposes of this subdivision, the term real property tax means
22 a charge imposed upon real property by or on behalf of a county, city,
23 town, village or school district for municipal or school district
24 purposes, provided that the charge is levied for the general public
25 welfare by the proper taxing authorities at a like rate against all
26 property over which such authorities have jurisdiction, and provided
27 that where taxes are levied pursuant to article eighteen or nineteen of
28 the real property tax law, the property must have been taxed at the rate

1 determined for the class in which it is contained, as provided by such
2 article eighteen or nineteen, whichever is applicable. The term real
3 property tax does not include a charge for local benefits, including any
4 portion of that charge that is properly allocated to the costs attribut-
5 able to maintenance or interest, when (1) the property subject to the
6 charge is limited to the property that benefits from the charge, or (2)
7 the amount of the charge is determined by the benefit to the property
8 assessed, or (3) the improvement for which the charge is assessed tends
9 to increase the property value. The term real property tax does not
10 include a payment in lieu of taxes made by the qualified New York
11 manufacturer.

12 (c) Credit recapture. Where a qualified New York manufacturer's real
13 property taxes which were the basis for the allowance of the credit
14 provided for under this subdivision are subsequently reduced as a result
15 of a final order in any proceeding under article seven of the real prop-
16 erty tax law or other provision of law, the taxpayer shall add back, in
17 the taxable year in which such final order is issued, the excess of (1)
18 the amount of credit originally allowed for a taxable year over (2) the
19 amount of credit determined based upon the reduced real property taxes.
20 If such final order reduces real property taxes for more than one year,
21 the taxpayer must determine how much of such reduction is attributable
22 to each year covered by such final order and calculate the amount of
23 credit which is required by this subdivision to be recaptured for each
24 year based on such reduction.

25 (d) The credit allowed under this subdivision for any taxable year
26 shall not reduce the tax due for such year to less than the amount
27 prescribed in paragraph (d) of subdivision one of this section. However,
28 any amount of credit not deductible in such taxable year shall be treat-

1 ed as an overpayment of tax to be credited or refunded in accordance
 2 with the provisions of section one thousand eighty-six of this chapter.
 3 Provided, however, the provisions of subsection (c) of section one thou-
 4 sand eighty-eight of this chapter notwithstanding, no interest shall be
 5 paid thereon.

6 § 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 7 of the tax law is amended by adding a new clause (xxxvii) to read as
 8 follows:

9 <u>(xxxvii) Real property tax</u>	<u>Amount of credit under</u>
10 <u>credit for manufacturers under</u>	<u>subdivision forty-eight of</u>
11 <u>subsection (xx)</u>	<u>section two hundred ten</u>

12 § 4. Subsections (yy) and (zz) of section 606 of the tax law, as
 13 relettered by section 5 of part H of chapter 1 of the laws of 2003, are
 14 relettered subsections (yyy) and (zzz) and a new subsection (xx) is
 15 added to read as follows:

16 (xx) Real property tax credit for manufacturers. (1) A qualified New
 17 York manufacturer will be allowed a credit equal to twenty percent of
 18 the real property tax it paid during the taxable year for real property
 19 owned by such manufacturer in New York which was principally used during
 20 the taxable year for manufacturing to the extent not deducted in comput-
 21 ing federal adjusted gross income. This credit will not be allowed if
 22 the real property taxes that are the basis for this credit are included
 23 in the calculation of another credit claimed by the taxpayer.

24 (2) (A) The term qualified New York manufacturer has the same meaning
 25 as under subparagraph (B) of paragraph two of subsection (a) of this
 26 section.

1 (B) The term real property tax means a charge imposed upon real prop-
2 erty by or on behalf of a county, city, town, village or school district
3 for municipal or school district purposes, provided that the charge is
4 levied for the general public welfare by the proper taxing authorities
5 at a like rate against all property over which such authorities have
6 jurisdiction, and provided that where taxes are levied pursuant to arti-
7 cle eighteen or nineteen of the real property tax law, the property must
8 have been taxed at the rate determined for the class in which it is
9 contained, as provided by such article eighteen or nineteen, whichever
10 is applicable. The term real property tax does not include a charge for
11 local benefits, including any portion of that charge that is properly
12 allocated to the costs attributable to maintenance or interest, when (i)
13 the property subject to the charge is limited to the property that bene-
14 fits from the charge, or (ii) the amount of the charge is determined by
15 the benefit to the property assessed, or (iii) the improvement for which
16 the charge is assessed tends to increase the property value. The term
17 real property tax does not include a payment in lieu of taxes made by
18 the qualified New York manufacturer.

19 (3) Credit recapture. Where a qualified New York manufacturer's real
20 property taxes which were the basis for the allowance of the credit
21 provided for under this subdivision are subsequently reduced as a result
22 of a final order in any proceeding under article seven of the real prop-
23 erty tax law or other provision of law, the taxpayer shall add back, in
24 the taxable year in which such final order is issued, the excess of (i)
25 the amount of credit originally allowed for a taxable year over (ii) the
26 amount of credit determined based upon the reduced real property taxes.
27 If such final order reduces real property taxes for more than one year,
28 the taxpayer must determine how much of such reduction is attributable

1 to each year covered by such final order and calculate the amount of
2 credit which is required by this subdivision to be recaptured for each
3 year based on such reduction.

4 (4) If the amount of the credit allowed under this subsection for any
5 taxable year exceeds the taxpayer's tax for such year, the excess will
6 be treated as an overpayment to be credited or refunded in accordance
7 with the provisions of section six hundred eighty-six of this article,
8 provided however, no interest will be paid thereon.

9 § 5. Paragraph (b) of subdivision 12 of section 210 of the tax law, as
10 amended by chapter 817 of the laws of 1987, subparagraph (i) as amended
11 by chapter 637 of the laws of 2008 and clause (E) of subparagraph (ii)
12 as added by chapter 393 of the laws of 2005, is amended to read as
13 follows:

14 (b) (i) A credit shall be allowed under this subdivision to a quali-
15 fied New York manufacturer, a qualified New York agricultural business
16 or a qualified New York mining business with respect to tangible
17 personal property and other tangible property, including buildings and
18 structural components of buildings, which (A) are[:] depreciable pursu-
19 ant to section one hundred sixty-seven of the internal revenue code, (B)
20 have a useful life of four years or more, (C) are acquired by purchase
21 as defined in section one hundred seventy-nine (d) of the internal
22 revenue code, (D) have not been previously the subject of an investment
23 tax credit or empire zone investment tax credit allowed under this chap-
24 ter to another taxpayer, (E) have a situs in this state, and (F) are
25 [(A)] principally used by the taxpayer in the production of goods [by
26 manufacturing, processing, assembling, refining, mining, extracting,
27 farming, agriculture, horticulture, floriculture, viticulture or commer-
28 cial fishing, (B) industrial waste treatment facilities or air pollution

1 control facilities, used in the taxpayer's trade or business, (C)] for
2 sale or are research and development property[, (D) principally used in
3 the ordinary course of the taxpayer's trade or business as a broker or
4 dealer in connection with the purchase or sale (which shall include but
5 not be limited to the issuance, entering into, assumption, offset,
6 assignment, termination, or transfer) of stocks, bonds or other securi-
7 ties as defined in section four hundred seventy-five (c)(2) of the
8 Internal Revenue Code, or of commodities as defined in section four
9 hundred seventy-five (e) of the Internal Revenue Code, (E) principally
10 used in the ordinary course of the taxpayer's trade or business of
11 providing investment advisory services for a regulated investment compa-
12 ny as defined in section eight hundred fifty-one of the Internal Revenue
13 Code, or lending, loan arrangement or loan origination services to
14 customers in connection with the purchase or sale (which shall include
15 but not be limited to the issuance, entering into, assumption, offset,
16 assignment, termination, or transfer) of securities as defined in
17 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
18 (F) principally used in the ordinary course of the taxpayer's business
19 as an exchange registered as a national securities exchange within the
20 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of
21 1934 or a board of trade as defined in section 1410(a)(1) of the New
22 York Not-for-Profit Corporation Law or as an entity that is wholly owned
23 by one or more such national securities exchanges or boards of trade and
24 that provides automation or technical services thereto, or (G) princi-
25 pally used as a qualified film production facility including qualified
26 film production facilities having a situs in an empire zone designated
27 as such pursuant to article eighteen-B of the general municipal law,
28 where the taxpayer is providing three or more services to any qualified

1 film production company using the facility, including such services as a
2 studio lighting grid, lighting and grip equipment, multi-line phone
3 service, broadband information technology access, industrial scale elec-
4 trical capacity, food services, security services, and heating, venti-
5 lation and air conditioning. For purposes of clauses (D), (E) and (F) of
6 this subparagraph, property purchased by a taxpayer affiliated with a
7 regulated broker, dealer, registered investment adviser, national secu-
8 rities exchange or board of trade, is allowed a credit under this subdivi-
9 sion if the property is used by its affiliated regulated broker, deal-
10 er, registered investment adviser, national securities exchange or board
11 of trade in accordance with this subdivision. For purposes of determin-
12 ing if the property is principally used in qualifying uses, the uses by
13 the taxpayer described in clauses (D) and (E) of this subparagraph may
14 be aggregated. In addition, the uses by the taxpayer, its affiliated
15 regulated broker, dealer, and registered investment adviser under either
16 or both of those clauses may be aggregated. Provided, however, a
17 taxpayer shall not be allowed the credit provided by clauses (D), (E)
18 and (F) of this subparagraph unless (I) eighty percent or more of the
19 employees performing the administrative and support functions resulting
20 from or related to the qualifying uses of such equipment are located in
21 this state or (II) the average number of employees that perform the
22 administrative and support functions resulting from or related to the
23 qualifying uses of such equipment and are located in this state during
24 the taxable year for which the credit is claimed is equal to or greater
25 than ninety-five percent of the average number of employees that perform
26 these functions and are located in this state during the thirty-six
27 months immediately preceding the year for which the credit is claimed,
28 or (III) the number of employees located in this state during the taxa-

1 ble year for which the credit is claimed is equal to or greater than
2 ninety percent of the number of employees located in this state on
3 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer
4 was not a calendar year taxpayer in nineteen hundred ninety-eight, the
5 last day of its first taxable year ending after December thirty-first,
6 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in
7 this state after the taxable year beginning in nineteen hundred ninety-
8 eight, then the taxpayer is not required to satisfy the employment test
9 provided in the preceding sentence of this subparagraph for its first
10 taxable year. For purposes of clause (III) of this subparagraph the
11 employment test will be based on the number of employees located in this
12 state on the last day of the first taxable year the taxpayer is subject
13 to tax in this state. If the uses of the property must be aggregated to
14 determine whether the property is principally used in qualifying uses,
15 then either each affiliate using the property must satisfy this employ-
16 ment test or this employment test must be satisfied through the aggre-
17 gation of the employees of the taxpayer, its affiliated regulated
18 broker, dealer, and registered investment adviser using the property.
19 For purposes of this subdivision, the term "goods" shall not include
20 electricity].

21 (ii) For purposes of this paragraph, the following definitions shall
22 apply--

23 (A) [Manufacturing shall mean the process of working raw materials
24 into wares suitable for use or which gives new shapes, new quality or
25 new combinations to matter which already has gone through some artifi-
26 cial process by the use of machinery, tools, appliances and other simi-
27 lar equipment.] Property used in the production of goods for sale shall
28 include machinery, equipment or other tangible property which is princi-

1 pally used in the repair and service of other machinery, equipment or
2 other tangible property used principally in the production of goods for
3 sale and shall include all facilities used in the production operation,
4 including storage of material to be used in production and of the
5 products that are produced.

6 (B) Research and development property shall mean property which is
7 used for purposes of research and development in the experimental or
8 laboratory sense. Such purposes shall not be deemed to include the ordi-
9 nary testing or inspection of materials or products for quality control,
10 efficiency surveys, management studies, consumer surveys, advertising,
11 promotions, or research in connection with literary, historical or simi-
12 lar projects.

13 (C) [Industrial waste treatment facilities shall mean property consti-
14 tuting facilities for the treatment, neutralization or stabilization of
15 industrial waste and other wastes (as the terms "industrial waste" and
16 "other wastes" are defined in section 17-0105 of the environmental
17 conservation law) from a point immediately preceding the point of such
18 treatment, neutralization or stabilization to the point of disposal,
19 including the necessary pumping and transmitting facilities, but exclud-
20 ing such facilities installed for the primary purpose of salvaging mate-
21 rials which are usable in the manufacturing process or are marketable.]

22 A qualified New York agricultural business shall mean a taxpayer or, in
23 the case of a combined report, a combined group, principally engaged in
24 farming, agriculture, horticulture, floriculture, viticulture or commer-
25 cial fishing in the state. A taxpayer or a combined group is principally
26 engaged in farming, agriculture, horticulture, floriculture, viticulture
27 or commercial fishing in the state if more than fifty percent of the
28 gross receipts of the taxpayer or the combined group, respectively,

1 during the taxable year are derived from the sale of goods produced by
2 the taxpayer by any of the activities specified in this sentence that
3 are conducted in the state. In computing a combined group's gross
4 receipts, intercorporate receipts shall be eliminated. In computing
5 gross receipts for a taxpayer that is a partner in partnership, inter-
6 entity receipts between the taxpayer and such partnership shall be elim-
7 inated.

8 (D) [Air pollution control facilities shall mean property constituting
9 facilities which remove, reduce, or render less noxious air contaminants
10 emitted from an air contamination source (as the terms "air contaminant"
11 and "air contamination source" are defined in section 19-0107 of the
12 environmental conservation law) from a point immediately preceding the
13 point of such removal, reduction or rendering to the point of discharge
14 of air, meeting emission standards as established by the department of
15 environmental conservation, but excluding such facilities installed for
16 the primary purpose of salvaging materials which are usable in the manu-
17 facturing process or are marketable and excluding those facilities which
18 rely for their efficacy on dilution, dispersion or assimilation of air
19 contaminants in the ambient air after emission. Such term shall further
20 include flue gas desulfurization equipment and attendant sludge disposal
21 facilities, fluidized bed boilers, precombustion coal cleaning facili-
22 ties or other facilities that conform with this subdivision and which
23 comply with the provisions of the state acid deposition control act set
24 forth in title nine of article nineteen of the environmental conserva-
25 tion law] A qualified New York mining business shall mean a taxpayer
26 principally engaged in mining in the state. A taxpayer is principally
27 engaged in mining in the state if more than fifty percent of the gross
28 receipts of the taxpayer or, in the case of a combined report, the

1 combined group, respectively, during the taxable year are derived from
2 the sale of goods produced by the taxpayer by mining activities that are
3 conducted in the state. In computing a combined group's gross receipts,
4 intercorporate receipts shall be eliminated. In computing gross receipts
5 for a taxpayer that is a partner in partnership, inter-entity receipts
6 between the taxpayer and such partnership shall be eliminated.

7 [(E) The terms "qualified film production facility" and "qualified
8 film production company" shall have the same meaning as in section twen-
9 ty-four of this chapter.]

10 (iii) [However, such credit shall be allowed with respect to indus-
11 trial waste treatment facilities and air pollution control facilities
12 only on condition that such facilities have been certified by the state
13 commissioner of environmental conservation or his designated represen-
14 tative, pursuant to subdivision one of section 17-0707 or subdivision
15 one of section 19-0309 of the environmental conservation law, as comply-
16 ing with applicable provisions of the environmental conservation law,
17 the public health law, the state sanitary code and codes, rules, regu-
18 lations, permits or orders issued pursuant thereto.] In order to proper-
19 ly administer the credit authorized by this subdivision, the department
20 may disclose information about the allowance to another taxpayer of an
21 investment tax credit or an empire zone investment tax credit under this
22 chapter with respect to the same property.

23 § 6. Paragraph (d) of subdivision 12 of section 210 of the tax law, as
24 amended by chapter 637 of the laws of 2008, is amended to read as
25 follows:

26 (d) A taxpayer shall not be allowed a credit under this subdivision
27 with respect to tangible personal property and other tangible property,
28 including buildings and structural components of buildings, which it

1 leases to any other person or corporation [except where a taxpayer leas-
2 es property to an affiliated regulated broker, dealer, registered
3 investment adviser, national securities exchange or board of trade (or
4 other entity described in clause (F) of subparagraph (i) of paragraph
5 (b) of this subdivision) that uses such property in accordance with
6 clause (D), (E) or (F) of subparagraph (i) of paragraph (b) of this
7 subdivision]. For purposes of the preceding sentence, any contract or
8 agreement to lease or rent or for a license to use such property shall
9 be considered a lease. Provided, however, in determining whether a
10 taxpayer shall be allowed a credit under this subdivision with respect
11 to such property, any election made with respect to such property pursu-
12 ant to the provisions of paragraph eight of subsection (f) of section
13 one hundred sixty-eight of the internal revenue code, as such paragraph
14 was in effect for agreements entered into prior to January first, nine-
15 teen hundred eighty-four, shall be disregarded. [For purposes of this
16 paragraph, the use of a qualified film production facility by a quali-
17 fied film production company shall not be considered a lease of such
18 facility to such company.]

19 § 7. Subparagraph 6 of paragraph (g) of subdivision 12 of section 210
20 of the tax law is REPEALED.

21 § 8. Paragraphs (f), (k), (l) and (m) of subdivision 12 of section 210
22 of the tax law are REPEALED.

23 § 9. Paragraph 2 of subsection (a) of section 606 of the tax law, as
24 amended by chapter 817 of the laws of 1987, subparagraph (A) as amended
25 by chapter 637 of the laws of 2008 and clause (v) of subparagraph (B) as
26 added by chapter 393 of the laws of 2005, is amended to read as follows:

27 (2) (A) A credit shall be allowed under this subsection to a qualified
28 New York manufacturer, a qualified New York agricultural business or a

1 qualified New York mining business with respect to tangible personal
2 property and other tangible property, including buildings and structural
3 components of buildings, which (i) are[:] depreciable pursuant to
4 section one hundred sixty-seven of the internal revenue code, (ii) have
5 a useful life of four years or more, (iii) are acquired by purchase as
6 defined in section one hundred seventy-nine (d) of the internal revenue
7 code, (iv) have not been previously the subject of an investment tax
8 credit or an empire zone investment tax credit allowed under this chap-
9 ter to another taxpayer, (v) have a situs in this state, and (vi) are
10 [(i)] principally used by the taxpayer in the production of goods [by
11 manufacturing, processing, assembling, refining, mining, extracting,
12 farming, agriculture, horticulture, floriculture, viticulture or commer-
13 cial fishing, (ii) industrial waste treatment facilities or air
14 pollution control facilities, used in the taxpayer's trade or business,
15 (iii)] for sale or are research and development property[, (iv) princi-
16 pally used in the ordinary course of the taxpayer's trade or business as
17 a broker or dealer in connection with the purchase or sale (which shall
18 include but not be limited to the issuance, entering into, assumption,
19 offset, assignment, termination, or transfer) of stocks, bonds or other
20 securities as defined in section four hundred seventy-five (c) (2) of the
21 Internal Revenue Code, or of commodities as defined in section 475(e) of
22 the Internal Revenue Code, (v) principally used in the ordinary course
23 of the taxpayer's trade or business of providing investment advisory
24 services for a regulated investment company as defined in section eight
25 hundred fifty-one of the Internal Revenue Code, or lending, loan
26 arrangement or loan origination services to customers in connection with
27 the purchase or sale (which shall include but not be limited to the
28 issuance, entering into, assumption, offset, assignment, termination, or

1 transfer) of securities as defined in section four hundred seventy-five
2 (c) (2) of the Internal Revenue Code, or (vi) principally used as a qual-
3 ified film production facility including qualified film production
4 facilities having a situs in an empire zone designated as such pursuant
5 to article eighteen-B of the general municipal law, where the taxpayer
6 is providing three or more services to any qualified film production
7 company using the facility, including such services as a studio lighting
8 grid, lighting and grip equipment, multi-line phone service, broadband
9 information technology access, industrial scale electrical capacity,
10 food services, security services, and heating, ventilation and air
11 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,
12 property purchased by a taxpayer affiliated with a regulated broker,
13 dealer, or registered investment adviser is allowed a credit under this
14 subsection if the property is used by its affiliated regulated broker,
15 dealer or registered investment adviser in accordance with this
16 subsection. For purposes of determining if the property is principally
17 used in qualifying uses, the uses by the taxpayer described in clauses
18 (iv) and (v) of this subparagraph may be aggregated. In addition, the
19 uses by the taxpayer, its affiliated regulated broker, dealer and regis-
20 tered investment adviser under either or both of those clauses may be
21 aggregated. Provided, however, a taxpayer shall not be allowed the cred-
22 it provided by clauses (iv) and (v) of this subparagraph unless (I)
23 eighty percent or more of the employees performing the administrative
24 and support functions resulting from or related to the qualifying uses
25 of such equipment are located in this state, or (II) the average number
26 of employees that perform the administrative and support functions
27 resulting from or related to the qualifying uses of such equipment and
28 are located in this state during the taxable year for which the credit

1 is claimed is equal to or greater than ninety-five percent of the aver-
2 age number of employees that perform these functions and are located in
3 this state during the thirty-six months immediately preceding the year
4 for which the credit is claimed, or (III) the number of employees
5 located in this state during the taxable year for which the credit is
6 claimed is equal to or greater than ninety percent of the number of
7 employees located in this state on December thirty-first, nineteen
8 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
9 er in nineteen hundred ninety-eight, the last day of its first taxable
10 year ending after December thirty-first, nineteen hundred ninety-eight.
11 If the taxpayer becomes subject to tax in this state after the taxable
12 year beginning in nineteen hundred ninety-eight, then the taxpayer is
13 not required to satisfy the employment test provided in the preceding
14 sentence of this subparagraph for its first taxable year. For the
15 purposes of clause (III) of this subparagraph the employment test will
16 be based on the number of employees located in this state on the last
17 day of the first taxable year the taxpayer is subject to tax in this
18 state. If the uses of the property must be aggregated to determine
19 whether the property is principally used in qualifying uses, then either
20 each affiliate using the property must satisfy this employment test or
21 this employment test must be satisfied through the aggregation of the
22 employees of the taxpayer, its affiliated regulated broker, dealer, and
23 registered investment adviser using the property. For purposes of this
24 subsection, the term "goods" shall not include electricity].

25 (B) For purposes of this paragraph, the following definitions shall
26 apply:

27 (i) (I) Manufacturing shall mean the process of working raw materials
28 into wares suitable for use or which gives new shapes, new quality or

1 new combinations to matter which already has gone through some artifi-
2 cial process by the use of machinery, tools, appliances and other simi-
3 lar equipment. Property used in the production of goods for sale shall
4 include machinery, equipment or other tangible property which is princi-
5 pally used in the repair and service of other machinery, equipment or
6 other tangible property used principally in the production of goods and
7 shall include all facilities used in the production operation, including
8 storage of material to be used in production and of the products that
9 are produced.

10 (II) Notwithstanding the definition of manufacturing in item (I) of
11 this clause: The generation and distribution of electricity, the
12 extraction and distribution of natural gas, and the production of steam
13 associated with the generation of electricity does not constitute manu-
14 facturing. The creation, production or reproduction of a film, tele-
15 vision show or commercial does not constitute manufacturing. The blend-
16 ing of two or more fuels does not constitute manufacturing. The mass
17 production of food products for commercial wholesale distribution and
18 sale constitutes manufacturing.

19 (ii) Research and development property shall mean property which is
20 used for purposes of research and development in the experimental or
21 laboratory sense. Such purposes shall not be deemed to include the ordi-
22 nary testing or inspection of materials or products for quality control,
23 efficiency surveys, management studies, consumer surveys, advertising,
24 promotions, or research in connection with literary, historical or simi-
25 lar projects.

26 (iii) [Industrial waste treatment facilities shall mean property
27 constituting facilities for the treatment, neutralization or stabiliza-
28 tion of industrial waste and other wastes (as the terms "industrial

1 waste" and "other wastes" are defined in section 17-0105 of the environ-
2 mental conservation law) from a point immediately preceding the point of
3 such treatment, neutralization or stabilization to the point of
4 disposal, including the necessary pumping and transmitting facilities,
5 but excluding such facilities installed for the primary purpose of
6 salvaging materials which are usable in the manufacturing process or are
7 marketable.] "Manufacturer" shall mean a taxpayer that during the taxa-
8 ble year is principally engaged in manufacturing. A taxpayer is princi-
9 pally engaged in manufacturing if more than fifty percent of the gross
10 receipts of the taxpayer during the taxable year are derived from the
11 sale of goods produced by manufacturing. In computing gross receipts for
12 a taxpayer that is a partner in partnership, inter-entity receipts
13 between the taxpayer and such partnership shall be eliminated.

14 (iv) [Air pollution control facilities shall mean property constitut-
15 ing facilities which remove, reduce, or render less noxious air contam-
16 inants emitted from an air contamination source (as the terms "air
17 contaminant" and "air contamination source" are defined in section
18 19-0107 of the environmental conservation law) from a point immediately
19 preceding the point of such removal, reduction or rendering to the point
20 of discharge of air, meeting emission standards as established by the
21 department of environmental conservation, but excluding such facilities
22 installed for the primary purpose of salvaging materials which are
23 usable in the manufacturing process or are marketable and excluding
24 those facilities which rely for their efficacy on dilution, dispersion
25 or assimilation of air contaminants in the ambient air after emission.
26 Such term shall further include flue gas desulfurization equipment and
27 attendant sludge disposal facilities, fluidized bed boilers, precom-
28 bustion coal cleaning facilities or other facilities that conform with

1 this subsection and which comply with the provisions of the State Acid
2 Deposition Control Act set forth in title nine of article nineteen of
3 the environmental conservation law.] "Qualified New York manufacturer"
4 shall mean a manufacturer that has property in the state that is used in
5 manufacturing and either the fair market value of that property at the
6 close of the taxable year is at least ten million dollars or all of its
7 real and personal property is located in New York.

8 (v) [For purposes of this paragraph, the terms "qualified film
9 production facility" and "qualified film production company" shall have
10 the same meaning as in section twenty-four of this chapter.] A qualified
11 New York agricultural business shall mean a taxpayer principally engaged
12 in farming, agriculture, horticulture, floriculture, viticulture or
13 commercial fishing in the state. A taxpayer is principally engaged in
14 farming, agriculture, horticulture, floriculture, viticulture or commer-
15 cial fishing in the state if more than fifty percent of the gross
16 receipts of the taxpayer during the taxable year are derived from the
17 sale of goods produced by the taxpayer by any of the activities speci-
18 fied in this sentence that are conducted in the state. In computing
19 gross receipts for a taxpayer that is a partner in partnership, inter-
20 entity receipts between the taxpayer and such partnership shall be elim-
21 inated.

22 (vi) A qualified New York mining business shall mean a taxpayer prin-
23 cipally engaged in mining in the state. A taxpayer is principally
24 engaged in mining in the state if more than fifty percent of the gross
25 receipts of the taxpayer during the taxable year are derived from the
26 sale of goods produced by the taxpayer by mining activities that are
27 conducted in the state. In computing gross receipts for a taxpayer that

1 is a partner in partnership, inter-entity receipts between the taxpayer
2 and such partnership shall be eliminated.

3 (C) [However, such credit shall be allowed with respect to industrial
4 waste treatment facilities and air pollution control facilities only on
5 condition that such facilities have been certified by the state commis-
6 sioner of environmental conservation or his designated representative,
7 pursuant to subdivision one of section 17-0707 or subdivision one of
8 section 19-0309 of the environmental conservation law, as complying with
9 applicable provisions of the environmental conservation law, the public
10 health law, the state sanitary code and codes, rules, regulations,
11 permits or orders issued pursuant thereto.] In order to properly admin-
12 ister the credit authorized by this subdivision, the department may
13 disclose information about the allowance to another taxpayer of an
14 investment tax credit or an empire zone investment tax credit under this
15 chapter with respect to the same property.

16 § 10. Paragraph 4 of subsection (a) of section 606 of the tax law, as
17 amended by chapter 637 of the laws of 2008, is amended to read as
18 follows:

19 (4) A taxpayer shall not be allowed a credit under this subsection
20 with respect to tangible personal property and other tangible property,
21 including buildings and structural components of buildings, which it
22 leases to any other person or corporation [except where a taxpayer leas-
23 es property to an affiliated regulated broker, dealer, or registered
24 investment adviser that uses such property in accordance with clause
25 (iv) or (v) of subparagraph (A) of paragraph two of this subsection].
26 For purposes of the preceding sentence, any contract or agreement to
27 lease or rent or for a license to use such property shall be considered
28 a lease. Provided, however, in determining whether a taxpayer shall be

1 allowed a credit under this subsection with respect to such property,
2 any election made with respect to such property pursuant to the
3 provisions of paragraph eight of subsection (f) of section one hundred
4 sixty-eight of the internal revenue code, as such paragraph was in
5 effect for agreements entered into prior to January first, nineteen
6 hundred eighty-four, shall be disregarded. [For purposes of this para-
7 graph, the use of a qualified film production facility by a qualified
8 film production company shall not be considered a lease of such facility
9 to such company.]

10 § 11. Paragraph 6 of subsection (a) of section 606 of the tax law is
11 REPEALED.

12 § 12. Subparagraph (F) of paragraph 7 of subsection (a) of section 606
13 of the tax law is REPEALED.

14 § 13. Paragraphs 11, 12 and 13 of subsection (a) of section 606 of the
15 tax law are REPEALED.

16 § 14. Subsection (i) of section 1456 of the tax law is REPEALED.

17 § 15. Subdivision (q) of section 1511 of the tax law is REPEALED.

18 § 16. Subparagraphs (vi) and (vii) of paragraph (a) of subdivision 1
19 of section 210 of the tax law, subparagraph (vi) as amended by section 1
20 of part C of chapter 56 of the laws of 2011 and subparagraph (vii) as
21 added by section 1 of part Z of chapter 59 of the laws of 2013, are
22 amended to read as follows:

23 (vi) except as otherwise provided in this subparagraph or subparagraph
24 (vii) of this paragraph, for taxable years beginning on or after January
25 thirty-first, two thousand seven, the amount prescribed by this para-
26 graph for a taxpayer which is a qualified New York manufacturer, as
27 defined in subdivision fifteen of section two hundred eight of this
28 article, shall be computed at the rate of six and one-half (6.5) percent

1 of the taxpayer's entire net income base. For taxable years beginning on
2 or after January first, two thousand twelve and before January first,
3 two thousand fifteen, the amount prescribed by this paragraph for a
4 taxpayer which is an eligible qualified New York manufacturer shall be
5 computed at the rate of three and one-quarter (3.25) percent of the
6 taxpayer's entire net income base. [The term "manufacturer" shall mean
7 a taxpayer which during the taxable year is principally engaged in the
8 production of goods by manufacturing, processing, assembling, refining,
9 mining, extracting, farming, agriculture, horticulture, floriculture,
10 viticulture or commercial fishing. However, the generation and distrib-
11 ution of electricity, the distribution of natural gas, and the
12 production of steam associated with the generation of electricity shall
13 not be qualifying activities for a manufacturer under this subparagraph.
14 Moreover, the combined group shall be considered a "manufacturer" for
15 purposes of this subparagraph only if the combined group during the
16 taxable year is principally engaged in the activities set forth in this
17 paragraph, or any combination thereof. A taxpayer or a combined group
18 shall be "principally engaged" in activities described above if, during
19 the taxable year, more than fifty percent of the gross receipts of the
20 taxpayer or combined group, respectively, are derived from receipts from
21 the sale of goods produced by such activities. In computing a combined
22 group's gross receipts, intercorporate receipts shall be eliminated. A
23 "qualified New York manufacturer" is a manufacturer which has property
24 in New York which is described in clause (A) of subparagraph (i) of
25 paragraph (b) of subdivision twelve of this section and either (I) the
26 adjusted basis of such property for federal income tax purposes at the
27 close of the taxable year is at least one million dollars or (II) all of
28 its real and personal property is located in New York. In addition, a

1 "qualified New York manufacturer" means a taxpayer which is defined as a
2 qualified emerging technology company under paragraph (c) of subdivision
3 one of section thirty-one hundred two-e of the public authorities law
4 regardless of the ten million dollar limitation expressed in subpara-
5 graph one of such paragraph (c).] The commissioner shall establish
6 guidelines and criteria that specify requirements by which a manufactur-
7 er may be classified as an eligible qualified New York manufacturer.
8 Criteria may include but not be limited to factors such as regional
9 unemployment, the economic impact that manufacturing has on the
10 surrounding community, population decline within the region and median
11 income within the region in which the manufacturer is located. In estab-
12 lishing these guidelines and criteria, the commissioner shall endeavor
13 that the total annual cost of the lower rates shall not exceed twenty-
14 five million dollars.

15 [(vii)] For a qualified New York manufacturer, as defined in [subpara-
16 graph (vi) of this paragraph] subdivision fifteen of section two hundred
17 eight of this article, the rate at which the tax is computed in effect
18 for taxable years beginning on or after January first, two thousand
19 thirteen and before January first, two thousand fourteen for qualified
20 New York manufacturers shall be reduced by nine and two-tenths percent
21 for taxable years commencing on or after January first, two thousand
22 fourteen and before January first, two thousand fifteen, twelve and
23 three-tenths percent for taxable years commencing on or after January
24 first, two thousand fifteen and before January first, two thousand
25 sixteen, fifteen and four-tenths percent for taxable years commencing on
26 or after January first, two thousand sixteen and before January first,
27 two thousand eighteen, and twenty-five percent for taxable years begin-
28 ning on or after January first, two thousand eighteen.

1 (vii) For a qualified New York manufacturer that has an apportionment
2 factor for purposes of the metropolitan transportation business tax
3 surcharge computed pursuant to subdivision two of section two hundred
4 nine-B of this article equal to zero for the taxable year, the amount
5 prescribed by this paragraph for taxable years beginning on or after
6 January first, two thousand fourteen shall be computed at the rate of
7 zero percent of the taxpayer's entire net income base.

8 § 17. Subparagraphs 2 and 3 of paragraph (b) of subdivision 1 of
9 section 210 of the tax law, subparagraph 2 as amended by section 1 of
10 part GG-1 of chapter 57 of the laws of 2008 and subparagraph 3 as added
11 by section 2 of part Z of chapter 59 of the laws of 2013, are amended to
12 read as follows:

13 (2) [For purposes of subparagraph one of this paragraph, the term
14 "manufacturer" shall mean a taxpayer which during the taxable year is
15 principally engaged in the production of goods by manufacturing, proc-
16 essing, assembling, refining, mining, extracting, farming, agriculture,
17 horticulture, floriculture, viticulture or commercial fishing. Moreover,
18 for purposes of computing the capital base in a combined report, the
19 combined group shall be considered a "manufacturer" for purposes of this
20 subparagraph only if the combined group during the taxable year is prin-
21 cipally engaged in the activities set forth in this subparagraph, or any
22 combination thereof. A taxpayer or a combined group shall be "principal-
23 ly engaged" in activities described above if, during the taxable year,
24 more than fifty percent of the gross receipts of the taxpayer or
25 combined group, respectively, are derived from receipts from the sale of
26 goods produced by such activities. In computing a combined group's gross
27 receipts, intercorporate receipts shall be eliminated. A "qualified New
28 York manufacturer" is a manufacturer that has property in New York that

1 is described in clause (A) of subparagraph (i) of paragraph (b) of
2 subdivision twelve of this section and either (i) the adjusted basis of
3 that property for federal income tax purposes at the close of the taxa-
4 ble year is at least one million dollars or (ii) all of its real and
5 personal property is located in New York. In addition, a "qualified New
6 York manufacturer" means a taxpayer that is defined as a qualified
7 emerging technology company under paragraph (c) of subdivision one of
8 section thirty-one hundred two-e of the public authorities law regard-
9 less of the ten million dollar limitation expressed in subparagraph one
10 of such paragraph.

11 (3)] For a qualified New York manufacturer, as defined in [subpara-
12 graph two of this paragraph] subdivision fifteen of section two hundred
13 eight of this article, the rate at which the tax is computed in effect
14 for taxable years beginning on or after January first, two thousand
15 thirteen and before January first, two thousand fourteen shall be
16 reduced by nine and two-tenths percent for taxable years commencing on
17 or after January first, two thousand fourteen and before January first,
18 two thousand fifteen, twelve and three-tenths percent for taxable years
19 commencing on or after January first, two thousand fifteen and before
20 January first, two thousand sixteen, fifteen and four-tenths percent for
21 taxable years commencing on or after January first, two thousand sixteen
22 and before January first, two thousand eighteen, and twenty-five percent
23 for taxable years beginning on or after January first, two thousand
24 eighteen.

25 § 18. Subparagraph (iii) of paragraph (c) of subdivision 1 of section
26 210 of the tax law, as added by section 3 of part Z of chapter 59 of the
27 laws of 2013, is amended to read as follows:

1 (iii) For a qualified New York manufacturer, as defined in [subpara-
2 graph (vi) of paragraph (a) of this] subdivision fifteen of section two
3 hundred eight of this article, the rate at which the tax is computed in
4 effect for taxable years beginning on or after January first, two thou-
5 sand thirteen and before January first, two thousand fourteen for quali-
6 fied New York manufacturers shall be reduced by nine and two-tenths
7 percent for taxable years commencing on or after January first, two
8 thousand fourteen and before January first, two thousand fifteen, twelve
9 and three-tenths percent for taxable years commencing on or after Janu-
10 ary first, two thousand fifteen and before January first, two thousand
11 sixteen, fifteen and four-tenths percent for taxable years commencing on
12 or after January first, two thousand sixteen and before January first,
13 two thousand eighteen, and twenty-five percent for taxable years begin-
14 ning on or after January first, two thousand eighteen.

15 § 19. Subparagraph 6 of paragraph (d) of subdivision 1 of section 210
16 of the tax law, as added by section 4 of part Z of chapter 59 of the
17 laws of 2013, is amended to read as follows:

18 (6) For a qualified New York manufacturer, as defined in [subparagraph
19 (vi) of paragraph (a) of this] subdivision fifteen of section two
20 hundred eight of this article, the amounts prescribed in subparagraphs
21 one and four of this paragraph in effect for taxable years beginning on
22 or after January first, two thousand thirteen and before January first,
23 two thousand fourteen for qualified New York manufacturers shall be
24 reduced by nine and two-tenths percent for taxable years commencing on
25 or after January first, two thousand fourteen and before January first,
26 two thousand fifteen, twelve and three-tenths percent for taxable years
27 commencing on or after January first, two thousand fifteen and before
28 January first, two thousand sixteen, fifteen and four-tenths percent for

1 taxable years commencing on or after January first, two thousand sixteen
2 and before January first, two thousand eighteen, and twenty-five percent
3 for taxable years beginning on or after January first, two thousand
4 eighteen.

5 § 20. Subdivision 1 of section 210 of the tax law is amended by adding
6 a new paragraph (h) to read as follows:

7 (h) For purposes of determining whether a taxpayer is an eligible
8 qualified New York manufacturer for purposes of the tax benefits
9 provided in subparagraph (vi) of paragraph (a) of this subdivision,
10 subparagraph (ii) of paragraph (c) of this subdivision, and subparagraph
11 five of paragraph (d) of this subdivision, a taxpayer shall utilize the
12 law, guidelines and criteria in effect on December thirty-first, two
13 thousand thirteen.

14 § 21. Subdivision 2 of section 355 of the economic development law, as
15 amended by section 4 of part G of chapter 61 of the laws of 2011, is
16 amended to read as follows:

17 2. Excelsior investment tax credit component. A participant in the
18 excelsior jobs program shall be eligible to claim a credit on qualified
19 investments. The credit shall be equal to two percent of the cost or
20 other basis for federal income tax purposes of the qualified investment.
21 A participant may not claim both the excelsior investment tax credit
22 component and the investment tax credit set forth in subdivision twelve
23 of section two hundred ten[,] or subsection (a) of section six hundred
24 six[, subsection (i) of section fourteen hundred fifty-six, or subdivi-
25 sion (q) of section fifteen hundred eleven] of the tax law for the same
26 property in any taxable year, except that a participant may claim both
27 the excelsior investment tax credit component and the investment tax
28 credit for research and development property. In addition, a taxpayer

1 who or which is qualified to claim the excelsior investment tax credit
2 component and is also qualified to claim the brownfield tangible proper-
3 ty credit component under section twenty-one of the tax law may claim
4 either the excelsior investment tax credit component or such tangible
5 property credit component, but not both with regard to a particular
6 piece of property. A credit may not be claimed until a business enter-
7 prise has received a certificate of tax credit, provided that qualified
8 investments made on or after the issuance of the certificate of eligi-
9 bility but before the issuance of the certificate of tax credit to the
10 business enterprise, may be claimed in the first taxable year for which
11 the business enterprise is allowed to claim the credit. Expenses
12 incurred prior to the date the certificate of eligibility is issued are
13 not eligible to be included in the calculation of the credit.

14 § 22. Severability. The legislature intends by this act to provide
15 needed tax relief to New York manufacturers. However, if a court of
16 final, competent jurisdiction adjudges the tax rates imposed on quali-
17 fied New York manufacturers to be invalid, qualified New York manufac-
18 turers shall be subject to the same tax rates as all other taxpayers
19 subject to tax under article nine-A of the tax law. Provided further, if
20 a court of final, competent jurisdiction adjudges that the tax credits
21 provided by this act to qualified New York manufacturers, qualified New
22 York agricultural businesses and qualified New York mining businesses to
23 be invalid, such credits shall be deemed repealed and shall be of no
24 force and effect as to any taxpayers.

25 § 23. This act shall take effect immediately and shall apply to taxa-
26 ble years beginning on or after January 1, 2014.

1 Section 1. Sections 185, 187-j, 187-k, 187-l, 187-m, 187-q, 187-r and
2 187-s of the tax law are REPEALED.

3 § 2. Paragraph (c) of subdivision 9 of section 400 of the economic
4 development law, as added by section 2 of part V of chapter 61 of the
5 laws of 2011, is amended to read as follows:

6 (c) the business entity must not be substantially similar in ownership
7 and operation to another taxpayer taxable or previously taxable under
8 section one hundred eighty-three[,] or one hundred eighty-four or former
9 section one hundred eighty-five of article nine, former section one
10 hundred eighty-six or article nine-A, twenty-two, thirty-two or thirty-
11 three of the tax law or the income or losses of which is or was includa-
12 ble under article twenty-two of the tax law;

13 § 3. Paragraph (c) of subdivision 6 of section 431 of the economic
14 development law, as added by section 1 of part A of chapter 68 of the
15 laws of 2013, is amended to read as follows:

16 (c) the business is not substantially similar in operation and in
17 ownership to a business entity (or entities) taxable, or previously
18 taxable within the last five taxable years, under section one hundred
19 eighty-three[,] or one hundred eighty-four, former section one hundred
20 eighty-five or former section one hundred eighty-six of the tax law,
21 article nine-A, thirty-two or thirty-three of the tax law, article twen-
22 ty-three of the tax law or which would have been subject to tax under
23 such article twenty-three (as such article was in effect on January
24 first, nineteen hundred eighty), or the income (or losses) of which is
25 (or was) includable under article twenty-two of the tax law; and

26 § 4. Paragraph 1 of subdivision (a), subdivision (f), paragraph 1 of
27 subdivision (i) and subdivisions (j) and (k) of section 14 of the tax
28 law, paragraph 1 of subdivision (a) as amended by section 3 of part VI

1 of chapter 109 of the laws of 2006, subdivisions (f) and (j) as amended
2 by section 10 of part CC of chapter 85 of the laws of 2002, paragraph 1
3 of subdivision (i) and subdivision (k) as amended and paragraph 4 of
4 subdivision (j) as added by section 5 of part A of chapter 63 of the
5 laws of 2005, subparagraph (B) of paragraph 4 of subdivision (j) as
6 amended by chapter 161 of the laws of 2005 and paragraph 5 of subdivi-
7 sion (j) as amended by section 4 of part V1 of chapter 109 of the laws
8 of 2006, are amended to read as follows:

9 (1) except as provided in paragraphs one-a and one-b of this subdivi-
10 sion, for purposes of [section one hundred eighty-seven-j and] articles
11 nine-A, twenty-two, thirty-two and thirty-three of this chapter, for
12 each of the taxable years within the "business tax benefit period,"
13 which period shall consist of (A) in the case of a business enterprise
14 with a test date occurring on or before December thirty-first, two thou-
15 sand one, the first fifteen taxable years beginning on or after January
16 first, two thousand one, (B) in the case of a business enterprise with a
17 test date occurring on or after January first, two thousand two, but
18 prior to April first, two thousand five, the fifteen taxable years next
19 following the business enterprise's test year, and (C) in the case of a
20 business enterprise which is first certified under article eighteen-B of
21 the general municipal law on or after April first, two thousand five,
22 the ten taxable years starting with the taxable year in which the busi-
23 ness enterprise's first date of certification under article eighteen-B
24 of the general municipal law occurs, but only with respect to each of
25 such business tax benefit period years for which the employment test is
26 met,

27 (f) Taxable year. The term "taxable year" means the taxable year of
28 the business enterprise under section one hundred eighty-three[,] or one

1 hundred eighty-four[, one hundred eighty-five] or former section one
2 hundred eighty-six of article nine, or under article nine-A, twenty-two,
3 thirty-two or thirty-three of this chapter. If a business enterprise
4 does not have a taxable year because it is exempt from taxation or
5 otherwise not required to file a return under any of such sections of
6 article nine or under article nine-A, twenty-two, thirty-two or thirty-
7 three, then the term "taxable year" means (i) the business enterprise's
8 federal taxable year, or, (ii) if the enterprise does not have a federal
9 taxable year, the calendar year.

10 (1) for purposes of [section one hundred eighty-seven-j of article
11 nine, and] articles nine-A, twenty-two, thirty-two and thirty-three of
12 this chapter, on the first day of the taxable year during which revoca-
13 tion of its certification under article eighteen-B of the general munic-
14 ipal law occurs, and

15 (j) New business. (1) A new business shall include any corporation,
16 except a corporation which is substantially similar in operation and in
17 ownership to a business entity (or entities) taxable, or previously
18 taxable, under section one hundred eighty-three, one hundred eighty-
19 four, former section one hundred eighty-five or former section one
20 hundred eighty-six of article nine; article nine-A, article thirty-two
21 or thirty-three of this chapter; article twenty-three of this chapter or
22 which would have been subject to tax under such article twenty-three (as
23 such article was in effect on January first, nineteen hundred eighty) or
24 the income (or losses) of which is (or was) includable under article
25 twenty-two of this chapter.

26 (2) For purposes of article twenty-two of this chapter, an individual
27 who is either a sole proprietor or a member of a partnership shall qual-
28 ify as an owner of a new business unless the business of which the indi-

1 vidual is an owner is substantially similar in operation and in owner-
2 ship to a business entity taxable, or previously taxable, under section
3 one hundred eighty-three, one hundred eighty-four, former section one
4 hundred eighty-five or former section one hundred eighty-six of article
5 nine; article nine-A, thirty-two or thirty-three of this chapter; arti-
6 cle twenty-three of this chapter or which would have been subject to tax
7 under such article twenty-three (as such article was in effect on Janu-
8 ary first, nineteen hundred eighty) or the income (or losses) of which
9 is (or was) includable under article twenty-two.

10 (3) For purposes of article twenty-two of this chapter, a shareholder
11 of a New York S corporation shall be treated as the owner of a new busi-
12 ness with respect to such share if the corporation qualifies as a new
13 business pursuant to paragraph one of this subdivision.

14 (4) (A) (i) Notwithstanding paragraphs one and two of this subdivision,
15 a new business shall include any corporation which is identical in oper-
16 ation and ownership to a business entity (or entities) taxable under
17 section one hundred eighty-three[,] or one hundred eighty-four or former
18 section one hundred eighty-five of article nine; article nine-A, article
19 thirty-two or thirty-three of this chapter or the income (or losses) of
20 which is includable under article twenty-two of this chapter, provided
21 such corporation and such business entity or entities are operating in
22 different counties in the state.

23 (ii) Notwithstanding paragraphs one and two of this subdivision, an
24 individual who is either a sole proprietor or a member of a partnership
25 shall qualify as an owner of a new business if the business of which the
26 individual is an owner is identical in operation and in ownership to a
27 business entity (or entities) taxable under section one hundred eighty-
28 three[,] or one hundred eighty-four or former section one hundred eight-

1 y-five of article nine; article nine-A, article thirty-two or thirty-
2 three of this chapter or the income (or losses) of which is includable
3 under article twenty-two of this chapter, provided such business and
4 such business entity or entities are operating in different counties in
5 the state.

6 (iii) Any corporation qualifying as a new business or any individual
7 qualifying as an owner of a new business as a result of the provisions
8 of this subparagraph shall have the same business tax benefit period and
9 sales and use tax benefit period as the business entity to which it is
10 identical in operation and in ownership.

11 (B) Notwithstanding any provisions of this subdivision to the contrary
12 and notwithstanding subdivision c of section eighteen of part CC of
13 chapter eighty-five of the laws of two thousand two, a corporation or
14 partnership, which was first certified under article eighteen-B of the
15 general municipal law before August first, two thousand two, has a base
16 period of zero years or zero employment for its base period, and is
17 similar in operation and in ownership to a business entity or entities
18 taxable, or previously taxable, under sections specified in paragraph
19 one or two of this subdivision or which would have been subject to tax
20 under article twenty-three of this chapter (as such article was in
21 effect on January first, nineteen hundred eighty) or the income or loss-
22 es of which is or was includable under article twenty-two of this chap-
23 ter shall not be deemed a new business if it was not formed for a valid
24 business purpose, as such term is defined in clause (D) of subparagraph
25 one of paragraph (o) of subdivision nine of section two hundred eight of
26 this chapter and was formed solely to gain empire zone benefits.

27 (5) Notwithstanding any other provision of this section, a business
28 enterprise which is approved by the commissioner of economic development

1 as the owner of a qualified investment project or a significant capital
2 investment project pursuant to subdivision (w) of section nine hundred
3 fifty-nine of the general municipal law, has a base period of zero years
4 and places in service property (or a project that includes such proper-
5 ty) which comprises such qualified investment project or such signif-
6 icant capital investment project[,], shall be deemed to be a new busi-
7 ness under this section. Provided, however, to be deemed a new business
8 under this paragraph, such business enterprise shall have received
9 certification under article eighteen-B of the general business law by
10 December thirty-first, two thousand seven.

11 (k) If the designation of an area as an empire zone is no longer in
12 effect because section nine hundred sixty-nine of the general municipal
13 law was not amended to extend the effective date of such designation so
14 that the designations of all empire zones pursuant to article eighteen-B
15 of the general municipal law have expired, a business enterprise that
16 was certified pursuant to article eighteen-B of the general municipal
17 law on the day immediately preceding the day on which such designation
18 expired shall be deemed to continue to be certified under such article
19 eighteen-B for purposes of this section, and sections fifteen, sixteen,
20 [section one hundred eighty-seven-j,] subdivisions twenty-seven and
21 twenty-eight of section two hundred ten, subsections (bb) and (cc) of
22 section six hundred six, subdivision [(z)] (d) of section eleven hundred
23 [fifteen] nineteen, subsections (o) and (p) of section fourteen hundred
24 fifty-six, and subdivisions (r) and (s) of section fifteen hundred elev-
25 en of this chapter. In addition, if the designation of an area as an
26 empire zone is no longer in effect because section nine hundred sixty-
27 nine of the general municipal law was not amended to extend the effec-
28 tive date of such designation so that the designations of all empire

1 zones pursuant to article eighteen-B of the general municipal law have
2 expired, all references to empire zones in the provisions of this chap-
3 ter listed in the previous sentence shall be read as meaning areas
4 designated as empire zones on the day immediately preceding the day on
5 which such designation expired.

6 § 5. Paragraph 1 of subdivision (h) of section 15 of the tax law is
7 REPEALED.

8 § 6. The closing paragraph of subdivision (a) of section 28 of the tax
9 law, as added by section 2 of part V of chapter 62 of the laws of 2006,
10 is amended to read as follows:

11 (4) Notwithstanding any provisions of this section to the contrary, a
12 corporation or partnership, which otherwise qualifies as a qualified
13 commercial production company, and is similar in operation and in owner-
14 ship to a business entity or entities taxable, or previously taxable,
15 under section one hundred eighty-three[,] or one hundred eighty-four or
16 former section one hundred eighty-five of article nine; article nine-A,
17 article thirty-two or thirty-three of this chapter or which would have
18 been subject to tax under article twenty-three of this chapter (as such
19 article was in effect on January first, nineteen hundred eighty) or the
20 income or losses of which is or was includable under article twenty-two
21 of this chapter shall not be deemed a new or separate business, and
22 therefore shall not be eligible for empire state commercial production
23 benefits, if it was not formed for a valid business purpose, as such
24 term is defined in clause (D) of subparagraph one of paragraph (o) of
25 subdivision nine of section two hundred eight of this chapter and was
26 formed solely to gain empire state commercial production credit bene-
27 fits.

1 § 7. Subdivision (a) of section 31 of the tax law, as amended by
2 section 7 of part G of chapter 61 of the laws of 2011, is amended to
3 read as follows:

4 (a) General. A taxpayer subject to tax under [section one hundred
5 eighty-five,] article nine-A, twenty-two, thirty-two or thirty-three of
6 this chapter shall be allowed a credit against such tax, pursuant to the
7 provisions referenced in subdivision (g) of this section. The amount of
8 the credit, allowable for up to ten consecutive taxable years, is the
9 sum of the following four credit components:

- 10 (1) the excelsior jobs tax credit component;
- 11 (2) the excelsior investment tax credit component;
- 12 (3) the excelsior research and development tax credit component; and
- 13 (4) the excelsior real property tax credit component.

14 § 8. Paragraph 1 of subdivision (g) of section 31 of the tax law is
15 REPEALED.

16 § 9. The opening paragraph of paragraph 1 of subdivision (a) and
17 subparagraph (C) of paragraph 2 of subdivision (e) of section 35 of the
18 tax law, as added by section 3 of part V of chapter 61 of the laws of
19 2011, are amended to read as follows:

20 A taxpayer which is a participant or the owner of a participant in the
21 economic transformation and facility redevelopment program under article
22 eighteen of the economic development law that is subject to tax under
23 [section one hundred eighty-five of article nine, or] article nine-A,
24 twenty-two, thirty-two or thirty-three of this chapter shall be allowed
25 the sum of following components against such tax, pursuant to the
26 provisions referenced in subdivision (f) of this section.

27 (C) the business entity must not be substantially similar in ownership
28 and operation to another taxpayer taxable or previously taxable under

1 section one hundred eighty-three[,] or one hundred eighty-four or former
2 section one hundred eighty-five of article nine, former section one
3 hundred eighty-six of this chapter or article nine-A, twenty-two, thir-
4 ty-two or thirty-three of this chapter or the income or losses of which
5 is or was includable under article twenty-two of this chapter;

6 § 10. Paragraph 1 of subdivision (f) of section 35 of the tax law, as
7 added by section 3 of part V of chapter 61 of the laws of 2011, is
8 REPEALED.

9 § 11. Paragraph 1 of subdivision (e) of section 38 of the tax law, as
10 added by section 1 of part EE of chapter 59 of the laws of 2013, is
11 REPEALED.

12 § 12. Subdivision 2 of section 187 of the tax law, as added by chapter
13 788 of the laws of 1978, is amended to read as follows:

14 2. In no event shall the credit herein provided for be allowed in an
15 amount which will reduce the tax payable to less than the applicable
16 minimum tax fixed by section one hundred eighty-three[, one hundred
17 eighty-five] or former section one hundred eighty-six. If, however, the
18 amount of credit allowable under this section for any taxable year
19 reduces the tax to such amount, any amount of credit not deductible in
20 such taxable year may be carried over to the following year or years and
21 may be deducted from the taxpayer's tax for such year or years.

22 § 13. Subdivision 5 of section 187-a of the tax law, as added by chap-
23 ter 142 of the laws of 1997, is amended to read as follows:

24 5. Carryover. In no event shall the credit under this section be
25 allowed in an amount which will reduce the tax payable to less than the
26 applicable minimum tax fixed by section one hundred eighty-three[, one
27 hundred eighty-five] or former section one hundred eighty-six of this
28 article. If, however, the amount of credit allowable under this section

1 for any taxable year reduces the tax to such amount, any amount of cred-
2 it not deductible in such taxable year may be carried over to the
3 following year or years and may be deducted from the taxpayer's tax for
4 such year or years.

5 § 14. Subdivisions 1 and 4 of section 187-b of the tax law, as amended
6 by section 1 of part G of chapter 59 of the laws of 2013, are amended to
7 read as follows:

8 1. General. A taxpayer shall be allowed a credit, to be credited
9 against the taxes imposed under sections one hundred eighty-three[,] and
10 one hundred eighty-four[, and one hundred eighty-five] of this article.
11 Such credit, to be computed as hereinafter provided, shall be allowed
12 for alternative fuel vehicle refueling and electric vehicle recharging
13 property placed in service during the taxable year. Provided, however,
14 that the amount of such credit allowable against the tax imposed by
15 section one hundred eighty-four of this article shall be the excess of
16 the credit allowed by this section over the amount of such credit allow-
17 able against the tax imposed by section one hundred eighty-three of this
18 article.

19 4. Carryovers. In no event shall the credit under this section be
20 allowed in an amount which will reduce the tax payable to less than the
21 applicable minimum tax fixed by section one hundred eighty-three [or one
22 hundred eighty-five] of this article. If, however, the amount of credit
23 allowable under this section for any taxable year reduces the tax to
24 such amount, any amount of credit not deductible in such taxable year
25 may be carried over to the following year or years and may be deducted
26 from the taxpayer's tax for such year or years.

27 § 15. Section 187-c of the tax law, as amended by section 2 of part K
28 of chapter 59 of the laws of 2012, is amended to read as follows:

1 § 187-c. Biofuel production credit. A taxpayer shall be allowed a
2 credit to be computed as provided in section twenty-eight of this chap-
3 ter, as added by part X of chapter sixty-two of the laws of two thousand
4 six, against the tax imposed by this article. Provided, however, that
5 the amount of such credit allowed against the tax imposed by section one
6 hundred eighty-four of this article shall be the excess of the amount of
7 such credit over the amount of any credit allowed by this section
8 against the tax imposed by section one hundred eighty-three of this
9 article. In no event shall the credit under this section be allowed in
10 an amount which will reduce the tax payable to less than the applicable
11 minimum tax fixed by section one hundred eighty-three [or one hundred
12 eighty-five] of this article. If, however, the amount of the credit
13 allowed under this section for any taxable year reduces the tax to such
14 amount, the excess shall be treated as an overpayment of tax to be cred-
15 ited or refunded in accordance with the provisions of section six
16 hundred eighty-six of this chapter. Provided, however, the provisions of
17 subsection (c) of section one thousand eighty-eight of this chapter
18 notwithstanding, no interest shall be paid thereon. The tax credit
19 allowed pursuant to this section shall apply to taxable years beginning
20 before January first, two thousand twenty.

21 § 16. Section 187-d of the tax law, as added by section 3 of part II
22 of chapter 63 of the laws of 2000, is amended to read as follows:

23 § 187-d. Green building credit. 1. Allowance of credit. A taxpayer
24 shall be allowed a credit, to be computed as provided in section nine-
25 teen of this chapter, against the taxes imposed by sections one hundred
26 eighty-three, one hundred eighty-four[, one hundred eighty-five] and
27 former section one hundred eighty-six of this article. Provided, howev-
28 er, that the amount of such credit allowable against the tax imposed by

1 section one hundred eighty-four of this article shall be the excess of
2 the amount of such credit over the amount of any credit allowed by this
3 section against the tax imposed by section one hundred eighty-three of
4 this article.

5 2. Carryovers. In no event shall the credit under this section be
6 allowed in an amount which will reduce the tax payable to less than the
7 applicable minimum tax fixed by section one hundred eighty-three[, one
8 hundred eighty-five] or former section one hundred eighty-six of this
9 article. If, however, the amount of credit allowable under this section
10 for any taxable year reduces the tax to such amount, any amount of cred-
11 it not deductible in such taxable year may be carried over to the
12 following year or years and may be deducted from the taxpayer's tax for
13 such year or years.

14 § 17. Subdivisions 1 and 2 of section 187-e of the tax law, as added
15 by section 2 of part I of chapter 63 of the laws of 2000, are amended to
16 read as follows:

17 1. Allowance of credit. A taxpayer shall be allowed a credit, to be
18 computed as provided in section twenty of this chapter, against the
19 taxes imposed by sections one hundred eighty-three, one hundred eighty-
20 four[, one hundred eighty-five] and former section one hundred eighty-
21 six of this article. Provided, however, that the amount of such credit
22 allowable against the tax imposed by section one hundred eighty-four of
23 this article shall be the excess of the amount of such credit over the
24 amount of any credit allowed by this section against the tax imposed by
25 section one hundred eighty-three of this article.

26 2. Application of credit. In no event shall the credit under this
27 section be allowed in an amount which will reduce the tax payable to
28 less than the applicable minimum tax fixed by section one hundred eight-

1 y-three[, one hundred eighty-five] or former section one hundred eight-
2 y-six of this article. If, however, the amount of credit allowable under
3 this section for any taxable year reduces the tax to such amount, any
4 amount of credit not thus deductible in such taxable year shall be
5 treated as an overpayment of tax to be credited or refunded in accord-
6 ance with the provisions of section ten hundred eighty-six of this chap-
7 ter. Provided, however, the provisions of subsection (c) of section ten
8 hundred eighty-eight of this chapter notwithstanding, no interest shall
9 be paid thereon.

10 § 18. Section 187-g of the tax law, as added by section 2 of part H of
11 chapter 1 of the laws of 2003, is amended to read as follows:

12 § 187-g. Brownfield redevelopment tax credit. 1. Allowance of credit.
13 A taxpayer shall be allowed a credit, to be computed as provided in
14 section twenty-one of this chapter, against the taxes imposed by
15 sections one hundred eighty-three[,] and one hundred eighty-four [and
16 one hundred eighty-five] of this article. Provided, however, that the
17 amount of such credit allowable against the tax imposed by section one
18 hundred eighty-four of this article shall be the excess of the amount of
19 such credit over the amount of any credit allowed by this section
20 against the tax imposed by section one hundred eighty-three of this
21 article.

22 2. Application of credit. In no event shall the credit under this
23 section be allowed in an amount which will reduce the tax payable to
24 less than the applicable minimum tax fixed by section one hundred eight-
25 y-three [or one hundred eighty-five] of this article. If, however, the
26 amount of credit allowable under this section for any taxable year
27 reduces the tax to such amount, any amount of credit not deductible in
28 such taxable year shall be treated as an overpayment of tax to be

1 refunded in accordance with the provisions of section ten hundred eight-
2 y-six of this chapter. Provided, however, the provisions of subsection
3 (c) of section ten hundred eighty-eight of this chapter notwithstanding,
4 no interest shall be paid thereon.

5 § 19. Section 187-h of the tax law, as added by section 13 of part H
6 of chapter 1 of the laws of 2003, subdivision 1 as amended by section 5
7 of part H of chapter 577 of the laws of 2004, is amended to read as
8 follows:

9 § 187-h. Remediated brownfield credit for real property taxes for
10 qualified sites. 1. Allowance of credit. A taxpayer shall be allowed a
11 credit, to be computed as provided in subdivision (b) of section twen-
12 ty-two of this chapter, against the taxes imposed by sections one
13 hundred eighty-three[,] and one hundred eighty-four [and one hundred
14 eighty-five] of this article. Provided, however, that the amount of such
15 credit allowed against the tax imposed by section one hundred eighty-
16 four of this article shall be the excess of the amount of such credit
17 over the amount of any credit allowed by this section against the tax
18 imposed by section one hundred eighty-three of this article.

19 2. Application of credit. In no event shall the credit under this
20 section be allowed in an amount which will reduce the tax payable to
21 less than the applicable minimum tax fixed by section one hundred eight-
22 y-three [or one hundred eighty-five] of this article. If, however, the
23 amount of credit allowed under this section for any taxable year reduces
24 the tax to such amount, any amount of credit not thus deductible in such
25 taxable year shall be treated as an overpayment of tax to be credited or
26 refunded in accordance with the provisions of section ten hundred eight-
27 y-six of this chapter. Provided, however, the provisions of subsection

1 (c) of section ten hundred eighty-eight of this chapter notwithstanding,
2 no interest shall be paid thereon.

3 § 20. Section 187-i of the tax law, as added by section 20 of part H
4 of chapter 1 of the laws of 2003, is amended to read as follows:

5 § 187-i. Environmental remediation insurance credit. 1. Allowance of
6 credit. A taxpayer shall be allowed a credit, to be computed as provided
7 in section twenty-three of this chapter, against the taxes imposed by
8 sections one hundred eighty-three[,] and one hundred eighty-four [and
9 one hundred eighty-five] of this article. Provided, however, that the
10 amount of such credit allowable against the tax imposed by section one
11 hundred eighty-four of this article shall be the excess of the amount of
12 such credit over the amount of any credit allowed by this section
13 against the tax imposed by section one hundred eighty-three of this
14 article.

15 2. Application of credit. In no event shall the credit under this
16 section be allowed in an amount which will reduce the tax payable to
17 less than the applicable minimum tax fixed by section one hundred
18 eighty-three [or one hundred eighty-five] of this article. If, however,
19 the amount of credit allowable under this section for any taxable year
20 reduces the tax to such amount, any amount of credit not deductible in
21 such taxable year shall be treated as an overpayment of tax to be
22 refunded in accordance with the provisions of section one thousand
23 eighty-six of this chapter. Provided, however, the provisions of
24 subsection (c) of section one thousand eighty-eight of this chapter
25 notwithstanding, no interest shall be paid thereon.

26 § 21. Subdivision 2 of section 187-n of the tax law, as added by
27 chapter 537 of the laws of 2005, is amended to read as follows:

1 2. Application of credit. In no event shall the credit under this
2 section be allowed in an amount which will reduce the tax payable to
3 less than the applicable minimum tax fixed by section one hundred
4 eighty-three [or one hundred eighty-five] of this article. If, however,
5 the amount of credit allowable under this section for any taxable year
6 reduces the tax to such amount, any amount of credit not deductible in
7 such taxable year shall be treated as an overpayment of tax to be
8 refunded in accordance with the provisions of section one thousand
9 eighty-six of this chapter. Provided, however, the provisions of
10 subsection (c) of section one thousand eighty-eight of this chapter
11 notwithstanding, no interest shall be paid thereon.

12 § 22. Subdivisions 1 and 3 of section 187-n of the tax law, subdivi-
13 sion 1 as amended by section 1 of part C1 of chapter 57 of the laws of
14 2009 and subdivision 3 as added by chapter 446 of the laws of 2005, are
15 amended to read as follows:

16 (1) Allowance of credit. For taxable years beginning before January
17 first, two thousand nine, a taxpayer whose business is not substantially
18 engaged in the commercial generation, distribution, transmission, or
19 servicing of energy or energy products shall be allowed a credit against
20 the taxes imposed by sections one hundred eighty-three[,] and one
21 hundred eighty-four [and one hundred eighty-five] of this article, equal
22 to its qualified fuel cell electric generating equipment expenditures.
23 Provided, however, that the amount of such credit allowable against the
24 tax imposed by section one hundred eighty-four of this article shall be
25 the excess of the amount of such credit over the amount of any credit
26 allowed by this section against the tax imposed by section one hundred
27 eighty-three of this article. This credit shall not exceed one thousand
28 five hundred dollars per generating unit with respect to any taxable

1 year. The credit provided for herein shall be allowed with respect to
2 the taxable year in which the fuel cell electric generating equipment is
3 placed in service.

4 (3) Application of credit. In no event shall the credit under this
5 section be allowed in an amount which will reduce the tax payable to
6 less than the applicable minimum tax fixed by section one hundred eight-
7 y-three [or one hundred eighty-five] of this article. If, however, the
8 amount of credit allowable under this section for any taxable year
9 reduces the tax to such amount, any amount of credit not deductible in
10 such taxable year may be carried over to the following year or years and
11 may be deducted from the taxpayer's tax for such year or years.

12 § 23. Section 187-o of the tax law, as added by section 3 of part Y of
13 chapter 57 of the laws of 2010, is amended to read as follows:

14 § 187-o. Temporary deferral nonrefundable payout credit. 1. Allowance
15 of credit. A taxpayer shall be allowed a credit, to be computed as
16 provided in subdivision one of section thirty-four of this chapter,
17 against either the taxes imposed by sections one hundred eighty-three[,]
18 and one hundred eighty-four, [and one hundred eighty-five,] or the tax
19 imposed by section one hundred eighty-six-a of this article. However,
20 the amount of such credit against the tax imposed by section one hundred
21 eighty-four of this article shall be the excess of the amount of that
22 credit over the amount of any credit allowed by this section against the
23 tax imposed by section one hundred eighty-three of this article.

24 2. Application of credit. In no event shall the credit under this
25 section be allowed in an amount which will reduce the tax to less than
26 the applicable minimum tax fixed by section one hundred eighty-three [or
27 one hundred eighty-five] of this article. If, however, the amount of
28 credit allowed under this section for any taxable year reduces the tax

1 to such amount, any amount of credit not deductible in such taxable year
2 may be carried over to the following year or years and may be deducted
3 from the taxpayer's tax for such year or years.

4 § 24. Section 187-p of the tax law, as added by section 3 of part Y of
5 chapter 57 of the laws of 2010, is amended to read as follows:

6 § 187-p. Temporary deferral refundable payout credit. 1. Allowance of
7 credit. A taxpayer shall be allowed a credit, to be computed as provided
8 in subdivision two of section thirty-four of this chapter, against the
9 taxes imposed by sections one hundred eighty-three[,] and one hundred
10 eighty-four [and one hundred eighty-five] of this article, or the tax
11 imposed by section one hundred eighty-six-a of this article. However,
12 the amount of such credit against the tax imposed by section one hundred
13 eighty-four of this article shall be the excess of the amount of that
14 credit over the amount of any credit allowed by this section against the
15 tax imposed by section one hundred eighty-three of this article.

16 2. Application of credit. In no event shall the credit under this
17 section be allowed in an amount which will reduce the tax to less than
18 the applicable minimum tax fixed by section one hundred eighty-three [or
19 one hundred eighty-five] of this article. If, however, the amount of
20 credit allowed under this section for any taxable year reduces the tax
21 to such amount, any amount of credit not deductible in such taxable year
22 shall be treated as an overpayment of tax to be refunded in accordance
23 with the provisions of section one thousand eighty-six of this chapter,
24 provided however, that no interest shall be paid thereon.

25 § 25. Subdivisions 2 and 3 of section 190 of the tax law, as added by
26 section 1 of part E of chapter 63 of the laws of 2000, are amended to
27 read as follows:

1 2. Computation. The credit allowed by this section shall first be
2 deducted from the taxes imposed by section one hundred eighty-three[,
3 one hundred eighty-five] or former section one hundred eighty-six of
4 this article. The amount of any such credit remaining shall next be
5 deducted from the taxes imposed by section one hundred eighty-four of
6 this article.

7 3. Carryover. In no event shall the amount of credit allowed under
8 this section reduce the tax payable to less than the minimum tax fixed
9 by section one hundred eighty-three[, one hundred eighty-five] or former
10 section one hundred eighty-six of this article. If, however, the amount
11 of credit allowable under this section for any taxable year reduces the
12 tax to such amount, any amount of credit not deductible in such taxable
13 year may be carried over to the following year or years and may be
14 deducted from the taxpayer's tax for such year or years.

15 § 26. Subdivision 1 of section 192 of the tax law, as amended by chap-
16 ter 96 of the laws of 1976, is amended to read as follows:

17 1. Corporations paying franchise tax. Every corporation, association
18 or joint-stock company liable to pay a tax under section one hundred
19 eighty-three [or one hundred eighty-five] of this chapter shall, on or
20 before March fifteenth in each year, make a written report to the tax
21 commission of its condition at the close of its business on the preced-
22 ing December thirty-first, stating the amount of its authorized capital
23 stock, the amount of stock paid in, the date and rate per centum of each
24 dividend paid by it during the year ending with such day, the entire
25 amount of the capital of such corporation, and the capital employed by
26 it in this state during such year.

1 § 27. Subdivision 4 of section 209 of the tax law, as amended by
2 section 2 of part FF1 of chapter 57 of the laws of 2008, is amended to
3 read as follows:

4 4. Corporations liable to tax under sections one hundred eighty-three
5 to one hundred [eighty-five] eighty-four-a, inclusive, corporations
6 taxable under articles thirty-two and thirty-three of this chapter, any
7 trust company organized under a law of this state all of the stock of
8 which is owned by not less than twenty savings banks organized under a
9 law of this state, bank holding companies filing a combined return in
10 accordance with [subdivision] subsection (f) of section fourteen hundred
11 sixty-two of this chapter, a captive REIT or a captive RIC filing a
12 combined return under either [subdivision] subsection (f) of section
13 fourteen hundred sixty-two or subdivision (f) of section fifteen hundred
14 fifteen of this chapter, and housing companies organized and operating
15 pursuant to the provisions of article two or article five of the private
16 housing finance law and housing development fund companies organized
17 pursuant to the provisions of article eleven of the private housing
18 finance law shall not be subject to tax under this article.

19 § 28. Section 209 of the tax law is amended by adding a new subdivi-
20 sion 12 to read as follows:

21 12. All farmers', fruit growers' and other like agricultural corpo-
22 rations organized and operated on a co-operative basis for the purposes
23 expressed in and as provided under the co-operative corporations law of
24 the state of New York, whether or not such corporations have capital
25 stock, shall be exempt from taxation under the provisions of this arti-
26 cle.

27 § 29. Paragraphs (b) and (c) of subdivision 1-c, clause (i) of subpar-
28 agraph 1 of paragraph (b) of subdivision 3, and subparagraphs 1 and 2 of

1 paragraph (j) of subdivision 12 of section 210 of the tax law, paragraph
2 (b) of subdivision 1-c as amended by section 12 of part Y of chapter 63
3 of the laws of 2000, paragraph (c) of subdivision 1-c and subparagraph 2
4 of paragraph (j) of subdivision 12 as amended by chapter 1043 of the
5 laws of 1981, clause (i) of subparagraph 1 of paragraph (b) of subdivi-
6 sion 3 as amended by chapter 61 of the laws of 1989 and subparagraph 1
7 of paragraph (j) of subdivision 12 as amended by section 14 of part Y of
8 chapter 63 of the laws of 2000, are amended to read as follows:

9 (b) is not a corporation over fifty percent of the number of shares of
10 stock of which entitling the holders thereof to vote for the election of
11 directors or trustees is owned by a taxpayer which (1) is subject to tax
12 under this article; section one hundred eighty-three[,] or section one
13 hundred eighty-four or former section one hundred eighty-five of article
14 nine; article thirty-two or thirty-three of this chapter, and (2) does
15 not qualify as a small business corporation as defined in paragraph
16 three of subsection (c) of section twelve hundred forty-four of the
17 internal revenue code (without regard to the second sentence of subpara-
18 graph (A) thereof) as of the last day of its taxable year ending within
19 or with the taxable year of the taxpayer,

20 (c) is not a corporation which is substantially similar in operation
21 and in ownership to a business entity (or entities) taxable, or previ-
22 ously taxable, under this article; section one hundred eighty-three, one
23 hundred eighty-four, or former section one hundred eighty-five or former
24 section one hundred eighty-six of article nine; article thirty-two or
25 thirty-three of this chapter; article twenty-three of this chapter or
26 which would have been subject to tax under such article twenty-three (as
27 such article was in effect on January first, nineteen hundred eighty) or

1 the income (or losses) of which is (or was) includable under article
2 twenty-two of this chapter, and

3 (i) In the case of an issuer or obligor subject to tax under section
4 one hundred eighty-three[, one hundred eighty-five] or former section
5 one hundred eighty-six of this chapter or under this article or article
6 thirty-three of this chapter (except for savings and insurance banks
7 described in subdivision (b) of section fifteen hundred of this chap-
8 ter), the issuer's allocation percentage shall be the percentage of the
9 appropriate measure (as defined hereinafter) which is required to be
10 allocated within the state on the report, if any, required of the issuer
11 or obligor under this chapter for the preceding year. The appropriate
12 measure referred to in the preceding sentence shall be: in the case of
13 an issuer or obligor subject to section one hundred eighty-three of this
14 chapter, issued capital stock; in the case of an issuer or obligor
15 [subject to section one hundred eighty-five] exempt from tax under
16 subdivision twelve of section two hundred nine of this [chapter]
17 article, issued capital stock; in the case of an issuer or obligor
18 subject to former section one hundred eighty-six of this chapter, gross
19 earnings; in the case of an issuer or obligor subject to this article,
20 entire capital; and in the case of an issuer or obligor subject to arti-
21 cle thirty-three of this chapter, gross direct premiums.

22 (1) over fifty percent of the number of shares of stock entitling the
23 holders thereof to vote for the election of directors or trustees is
24 owned or controlled, either directly or indirectly, by a taxpayer
25 subject to tax under this article; section one hundred eighty-three, one
26 hundred eighty-four or former section one hundred eighty-five of article
27 nine; article thirty-two or thirty-three of this chapter; or

1 (2) is substantially similar in operation and in ownership to a busi-
2 ness entity (or entities) taxable, or previously taxable, under this
3 article; section one hundred eighty-three, one hundred eighty-four,
4 former section one hundred eighty-five or former section one hundred
5 eighty-six of article nine; article thirty-two or thirty-three of this
6 chapter; article twenty-three of this chapter or which would have been
7 subject to tax under such article twenty-three (as such article was in
8 effect on January first, nineteen hundred eighty) or the income (or
9 losses) of which is (or was) includable under article twenty-two of this
10 chapter whereby the intent and purpose of this paragraph and paragraph
11 (e) of this subdivision with respect to refunding of credit to new busi-
12 ness would be evaded; or

13 § 30. Subparagraph (A) of paragraph 10 of subsection (a) of section
14 606 of the tax law, as amended by section 3 of part CC of chapter 85 of
15 the laws of 2002, is amended to read as follows:

16 (A) the business of which the individual is an owner is substantially
17 similar in operation and in ownership to a business entity taxable, or
18 previously taxable, under section one hundred eighty-three, one hundred
19 eighty-four, former section one hundred eighty-five or former section
20 one hundred eighty-six of article nine; article nine-A, thirty-two or
21 thirty-three of this chapter; article twenty-three of this chapter or
22 which would have been subject to tax under such article twenty-three (as
23 such article was in effect on January first, nineteen hundred eighty) or
24 the income (or losses) of which is (or was) includable under article
25 twenty-two of this chapter whereby the intent and purpose of this para-
26 graph and paragraph five of this subsection with respect to refunding of
27 credit to new business would be evaded; or

1 § 31. Subparagraphs (A) and (B) of paragraph 8 of subsection (i) of
2 section 1456 of the tax law, as added by section 27 of part A of chapter
3 56 of the laws of 1998, are amended to read as follows:

4 (A) over fifty percent of the number of shares of stock entitling the
5 holders thereof to vote for the election of directors or trustees is
6 owned or controlled, either directly or indirectly, by a taxpayer
7 subject to tax under this article; section one hundred eighty-three, one
8 hundred eighty-four, former section one hundred eighty-five or former
9 section one hundred eighty-six of article nine; article nine-A or arti-
10 cle thirty-three of this chapter; or

11 (B) is substantially similar in operation and in ownership to a busi-
12 ness entity (or entities) taxable, or previously taxable, under this
13 article; section one hundred eighty-three, one hundred eighty-four,
14 former section one hundred eighty-five or former section one hundred
15 eighty-six of article nine; article nine-A or article thirty-three of
16 this chapter; article twenty-three of this chapter or which would have
17 been subject to tax under such article twenty-three (as such article was
18 in effect on January first, nineteen hundred eighty) or the income (or
19 losses) of which is (or was) includable under article twenty-two of this
20 chapter whereby the intent and purpose of this paragraph and paragraph
21 five of this subsection with respect to refunding of credit to new busi-
22 ness would be evaded; or

23 § 32. Subparagraph (A) of paragraph 7 of subdivision (q) of section
24 1511 of the tax law, as added by section 1 of part L of chapter 63 of
25 the laws of 2000, is amended to read as follows:

26 (A) over fifty percent of the number of shares of stock entitling the
27 holders thereof to vote for the election of directors or trustees is
28 owned or controlled, either directly or indirectly, by a taxpayer

1 subject to tax under this article; section one hundred eighty-three, one
2 hundred eighty-four, former section one hundred eighty-five or former
3 section one hundred eighty-six of article nine; article nine-A or arti-
4 cle thirty-two of this chapter; or

5 § 33. Subdivision 13 of section 171 of the transportation law, as
6 added by chapter 478 of the laws of 1991, is amended to read as follows:

7 13. The transportation for compensation performed by an agricultural
8 cooperative corporation[, which corporation is subject to tax under
9 section one hundred eighty-five of the tax law,] for non-members who are
10 not farmers or cooperative corporations when such transportation is
11 limited to that which is incidental to the agricultural cooperative
12 corporation's primary transportation operation and is necessary for its
13 effective performance. Such transportation shall be provided only after
14 the agricultural cooperative corporation notifies the commissioner in
15 writing of its intent to provide the transportation and it shall not
16 exceed twenty-five percent of the agricultural cooperative corporation's
17 total transportation services in each calendar year measured in terms of
18 tonnage. The commissioner may prescribe the records to be kept and the
19 information to be furnished by all agricultural cooperative corporations
20 performing transportation pursuant to this subdivision.

21 § 34. Subclause 2 of clause (v) of subparagraph (B) of paragraph 1 of
22 subdivision (o) of section 11-1712 of the administrative code of the
23 city of New York, such subdivision as relettered by chapter 639 of the
24 laws of 1986, is amended to read as follows:

25 (2) A new business does not include: (i) any new business of which
26 twenty-five percent or more of the number of shares of stock that enti-
27 tle the holders thereof to vote for the election of directors or trus-
28 tees is owned, directly or indirectly, by a taxpayer subject to tax

1 under section one hundred eighty-three, one hundred eighty-four, former
2 section one hundred eighty-five or former section one hundred eighty-six
3 of article nine of the tax law, or under article [nine-a] nine-A, thir-
4 ty-two or thirty-three of the tax law or (ii) any new business substan-
5 tially similar in operation and in ownership, directly or indirectly, to
6 a business entity (or entities) taxable, or previously taxable, under
7 such section, such article, article twenty-three of the tax law or which
8 would have been subject to tax under such article twenty-three (as such
9 article was in effect on January first, nineteen hundred eighty) or the
10 income (or losses) of which is (or was) includible under article twen-
11 ty-two of such tax law whereby the intent and purpose of this section
12 would be evaded.

13 § 35. Paragraph (iii) of subdivision 9 of section 16-v of section 1 of
14 chapter 174 of the laws of 1968, constituting the New York state urban
15 development corporation act, as added by section 1 of part C of chapter
16 59 of the laws of 2013, is amended to read as follows:

17 (iii) either: (A) any corporation, except a corporation which:

18 (1) over fifty percent of the number of shares of stock entitling the
19 holders thereof to vote for the election of directors or trustees is
20 owned or controlled, either directly or indirectly, by a taxpayer
21 subject to tax under the following provisions of the tax law: article
22 nine-A; section one hundred eighty-three[,] or one hundred eighty-four
23 or former section one hundred eighty-five of article nine; article thir-
24 ty-two or article thirty-three; or

25 (2) is substantially similar in operation and in ownership to a busi-
26 ness entity (or entities) taxable or previously taxable under the
27 following provisions of the tax law: article nine-A; section one hundred
28 eighty-three, one hundred eighty-four, former section one hundred eight-

1 y-five or former section one hundred eighty-six of article nine; article
2 thirty-two; article thirty-three; article twenty-three, or would have
3 been subject to tax under such article twenty-three (as such article was
4 in effect on January first, nineteen hundred eighty) or the income (or
5 losses) of which is (or was) includable under article twenty-two; or

6 (B) a sole proprietorship, partnership, limited partnership, limited
7 liability company, or New York subchapter S corporation that is not
8 substantially similar in operation and in ownership to a business entity
9 (or entities) taxable, or previously taxable, under article nine-A of
10 the tax law, section one hundred eighty-three, one hundred eighty-four,
11 former section one hundred eighty-five or former section one hundred
12 eighty-six of article nine of the tax law, article thirty-two or thir-
13 ty-three of the tax law, article twenty-three of the tax law or which
14 would have been subject to tax under such article twenty-three (as such
15 article was in effect on January first, nineteen hundred eighty) or the
16 income (or losses) of which is (or was) includable under article twen-
17 ty-two of the tax law; and

18 § 36. Notwithstanding the repeal of section 185 of the tax law by
19 section one of this act, all provisions of such section 185, in respect
20 to the imposition, exemption, assessment, payment, payment over, deter-
21 mination, collection, and credit or refund of tax imposed thereunder,
22 the filing of forms and returns, the preservation of records for the
23 purposes of such tax, the secrecy of returns, the disposition of reven-
24 ues, and the civil and criminal penalties applicable to the violation of
25 the provisions of such section 185, shall continue in full force and
26 effect with respect to all such tax accrued up to December 31, 2014; all
27 actions and proceedings, civil or criminal, commenced or authorized to
28 be commenced under or by virtue of any provision of such section 185 so

1 repealed, and pending or able to commence prior to the taking effect of
2 such repeal, may be commenced, prosecuted and defended to final effect
3 in the same manner as they might if such provisions were not so
4 repealed.

5 § 37. This act shall take effect immediately and shall apply to taxa-
6 ble years beginning on or after January 1, 2015; provided, however that:

7 a. the amendments to subdivision 9 of section 400 of the economic
8 development law made by section two of this act shall not affect the
9 repeal of such section and shall be deemed repealed therewith; and

10 b. the amendments to subdivisions (a) and (e) of section 35 of the tax
11 law made by section nine of this act shall not affect the repeal of such
12 section and shall be deemed repealed therewith.

13 PART T

14 Section 1. Section 39 of the tax law is amended by adding a new subdi-
15 vision (c-1) to read as follows:

16 (c-1) Excise tax on telecommunication services. Such business or owner
17 of a business shall be eligible for a credit of the excise tax on tele-
18 communication services imposed by section one hundred eighty-six-e of
19 this chapter that is passed through to such business, pursuant to the
20 provisions referenced in subdivision (k) of this section.

21 § 2. Paragraphs 4 and 6 of subdivision (k) of section 39 of the tax
22 law, as added by section 2 of part A of chapter 68 of the laws of 2013,
23 are amended to read as follows:

24 (4) Article 9-A: section 210, subdivision 47 and subdivision 48.

25 (6) Article 22: section 606, subsection (ww) and subsection (xx).

1 § 3. Section 210 of the tax law is amended by adding a new subdivision
2 48 to read as follows:

3 48. The tax-free NY area excise tax on telecommunication services
4 credit. A taxpayer that is a business or owner of a business that is
5 located in a tax-free NY area approved pursuant to article twenty-one of
6 the economic development law shall be allowed a credit equal to the
7 excise tax on telecommunication services imposed by section one hundred
8 eighty-six-e of this chapter and passed through to such business during
9 the taxable year to the extent not otherwise deducted in computing
10 entire net income. However, any amount of credit not deductible in such
11 taxable year shall be treated as an overpayment of tax to be credited or
12 refunded in accordance with the provisions of section one thousand
13 eighty-six of this chapter. This credit may be claimed only where any
14 tax imposed by such section one hundred eighty-six-e has been separately
15 stated on a bill from the provider of telecommunication services and
16 paid by such business during the taxable year. Unless the taxpayer has a
17 tax-free NY area allocation factor of one hundred percent, the credit
18 allowed under this subdivision for any taxable year shall not reduce the
19 tax due for such year to less than the amount prescribed in paragraph
20 (d) of subdivision one of this section. Provided, however, the
21 provisions of subsection (c) of section one thousand eighty-eight of
22 this chapter notwithstanding, no interest shall be paid thereon.

23 § 4. Section 606 of the tax law is amended by adding a new subsection
24 (xx) to read as follows:

25 (xx) The tax-free NY area excise tax on telecommunication services
26 credit. A taxpayer that is a business or owner of a business that is
27 located in a tax-free NY area approved pursuant to article twenty-one of
28 the economic development law shall be allowed a credit equal to the

1 excise tax on telecommunication services imposed by section one hundred
 2 eighty-six-e of this chapter and passed through to such business during
 3 the taxable year to the extent not otherwise deducted in computing
 4 federal adjusted gross income. This credit may be claimed only where
 5 any tax imposed by such section one hundred eighty-six-e has been sepa-
 6 rately stated on a bill from the provider of telecommunication services
 7 and paid by such taxpayer during the taxable year. If the amount of the
 8 credit allowed under this subsection for any taxable year exceeds the
 9 taxpayer's tax for such year, the excess will be treated as an overpay-
 10 ment to be credited or refunded in accordance with the provisions of
 11 section six hundred eighty-six of this article, provided, however, that
 12 no interest will be paid thereon.

13 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 14 of the tax law is amended by adding a new clause (xxxvii) to read as
 15 follows:

16 <u>(xxxvii) Tax free NY area excise</u>	<u>Amount of credit under</u>
17 <u>tax on telecommunication services</u>	<u>subdivision forty-eight</u>
18 <u>credit under subsection (xx)</u>	<u>of section two hundred ten</u>

19 § 6. This act shall take effect immediately and shall apply to taxable
 20 years beginning on or after January 1, 2014.

21 PART U

22 Section 1. Paragraph (a) of subdivision 44 of section 210 of the tax
 23 law, as amended by section 2 of part T of chapter 59 of the laws of
 24 2012, is amended to read as follows:

25 (a) A taxpayer that has been certified by the commissioner of labor as
 26 a qualified employer pursuant to section twenty-five-a of the labor law

1 shall be allowed a credit against the tax imposed by this article equal
2 to (i) five hundred dollars per month for up to six months for each
3 qualified employee the employer employs in a full-time job or two
4 hundred fifty dollars per month for up to six months for each qualified
5 employee the employer employs in a part-time job of at least twenty
6 hours per week or ten hours per week when the qualified employee is
7 enrolled in high school full-time, and (ii) one thousand dollars for
8 each qualified employee who is employed for at least an additional six
9 months by the qualified employer in a full-time job or five hundred
10 dollars for each qualified employee who is employed for at least an
11 additional six months by the qualified employer in a part-time job of at
12 least twenty hours per week or ten hours per week when the qualified
13 employee is enrolled in high school full-time, and (iii) an additional
14 one thousand dollars for each qualified employee who is employed for at
15 least an additional year after the first year of the employee's employ-
16 ment by the qualified employer in a full-time job or five hundred
17 dollars for each qualified employee who is employed for at least an
18 additional year after the first year of the employee's employment by the
19 qualified employer in a part-time job of at least twenty hours per week
20 or ten hours per week when the qualified employee is enrolled in high
21 school full-time. For purposes of this subdivision, the term "qualified
22 employee" shall have the same meaning as set forth in subdivision (b) of
23 section twenty-five-a of the labor law. The portion of the credit
24 described in subparagraph (i) of this paragraph shall be allowed for the
25 taxable year in which the wages are paid to the qualified employee, and
26 the portion of the credit described in subparagraph (ii) of this para-
27 graph shall be allowed in the taxable year in which the additional six
28 month period ends.

1 § 2. Paragraph 1 of subsection (tt) of section 606 of the tax law, as
2 amended by section 3 of part T of chapter 59 of the laws of 2012, is
3 amended to read as follows:

4 (1) A taxpayer that has been certified by the commissioner of labor as
5 a qualified employer pursuant to section twenty-five-a of the labor law
6 shall be allowed a credit against the tax imposed by this article equal
7 to (A) five hundred dollars per month for up to six months for each
8 qualified employee the employer employs in a full-time job or two
9 hundred fifty dollars per month for up to six months for each qualified
10 employee the employer employs in a part-time job of at least twenty
11 hours per week or ten hours per week when the qualified employee is
12 enrolled in high school full-time, and (B) one thousand dollars for each
13 qualified employee who is employed for at least an additional six months
14 by the qualified employer in a full-time job or five hundred dollars for
15 each qualified employee who is employed for at least an additional six
16 months by the qualified employer in a part-time job of at least twenty
17 hours per week or ten hours per week when the qualified employee is
18 enrolled in high school full-time, and (C) an additional one thousand
19 dollars for each qualified employee who is employed for at least an
20 additional year after the first year of the employee's employment by the
21 qualified employer in a full-time job or five hundred dollars for each
22 qualified employee who is employed for at least an additional year after
23 the first year of the employee's employment by the qualified employer in
24 a part-time job of at least twenty hours per week or ten hours per week
25 when the qualified employee is enrolled in high school full-time. A
26 taxpayer that is a partner in a partnership, member of a limited liabil-
27 ity company or shareholder in an S corporation that has been certified
28 by the commissioner of labor as a qualified employer pursuant to section

1 twenty-five-a of the labor law shall be allowed its pro rata share of
2 the credit earned by the partnership, limited liability company or S
3 corporation. For purposes of this subsection, the term "qualified
4 employee" shall have the same meaning as set forth in subdivision (b) of
5 section twenty-five-a of the labor law. The portion of the credit
6 described in subparagraph (A) of this paragraph shall be allowed for the
7 taxable year in which the wages are paid to the qualified employee, and
8 the portion of the credit described in subparagraph (B) of this para-
9 graph shall be allowed in the taxable year in which the additional six
10 month period ends.

11 § 3. Subdivision (a) of section 25-a of the labor law, as amended by
12 section 2 of part DD of chapter 59 of the laws of 2013, is amended to
13 read as follows:

14 (a) The commissioner is authorized to establish and administer the New
15 York youth works tax credit program to provide tax incentives to employ-
16 ers for employing at risk youth in part-time and full-time positions.
17 There will be five distinct pools of tax incentives. Program one will
18 cover tax incentives allocated for two thousand twelve and two thousand
19 thirteen. Program two will cover tax incentives allocated in two thou-
20 sand fourteen to be used in two thousand fourteen and fifteen. Program
21 three will cover tax incentives allocated in two thousand fifteen to be
22 used in two thousand fifteen and sixteen. Program four will cover tax
23 incentives allocated in two thousand sixteen to be used in two thousand
24 sixteen and seventeen. Program five will cover tax incentives allocated
25 in two thousand seventeen to be used in two thousand seventeen and eigh-
26 teen. The commissioner is authorized to allocate up to twenty-five
27 million dollars of tax credits under program one, [six] ten million
28 dollars of tax credits under program two, [six] ten million dollars of

1 tax credits under program three, [and six] ten million dollars of tax
2 credits under program four, and [six] ten million dollars of tax credits
3 under program five.

4 § 4. This act shall take effect immediately and apply to taxable years
5 beginning on or after January 1, 2014.

6 PART V

7 Section 1. Section 19 of Part W-1 of chapter 109 of the laws of 2006
8 amending the tax law and other laws relating to providing exemptions,
9 reimbursements and credits from various taxes for certain alternative
10 fuels, as amended by section 1 of part D of chapter 59 of the laws of
11 2012, is amended to read as follows:

12 § 19. This act shall take effect immediately; provided, however, that
13 sections one through thirteen of this act shall take effect September 1,
14 2006 and shall be deemed repealed on September 1, [2014] 2016 and such
15 repeal shall apply in accordance with the applicable transitional
16 provisions of sections 1106 and 1217 of the tax law, and shall apply to
17 sales made, fuel compounded or manufactured, and uses occurring on or
18 after such date, and with respect to sections seven through eleven of
19 this act, in accordance with applicable transitional provisions of
20 sections 1106 and 1217 of the tax law; provided, however, that the
21 commissioner of taxation and finance shall be authorized on and after
22 the date this act shall have become a law to adopt and amend any rules
23 or regulations and to take any steps necessary to implement the
24 provisions of this act; provided further that sections fourteen through
25 sixteen of this act shall take effect immediately and shall apply to
26 taxable years beginning on or after January 1, 2006.

1 § 2. This act shall take effect immediately.

2 PART W

3 Section 1. Section 11 of part EE of chapter 63 of the laws of 2000,
4 amending the tax law and other laws relating to modifying the distrib-
5 ution of funds from the motor vehicle fuel excise tax, as amended by
6 section 1 of part M of chapter 61 of the laws of 2011, is amended to
7 read as follows:

8 § 11. Notwithstanding any other law, rule or regulation to the contra-
9 ry, the comptroller is hereby authorized and directed to deposit in
10 equal monthly installments and distribute pursuant to the provisions of
11 subdivision (d) of section 301-j of the tax law amounts listed below to
12 the credit of the dedicated highway and bridge trust fund and the dedi-
13 cated mass transportation trust fund from all motor vehicle receipts now
14 deposited into the general fund pursuant to provisions of the vehicle
15 and traffic law: twenty-eight million four hundred thousand dollars
16 from April 1, 2002 through March 31, 2003, sixty-seven million nine
17 hundred thousand dollars from April 1, 2003 through March 31, 2004, one
18 hundred seventy million one hundred thousand dollars from April 1, 2004
19 through March 31, 2005, and one hundred percent of all motor vehicle
20 receipts pursuant to provisions of the vehicle and traffic law that are
21 not otherwise directed to be deposited in a fund other than the general
22 fund from April 1, 2005 through March 31, 2006, and the same amount each
23 year thereafter until March 31, 2014. From April 1, 2014 through March
24 31, 2015, and each year thereafter, the comptroller shall, on a quarter-
25 ly basis, certify and transfer sixteen million four hundred ninety-eight
26 thousand two hundred fifty-five dollars to the dedicated highway and

1 bridge trust fund and fifteen million six hundred sixty-five thousand
2 two hundred forty-five dollars to the dedicated mass transportation
3 trust fund.

4 § 2. Paragraph (f) of subdivision 4 of section 503 of the vehicle and
5 traffic law, as added by section 1 of part W of chapter 59 of the laws
6 of 2006, is amended to read as follows:

7 (f) Notwithstanding any other provision of law to the contrary,
8 commencing April first, two thousand six and ending March thirty-first,
9 two thousand [seven] fourteen, in each year, the first forty million
10 seven hundred thousand dollars of fees collected pursuant to this subdi-
11 vision and section eleven hundred ninety-nine of this chapter, in the
12 aggregate, shall be paid to the state comptroller who shall deposit such
13 money in the state treasury pursuant to section one hundred twenty-one
14 of the state finance law to the credit of the general fund. Any such
15 fees collected in excess of such amount shall be paid to the credit of
16 the comptroller on account of the dedicated highway and bridge trust
17 fund established pursuant to section eighty-nine-b of the state finance
18 law. [Commencing April first, two thousand seven and ending March thir-
19 ty-first, two thousand eight, and for each such fiscal year thereafter,
20 the first forty million seven hundred thousand dollars of fees collected
21 pursuant to this subdivision and section eleven hundred ninety-nine of
22 this chapter, in the aggregate, shall be paid to the state comptroller
23 who shall deposit such money in the state treasury pursuant to section
24 one hundred twenty-one of the state finance law to the credit of the
25 general fund. Any such fees collected in excess of such amount for each
26 such state fiscal year, shall be paid to the credit of the comptroller
27 on account of the dedicated highway and bridge trust fund established
28 pursuant to section eighty-nine-b of the state finance law.] Commencing

1 April first, two thousand fourteen and for each such fiscal year there-
2 after, any such fees collected pursuant to this subdivision and section
3 eleven hundred ninety-nine of this chapter shall be paid to the credit
4 of the comptroller on account of the dedicated highway and bridge trust
5 fund established pursuant to section eighty-nine-b of the state finance
6 law.

7 § 3. This act shall take effect immediately and shall be deemed to
8 have been in full force and effect on and after April 1, 2014.

9 PART X

10 Section 1. Section 951 of the tax law, as amended by chapter 67 of the
11 laws of 1978, subsection (a) as amended by section 1 of part T of chap-
12 ter 57 of the laws of 2010, subsection (b) as amended by section 5 of
13 part A of chapter 389 of the laws of 1997 and subsection (c) as added by
14 chapter 538 of the laws of 2013, is amended to read as follows:

15 § 951. Applicable internal revenue code provisions... (a) [Dates]
16 General. For purposes of this article, any reference to the internal
17 revenue code means the United States Internal Revenue Code of 1986, with
18 all amendments enacted on or before [July twenty-second, nineteen
19 hundred ninety-eight,] January first, two thousand fourteen and, unless
20 specifically provided otherwise in this article, any reference to Decem-
21 ber thirty-first, nineteen hundred seventy-six or January first, nine-
22 teen hundred seventy-seven contained in the provisions of such code
23 which are applicable to the determination of the tax imposed by this
24 article shall be read as a reference to June thirtieth, nineteen hundred
25 seventy-eight or July first, nineteen hundred seventy-eight, respective-
26 ly. [Notwithstanding the foregoing, the unified credit against the

1 estate tax provided in section two thousand ten of the internal revenue
2 code shall, for purposes of this article, be the amount allowable as if
3 the federal applicable exclusion amount were one million dollars.]

4 (b) [Applicable generation-skipping transfer tax provisions.--Where
5 any reference is made in this article (or in the provisions of the
6 internal revenue code which are made applicable by section two, as
7 amended, of chapter one thousand thirteen of the laws of nineteen
8 hundred sixty-two, to the determination of the tax imposed by this arti-
9 cle and appended thereto) to provisions of the internal revenue code
10 contained in section one thousand twenty-five of this chapter, such
11 internal revenue code provisions contained in such section one thousand
12 twenty-five shall apply to the provisions of this article in the same
13 manner and with the same force and effect as if the language of such
14 provisions of the internal revenue code had been incorporated in full
15 into this article except to the extent that any such provision is either
16 inconsistent with a provision of this article or is not relevant there-
17 to.

18 (c)] Disposition to surviving spouse who is not a United States citi-
19 zen. In the case of an estate where a federal estate tax return is not
20 required for federal estate tax purposes, a disposition to a surviving
21 spouse that would qualify for the federal estate tax marital deduction
22 under section 2056 of the internal revenue code if not for the limita-
23 tion imposed by subsection (d)(1) of such section shall nonetheless be
24 treated as qualifying for the federal estate tax marital deduction for
25 purposes of computing the tax imposed by section nine hundred fifty-two
26 of this part, without requiring that such disposition pass to the
27 surviving spouse in a qualified domestic trust as required for federal
28 purposes by internal revenue code section 2056(d)(2).

1 § 2. Section 952 of the tax law, as added by section 9 of part A of
2 chapter 389 of the laws of 1997, subsection (b) as amended by section 3
3 of part I of chapter 60 of the laws of 2004, is amended to read as
4 follows:

5 § 952. Tax imposed. (a) A tax is hereby imposed on the transfer of the
6 New York estate by every deceased individual who at his or her death was
7 a resident of New York state. [The tax imposed by this subsection shall
8 be an amount equal to the maximum amount allowable against the federal
9 estate tax as a credit for state death taxes under section two thousand
10 eleven of the internal revenue code.]

11 (b) [If the transfer of any part of the estate of a deceased resident
12 includes real or tangible personal property having an actual situs
13 outside New York state, the tax imposed by subsection (a) of this
14 section shall be reduced by an amount determined by multiplying the
15 maximum amount of the federal credit for state death taxes by a frac-
16 tion, the numerator of which is the decedent's federal gross estate
17 reduced by his or her New York gross estate and the denominator of which
18 is his or her federal gross estate.] Computation of tax. The tax imposed
19 by this section shall be computed on the deceased resident's New York
20 taxable estate as follows:

21 In the case of decedents dying on or after April 1, 2014 and before
22 April 1, 2015

23 <u>If the New York taxable estate is:</u>	<u>The tax is:</u>
24 <u>Not over \$500,000</u>	<u>3.06% of taxable estate</u>
25 <u>Over \$500,000 but not over \$1,000,000</u>	<u>\$15,300 plus 5.0% of excess over</u>
26	<u>\$500,000</u>
27 <u>Over \$1,000,000 but not over \$1,500,000</u>	<u>\$40,300 plus 5.5% of excess over</u>

1		<u>\$1,000,000</u>
2	<u>Over \$1,500,000 but not over \$2,100,000</u>	<u>\$67,800 plus 6.5% of excess over</u>
3		<u>\$1,500,000</u>
4	<u>Over \$2,100,000 but not over \$2,600,000</u>	<u>\$106,800 plus 8.0% of excess</u>
5		<u>over \$2,100,000</u>
6	<u>Over \$2,600,000 but not over \$3,100,000</u>	<u>\$146,800 plus 8.8% of excess over</u>
7		<u>\$2,600,000</u>
8	<u>Over \$3,100,000 but not over \$3,600,000</u>	<u>\$190,800 plus 9.6% of excess over</u>
9		<u>\$3,100,000</u>
10	<u>Over \$3,600,000 but not over \$4,100,000</u>	<u>\$238,800 plus 10.4% of excess</u>
11		<u>over \$3,600,000</u>
12	<u>Over \$4,100,000 but not over \$5,100,000</u>	<u>\$290,800 plus 11.2% of excess</u>
13		<u>over \$4,100,000</u>
14	<u>Over \$5,100,000 but not over \$6,100,000</u>	<u>\$402,800 plus 12.0% of excess</u>
15		<u>over \$5,100,000</u>
16	<u>Over \$6,100,000 but not over \$7,100,000</u>	<u>\$522,800 plus 12.8% of excess</u>
17		<u>over \$6,100,000</u>
18	<u>Over \$7,100,000 but not over \$8,100,000</u>	<u>\$650,800 plus 13.6% of excess</u>
19		<u>over \$7,100,000</u>
20	<u>Over \$8,100,000 but not over \$9,100,000</u>	<u>\$786,800 plus 14.4% of excess</u>
21		<u>over \$8,100,000</u>
22	<u>Over \$9,100,000</u>	<u>\$930,800 plus 14.5% of excess over</u>
23		<u>\$9,100,000</u>
24	<u>In the case of decedents dying on or after April 1, 2015 and before</u>	
25	<u>April 1, 2016</u>	
26	<u>If the New York taxable estate is:</u>	<u>The tax is:</u>
27	<u>Not over \$500,000</u>	<u>3.06% of taxable estate</u>
28	<u>Over \$500,000 but not over \$1,000,000</u>	<u>\$15,300 plus 5.0% of excess over</u>

1		<u>\$500,000</u>
2	<u>Over \$1,000,000 but not over \$1,500,000</u>	<u>\$40,300 plus 5.5% of excess over</u>
3		<u>\$1,000,000</u>
4	<u>Over \$1,500,000 but not over \$2,100,000</u>	<u>\$67,800 plus 6.5% of excess</u>
5		<u>over \$1,500,000</u>
6	<u>Over \$2,100,000 but not over \$2,600,000</u>	<u>\$106,800 plus 8.0% of excess</u>
7		<u>over \$2,100,000</u>
8	<u>Over \$2,600,000 but not over \$3,100,000</u>	<u>\$146,800 plus 8.8% of excess</u>
9		<u>over \$2,600,000</u>
10	<u>Over \$3,100,000 but not over \$3,600,000</u>	<u>\$190,800 plus 9.6% of excess</u>
11		<u>over \$3,100,000</u>
12	<u>Over \$3,600,000 but not over \$4,100,000</u>	<u>\$238,800 plus 10.4% of excess</u>
13		<u>over \$3,600,000</u>
14	<u>Over \$4,100,000 but not over \$5,100,000</u>	<u>\$290,800 plus 11.2% of excess</u>
15		<u>over \$4,100,000</u>
16	<u>Over \$5,100,000 but not over \$6,100,000</u>	<u>\$402,800 plus 12.0% of excess</u>
17		<u>over \$5,100,000</u>
18	<u>Over \$6,100,000 but not over \$7,100,000</u>	<u>\$522,800 plus 12.8% of excess</u>
19		<u>over \$6,100,000</u>
20	<u>Over \$7,100,000</u>	<u>\$650,800 plus 13.0% of excess</u>
21		<u>over \$7,100,000</u>
22	<u>In the case of decedents dying on or after April 1, 2016 and before</u>	
23	<u>April 1, 2017</u>	
24	<u>If the New York taxable estate is:</u>	<u>The tax is:</u>
25	<u>Not over \$500,000</u>	<u>3.06% of taxable estate</u>
26	<u>Over \$500,000 but not over \$1,000,000</u>	<u>\$15,300 plus 5.0% of excess over</u>
27		<u>\$500,000</u>
28	<u>Over \$1,000,000 but not over \$1,500,000</u>	<u>\$40,300 plus 5.5% of excess over</u>

1		<u>\$1,000,000</u>
2	<u>Over \$1,500,000 but not over \$2,100,000</u>	<u>\$67,800 plus 6.5% of excess</u>
3		<u>over \$1,500,000</u>
4	<u>Over \$2,100,000 but not over \$2,600,000</u>	<u>\$106,800 plus 8.0% of excess</u>
5		<u>over \$2,100,000</u>
6	<u>Over \$2,600,000 but not over \$3,100,000</u>	<u>\$146,800 plus 8.8% of excess</u>
7		<u>over \$2,600,000</u>
8	<u>Over \$3,100,000 but not over \$3,600,000</u>	<u>\$190,800 plus 9.6% of excess</u>
9		<u>over \$3,100,000</u>
10	<u>Over \$3,600,000 but not over \$4,100,000</u>	<u>\$238,800 plus 10.4% of excess</u>
11		<u>over \$3,600,000</u>
12	<u>Over \$4,100,000 but not over \$5,100,000</u>	<u>\$290,800 plus 11.2% of excess</u>
13		<u>over \$4,100,000</u>
14	<u>Over \$5,100,000</u>	<u>\$402,800 plus 11.5% of excess</u>
15		<u>over \$5,100,000</u>
16	<u>In the case of decedents dying on or after April 1, 2017</u>	
17	<u>If the New York taxable estate is:</u>	<u>The tax is:</u>
18	<u>Not over \$500,000</u>	<u>3.06% of taxable estate</u>
19	<u>Over \$500,000 but not over \$1,000,000</u>	<u>\$15,300 plus 5.0% of excess over</u>
20		<u>\$500,000</u>
21	<u>Over \$1,000,000 but not over \$1,500,000</u>	<u>\$40,300 plus 5.5% of excess over</u>
22		<u>\$1,000,000</u>
23	<u>Over \$1,500,000 but not over \$2,100,000</u>	<u>\$67,800 plus 6.5% of</u>
24		<u>excess over \$1,500,000</u>
25	<u>Over \$2,100,000 but not over \$2,600,000</u>	<u>\$106,800 plus 8.0% of</u>
26		<u>excess over \$2,100,000</u>
27	<u>Over \$2,600,000 but not over \$3,100,000</u>	<u>\$146,800 plus 8.8% of</u>

1 excess over \$2,600,000
2 Over \$3,100,000 but not over \$3,600,000 \$190,800 plus 9.6% of excess
3 over \$3,100,000
4 Over \$3,600,000 \$238,800 plus 10.0% of excess
5 over \$3,600,000

6 (c) Applicable credit amount. (1) A credit of the applicable credit
7 amount shall be allowed against the tax imposed by this section as
8 provided in this subsection. In the case of a decedent whose New York
9 taxable estate is less than or equal to the basic exclusion amount, the
10 applicable credit amount shall be the amount of tax that would be due
11 under subsection (b) of this section on such decedent's New York taxable
12 estate. In the case of a decedent whose New York taxable estate exceeds
13 the basic exclusion amount by an amount that is less than or equal to
14 five percent of such amount, the applicable credit amount shall be the
15 amount of tax that would be due under subsection (b) of this section if
16 the amount on which the tax is to be computed were equal to the basic
17 exclusion amount multiplied by one minus a fraction, the numerator of
18 which is the decedent's New York taxable estate minus the basic exclu-
19 sion amount, and the denominator of which is five percent of the basic
20 exclusion amount. Provided, however, that the credit allowed by this
21 subsection shall not exceed the tax imposed by this section, and no
22 credit shall be allowed to the estate of any decedent whose New York
23 taxable estate exceeds one hundred five percent of the basic exclusion
24 amount.

25 (2) (A) For purposes of this section, the basic exclusion amount shall
26 be as follows:
27 In the case of decedents dying on or after: The basic exclusion amount
28 is:

1	<u>April 1, 2014 and before April 1, 2015</u>	<u>\$ 2,062,500</u>
2	<u>April 1, 2015 and before April 1, 2016</u>	<u>3,125,000</u>
3	<u>April 1, 2016 and before April 1, 2017</u>	<u>4,187,500</u>
4	<u>April 1, 2017 and before January 1, 2019</u>	<u>5,250,000</u>

5 (B) In the case of any decedent dying on or after January first, two
6 thousand nineteen and before January first, two thousand twenty, the
7 basic exclusion amount in subparagraph (A) of this paragraph for dece-
8 dents dying on and after April first, two thousand seventeen and before
9 January first, two thousand nineteen shall be increased by an amount
10 equal to:

11 (i) such dollar amount, multiplied by

12 (ii) the cost-of-living adjustment, which shall be the percentage by
13 which the consumer price index for the preceding calendar year exceeds
14 the consumer price index for calendar year two thousand twelve.

15 (C) In the case of any decedent dying in a calendar year beginning on
16 or after January first, two thousand twenty, the basic exclusion amount
17 for decedents dying in the preceding calendar year shall be increased by
18 an amount equal to:

19 (i) such dollar amount, multiplied by

20 (ii) the cost-of-living adjustment, which shall be the percentage by
21 which the consumer price index for the preceding calendar year exceeds
22 the consumer price index for calendar year two thousand eighteen.

23 (D) (i) For purposes of this paragraph, "consumer price index" means
24 the most recent consumer price index for all-urban consumers published
25 by the United States department of labor.

26 (ii) If any amount adjusted under this paragraph is not a multiple of
27 ten thousand dollars, such amount shall be rounded to the nearest multi-
28 ple of ten thousand dollars.

1 § 3. Section 954 of the tax law, as amended by chapter 67 of the laws
2 of 1978, paragraph 1 of subsection (a) as amended by section 10 and
3 subsection (b) as amended by section 11 of part A of chapter 389 of the
4 laws of 1997, subsection (c) as amended by chapter 916 of the laws of
5 1982, paragraph 1 of subsection (c) as amended by section 3 of part A of
6 chapter 407 of the laws of 1999 and such subsection (c) as relettered by
7 section 12 of part A of chapter 389 of the laws of 1997, is amended to
8 read as follows:

9 § 954. Resident's New York gross estate. (a) General.-- The New York
10 gross estate of a deceased resident means his or her federal gross
11 estate as defined in the internal revenue code (whether or not a federal
12 estate tax return is required to be filed) modified as follows:

13 (1) Reduced by the value of real or tangible personal property having
14 an actual situs outside New York state.

15 (2) Increased by the amount determined under section nine hundred
16 fifty-seven of this part (relating to limited powers of appointment
17 created prior to September first, nineteen hundred thirty).

18 (3) Increased by the amount of any taxable gift under section 2503 of
19 the internal revenue code, on or after April first, two thousand four-
20 teen, if the decedent was a resident of New York state at the time such
21 gift was made.

22 (b) Valuation. -- (1) The New York gross estate shall be valued as of
23 the time of the decedent's death, except that if a federal estate tax
24 return is filed and the alternate valuation under section 2032 of the
25 internal revenue code is elected for federal estate tax purposes, the
26 New York gross estate shall be valued as of the applicable federal valu-
27 ation date or dates. Any real property qualified under section two thou-
28 sand thirty-two-A of the internal revenue code shall have the same value

1 for purposes of the New York gross estate as it has for federal estate
2 tax purposes.

3 (2) If such alternate valuation could have been elected pursuant to
4 paragraph one of this subsection, but for the absence of an estate
5 sufficient to require the filing of a federal return, the New York gross
6 estate may, upon the election of the executor, be valued as of the
7 federal valuation date or dates which would have applied if a federal
8 return had been filed. However, no election may be made under this para-
9 graph unless such election will decrease the value of the New York gross
10 estate and the amount of tax imposed by this article (reduced by credits
11 allowable against such tax). Any election made under this paragraph
12 shall be irrevocable. The election allowed by this paragraph shall be
13 made no later than the date prescribed for the filing of the return
14 under this article (including extensions) or any time thereafter as the
15 commissioner may prescribe.

16 (c) Cross references.-- (1) For provisions of the internal revenue
17 code defining the federal gross estate, see:

18 Sec. 2031. Definition of gross estate.

19 Sec. 2032. Alternate valuation.

20 Sec. 2032A. Valuation of certain farm, etc., real property.

21 Sec. 2033. Property in which the decedent had an interest.

22 Sec. 2034. Dower or curtesy interest.

23 Sec. 2035. Adjustments for gifts made within three years of decedent's
24 death.

25 Sec. 2036. Transfers with retained life estate.

26 Sec. 2037. Transfers taking effect at death.

27 Sec. 2038. Revocable transfers.

28 Sec. 2039. Annuities.

1 Sec. 2040. Joint interests.

2 Sec. 2041. Powers of appointment.

3 Sec. 2042. Proceeds of life insurance.

4 Sec. 2043. Transfers for insufficient consideration.

5 Sec. 2044. Certain property for which marital deduction was previously
6 allowed.

7 Sec. 2045. Prior interests.

8 Sec. 2046. Disclaimers.

9 (2) For provisions of the internal revenue code which, except to the
10 extent they are inconsistent with the provisions of this article, are
11 pertinent to the computation of taxable gifts and the tax under this
12 article, see:

13 Sec. 2503. Taxable gifts.

14 Sec. 2511. Transfers in general.

15 Sec. 2512. Valuation of gifts.

16 Sec. 2513. Gift by husband or wife to third party.

17 Sec. 2514. Powers of appointment.

18 Sec. 2516. Certain property settlements.

19 Sec. 2518. Disclaimers.

20 Sec. 2519. Dispositions of certain life estates.

21 Sec. 2522. Charitable and similar gifts.

22 Sec. 2523. Gift to spouse.

23 Sec. 2524. Extent of deductions.

24 Sec. 2701. Special valuation rules in case of transfers of certain
25 interests in corporations or partnerships.

26 Sec. 2702. Special valuation rules in case of transfers of interests
27 in trusts.

28 Sec. 2703. Certain rights and restrictions disregarded.

1 Sec. 2704. Treatment of certain lapsing rights and restrictions.

2 Sec. 7872. Treatment of loans with below-market interest rates.

3 (3) For effect of federal estate tax determinations, see section nine
4 hundred sixty-one of this article.

5 § 4. The tax law is amended by adding a new section 955 to read as
6 follows:

7 § 955. Resident's New York taxable estate. (a) General.--The taxable
8 estate of a New York resident shall be his or her New York gross estate,
9 minus the deductions allowable for determining his or her federal taxa-
10 ble estate under the internal revenue code (whether or not a federal
11 estate tax return is required to be filed), except to the extent that
12 such deductions relate to real or tangible personal property situated
13 outside New York state.

14 (b) Waiver of deductions.-- If the right to any deduction otherwise
15 allowable is waived for federal estate tax purposes, it shall be consid-
16 ered waived for New York estate tax purposes.

17 (c) Qualified terminable interest property election.-- Except as
18 otherwise provided in this subsection, the election referred to in para-
19 graph (7) of subsection (b) of section 2056 of the internal revenue code
20 shall not be allowed under this article unless such election was made
21 with respect to the federal estate tax return required to be filed under
22 the provisions of the internal revenue code. If such election was made
23 for the purposes of the federal estate tax, then such election must also
24 be made by the executor on the return of the tax imposed by this arti-
25 cle. Where no federal estate tax return is required to be filed, the
26 executor may make the election referred to in such paragraph (7) with
27 respect to the tax imposed by this article on the return of the tax

1 imposed by this article. Any election made under this subsection shall
2 be irrevocable.

3 (d) Cross references.-- For provisions of the internal revenue code
4 specifying the deductions allowable for federal estate tax purposes,
5 see:

6 Sec.2032(b). Alternate valuation--special rule for deductions.

7 Sec.2046. Disclaimers.

8 Sec.2053. Expenses, indebtedness, and taxes.

9 Sec.2054. Losses.

10 Sec.2055. Transfers for public, charitable, and religious uses.

11 Sec.2056. Bequests, etc., to surviving spouse.

12 § 5. Subsections (b) and (d) of section 960 of the tax law, subsection
13 (b) as amended by section 4 of part I of chapter 60 of the laws of 2004
14 and subsection (d) as added by section 190 of the laws of 1980 and
15 relettered by section 15 of part A of chapter 389 of the laws of 1997,
16 are amended to read as follows:

17 (b) Computation of tax.--The tax imposed under subsection (a) shall be
18 the same as the tax that would be due, if the decedent had died a resi-
19 dent, under subsection (a) of section nine hundred fifty-two, except
20 that for purposes of [allocating] computing the tax under subsection (b)
21 of section nine hundred fifty-two, "New York [gross] taxable estate"[,
22 in the numerator in subsection (b) of section nine hundred fifty-two,]
23 shall not include the value of any intangible personal property other-
24 wise includible in the deceased individual's New York gross estate, and
25 shall not include the amount of any gift unless such gift consists of
26 real or tangible personal property having an actual situs in New York
27 state or intangible personal property employed in a business, trade or
28 profession carried on in this state.

1 (d) Works of art on loan for exhibition. Notwithstanding the forego-
2 ing, the tax imposed under subsection (a) of this section on the trans-
3 fer, from any deceased individual who at his or her death was not a
4 resident of the state of New York, of works of art having an actual
5 situs in the state of New York and either (i) includible in his or her
6 federal gross estate or (ii) which would be includible in his or her New
7 York gross estate pursuant to section nine hundred fifty-seven (relating
8 to certain limited powers of appointment) if he or she were a resident
9 of the state of New York, shall [be an amount equal to the transfer
10 taxes or death taxes of every character in respect of personal property
11 which would be imposed on such transfer or such works of art if the
12 actual situs of such works of art were the state or territory of the
13 United States of residence of such individual] not be subject to the tax
14 imposed by this section if such works of art are [sited in the state of
15 New York solely for exhibition purposes,] loaned [for such] to a public
16 gallery located within the state of New York solely for exhibition
17 purposes [to a public gallery or museum (] but only if no part of the
18 net earnings of [which] such public gallery or museum inure to the bene-
19 fit of any private stockholder or individual[]], and [(], at the time of
20 the death of such individual[])] such works of art are on exhibition or
21 en route to or from exhibition in such a public gallery or museum.
22 [Provided however, that if the state or territory of the United States
23 of residence of such individual imposes transfer taxes or death taxes on
24 such works of art which are sited in the state of New York for the
25 purposes herein specified, then such works of art shall not be subject
26 to the tax imposed by this section.]

1 § 6. Subsection (a) of section 971 of the tax law, as added by section
2 17 of part A of chapter 389 of the laws of 1997, is amended to read as
3 follows:

4 (a) Returns by executor. (1) Residents. In the case of the estate of
5 every individual dying on or after [February first, two thousand] April
6 first, two thousand fourteen, who at his or her death was a resident of
7 New York state, [if] his or her executor [is required to file a return
8 with respect to the federal estate tax (determined as if the limitation
9 contained in subsection (a) of section nine hundred fifty-one of this
10 article were applicable in determining whether such executor is required
11 to file such federal return), the executor] shall make a return with
12 respect to the estate tax imposed by section nine hundred fifty-two of
13 this article if the decedent's federal gross estate, increased by the
14 amount of any gift includible in his or her New York gross estate,
15 exceeds the basic exclusion amount applicable to the decedent's date of
16 death in paragraph two of subsection (c) of section nine hundred fifty-
17 two of this article.

18 (2) Nonresidents. In the case of the estate of every individual dying
19 on or after April first, two thousand fourteen, who at his or her death
20 was not a resident of New York state, [if his or her executor is
21 required to file a return with respect to the federal estate tax (deter-
22 mined as if the limitation contained in subsection (a) of section nine
23 hundred fifty-one of this article were applicable in determining whether
24 such executor is required to file such federal return) and] if such
25 individual's federal gross estate includes real or tangible personal
26 property having an actual situs in New York state, the executor shall
27 make a return with respect to the estate tax imposed by section nine
28 hundred sixty of this article if the decedent's federal gross estate,

1 increased by the amount of any gift includible in his or her New York
2 gross estate, exceeds the basic exclusion amount applicable to the
3 decedent's date of death in paragraph two of subsection (c) of section
4 nine hundred fifty-two of this article.

5 § 7. Subsection (a) of section 997 of the tax law, as amended by
6 section 27 of part A of chapter 389 of the laws of 1997, is amended to
7 read as follows:

8 (a) The phrase "adjusted gross estate" shall be read as "adjusted
9 federal gross estate determined without reference to paragraphs (1)
10 [and], (2) and (3) of subsection (a) of section nine hundred fifty-four"
11 of this article.

12 § 8. Article 26-B of the tax law is REPEALED.

13 § 9. Section 2 of chapter 1013 of the laws of 1962 amending the tax
14 law relating to imposing a tax on the transfer of estates of decedents
15 dying on or after April first, nineteen hundred sixty-three is REPEALED.

16 § 10. The tax law is amended by adding a new section 999-a to read as
17 follows:

18 § 999-a. Appendix to article twenty-six. The following provisions of
19 the United States Internal Revenue Code of 1986, with all amendments
20 enacted on or before January first, two thousand fourteen, shall apply
21 to the tax imposed by this article, to the extent specified in this
22 article.

23 § 2031. Definition of Gross Estate.

24 (a) General.--The value of the gross estate of the decedent shall be
25 determined by including to the extent provided for in this part, the
26 value at the time of his death of all property, real or personal, tangi-
27 ble or intangible, wherever situated.

1 (b) Valuation of unlisted stock and securities.--In the case of stock
2 and securities of a corporation the value of which, by reason of their
3 not being listed on an exchange and by reason of the absence of sales
4 thereof, cannot be determined with reference to bid and asked prices or
5 with reference to sales prices, the value thereof shall be determined by
6 taking into consideration, in addition to all other factors, the value
7 of stock or securities of corporations engaged in the same or a similar
8 line of business which are listed on an exchange.

9 (c) Estate tax with respect to land subject to a qualified conserva-
10 tion easement.--

11 (1) In general.--If the executor makes the election described in para-
12 graph (6), then, except as otherwise provided in this subsection, there
13 shall be excluded from the gross estate the lesser of--

14 (A) the applicable percentage of the value of land subject to a quali-
15 fied conservation easement, reduced by the amount of any deduction under
16 section 2055(f) with respect to such land, or

17 (B) the exclusion limitation.

18 (2) Applicable percentage.--For purposes of paragraph (1), the term
19 "applicable percentage" means 40 percent reduced (but not below zero) by
20 2 percentage points for each percentage point (or fraction thereof) by
21 which the value of the qualified conservation easement is less than 30
22 percent of the value of the land (determined without regard to the value
23 of such easement and reduced by the value of any retained development
24 right (as defined in paragraph (5)). The values taken into account under
25 the preceding sentence shall be such values as of the date of the
26 contribution referred to in paragraph (8)(B).

1 (3) Exclusion limitation.--For purposes of paragraph (1), the exclu-
 2 sion limitation is the limitation determined in accordance with the
 3 following table:

4 In the case of estates of decedents dying The exclusion limitation
 5 during: is:

6	<u>1998.....</u>	<u>100,000</u>
7	<u>1999.....</u>	<u>200,000</u>
8	<u>2000.....</u>	<u>300,000</u>
9	<u>2001.....</u>	<u>400,000</u>
10	<u>2002 or thereafter.....</u>	<u>500,000</u>

11 (4) Treatment of certain indebtedness.--

12 (A) In general.--The exclusion provided in paragraph (1) shall not
 13 apply to the extent that the land is debt-financed property.

14 (B) Definitions.--For purposes of this paragraph--

15 (i) Debt-financed property.--The term "debt-financed property" means
 16 any property with respect to which there is an acquisition indebtedness
 17 (as defined in clause (ii)) on the date of the decedent's death.

18 (ii) Acquisition indebtedness.--The term "acquisition indebtedness"
 19 means, with respect to debt-financed property, the unpaid amount of--

20 (I) the indebtedness incurred by the donor in acquiring such property,

21 (II) the indebtedness incurred before the acquisition of such property
 22 if such indebtedness would not have been incurred but for such acquisi-
 23 tion,

24 (III) the indebtedness incurred after the acquisition of such property
 25 if such indebtedness would not have been incurred but for such acquisi-
 26 tion and the incurrence of such indebtedness was reasonably foreseeable
 27 at the time of such acquisition, and

1 (IV) the extension, renewal, or refinancing of an acquisition indebt-
2 edness.

3 (5) Treatment of retained development right.--

4 (A) In general.--Paragraph (1) shall not apply to the value of any
5 development right retained by the donor in the conveyance of a qualified
6 conservation easement.

7 (B) Termination of retained development right.--If every person in
8 being who has an interest (whether or not in possession) in the land
9 executes an agreement to extinguish permanently some or all of any
10 development rights (as defined in subparagraph (D)) retained by the
11 donor on or before the date for filing the return of the tax imposed by
12 section 2001, then any tax imposed by section 2001 shall be reduced
13 accordingly. Such agreement shall be filed with the return of the tax
14 imposed by section 2001. The agreement shall be in such form as the
15 Secretary shall prescribe.

16 (C) Additional tax.--Any failure to implement the agreement described
17 in subparagraph (B) not later than the earlier of--

18 (i) the date which is 2 years after the date of the decedent's death,
19 or

20 (ii) the date of the sale of such land subject to the qualified
21 conservation easement,

22 shall result in the imposition of an additional tax in the amount of
23 the tax which would have been due on the retained development rights
24 subject to such agreement. Such additional tax shall be due and payable
25 on the last day of the 6th month following such date.

26 (D) Development right defined.--For purposes of this paragraph, the
27 term "development right" means any right to use the land subject to the
28 qualified conservation easement in which such right is retained for any

1 commercial purpose which is not subordinate to and directly supportive
2 of the use of such land as a farm for farming purposes (within the mean-
3 ing of section 2032A(e)(5)).

4 (6) Election.--The election under this subsection shall be made on or
5 before the due date (including extensions) for filing the return of tax
6 imposed by section 2001 and shall be made on such return. Such an
7 election, once made, shall be irrevocable.

8 (7) Calculation of estate tax due.--An executor making the election
9 described in paragraph (6) shall, for purposes of calculating the amount
10 of tax imposed by section 2001, include the value of any development
11 right (as defined in paragraph (5)) retained by the donor in the convey-
12 ance of such qualified conservation easement. The computation of tax on
13 any retained development right prescribed in this paragraph shall be
14 done in such manner and on such forms as the Secretary shall prescribe.

15 (8) Definitions.--For purposes of this subsection--

16 (A) Land subject to a qualified conservation easement.--The term "land
17 subject to a qualified conservation easement" means land--

18 (i) which is located in the United States or any possession of the
19 United States,

20 (ii) which was owned by the decedent or a member of the decedent's
21 family at all times during the 3-year period ending on the date of the
22 decedent's death, and

23 (iii) with respect to which a qualified conservation easement has been
24 made by an individual described in subparagraph (C), as of the date of
25 the election described in paragraph (6).

26 (B) Qualified conservation easement.--The term "qualified conservation
27 easement" means a qualified conservation contribution (as defined in
28 section 170(h)(1)) of a qualified real property interest (as defined in

1 section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A)
2 shall not apply, and the restriction on the use of such interest
3 described in section 170(h)(2)(C) shall include a prohibition on more
4 than a de minimis use for a commercial recreational activity.

5 (C) Individual described.--An individual is described in this subpara-
6 graph if such individual is--

7 (i) the decedent,

8 (ii) a member of the decedent's family,

9 (iii) the executor of the decedent's estate, or

10 (iv) the trustee of a trust the corpus of which includes the land to
11 be subject to the qualified conservation easement.

12 (D) Member of family.--The term "member of the decedent's family"
13 means any member of the family (as defined in section 2032A(e)(2)) of
14 the decedent.

15 (9) Treatment of easements granted after death.--In any case in which
16 the qualified conservation easement is granted after the date of the
17 decedent's death and on or before the due date (including extensions)
18 for filing the return of tax imposed by section 2001, the deduction
19 under section 2055(f) with respect to such easement shall be allowed to
20 the estate but only if no charitable deduction is allowed under chapter
21 1 to any person with respect to the grant of such easement.

22 (10) Application of this section to interests in partnerships, corpo-
23 rations, and trusts.--This section shall apply to an interest in a part-
24 nership, corporation, or trust if at least 30 percent of the entity is
25 owned (directly or indirectly) by the decedent, as determined under the
26 rules described in section 2057(e)(3).

27 (d) Cross reference.--

1 For executor's right to be furnished on request a statement regarding
2 any valuation made by the Secretary within the gross estate, see section
3 7517.

4 § 2032. Alternate Valuation.

5 (a) General.--The value of the gross estate may be determined, if the
6 executor so elects, by valuing all the property included in the gross
7 estate as follows:

8 (1) In the case of property distributed, sold, exchanged, or otherwise
9 disposed of, within 6 months after the decedent's death such property
10 shall be valued as of the date of distribution, sale, exchange, or other
11 disposition.

12 (2) In the case of property not distributed, sold, exchanged, or
13 otherwise disposed of, within 6 months after the decedent's death such
14 property shall be valued as of the date 6 months after the decedent's
15 death.

16 (3) Any interest or estate which is affected by mere lapse of time
17 shall be included at its value as of the time of death (instead of the
18 later date) with adjustment for any difference in its value as of the
19 later date not due to mere lapse of time.

20 (b) Special rules.--No deduction under this chapter of any item shall
21 be allowed if allowance for such items is in effect given by the alter-
22 nate valuation provided by this section. Wherever in any other
23 subsection or section of this chapter reference is made to the value of
24 property at the time of the decedent's death, such reference shall be
25 deemed to refer to the value of such property used in determining the
26 value of the gross estate. In case of an election made by the executor
27 under this section, then--

1 (1) for purposes of the charitable deduction under section 2055 or
2 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein,
3 and

4 (2) for the purpose of the marital deduction under section 2056, any
5 interest in property passing to the surviving spouse,
6 shall be valued as of the date of the decedent's death with adjustment
7 for any difference in value (not due to mere lapse of time or the occur-
8 rence or nonoccurrence of a contingency) of the property as of the date
9 6 months after the decedent's death (substituting, in the case of prop-
10 erty distributed by the executor or trustee, or sold, exchanged, or
11 otherwise disposed of, during such 6-month period, the date thereof).

12 (c) Election must decrease gross estate and estate tax.--No election
13 may be made under this section with respect to an estate unless such
14 election will decrease--

15 (1) the value of the gross estate, and

16 (2) the sum of the tax imposed by this chapter and the tax imposed by
17 chapter 13 with respect to property includible in the decedent's gross
18 estate (reduced by credits allowable against such taxes).

19 (d) Election.--

20 (1) In general.--The election provided for in this section shall be
21 made by the executor on the return of the tax imposed by this chapter.
22 Such election, once made, shall be irrevocable.

23 (2) Exception.--No election may be made under this section if such
24 return is filed more than 1 year after the time prescribed by law
25 (including extensions) for filing such return.

26 § 2032A. Valuation of Certain Farm, Etc., Real Property.

27 (a) Value based on use under which property qualifies.--

28 (1) General rule.--If--

1 (A) the decedent was (at the time of his death) a citizen or resident
2 of the United States, and

3 (B) the executor elects the application of this section and files the
4 agreement referred to in subsection (d)(2),

5 then, for purposes of this chapter, the value of qualified real prop-
6 erty shall be its value for the use under which it qualifies, under
7 subsection (b), as qualified real property.

8 (2) Limitation on aggregate reduction in fair market value.--The
9 aggregate decrease in the value of qualified real property taken into
10 account for purposes of this chapter which results from the application
11 of paragraph (1) with respect to any decedent shall not exceed \$750,000.

12 (3) Inflation adjustment.--In the case of estates of decedents dying
13 in a calendar year after 1998, the \$750,000 amount contained in para-
14 graph (2) shall be increased by an amount equal to--

15 (A) \$750,000, multiplied by

16 (B) the cost-of-living adjustment determined under section 1(f)(3) for
17 such calendar year by substituting "calendar year 1997" for "calendar
18 year 1992" in subparagraph (B) thereof.

19 If any amount as adjusted under the preceding sentence is not a multi-
20 ple of \$10,000, such amount shall be rounded to the next lowest multiple
21 of \$10,000.

22 (b) Qualified real property.--

23 (1) In general.--For purposes of this section, the term "qualified
24 real property" means real property located in the United States which
25 was acquired from or passed from the decedent to a qualified heir of the
26 decedent and which, on the date of the decedent's death, was being used
27 for a qualified use by the decedent or a member of the decedent's fami-
28 ly, but only if--

1 (A) 50 percent or more of the adjusted value of the gross estate
2 consists of the adjusted value of real or personal property which--

3 (i) on the date of the decedent's death, was being used for a quali-
4 fied use by the decedent or a member of the decedent's family, and

5 (ii) was acquired from or passed from the decedent to a qualified heir
6 of the decedent.

7 (B) 25 percent or more of the adjusted value of the gross estate
8 consists of the adjusted value of real property which meets the require-
9 ments of subparagraphs (A)(ii) and (C),

10 (C) during the 8-year period ending on the date of the decedent's
11 death there have been periods aggregating 5 years or more during which--

12 (i) such real property was owned by the decedent or a member of the
13 decedent's family and used for a qualified use by the decedent or a
14 member of the decedent's family, and

15 (ii) there was material participation by the decedent or a member of
16 the decedent's family in the operation of the farm or other business,
17 and

18 (D) such real property is designated in the agreement referred to in
19 subsection (d)(2).

20 (2) Qualified use.--For purposes of this section, the term "qualified
21 use" means the devotion of the property to any of the following:

22 (A) use as a farm for farming purposes, or

23 (B) use in a trade or business other than the trade or business of
24 farming.

25 (3) Adjusted value.--For purposes of paragraph (1), the term "adjusted
26 value" means--

27 (A) in the case of the gross estate, the value of the gross estate for
28 purposes of this chapter (determined without regard to this section),

1 reduced by any amounts allowable as a deduction under paragraph (4) of
2 section 2053(a), or

3 (B) in the case of any real or personal property, the value of such
4 property for purposes of this chapter (determined without regard to this
5 section), reduced by any amounts allowable as a deduction in respect of
6 such property under paragraph (4) of section 2053(a).

7 (4) Decedents who are retired or disabled.--

8 (A) In general.--If, on the date of the decedent's death, the require-
9 ments of paragraph (1)(C)(ii) with respect to the decedent for any prop-
10 erty are not met, and the decedent--

11 (i) was receiving old-age benefits under title II of the Social Secu-
12 arity Act for a continuous period ending on such date, or

13 (ii) was disabled for a continuous period ending on such date,
14 then paragraph (1)(C)(ii) shall be applied with respect to such prop-
15 erty by substituting "the date on which the longer of such continuous
16 periods began" for "the date of the decedent's death" in paragraph
17 (1)(C).

18 (B) Disabled defined.--For purposes of subparagraph (A), an individual
19 shall be disabled if such individual has a mental or physical impairment
20 which renders him unable to materially participate in the operation of
21 the farm or other business.

22 (C) Coordination with recapture.--For purposes of subsection
23 (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with
24 respect to any decedent by reason of subparagraph (A), the period ending
25 on the date on which the continuous period taken into account under
26 subparagraph (A) began shall be treated as the period immediately before
27 the decedent's death.

28 (5) Special rules for surviving spouses.--

1 (A) In general.--If property is qualified real property with respect
2 to a decedent (hereinafter in this paragraph referred to as the "first
3 decedent") and such property was acquired from or passed from the first
4 decedent to the surviving spouse of the first decedent, for purposes of
5 applying this subsection and subsection (c) in the case of the estate of
6 such surviving spouse, active management of the farm or other business
7 by the surviving spouse shall be treated as material participation by
8 such surviving spouse in the operation of such farm or business.

9 (B) Special rule.--For the purposes of subparagraph (A), the determi-
10 nation of whether property is qualified real property with respect to
11 the first decedent shall be made without regard to subparagraph (D) of
12 paragraph (1) and without regard to whether an election under this
13 section was made.

14 (C) Coordination with paragraph (4).--In any case in which to do so
15 will enable the requirements of paragraph (1)(C)(ii) to be met with
16 respect to the surviving spouse, this subsection and subsection (c)
17 shall be applied by taking into account any application of paragraph
18 (4).

19 (c) Tax treatment of dispositions and failures to use for qualified
20 use.--

21 (1) Imposition of additional estate tax.--If, within 10 years after
22 the decedent's death and before the death of the qualified heir--

23 (A) the qualified heir disposes of any interest in qualified real
24 property (other than by a disposition to a member of his family), or

25 (B) the qualified heir ceases to use for the qualified use the quali-
26 fied real property which was acquired (or passed) from the decedent,
27 then, there is hereby imposed an additional estate tax.

28 (2) Amount of additional tax.--

1 (A) In general.--The amount of the additional tax imposed by paragraph
2 (1) with respect to any interest shall be the amount equal to the lesser
3 of--

4 (i) the adjusted tax difference attributable to such interest, or

5 (ii) the excess of the amount realized with respect to the interest
6 (or, in any case other than a sale or exchange at arm's length, the fair
7 market value of the interest) over the value of the interest determined
8 under subsection (a).

9 (B) Adjusted tax difference attributable to interest.--For purposes of
10 subparagraph (A), the adjusted tax difference attributable to an inter-
11 est is the amount which bears the same ratio to the adjusted tax differ-
12 ence with respect to the estate (determined under subparagraph (C)) as--

13 (i) the excess of the value of such interest for purposes of this
14 chapter (determined without regard to subsection (a)) over the value of
15 such interest determined under subsection (a), bears to

16 (ii) a similar excess determined for all qualified real property.

17 (C) Adjusted tax difference with respect to the estate.--For purposes
18 of subparagraph (B), the term "adjusted tax difference with respect to
19 the estate" means the excess of what would have been the estate tax
20 liability but for subsection (a) over the estate tax liability. For
21 purposes of this subparagraph, the term "estate tax liability" means the
22 tax imposed by section 2001 reduced by the credits allowable against
23 such tax.

24 (D) Partial dispositions.--For purposes of this paragraph, where the
25 qualified heir disposes of a portion of the interest acquired by (or
26 passing to) such heir (or a predecessor qualified heir) or there is a
27 cessation of use of such a portion--

1 (i) the value determined under subsection (a) taken into account under
2 subparagraph (A)(ii) with respect to such portion shall be its pro rata
3 share of such value of such interest, and

4 (ii) the adjusted tax difference attributable to the interest taken
5 into account with respect to the transaction involving the second or any
6 succeeding portion shall be reduced by the amount of the tax imposed by
7 this subsection with respect to all prior transactions involving
8 portions of such interest.

9 (E) Special rule for disposition of timber.--In the case of qualified
10 woodland to which an election under subsection (e)(13)(A) applies, if
11 the qualified heir disposes of (or severs) any standing timber on such
12 qualified woodland--

13 (i) such disposition (or severance) shall be treated as a disposition
14 of a portion of the interest of the qualified heir in such property, and

15 (ii) the amount of the additional tax imposed by paragraph (1) with
16 respect to such disposition shall be an amount equal to the lesser of--

17 (I) the amount realized on such disposition (or, in any case other
18 than a sale or exchange at arm's length, the fair market value of the
19 portion of the interest disposed or severed), or

20 (II) the amount of additional tax determined under this paragraph
21 (without regard to this subparagraph) if the entire interest of the
22 qualified heir in the qualified woodland had been disposed of, less the
23 sum of the amount of the additional tax imposed with respect to all
24 prior transactions involving such woodland to which this subparagraph
25 applied.

26 For purposes of the preceding sentence, the disposition of a right to
27 sever shall be treated as the disposition of the standing timber. The
28 amount of additional tax imposed under paragraph (1) in any case in

1 which a qualified heir disposes of his entire interest in the qualified
2 woodland shall be reduced by any amount determined under this subpara-
3 graph with respect to such woodland.

4 (3) Only 1 additional tax imposed with respect to any 1 portion.--In
5 the case of an interest acquired from (or passing from) any decedent, if
6 subparagraph (A) or (B) of paragraph (1) applies to any portion of an
7 interest, subparagraph (B) or (A), as the case may be, of paragraph (1)
8 shall not apply with respect to the same portion of such interest.

9 (4) Due date.--The additional tax imposed by this subsection shall
10 become due and payable on the day which is 6 months after the date of
11 the disposition or cessation referred to in paragraph (1).

12 (5) Liability for tax; furnishing of bond.--The qualified heir shall
13 be personally liable for the additional tax imposed by this subsection
14 with respect to his interest unless the heir has furnished bond which
15 meets the requirements of subsection (e)(11).

16 (6) Cessation of qualified use.--For purposes of paragraph (1)(B),
17 real property shall cease to be used for the qualified use if--

18 (A) such property ceases to be used for the qualified use set forth in
19 subparagraph (A) or (B) of subsection (b)(2) under which the property
20 qualified under subsection (b), or

21 (B) during any period of 8 years ending after the date of the
22 decedent's death and before the date of the death of the qualified heir,
23 there had been periods aggregating more than 3 years during which--

24 (i) in the case of periods during which the property was held by the
25 decedent, there was no material participation by the decedent or any
26 member of his family in the operation of the farm or other business, and

27 (ii) in the case of periods during which the property was held by any
28 qualified heir, there was no material participation by such qualified

1 heir or any member of his family in the operation of the farm or other
2 business.

3 (7) Special rules.--

4 (A) No tax if use begins within 2 years.--If the date on which the
5 qualified heir begins to use the qualified real property (hereinafter in
6 this subparagraph referred to as the commencement date) is before the
7 date 2 years after the decedent's death--

8 (i) no tax shall be imposed under paragraph (1) by reason of the fail-
9 ure by the qualified heir to so use such property before the commence-
10 ment date, and

11 (ii) the 10-year period under paragraph (1) shall be extended by the
12 period after the decedent's death and before the commencement date.

13 (B) Active management by eligible qualified heir treated as material
14 participation.--For purposes of paragraph (6)(B)(ii), the active manage-
15 ment of a farm or other business by--

16 (i) an eligible qualified heir, or

17 (ii) a fiduciary of an eligible qualified heir described in clause
18 (ii) or (iii) of subparagraph (C),

19 shall be treated as material participation by such eligible qualified
20 heir in the operation of such farm or business. In the case of an eligi-
21 ble qualified heir described in clause (ii), (iii), or (iv) of subpara-
22 graph (C), the preceding sentence shall apply only during periods during
23 which such heir meets the requirements of such clause.

24 (C) Eligible qualified heir.--For purposes of this paragraph, the term
25 "eligible qualified heir" means a qualified heir who--

26 (i) is the surviving spouse of the decedent,

27 (ii) has not attained the age of 21,

28 (iii) is disabled (within the meaning of subsection (b)(4)(B)), or

1 (iv) is a student.

2 (D) Student.--For purposes of subparagraph (C), an individual shall be
3 treated as a student with respect to periods during any calendar year if
4 (and only if) such individual is a student (within the meaning of
5 section 152(f)(2)) for such calendar year.

6 (E) Certain rents treated as qualified use.--For purposes of this
7 subsection, a surviving spouse or lineal descendant of the decedent
8 shall not be treated as failing to use qualified real property in a
9 qualified use solely because such spouse or descendant rents such prop-
10 erty to a member of the family of such spouse or descendant on a net
11 cash basis. For purposes of the preceding sentence, a legally adopted
12 child of an individual shall be treated as the child of such individual
13 by blood.

14 (8) Qualified conservation contribution is not a disposition.--A qual-
15 ified conservation contribution (as defined in section 170(h)) by gift
16 or otherwise shall not be deemed a disposition under subsection
17 (c)(1)(A).

18 (d) Election; agreement.--

19 (1) Election.--The election under this section shall be made on the
20 return of the tax imposed by section 2001. Such election shall be made
21 in such manner as the Secretary shall by regulations prescribe. Such an
22 election, once made, shall be irrevocable.

23 (2) Agreement.--The agreement referred to in this paragraph is a writ-
24 ten agreement signed by each person in being who has an interest (wheth-
25 er or not in possession) in any property designated in such agreement
26 consenting to the application of subsection (c) with respect to such
27 property.

1 (3) Modification of election and agreement to be permitted.--The
2 Secretary shall prescribe procedures which provide that in any case in
3 which the executor makes an election under paragraph (1) (and submits
4 the agreement referred to in paragraph (2)) within the time prescribed
5 therefor, but--

6 (A) the notice of election, as filed, does not contain all required
7 information, or

8 (B) signatures of 1 or more persons required to enter into the agree-
9 ment described in paragraph (2) are not included on the agreement as
10 filed, or the agreement does not contain all required information,
11 the executor will have a reasonable period of time (not exceeding 90
12 days) after notification of such failures to provide such information or
13 signatures.

14 (e) Definitions; special rules.--For purposes of this section--

15 (1) Qualified heir.--The term "qualified heir" means, with respect to
16 any property, a member of the decedent's family who acquired such prop-
17 erty (or to whom such property passed) from the decedent. If a qualified
18 heir disposes of any interest in qualified real property to any member
19 of his family, such member shall thereafter be treated as the qualified
20 heir with respect to such interest.

21 (2) Member of family.--The term "member of the family" means, with
22 respect to any individual, only--

23 (A) an ancestor of such individual,

24 (B) the spouse of such individual,

25 (C) a lineal descendant of such individual, of such individual's
26 spouse, or of a parent of such individual, or

27 (D) the spouse of any lineal descendant described in subparagraph (C).

1 For purposes of the preceding sentence, a legally adopted child of an
2 individual shall be treated as the child of such individual by blood.

3 (3) Certain real property included.--In the case of real property
4 which meets the requirements of subparagraph (C) of subsection (b)(1),
5 residential buildings and related improvements on such real property
6 occupied on a regular basis by the owner or lessee of such real property
7 or by persons employed by such owner or lessee for the purpose of oper-
8 ating or maintaining such real property, and roads, buildings, and other
9 structures and improvements functionally related to the qualified use
10 shall be treated as real property devoted to the qualified use.

11 (4) Farm.--The term "farm" includes stock, dairy, poultry, fruit,
12 furbearing animal, and truck farms, plantations, ranches, nurseries,
13 ranges, greenhouses or other similar structures used primarily for the
14 raising of agricultural or horticultural commodities, and orchards and
15 woodlands.

16 (5) Farming purposes.--The term "farming purposes" means-

17 (A) cultivating the soil or raising or harvesting any agricultural or
18 horticultural commodity (including the raising, shearing, feeding,
19 caring for, training, and management of animals) on a farm;

20 (B) handling, drying, packing, grading, or storing on a farm any agri-
21 cultural or horticultural commodity in its unmanufactured state, but
22 only if the owner, tenant, or operator of the farm regularly produces
23 more than one-half of the commodity so treated; and

24 (C) (i) the planting, cultivating, caring for, or cutting of trees, or
25 (ii) the preparation (other than milling) of trees for market.

26 (6) Material participation.--Material participation shall be deter-
27 mined in a manner similar to the manner used for purposes of paragraph
28 (1) of section 1402(a) (relating to net earnings from self-employment).

1 (7) Method of valuing farms.--

2 (A) In general.--Except as provided in subparagraph (B), the value of
3 a farm for farming purposes shall be determined by dividing--

4 (i) the excess of the average annual gross cash rental for comparable
5 land used for farming purposes and located in the locality of such farm
6 over the average annual State and local real estate taxes for such
7 comparable land, by

8 (ii) the average annual effective interest rate for all new Federal
9 Land Bank loans.

10 For purposes of the preceding sentence, each average annual computa-
11 tion shall be made on the basis of the 5 most recent calendar years
12 ending before the date of the decedent's death.

13 (B) Value based on net share rental in certain cases.--

14 (i) In general.--If there is no comparable land from which the average
15 annual gross cash rental may be determined but there is comparable land
16 from which the average net share rental may be determined, subparagraph
17 (A)(i) shall be applied by substituting "average annual net share
18 rental" for "average annual gross cash rental".

19 (ii) Net share rental.--For purposes of this paragraph, the term "net
20 share rental" means the excess of--

21 (I) the value of the produce received by the lessor of the land on
22 which such produce is grown, over

23 (II) the cash operating expenses of growing such produce which, under
24 the lease, are paid by the lessor.

25 (C) Exception.--The formula provided by subparagraph (A) shall not be
26 used--

27 (i) where it is established that there is no comparable land from
28 which the average annual gross cash rental may be determined, or

1 (ii) where the executor elects to have the value of the farm for farm-
2 ing purposes determined and that there is no comparable land from which
3 the average net share rental may be determined under paragraph (8).

4 (8) Method of valuing closely held business interests, etc.--In any
5 case to which paragraph (7)(A) does not apply, the following factors
6 shall apply in determining the value of any qualified real property:

7 (A) The capitalization of income which the property can be expected to
8 yield for farming or closely held business purposes over a reasonable
9 period of time under prudent management using traditional cropping
10 patterns for the area, taking into account soil capacity, terrain
11 configuration, and similar factors,

12 (B) The capitalization of the fair rental value of the land for farm-
13 land or closely held business purposes,

14 (C) Assessed land values in a State which provides a differential or
15 use value assessment law for farmland or closely held business,

16 (D) Comparable sales of other farm or closely held business land in
17 the same geographical area far enough removed from a metropolitan or
18 resort area so that nonagricultural use is not a significant factor in
19 the sales price, and

20 (E) Any other factor which fairly values the farm or closely held
21 business value of the property.

22 (9) Property acquired from decedent.--Property shall be considered to
23 have been acquired from or to have passed from the decedent if--

24 (A) such property is so considered under section 1014(b) (relating to
25 basis of property acquired from a decedent),

26 (B) such property is acquired by any person from the estate, or

27 (C) such property is acquired by any person from a trust (to the
28 extent such property is includible in the gross estate of the decedent).

1 (10) Community property.--If the decedent and his surviving spouse at
2 any time held qualified real property as community property, the inter-
3 est of the surviving spouse in such property shall be taken into account
4 under this section to the extent necessary to provide a result under
5 this section with respect to such property which is consistent with the
6 result which would have obtained under this section if such property had
7 not been community property.

8 (11) Bond in lieu of personal liability.--If the qualified heir makes
9 written application to the Secretary for determination of the maximum
10 amount of the additional tax which may be imposed by subsection (c) with
11 respect to the qualified heir's interest, the Secretary (as soon as
12 possible, and in any event within 1 year after the making of such appli-
13 cation) shall notify the heir of such maximum amount. The qualified
14 heir, on furnishing a bond in such amount and for such period as may be
15 required, shall be discharged from personal liability for any additional
16 tax imposed by subsection (c) and shall be entitled to a receipt or
17 writing showing such discharge.

18 (12) Active management.--The term "active management" means the making
19 of the management decisions of a business (other than the daily operat-
20 ing decisions).

21 (13) Special rules for woodlands.--

22 (A) In general.--In the case of any qualified woodland with respect to
23 which the executor elects to have this subparagraph apply, trees growing
24 on such woodland shall not be treated as a crop.

25 (B) Qualified woodland.--The term "qualified woodland" means any real
26 property which--

27 (i) is used in timber operations, and

1 (ii) is an identifiable area of land such as an acre or other area for
2 which records are normally maintained in conducting timber operations.

3 (C) Timber operations.--The term "timber operations" means--

4 (i) the planting, cultivating, caring for, or cutting of trees, or

5 (ii) the preparation (other than milling) of trees for market.

6 (D) Election.--An election under subparagraph (A) shall be made on the
7 return of the tax imposed by section 2001. Such election shall be made
8 in such manner as the Secretary shall by regulations prescribe. Such an
9 election, once made, shall be irrevocable.

10 (14) Treatment of replacement property acquired in section 1031 or
11 1033 transactions.--

12 (A) In general.--In the case of any qualified replacement property,
13 any period during which there was ownership, qualified use, or material
14 participation with respect to the replaced property by the decedent or
15 any member of his family shall be treated as a period during which there
16 was such ownership, use, or material participation (as the case may be)
17 with respect to the qualified replacement property.

18 (B) Limitation.--Subparagraph (A) shall not apply to the extent that
19 the fair market value of the qualified replacement property (as of the
20 date of its acquisition) exceeds the fair market value of the replaced
21 property (as of the date of its disposition).

22 (C) Definitions.--For purposes of this paragraph--

23 (i) Qualified replacement property.--The term "qualified replacement
24 property" means any real property which is--

25 (I) acquired in an exchange which qualifies under section 1031, or

26 (II) the acquisition of which results in the nonrecognition of gain
27 under section 1033.

1 Such term shall only include property which is used for the same qual-
2 ified use as the replaced property was being used before the exchange.

3 (ii) Replaced property.--The term "replaced property" means--

4 (I) the property transferred in the exchange which qualifies under
5 section 1031, or

6 (II) the property compulsorily or involuntarily converted (within the
7 meaning of section 1033).

8 (f) Statute of limitations.--If qualified real property is disposed of
9 or ceases to be used for a qualified use, then--

10 (1) the statutory period for the assessment of any additional tax
11 under subsection (c) attributable to such disposition or cessation shall
12 not expire before the expiration of 3 years from the date the Secretary
13 is notified (in such manner as the Secretary may by regulations
14 prescribe) of such disposition or cessation (or if later in the case of
15 an involuntary conversion or exchange to which subsection (h) or (i)
16 applies, 3 years from the date the Secretary is notified of the replace-
17 ment of the converted property or of an intention not to replace or of
18 the exchange of property), and

19 (2) such additional tax may be assessed before the expiration of such
20 3-year period notwithstanding the provisions of any other law or rule of
21 law which would otherwise prevent such assessment.

22 (g) Application of this section and section 6324B to interests in
23 partnerships, corporations, and trusts.--The Secretary shall prescribe
24 regulations setting forth the application of this section and section
25 6324B in the case of an interest in a partnership, corporation, or trust
26 which, with respect to the decedent, is an interest in a closely held
27 business (within the meaning of paragraph (1) of section 6166(b)). For
28 purposes of the preceding sentence, an interest in a discretionary trust

1 all the beneficiaries of which are qualified heirs shall be treated as a
2 present interest.

3 (h) Special rules for involuntary conversions of qualified real prop-
4 erty.--

5 (1) Treatment of converted property.--

6 (A) In general.--If there is an involuntary conversion of an interest
7 in qualified real property--

8 (i) no tax shall be imposed by subsection (c) on such conversion if
9 the cost of the qualified replacement property equals or exceeds the
10 amount realized on such conversion, or

11 (ii) if clause (i) does not apply, the amount of the tax imposed by
12 subsection (c) on such conversion shall be the amount determined under
13 subparagraph (B).

14 (B) Amount of tax where there is not complete reinvestment.--The
15 amount determined under this subparagraph with respect to any involun-
16 tary conversion is the amount of the tax which (but for this subsection)
17 would have been imposed on such conversion reduced by an amount which--

18 (i) bears the same ratio to such tax, as

19 (ii) the cost of the qualified replacement property bears to the
20 amount realized on the conversion.

21 (2) Treatment of replacement property.--For purposes of subsection
22 (c)--

23 (A) any qualified replacement property shall be treated in the same
24 manner as if it were a portion of the interest in qualified real proper-
25 ty which was involuntarily converted; except that with respect to such
26 qualified replacement property the 10-year period under paragraph (1) of
27 subsection (c) shall be extended by any period, beyond the 2-year period

1 referred to in section 1033(a)(2)(B)(i), during which the qualified heir
2 was allowed to replace the qualified real property,

3 (B) any tax imposed by subsection (c) on the involuntary conversion
4 shall be treated as a tax imposed on a partial disposition, and

5 (C) paragraph (6) of subsection (c) shall be applied--

6 (i) by not taking into account periods after the involuntary conver-
7 sion and before the acquisition of the qualified replacement property,
8 and

9 (ii) by treating material participation with respect to the converted
10 property as material participation with respect to the qualified
11 replacement property.

12 (3) Definitions and special rules.--For purposes of this subsection--

13 (A) Involuntary conversion.--The term "involuntary conversion" means a
14 compulsory or involuntary conversion within the meaning of section 1033.

15 (B) Qualified replacement property.--The term "qualified replacement
16 property" means--

17 (i) in the case of an involuntary conversion described in section
18 1033(a)(1), any real property into which the qualified real property is
19 converted, or

20 (ii) in the case of an involuntary conversion described in section
21 1033(a)(2), any real property purchased by the qualified heir during the
22 period specified in section 1033(a)(2)(B) for purposes of replacing the
23 qualified real property.

24 Such term only includes property which is to be used for the qualified
25 use set forth in subparagraph (A) or (B) of subsection (b)(2) under
26 which the qualified real property qualified under subsection (a).

27 (4) Certain rules made applicable.--The rules of the last sentence of
28 section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

1 (i) Exchanges of qualified real property.--

2 (1) Treatment of property exchanged.--

3 (A) Exchanges solely for qualified exchange property.--If an interest
4 in qualified real property is exchanged solely for an interest in quali-
5 fied exchange property in a transaction which qualifies under section
6 1031, no tax shall be imposed by subsection (c) by reason of such
7 exchange.

8 (B) Exchanges where other property received.--If an interest in quali-
9 fied real property is exchanged for an interest in qualified exchange
10 property and other property in a transaction which qualifies under
11 section 1031, the amount of the tax imposed by subsection (c) by reason
12 of such exchange shall be the amount of tax which (but for this subpara-
13 graph) would have been imposed on such exchange under subsection (c)(1),
14 reduced by an amount which--

15 (i) bears the same ratio to such tax, as

16 (ii) the fair market value of the qualified exchange property bears to
17 the fair market value of the qualified real property exchanged.

18 For purposes of clause (ii) of the preceding sentence, fair market
19 value shall be determined as of the time of the exchange.

20 (2) Treatment of qualified exchange property.--For purposes of
21 subsection (c)--

22 (A) any interest in qualified exchange property shall be treated in
23 the same manner as if it were a portion of the interest in qualified
24 real property which was exchanged,

25 (B) any tax imposed by subsection (c) by reason of the exchange shall
26 be treated as a tax imposed on a partial disposition, and

1 (C) paragraph (6) of subsection (c) shall be applied by treating mate-
2 rial participation with respect to the exchanged property as material
3 participation with respect to the qualified exchange property.

4 (3) Qualified exchange property.--For purposes of this subsection, the
5 term "qualified exchange property" means real property which is to be
6 used for the qualified use set forth in subparagraph (A) or (B) of
7 subsection (b)(2) under which the real property exchanged therefor
8 originally qualified under subsection (a).

9 § 2033. Property in Which the Decedent had an Interest. The value of
10 the gross estate shall include the value of all property to the extent
11 of the interest therein of the decedent at the time of his death.

12 § 2034. Dower or Curtesy Interests. The value of the gross estate
13 shall include the value of all property to the extent of any interest
14 therein of the surviving spouse, existing at the time of the decedent's
15 death as dower or curtesy, or by virtue of a statute creating an estate
16 in lieu of dower or curtesy.

17 § 2035. Adjustments for Certain Gifts Made Within Three Years of
18 Decedent's Death. (a) Inclusion of certain property in gross
19 estate.--If--

20 (1) the decedent made a transfer (by trust or otherwise) of an inter-
21 est in any property, or relinquished a power with respect to any proper-
22 ty, during the 3-year period ending on the date of the decedent's death,
23 and

24 (2) the value of such property (or an interest therein) would have
25 been included in the decedent's gross estate under section 2036, 2037,
26 2038, or 2042 if such transferred interest or relinquished power had
27 been retained by the decedent on the date of his death,

1 the value of the gross estate shall include the value of any property
2 (or interest therein) which would have been so included.

3 (b) Inclusion of gift tax on gifts made during 3 years before
4 decedent's death.--The amount of the gross estate (determined without
5 regard to this subsection) shall be increased by the amount of any tax
6 paid under chapter 12 by the decedent or his estate on any gift made by
7 the decedent or his spouse during the 3-year period ending on the date
8 of the decedent's death.

9 (c) Other rules relating to transfers within 3 years of death.--

10 (1) In general.--For purposes of--

11 (A) section 303(b) (relating to distributions in redemption of stock
12 to pay death taxes),

13 (B) section 2032A (relating to special valuation of certain farms,
14 etc., real property), and

15 (C) subchapter C of chapter 64 (relating to lien for taxes),

16 the value of the gross estate shall include the value of all property
17 to the extent of any interest therein of which the decedent has at any
18 time made a transfer, by trust or otherwise, during the 3-year period
19 ending on the date of the decedent's death.

20 (2) Coordination with section 6166.--An estate shall be treated as
21 meeting the 35 percent of adjusted gross estate requirement of section
22 6166(a)(1) only if the estate meets such requirement both with and with-
23 out the application of subsection (a).

24 (3) Marital and small transfers.--Paragraph (1) shall not apply to any
25 transfer (other than a transfer with respect to a life insurance policy)
26 made during a calendar year to any donee if the decedent was not
27 required by section 6019 (other than by reason of section 6019(2)) to

1 file any gift tax return for such year with respect to transfers to such
2 donee.

3 (d) Exception.--Subsection (a) and paragraph (1) of subsection (c)
4 shall not apply to any bona fide sale for an adequate and full consider-
5 ation in money or money's worth.

6 (e) Treatment of certain transfers from revocable trusts.--For
7 purposes of this section and section 2038, any transfer from any portion
8 of a trust during any period that such portion was treated under section
9 676 as owned by the decedent by reason of a power in the grantor (deter-
10 mined without regard to section 672(e)) shall be treated as a transfer
11 made directly by the decedent.

12 § 2036. Transfers with Retained Life Estate. (a) General rule.--The
13 value of the gross estate shall include the value of all property to the
14 extent of any interest therein of which the decedent has at any time
15 made a transfer (except in case of a bona fide sale for an adequate and
16 full consideration in money or money's worth), by trust or otherwise,
17 under which he has retained for his life or for any period not ascer-
18 tainable without reference to his death or for any period which does not
19 in fact end before his death--

20 (1) the possession or enjoyment of, or the right to the income from,
21 the property, or

22 (2) the right, either alone or in conjunction with any person, to
23 designate the persons who shall possess or enjoy the property or the
24 income therefrom.

25 (b) Voting rights.--

26 (1) In general.--For purposes of subsection (a)(1), the retention of
27 the right to vote (directly or indirectly) shares of stock of a

1 controlled corporation shall be considered to be a retention of the
2 enjoyment of transferred property.

3 (2) Controlled corporation.--For purposes of paragraph (1), a corpo-
4 ration shall be treated as a controlled corporation if, at any time
5 after the transfer of the property and during the 3-year period ending
6 on the date of the decedent's death, the decedent owned (with the appli-
7 cation of section 318), or had the right (either alone or in conjunction
8 with any person) to vote, stock possessing at least 20 percent of the
9 total combined voting power of all classes of stock.

10 (3) Coordination with section 2035.--For purposes of applying section
11 2035 with respect to paragraph (1), the relinquishment or cessation of
12 voting rights shall be treated as a transfer of property made by the
13 decedent.

14 (c) Limitation on application of general rule.--This section shall not
15 apply to a transfer made before March 4, 1931; nor to a transfer made
16 after March 3, 1931, and before June 7, 1932, unless the property trans-
17 ferred would have been includible in the decedent's gross estate by
18 reason of the amendatory language of the joint resolution of March 3,
19 1931 (46 Stat. 1516).

20 § 2037. Transfers Taking Effect at Death. (a) General rule.--The value
21 of the gross estate shall include the value of all property to the
22 extent of any interest therein of which the decedent has at any time
23 after September 7, 1916, made a transfer (except in case of a bona fide
24 sale for an adequate and full consideration in money or money's worth),
25 by trust or otherwise, if--

26 (1) possession or enjoyment of the property can, through ownership of
27 such interest, be obtained only by surviving the decedent, and

1 (2) the decedent has retained a reversionary interest in the property
2 (but in the case of a transfer made before October 8, 1949, only if such
3 reversionary interest arose by the express terms of the instrument of
4 transfer), and the value of such reversionary interest immediately
5 before the death of the decedent exceeds 5 percent of the value of such
6 property.

7 (b) Special rules.--For purposes of this section, the term "reversion-
8 ary interest" includes a possibility that property transferred by the
9 decedent--

10 (1) may return to him or his estate, or

11 (2) may be subject to a power of disposition by him,

12 but such term does not include a possibility that the income alone
13 from such property may return to him or become subject to a power of
14 disposition by him. The value of a reversionary interest immediately
15 before the death of the decedent shall be determined (without regard to
16 the fact of the decedent's death) by usual methods of valuation, includ-
17 ing the use of tables of mortality and actuarial principles, under regu-
18 lations prescribed by the Secretary. In determining the value of a
19 possibility that property may be subject to a power of disposition by
20 the decedent, such possibility shall be valued as if it were a possibil-
21 ity that such property may return to the decedent or his estate.
22 Notwithstanding the foregoing, an interest so transferred shall not be
23 included in the decedent's gross estate under this section if possession
24 or enjoyment of the property could have been obtained by any beneficiary
25 during the decedent's life through the exercise of a general power of
26 appointment (as defined in section 2041) which in fact was exercisable
27 immediately before the decedent's death.

1 § 2038. Revocable Transfers. (a) In general.--The value of the gross
2 estate shall include the value of all property--

3 (1) Transfers after June 22, 1936.--To the extent of any interest
4 therein of which the decedent has at any time made a transfer (except in
5 case of a bona fide sale for an adequate and full consideration in money
6 or money's worth), by trust or otherwise, where the enjoyment thereof
7 was subject at the date of his death to any change through the exercise
8 of a power (in whatever capacity exercisable) by the decedent alone or
9 by the decedent in conjunction with any other person (without regard to
10 when or from what source the decedent acquired such power), to alter,
11 amend, revoke, or terminate, or where any such power is relinquished
12 during the 3-year period ending on the date of the decedent's death.

13 (2) Transfers on or before June 22, 1936.--To the extent of any inter-
14 est therein of which the decedent has at any time made a transfer
15 (except in case of a bona fide sale for an adequate and full consider-
16 ation in money or money's worth), by trust or otherwise, where the
17 enjoyment thereof was subject at the date of his death to any change
18 through the exercise of a power, either by the decedent alone or in
19 conjunction with any person, to alter, amend, or revoke, or where the
20 decedent relinquished any such power during the 3-year period ending on
21 the date of the decedent's death. Except in the case of transfers made
22 after June 22, 1936, no interest of the decedent of which he has made a
23 transfer shall be included in the gross estate under paragraph (1)
24 unless it is includible under this paragraph.

25 (b) Date of existence of power.--For purposes of this section, the
26 power to alter, amend, revoke, or terminate shall be considered to exist
27 on the date of the decedent's death even though the exercise of the
28 power is subject to a precedent giving of notice or even though the

1 alteration, amendment, revocation, or termination takes effect only on
2 the expiration of a stated period after the exercise of the power,
3 whether or not on or before the date of the decedent's death notice has
4 been given or the power has been exercised. In such cases proper adjust-
5 ment shall be made representing the interests which would have been
6 excluded from the power if the decedent had lived, and for such purpose,
7 if the notice has not been given or the power has not been exercised on
8 or before the date of his death, such notice shall be considered to have
9 been given, or the power exercised, on the date of his death.

10 § 2039. Annuities. (a) General.--The gross estate shall include the
11 value of an annuity or other payment receivable by any beneficiary by
12 reason of surviving the decedent under any form of contract or agreement
13 entered into after March 3, 1931 (other than as insurance under policies
14 on the life of the decedent), if, under such contract or agreement, an
15 annuity or other payment was payable to the decedent, or the decedent
16 possessed the right to receive such annuity or payment, either alone or
17 in conjunction with another for his life or for any period not ascer-
18 tainable without reference to his death or for any period which does not
19 in fact end before his death.

20 (b) Amount includible.--Subsection (a) shall apply to only such part
21 of the value of the annuity or other payment receivable under such
22 contract or agreement as is proportionate to that part of the purchase
23 price therefor contributed by the decedent. For purposes of this
24 section, any contribution by the decedent's employer or former employer
25 to the purchase price of such contract or agreement (whether or not to
26 an employee's trust or fund forming part of a pension, annuity, retire-
27 ment, bonus or profit sharing plan) shall be considered to be contrib-
28 uted by the decedent if made by reason of his employment.

1 § 2040. Joint Interests. (a) General rule.--The value of the gross
2 estate shall include the value of all property to the extent of the
3 interest therein held as joint tenants with right of survivorship by the
4 decedent and any other person, or as tenants by the entirety by the
5 decedent and spouse, or deposited, with any person carrying on the bank-
6 ing business, in their joint names and payable to either or the survi-
7 vor, except such part thereof as may be shown to have originally
8 belonged to such other person and never to have been received or
9 acquired by the latter from the decedent for less than an adequate and
10 full consideration in money or money's worth: Provided, That where such
11 property or any part thereof, or part of the consideration with which
12 such property was acquired, is shown to have been at any time acquired
13 by such other person from the decedent for less than an adequate and
14 full consideration in money or money's worth, there shall be excepted
15 only such part of the value of such property as is proportionate to the
16 consideration furnished by such other person: Provided further, That
17 where any property has been acquired by gift, bequest, devise, or inher-
18 itance, as a tenancy by the entirety by the decedent and spouse, then to
19 the extent of one-half of the value thereof, or, where so acquired by
20 the decedent and any other person as joint tenants with right of survi-
21 vorship and their interests are not otherwise specified or fixed by law,
22 then to the extent of the value of a fractional part to be determined by
23 dividing the value of the property by the number of joint tenants with
24 right of survivorship.

25 (b) Certain joint interests of husband and wife.--

26 (1) Interests of spouse excluded from gross estate.--Notwithstanding
27 subsection (a), in the case of any qualified joint interest, the value

1 included in the gross estate with respect to such interest by reason of
2 this section is one-half of the value of such qualified joint interest.

3 (2) Qualified joint interest defined.--For purposes of paragraph (1),
4 the term "qualified joint interest" means any interest in property held
5 by the decedent and the decedent's spouse as--

6 (A) tenants by the entirety, or

7 (B) joint tenants with right of survivorship, but only if the decedent
8 and the spouse of the decedent are the only joint tenants.

9 § 2041. Powers of Appointment. (a) In general.--The value of the gross
10 estate shall include the value of all property--

11 (1) Powers of appointment created on or before October 21, 1942.--To
12 the extent of any property with respect to which a general power of
13 appointment created on or before October 21, 1942, is exercised by the
14 decedent--

15 (A) by will, or

16 (B) by a disposition which is of such nature that if it were a trans-
17 fer of property owned by the decedent, such property would be includible
18 in the decedent's gross estate under sections 2035 to 2038, inclusive;

19 but the failure to exercise such a power or the complete release of
20 such a power shall not be deemed an exercise thereof. If a general power
21 of appointment created on or before October 21, 1942, has been partially
22 released so that it is no longer a general power of appointment, the
23 exercise of such power shall not be deemed to be the exercise of a
24 general power of appointment if--

25 (i) such partial release occurred before November 1, 1951, or

26 (ii) the donee of such power was under a legal disability to release
27 such power on October 21, 1942, and such partial release occurred not
28 later than 6 months after the termination of such legal disability.

1 (2) Powers created after October 21, 1942.--To the extent of any prop-
2 erty with respect to which the decedent has at the time of his death a
3 general power of appointment created after October 21, 1942, or with
4 respect to which the decedent has at any time exercised or released such
5 a power of appointment by a disposition which is of such nature that if
6 it were a transfer of property owned by the decedent, such property
7 would be includible in the decedent's gross estate under sections 2035
8 to 2038, inclusive. For purposes of this paragraph (2), the power of
9 appointment shall be considered to exist on the date of the decedent's
10 death even though the exercise of the power is subject to a precedent
11 giving of notice or even though the exercise of the power takes effect
12 only on the expiration of a stated period after its exercise, whether or
13 not on or before the date of the decedent's death notice has been given
14 or the power has been exercised.

15 (3) Creation of another power in certain cases.--To the extent of any
16 property with respect to which the decedent--

17 (A) by will, or

18 (B) by a disposition which is of such nature that if it were a trans-
19 fer of property owned by the decedent such property would be includible
20 in the decedent's gross estate under section 2035, 2036, or 2037,

21 exercises a power of appointment created after October 21, 1942, by
22 creating another power of appointment which under the applicable local
23 law can be validly exercised so as to postpone the vesting of any estate
24 or interest in such property, or suspend the absolute ownership or power
25 of alienation of such property, for a period ascertainable without
26 regard to the date of the creation of the first power.

27 (b) Definitions.--For purposes of subsection (a)--

1 (1) General power of appointment.--The term "general power of appoint-
2 ment" means a power which is exercisable in favor of the decedent, his
3 estate, his creditors, or the creditors of his estate; except that--

4 (A) A power to consume, invade, or appropriate property for the bene-
5 fit of the decedent which is limited by an ascertainable standard relat-
6 ing to the health, education, support, or maintenance of the decedent
7 shall not be deemed a general power of appointment.

8 (B) A power of appointment created on or before October 21, 1942,
9 which is exercisable by the decedent only in conjunction with another
10 person shall not be deemed a general power of appointment.

11 (C) In the case of a power of appointment created after October 21,
12 1942, which is exercisable by the decedent only in conjunction with
13 another person--

14 (i) If the power is not exercisable by the decedent except in conjunc-
15 tion with the creator of the power--such power shall not be deemed a
16 general power of appointment.

17 (ii) If the power is not exercisable by the decedent except in
18 conjunction with a person having a substantial interest in the property,
19 subject to the power, which is adverse to exercise of the power in favor
20 of the decedent--such power shall not be deemed a general power of
21 appointment. For the purposes of this clause a person who, after the
22 death of the decedent, may be possessed of a power of appointment (with
23 respect to the property subject to the decedent's power) which he may
24 exercise in his own favor shall be deemed as having an interest in the
25 property and such interest shall be deemed adverse to such exercise of
26 the decedent's power.

27 (iii) If (after the application of clauses (i) and (ii)) the power is
28 a general power of appointment and is exercisable in favor of such other

1 person--such power shall be deemed a general power of appointment only
2 in respect of a fractional part of the property subject to such power,
3 such part to be determined by dividing the value of such property by the
4 number of such persons (including the decedent) in favor of whom such
5 power is exercisable.

6 For purposes of clauses (ii) and (iii), a power shall be deemed to be
7 exercisable in favor of a person if it is exercisable in favor of such
8 person, his estate, his creditors, or the creditors of his estate.

9 (2) Lapse of power.--The lapse of a power of appointment created after
10 October 21, 1942, during the life of the individual possessing the power
11 shall be considered a release of such power. The preceding sentence
12 shall apply with respect to the lapse of powers during any calendar year
13 only to the extent that the property, which could have been appointed by
14 exercise of such lapsed powers, exceeded in value, at the time of such
15 lapse, the greater of the following amounts:

16 (A) \$5,000, or

17 (B) 5 percent of the aggregate value, at the time of such lapse, of
18 the assets out of which, or the proceeds of which, the exercise of the
19 lapsed powers could have been satisfied.

20 (3) Date of creation of power.--For purposes of this section, a power
21 of appointment created by a will executed on or before October 21, 1942,
22 shall be considered a power created on or before such date if the person
23 executing such will dies before July 1, 1949, without having republished
24 such will, by codicil or otherwise, after October 21, 1942.

25 § 2042. Proceeds of Life Insurance. The value of the gross estate
26 shall include the value of all property--

1 (1) Receivable by the executor.--To the extent of the amount receiv-
2 able by the executor as insurance under policies on the life of the
3 decedent.

4 (2) Receivable by other beneficiaries.--To the extent of the amount
5 receivable by all other beneficiaries as insurance under policies on the
6 life of the decedent with respect to which the decedent possessed at his
7 death any of the incidents of ownership, exercisable either alone or in
8 conjunction with any other person. For purposes of the preceding
9 sentence, the term "incident of ownership" includes a reversionary
10 interest (whether arising by the express terms of the policy or other
11 instrument or by operation of law) only if the value of such reversion-
12 ary interest exceeded 5 percent of the value of the policy immediately
13 before the death of the decedent. As used in this paragraph, the term
14 "reversionary interest" includes a possibility that the policy, or the
15 proceeds of the policy, may return to the decedent or his estate, or may
16 be subject to a power of disposition by him. The value of a reversionary
17 interest at any time shall be determined (without regard to the fact of
18 the decedent's death) by usual methods of valuation, including the use
19 of tables of mortality and actuarial principles, pursuant to regulations
20 prescribed by the Secretary. In determining the value of a possibility
21 that the policy or proceeds thereof may be subject to a power of dispo-
22 sition by the decedent, such possibility shall be valued as if it were a
23 possibility that such policy or proceeds may return to the decedent or
24 his estate.

25 § 2043. Transfers for Insufficient Consideration. (a) In general.--If
26 any one of the transfers, trusts, interests, rights, or powers enumer-
27 ated and described in sections 2035 to 2038, inclusive, and section 2041
28 is made, created, exercised, or relinquished for a consideration in

1 money or money's worth, but is not a bona fide sale for an adequate and
2 full consideration in money or money's worth, there shall be included in
3 the gross estate only the excess of the fair market value at the time of
4 death of the property otherwise to be included on account of such trans-
5 action, over the value of the consideration received therefor by the
6 decendent.

7 (b) Marital rights not treated as consideration.--

8 (1) In general.--For purposes of this chapter, a relinquishment or
9 promised relinquishment of dower or curtesy, or of a statutory estate
10 created in lieu of dower or curtesy, or of other marital rights in the
11 decendent's property or estate, shall not be considered to any extent a
12 consideration "in money or money's worth".

13 (2) Exception.--For purposes of section 2053 (relating to expenses,
14 indebtedness, and taxes), a transfer of property which satisfies the
15 requirements of paragraph (1) of section 2516 (relating to certain prop-
16 erty settlements) shall be considered to be made for an adequate and
17 full consideration in money or money's worth.

18 § 2044. Certain Property for Which Marital Deduction Was Previously
19 Allowed. (a) General rule.--The value of the gross estate shall include
20 the value of any property to which this section applies in which the
21 decendent had a qualifying income interest for life.

22 (b) Property to which this section applies.--This section applies to
23 any property if--

24 (1) a deduction was allowed with respect to the transfer of such prop-
25 erty to the decendent--

26 (A) under section 2056 by reason of subsection (b)(7) thereof, or

27 (B) under section 2523 by reason of subsection (f) thereof, and

1 (2) section 2519 (relating to dispositions of certain life estates)
2 did not apply with respect to a disposition by the decedent of part or
3 all of such property.

4 (c) Property treated as having passed from decedent.--For purposes of
5 this chapter and chapter 13, property includible in the gross estate of
6 the decedent under subsection (a) shall be treated as property passing
7 from the decedent.

8 § 2045. Prior Interests. Except as otherwise specifically provided by
9 law, sections 2034 to 2042, inclusive, shall apply to the transfers,
10 trusts, estates, interests, rights, powers, and relinquishment of
11 powers, as severally enumerated and described therein, whenever made,
12 created, arising, existing, exercised, or relinquished.

13 § 2046. Disclaimers. For provisions relating to the effect of a quali-
14 fied disclaimer for purposes of this chapter, see section 2518.

15 § 2053. Expenses, indebtedness, and taxes. (a) General rule.--For
16 purposes of the tax imposed by section 2001, the value of the taxable
17 estate shall be determined by deducting from the value of the gross
18 estate such amounts--

19 (1) for funeral expenses,

20 (2) for administration expenses,

21 (3) for claims against the estate, and

22 (4) for unpaid mortgages on, or any indebtedness in respect of, prop-
23 erty where the value of the decedent's interest therein, undiminished by
24 such mortgage or indebtedness, is included in the value of the gross
25 estate,

26 as are allowable by the laws of the jurisdiction, whether within or
27 without the United States, under which the estate is being administered.

1 (b) Other administration expenses.--Subject to the limitations in
2 paragraph (1) of subsection (c), there shall be deducted in determining
3 the taxable estate amounts representing expenses incurred in administer-
4 ing property not subject to claims which is included in the gross estate
5 to the same extent such amounts would be allowable as a deduction under
6 subsection (a) if such property were subject to claims, and such amounts
7 are paid before the expiration of the period of limitation for assess-
8 ment provided in section 6501.

9 (c) Limitations.--

10 (1) Limitations applicable to subsections (a) and (b).--

11 (A) Consideration for claims.--The deduction allowed by this section
12 in the case of claims against the estate, unpaid mortgages, or any
13 indebtedness shall, when founded on a promise or agreement, be limited
14 to the extent that they were contracted bona fide and for an adequate
15 and full consideration in money or money's worth; except that in any
16 case in which any such claim is founded on a promise or agreement of the
17 decedent to make a contribution or gift to or for the use of any donee
18 described in section 2055 for the purposes specified therein, the
19 deduction for such claims shall not be so limited, but shall be limited
20 to the extent that it would be allowable as a deduction under section
21 2055 if such promise or agreement constituted a bequest.

22 (B) Certain taxes.--Any income taxes on income received after the
23 death of the decedent, or property taxes not accrued before his death,
24 or any estate, succession, legacy, or inheritance taxes, shall not be
25 deductible under this section.

26 (C) Certain claims by remaindermen.--No deduction shall be allowed
27 under this section for a claim against the estate by a remainderman
28 relating to any property described in section 2044.

1 (D) Section 6166 interest.--No deduction shall be allowed under this
2 section for any interest payable under section 6601 on any unpaid
3 portion of the tax imposed by section 2001 for the period during which
4 an extension of time for payment of such tax is in effect under section
5 6166.

6 (2) Limitations applicable only to subsection (a).--In the case of the
7 amounts described in subsection (a), there shall be disallowed the
8 amount by which the deductions specified therein exceed the value, at
9 the time of the decedent's death, of property subject to claims, except
10 to the extent that such deductions represent amounts paid before the
11 date prescribed for the filing of the estate tax return. For purposes of
12 this section, the term "property subject to claims" means property
13 includible in the gross estate of the decedent which, or the avails of
14 which, would under the applicable law, bear the burden of the payment of
15 such deductions in the final adjustment and settlement of the estate,
16 except that the value of the property shall be reduced by the amount of
17 the deduction under section 2054 attributable to such property.

18 (d) Certain foreign death taxes.--

19 (1) In general.--Notwithstanding the provisions of subsection
20 (c)(1)(B), for purposes of the tax imposed by section 2001, the value of
21 the taxable estate may be determined, if the executor so elects before
22 the expiration of the period of limitation for assessment provided in
23 section 6501, by deducting from the value of the gross estate the amount
24 (as determined in accordance with regulations prescribed by the Secre-
25 tary) of any estate, succession, legacy, or inheritance tax imposed by
26 and actually paid to any foreign country, in respect of any property
27 situated within such foreign country and included in the gross estate of
28 a citizen or resident of the United States, upon a transfer by the dece-

1 dent for public, charitable, or religious uses described in section
2 2055. The determination under this paragraph of the country within which
3 property is situated shall be made in accordance with the rules applica-
4 ble under subchapter B (sec. 2101 and following) in determining whether
5 property is situated within or without the United States. Any election
6 under this paragraph shall be exercised in accordance with regulations
7 prescribed by the Secretary.

8 (2) Condition for allowance of deduction.--No deduction shall be
9 allowed under paragraph (1) for a foreign death tax specified therein
10 unless the decrease in the tax imposed by section 2001 which results
11 from the deduction provided in paragraph (1) will inure solely for the
12 benefit of the public, charitable, or religious transferees described in
13 section 2055 or section 2106(a)(2). In any case where the tax imposed
14 by section 2001 is equitably apportioned among all the transferees of
15 property included in the gross estate, including those described in
16 sections 2055 and 2106(a)(2) (taking into account any exemptions, cred-
17 its, or deductions allowed by this chapter), in determining such
18 decrease, there shall be disregarded any decrease in the Federal estate
19 tax which any transferees other than those described in sections 2055
20 and 2106(a)(2) are required to pay.

21 (3) Effect on credit for foreign death taxes of deduction under this
22 subsection.--

23 (A) Election.--An election under this subsection shall be deemed a
24 waiver of the right to claim a credit, against the Federal estate tax,
25 under a death tax convention with any foreign country for any tax or
26 portion thereof in respect of which a deduction is taken under this
27 subsection.

28 (B) Cross reference.--

1 See section 2011(d) for the effect of a deduction taken under this
2 paragraph on the credit for foreign death taxes.

3 (e) Marital rights.--

4 For provisions treating certain relinquishments of marital rights as
5 consideration in money or money's worth, see section 2043(b)(2).

6 § 2054. Losses. For purposes of the tax imposed by section 2001, the
7 value of the taxable estate shall be determined by deducting from the
8 value of the gross estate losses incurred during the settlement of
9 estates arising from fires, storms, shipwrecks, or other casualties, or
10 from theft, when such losses are not compensated for by insurance or
11 otherwise.

12 § 2055. Transfers for public, charitable, and religious uses.

13 (a) In general.--For purposes of the tax imposed by section 2001, the
14 value of the taxable estate shall be determined by deducting from the
15 value of the gross estate the amount of all bequests, legacies, devises,
16 or transfers--

17 (1) to or for the use of the United States, any State, any political
18 subdivision thereof, or the District of Columbia, for exclusively public
19 purposes;

20 (2) to or for the use of any corporation organized and operated exclu-
21 sively for religious, charitable, scientific, literary, or educational
22 purposes, including the encouragement of art, or to foster national or
23 international amateur sports competition (but only if no part of its
24 activities involve the provision of athletic facilities or equipment),
25 and the prevention of cruelty to children or animals, no part of the net
26 earnings of which inures to the benefit of any private stockholder or
27 individual, which is not disqualified for tax exemption under section
28 501(c)(3) by reason of attempting to influence legislation, and which

1 does not participate in, or intervene in (including the publishing or
2 distributing of statements), any political campaign on behalf of (or in
3 opposition to) any candidate for public office;

4 (3) to a trustee or trustees, or a fraternal society, order, or asso-
5 ciation operating under the lodge system, but only if such contributions
6 or gifts are to be used by such trustee or trustees, or by such frater-
7 nal society, order, or association, exclusively for religious, charita-
8 ble, scientific, literary, or educational purposes, or for the
9 prevention of cruelty to children or animals, such trust, fraternal
10 society, order, or association would not be disqualified for tax
11 exemption under section 501(c)(3) by reason of attempting to influence
12 legislation, and such trustee or trustees, or such fraternal society,
13 order, or association, does not participate in, or intervene in (includ-
14 ing the publishing or distributing of statements), any political
15 campaign on behalf of (or in opposition to) any candidate for public
16 office;

17 (4) to or for the use of any veterans' organization incorporated by
18 Act of Congress, or of its departments or local chapters or posts, no
19 part of the net earnings of which inures to the benefit of any private
20 shareholder or individual; or

21 (5) to an employee stock ownership plan if such transfer qualifies as
22 a qualified gratuitous transfer of qualified employer securities within
23 the meaning of section 664(g).

24 For purposes of this subsection, the complete termination before the
25 date prescribed for the filing of the estate tax return of a power to
26 consume, invade, or appropriate property for the benefit of an individ-
27 ual before such power has been exercised by reason of the death of such
28 individual or for any other reason shall be considered and deemed to be

1 a qualified disclaimer with the same full force and effect as though he
2 had filed such qualified disclaimer. Rules similar to the rules of
3 section 501(j) shall apply for purposes of paragraph (2).

4 (b) Powers of appointment.--Property includible in the decedent's
5 gross estate under section 2041 (relating to powers of appointment)
6 received by a donee described in this section shall, for purposes of
7 this section, be considered a bequest of such decedent.

8 (c) Death taxes payable out of bequests.--If the tax imposed by
9 section 2001, or any estate, succession, legacy, or inheritance taxes,
10 are, either by the terms of the will, by the law of the jurisdiction
11 under which the estate is administered, or by the law of the jurisdic-
12 tion imposing the particular tax, payable in whole or in part out of the
13 bequests, legacies, or devises otherwise deductible under this section,
14 then the amount deductible under this section shall be the amount of
15 such bequests, legacies, or devises reduced by the amount of such taxes.

16 (d) Limitation on deduction.--The amount of the deduction under this
17 section for any transfer shall not exceed the value of the transferred
18 property required to be included in the gross estate.

19 (e) Disallowance of deductions in certain cases.--

20 (1) No deduction shall be allowed under this section for a transfer to
21 or for the use of an organization or trust described in section 508(d)
22 or 4948(c)(4) subject to the conditions specified in such sections.

23 (2) Where an interest in property (other than an interest described in
24 section 170(f)(3)(B)) passes or has passed from the decedent to a
25 person, or for a use, described in subsection (a), and an interest
26 (other than an interest which is extinguished upon the decedent's death)
27 in the same property passes or has passed (for less than an adequate and
28 full consideration in money or money's worth) from the decedent to a

1 person, or for a use, not described in subsection (a), no deduction
2 shall be allowed under this section for the interest which passes or has
3 passed to the person, or for the use, described in subsection (a)
4 unless--

5 (A) in the case of a remainder interest, such interest is in a trust
6 which is a charitable remainder annuity trust or a charitable remainder
7 unitrust (described in section 664) or a pooled income fund (described
8 in section 642(c)(5)), or

9 (B) in the case of any other interest, such interest is in the form of
10 a guaranteed annuity or is a fixed percentage distributed yearly of the
11 fair market value of the property (to be determined yearly).

12 (3) Reformatations to comply with paragraph (2).--

13 (A) In general.--A deduction shall be allowed under subsection (a) in
14 respect of any qualified reformation.

15 (B) Qualified reformation.--For purposes of this paragraph, the term
16 "qualified reformation" means a change of a governing instrument by
17 reformation, amendment, construction, or otherwise which changes a
18 reformable interest into a qualified interest but only if--

19 (i) any difference between--

20 (I) the actuarial value (determined as of the date of the decedent's
21 death) of the qualified interest, and

22 (II) the actuarial value (as so determined) of the reformable inter-
23 est,

24 does not exceed 5 percent of the actuarial value (as so determined) of
25 the reformable interest,

26 (ii) in the case of--

27 (I) a charitable remainder interest, the nonremainder interest (before
28 and after the qualified reformation) terminated at the same time, or

1 (II) any other interest, the reformable interest and the qualified
2 interest are for the same period, and

3 (iii) such change is effective as of the date of the decedent's death.

4 A nonremainder interest (before reformation) for a term of years in
5 excess of 20 years shall be treated as satisfying subclause (I) of
6 clause (ii) if such interest (after reformation) is for a term of 20
7 years.

8 (C) Reformable interest.--For purposes of this paragraph--

9 (i) In general.--The term "reformable interest" means any interest for
10 which a deduction would be allowable under subsection (a) at the time of
11 the decedent's death but for paragraph (2).

12 (ii) Beneficiary's interest must be fixed.--The term "reformable
13 interest" does not include any interest unless, before the remainder
14 vests in possession, all payments to persons other than an organization
15 described in subsection (a) are expressed either in specified dollar
16 amounts or a fixed percentage of the fair market value of the property.
17 For purposes of determining whether all such payments are expressed as a
18 fixed percentage of the fair market value of the property, section
19 664(d)(3) shall be taken into account.

20 (iii) Special rule where timely commencement of reformation.--Clause
21 (ii) shall not apply to any interest if a judicial proceeding is
22 commenced to change such interest into a qualified interest not later
23 than the 90th day after--

24 (I) if an estate tax return is required to be filed, the last date
25 (including extensions) for filing such return, or

26 (II) if no estate tax return is required to be filed, the last date
27 (including extensions) for filing the income tax return for the 1st

1 taxable year for which such a return is required to be filed by the
2 trust.

3 (iv) Special rule for will executed before January 1, 1979, etc.--In
4 the case of any interest passing under a will executed before January 1,
5 1979, or under a trust created before such date, clause (ii) shall not
6 apply.

7 (D) Qualified interest.--For purposes of this paragraph, the term
8 "qualified interest" means an interest for which a deduction is allow-
9 able under subsection (a).

10 (E) Limitation.--The deduction referred to in subparagraph (A) shall
11 not exceed the amount of the deduction which would have been allowable
12 for the reformable interest but for paragraph (2).

13 (F) Special rule where income beneficiary dies.--If (by reason of the
14 death of any individual, or by termination or distribution of a trust in
15 accordance with the terms of the trust instrument) by the due date for
16 filing the estate tax return (including any extension thereof) a reform-
17 able interest is in a wholly charitable trust or passes directly to a
18 person or for a use described in subsection (a), a deduction shall be
19 allowed for such reformable interest as if it had met the requirements
20 of paragraph (2) on the date of the decedent's death. For purposes of
21 the preceding sentence, the term "wholly charitable trust" means a char-
22 itable trust which, upon the allowance of a deduction, would be
23 described in section 4947(a)(1).

24 (G) Statute of limitations.--The period for assessing any deficiency
25 of any tax attributable to the application of this paragraph shall not
26 expire before the date 1 year after the date on which the Secretary is
27 notified that such reformation (or other proceeding pursuant to subpara-
28 graph (J)1 has occurred.

1 (H) Regulations.--The Secretary shall prescribe such regulations as
2 may be necessary to carry out the purposes of this paragraph, including
3 regulations providing such adjustments in the application of the
4 provisions of section 508 (relating to special rules relating to section
5 501(c)(3) organizations), subchapter J (relating to estates, trusts,
6 beneficiaries, and decedents), and chapter 42 (relating to private foun-
7 dations) as may be necessary by reason of the qualified reformation.

8 (I) Reformations permitted in case of remainder interests in residence
9 or farm, pooled income funds, etc.--The Secretary shall prescribe regu-
10 lations (consistent with the provisions of this paragraph) permitting
11 reformations in the case of any failure--

12 (i) to meet the requirements of section 170(f)(3)(B) (relating to
13 remainder interests in personal residence or farm, etc.), or

14 (ii) to meet the requirements of section 642(c)(5).

15 (J) Void or reformed trust in cases of insufficient remainder inter-
16 ests.--In the case of a trust that would qualify (or could be reformed
17 to qualify pursuant to subparagraph (B)) but for failure to satisfy the
18 requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust
19 may be--

20 (i) declared null and void ab initio, or

21 (ii) changed by reformation, amendment, or otherwise to meet such
22 requirement by reducing the payout rate or the duration (or both) of any
23 noncharitable beneficiary's interest to the extent necessary to satisfy
24 such requirement,

25 pursuant to a proceeding that is commenced within the period required
26 in subparagraph (C)(iii). In a case described in clause (i), no
27 deduction shall be allowed under this title for any transfer to the

1 trust and any transactions entered into by the trust prior to being
2 declared void shall be treated as entered into by the transferor.

3 (4) Works of art and their copyrights treated as separate properties
4 in certain cases.--

5 (A) In general.--In the case of a qualified contribution of a work of
6 art, the work of art and the copyright on such work of art shall be
7 treated as separate properties for purposes of paragraph (2).

8 (B) Work of art defined.--For purposes of this paragraph, the term
9 "work of art" means any tangible personal property with respect to which
10 there is a copyright under Federal law.

11 (C) Qualified contribution defined.--For purposes of this paragraph,
12 the term "qualified contribution" means any transfer of property to a
13 qualified organization if the use of the property by the organization is
14 related to the purpose or function constituting the basis for its
15 exemption under section 501.

16 (D) Qualified organization defined.--For purposes of this paragraph,
17 the term "qualified organization" means any organization described in
18 section 501(c)(3) other than a private foundation (as defined in section
19 509). For purposes of the preceding sentence, a private operating foun-
20 ation (as defined in section 4942(j)(3)) shall not be treated as a
21 private foundation.

22 (5) Contributions to donor advised funds.--A deduction otherwise
23 allowed under subsection (a) for any contribution to a donor advised
24 fund (as defined in section 4966(d)(2)) shall only be allowed if--

25 (A) the sponsoring organization (as defined in section 4966(d)(1))
26 with respect to such donor advised fund is not--

27 (i) described in paragraph (3) or (4) of subsection (a), or

1 (ii) a type III supporting organization (as defined in section
2 4943(f)(5)(A)) which is not a functionally integrated type III support-
3 ing organization (as defined in section 4943(f)(5)(B)), and

4 (B) the taxpayer obtains a contemporaneous written acknowledgment
5 (determined under rules similar to the rules of section 170(f)(8)(C))
6 from the sponsoring organization (as so defined) of such donor advised
7 fund that such organization has exclusive legal control over the assets
8 contributed.

9 (f) Special rule for irrevocable transfers of easements in real
10 property.--A deduction shall be allowed under subsection (a) in respect
11 of any transfer of a qualified real property interest (as defined in
12 section 170(h)(2)(C)) which meets the requirements of section 170(h)
13 (without regard to paragraph (4)(A) thereof).

14 (g) Cross references.--

15 (1) For option as to time for valuation for purpose of deduction under
16 this section, see section 2032.

17 (2) For treatment of certain organizations providing child care, see
18 section 501(k).

19 (3) For exemption of gifts and bequests to or for the benefit of
20 Library of Congress, see section 5 of the Act of March 3, 1925, as
21 amended (2 U.S.C. 161).

22 (4) For treatment of gifts and bequests for the benefit of the Naval
23 Historical Center as gifts or bequests to or for the use of the United
24 States, see section 7222 of Title 10, United States Code.

25 (5) For treatment of gifts and bequests to or for the benefit of
26 National Park Foundation as gifts or bequests to or for the use of the
27 United States, see section 8 of the Act of December 18, 1967 (16 U.S.C.
28 191).

1 (6) For treatment of gifts, devises, or bequests accepted by the
2 Secretary of State, the Director of the International Communication
3 Agency, or the Director of the United States International Development
4 Cooperation Agency as gifts, devises, or bequests to or for the use of
5 the United States, see section 25 of the State Department Basic Authori-
6 ties Act of 1956.

7 (7) For treatment of gifts or bequests of money accepted by the Attor-
8 ney General for credit to "Commissary Funds, Federal Prisons" as gifts
9 or bequests to or for the use of the United States, see section 4043 of
10 Title 18, United States Code.

11 (8) For payment of tax on gifts and bequests of United States obli-
12 gations to the United States, see section 3113(e) of Title 31, United
13 States Code.

14 (9) For treatment of gifts and bequests for benefit of the Naval Acad-
15 emy as gifts or bequests to or for the use of the United States, see
16 section 6973 of Title 10, United States Code.

17 (10) For treatment of gifts and bequests for benefit of the Naval
18 Academy Museum as gifts or bequests to or for the use of the United
19 States, see section 6974 of Title 10, United States Code.

20 (11) For exemption of gifts and bequests received by National Archives
21 Trust Fund Board, see section 2308 of Title 44, United States Code.

22 (12) For treatment of gifts and bequests to or for the use of Indian
23 tribal governments (or their subdivisions), see section 7871.

24 § 2056. Bequests, etc., to surviving spouse. (a) Allowance of marital
25 deduction.--For purposes of the tax imposed by section 2001, the value
26 of the taxable estate shall, except as limited by subsection (b), be
27 determined by deducting from the value of the gross estate an amount
28 equal to the value of any interest in property which passes or has

1 passed from the decedent to his surviving spouse, but only to the extent
2 that such interest is included in determining the value of the gross
3 estate.

4 (b) Limitation in the case of life estate or other terminable inter-
5 est.--

6 (1) General rule.--Where, on the lapse of time, on the occurrence of
7 an event or contingency, or on the failure of an event or contingency to
8 occur, an interest passing to the surviving spouse will terminate or
9 fail, no deduction shall be allowed under this section with respect to
10 such interest--

11 (A) if an interest in such property passes or has passed (for less
12 than an adequate and full consideration in money or money's worth) from
13 the decedent to any person other than such surviving spouse (or the
14 estate of such spouse); and

15 (B) if by reason of such passing such person (or his heirs or assigns)
16 may possess or enjoy any part of such property after such termination or
17 failure of the interest so passing to the surviving spouse;

18 and no deduction shall be allowed with respect to such interest (even
19 if such deduction is not disallowed under subparagraphs (A) and (B))--

20 (C) if such interest is to be acquired for the surviving spouse,
21 pursuant to directions of the decedent, by his executor or by the trus-
22 tee of a trust.

23 For purposes of this paragraph, an interest shall not be considered as
24 an interest which will terminate or fail merely because it is the owner-
25 ship of a bond, note, or similar contractual obligation, the discharge
26 of which would not have the effect of an annuity for life or for a term.

27 (2) Interest in unidentified assets.--Where the assets (included in
28 the decedent's gross estate) out of which, or the proceeds of which, an

1 interest passing to the surviving spouse may be satisfied include a
2 particular asset or assets with respect to which no deduction would be
3 allowed if such asset or assets passed from the decedent to such spouse,
4 then the value of such interest passing to such spouse shall, for
5 purposes of subsection (a), be reduced by the aggregate value of such
6 particular assets.

7 (3) Interest of spouse conditional on survival for limited
8 period.--For purposes of this subsection, an interest passing to the
9 surviving spouse shall not be considered as an interest which will
10 terminate or fail on the death of such spouse if--

11 (A) such death will cause a termination or failure of such interest
12 only if it occurs within a period not exceeding 6 months after the
13 decedent's death, or only if it occurs as a result of a common disaster
14 resulting in the death of the decedent and the surviving spouse, or only
15 if it occurs in the case of either such event; and

16 (B) such termination or failure does not in fact occur.

17 (4) Valuation of interest passing to surviving spouse.--In determining
18 for purposes of subsection (a) the value of any interest in property
19 passing to the surviving spouse for which a deduction is allowed by this
20 section--

21 (A) there shall be taken into account the effect which the tax imposed
22 by section 2001, or any estate, succession, legacy, or inheritance tax,
23 has on the net value to the surviving spouse of such interest; and

24 (B) where such interest or property is encumbered in any manner, or
25 where the surviving spouse incurs any obligation imposed by the decedent
26 with respect to the passing of such interest, such encumbrance or obli-
27 gation shall be taken into account in the same manner as if the amount
28 of a gift to such spouse of such interest were being determined.

1 (5) Life estate with power of appointment in surviving spouse.--In the
2 case of an interest in property passing from the decedent, if his
3 surviving spouse is entitled for life to all the income from the entire
4 interest, or all the income from a specific portion thereof, payable
5 annually or at more frequent intervals, with power in the surviving
6 spouse to appoint the entire interest, or such specific portion (exer-
7 cisable in favor of such surviving spouse, or of the estate of such
8 surviving spouse, or in favor of either, whether or not in each case the
9 power is exercisable in favor of others), and with no power in any other
10 person to appoint any part of the interest, or such specific portion, to
11 any person other than the surviving spouse--

12 (A) the interest or such portion thereof so passing shall, for
13 purposes of subsection (a), be considered as passing to the surviving
14 spouse, and

15 (B) no part of the interest so passing shall, for purposes of para-
16 graph (1)(A), be considered as passing to any person other than the
17 surviving spouse.

18 This paragraph shall apply only if such power in the surviving spouse
19 to appoint the entire interest, or such specific portion thereof, wheth-
20 er exercisable by will or during life, is exercisable by such spouse
21 alone and in all events.

22 (6) Life insurance or annuity payments with power of appointment in
23 surviving spouse.--In the case of an interest in property passing from
24 the decedent consisting of proceeds under a life insurance, endowment,
25 or annuity contract, if under the terms of the contract such proceeds
26 are payable in installments or are held by the insurer subject to an
27 agreement to pay interest thereon (whether the proceeds, on the termi-
28 nation of any interest payments, are payable in a lump sum or in annual

1 or more frequent installments), and such installment or interest
2 payments are payable annually or at more frequent intervals, commencing
3 not later than 13 months after the decedent's death, and all amounts, or
4 a specific portion of all such amounts, payable during the life of the
5 surviving spouse are payable only to such spouse, and such spouse has
6 the power to appoint all amounts, or such specific portion, payable
7 under such contract (exercisable in favor of such surviving spouse, or
8 of the estate of such surviving spouse, or in favor of either, whether
9 or not in each case the power is exercisable in favor of others), with
10 no power in any other person to appoint such amounts to any person other
11 than the surviving spouse--

12 (A) such amounts shall, for purposes of subsection (a), be considered
13 as passing to the surviving spouse, and

14 (B) no part of such amounts shall, for purposes of paragraph (1)(A),
15 be considered as passing to any person other than the surviving spouse.

16 This paragraph shall apply only if, under the terms of the contract,
17 such power in the surviving spouse to appoint such amounts, whether
18 exercisable by will or during life, is exercisable by such spouse alone
19 and in all events.

20 (7) Election with respect to life estate for surviving spouse.--

21 (A) In general.--In the case of qualified terminable interest proper-
22 ty--

23 (i) for purposes of subsection (a), such property shall be treated as
24 passing to the surviving spouse, and

25 (ii) for purposes of paragraph (1)(A), no part of such property shall
26 be treated as passing to any person other than the surviving spouse.

27 (B) Qualified terminable interest property defined.--For purposes of
28 this paragraph--

1 (i) In general.--The term "qualified terminable interest property"
2 means property--

3 (I) which passes from the decedent,

4 (II) in which the surviving spouse has a qualifying income interest
5 for life, and

6 (III) to which an election under this paragraph applies.

7 (ii) Qualifying income interest for life.--The surviving spouse has a
8 qualifying income interest for life if--

9 (I) the surviving spouse is entitled to all the income from the prop-
10 erty, payable annually or at more frequent intervals, or has a usufruct
11 interest for life in the property, and

12 (II) no person has a power to appoint any part of the property to any
13 person other than the surviving spouse.

14 Subclause (II) shall not apply to a power exercisable only at or after
15 the death of the surviving spouse. To the extent provided in regu-
16 lations, an annuity shall be treated in a manner similar to an income
17 interest in property (regardless of whether the property from which the
18 annuity is payable can be separately identified).

19 (iii) Property includes interest therein.--The term "property"
20 includes an interest in property.

21 (iv) Specific portion treated as separate property.--A specific
22 portion of property shall be treated as separate property.

23 (v) Election.--An election under this paragraph with respect to any
24 property shall be made by the executor on the return of tax imposed by
25 section 2001. Such an election, once made, shall be irrevocable.

26 (C) Treatment of survivor annuities.--In the case of an annuity
27 included in the gross estate of the decedent under section 2039 (or, in
28 the case of an interest in an annuity arising under the community prop-

1 erty laws of a State, included in the gross estate of the decedent under
2 section 2033) where only the surviving spouse has the right to receive
3 payments before the death of such surviving spouse--

4 (i) the interest of such surviving spouse shall be treated as a quali-
5 fyng income interest for life, and

6 (ii) the executor shall be treated as having made an election under
7 this subsection with respect to such annuity unless the executor other-
8 wise elects on the return of tax imposed by section 2001.

9 An election under clause (ii), once made, shall be irrevocable.

10 (8) Special rule for charitable remainder trusts.--

11 (A) In general.--If the surviving spouse of the decedent is the only
12 beneficiary of a qualified charitable remainder trust who is not a char-
13 itable beneficiary nor an ESOP beneficiary, paragraph (1) shall not
14 apply to any interest in such trust which passes or has passed from the
15 decedent to such surviving spouse.

16 (B) Definitions.--For purposes of subparagraph (A)--

17 (i) Charitable beneficiary.--The term "charitable beneficiary" means
18 any beneficiary which is an organization described in section 170(c).

19 (ii) ESOP beneficiary.--The term "ESOP beneficiary" means any benefi-
20 ciary which is an employee stock ownership plan (as defined in section
21 4975(e)(7)) that holds a remainder interest in qualified employer secu-
22 rities (as defined in section 664(g)(4)) to be transferred to such plan
23 in a qualified gratuitous transfer (as defined in section 664(g)(1)).

24 (iii) Qualified charitable remainder trust.--The term "qualified char-
25 itable remainder trust" means a charitable remainder annuity trust or a
26 charitable remainder unitrust (described in section 664).

27 (9) Denial of double deduction.--Nothing in this section or any other
28 provision of this chapter shall allow the value of any interest in prop-

1 erty to be deducted under this chapter more than once with respect to
2 the same decedent.

3 (10) Specific portion.--For purposes of paragraphs (5), (6), and
4 (7)(B)(iv), the term "specific portion" only includes a portion deter-
5 mined on a fractional or percentage basis.

6 (c) Definition.--For purposes of this section, an interest in property
7 shall be considered as passing from the decedent to any person if and
8 only if--

9 (1) such interest is bequeathed or devised to such person by the dece-
10 dent;

11 (2) such interest is inherited by such person from the decedent;

12 (3) such interest is the dower or curtesy interest (or statutory
13 interest in lieu thereof) of such person as surviving spouse of the
14 decedent;

15 (4) such interest has been transferred to such person by the decedent
16 at any time;

17 (5) such interest was, at the time of the decedent's death, held by
18 such person and the decedent (or by them and any other person) in joint
19 ownership with right of survivorship;

20 (6) the decedent had a power (either alone or in conjunction with any
21 person) to appoint such interest and if he appoints or has appointed
22 such interest to such person, or if such person takes such interest in
23 default on the release or nonexercise of such power; or

24 (7) such interest consists of proceeds of insurance on the life of the
25 decedent receivable by such person.

26 Except as provided in paragraph (5) or (6) of subsection (b), where at
27 the time of the decedent's death it is not possible to ascertain the
28 particular person or persons to whom an interest in property may pass

1 from the decedent, such interest shall, for purposes of subparagraphs
2 (A) and (B) of subsection (b)(1), be considered as passing from the
3 decedent to a person other than the surviving spouse.

4 § 2103. Definition of Gross Estate. For the purpose of the tax imposed
5 by section 2101, the value of the gross estate of every decedent nonres-
6 ident not a citizen of the United States shall be that part of his gross
7 estate (determined as provided in section 2031) which at the time of his
8 death is situated in the United States.

9 § 2104. Property Within the United States. (a) Stock in corpora-
10 tion.--For purposes of this subchapter shares of stock owned and held by
11 a nonresident not a citizen of the United States shall be deemed proper-
12 ty within the United States only if issued by a domestic corporation.

13 (b) Revocable transfers and transfers within 3 years of death.--For
14 purposes of this subchapter, any property of which the decedent has made
15 a transfer, by trust or otherwise, within the meaning of sections 2035
16 to 2038, inclusive, shall be deemed to be situated in the United States,
17 if so situated either at the time of the transfer or at the time of the
18 decedent's death.

19 (c) Debt obligations.--For purposes of this subchapter, debt obli-
20 gations of-

21 (1) a United States person, or

22 (2) the United States, a State or any political subdivision thereof,
23 or the District of Columbia,

24 owned and held by a nonresident not a citizen of the United States
25 shall be deemed property within the United States. With respect to
26 estates of decedents dying after December 31, 1969, deposits with a
27 domestic branch of a foreign corporation, if such branch is engaged in
28 the commercial banking business, shall, for purposes of this subchapter,

1 be deemed property within the United States. This subsection shall not
2 apply to a debt obligation to which section 2105(b) applies.

3 § 2105. Property Without the United States. (a) Proceeds of life insu-
4 rance.--For purposes of this subchapter, the amount receivable as insur-
5 ance on the life of a nonresident not a citizen of the United States
6 shall not be deemed property within the United States.

7 (b) Bank deposits and certain other debt obligations.--For purposes of
8 this subchapter, the following shall not be deemed property within the
9 United States--

10 (1) amounts described in section 871(i)(3), if any interest thereon
11 would not be subject to tax by reason of section 871(i)(1) were such
12 interest received by the decedent at the time of his death,

13 (2) deposits with a foreign branch of a domestic corporation or domes-
14 tic partnership, if such branch is engaged in the commercial banking
15 business,

16 (3) debt obligations, if, without regard to whether a statement meet-
17 ing the requirements of section 871(h)(5) has been received, any inter-
18 est thereon would be eligible for the exemption from tax under section
19 871(h)(1) were such interest received by the decedent at the time of his
20 death, and

21 (4) obligations which would be original issue discount obligations as
22 defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any
23 interest thereon (were such interest received by the decedent at the
24 time of his death) would not be effectively connected with the conduct
25 of a trade or business within the United States.

26 Notwithstanding the preceding sentence, if any portion of the interest
27 on an obligation referred to in paragraph (3) would not be eligible for
28 the exemption referred to in paragraph (3) by reason of section

1 871(h)(4) if the interest were received by the decedent at the time of
2 his death, then an appropriate portion (as determined in a manner
3 prescribed by the Secretary) of the value (as determined for purposes of
4 this chapter) of such debt obligation shall be deemed property within
5 the United States.

6 (c) Works of art on loan for exhibition.--For purposes of this
7 subchapter, works of art owned by a nonresident not a citizen of the
8 United States shall not be deemed property within the United States if
9 such works of art are--

10 (1) imported into the United States solely for exhibition purposes,

11 (2) loaned for such purposes, to a public gallery or museum, no part
12 of the net earnings of which inures to the benefit of any private stock-
13 holder or individual, and

14 (3) at the time of the death of the owner, on exhibition, or enroute
15 to or from exhibition, in such a public gallery or museum.

16 § 2503. (a) General Definition - The term "taxable gifts" means the
17 total amount of gifts made during the calendar year, less deductions
18 provided in subchapter C (section 2522 and following).

19 (b) Exclusions from gifts. (1) In general.--In the case of gifts
20 (other than gifts of future interests in property) made to any person by
21 the donor during the calendar year, the first \$10,000 of such gifts to
22 such person shall not, for purposes of subsection (a), be included in
23 the total amount of gifts made during such year. Where there has been a
24 transfer to any person of a present interest in property, the possibil-
25 ity that such interest may be diminished by the exercise of a power
26 shall be disregarded in applying this subsection, if no part of such
27 interest will at any time pass to any other person.

1 (2) Inflation adjustment.--In the case of gifts made in a calendar
2 year after 1998, the \$10,000 amount contained in paragraph (1) shall be
3 increased by an amount equal to--

4 (A) \$10,000, multiplied by

5 (B) the cost-of-living adjustment determined under section 1(f)(3) for
6 such calendar year by substituting "calendar year 1997" for "calendar
7 year 1992" in subparagraph (B) thereof.

8 If any amount as adjusted under the preceding sentence is not a multi-
9 ple of \$1,000, such amount shall be rounded to the next lowest multiple
10 of \$1,000.

11 (c) Transfer for the benefit of minor. -- No part of a gift to an
12 individual who has not attained the age of 21 years on the date of such
13 transfer shall be considered a gift of a future interest in property for
14 purposes of subsection (b) if the property and the income therefrom-

15 (1) may be expended by, or for the benefit of, the donee before his
16 attaining the age of 21 years, and

17 (2) will to the extent not so expended-

18 (A) pass to the donee on his attaining the age of 21 years, and

19 (B) in the event the donee dies before attaining the age of 21 years,
20 be payable to the estate of the donee or as he may appoint under a
21 general power of appointment as defined in section 2514(c).

22 {(d) Repealed. Pub. L. 97-34, title III, § 311(h)(5), Aug. 13, 1981,
23 95 Stat. 282}

24 (e) Exclusion for certain transfers for educational expenses or
25 medical expenses. (1) In general. Any qualified transfer shall not be
26 treated as a transfer of property by gift for purposes of this chapter.

27 (2) Qualified transfer. For purposes of this subsection, the term
28 "qualified transfer" means any amount paid on behalf of an individual-

1 (A) as tuition to an educational organization described in section
2 170(b)(1)(A)(ii) for the education or training of such individual, or
3 (B) to any person who provides medical care (as defined in section
4 213(d)) with respect to such individual as payment for such medical
5 care.

6 (f) Waiver of certain pension rights. If any individual waives, before
7 the death of a participant, any survivor benefit, or right to such bene-
8 fit, under section 401(a)(11) or 417, such waiver shall not be treated
9 as a transfer of property by gift for purposes of this chapter.

10 (g) Treatment of certain loans of artworks. (1) In general. For
11 purposes of this subtitle, any loan of a qualified work of art shall not
12 be treated as a transfer (and the value of such qualified work of art
13 shall be determined as if such loan had not been made) if-

14 (A) such loan is to an organization described in section 501(c)(3) and
15 exempt from tax under section 501(c) (other than a private foundation),
16 and

17 (B) the use of such work by such organization is related to the
18 purpose or function constituting the basis for its exemption under
19 section 501.

20 (2) Definitions. For purposes of this section-

21 (A) Qualified work of art. The term "qualified work of art" means any
22 archaeological, historic, or creative tangible personal property.

23 (B) Private foundation. The term "private foundation" has the meaning
24 given such term by section 509, except that such term shall not include
25 any private operating foundation (as defined in section 4942(j)(3)).

26 § 2511. Transfers in general. (a) Scope. Subject to the limitations
27 contained in this chapter, the tax imposed by section 2501 shall apply
28 whether the transfer is in trust or otherwise, whether the gift is

1 direct or indirect, and whether the property is real or personal, tangi-
2 ble or intangible; but in the case of a nonresident not a citizen of the
3 United States, shall apply to a transfer only if the property is situ-
4 ated within the United States.

5 (b) Intangible property. For purposes of this chapter, in the case of
6 a nonresident not a citizen of the United States who is excepted from
7 the application of section 2501(a)(2)-

8 (1) shares of stock issued by a domestic corporation, and

9 (2) debt obligations of-

10 --(A) a United States person, or

11 --(B) the United States, a State or any political subdivision thereof,
12 or the District of Columbia,

13 --which are owned and held by such nonresident shall be deemed to be
14 property situated within the United States.

15 § 2512. Valuation of gifts. (a) If the gift is made in property, the
16 value thereof at the date of the gift shall be considered the amount of
17 the gift.

18 (b) Where property is transferred for less than an adequate and full
19 consideration in money or money's worth, then the amount by which the
20 value of the property exceeded the value of the consideration shall be
21 deemed a gift, and shall be included in computing the amount of gifts
22 made during the calendar year.

23 § 2513. Gift by husband or wife to third party. (a) Considered as made
24 one-half by each. (1) In general. A gift made by one spouse to any
25 person other than his spouse shall, for the purposes of this chapter, be
26 considered as made one-half by him and one-half by his spouse, but only
27 if at the time of the gift each spouse is a citizen or resident of the
28 United States. This paragraph shall not apply with respect to a gift by

1 a spouse of an interest in property if he creates in his spouse a gener-
2 al power of appointment, as defined in section 2514(c), over such inter-
3 est. For purposes of this section, an individual shall be considered as
4 the spouse of another individual only if he is married to such individ-
5 ual at the time of the gift and does not remarry during the remainder of
6 the calendar year.

7 (2) Consent of both spouses. Paragraph (1) shall apply only if both
8 spouses have signified (under the regulations provided for in subsection
9 (b)) their consent to the application of paragraph (1) in the case of
10 all such gifts made during the calendar year by either while married to
11 the other.

12 (b) Manner and time of signifying consent. (1) Manner. A consent under
13 this section shall be signified in such manner as is provided under
14 regulations prescribed by the Secretary.

15 (2) Time. Such consent may be so signified at any time after the close
16 of the calendar year in which the gift was made, subject to the follow-
17 ing limitations-

18 --(A) The consent may not be signified after the 15th day of April
19 following the close of such year, unless before such 15th day no return
20 has been filed for such year by either spouse, in which case the consent
21 may not be signified after a return for such year is filed by either
22 spouse.

23 --(B) The consent may not be signified after a notice of deficiency with
24 respect to the tax for such year has been sent to either spouse in
25 accordance with section 6212(a).

26 (c) Revocation of consent. Revocation of a consent previously signi-
27 fied shall be made in such manner as in provided under regulations

1 prescribed by the Secretary, but the right to revoke a consent previous-
2 ly signified with respect to a calendar year-

3 (1) shall not exist after the 15th day of April following the close of
4 such year if the consent was signified on or before such 15th day; and

5 (2) shall not exist if the consent was not signified until after such
6 15th day.

7 (d) Joint and several liability for tax. If the consent required by
8 subsection (a)(2) is signified with respect to a gift made in any calen-
9 dar year, the liability with respect to the entire tax imposed by this
10 chapter of each spouse for such year shall be joint and several.

11 § 2514. Powers of appointment. (a) Powers created on or before October
12 21, 1942. An exercise of a general power of appointment created on or
13 before October 21, 1942, shall be deemed a transfer of property by the
14 individual possessing such power; but the failure to exercise such a
15 power or the complete release of such a power shall not be deemed an
16 exercise thereof. If a general power of appointment created on or before
17 October 21, 1942, has been partially released so that it is no longer a
18 general power of appointment, the subsequent exercise of such power
19 shall not be deemed to be the exercise of a general power of appointment
20 if-

21 (1) such partial release occurred before November 1, 1951, or

22 (2) the donee of such power was under a legal disability to release
23 such power on October 21, 1942, and such partial release occurred not
24 later than six months after the termination of such legal disability.

25 (b) Powers created after October 21, 1942. The exercise or release of
26 a general power of appointment created after October 21, 1942, shall be
27 deemed a transfer of property by the individual possessing such power.

1 (c) Definition of general power of appointment. For purposes of this
2 section, the term "general power of appointment" means a power which is
3 exercisable in favor of the individual possessing the power (hereafter
4 in this subsection referred to as the "possessor"), his estate, his
5 creditors, or the creditors of his estate; except that-

6 (1) A power to consume, invade, or appropriate property for the bene-
7 fit of the possessor which is limited by an ascertainable standard
8 relating to the health, education, support, or maintenance of the
9 possessor shall not be deemed a general power of appointment.

10 (2) A power of appointment created on or before October 21, 1942,
11 which is exercisable by the possessor only in conjunction with another
12 person shall not be deemed a general power of appointment.

13 (3) In the case of a power of appointment created after October 21,
14 1942, which is exercisable by the possessor only in conjunction with
15 another person-

16 --(A) if the power is not exercisable by the possessor except in
17 conjunction with the creator of the power-such power shall not be deemed
18 a general power of appointment;

19 --(B) if the power is not exercisable by the possessor except in
20 conjunction with a person having a substantial interest, in the property
21 subject to the power, which is adverse to exercise of the power in favor
22 of the possessor-such power shall not be deemed a general power of
23 appointment. For the purposes of this subparagraph a person who, after
24 the death of the possessor, may be possessed of a power of appointment
25 (with respect to the property subject to the possessor's power) which he
26 may exercise in his own favor shall be deemed as having an interest in
27 the property and such interest shall be deemed adverse to such exercise
28 of the possessor's power;

1 --(C) if (after the application of subparagraphs (A) and (B)) the power
2 is a general power of appointment and is exercisable in favor of such
3 other person-such power shall be deemed a general power of appointment
4 only in respect of a fractional part of the property subject to such
5 power, such part to be determined by dividing the value of such property
6 by the number of such persons (including the possessor) in favor of whom
7 such power is exercisable.

8 --For purposes of subparagraphs (B) and (C), a power shall be deemed to
9 be exercisable in favor of a person if it is exercisable in favor of
10 such person, his estate, his creditors, or the creditors of his estate.

11 (d) Creation of another power in certain cases. If a power of appoint-
12 ment created after October 21, 1942, is exercised by creating another
13 power of appointment which, under the applicable local law, can be
14 validly exercised so as to postpone the vesting of any estate or inter-
15 est in the property which was subject to the first power, or suspend the
16 absolute ownership or power of alienation of such property, for a period
17 ascertainable without regard to the date of the creation of the first
18 power, such exercise of the first power shall, to the extent of the
19 property subject to the second power, be deemed a transfer of property
20 by the individual possessing such power.

21 (e) Lapse of power. The lapse of a power of appointment created after
22 October 21, 1942, during the life of the individual possessing the power
23 shall be considered a release of such power. The rule of the preceding
24 sentence shall apply with respect to the lapse of powers during any
25 calendar year only to the extent that the property which could have been
26 appointed by exercise of such lapsed powers exceeds in value the greater
27 of the following amounts:

28 (1) \$5,000, or

1 (2) 5 percent of the aggregate value of the assets out of which, or
2 the proceeds of which, the exercise of the lapsed powers could be satis-
3 fied.

4 (f) Date of creation of power. For purposes of this section a power of
5 appointment created by a will executed on or before October 21, 1942,
6 shall be considered a power created on or before such date if the person
7 executing such will dies before July 1, 1949, without having republished
8 such will, by codicil or otherwise, after October 21, 1942.

9 § 2516. Certain property settlements. Where a husband and wife enter
10 into a written agreement relative to their marital and property rights
11 and divorce occurs within the 3-year period beginning on the date 1 year
12 before such agreement is entered into (whether or not such agreement is
13 approved by the divorce decree), any transfers of property or interests
14 in property made pursuant to such agreement-

15 (1) to either spouse in settlement of his or her marital or property
16 rights, or

17 (2) to provide a reasonable allowance for the support of issue of the
18 marriage during minority,

19 --shall be deemed to be transfers made for a full and adequate consid-
20 eration in money or money's worth.

21 § 2518. Disclaimers. (a) General Rule. - For purposes of this subti-
22 tle, if a person makes a qualified disclaimer with respect to any inter-
23 est in property, this subtitle shall apply with respect to such interest
24 as if the interest had never been transferred to such person.

25 (b) Qualified Disclaimer Defined. - For purposes of subsection (a),
26 the term "qualified disclaimer" means an irrevocable and unqualified
27 refusal by a person to accept an interest in property but only if -

28 (1) such refusal is in writing,

1 (2) such writing is received by the transferor of the interest, his
2 legal representative, or the holder of the legal title to the property
3 to which the interest relates not later than the date which is 9 months
4 after the later of -

5 (A) the date on which the transfer creating the interest in such
6 person is made, or

7 (B) the day on which such person attains age 21,

8 (3) such person has not accepted the interest or any of its benefits,
9 and

10 (4) as a result of such refusal, the interest passes without any
11 direction on the part of the person making the disclaimer and passes
12 either -

13 (A) to the spouse of the decedent, or

14 (B) to a person other than the person making the disclaimer.

15 (c) Other rules. For purposes of subsection (a)-

16 (1) Disclaimer of undivided portion of interest. A disclaimer with
17 respect to an undivided portion of an interest which meets the require-
18 ments of the preceding sentence shall be treated as a qualified
19 disclaimer of such portion of the interest.

20 (2) Powers. A power with respect to property shall be treated as an
21 interest in such property.

22 (3) Certain transfers treated as disclaimers. A written transfer of
23 the transferor's entire interest in the property-

24 (A) which meets requirements similar to the requirements of paragraphs

25 (2) and (3) of subsection (b), and

26 (B) which is to a person or persons who would have received the prop-
27 erty had the transferor made a qualified disclaimer (within the meaning
28 of subsection (b)),

1 --shall be treated as a qualified disclaimer.

2 § 2519. Dispositions of certain life estates. (a) General rule

3 --For purposes of this chapter and chapter 11, any disposition of all
4 or part of a qualifying income interest for life in any property to
5 which this section applies shall be treated as a transfer of all inter-
6 ests in such property other than the qualifying income interest.

7 (b) Property to which this subsection applies. This section applies to
8 any property if a deduction was allowed with respect to the transfer of
9 such property to the donor-

10 (1) under section 2056 by reason of subsection (b)(7) thereof, or

11 (2) under section 2523 by reason of subsection (f) thereof.

12 (c) Cross reference

13 --For right of recovery for gift tax in the case of property treated as
14 transferred under this section, see section 2207A(b).

15 § 2522. Charitable and similar gifts. (a) Citizens or residents. In
16 computing taxable gifts for the calendar year, there shall be allowed as
17 a deduction in the case of a citizen or resident the amount of all gifts
18 made during such year to or for the use of-

19 (1) the United States, any State, or any political subdivision there-
20 of, or the District of Columbia, for exclusively public purposes;

21 (2) a corporation, or trust, or community chest, fund, or foundation,
22 organized and operated exclusively for religious, charitable, scientif-
23 ic, literary, or educational purposes, or to foster national or interna-
24 tional amateur sports competition (but only if no part of its activities
25 involve the provision of athletic facilities or equipment), including
26 the encouragement of art and the prevention of cruelty to children or
27 animals, no part of the net earnings of which inures to the benefit of
28 any private shareholder or individual, which is not disqualified for tax

1 exemption under section 501(c)(3) by reason of attempting to influence
2 legislation, and which does not participate in, or intervene in (includ-
3 ing the publishing or distributing of statements), any political
4 campaign on behalf of (or in opposition to) any candidate for public
5 office;

6 (3) a fraternal society, order, or association, operating under the
7 lodge system, but only if such gifts are to be used exclusively for
8 religious, charitable, scientific, literary, or educational purposes,
9 including the encouragement of art and the prevention of cruelty to
10 children or animals;

11 (4) posts or organizations of war veterans, or auxiliary units or
12 societies of any such posts or organizations, if such posts, organiza-
13 tions, units, or societies are organized in the United States or any of
14 its possessions, and if no part of their net earnings inures to the
15 benefit of any private shareholder or individual.

16 Rules similar to the rules of section 501(j) shall apply for purposes
17 of paragraph (2).

18 (b) Nonresidents. In the case of a nonresident not a citizen of the
19 United States, there shall be allowed as a deduction the amount of all
20 gifts made during such year to or for the use of-

21 (1) the United States, any State, or any political subdivision there-
22 of, or the District of Columbia, for exclusively public purposes;

23 (2) a domestic corporation organized and operated exclusively for
24 religious, charitable, scientific, literary, or educational purposes,
25 including the encouragement of art and the prevention of cruelty to
26 children or animals, no part of the net earnings of which inures to the
27 benefit of any private shareholder or individual, which is not disquali-
28 fied for tax exemption under section 501(c)(3) by reason of attempting

1 to influence legislation, and which does not participate in, or inter-
2 vene in (including the publishing or distributing of statements), any
3 political campaign on behalf of (or in opposition to) any candidate for
4 public office;

5 (3) a trust, or community chest, fund, or foundation, organized and
6 operated exclusively for religious, charitable, scientific, literary, or
7 educational purposes, including the encouragement of art and the
8 prevention of cruelty to children or animals, no substantial part of the
9 activities of which is carrying on propaganda, or otherwise attempting,
10 to influence legislation, and which does not participate in, or inter-
11 vene in (including the publishing or distributing of statements), any
12 political campaign on behalf of (or in opposition to) any candidate for
13 public office; but only if such gifts are to be used within the United
14 States exclusively for such purposes;

15 (4) a fraternal society, order, or association, operating under the
16 lodge system, but only if such gifts are to be used within the United
17 States exclusively for religious, charitable, scientific, literary, or
18 educational purposes, including the encouragement of art and the
19 prevention of cruelty to children or animals;

20 (5) posts or organizations of war veterans, or auxiliary units or
21 societies of any such posts or organizations, if such posts, organiza-
22 tions, units, or societies are organized in the United States or any of
23 its possessions, and if no part of their net earnings inures to the
24 benefit of any private shareholder or individual.

25 (c) Disallowance of deductions in certain cases. (1) No deduction
26 shall be allowed under this section for a gift to of 1 for the use of an
27 organization or trust described in section 508(d) or 4948(c)(4) subject
28 to the conditions specified in such sections.

1 (2) Where a donor transfers an interest in property (other than an
2 interest described in section 170(f)(3)(B)) to a person, or for a use,
3 described in subsection (a) or (b) and an interest in the same property
4 is retained by the donor, or is transferred or has been transferred (for
5 less than an adequate and full consideration in money or money's worth)
6 from the donor to a person, or for a use, not described in subsection
7 (a) or (b), no deduction shall be allowed under this section for the
8 interest which is, or has been transferred to the person, or for the
9 use, described in subsection (a) or (b), unless-

10 (A) in the case of a remainder interest, such interest is in a trust
11 which is a charitable remainder annuity trust or a charitable remainder
12 unitrust (described in section 664) or a pooled income fund (described
13 in section 642(c)(5)), or

14 (B) in the case of any other interest, such interest is in the form of
15 a guaranteed annuity or is a fixed percentage distributed yearly of the
16 fair market value of the property (to be determined yearly).

17 (3) Rules similar to the rules of section 2055(e)(4) shall apply for
18 purposes of paragraph (2).

19 (4) Reforms to comply with paragraph (2). (A) In general -- A
20 deduction shall be allowed under subsection (a) in respect of any quali-
21 fied reformation (within the meaning of section 2055(e)(3)(B)).

22 (B) Rules similar to section 2055(e)(3) to apply -- For purposes of
23 this paragraph, rules similar to the rules of section 2055(e)(3) shall
24 apply.

25 (5) Contributions to donor advised funds. A deduction otherwise
26 allowed under subsection (a) for any contribution to a donor advised
27 fund (as defined in section 4966(d)(2)) shall only be allowed if-

1 --(A) the sponsoring organization (as defined in section 4966(d)(1))
2 with respect to such donor advised fund is not-
3 --(i) described in paragraph (3) or (4) of subsection (a), or
4 --(ii) a type III supporting organization (as defined in section
5 4943(f)(5)(A)) which is not a functionally integrated type III support-
6 ing organization (as defined in section 4943(f)(5)(B)), and
7 --(B) the taxpayer obtains a contemporaneous written acknowledgment
8 (determined under rules similar to the rules of section 170(f)(8)(C))
9 from the sponsoring organization (as so defined) of such donor advised
10 fund that such organization has exclusive legal control over the assets
11 contributed.

12 (d) Special rule for irrevocable transfers of easements in real prop-
13 erty. A deduction shall be allowed under subsection (a) in respect of
14 any transfer of a qualified real property interest (as defined in
15 section 170(h)(2)(C)) which meets the requirements of section 170(h)
16 (without regard to paragraph (4)(A) thereof).

17 (e) Special rules for fractional gifts

18 (1) Denial of deduction in certain cases

19 (A) In general

20 --No deduction shall be allowed for a contribution of an undivided
21 portion of a taxpayer's entire interest in tangible personal property
22 unless all interests in the property are held immediately before such
23 contribution by-

24 --(i) the taxpayer, or

25 --(ii) the taxpayer and the donee.

26 (B) Exceptions

27 --The Secretary may, by regulation, provide for exceptions to subpara-
28 graph (A) in cases where all persons who hold an interest in the proper-

1 ty make proportional contributions of an undivided portion of the entire
2 interest held by such persons.

3 (2) Recapture of deduction in certain cases; addition to tax

4 (A) In general. The Secretary shall provide for the recapture of an
5 amount equal to any deduction allowed under this section (plus interest)
6 with respect to any contribution of an undivided portion of a taxpayer's
7 entire interest in tangible personal property-

8 --(i) in any case in which the donor does not contribute all of the
9 remaining interests in such property to the donee (or, if such donee is
10 no longer in existence, to any person described in section 170(c)) on or
11 before the earlier of-

12 --(I) the date that is 10 years after the date of the initial fractional
13 contribution, or

14 --(II) the date of the death of the donor, and

15 --(ii) in any case in which the donee has not, during the period begin-
16 ning on the date of the initial fractional contribution and ending on
17 the date described in clause (i)-

18 --(I) had substantial physical possession of the property, and

19 --(II) used the property in a use which is related to a purpose or func-
20 tion constituting the basis for the organizations' exemption under
21 section 501.

22 (B) Addition to tax. The tax imposed under this chapter for any taxa-
23 ble year for which there is a recapture under subparagraph (A) shall be
24 increased by 10 percent of the amount so recaptured.

25 (C) Initial fractional contribution. For purposes of this paragraph,
26 the term "initial fractional contribution" means, with respect to any
27 donor, the first gift of an undivided portion of the donor's entire

1 interest in any tangible personal property for which a deduction is
2 allowed under subsection (a) or (b).

3 (f) Cross references

4 --(1) For treatment of certain organizations providing child care, see
5 section 501(k).

6 --(2) For exemption of certain gifts to or for the benefit of the United
7 States and for rules of construction with respect to certain bequests,
8 see section 2055(f).

9 --(3) For treatment of gifts to or for the use of Indian tribal govern-
10 ments (or their subdivisions), see section 7871.

11 § 2523. Gift to spouse (a) Allowance of deduction. Where a donor
12 transfers during the calendar year by gift an interest in property to a
13 donee who at the time of the gift is the donor's spouse, there shall be
14 allowed as a deduction in computing taxable gifts for the calendar year
15 an amount with respect to such interest equal to its value.

16 (b) Life estate or other terminable interest. Where, on the lapse of
17 time, on the occurrence of an event or contingency, or on the failure of
18 an event or contingency to occur, such interest transferred to the
19 spouse will terminate or fail, no deduction shall be allowed with
20 respect to such interest-

21 (1) if the donor retains in himself, or transfers or has transferred
22 (for less than an adequate and full consideration in money or money's
23 worth) to any person other than such donee spouse (or the estate of such
24 spouse), an interest in such property, and if by reason of such
25 retention or transfer the donor (or his heirs or assigns) or such person
26 (or his heirs or assigns) may possess or enjoy any part of such property
27 after such termination or failure of the interest transferred to the
28 donee spouse; or

1 (2) if the donor immediately after the transfer to the donee spouse
2 has a power to appoint an interest in such property which he can exer-
3 cise (either alone or in conjunction with any person) in such manner
4 that the appointee may possess or enjoy any part of such property after
5 such termination or failure of the interest transferred to the donee
6 spouse. For purposes of this paragraph, the donor shall be considered as
7 having immediately after the transfer to the donee spouse such power to
8 appoint even though such power cannot be exercised until after the lapse
9 of time, upon the occurrence of an event or contingency, or on the fail-
10 ure of an event or contingency to occur.

11 An exercise or release at any time by the donor, either alone or in
12 conjunction with any person, of a power to appoint an interest in prop-
13 erty, even though not otherwise a transfer, shall, for purposes of para-
14 graph (1), be considered as a transfer by him. Except as provided in
15 subsection (e), where at the time of the transfer it is impossible to
16 ascertain the particular person or persons who may receive from the
17 donor an interest in property so transferred by him, such interest
18 shall, for purposes of paragraph (1), be considered as transferred to a
19 person other than the donee spouse.

20 (c) Interest in unidentified assets. Where the assets out of which, or
21 the proceeds of which, the interest transferred to the donee spouse may
22 be satisfied include a particular asset or assets with respect to which
23 no deduction would be allowed if such asset or assets were transferred
24 from the donor to such spouse, then the value of the interest trans-
25 ferred to such spouse shall, for purposes of subsection (a), be reduced
26 by the aggregate value of such particular assets.

27 (d) Joint interests. If the interest is transferred to the donee
28 spouse as sole joint tenant with the donor or as tenant by the entirety,

1 the interest of the donor in the property which exists solely by reason
2 of the possibility that the donor may survive the donee spouse, or that
3 there may occur a severance of the tenancy, shall not be considered for
4 purposes of subsection (b) as an interest retained by the donor in
5 himself.

6 (e) Life estate with power of appointment in donee spouse. Where the
7 donor transfers an interest in property, if by such transfer his spouse
8 is entitled for life to all of the income from the entire interest, or
9 all the income from a specific portion thereof, payable annually or at
10 more frequent intervals, with power in the donee spouse to appoint the
11 entire interest, or such specific portion (exercisable in favor of such
12 donee spouse, or of the estate of such donee spouse, or in favor of
13 either, whether or not in each case the power is exercisable in favor of
14 others), and with no power in any other person to appoint any part of
15 such interest, or such portion, to any person other than the donee
16 spouse-

17 (1) the interest, or such portion, so transferred shall, for purposes
18 of subsection (a) be considered as transferred to the donee spouse, and

19 (2) no part of the interest, or such portion, so transferred shall,
20 for purposes of subsection (b)(1), be considered as retained in the
21 donor or transferred to any person other than the donee spouse.

22 This subsection shall apply only if, by such transfer, such power in
23 the donee spouse to appoint the interest, or such portion, whether exer-
24 cisable by will or during life, is exercisable by such spouse alone and
25 in all events. For purposes of this subsection, the term "specific
26 portion" only includes a portion determined on a fractional or percent-
27 age basis.

1 (f) Election with respect to life estate for donee spouse. (1) In
2 general

3 In the case of qualified terminable interest property-

4 (A) for purposes of subsection (a), such property shall be treated as
5 transferred to the donee spouse, and

6 (B) for purposes of subsection (b)(1), no part of such property shall
7 be considered as retained in the donor or transferred to any person
8 other than the donee spouse.

9 (2) Qualified terminable interest property. For purposes of this
10 subsection, the term "qualified terminable interest property" means any
11 property-

12 (A) which is transferred by the donor spouse,

13 (B) in which the donee spouse has a qualifying income interest for
14 life, and

15 (C) to which an election under this subsection applies.

16 (3) Certain rules made applicable. For purposes of this subsection,
17 rules similar to the rules of clauses (ii), (iii), and (iv) of section
18 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall
19 apply.

20 (4) Election. (A) Time and manner. An election under this subsection
21 with respect to any property shall be made on or before the date
22 prescribed by section 6075(b) for filing a gift tax return with respect
23 to the transfer (determined without regard to section 6019(2)) and shall
24 be made in such manner as the Secretary shall by regulations prescribe.

25 (B) Election irrevocable. An election under this subsection, once
26 made, shall be irrevocable.

27 (5) Treatment of interest retained by donor spouse. (A) In general. In
28 the case of any qualified terminable interest property-

1 (i) such property shall not be includible in the gross estate of the
2 donor spouse, and

3 (ii) any subsequent transfer by the donor spouse of an interest in
4 such property shall not be treated as a transfer for purposes of this
5 chapter.

6 (B) Subparagraph (A) not to apply after transfer by donee spouse.
7 Subparagraph (A) shall not apply with respect to any property after the
8 donee spouse is treated as having transferred such property under
9 section 2519, or such property is includible in the donee spouse's gross
10 estate under section 2044.

11 (6) Treatment of joint and survivor annuities. In the case of a joint
12 and survivor annuity where only the donor spouse and donee spouse have
13 the right to receive payments before the death of the last spouse to
14 die-

15 --(A) the donee spouse's interest shall be treated as a qualifying
16 income interest for life,

17 --(B) the donor spouse shall be treated as having made an election under
18 this subsection with respect to such annuity unless the donor spouse
19 otherwise elects on or before the date specified in paragraph (4)(A),

20 --(C) paragraph (5) and section 2519 shall not apply to the donor
21 spouse's interest in the annuity, and

22 --(D) if the donee spouse dies before the donor spouse, no amount shall
23 be includible in the gross estate of the donee spouse under section 2044
24 with respect to such annuity.

25 An election under subparagraph (B), once made, shall be irrevocable.

26 (g) Special rule for charitable remainder trusts. (1) In general. If,
27 after the transfer, the donee spouse is the only noncharitable benefici-
28 ary (other than the donor) of a qualified charitable remainder trust,

1 subsection (b) shall not apply to the interest in such trust which is
2 transferred to the donee spouse.

3 (2) Definitions. For purposes of paragraph (1), the term "noncharita-
4 ble beneficiary" and "qualified charitable remainder trust" have the
5 meanings given to such terms by section 2056(b)(8)(B).

6 (h) Denial of double deduction. Nothing in this section or any other
7 provision of this chapter shall allow the value of any interest in prop-
8 erty to be deducted under this chapter more than once with respect to
9 the same donor.

10 § 2524. Extent of deductions. The deductions provided in sections 2522
11 and 2523 shall be allowed only to the extent that the gifts therein
12 specified are included in the amount of gifts against which such
13 deductions are applied.

14 § 2701. Special valuation rules in case of transfers of certain inter-
15 ests in corporations or partnerships. (a) Valuation rules. (1) In gener-
16 al. Solely for purposes of determining whether a transfer of an inter-
17 est in a corporation or partnership to (or for the benefit of) a member
18 of the transferor's family is a gift (and the value of such transfer),
19 the value of any right-

20 --(A) which is described in subparagraph (A) or (B) of subsection
21 (b)(1), and

22 --(B) which is with respect to any applicable retained interest that is
23 held by the transferor or an applicable family member immediately after
24 the transfer,

25 --shall be determined under paragraph (3). This paragraph shall not
26 apply to the transfer of any interest for which market quotations are
27 readily available (as of the date of transfer) on an established securi-
28 ties market.

1 (2) Exceptions for marketable retained interests, etc. Paragraph (1)
2 shall not apply to any right with respect to an applicable retained
3 interest if-

4 --(A) market quotations are readily available (as of the date of the
5 transfer) for such interest on an established securities market,

6 --(B) such interest is of the same class as the transferred interest, or

7 --(C) such interest is proportionally the same as the transferred inter-
8 est, without regard to nonlapsing differences in voting power (or, for a
9 partnership, nonlapsing differences with respect to management and limi-
10 tations on liability).

11 --Subparagraph (C) shall not apply to any interest in a partnership if
12 the transferor or an applicable family member has the right to alter the
13 liability of the transferee of the transferred property. Except as
14 provided by the Secretary, any difference described in subparagraph (C)
15 which lapses by reason of any Federal or State law shall be treated as a
16 nonlapsing difference for purposes of such subparagraph.

17 (3) Valuation of rights to which paragraph (1) applies. (A) In gener-
18 al. The value of any right described in paragraph (1), other than a
19 distribution right which consists of a right to receive a qualified
20 payment, shall be treated as being zero.

21 (B) Valuation of certain qualified payments. If-

22 --(i) any applicable retained interest confers a distribution right
23 which consists of the right to a qualified payment, and

24 --(ii) there are 1 or more liquidation, put, call, or conversion rights
25 with respect to such interest, the value of all such rights shall be
26 determined as if each liquidation, put, call, or conversion right were
27 exercised in the manner resulting in the lowest value being determined
28 for all such rights.

1 (C) Valuation of qualified payments where no liquidation, etc.
2 rights. In the case of an applicable retained interest which is
3 described in subparagraph (B)(i) but not subparagraph (B)(ii), the value
4 of the distribution right shall be determined without regard to this
5 section.

6 (4) Minimum valuation of junior equity. (A) In general. In the case of
7 a transfer described in paragraph (1) of a junior equity interest in a
8 corporation or partnership, such interest shall in no event be valued at
9 an amount less than the value which would be determined if the total
10 value of all of the junior equity interests in the entity were equal to
11 10 percent of the sum of-

12 --(i) the total value of all of the equity interests in such entity,
13 plus

14 --(ii) the total amount of indebtedness of such entity to the transferor
15 (or an applicable family member).

16 (B) Definitions. For purposes of this paragraph-

17 (i) Junior equity interest. The term "junior equity interest" means
18 common stock or, in the case of a partnership, any partnership interest
19 under which the rights as to income and capital (or, to the extent
20 provided in regulations, the rights as to either income or capital) are
21 junior to the rights of all other classes of equity interests.

22 (ii) Equity interest. The term "equity interest" means stock or any
23 interest as a partner, as the case may be.

24 (b) Applicable retained interests. For purposes of this section-

25 (1) In general. The term "applicable retained interest" means any
26 interest in an entity with respect to which there is-

27 --(A) a distribution right, but only if, immediately before the transfer
28 described in subsection (a)(1), the transferor and applicable family

1 members hold (after application of subsection (e)(3)) control of the
2 entity, or

3 --(B) a liquidation, put, call, or conversion right.

4 (2) Control. For purposes of paragraph (1)-

5 (A) Corporations. In the case of a corporation, the term "control"
6 means the holding of at least 50 percent (by vote or value) of the stock
7 of the corporation.

8 (B) Partnerships. In the case of a partnership, the term "control"
9 means-

10 --(i) the holding of at least 50 percent of the capital or profits
11 interests in the partnership, or

12 --(ii) in the case of a limited partnership, the holding of any interest
13 as a general partner.

14 (C) Applicable family member. For purposes of this subsection, the
15 term "applicable family member" includes any lineal descendant of any
16 parent of the transferor or the transferor's spouse.

17 (c) Distribution and other rights; qualified payments. For purposes of
18 this section-

19 (1) Distribution right. (A) In general. The term "distribution right"
20 means-

21 --(i) a right to distributions from a corporation with respect to its
22 stock, and

23 --(ii) a right to distributions from a partnership with respect to a
24 partner's interest in the partnership.

25 (B) Exceptions. The term "distribution right" does not include-

26 --(i) a right to distributions with respect to any interest which is
27 junior to the rights of the transferred interest,

28 --(ii) any liquidation, put, call, or conversion right, or

1 --(iii) any right to receive any guaranteed payment described in section
2 707(c) of a fixed amount.

3 (2) Liquidation, etc. rights. (A) In general. The term "liquidation,
4 put, call, or conversion right" means any liquidation, put, call, or
5 conversion right, or any similar right, the exercise or nonexercise of
6 which affects the value of the transferred interest.

7 (B) Exception for fixed rights. (i) In general. The term "liquidation,
8 put, call, or conversion right" does not include any right which must be
9 exercised at a specific time and at a specific amount.

10 (ii) Treatment of certain rights. If a right is assumed to be exer-
11 cised in a particular manner under subsection (a)(3)(B), such right
12 shall be treated as so exercised for purposes of clause (i).

13 (C) Exception for certain rights to convert. The term "liquidation,
14 put, call, or conversion right" does not include any right which-

15 --(i) is a right to convert into a fixed number (or a fixed percentage)
16 of shares of the same class of stock in a corporation as the transferred
17 stock in such corporation under subsection (a)(1) (or stock which would
18 be of the same class but for nonlapsing differences in voting power),

19 --(ii) is nonlapsing,

20 --(iii) is subject to proportionate adjustments for splits, combina-
21 tions, reclassifications, and similar changes in the capital stock, and

22 --(iv) is subject to adjustments similar to the adjustments under
23 subsection (d) for accumulated but unpaid distributions.

24 --A rule similar to the rule of the preceding sentence shall apply for
25 partnerships.

26 (3) Qualified payment. (A) In general. Except as otherwise provided in
27 this paragraph, the term "qualified payment" means any dividend payable
28 on a periodic basis under any cumulative preferred stock (or a compara-

1 ble payment under any partnership interest) to the extent that such
2 dividend (or comparable payment) is determined at a fixed rate.

3 (B) Treatment of variable rate payments. For purposes of subparagraph
4 (A), a payment shall be treated as fixed as to rate if such payment is
5 determined at a rate which bears a fixed relationship to a specified
6 market interest rate.

7 (C) Elections. (i) In general. Payments under any interest held by a
8 transferor which (without regard to this subparagraph) are qualified
9 payments shall be treated as qualified payments unless the transferor
10 elects not to treat such payments as qualified payments. Payments
11 described in the preceding sentence which are held by an applicable
12 family member shall be treated as qualified payments only if such member
13 elects to treat such payments as qualified payments.

14 (ii) Election to have interest treated as qualified payment. A
15 transferor or applicable family member holding any distribution right
16 which (without regard to this subparagraph) is not a qualified payment
17 may elect to treat such right as a qualified payment, to be paid in the
18 amounts and at the times specified in such election. The preceding
19 sentence shall apply only to the extent that the amounts and times so
20 specified are not inconsistent with the underlying legal instrument
21 giving rise to such right.

22 (iii) Elections irrevocable. Any election under this subparagraph with
23 respect to an interest shall, once made, be irrevocable.

24 (d) Transfer tax treatment of cumulative but unpaid distributions. (1)
25 In general. If a taxable event occurs with respect to any distribution
26 right to which subsection (a)(3)(B) or (C) applied, the following shall
27 be increased by the amount determined under paragraph (2):

1 --(A) The taxable estate of the transferor in the case of a taxable
2 event described in paragraph (3)(A)(i).

3 --(B) The taxable gifts of the transferor for the calendar year in which
4 the taxable event occurs in the case of a taxable event described in
5 paragraph (3)(A)(ii) or (iii).

6 (2) Amount of increase. (A) In general. The amount of the increase
7 determined under this paragraph shall be the excess (if any) of-

8 --(i) the value of the qualified payments payable during the period
9 beginning on the date of the transfer under subsection (a)(1) and ending
10 on the date of the taxable event determined as if-

11 --(I) all such payments were paid on the date payment was due, and

12 --(II) all such payments were reinvested by the transferor as of the
13 date of payment at a yield equal to the discount rate used in determin-
14 ing the value of the applicable retained interest described in
15 subsection (a)(1), over

16 (ii) the value of such payments paid during such period computed under
17 clause (i) on the basis of the time when such payments were actually
18 paid.

19 (B) Limitation on amount of increase. (i) In general. The amount of
20 the increase under subparagraph (A) shall not exceed the applicable
21 percentage of the excess (if any) of-

22 --(I) the value (determined as of the date of the taxable event) of all
23 equity interests in the entity which are junior to the applicable
24 retained interest, over

25 --(II) the value of such interests (determined as of the date of the
26 transfer to which subsection (a)(1) applied).

27 (ii) Applicable percentage. For purposes of clause (i), the applicable
28 percentage is the percentage determined by dividing-

1 --(I) the number of shares in the corporation held (as of the date of
2 the taxable event) by the transferor which are applicable retained
3 interests of the same class, by

4 --(II) the total number of shares in such corporation (as of such date)
5 which are of the same class as the class described in subclause (I).

6 --A similar percentage shall be determined in the case of interests in a
7 partnership.

8 (iii) Definition. For purposes of this subparagraph, the term "equity
9 interest" has the meaning given such term by subsection (a)(4)(B).

10 (C) Grace period. For purposes of subparagraph (A), any payment of any
11 distribution during the 4-year period beginning on its due date shall be
12 treated as having been made on such due date.

13 (3) Taxable events. For purposes of this subsection-

14 (A) In general. The term "taxable event" means any of the following:

15 --(i) The death of the transferor if the applicable retained interest
16 conferring the distribution right is includible in the estate of the
17 transferor.

18 --(ii) The transfer of such applicable retained interest.

19 --(iii) At the election of the taxpayer, the payment of any qualified
20 payment after the period described in paragraph (2)(C), but only with
21 respect to such payment.

22 (B) Exception where spouse is transferee. (i) Deathtime transfers

23 --Subparagraph (A)(i) shall not apply to any interest includible in the
24 gross estate of the transferor if a deduction with respect to such
25 interest is allowable under section 2056 or 2106(a)(3).

26 (ii) Lifetime transfers. A transfer to the spouse of the transferor
27 shall not be treated as a taxable event under subparagraph (A)(ii) if
28 such transfer does not result in a taxable gift by reason of-

1 --(I) any deduction allowed under section 2523, or the exclusion under
2 section 2503(b), or

3 --(II) consideration for the transfer provided by the spouse.

4 (iii) Spouse succeeds to treatment of transferor. If an event is not
5 treated as a taxable event by reason of this subparagraph, the transfer-
6 ee spouse or surviving spouse (as the case may be) shall be treated in
7 the same manner as the transferor in applying this subsection with
8 respect to the interest involved.

9 (4) Special rules for applicable family members. (A) Family member
10 treated in same manner as transferor. For purposes of this subsection,
11 an applicable family member shall be treated in the same manner as the
12 transferor with respect to any distribution right retained by such fami-
13 ly member to which subsection (a)(3)(B) or (C) applied.

14 (B) Transfer to applicable family member. In the case of a taxable
15 event described in paragraph (3)(A)(ii) involving the transfer of an
16 applicable retained interest to an applicable family member (other than
17 the spouse of the transferor), the applicable family member shall be
18 treated in the same manner as the transferor in applying this subsection
19 to distributions accumulating with respect to such interest after such
20 taxable event.

21 (C) Transfer to transferors. In the case of a taxable event described
22 in paragraph (3)(A)(ii) involving a transfer of an applicable retained
23 interest from an applicable family member to a transferor, this
24 subsection shall continue to apply to the transferor during any period
25 the transferor holds such interest.

26 (5) Transfer to include termination. For purposes of this subsection,
27 any termination of an interest shall be treated as a transfer.

28 (e) Other definitions and rules. For purposes of this section-

1 (1) Member of the family. The term "member of the family" means, with
2 respect to any transferor-

3 --(A) the transferor's spouse,

4 --(B) a lineal descendant of the transferor or the transferor's spouse,

5 and

6 --(C) the spouse of any such descendant.

7 (2) Applicable family member. The term "applicable family member"
8 means, with respect to any transferor-

9 --(A) the transferor's spouse,

10 --(B) an ancestor of the transferor or the transferor's spouse, and

11 --(C) the spouse of any such ancestor.

12 (3) Attribution of indirect holdings and transfers. An individual
13 shall be treated as holding any interest to the extent such interest is
14 held indirectly by such individual through a corporation, partnership,
15 trust, or other entity. If any individual is treated as holding any
16 interest by reason of the preceding sentence, any transfer which results
17 in such interest being treated as no longer held by such individual
18 shall be treated as a transfer of such interest.

19 (4) Effect of adoption. A relationship by legal adoption shall be
20 treated as a relationship by blood.

21 (5) Certain changes treated as transfers. Except as provided in regu-
22 lations, a contribution to capital or a redemption, recapitalization, or
23 other change in the capital structure of a corporation or partnership
24 shall be treated as a transfer of an interest in such entity to which
25 this section applies if the taxpayer or an applicable family member-

26 --(A) receives an applicable retained interest in such entity pursuant
27 to such transaction, or

1 --(B) under regulations, otherwise holds, immediately after such trans-
2 action, an applicable retained interest in such entity.

3 --This paragraph shall not apply to any transaction (other than a
4 contribution to capital) if the interests in the entity held by the
5 transferor, applicable family members, and members of the transferor's
6 family before and after the transaction are substantially identical.

7 (6) Adjustments. Under regulations prescribed by the Secretary, if
8 there is any subsequent transfer, or inclusion in the gross estate, of
9 any applicable retained interest which was valued under the rules of
10 subsection (a), appropriate adjustments shall be made for purposes of
11 chapter 11, 12, or 13 to reflect the increase in the amount of any prior
12 taxable gift made by the transferor or decedent by reason of such valu-
13 ation or to reflect the application of subsection (d).

14 (7) Treatment as separate interests. The Secretary may by regulation
15 provide that any applicable retained interest shall be treated as 2 or
16 more separate interests for purposes of this section.

17 § 2702. Special valuation rules in case of transfers of interests in
18 trusts. (a) Valuation rules. (1) In general. Solely for purposes of
19 determining whether a transfer of an interest in trust to (or for the
20 benefit of) a member of the transferor's family is a gift (and the value
21 of such transfer), the value of any interest in such trust retained by
22 the transferor or any applicable family member (as defined in section
23 2701(e)(2)) shall be determined as provided in paragraph (2).

24 (2) Valuation of retained interests. (A) In general. The value of any
25 retained interest which is not a qualified interest shall be treated as
26 being zero.

1 (B) Valuation of qualified interest. The value of any retained inter-
2 est which is a qualified interest shall be determined under section
3 7520.

4 (3) Exceptions. (A) In general. This subsection shall not apply to any
5 transfer-

6 --(i) if such transfer is an incomplete gift,

7 --(ii) if such transfer involves the transfer of an interest in trust
8 all the property in which consists of a residence to be used as a
9 personal residence by persons holding term interests in such trust, or

10 --(iii) to the extent that regulations provide that such transfer is not
11 inconsistent with the purposes of this section.

12 (B) Incomplete gift. For purposes of subparagraph (A), the term
13 "incomplete gift" means any transfer which would not be treated as a
14 gift whether or not consideration was received for such transfer.

15 (b) Qualified interest. For purposes of this section, the term "quali-
16 fied interest" means-

17 (1) any interest which consists of the right to receive fixed amounts
18 payable not less frequently than annually,

19 (2) any interest which consists of the right to receive amounts which
20 are payable not less frequently than annually and are a fixed percentage
21 of the fair market value of the property in the trust (determined annu-
22 ally), and

23 (3) any noncontingent remainder interest if all of the other interests
24 in the trust consist of interests described in paragraph (1) or (2).

25 (c) Certain property treated as held in trust. For purposes of this
26 section- (1) In general. The transfer of an interest in property with
27 respect to which there is 1 or more term interests shall be treated as a
28 transfer of an interest in a trust.

1 (2) Joint purchases. If 2 or more members of the same family acquire
2 interests in any property described in paragraph (1) in the same trans-
3 action (or a series of related transactions), the person (or persons)
4 acquiring the term interests in such property shall be treated as having
5 acquired the entire property and then transferred to the other persons
6 the interests acquired by such other persons in the transaction (or
7 series of transactions). Such transfer shall be treated as made in
8 exchange for the consideration (if any) provided by such other persons
9 for the acquisition of their interests in such property.

10 (3) Term interest. The term "term interest" means-

11 (A) a life interest in property, or

12 (B) an interest in property for a term of years.

13 (4) Valuation rule for certain term interests. If the nonexercise of
14 rights under a term interest in tangible property would not have a
15 substantial effect on the valuation of the remainder interest in such
16 property-

17 (A) subparagraph (A) of subsection (a)(2) shall not apply to such term
18 interest, and

19 (B) the value of such term interest for purposes of applying
20 subsection (a)(1) shall be the amount which the holder of the term
21 interest establishes as the amount for which such interest could be sold
22 to an unrelated third party.

23 (d) Treatment of transfers of interests in portion of trust. In the
24 case of a transfer of an income or remainder interest with respect to a
25 specified portion of the property in a trust, only such portion shall be
26 taken into account in applying this section to such transfer.

1 (e) Member of the family. For purposes of this section, the term
2 "member of the family" shall have the meaning given such term by section
3 2704(c)(2).

4 § 2703. Certain rights and restrictions disregarded

5 (a) General rule. For purposes of this subtitle, the value of any
6 property shall be determined without regard to-

7 (1) any option, agreement, or other right to acquire or use the prop-
8 erty at a price less than the fair market value of the property (without
9 regard to such option, agreement, or right), or

10 (2) any restriction on the right to sell or use such property.

11 (b) Exceptions. Subsection (a) shall not apply to any option, agree-
12 ment, right, or restriction which meets each of the following require-
13 ments:

14 (1) It is a bona fide business arrangement.

15 (2) It is not a device to transfer such property to members of the
16 decedent's family for less than full and adequate consideration in money
17 or money's worth.

18 (3) Its terms are comparable to similar arrangements entered into by
19 persons in an arms' length transaction

20 § 2704. Treatment of certain lapsing rights and restrictions. (a)
21 Treatment of lapsed voting or liquidation rights. (1) In general. For
22 purposes of this subtitle, if-

23 --(A) there is a lapse of any voting or liquidation right in a corpo-
24 ration or partnership, and

25 --(B) the individual holding such right immediately before the lapse and
26 members of such individual's family hold, both before and after the
27 lapse, control of the entity,

1 such lapse shall be treated as a transfer by such individual by gift,
2 or a transfer which is includible in the gross estate of the decedent,
3 whichever is applicable, in the amount determined under paragraph (2).

4 (2) Amount of transfer. For purposes of paragraph (1), the amount
5 determined under this paragraph is the excess (if any) of-

6 --(A) the value of all interests in the entity held by the individual
7 described in paragraph (1) immediately before the lapse (determined as
8 if the voting and liquidation rights were nonlapsing), over

9 --(B) the value of such interests immediately after the lapse.

10 (3) Similar rights. The Secretary may by regulations apply this
11 subsection to rights similar to voting and liquidation rights.

12 (b) Certain restrictions on liquidation disregarded. (1) In general.
13 For purposes of this subtitle, if-

14 --(A) there is a transfer of an interest in a corporation or partnership
15 to (or for the benefit of) a member of the transferor's family, and

16 --(B) the transferor and members of the transferor's family hold, imme-
17 diately before the transfer, control of the entity,

18 --any applicable restriction shall be disregarded in determining the
19 value of the transferred interest.

20 (2) Applicable restriction. For purposes of this subsection, the term
21 "applicable restriction" means any restriction-

22 (A) which effectively limits the ability of the corporation or part-
23 nership to liquidate, and

24 (B) with respect to which either of the following applies:

25 --(i) The restriction lapses, in whole or in part, after the transfer
26 referred to in paragraph (1).

1 --(ii) The transferor or any member of the transferor's family, either
2 alone or collectively, has the right after such transfer to remove, in
3 whole or in part, the restriction.

4 (3) Exceptions. The term "applicable restriction" shall not include-

5 --(A) any commercially reasonable restriction which arises as part of
6 any financing by the corporation or partnership with a person who is not
7 related to the transferor or transferee, or a member of the family of
8 either, or

9 --(B) any restriction imposed, or required to be imposed, by any Federal
10 or State law.

11 (4) Other restrictions. The Secretary may by regulations provide that
12 other restrictions shall be disregarded in determining the value of the
13 transfer of any interest in a corporation or partnership to a member of
14 the transferor's family if such restriction has the effect of reducing
15 the value of the transferred interest for purposes of this subtitle but
16 does not ultimately reduce the value of such interest to the transferee.

17 (c) Definitions and special rules. For purposes of this section-

18 (1) Control. The term "control" has the meaning given such term by
19 section 2701(b)(2).

20 (2) Member of the family. The term "member of the family" means, with
21 respect to any individual-

22 (A) such individual's spouse,

23 (B) any ancestor or lineal descendant of such individual or such indi-
24 vidual's spouse,

25 (C) any brother or sister of the individual, and

26 (D) any spouse of any individual described in subparagraph (B) or

27 (C).

1 (3) Attribution. The rule of section 2701(e)(3) shall apply for
2 purposes of determining the interests held by any individual.

3 § 7872. Treatment of loans with below-market interest rates

4 (a) Treatment of gift loans and demand loans. (1) In general. For
5 purposes of this title, in the case of any below-market loan to which
6 this section applies and which is a gift loan or a demand loan, the
7 forgone interest shall be treated as-

8 --(A) transferred from the lender to the borrower, and

9 --(B) retransferred by the borrower to the lender as interest.

10 (2) Time when transfers made. Except as otherwise provided in regu-
11 lations prescribed by the Secretary, any forgone interest attributable
12 to periods during any calendar year shall be treated as transferred (and
13 retransferred) under paragraph (1) on the last day of such calendar
14 year.

15 (b) Treatment of other below-market loans. (1) In general. For
16 purposes of this title, in the case of any below-market loan to which
17 this section applies and to which subsection (a)(1) does not apply, the
18 lender shall be treated as having transferred on the date the loan was
19 made (or, if later, on the first day on which this section applies to
20 such loan), and the borrower shall be treated as having received on such
21 date, cash in an amount equal to the excess of-

22 --(A) the amount loaned, over

23 --(B) the present value of all payments which are required to be made
24 under the terms of the loan.

25 (2) Obligation treated as having original issue discount. For purposes
26 of this title-

1 (A) In general. Any below-market loan to which paragraph (1) applies
2 shall be treated as having original issue discount in an amount equal to
3 the excess described in paragraph (1).

4 (B) Amount in addition to other original issue discount. Any original
5 issue discount which a loan is treated as having by reason of subpara-
6 graph (A) shall be in addition to any other original issue discount on
7 such loan (determined without regard to subparagraph (A)).

8 (c) Below-market loans to which section applies. (1) In general.
9 Except as otherwise provided in this subsection and subsection (g), this
10 section shall apply to-

11 (A) Gifts. Any below-market loan which is a gift loan.

12 (B) Compensation-related loans. Any below-market loan directly or
13 indirectly between-

14 --(i) an employer and an employee, or

15 --(ii) an independent contractor and a person for whom such independent
16 contractor provides services.

17 (C) Corporation-shareholder loans. Any below-market loan directly or
18 indirectly between a corporation and any shareholder of such corpo-
19 ration.

20 (D) Tax avoidance loans. Any below-market loan 1 of the principal
21 purposes of the interest arrangements of which is the avoidance of any
22 Federal tax.

23 (E) Other below-market loans. To the extent provided in regulations,
24 any below-market loan which is not described in subparagraph (A), (B),
25 (C), or (F) if the interest arrangements of such loan have a significant
26 effect on any Federal tax liability of the lender or the borrower.

1 (F) Loans to qualified continuing care facilities. Any loan to any
2 qualified continuing care facility pursuant to a continuing care
3 contract.

4 (2) \$10,000 de minimis exception for gift loans between individuals.

5 (A) In general. In the case of any gift loan directly between individ-
6 uals, this section shall not apply to any day on which the aggregate
7 outstanding amount of loans between such individuals does not exceed
8 \$10,000.

9 (B) De minimis exception not to apply to loans attributable to acqui-
10 sition of income-producing assets.

11 --Subparagraph (A) shall not apply to any gift loan directly attribut-
12 able to the purchase or carrying of income-producing assets.

13 (C) Cross reference. For limitation on amount treated as interest
14 where loans do not exceed \$100,000, see subsection (d)(1).

15 (3) \$10,000 de minimis exception for compensation-related and corpo-
16 rate-shareholder loans. (A) In general. In the case of any loan
17 described in subparagraph (B) or (C) of paragraph (1), this section
18 shall not apply to any day on which the aggregate outstanding amount of
19 loans between the borrower and lender does not exceed \$10,000.

20 (B) Exception not to apply where 1 of principal purposes is tax avoid-
21 ance. Subparagraph (A) shall not apply to any loan the interest
22 arrangements of which have as 1 of their principal purposes the avoid-
23 ance of any Federal tax.

24 (d) Special rules for gift loans. (1) Limitation on interest accrual
25 for purposes of income taxes where loans do not exceed \$100,000. (A) In
26 general. For purposes of subtitle A, in the case of a gift loan directly
27 between individuals, the amount treated as retransferred by the borrower

1 to the lender as of the close of any year shall not exceed the borrow-
2 er's net investment income for such year.

3 (B) Limitation not to apply where 1 of principal purposes is tax
4 avoidance. Subparagraph (A) shall not apply to any loan the interest
5 arrangements of which have as 1 of their principal purposes the avoid-
6 ance of any Federal tax.

7 (C) Special rule where more than 1 gift loan outstanding. For purposes
8 of subparagraph (A), in any case in which a borrower has outstanding
9 more than 1 gift loan, the net investment income of such borrower shall
10 be allocated among such loans in proportion to the respective amounts
11 which would be treated as retransferred by the borrower without regard
12 to this paragraph.

13 (D) Limitation not to apply where aggregate amount of loans exceed
14 \$100,000. This paragraph shall not apply to any loan made by a lender
15 to a borrower for any day on which the aggregate outstanding amount of
16 loans between the borrower and lender exceeds \$100,000.

17 (E) Net investment income. For purposes of this paragraph-

18 (i) In general. The term "net investment income" has the meaning given
19 such term by section 163(d)(4).

20 (ii) De minimis rule. If the net investment income of any borrower for
21 any year does not exceed \$1,000, the net investment income of such
22 borrower for such year shall be treated as zero.

23 (iii) Additional amounts treated as interest. In determining the net
24 investment income of a person for any year, any amount which would be
25 included in the gross income of such person for such year by reason of
26 section 1272 if such section applied to all deferred payment obligations
27 shall be treated as interest received by such person for such year.

1 (iv) Deferred payment obligations. The term "deferred payment obli-
2 gation" includes any market discount bond, short-term obligation, United
3 States savings bond, annuity, or similar obligation.

4 (2) Special rule for gift tax. In the case of any gift loan which is a
5 term loan, subsection (b)(1) (and not subsection (a)) shall apply for
6 purposes of chapter 12.

7 (e) Definitions of below-market loan and forgone interest. For
8 purposes of this section-

9 (1) Below-market loan. The term "below-market loan" means any loan if-
10 --(A) in the case of a demand loan, interest is payable on the loan at a
11 rate less than the applicable Federal rate, or

12 --(B) in the case of a term loan, the amount loaned exceeds the present
13 value of all payments due under the loan.

14 (2) Forgone interest. The term "forgone interest" means, with respect
15 to any period during which the loan is outstanding, the excess of-

16 --(A) the amount of interest which would have been payable on the loan
17 for the period if interest accrued on the loan at the applicable Federal
18 rate and were payable annually on the day referred to in subsection
19 (a)(2), over

20 --(B) any interest payable on the loan properly allocable to such peri-
21 od.

22 (f) Other definitions and special rules. For purposes of this section-

23 (1) Present value. The present value of any payment shall be deter-
24 mined in the manner provided by regulations prescribed by the Secretary-

25 --(A) as of the date of the loan, and

26 --(B) by using a discount rate equal to the applicable Federal rate.

27 (2) Applicable Federal rate. (A) Term loans. In the case of any term
28 loan, the applicable Federal rate shall be the applicable Federal rate

1 in effect under section 1274(d) (as of the day on which the loan was
2 made), compounded semiannually.

3 (B) Demand loans. In the case of a demand loan, the applicable Federal
4 rate shall be the Federal short-term rate in effect under section
5 1274(d) for the period for which the amount of forgone interest is being
6 determined, compounded semiannually.

7 (3) Gift loan. The term "gift loan" means any below-market loan where
8 the forgoing of interest is in the nature of a gift.

9 (4) Amount loaned. The term "amount loaned" means the amount received
10 by the borrower.

11 (5) Demand loan. The term "demand loan" means any loan which is paya-
12 ble in full at any time on the demand of the lender. Such term also
13 includes (for purposes other than determining the applicable Federal
14 rate under paragraph (2)) any loan if the benefits of the interest
15 arrangements of such loan are not transferable and are conditioned on
16 the future performance of substantial services by an individual. To the
17 extent provided in regulations, such term also includes any loan with an
18 indefinite maturity.

19 (6) Term loan. The term "term loan" means any loan which is not a
20 demand loan.

21 (7) Husband and wife treated as 1 person. A husband and wife shall be
22 treated as 1 person.

23 (8) Loans to which section 483, 643(i), or 1274 applies. This section
24 shall not apply to any loan to which section 483, 643(i), or 1274
25 applies.

26 (9) No withholding. No amount shall be withheld under chapter 24 with
27 respect to-

1 --(A) any amount treated as transferred or retransferred under
2 subsection (a), and

3 --(B) any amount treated as received under subsection (b).

4 (10) Special rule for term loans. If this section applies to any term
5 loan on any day, this section shall continue to apply to such loan
6 notwithstanding paragraphs (2) and (3) of subsection (c). In the case of
7 a gift loan, the preceding sentence shall only apply for purposes of
8 chapter 12.

9 (11) Time for determining rate applicable to employee relocation
10 loans. (A) In general. In the case of any term loan made by an employer
11 to an employee the proceeds of which are used by the employee to
12 purchase a principal residence (within the meaning of section 121), the
13 determination of the applicable Federal rate shall be made as of the
14 date the written contract to purchase such residence was entered into.

15 (B) Paragraph only to apply to cases to which section 217 applies.
16 Subparagraph (A) shall only apply to the purchase of a principal resi-
17 dence in connection with the commencement of work by an employee or a
18 change in the principal place of work of an employee to which section
19 217 applies.

20 (g) Exception for certain loans to qualified continuing care facili-
21 ties. (1) In general. This section shall not apply for any calendar
22 year to any below-market loan made by a lender to a qualified continuing
23 care facility pursuant to a continuing care contract if the lender (or
24 the lender's spouse) attains age 65 before the close of such year.

25 (2) \$90,000 limit. Paragraph (1) shall apply only to the extent that
26 the aggregate outstanding amount of any loan to which such paragraph
27 applies (determined without regard to this paragraph), when added to the
28 aggregate outstanding amount of all other previous loans between the

1 lender (or the lender's spouse) and any qualified continuing care facil-
2 ity to which paragraph (1) applies, does not exceed \$90,000.

3 (3) Continuing care contract. For purposes of this section, the term
4 "continuing care contract" means a written contract between an individ-
5 ual and a qualified continuing care facility under which-

6 --(A) the individual or individual's spouse may use a qualified continu-
7 ing care facility for their life or lives,

8 --(B) the individual or individual's spouse-

9 --(i) will first-

10 --(I) reside in a separate, independent living unit with additional
11 facilities outside such unit for the providing of meals and other
12 personal care, and

13 --(II) not require long-term nursing care, and

14 --(ii) then will be provided long-term and skilled nursing care as the
15 health of such individual or individual's spouse requires, and

16 --(C) no additional substantial payment is required if such individual
17 or individual's spouse requires increased personal care services or
18 long-term and skilled nursing care.

19 (4) Qualified continuing care facility. (A) In general. For purposes
20 of this section, the term "qualified continuing care facility" means 1
21 or more facilities-

22 --(i) which are designed to provide services under continuing care
23 contracts, and

24 --(ii) substantially all of the residents of which are covered by
25 continuing care contracts.

26 (B) Substantially all facilities must be owned or operated by borrow-
27 er. A facility shall not be treated as a qualified continuing care
28 facility unless substantially all facilities which are used to provide

1 services which are required to be provided under a continuing care
2 contract are owned or operated by the borrower.

3 (C) Nursing homes excluded. The term "qualified continuing care facil-
4 ity" shall not include any facility which is of a type which is tradi-
5 tionally considered a nursing home.

6 (5) Adjustment of limit for inflation. (A) In general. In the case of
7 any loan made during any calendar year after 1986 to which paragraph (1)
8 applies, the dollar amount in paragraph (2) shall be increased by the
9 inflation adjustment for such calendar year. Any increase under the
10 preceding sentence shall be rounded to the nearest multiple of \$100 (or,
11 if such increase is a multiple of \$50, such increase shall be increased
12 to the nearest multiple of \$100).

13 (B) Inflation adjustment. For purposes of subparagraph (A), the
14 inflation adjustment for any calendar year is the percentage (if any) by
15 which-

16 --(i) the CPI for the preceding calendar year exceeds

17 --(ii) the CPI for calendar year 1985.

18 1. For purposes of the preceding sentence, the CPI for any calendar
19 year is the average of the Consumer Price Index as of the close of the
20 12-month period ending on September 30 of such calendar year.

21 (6) Suspension of application. Paragraph (1) shall not apply for any
22 calendar year to which subsection (h) applies.

23 (h) Exception for loans to qualified continuing care facilities. (1)
24 In general. This section shall not apply for any calendar year to any
25 below-market loan owed by a facility which on the last day of such year
26 is a qualified continuing care facility, if such loan was made pursuant
27 to a continuing care contract and if the lender (or the lender's spouse)
28 attains age 62 before the close of such year.

1 (2) Continuing care contract. For purposes of this section, the term
2 "continuing care contract" means a written contract between an individ-
3 ual and a qualified continuing care facility under which-
4 --(A) the individual or individual's spouse may use a qualified continu-
5 ing care facility for their life or lives,
6 --(B) the individual or individual's spouse will be provided with hous-
7 ing, as appropriate for the health of such individual or individual's
8 spouse-
9 --(i) in an independent living unit (which has additional available
10 facilities outside such unit for the provision of meals and other
11 personal care), and
12 --(ii) in an assisted living facility or a nursing facility, as is
13 available in the continuing care facility, and
14 --(C) the individual or individual's spouse will be provided assisted
15 living or nursing care as the health of such individual or individual's
16 spouse requires, and as is available in the continuing care facility.
17 --The Secretary shall issue guidance which limits such term to contracts
18 which provide only facilities, care, and services described in this
19 paragraph.

20 (3) Qualified continuing care facility. (A) In general. For purposes
21 of this section, the term "qualified continuing care facility" means 1
22 or more facilities-
23 --(i) which are designed to provide services under continuing care
24 contracts,
25 --(ii) which include an independent living unit, plus an assisted living
26 or nursing facility, or both, and
27 --(iii) substantially all of the independent living unit residents of
28 which are covered by continuing care contracts.

1 (B) Nursing homes excluded. The term "qualified continuing care facil-
2 ity" shall not include any facility which is of a type which is tradi-
3 tionally considered a nursing home.

4 (i) Regulations. (1) In general. The Secretary shall prescribe such
5 regulations as may be necessary or appropriate to carry out the purposes
6 of this section, including-

7 --(A) regulations providing that where, by reason of varying rates of
8 interest, conditional interest payments, waivers of interest, disposi-
9 tion of the lender's or borrower's interest in the loan, or other
10 circumstances, the provisions of this section do not carry out the
11 purposes of this section, adjustments to the provisions of this section
12 will be made to the extent necessary to carry out the purposes of this
13 section,

14 --(B) regulations for the purpose of assuring that the positions of the
15 borrower and lender are consistent as to the application (or nonapplica-
16 tion) of this section, and

17 --(C) regulations exempting from the application of this section any
18 class of transactions the interest arrangements of which have no signif-
19 icant effect on any Federal tax liability of the lender or the borrower.

20 (2) Estate tax coordination. Under regulations prescribed by the
21 Secretary, any loan which is made with donative intent and which is a
22 term loan shall be taken into account for purposes of chapter 11 in a
23 manner consistent with the provisions of subsection (b).

24 § 6166. Extension of Time for Payment of Estate Tax Where Estate
25 Consists Largely of Interest in Closely Held Business. (a) 5-year defer-
26 ral; 10-year installment payment.--

27 (1) In general.--If the value of an interest in a closely held busi-
28 ness which is included in determining the gross estate of a decedent who

1 was (at the date of his death) a citizen or resident of the United
2 States exceeds 35 percent of the adjusted gross estate, the executor may
3 elect to pay part or all of the tax imposed by section 2001 in 2 or more
4 (but not exceeding 10) equal installments.

5 (2) Limitation.--The maximum amount of tax which may be paid in
6 installments under this subsection shall be an amount which bears the
7 same ratio to the tax imposed by section 2001 (reduced by the credits
8 against such tax) as--

9 (A) the closely held business amount, bears to

10 (B) the amount of the adjusted gross estate.

11 (3) Date for payment of installments.--If an election is made under
12 paragraph (1), the first installment shall be paid on or before the date
13 selected by the executor which is not more than 5 years after the date
14 prescribed by section 6151(a) for payment of the tax, and each succeed-
15 ing installment shall be paid on or before the date which is 1 year
16 after the date prescribed by this paragraph for payment of the preceding
17 installment.

18 (b) Definitions and special rules.--

19 (1) Interest in closely held business.--For purposes of this section,
20 the term "interest in a closely held business" means--

21 (A) an interest as a proprietor in a trade or business carried on as a
22 proprietorship;

23 (B) an interest as a partner in a partnership carrying on a trade or
24 business, if--

25 (i) 20 percent or more of the total capital interest in such partner-
26 ship is included in determining the gross estate of the decedent, or

27 (ii) such partnership had 45 or fewer partners; or

28 (C) stock in a corporation carrying on a trade or business if--

1 (i) 20 percent or more in value of the voting stock of such corpo-
2 ration is included in determining the gross estate of the decedent, or

3 (ii) such corporation had 45 or fewer shareholders.

4 (2) Rules for applying paragraph (1).--For purposes of paragraph (1)--

5 (A) Time for testing.--Determinations shall be made as of the time
6 immediately before the decedent's death.

7 (B) Certain interests held by husband and wife.--Stock or a partner-
8 ship interest which--

9 (i) is community property of a husband and wife (or the income from
10 which is community income) under the applicable community property law
11 of a State, or

12 (ii) is held by a husband and wife as joint tenants, tenants by the
13 entirety, or tenants in common, shall be treated as owned by one share-
14 holder or one partner, as the case may be.

15 (C) Indirect ownership.--Property owned, directly or indirectly, by or
16 for a corporation, partnership, estate, or trust shall be considered as
17 being owned proportionately by or for its shareholders, partners, or
18 beneficiaries. For purposes of the preceding sentence, a person shall be
19 treated as a beneficiary of any trust only if such person has a present
20 interest in the trust.

21 (D) Certain interests held by members of decedent's family.--All stock
22 and all partnership interests held by the decedent or by any member of
23 his family (within the meaning of section 267(c)(4)) shall be treated as
24 owned by the decedent.

25 (3) Farmhouses and certain other structures taken into account.--For
26 purposes of the 35-percent requirement of subsection (a)(1), an interest
27 in a closely held business which is the business of farming includes an
28 interest in residential buildings and related improvements on the farm

1 which are occupied on a regular basis by the owner or lessee of the farm
2 or by persons employed by such owner or lessee for purposes of operating
3 or maintaining the farm.

4 (4) Value.--For purposes of this section, value shall be value deter-
5 mined for purposes of chapter 11 (relating to estate tax).

6 (5) Closely held business amount.--For purposes of this section, the
7 term "closely held business amount" means the value of the interest in a
8 closely held business which qualifies under subsection (a)(1).

9 (6) Adjusted gross estate.--For purposes of this section, the term,
10 "adjusted gross estate" means the value of the gross estate reduced by
11 the sum of the amounts allowable as a deduction under section 2053 or
12 2054. Such sum shall be determined on the basis of the facts and circum-
13 stances in existence on the date (including extensions) for filing the
14 return of tax imposed by section 2001 (or, if earlier, the date on which
15 such return is filed).

16 (7) Partnership interests and stock which is not readily tradable.--

17 (A) In general.--If the executor elects the benefits of this paragraph
18 (at such time and in such manner as the Secretary shall by regulations
19 prescribe), then--

20 (i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is
21 appropriate) and for purposes of subsection (c), any capital interest in
22 a partnership and any non-readily-tradable stock which (after the appli-
23 cation of paragraph (2)) is treated as owned by the decedent shall be
24 treated as included in determining the value of the decedent's gross
25 estate,

26 (ii) the executor shall be treated as having selected under subsection
27 (a)(3) the date prescribed by section 6151(a), and

1 (iii) for purposes of applying section 6601(j), the 2-percent portion
2 (as defined in such section) shall be treated as being zero.

3 (B) Non-readily-tradable stock defined.--For purposes of this para-
4 graph, the term "non-readily-tradable stock" means stock for which, at
5 the time of the decedent's death, there was no market on a stock
6 exchange or in an over-the-counter market.

7 (8) Stock in holding company treated as business company stock in
8 certain cases.--

9 (A) In general.--If the executor elects the benefits of this para-
10 graph, then--

11 (i) Holding company stock treated as business company stock.--For
12 purposes of this section, the portion of the stock of any holding compa-
13 ny which represents direct ownership (or indirect ownership through 1 or
14 more other holding companies) by such company in a business company
15 shall be deemed to be stock in such business company.

16 (ii) 5-year deferral for principal not to apply.--The executor shall
17 be treated as having selected under subsection (a)(3) the date
18 prescribed by section 6151(a).

19 (iii) 2-percent interest rate not to apply.--For purposes of applying
20 section 6601(j), the 2-percent portion (as defined in such section)
21 shall be treated as being zero.

22 (B) All stock must be non-readily-tradable stock.--

23 (i) In general.--No stock shall be taken into account for purposes of
24 applying this paragraph unless it is non-readily-tradable stock

25 (within the meaning of paragraph (7)(B)).

26 (ii) Special application where only holding company stock is non-read-
27 ily-tradable stock.--If the requirements of clause (i) are not met, but
28 all of the stock of each holding company taken into account is non-read-

1 ily-tradable, then this paragraph shall apply, but subsection (a)(1)
2 shall be applied by substituting "5" for "10".

3 (C) Application of voting stock requirement of paragraph
4 (1)(C)(i).--For purposes of clause (i) of paragraph (1)(C), the deemed
5 stock resulting from the application of subparagraph (A) shall be treat-
6 ed as voting stock to the extent that voting stock in the holding compa-
7 ny owns directly (or through the voting stock of 1 or more other holding
8 companies) voting stock in the business company.

9 (D) Definitions.--For purposes of this paragraph--

10 (i) Holding company.--The term "holding company" means any corporation
11 holding stock in another corporation.

12 (ii) Business company.--The term "business company" means any corpo-
13 ration carrying on a trade or business.

14 (9) Deferral not available for passive assets.--

15 (A) In general.--For purposes of subsection (a)(1) and determining the
16 closely held business amount (but not for purposes of subsection (g)),
17 the value of any interest in a closely held business shall not include
18 the value of that portion of such interest which is attributable to
19 passive assets held by the business.

20 (B) Passive asset defined.--For purposes of this paragraph--

21 (i) In general.--The term "passive asset" means any asset other than
22 an asset used in carrying on a trade or business.

23 (ii) Stock treated as passive asset.--The term "passive asset"
24 includes any stock in another corporation unless--

25 (I) such stock is treated as held by the decedent by reason of an
26 election under paragraph (8), and

27 (II) such stock qualified under subsection (a)(1).

28 (iii) Exception for active corporations.--If--

1 (I) a corporation owns 20 percent or more in value of the voting stock
2 of another corporation, or such other corporation has 45 or fewer share-
3 holders, and

4 (II) 80 percent or more of the value of the assets of each such corpo-
5 ration is attributable to assets used in carrying on a trade or busi-
6 ness, then such corporations shall be treated as 1 corporation for
7 purposes of clause (ii). For purposes of applying subclause (II) to the
8 corporation holding the stock of the other corporation, such stock shall
9 not be taken into account.

10 (10) Stock in qualifying lending and finance business treated as stock
11 in an active trade or business company.--

12 (A) In general.--If the executor elects the benefits of this para-
13 graph, then--

14 (i) Stock in qualifying lending and finance business treated as stock
15 in an active trade or business company.--For purposes of this section,
16 any asset used in a qualifying lending and finance business shall be
17 treated as an asset which is used in carrying on a trade or business.

18 (ii) 5-year deferral for principal not to apply.--The executor shall
19 be treated as having selected under subsection (a)(3) the date
20 prescribed by section 6151(a).

21 (iii) 5 equal installments allowed.--For purposes of applying
22 subsection

23 (a)(1), "5" shall be substituted for "10".

24 (B) Definitions.--For purposes of this paragraph--

25 (i) Qualifying lending and finance business.--The term "qualifying
26 lending and finance business" means a lending and finance business, if--

1 (I) based on all the facts and circumstances immediately before the
2 date of the decedent's death, there was substantial activity with
3 respect to the lending and finance business, or

4 (II) during at least 3 of the 5 taxable years ending before the date
5 of the decedent's death, such business had at least 1 full-time employee
6 substantially all of whose services were the active management of such
7 business, 10 full-time, nonowner employees substantially all of whose
8 services were directly related to such business, and \$5,000,000 in gross
9 receipts from activities described in clause (ii).

10 (ii) Lending and finance business.--The term "lending and finance
11 business" means a trade or business of--

12 (I) making loans,

13 (II) purchasing or discounting accounts receivable, notes, or install-
14 ment obligations,

15 (III) engaging in rental and leasing of real and tangible personal
16 property, including entering into leases and purchasing, servicing, and
17 disposing of leases and leased assets,

18 (IV) rendering services or making facilities available in the ordinary
19 course of a lending or finance business, and

20 (V) rendering services or making facilities available in connection
21 with activities described in subclauses (I) through (IV) carried on by
22 the corporation rendering services or making facilities available, or
23 another corporation which is a member of the same affiliated group (as
24 defined in section 1504 without regard to section 1504(b)(3)).

25 (iii) Limitation.--The term "qualifying lending and finance business"
26 shall not include any interest in an entity, if the stock or debt of
27 such entity or a controlled group (as defined in section 267(f)(1)) of
28 which such entity was a member was readily tradable on an established

1 securities market or secondary market (as defined by the Secretary) at
2 any time within 3 years before the date of the decedent's death.

3 (c) Special rule for interest in 2 or more closely held business-
4 es.--For purposes of this section, interest in 2 or more closely held
5 businesses, with respect to each of which there is included in determin-
6 ing the value of the decedent's gross estate 20 percent or more of the
7 total value of each such business, shall be treated as an interest in a
8 single closely held business. For purposes of the 20-percent requirement
9 of the preceding sentence, an interest in a closely held business which
10 represents the surviving spouse's interest in property held by the dece-
11 dent and the surviving spouse as community property or as joint tenants,
12 tenants by the entirety, or tenants in common shall be treated as having
13 been included in determining the value of the decedent's gross estate.

14 (d) Election.--Any election under subsection (a) shall be made not
15 later than the time prescribed by section 6075(a) for filing the return
16 of tax imposed by section 2001 (including extensions thereof), and shall
17 be made in such manner as the Secretary shall by regulations prescribe.
18 If an election under subsection (a) is made, the provisions of this
19 subtitle shall apply as though the Secretary were extending the time for
20 payment of the tax.

21 (e) Proration of deficiency to installments.--If an election is made
22 under subsection (a) to pay any part of the tax imposed by section 2001
23 in installments and a deficiency has been assessed, the deficiency shall
24 (subject to the limitation provided by subsection (a)(2)) be prorated to
25 the installments payable under subsection (a). The part of the deficien-
26 cy so prorated to any installment the date for payment of which has not
27 arrived shall be collected at the same time as, and as a part of, such
28 installment. The part of the deficiency so prorated to any installment

1 the date for payment of which has arrived shall be paid upon notice and
2 demand from the Secretary. This subsection shall not apply if the defi-
3 ciency is due to negligence, to intentional disregard of rules and regu-
4 lations, or to fraud with intent to evade tax.

5 (f) Time for payment of interest.--If the time for payment of any
6 amount of tax has been extended under this section--

7 (1) Interest for first 5 years.--Interest payable under section 6601
8 of any unpaid portion of such amount attributable to the first 5 years
9 after the date prescribed by section 6151(a) for payment of the tax
10 shall be paid annually.

11 (2) Interest for periods after first 5 years.--Interest payable under
12 section 6601 on any unpaid portion of such amount attributable to any
13 period after the 5-year period referred to in paragraph (1) shall be
14 paid annually at the same time as, and as a part of, each installment
15 payment of the tax.

16 (3) Interest in the case of certain deficiencies.--In the case of a
17 deficiency to which subsection (e) applies which is assessed after the
18 close of the 5-year period referred to in paragraph (1), interest
19 attributable to such 5-year period, and interest assigned under para-
20 graph (2) to any installment the date for payment of which has arrived
21 on or before the date of the assessment of the deficiency, shall be paid
22 upon notice and demand from the Secretary.

23 (4) Selection of shorter period.--If the executor has selected a peri-
24 od shorter than 5 years under subsection (a)(3), such shorter period
25 shall be substituted for 5 years in paragraphs (1), (2), and (3) of this
26 subsection.

27 (g) Acceleration of payment.--

28 (1) Disposition of interest; withdrawal of funds from business.--

1 (A) If--

2 (i)(I) any portion of an interest in a closely held business which
3 qualifies under subsection (a)(1) is distributed, sold, exchanged, or
4 otherwise disposed of, or

5 (II) money and other property attributable to such an interest is
6 withdrawn from such trade or business, and

7 (ii) the aggregate of such distributions, sales, exchanges, or other
8 dispositions and withdrawals equals or exceeds 50 percent of the value
9 of such interest, then the extension of time for payment of tax provided
10 in subsection (a) shall cease to apply, and the unpaid portion of the
11 tax payable in installments shall be paid upon notice and demand from
12 the Secretary.

13 (B) In the case of a distribution in redemption of stock to which
14 section 303 (or so much of section 304 as relates to section 303)
15 applies--

16 (i) the redemption of such stock, and the withdrawal of money and
17 other property distributed in such redemption, shall not be treated as a
18 distribution or withdrawal for purposes of subparagraph (A), and

19 (ii) for purposes of subparagraph (A), the value of the interest in
20 the closely held business shall be considered to be such value reduced
21 by the value of the stock redeemed.

22 This subparagraph shall apply only if, on or before the date
23 prescribed by subsection (a)(3) for the payment of the first installment
24 which becomes due after the date of the distribution (or, if earlier, on
25 or before the day which is 1 year after the date of the distribution),
26 there is paid an amount of the tax imposed by section 2001 not less than
27 the amount of money and other property distributed.

1 (C) Subparagraph (A)(i) does not apply to an exchange of stock pursu-
2 ant to a plan of reorganization described in subparagraph (D), (E), or
3 (F) of section 368(a)(1) nor to an exchange to which section 355 (or so
4 much of section 356 as relates to section 355) applies; but any stock
5 received in such an exchange shall be treated for purposes of subpara-
6 graph (A)(i) as an interest qualifying under subsection (a)(1).

7 (D) Subparagraph (A)(i) does not apply to a transfer of property of
8 the decedent to a person entitled by reason of the decedent's death to
9 receive such property under the decedent's will, the applicable law of
10 descent and distribution, or a trust created by the decedent. A similar
11 rule shall apply in the case of a series of subsequent transfers of the
12 property by reason of death so long as each transfer is to a member of
13 the family (within the meaning of section 267(c)(4)) of the transferor
14 in such transfer.

15 (E) Changes in interest in holding company.--If any stock in a holding
16 company is treated as stock in a business company by reason of
17 subsection (b)(8)(A)--

18 (i) any disposition of any interest in such stock in such holding
19 company which was included in determining the gross estate of the dece-
20 dent, or

21 (ii) any withdrawal of any money or other property from such holding
22 company attributable to any interest included in determining the gross
23 estate of the decedent,

24 shall be treated for purposes of subparagraph (A) as a disposition of
25 (or a withdrawal with respect to) the stock qualifying under subsection
26 (a)(1).

1 (F) Changes in interest in business company.--If any stock in a hold-
2 ing company is treated as stock in a business company by reason of
3 subsection (b)(8)(A)--

4 (i) any disposition of any interest in such stock in the business
5 company by such holding company, or

6 (ii) any withdrawal of any money or other property from such business
7 company attributable to such stock by such holding company owning such
8 stock,

9 shall be treated for purposes of subparagraph (A) as a disposition of
10 (or a withdrawal with respect to) the stock qualifying under subsection
11 (a)(1).

12 (2) Undistributed income of estate.--

13 (A) If an election is made under this section and the estate has
14 undistributed net income for any taxable year ending on or after the due
15 date for the first installment, the executor shall, on or before the
16 date prescribed by law for filing the income tax return for such taxable
17 year (including extensions thereof), pay an amount equal to such undis-
18 tributed net income in liquidation of the unpaid portion of the tax
19 payable in installments.

20 (B) For purposes of subparagraph (A), the undistributed net income of
21 the estate for any taxable year is the amount by which the distributable
22 net income of the estate for such taxable year (as defined in section
23 643) exceeds the sum of--

24 (i) the amounts for such taxable year specified in paragraphs (1) and
25 (2) of section 661(a) (relating to deductions for distributions, etc.);

26 (ii) the amount of tax imposed for the taxable year on the estate
27 under chapter 1; and

1 (iii) the amount of the tax imposed by section 2001 (including inter-
2 est) paid by the executor during the taxable year (other than any amount
3 paid pursuant to this paragraph).

4 (C) For purposes of this paragraph, if any stock in a corporation is
5 treated as stock in another corporation by reason of subsection
6 (b)(8)(A), any dividends paid by such other corporation to the corpo-
7 ration shall be treated as paid to the estate of the decedent to the
8 extent attributable to the stock qualifying under subsection (a)(1).

9 (3) Failure to make payment of principal or interest.--

10 (A) In general.--Except as provided in subparagraph (B), if any
11 payment of principal or interest under this section is not paid on or
12 before the date fixed for its payment by this section (including any
13 extension of time), the unpaid portion of the tax payable in install-
14 ments shall be paid upon notice and demand from the Secretary.

15 (B) Payment within 6 months.--If any payment of principal or interest
16 under this section is not paid on or before the date determined under
17 subparagraph (A) but is paid within 6 months of such date--

18 (i) the provisions of subparagraph (A) shall not apply with respect to
19 such payment,

20 (ii) the provisions of section 6601(j) shall not apply with respect to
21 the determination of interest on such payment, and

22 (iii) there is imposed a penalty in an amount equal to the product
23 of--

24 (I) 5 percent of the amount of such payment, multiplied by

25 (II) the number of months (or fractions thereof) after such date and
26 before payment is made. The penalty imposed under clause (iii) shall be
27 treated in the same manner as a penalty imposed under subchapter B of
28 chapter 68.

1 (h) Election in case of certain deficiencies.--

2 (1) In general.--If--

3 (A) a deficiency in the tax imposed by section 2001 is assessed,

4 (B) the estate qualifies under subsection (a)(1), and

5 (C) the executor has not made an election under subsection (a), the
6 executor may elect to pay the deficiency in installments. This
7 subsection shall not apply if the deficiency is due to negligence, to
8 intentional disregard of rules and regulations, or to fraud with intent
9 to evade tax.

10 (2) Time of election.--An election under this subsection shall be made
11 not later than 60 days after issuance of notice and demand by the Secre-
12 tary for the payment of the deficiency, and shall be made in such manner
13 as the Secretary shall by regulations prescribe.

14 (3) Effect of election on payment.--If an election is made under this
15 subsection, the deficiency shall (subject to the limitation provided by
16 subsection (a)(2)) be prorated to the installments which would have been
17 due if an election had been timely made under subsection (a) at the time
18 the estate tax return was filed. The part of the deficiency so prorated
19 to any installment the date for payment of which would have arrived
20 shall be paid at the time of the making of the election under this
21 subsection. The portion of the deficiency so prorated to installments
22 the date for payment of which would not have so arrived shall be paid at
23 the time such installments would have been due if such an election had
24 been made.

25 (i) Special rule for certain direct skips.--To the extent that an
26 interest in a closely held business is the subject of a direct skip
27 (within the meaning of section 2612(c)) occurring at the same time as
28 and as a result of the decedent's death, then for purposes of this

1 section any tax imposed by section 2601 on the transfer of such interest
2 shall be treated as if it were additional tax imposed by section 2001.

3 (j) Regulations.--The Secretary shall prescribe such regulations as
4 may be necessary to the application of this section.

5 (k) Cross references.--

6 (1) Security.-- For authority of the Secretary to require security in
7 the case of an extension under this section, see section 6165.

8 (2) Lien.--For special lien (in lieu of bond) in the case of an exten-
9 sion under this section, see section 6324A.

10 (3) Period of limitation.--For extension of the period of limitation
11 in the case of an extension under this section, see section 6503(d).

12 (4) Interest.--For provisions relating to interest on tax payable in
13 installments under this section, see subsection (j) of section 6601.

14 (5) Transfers within 3 years of death.--For special rule for qualify-
15 ing an estate under this section where property has been transferred
16 within 3 years of decedent's death, see section 2035(c)(2).

17 § 11. This act shall take effect April 1, 2014 and shall apply to
18 estates of decedents dying on and after that date; provided, however,
19 that the amendments to subsection (c) of section 951 of the tax law made
20 by section one of this act shall not affect the repeal of such
21 subsection and shall be deemed repealed therewith.

22 PART Y

23 Section 1. Article 19 of the tax law is REPEALED.

24 § 2. Section 1820 of the tax law is REPEALED.

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

4 1. All taxes, interest, penalties and fees collected or received by
5 the commissioner or the commissioner's duly authorized agent under arti-
6 cles nine (except section one hundred eighty-two-a thereof and except as
7 otherwise provided in section two hundred five thereof), nine-A,
8 twelve-A (except as otherwise provided in section two hundred eighty-
9 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
10 section three hundred twelve thereof), eighteen, [nineteen,] twenty
11 (except as otherwise provided in section four hundred eighty-two there-
12 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight
13 (except as otherwise provided in section eleven hundred two or eleven
14 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise
15 provided in section fourteen hundred twenty-one thereof), thirty-two,
16 thirty-three and thirty-three-A of this chapter shall be deposited daily
17 in one account with such responsible banks, banking houses or trust
18 companies as may be designated by the comptroller, to the credit of the
19 comptroller. Such an account may be established in one or more of such
20 depositories. Such deposits shall be kept separate and apart from all
21 other money in the possession of the comptroller. The comptroller shall
22 require adequate security from all such depositories. Of the total
23 revenue collected or received under such articles of this chapter, the
24 comptroller shall retain in the comptroller's hands such amount as the
25 commissioner may determine to be necessary for refunds or reimbursements
26 under such articles of this chapter and article ten thereof out of which
27 amount the comptroller shall pay any refunds or reimbursements to which
28 taxpayers shall be entitled under the provisions of such articles of

1 this chapter and article ten thereof. The commissioner and the comp-
2 troller shall maintain a system of accounts showing the amount of reven-
3 ue collected or received from each of the taxes imposed by such arti-
4 cles. The comptroller, after reserving the amount to pay such refunds or
5 reimbursements, shall, on or before the tenth day of each month, pay
6 into the state treasury to the credit of the general fund all revenue
7 deposited under this section during the preceding calendar month and
8 remaining to the comptroller's credit on the last day of such preceding
9 month, (i) except that the comptroller shall pay to the state department
10 of social services that amount of overpayments of tax imposed by article
11 twenty-two of this chapter and the interest on such amount which is
12 certified to the comptroller by the commissioner as the amount to be
13 credited against past-due support pursuant to subdivision six of section
14 one hundred seventy-one-c of this [chapter] article, (ii) and except
15 that the comptroller shall pay to the New York state higher education
16 services corporation and the state university of New York or the city
17 university of New York respectively that amount of overpayments of tax
18 imposed by article twenty-two of this chapter and the interest on such
19 amount which is certified to the comptroller by the commissioner as the
20 amount to be credited against the amount of defaults in repayment of
21 guaranteed student loans and state university loans or city university
22 loans pursuant to subdivision five of section one hundred seventy-one-d
23 and subdivision six of section one hundred seventy-one-e of this [chap-
24 ter] article, (iii) and except further that, notwithstanding any law,
25 the comptroller shall credit to the revenue arrearage account, pursuant
26 to section ninety-one-a of the state finance law, that amount of over-
27 payment of tax imposed by article nine, nine-A, twenty-two, thirty,
28 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any

1 interest thereon, which is certified to the comptroller by the commis-
2 sioner as the amount to be credited against a past-due legally enforcea-
3 ble debt owed to a state agency pursuant to paragraph (a) of subdivision
4 six of section one hundred seventy-one-f of this article, provided,
5 however, he shall credit to the special offset fiduciary account, pursu-
6 ant to section ninety-one-c of the state finance law, any such amount
7 creditable as a liability as set forth in paragraph (b) of subdivision
8 six of section one hundred seventy-one-f of this article, (iv) and
9 except further that the comptroller shall pay to the city of New York
10 that amount of overpayment of tax imposed by article nine, nine-A, twen-
11 ty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this
12 chapter and any interest thereon that is certified to the comptroller by
13 the commissioner as the amount to be credited against city of New York
14 tax warrant judgment debt pursuant to section one hundred seventy-one-l
15 of this article, (v) and except further that the comptroller shall pay
16 to a non-obligated spouse that amount of overpayment of tax imposed by
17 article twenty-two of this chapter and the interest on such amount which
18 has been credited pursuant to section one hundred seventy-one-c, one
19 hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-
20 one-f or one hundred seventy-one-l of this article and which is certi-
21 fied to the comptroller by the commissioner as the amount due such non-
22 obligated spouse pursuant to paragraph six of subsection (b) of section
23 six hundred fifty-one of this chapter; and (vi) the comptroller shall
24 deduct a like amount which the comptroller shall pay into the treasury
25 to the credit of the general fund from amounts subsequently payable to
26 the department of social services, the state university of New York, the
27 city university of New York, or the higher education services corpo-
28 ration, or the revenue arrearage account or special offset fiduciary

1 account pursuant to section ninety-one-a or ninety-one-c of the state
2 finance law, as the case may be, whichever had been credited the amount
3 originally withheld from such overpayment, and (vii) with respect to
4 amounts originally withheld from such overpayment pursuant to section
5 one hundred seventy-one-1 of this article and paid to the city of New
6 York, the comptroller shall collect a like amount from the city of New
7 York.

8 § 4. Section 29 of chapter 912 of the laws of 1920 relating to the
9 regulation of boxing, sparring and wrestling matches, as amended by
10 chapter 833 of the laws of 1987, the section heading and subdivision 1
11 as amended by chapter 437 of the laws of 2002, is amended to read as
12 follows:

13 § 29. Notice of contest or exhibition[; collection of tax]. 1. Every
14 individual, corporation, association or club holding any professional or
15 amateur boxing, sparring or professional wrestling match or exhibition,
16 for which an admission fee is charged or received, shall notify the
17 athletic commission ten days in advance of the holding of such contest.
18 All tickets of admission to any such boxing, sparring or professional
19 wrestling match or exhibition shall be procured from a printer duly
20 authorized by the state athletic commission to print such tickets and
21 shall bear clearly upon the face thereof the purchase price and location
22 of same. Any individual, corporation, association or club failing to
23 fully comply with this section shall be subject to a penalty of fifty
24 dollars to be collected by and paid to the department of state. Any
25 individual, corporation, association or club is prohibited from operat-
26 ing any shows or exhibitions until all penalties due pursuant to this
27 section [and taxes, interest and penalties due pursuant to article nine-
28 teen of the tax law] have been paid.

1 2. [Pursuant to direction by the commissioner of taxation and
2 finance, employees or officers of the athletic commission shall act as
3 agents of the commissioner of taxation and finance to collect the tax
4 imposed by article nineteen of the tax law.] The athletic commission
5 shall provide the commissioner of taxation and finance with such infor-
6 mation and technical assistance as may be necessary for the proper
7 administration of [such tax] state and local sales taxes imposed on
8 charges for admission to a place of amusement where any such match or
9 exhibition will be held.

10 § 5. Section 30 of chapter 912 of the laws of 1920 relating to the
11 regulation of boxing, sparring and wrestling matches, as amended by
12 chapter 833 of the laws of 1987, is amended to read as follows:

13 § 30. Disposition of receipts. All receipts of the commission shall be
14 paid into the state treasury. [Provided, however, that receipts from the
15 tax imposed by article nineteen of the tax law shall be deposited as
16 provided by section one hundred seventy-one-a of the tax law.]

17 § 6. Notwithstanding the repeal of article 19 and section 1820 of the
18 tax law by this act, all provisions of such article 19 and section 1820,
19 in respect to the imposition, exemption, assessment, payment, payment
20 over, determination, collection, and credit or refund of tax imposed
21 thereunder, the filing of forms and returns, the preservation of records
22 for the purposes of such tax, the secrecy of returns, the disposition of
23 revenues, and the civil and criminal penalties applicable to the
24 violation of the provisions of such article 19, shall continue in full
25 force and effect with respect to all such tax accrued up to September 1,
26 2014; all actions and proceedings, civil or criminal, commenced or
27 authorized to be commenced under or by virtue of any provision of such
28 article 19 so repealed, and pending or able to be commenced prior to the

1 effective date of this act, may be commenced, prosecuted and defended to
2 final effect in the same manner as they might if such provisions were
3 not so repealed.

4 § 7. This act shall take effect September 1, 2014 and the state and
5 local sales taxes arising on the date this act shall have taken effect
6 shall apply to any admission to or the use of facilities of a place of
7 amusement occurring on or after that date, whether or not the admission
8 charge has been paid prior to such date, unless the tickets were actual-
9 ly sold and delivered prior to such date to a person entering such place
10 of amusement on or after such date.

11 PART Z

12 Section 1. Clause (F) of subparagraph (ii) of paragraph 1 of subdivi-
13 sion b of section 1612 of the tax law, as amended by chapter 174 of the
14 laws of 2013, is amended to read as follows:

15 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-
16 agraph, when a vendor track, is located in Sullivan county and within
17 sixty miles from any gaming facility in a contiguous state such vendor
18 fee shall, for a period of [six] seven years commencing April first, two
19 thousand eight, be at a rate of forty-one percent of the total revenue
20 wagered at the vendor track after payout for prizes pursuant to this
21 chapter, after which time such rate shall be as for all tracks in clause
22 (C) of this subparagraph.

23 § 2. This act shall take effect immediately and shall be deemed to
24 have been in full force and effect on and after April 1, 2014.

25 PART AA

1 Section 1. Paragraph (a) of subdivision 1 of section 1003 of the
2 racing, pari-mutuel wagering and breeding law, as amended by chapter 174
3 of the laws of 2013, is amended to read as follows:

4 (a) Any racing association or corporation or regional off-track
5 betting corporation, authorized to conduct pari-mutuel wagering under
6 this chapter, desiring to display the simulcast of horse races on which
7 pari-mutuel betting shall be permitted in the manner and subject to the
8 conditions provided for in this article may apply to the commission for
9 a license so to do. Applications for licenses shall be in such form as
10 may be prescribed by the commission and shall contain such information
11 or other material or evidence as the commission may require. No license
12 shall be issued by the commission authorizing the simulcast transmission
13 of thoroughbred races from a track located in Suffolk county. The fee
14 for such licenses shall be five hundred dollars per simulcast facility
15 and for account wagering licensees that do not operate either a simul-
16 cast facility that is open to the public within the state of New York or
17 a licensed racetrack within the state, twenty thousand dollars per year
18 payable by the licensee to the commission for deposit into the general
19 fund. Except as provided in this section, the commission shall not
20 approve any application to conduct simulcasting into individual or group
21 residences, homes or other areas for the purposes of or in connection
22 with pari-mutuel wagering. The [board] commission may approve simulcast-
23 ing into residences, homes or other areas to be conducted jointly by one
24 or more regional off-track betting corporations and one or more of the
25 following: a franchised corporation, thoroughbred racing corporation or
26 a harness racing corporation or association; provided (i) the simulcast-
27 ing consists only of those races on which pari-mutuel betting is author-
28 ized by this chapter at one or more simulcast facilities for each of the

1 contracting off-track betting corporations which shall include wagers
2 made in accordance with section one thousand fifteen, one thousand
3 sixteen and one thousand seventeen of this article; provided further
4 that the contract provisions or other simulcast arrangements for such
5 simulcast facility shall be no less favorable than those in effect on
6 January first, two thousand five; (ii) that each off-track betting
7 corporation having within its geographic boundaries such residences,
8 homes or other areas technically capable of receiving the simulcast
9 signal shall be a contracting party; (iii) the distribution of revenues
10 shall be subject to contractual agreement of the parties except that
11 statutory payments to non-contracting parties, if any, may not be
12 reduced; provided, however, that nothing herein to the contrary shall
13 prevent a track from televising its races on an irregular basis primari-
14 ly for promotional or marketing purposes as found by the [board] commis-
15 sion. For purposes of this paragraph, the provisions of section one
16 thousand thirteen of this article shall not apply. Any agreement author-
17 izing an in-home simulcasting experiment commencing prior to May
18 fifteenth, nineteen hundred ninety-five, may, and all its terms, be
19 extended until June thirtieth, two thousand [fourteen] fifteen;
20 provided, however, that any party to such agreement may elect to termi-
21 nate such agreement upon conveying written notice to all other parties
22 of such agreement at least forty-five days prior to the effective date
23 of the termination, via registered mail. Any party to an agreement
24 receiving such notice of an intent to terminate, may request the [board]
25 commission to mediate between the parties new terms and conditions in a
26 replacement agreement between the parties as will permit continuation of
27 an in-home experiment until June thirtieth, two thousand [fourteen]
28 fifteen; and (iv) no in-home simulcasting in the thoroughbred special

1 betting district shall occur without the approval of the regional
2 thoroughbred track.

3 § 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
4 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
5 section 2 of part U of chapter 59 of the laws of 2013, is amended to
6 read as follows:

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

19 § 3. The opening paragraph of subdivision 1 of section 1014 of the
20 racing, pari-mutuel wagering and breeding law, as amended by section 3
21 of part U of chapter 59 of the laws of 2013, is amended to read as
22 follows:

23 The provisions of this section shall govern the simulcasting of races
24 conducted at thoroughbred tracks located in another state or country on
25 any day during which a franchised corporation is conducting a race meet-
26 ing in Saratoga county at Saratoga thoroughbred racetrack until June
27 thirtieth, two thousand [fourteen] fifteen and on any day regardless of
28 whether or not a franchised corporation is conducting a race meeting in

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

13 § 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering
14 and breeding law, as amended by section 4 of part U of chapter 59 of the
15 laws of 2013, is amended to read as follows:

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

21 § 5. The opening paragraph of subdivision 1 of section 1016 of the
22 racing, pari-mutuel wagering and breeding law, as amended by section 5
23 of part U of chapter 59 of the laws of 2013, is amended to read as
24 follows:

25 The provisions of this section shall govern the simulcasting of races
26 conducted at thoroughbred tracks located in another state or country on
27 any day during which a franchised corporation is not conducting a race
28 meeting in Saratoga county at Saratoga thoroughbred racetrack until June

1 thirtieth, two thousand [fourteen] fifteen. Every off-track betting
2 corporation branch office and every simulcasting facility licensed in
3 accordance with section one thousand seven that have entered into a
4 written agreement with such facility's representative horsemen's organ-
5 ization as approved by the [board] commission, one thousand eight or one
6 thousand nine of this article shall be authorized to accept wagers and
7 display the live full-card simulcast signal of thoroughbred tracks
8 (which may include quarter horse or mixed meetings provided that all
9 such wagering on such races shall be construed to be thoroughbred races)
10 located in another state or foreign country, subject to the following
11 provisions; provided, however, no such written agreement shall be
12 required of a franchised corporation licensed in accordance with section
13 one thousand seven of this article:

14 § 6. The opening paragraph of section 1018 of the racing, pari-mutuel
15 wagering and breeding law, as amended by section 6 of part U of chapter
16 59 of the laws of 2013, is amended to read as follows:

17 Notwithstanding any other provision of this chapter, for the period
18 July twenty-fifth, two thousand one through September eighth, two thou-
19 sand [thirteen] fourteen, when a franchised corporation is conducting a
20 race meeting within the state at Saratoga Race Course, every off-track
21 betting corporation branch office and every simulcasting facility
22 licensed in accordance with section one thousand seven (that has entered
23 into a written agreement with such facility's representative horsemen's
24 organization as approved by the [board] commission), one thousand eight
25 or one thousand nine of this article shall be authorized to accept
26 wagers and display the live simulcast signal from thoroughbred tracks
27 located in another state, provided that such facility shall accept
28 wagers on races run at all in-state thoroughbred tracks which are

1 conducting racing programs subject to the following provisions;
2 provided, however, no such written agreement shall be required of a
3 franchised corporation licensed in accordance with section one thousand
4 seven of this article.

5 § 7. Section 32 of chapter 281 of the laws of 1994, amending the
6 racing, pari-mutuel wagering and breeding law and other laws relating
7 to simulcasting, as amended by section 7 of part U of chapter 59 of the
8 laws of 2013, is amended to read as follows:

9 § 32. This act shall take effect immediately and the pari-mutuel tax
10 reductions in section six of this act shall expire and be deemed
11 repealed on July 1, [2014] 2015; provided, however, that nothing
12 contained herein shall be deemed to affect the application, qualifica-
13 tion, expiration, or repeal of any provision of law amended by any
14 section of this act, and such provisions shall be applied or qualified
15 or shall expire or be deemed repealed in the same manner, to the same
16 extent and on the same date as the case may be as otherwise provided by
17 law; provided further, however, that sections twenty-three and twenty-
18 five of this act shall remain in full force and effect only until May 1,
19 1997 and at such time shall be deemed to be repealed.

20 § 8. Section 54 of chapter 346 of the laws of 1990, amending the
21 racing, pari-mutuel wagering and breeding law and other laws relating to
22 simulcasting and the imposition of certain taxes, as amended by section
23 8 of part U of chapter 59 of the laws of 2013, is amended to read as
24 follows:

25 § 54. This act shall take effect immediately; provided, however,
26 sections three through twelve of this act shall take effect on January
27 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
28 ing law, as added by section thirty-eight of this act, shall expire and

1 be deemed repealed on July 1, [2014] 2015; and section eighteen of this
2 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
3 two of this act shall take effect as of the same date as chapter 772 of
4 the laws of 1989 took effect.

5 § 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
6 pari-mutuel wagering and breeding law, as amended by section 9 of part U
7 of chapter 59 of the laws of 2013, is amended to read as follows:

8 (a) The franchised corporation authorized under this chapter to
9 conduct pari-mutuel betting at a race meeting or races run thereat shall
10 distribute all sums deposited in any pari-mutuel pool to the holders of
11 winning tickets therein, provided such tickets be presented for payment
12 before April first of the year following the year of their purchase,
13 less an amount which shall be established and retained by such fran-
14 chised corporation of between twelve to seventeen per centum of the
15 total deposits in pools resulting from on-track regular bets, and four-
16 teen to twenty-one per centum of the total deposits in pools resulting
17 from on-track multiple bets and fifteen to twenty-five per centum of the
18 total deposits in pools resulting from on-track exotic bets and fifteen
19 to thirty-six per centum of the total deposits in pools resulting from
20 on-track super exotic bets, plus the breaks. The retention rate to be
21 established is subject to the prior approval of the [racing and wagering
22 board] gaming commission. Such rate may not be changed more than once
23 per calendar quarter to be effective on the first day of the calendar
24 quarter. "Exotic bets" and "multiple bets" shall have the meanings set
25 forth in section five hundred nineteen of this chapter. "Super exotic
26 bets" shall have the meaning set forth in section three hundred one of
27 this chapter. For purposes of this section, a "pick six bet" shall mean
28 a single bet or wager on the outcomes of six races. The breaks are here-

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

1 three per centum of super exotic bets provided, however, that for the
2 period September tenth, nineteen hundred ninety-nine through March thir-
3 ty-first, two thousand one, such payment shall be six-tenths of one per
4 centum of regular, multiple and exotic pools and for the period April
5 first, two thousand one through December thirty-first, two thousand
6 [fourteen] fifteen, such payment shall be seven-tenths of one per centum
7 of such pools.

8 § 10. This act shall take effect immediately.

9 PART BB

10 Section 1. Clause (H) of subparagraph (ii) of paragraph 1 of subdivi-
11 sion b of section 1612 of the tax law, as separately amended by chapters
12 174 and 175 of the laws of 2013, is amended to read as follows:

13 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
14 this subparagraph, the track operator of a vendor track shall be eligi-
15 ble for a vendor's capital award of up to four percent of the total
16 revenue wagered at the vendor track after payout for prizes pursuant to
17 this chapter, which shall be used exclusively for capital project
18 investments to improve the facilities of the vendor track which promote
19 or encourage increased attendance at the video lottery gaming facility
20 including, but not limited to hotels, other lodging facilities, enter-
21 tainment facilities, retail facilities, dining facilities, events
22 arenas, parking garages and other improvements that enhance facility
23 amenities; provided that such capital investments shall be approved by
24 the division, in consultation with the state racing and wagering board,
25 and that such vendor track demonstrates that such capital expenditures
26 will increase patronage at such vendor track's facilities and increase

1 the amount of revenue generated to support state education programs. The
2 annual amount of such vendor's capital awards that a vendor track shall
3 be eligible to receive shall be limited to two million five hundred
4 thousand dollars, except for Aqueduct racetrack, for which there shall
5 be no vendor's capital awards. Except for tracks having less than one
6 thousand one hundred video gaming machines, and except for a vendor
7 track located west of State Route 14 from Sodus Point to the Pennsylva-
8 nia border within New York, each track operator shall be required to
9 co-invest an amount of capital expenditure equal to its cumulative
10 vendor's capital award. For all tracks, except for Aqueduct racetrack,
11 the amount of any vendor's capital award that is not used during any one
12 year period may be carried over into subsequent years ending before
13 April first, two thousand [fourteen] fifteen. Any amount attributable
14 to a capital expenditure approved prior to April first, two thousand
15 [fourteen] fifteen and completed before April first, two thousand
16 [sixteen] seventeen; or approved prior to April first, two thousand
17 [eighteen] nineteen and completed before April first, two thousand
18 [twenty] twenty-one for a vendor track located west of State Route 14
19 from Sodus Point to the Pennsylvania border within New York, shall be
20 eligible to receive the vendor's capital award. In the event that a
21 vendor track's capital expenditures, approved by the division prior to
22 April first, two thousand [fourteen] fifteen and completed prior to
23 April first, two thousand [sixteen] seventeen, exceed the vendor track's
24 cumulative capital award during the five year period ending April first,
25 two thousand [fourteen] fifteen, the vendor shall continue to receive
26 the capital award after April first, two thousand [fourteen] fifteen
27 until such approved capital expenditures are paid to the vendor track
28 subject to any required co-investment. In no event shall any vendor

1 track that receives a vendor fee pursuant to clause (F) or (G) of this
2 subparagraph be eligible for a vendor's capital award under this
3 section. Any operator of a vendor track which has received a vendor's
4 capital award, choosing to divest the capital improvement toward which
5 the award was applied, prior to the full depreciation of the capital
6 improvement in accordance with generally accepted accounting principles,
7 shall reimburse the state in amounts equal to the total of any such
8 awards. Any capital award not approved for a capital expenditure at a
9 video lottery gaming facility by April first, two thousand [fourteen]
10 fifteen shall be deposited into the state lottery fund for education
11 aid; and

12 § 2. This act shall take effect immediately.

13 PART CC

14 Section 1. Article 12 of the tax law is REPEALED.

15 § 2. Subdivision fourth of section 171 of the tax law is REPEALED.

16 § 3. Subparagraph (iii) of paragraph (b) of subdivision 1 of section
17 173-a of the tax law is REPEALED.

18 § 4. Section 176 of the tax law, as amended by chapter 267 of the laws
19 of 1987, is amended to read as follows:

20 § 176. Transfer of the powers and duties of the comptroller in
21 relation to the assessment or collection of certain taxes. On and after
22 July first, nineteen hundred twenty-one, all the powers and duties now
23 conferred or imposed upon the state comptroller in relation to the taxa-
24 tion of corporations under articles nine and nine-A of this chapter, in
25 relation to the taxation of transfers of property, under article ten of
26 this chapter, [in relation to the taxation of transfers of stock, under

1 article twelve of this chapter,] and in relation to taxation upon and
2 with respect to personal income, under article sixteen of this chapter
3 (as such article was in effect on December thirtieth, nineteen hundred
4 sixty), shall be transferred to and thereafter shall be exercised and
5 performed by the commissioner, except as powers and duties under any
6 such article are expressly conferred upon or continued in the state
7 comptroller by acts of the legislature of nineteen hundred twenty-one,
8 enacted subsequent to chapter ninety of the laws of nineteen hundred
9 twenty-one.

10 § 5. Subparagraph 5 of paragraph (a) and subparagraph 4-a of paragraph
11 (b) of subdivision 9 of section 208 of the tax law, subparagraph 5 of
12 paragraph (a) as amended by chapter 61 of the laws of 1989, clause (i)
13 of subparagraph 5 as amended by section 2 of part C of chapter 25 of the
14 laws of 2009, and subparagraph 4-a of paragraph (b) of subdivision 9 of
15 section 208 of the tax law, as amended by chapter 760 of the laws of
16 1992, are amended to read as follows:

17 (5) (i) any refund or credit of a tax imposed under this article,
18 article twenty-three, or article thirty-two of this chapter, for which
19 tax no exclusion or deduction was allowed in determining the taxpayer's
20 entire net income under this article, article twenty-three, or article
21 thirty-two of this chapter for any prior year, or (ii) [a refund or
22 credit of general corporation tax allowed by subdivision eleven of
23 section 11-604 of the administrative code of the city of New York, or
24 (iii)] any refund or credit of a tax imposed under sections one hundred
25 eighty-three, one hundred eighty-three-a, one hundred eighty-four or one
26 hundred eighty-four-a of this chapter, and

27 (4-a) (A) [the entire amount allowable as an exclusion or deduction for
28 stock transfer taxes imposed by article twelve of this chapter in deter-

1 mining the entire taxable income which the taxpayer is required to
2 report to the United States treasury department but only to the extent
3 that such taxes are incurred and paid in market making transactions,
4 (B)] in those instances where a credit for the special additional mort-
5 gage recording tax credit is allowed under paragraph (a) of subdivision
6 seventeen of section two hundred ten of this article, the amount allowed
7 as an exclusion or deduction for the special additional mortgage record-
8 ing tax imposed by subdivision one-a of section two hundred fifty-three
9 of this chapter in determining the entire taxable income which the
10 taxpayer is required to report to the United States treasury department,
11 and [(C)] (B) unless the credit allowed pursuant to subdivision seven-
12 teen of section two hundred ten of this article is reflected in the
13 computation of the gain or loss so as to result in an increase in such
14 gain or decrease of such loss, for federal income tax purposes, from the
15 sale or other disposition of the property with respect to which the
16 special additional mortgage recording tax imposed pursuant to subdivi-
17 sion one-a of section two hundred fifty-three of this chapter was paid,
18 the amount of the special additional mortgage recording tax imposed by
19 subdivision one-a of section two hundred fifty-three of this chapter
20 which was paid and which is reflected in the computation of the basis of
21 the property so as to result in a decrease in such gain or increase in
22 such loss for federal income tax purposes from the sale or other dispo-
23 sition of the property with respect to which such tax was paid.

24 § 6. Subdivision 1 of section 472 of the tax law, as amended by chap-
25 ter 629 of the laws of 1996, and as further amended by section 104 of
26 part A of chapter 62 of the laws of 2011, is amended to read as follows:

27 1. The commissioner shall prescribe, prepare and furnish stamps of
28 such denominations and quantities as may be necessary for the payment of

1 the tax on cigarettes imposed by this article, and may from time to time
2 and as often as he deems advisable provide for the issuance and exclu-
3 sive use of stamps of a new design and forbid the use of stamps of any
4 other design[, in the manner and with the effect provided in section two
5 hundred seventy-four of this chapter]. The commissioner may make, enter
6 into and execute for and in behalf of the state such contract or
7 contracts for dies, plates and printing necessary for the manufacture of
8 the stamps provided for by this article, and hire staff and provide such
9 stationary together with such books and blanks as in his or her
10 discretion may be necessary for putting into operation the provisions of
11 this article; the commissioner shall be the custodian of all stamps,
12 dies, plates or other material or thing furnished and used in the manu-
13 facture of such state tax stamps, and all expenses incurred under the
14 commissioner's direction in carrying out the provisions of this article
15 shall be paid to the commissioner by the state treasurer from any moneys
16 appropriated for such purpose. The commissioner shall make provisions
17 for the sale of such stamps at such places and at such times as he may
18 deem necessary and may license agents for such purpose. The commissioner
19 may license dealers in cigarettes, who maintain separate warehousing
20 facilities for the purpose of receiving and distributing cigarettes and
21 conducting their business, who have received commitments from at least
22 two cigarette manufacturers whose aggregate market share is at least
23 forty percent of the New York state cigarette market, and importers,
24 exporters and manufacturers of cigarettes, and other persons within or
25 without the state as agents to buy or affix stamps to be used in paying
26 the tax herein imposed, but an agent shall at all times have the right
27 to appoint the person in his employ who is to affix the stamps to any
28 cigarettes under the agent's control. The fee for filing such applica-

1 tion for an agent's license shall be one thousand five hundred dollars,
2 unless such fee has been paid during the preceding twelve months, in
3 which case, the fee for a new license shall be one thousand dollars. All
4 of the provisions of section four hundred eighty relating to wholesale
5 dealers' licenses, including the procedure for suspension, revocation,
6 refusal to license and for hearings, except for paragraphs (c) and (g)
7 of subdivision one of such section, shall be applicable to agents'
8 licenses applied for or granted pursuant to this section, as if such
9 provisions had been set forth in full in this subdivision and had
10 expressly referred to the applicant for, or the holder of, an agent's
11 license. Whenever the commissioner shall sell and deliver to any such
12 agent any such stamps, such agent shall be entitled to receive as
13 compensation for his services and expenses as such agent in selling or
14 affixing such stamps, and to retain out of the moneys to be paid by him
15 for such stamps, a commission on the par value thereof. The commissioner
16 is hereby authorized to prescribe a schedule of commissions, not exceed-
17 ing five per centum, allowable to such agent for buying and affixing
18 such stamps. Such schedule shall be uniform with respect to the differ-
19 ent types of stamps used, and may be on a graduated scale with respect
20 to the number of stamps purchased. The commissioner may, in his
21 discretion, permit an agent to pay for such stamps within thirty days
22 after the date of purchase and may require any such agent to file with
23 the department of taxation and finance a bond issued by a surety company
24 approved by the superintendent of financial services as to solvency and
25 responsibility and authorized to transact business in the state or other
26 security acceptable to the commissioner, in such amount as the commis-
27 sioner may fix, to secure the payment of any sums due from such agent
28 pursuant to this article. If securities are deposited as security under

1 this subdivision, such securities shall be kept in the custody of the
2 commissioner and may be sold by the commissioner if it becomes necessary
3 so to do in order to recover any sums due from such agent pursuant to
4 this article, but no such sale shall be had until after such agent shall
5 have had opportunity to litigate the validity of any tax if it elects so
6 to do. Upon any such sale, the surplus, if any, above the sums due under
7 this article shall be returned to such agent.

8 § 7. Section 463 of the banking law, as added by chapter 608 of the
9 laws of 1996, is amended to read as follows:

10 § 463. [Exemptions and individual] Individual liability of sharehold-
11 ers. [The transfer of the shares of any credit union shall not be taxa-
12 ble under the provisions of article twelve of the tax law.]

13 The shareholders of a credit union shall not be individually liable
14 for the payment of the credit union's debts.

15 § 8. Subdivision 6 of section 3012 of the public authorities law, as
16 amended by chapter 868 of the laws of 1975, is amended to read as
17 follows:

18 6. Anything in this article ten to the contrary notwithstanding, any
19 agreement or agreements with the holders of notes or bonds issued by any
20 municipal assistance corporation created by or pursuant to any title of
21 this article shall contain a clause stating in substance that any
22 provision in this article or in any such agreement or agreements which
23 relate to taxes imposed under [article twelve or] sections eleven
24 hundred seven or eleven hundred eight of the tax law of the state or to
25 the funds created by sections ninety-two-b, ninety-two-d or ninety-two-e
26 of the state finance law shall be deemed executory only to the extent of
27 the moneys available to the state in such funds from time to time and no

1 liability on account thereof shall be incurred by the state beyond the
2 moneys available in such funds.

3 § 9. Section 92-b of the state finance law is REPEALED.

4 § 10. Section 92-i of the state finance law is REPEALED.

5 § 11. Subparagraph 6 of paragraph j of subdivision 1 of section 54 of
6 the state finance law is REPEALED.

7 § 12. Subdivision (c) of section 11-503 of the administrative code of
8 the city of New York is REPEALED.

9 § 13. Paragraph 4 of subdivision (b) of section 11-506 of the adminis-
10 trative code of the city of New York is REPEALED.

11 § 14. Subdivision (g) of section 11-512 of the administrative code of
12 the city of New York is REPEALED.

13 § 15. Subdivision (g) of section 11-514 of the administrative code of
14 the city of New York is REPEALED.

15 § 16. Clause (A) of subparagraph 4-a of paragraph (b) of subdivision 8
16 of section 11-602 of the administrative code of the city of New York is
17 REPEALED.

18 § 17. Subdivision 11 of section 11-604 of the administrative code of
19 the city of New York is REPEALED.

20 § 18. Paragraph (a) of subdivision 12 of section 11-604 of the admin-
21 istrative code of the city of New York is amended to read as follows:

22 (a) [In addition to the credit allowed by subdivision eleven of this
23 section, a] A taxpayer shall be allowed a credit against the tax imposed
24 by this subchapter to be credited or refunded in the manner hereinafter
25 provided in this section. The amount of such credit shall be the excess
26 of (A) the amount of sales and compensating use taxes imposed by section
27 eleven hundred seven of the tax law during the taxpayer's taxable year
28 which became legally due on or after and was paid on or after July

1 first, nineteen hundred seventy-seven, less any credits or refunds of
2 such taxes, with respect to the purchase or use by the taxpayer of
3 machinery or equipment for use or consumption directly and predominantly
4 in the production of tangible personal property, gas, electricity,
5 refrigeration or steam for sale, by manufacturing, processing, generat-
6 ing, assembling, refining, mining or extracting, or telephone central
7 office equipment or station apparatus or comparable telegraph equipment
8 for use directly and predominantly in receiving at destination or initi-
9 ating and switching telephone or telegraph communication, but not
10 including parts with a useful life of one year or less or tools or
11 supplies used in connection with such machinery, equipment or apparatus
12 over (B) the amount of any credit for such sales and compensating use
13 taxes allowed or allowable against the taxes imposed by subchapter two
14 of chapter eleven of this title for any periods embraced within the
15 taxable year of the taxpayer under this subchapter.

16 § 19. Subdivision 3 of section 11-606 of the administrative code of
17 the city of New York is REPEALED.

18 § 20. Subdivision 11 of section 11-608 of the administrative code of
19 the city of New York is REPEALED.

20 § 21. (a) Notwithstanding the repeal of article 12 of the tax law by
21 this act, all provisions of such article 12 and any regulations adopted
22 thereunder, in respect to the assessment, payment, payment over, deter-
23 mination, collection and refund of tax imposed thereunder, the rebates
24 provided for in section 280-a of the tax law, the filing of forms and
25 returns and the preservation of records for the purposes of the tax
26 imposed by article 12, the secrecy of returns, the disposition of reven-
27 ues, and the civil and criminal penalties applicable to the violation of
28 the provisions of such article 12, shall continue in full force and

1 effect with respect to all such tax accrued up to the date this act
2 takes effect; all actions and proceedings, civil or criminal, commenced
3 or authorized to be commenced under or by virtue of any provision of
4 such article 12 so repealed, and pending or able to be commenced prior
5 to the taking effect of such repeal, may be commenced, prosecuted and
6 defended to final effect in the same manner as they might if such
7 provisions were not so repealed.

8 (b) Notwithstanding any provision of law in article 12 of the tax law
9 or subdivision (a) of this section to the contrary, any application for
10 a rebate of tax paid under such article 12 must be filed within two
11 years from the effective date of this act.

12 § 22. This act shall take effect June 1, 2014; provided that section
13 ten of this act shall take effect January 1, 2016.

14 PART DD

15 Section 1. Subsection (b) of section 804 of the tax law, as added by
16 section 1 of part C of chapter 25 of the laws of 2009, is amended to
17 read as follows:

18 (b) Individuals with net earnings from self-employment. Individuals
19 with earnings from self-employment must make estimated tax payments of
20 the tax imposed by this article for the taxable year on the same dates
21 specified in [subsection (a) of this section for the quarterly payments
22 of the tax imposed on the payroll expense of employers] paragraph one of
23 subsection (c) of section six hundred eighty-five of this chapter. In
24 addition, these self-employed individuals must file a return for the
25 taxable year by the [thirtieth] fifteenth day of the fourth month
26 following the close of the taxable year. Paragraph one of subsection (d)

1 of section six hundred eighty-five of this chapter shall not apply to
2 the estimated tax payments required by this subsection.

3 § 2. Section 806 of the tax law, as added by section 1 of part C of
4 chapter 25 of the laws of 2009, is amended to read as follows:

5 § 806. Procedural provisions. (a) General. All provisions of article
6 twenty-two of this chapter will apply to the provisions of this article
7 in the same manner and with the same force and effect as if the language
8 of article twenty-two of this chapter had been incorporated in full into
9 this article and had been specifically adjusted for and expressly
10 referred to the tax imposed by this article, except to the extent that
11 any provision is either inconsistent with a provision of this article or
12 is not relevant to this article. Notwithstanding the preceding sentence,
13 no credit against tax in article twenty-two of this chapter can be used
14 to offset the tax due under this article.

15 (b) Combined Filings. Notwithstanding any other provisions of this
16 article:

17 (1) The commissioner may require the filing of a combined return
18 which, in addition to the return provided for in subsection (b) of
19 section eight hundred four of this article, may also include any of the
20 returns required to be filed by a resident individual of New York state
21 pursuant to the provisions of section six hundred fifty-one of this
22 chapter and which may be required to be filed by such individual pursu-
23 ant to any local law enacted pursuant to the authority of article thir-
24 ty, thirty-A or thirty-B of this chapter.

25 (2) Where a combined return is required, and with respect to the
26 payment of estimated tax, the commissioner may also require the payment
27 to it of a single amount which shall equal the total of the amounts
28 (total taxes less any credits or refunds) which would have been required

1 to be paid with the returns or in payment of estimated tax pursuant to
2 the provisions of this article, the provisions of article twenty-two of
3 this chapter, and the provisions of local laws enacted under the author-
4 ity of article thirty, thirty-A or thirty-B of this chapter.

5 (3) Notwithstanding any other law to the contrary, the commissioner
6 may require that all filings of forms or returns under this article must
7 be filed electronically and all payments of tax must be paid electron-
8 ically.

9 § 3. The tax law is amended by adding a new section 807 to read as
10 follows:

11 § 807. Enforcement with other taxes. (a) Joint assessment. If there is
12 assessed a tax under this article and there is also assessed a tax
13 against the same taxpayer pursuant to article twenty-two of this chapter
14 or under a local law enacted pursuant to the authority of article thir-
15 ty, article thirty-A, or article thirty-B of this chapter, and payment
16 of a single amount is required under the provisions of this article,
17 such payment shall be deemed to have been made with respect to the taxes
18 so assessed in proportion to the amounts of such taxes due, including
19 tax, penalties, interest and additions to tax.

20 (b) Joint action. If the commissioner takes action under such article
21 twenty-two or under a local law enacted pursuant to the authority of
22 article thirty, thirty-A, or thirty-B of this chapter with respect to
23 the enforcement and collection of the tax or taxes assessed under such
24 articles, the commissioner shall, whenever possible and necessary,
25 accompany such action with a similar action under similar enforcement
26 and collection provisions of the tax imposed by this article.

27 (c) Apportionment of moneys collected by joint action. Any moneys
28 collected as a result of such joint action shall be deemed to have been

1 collected in proportion to the amounts due, including tax, penalties,
2 interest and additions to tax, under article twenty-two of this chapter
3 or under a local law enacted pursuant to the authority of article thir-
4 ty, thirty-A, or thirty-B of this chapter and the tax imposed by this
5 article.

6 (d) Joint deficiency action. Whenever the commissioner takes any
7 action with respect to a deficiency of income tax under article twenty-
8 two of this chapter or under a local law enacted pursuant to the author-
9 ity of article thirty, thirty-A, or thirty-B of this chapter, other than
10 the action set forth in subsection (a) of this section, the commissioner
11 may in his or her discretion accompany such action with a similar action
12 under this article.

13 § 4. This act shall take effect immediately and apply to taxable years
14 beginning on or after January 1, 2015.

15 PART EE

16 Section 1. Subdivision 4 of section 97-nnnn of the state finance law,
17 as added by chapter 174 of the laws of 2013, is amended to read as
18 follows:

19 4. a. As used in this section, the term "base year gaming revenue"
20 shall mean the sum of all revenue generated to support education from
21 video lottery gaming as defined by section sixteen hundred seventeen-a
22 of the tax law in the twelve months preceding the operation of any
23 gaming facility pursuant to either article thirteen of the racing, pari-
24 mutuel wagering and breeding law or pursuant to paragraph four of subdi-
25 vision a of section [one thousand six] sixteen hundred seventeen-a of
26 the tax law.

1 b. Amounts appropriated or transferred in any year to support elemen-
2 tary and secondary education shall be calculated as follows:

3 (i) an amount equal to the positive difference, if any, between the
4 base year gaming revenue amount and the sum of all revenue generated to
5 support education from video lottery gaming as defined by section
6 sixteen hundred seventeen-a of the tax law in the current fiscal year
7 provided that such positive amount, if any, shall be transferred to the
8 state lottery fund[;]. For the purposes of this paragraph, the calcu-
9 lation of this positive difference shall be estimated and transferred
10 monthly based on the cumulative positive difference, if any, in the same
11 cumulative months of the base year and the cumulative months of the
12 current fiscal year to date, less amounts previously transferred in the
13 current fiscal year. Provided, however, if the amount previously trans-
14 ferred in the current fiscal year exceeds the cumulative positive
15 difference, an amount equal to the excess transferred may be transferred
16 back from the state lottery fund; and

17 (ii) the amount of revenue collected [in the prior state fiscal year,]
18 to be distributed pursuant to paragraph a of subdivision three of this
19 section, and in excess of any amounts transferred pursuant to subpara-
20 graph (i) of this paragraph [in such prior fiscal year], if any.

21 c. Notwithstanding any provision of law to the contrary, amounts
22 appropriated or transferred from the commercial gaming revenue fund
23 pursuant to subparagraph (ii) of this paragraph shall not be included
24 in: (i) the allowable growth amount computed pursuant to paragraph dd of
25 subdivision one of section thirty-six hundred two of the education law,
26 (ii) the preliminary growth amount computed pursuant to paragraph ff of
27 subdivision one of section thirty-six hundred two of the education law,
28 and (iii) the allocable growth amount computed pursuant to paragraph gg

1 of subdivision one of section thirty-six hundred two of the education
2 law.

3 § 2. Subdivision 5 of section 97-nmmn of the state finance law, as
4 added by chapter 174 of the laws of 2013, is amended to read as follows:

5 5. Notwithstanding the foregoing, monies received pursuant to:

6 a. sections one thousand three hundred forty-five and one thousand
7 three hundred forty-eight of [this article] the racing, pari-mutuel
8 wagering and breeding law shall be exclusively appropriated to the
9 office of alcoholism and substance abuse services to be used for problem
10 gambling education and treatment purposes.

11 b. section one thousand three hundred forty-nine of [this article] the
12 racing, pari-mutuel wagering and breeding law shall be exclusively
13 appropriated to the commission for regulatory investigations.

14 c. section one thousand three hundred fifty of [this article] the
15 racing, pari-mutuel wagering and breeding law shall be exclusively
16 appropriated to the commission for costs regulation.

17 § 3. Subdivisions (b) and (c) of section 52 of chapter 174 of the laws
18 of 2013 enacting the upstate New York gaming economic development act of
19 2013, are amended to read as follows:

20 (b) sections six, seven, fourteen and sixteen of this act shall take
21 effect on the same date as the agreement between the Oneida Nation of
22 New York and the state of New York entered into on the sixteenth day of
23 May, 2013 takes effect; provided, further, that the amendments to subdi-
24 vision 2 of section 99-h of the state finance law made by section six of
25 this act shall take effect on the same date as the reversion of such
26 section as provided in section 2 of chapter 747 of the laws of 2006, as
27 amended; provided, further, that the amendments to subdivision 3 of
28 section 99-h of the state finance law made by section seven of this act

1 shall be subject to the expiration and reversion of such subdivision as
2 provided in section 3 of part W of chapter 60 of the laws of 2011, as
3 amended when upon such date the provisions of section seven-a of this
4 act shall take effect; provided, further, that the amendments to subdi-
5 vision 3 of section 99-h of the state finance law made by section
6 seven-a of this act shall be subject to the the expiration and reversion
7 of such section as provided in section 2 of chapter 747 of the laws of
8 2006, as amended when upon such date the provisions of section eight of
9 this act shall take effect; [provided, further, however, that the amend-
10 ment to section 99-h of the state finance law made by section nine of
11 this act shall not affect the expiration of such section and shall be
12 deemed repealed therewith;] provided, further, that the state gaming
13 commission shall notify the legislative bill drafting commission upon
14 the occurrence of such agreement between the Oneida Nation and the state
15 of New York becoming effective in order that the commission may maintain
16 an accurate and timely effective data base of the official text of the
17 laws of the state of New York in furtherance of effecting the provisions
18 of section 44 of the legislative law and section 70-b of the public
19 officers law;

20 (c) section [1368] 1367 of the racing, pari-mutuel wagering and breed-
21 ing law, as added by section two of this act, shall take effect upon a
22 change in federal law authorizing the activity permitted by such section
23 or upon a ruling by a court of competent jurisdiction that such activity
24 is lawful. The state gaming commission shall notify the legislative bill
25 drafting commission upon the occurrence of the change in federal law or
26 upon the ruling of a court of competent jurisdiction in order that the
27 commission may maintain an accurate and timely effective data base of
28 the official text of the laws of the state of New York in furtherance of

1 effecting the provisions of section 44 of the legislative law and
2 section 70-b of the public officers law;

3 § 4. Subdivision 3-a of section 99-h of the state finance law, as
4 added by chapter 174 of the laws of 2013, is amended to read as follows:

5 3-a. Ten percent of any of the funds actually received by the state
6 pursuant to the tribal-state compacts and agreements described in subdi-
7 vision two of this section [that are retained in the fund after the
8 distributions required by subdivision three of this section, but] prior
9 to the transfer of unsegregated moneys to the general fund required by
10 such subdivision, shall be distributed to counties in each respective
11 exclusivity zone provided they do not otherwise receive a share of said
12 revenues pursuant to this section. Such distribution shall be made among
13 such counties on a per capita basis, excluding the population of any
14 municipality that receives a distribution pursuant to subdivision three
15 of this section.

16 § 5. Subdivision g of section 1617-a of the tax law, as added by chap-
17 ter 174 of the laws of 2013, is amended to read as follows:

18 g. Every video lottery gaming license, and every renewal license,
19 shall be valid for a period of five years, except that video gaming
20 licenses issued before the effective date of this subdivision shall be
21 for a term expiring on the applicant's next birthday following June
22 thirtieth, two thousand fourteen.

23 The gaming commission may decline to renew any license after notice
24 and an opportunity for hearing if it determines that:

25 (1) the licensee has violated section one thousand six hundred seven
26 of this article;

27 (2) the licensee has violated any rule, regulation or order of the
28 gaming commission;

1 (3) the applicant or its officers, directors or significant stockhold-
2 ers, as determined by the gaming commission, have been convicted of a
3 crime involving moral turpitude; or

4 (4) that the character or fitness of the licensee and its officers,
5 directors, and significant stockholders, as determined by the gaming
6 commission is such that the participation of the applicant in video
7 lottery gaming or related activities would be inconsistent with the
8 public interest, convenience or necessity or with the best interests of
9 video gaming generally.

10 § 6. This act shall take effect immediately; provided, that section
11 one of this act shall take effect April 1, 2015; provided, further, that
12 the amendments made to section three of this act shall be deemed to have
13 taken effect on the same date and in the same manner as chapter 174 of
14 the laws of 2013.

15 PART FF

16 Section 1. Subsections (yy) and (zz) of section 606 of the tax law, as
17 relettered by section 5 of part H of chapter 1 of the laws of 2003, are
18 relettered (yyy) and (zzz) and a new subsection (bbb) is added to read
19 as follows:

20 (bbb) Real property tax freeze credit. (1) As used in this subsection:

21 (A) The term "freeze-compliant budget" means a budget of a taxing
22 jurisdiction that has met the requirements of section two thousand twen-
23 ty-three-b of the education law or section three-d of the general munic-
24 ipal law, whichever is applicable.

1 (B) The terms "independent special district" and "dependent school
2 district" have the same meaning as set forth in section three-d of the
3 general municipal law.

4 (C) The term "STAR exemption" means the school tax relief exemption
5 authorized by section four hundred twenty-five of the real property tax
6 law.

7 (D) The term "taxing jurisdiction" means a county, city, town,
8 village, school district or an independent special district, except that
9 such term shall not include a city with a population of one million or
10 more, nor shall it include a county wholly located within such a city.

11 (2) An individual taxpayer who meets the eligibility standards set
12 forth in paragraph three of this subsection and whose primary residence
13 is located in a taxing jurisdiction that has a freeze-compliant budget
14 for the fiscal year starting in two thousand fourteen, two thousand
15 fifteen or two thousand sixteen, whichever is applicable, shall be
16 allowed a credit against the taxes imposed by this article. Subject to
17 the provisions of paragraph six of this subsection, such credit shall be
18 determined as follows:

19 (A) If a school district other than a dependent school district has a
20 freeze-compliant budget for its fiscal year starting in two thousand
21 fourteen, a credit shall be allowed for the eligible taxpayer's two
22 thousand fourteen taxable year in the amount by which the real property
23 taxes imposed upon such residence by or on behalf of that school
24 district for the fiscal year starting in two thousand fourteen exceeds
25 the real property taxes so imposed for the fiscal year starting in two
26 thousand thirteen.

27 (B) If a taxing jurisdiction, other than a school district or a city
28 with a dependent school district, has a freeze-compliant budget for its

1 fiscal year starting in two thousand fifteen, a credit shall be allowed
2 for the eligible taxpayer's two thousand fifteen taxable year in the
3 amount by which the real property taxes imposed upon such residence by
4 or on behalf of that taxing jurisdiction for the fiscal year starting in
5 two thousand fifteen exceeds the real property taxes so imposed for the
6 fiscal year starting in two thousand fourteen.

7 (C) If a school district other than a dependent school district has a
8 freeze-compliant budget for its fiscal year starting in two thousand
9 fifteen, a credit shall be allowed for the eligible taxpayer's two thou-
10 sand fifteen taxable year in the amount by which the real property taxes
11 imposed upon such residence by or on behalf of such school district for
12 the fiscal year starting in two thousand fifteen exceeds the real prop-
13 erty taxes so imposed for the fiscal year identified as follows:

14 (i) if the school district's budget for the fiscal year starting in
15 two thousand fourteen was freeze-compliant, the excess shall be deter-
16 mined with respect to the fiscal year starting in two thousand thirteen.

17 (ii) if the school district's budget for the fiscal year starting in
18 two thousand fourteen was not freeze-compliant, the excess shall be
19 determined with respect to the fiscal year starting in two thousand
20 fourteen.

21 (D) If a taxing jurisdiction, other than a school district or a city
22 with a dependent school district, has a freeze-compliant budget for its
23 fiscal year starting in two thousand sixteen, a credit shall be allowed
24 for the eligible taxpayer's two thousand sixteen taxable year in the
25 amount by which the real property taxes imposed upon such residence by
26 or on behalf of that taxing jurisdiction for the fiscal year starting in
27 two thousand sixteen exceeds the real property taxes so imposed for the
28 fiscal year identified as follows:

1 (i) if the taxing jurisdiction's budget for the fiscal year starting
2 in two thousand fifteen was freeze-compliant, the excess shall be deter-
3 mined with respect to the fiscal year starting in two thousand fourteen.

4 (ii) if the taxing jurisdiction's budget for the fiscal year starting
5 in two thousand fifteen was not freeze-compliant, the excess shall be
6 determined with respect to the fiscal year starting in two thousand
7 fifteen.

8 (E) If a city with a dependent school district has a freeze-compliant
9 budget for its fiscal year starting in two thousand fourteen, a tax
10 credit shall be allowed for the eligible taxpayer's two thousand four-
11 teen taxable year in the amount equivalent to sixty-seven percent of the
12 amount by which the real property taxes imposed upon such residence by
13 or on behalf of that city for the fiscal year starting in two thousand
14 fourteen exceeds the real property taxes so imposed for the fiscal year
15 starting in two thousand thirteen.

16 (F) If a city with a dependent school district has a freeze-compliant
17 budget for its fiscal year starting in two thousand fifteen, a tax cred-
18 it shall be allowed for the eligible taxpayer's two thousand fifteen
19 taxable year as follows:

20 (i) if the city's budget for the fiscal year starting in two thousand
21 fourteen was freeze-compliant, a credit shall be allowed for the eligi-
22 ble taxpayer's two thousand fifteen taxable year in an amount equivalent
23 to thirty-three percent of the amount by which the real property taxes
24 imposed upon such residence by that city for the fiscal year starting in
25 two thousand fourteen exceeds the real property taxes so imposed for the
26 fiscal year starting in two thousand thirteen, together with an amount
27 equivalent to sixty-seven percent of the amount by which the real prop-
28 erty taxes imposed upon such residence by that city for the fiscal year

1 starting in two thousand fifteen exceeds the real property taxes so
2 imposed for the fiscal year starting in two thousand thirteen; and a
3 credit shall be allowed for the eligible taxpayer's two thousand sixteen
4 taxable year in an amount equivalent to thirty-three percent of the
5 amount by which the real property taxes imposed upon such residence by
6 that city for the fiscal year starting in two thousand fifteen exceeds
7 the real property taxes so imposed for the fiscal year starting in two
8 thousand thirteen.

9 (ii) if the city's budget for the fiscal year starting in two thousand
10 fourteen was not freeze-compliant, a credit shall be allowed for the
11 eligible taxpayer's two thousand fifteen taxable year in an amount
12 equivalent to sixty-seven percent of the amount by which the real prop-
13 erty taxes imposed upon such residence by that city for the fiscal year
14 starting in two thousand fifteen exceeds the real property taxes so
15 imposed for the fiscal year starting in two thousand fourteen; and a
16 credit shall be allowed for the eligible taxpayer's two thousand sixteen
17 taxable year in an amount equivalent to thirty-three percent of the
18 amount by which the real property taxes imposed upon such residence by
19 that city for the fiscal year starting in two thousand fifteen exceeds
20 the real property taxes so imposed for the fiscal year starting in two
21 thousand fourteen.

22 (G) If a city with a dependent school district has a freeze-compliant
23 budget for its fiscal year starting in two thousand fourteen but does
24 not have a freeze-compliant budget for its fiscal year starting in two
25 thousand fifteen, a tax credit shall be allowed for the eligible taxpay-
26 er's two thousand fifteen taxable year an amount representing thirty-
27 three percent of the amount by which the real property taxes imposed
28 upon such residence by that city for the fiscal year starting in two

1 thousand fourteen exceeds the real property taxes so imposed for the
2 fiscal year starting in two thousand thirteen.

3 (3) To be eligible for such credit, the taxpayer (or taxpayers filing
4 joint returns) must meet the following criteria:

5 (A) For the two thousand fourteen taxable year, the taxpayer's primary
6 residence must have qualified for the STAR exemption for the two thou-
7 sand fourteen--two thousand fifteen school year, or would have so quali-
8 fied if an application for such exemption had been submitted in a timely
9 manner.

10 (B) For the two thousand fifteen taxable year, the taxpayer's primary
11 residence must have qualified for the STAR exemption for the two thou-
12 sand fifteen--two thousand sixteen school year, or would have so quali-
13 fied if an application for such exemption had been submitted in a timely
14 manner.

15 (C) For the two thousand sixteen taxable year, the taxpayer's primary
16 residence must have qualified for the STAR exemption for the two thou-
17 sand sixteen--two thousand seventeen school year, or would have so qual-
18 ified if an application for such exemption had been submitted in a time-
19 ly manner.

20 (4) For each year this credit is allowed, the commissioner shall
21 determine the taxpayer's eligibility for this credit utilizing the
22 information available to the commissioner. When the commissioner has
23 determined a taxpayer to be eligible for this credit, the commissioner
24 shall advance a payment of the amount determined in accordance with this
25 subsection. The taxpayer shall not apply for such credit in conjunction
26 with the filing of his or her return. A taxpayer who has failed to
27 receive an advance payment that he or she believes was due to him or
28 her, or who has received an advance payment that he or she believes is

1 less than the amount that was due to him or her, may request payment of
2 the claimed deficiency in a manner prescribed by the commissioner.

3 (5) If the amount of the credit allowed under this subsection, if any,
4 shall exceed the taxpayer's tax for the taxable year, the excess shall
5 be treated as an overpayment of tax to be credited or refunded in
6 accordance with the provisions of section six hundred eighty-six of this
7 article, provided, however, that no interest shall be paid thereon.

8 (6) The following provisions shall apply to the calculation of the
9 credit pursuant to paragraph two of this subsection:

10 (A) If the tax bill pertaining to the eligible taxpayer's primary
11 residence includes taxes levied by or on behalf of multiple taxing
12 jurisdictions, the credit shall be based upon the change in the aggre-
13 gate tax liability of such residence, provided that any tax appearing on
14 the tax bill that is not attributable to a freeze-compliant budget shall
15 be disregarded when determining the aggregate tax liability of such
16 residence.

17 (B) If the tax bill pertaining to the eligible taxpayer's primary
18 residence includes relieved taxes or other taxes that were previously
19 billed but not paid, those taxes shall be disregarded when determining
20 the aggregate tax liability of such residence.

21 (C) If the tax bill pertaining to the eligible taxpayer's primary
22 residence includes usage charges, unit charges or other charges that are
23 based upon the consumption of a service, those charges shall be disre-
24 garded when determining the aggregate tax liability of such residence.

25 (D) Notwithstanding the foregoing provisions of this subsection, no
26 credit shall be allowed to the extent that the tax liability of the
27 eligible taxpayer's primary residence increased due to one or more of
28 the following events:

1 (i) A physical improvement to the eligible taxpayer's primary resi-
2 dence.

3 (ii) A removal or reduction of an exemption on the eligible taxpayer's
4 primary residence, including a reduction of the STAR exempt amount
5 calculated pursuant to subdivision two of section four hundred twenty-
6 five of the real property tax law.

7 (iii) A revaluation that caused the assessment of the eligible taxpay-
8 er's primary residence to increase by a percentage that is greater than
9 the applicable change in level of assessment. As used herein, the terms
10 "revaluation" and "change in level of assessment" shall have the same
11 meanings as set forth in sections one hundred two and twelve hundred
12 twenty of the real property tax law, respectively.

13 (E) In the case of property consisting of a cooperative apartment
14 corporation that is described by paragraph (k) of subdivision two of
15 section four hundred twenty-five of the real property tax law, an eligi-
16 ble owner shall be allowed a credit in the amount equal to sixty percent
17 of the average tax credit in that taxing jurisdiction for that fiscal
18 year, as determined by the commissioner, or in the case of a cooperative
19 apartment corporation that is described by subparagraph (iv) of para-
20 graph (k) of subdivision two of section four hundred twenty-five of the
21 real property tax law, a credit of twenty percent of such average tax
22 credit.

23 (F) In the case of property consisting of a mobile home that is
24 described by paragraph (1) of subdivision two of section four hundred
25 twenty-five of the real property tax law, an eligible owner shall be
26 allowed a credit in the amount equal to twenty-five percent of the aver-
27 age tax credit in that taxing jurisdiction for that fiscal year, as
28 determined by the commissioner.

1 (G) In the case of a city with a dependent school district, it shall
2 be presumed that sixty-seven percent of the city tax bill is for school
3 district purposes and that thirty-three percent is for general city
4 purposes.

5 (H) The amount of the credit shall be rounded to the nearest dollar,
6 except where such amount is greater than zero and less than one dollar
7 and fifty cents, in which case the amount of the credit shall be rounded
8 up to two dollars.

9 (7) No credit shall be allowed under this subsection in relation to
10 property located within a city with a population of one million or more.

11 § 2. The education law is amended by adding a new section 2023-b to
12 read as follows:

13 § 2023-b. Certification of compliance with property tax freeze
14 requirements. A school district that is subject to the provisions of
15 section two thousand twenty-three-a of this part must comply with the
16 requirements of subdivision two of this section in order to render its
17 taxpayers eligible for the real property tax freeze credit authorized by
18 subsection (bbb) of section six hundred six of the tax law for a fiscal
19 year starting in two thousand fourteen. A school district that is
20 subject to the provisions of section two thousand twenty-three-a of this
21 part must comply with the requirements of subdivisions two and three of
22 this section in order to render its taxpayers eligible for the real
23 property tax freeze credit authorized by subsection (bbb) of section six
24 hundred six of the tax law for a fiscal year starting in two thousand
25 fifteen.

26 1. Definitions. As used in this section:

27 a. "Consolidation actions" means: reorganizations of eligible school
28 districts pursuant to sections fifteen hundred five, fifteen hundred

1 eleven through fifteen hundred thirteen, fifteen hundred twenty-four,
2 fifteen hundred twenty-six, seventeen hundred five, eighteen hundred one
3 through eighteen hundred three, or twenty-two hundred eighteen of the
4 education law; or reorganizations, consolidations, or dissolutions of
5 eligible school districts in which one or more eligible school districts
6 are terminated and another eligible school district assumes jurisdiction
7 over the terminated school district or districts pursuant to any other
8 provision of law.

9 b. "Eligible school district" means a school district that is subject
10 to section two thousand twenty-three-a of this part, but shall not mean
11 a school district that is subject to article fifty-two of this chapter.

12 c. "Efficiency plan" means a plan that identifies shared services
13 actions and/or consolidation actions to be fully implemented by all
14 eligible school districts in a board of cooperative educational services
15 district that are signatories to the plan.

16 d. "Lead district" means the independent school district in each board
17 of cooperative educational services district with the highest pupil
18 enrollment as reported to the state education department for the two
19 thousand thirteen--two thousand fourteen school year that has elected to
20 participate in the preparation of an efficiency plan.

21 e. "Shared services actions" means functional consolidations by which
22 one eligible school district completely provides a service or function
23 for another eligible school district, which no longer engages in that
24 function or service; shared or cooperative services between and among
25 eligible school districts; and regionalized delivery of services between
26 and among eligible school districts. These shared services actions may
27 be for services or functions including but not limited to: procurement,
28 real estate and facility management, fleet management, business and

1 financial services, administrative services, payroll administration,
2 time and attendance, benefits administration and other transactional
3 human resources functions, contract management, grants management,
4 transportation services, facilities and functions, human services facil-
5 ities and functions, customer service facilities and functions and
6 information technology infrastructure, processes, services and func-
7 tions.

8 2. Certification of compliance with tax levy limit. a. Upon the
9 adoption of the budget of an eligible school district, the chief execu-
10 tive officer of such school district shall certify to the state comp-
11 troller, the commissioner of taxation and finance and the commissioner
12 that the budget so adopted does not exceed the tax levy limit prescribed
13 by section two thousand twenty-three-a of this part. Such certification
14 shall be made in a form and manner prescribed by the state comptroller
15 in consultation with the commissioner of taxation and finance and the
16 commissioner.

17 b. In order for such certification to give rise to a real property tax
18 freeze credit under subsection (bbb) of section six hundred six of the
19 tax law, such certification shall be made no later than the twenty-first
20 day of the fiscal year to which it applies.

21 c. If such a certification has been made and the actual tax levy of
22 the school district exceeds the applicable tax levy limit, the excess
23 amount shall be placed in reserve and used in the manner prescribed by
24 subdivision five of section two thousand twenty-three-a of this part,
25 even if a tax levy in excess of the tax levy limit had been duly author-
26 ized for the applicable fiscal year by the school district voters.

27 d. Notwithstanding any provision of law to the contrary, every school
28 district that is subject to the provisions of section two thousand twen-

1 ty-three-a of this part shall report both its proposed budget and its
2 adopted budget to the office of the state comptroller and the commis-
3 sioner at the time and in the manner as they may prescribe, whether or
4 not such budget has been or will be certified as provided by this subdi-
5 vision.

6 3. School district efficiency plans. a. The superintendent of each
7 lead district shall submit to the secretary of state by June first, two
8 thousand fifteen, an efficiency plan that if fully implemented will
9 result in savings over the aggregate two thousand fourteen--two thousand
10 fifteen school year tax levies for all eligible school districts that
11 are signatories to such plan of (1) at least one percent in the two
12 thousand sixteen--two thousand seventeen school year; (2) at least two
13 percent in the two thousand seventeen--two thousand eighteen school
14 year; and (3) at least three percent in the two thousand eighteen--two
15 thousand nineteen school year.

16 (i) The superintendent of each eligible school district that is a
17 signatory to an efficiency plan shall submit to the superintendent of
18 the lead district by June first, two thousand fifteen, a written certif-
19 ication that the eligible school district agrees to undertake its best
20 efforts to fully implement by the end of the two thousand sixteen--two
21 thousand seventeen school year the consolidation actions and/or shared
22 services actions specified for the eligible school district in such
23 plan.

24 (ii) The chief financial officer of a school district that is a signa-
25 tory to an efficiency plan shall submit to the superintendent of the
26 lead district by June first, two thousand fifteen, a written certif-
27 ication that in his or her professional opinion, full implementation by
28 the end of the two thousand sixteen--two thousand seventeen school year

1 of the consolidation and/or shared services actions that are to be taken
2 by such school district itself as specified in such plan will result in
3 the savings set forth in such plan attributable to such school district.

4 (iii) The chief financial officer of each eligible school district
5 that is a signatory to an efficiency plan shall submit to the lead
6 district by June first, two thousand fifteen, a written certification
7 that in his or her professional opinion, full implementation of the
8 consolidation and/or shared services actions as specified for all of the
9 eligible school districts that are signatories to such plan will result
10 in savings over the aggregate two thousand fourteen--two thousand
11 fifteen school year tax levies for all eligible school districts that
12 are signatories to such plan of (1) at least one percent in the two
13 thousand sixteen--two thousand seventeen school year; (2) at least two
14 percent in the two thousand seventeen--two thousand eighteen school
15 year; and (3) at least three percent in the two thousand eighteen--two
16 thousand nineteen school year.

17 b. The chief financial officer of each lead district shall submit the
18 following documents to the secretary of state on or before July first,
19 two thousand fifteen: (i) the efficiency plan; (ii) a list of all
20 eligible school districts that are signatories to such plan; (iii) all
21 of the certifications required by paragraph a of this subdivision; and
22 (iv) an analysis of the aggregate amount of savings set forth in such
23 plan attributable to all eligible school districts that are signatories
24 to such plan that will be achieved if the shared services actions and/or
25 consolidation actions identified in such plan are fully implemented by
26 the end of the two thousand sixteen--two thousand seventeen school year.
27 The secretary of state shall review such documents to determine whether
28 the requirements of this subdivision have been met with respect to each

1 eligible school district that is a signatory to the efficiency plan and
2 shall notify the commissioner of taxation and finance of such determi-
3 nations no later than July thirty-first, two thousand fifteen.

4 § 3. The general municipal law is amended by adding a new section 3-d
5 to read as follows:

6 § 3-d. Certification of compliance with property tax freeze require-
7 ments. A municipal corporation or an independent special district that
8 is subject to the provisions of section three-c of this article must
9 comply with the requirements of subdivision two of this section in order
10 to render its taxpayers eligible for the real property tax freeze credit
11 authorized by subsection (bbb) of section six hundred six of the tax law
12 for a fiscal year starting in two thousand fifteen. A municipal corpo-
13 ration or an independent special district that is subject to the
14 provisions of section three-c of this article must comply with the
15 requirements of subdivisions two and three of this section in order to
16 render its taxpayers eligible for the real property tax freeze credit
17 authorized by subsection (bbb) of section six hundred six of the tax law
18 for a fiscal year starting in two thousand sixteen. Provided however,
19 that a city with a dependent school district must comply with the
20 requirements of subdivision two of this section in order to render its
21 taxpayers eligible for the real property tax freeze credit authorized by
22 subsection (bbb) of section six hundred six of the tax law for a fiscal
23 year starting in two thousand fourteen and comply with the requirements
24 of subdivision two of this section, and both the city and its dependent
25 school district must comply with the requirements of subdivision three
26 of this section, in order to render its taxpayers eligible for the real
27 property tax freeze credit authorized by subsection (bbb) of section six

1 hundred six of the tax law for a fiscal year starting in two thousand
2 fifteen or two thousand sixteen.

3 1. Definitions. As used in this section:

4 (a) "Consolidation actions" means: consolidations or dissolutions of
5 local government units in accordance with article seventeen-A of this
6 article or reorganizations, consolidations, or dissolutions of local
7 government units in which one or more local government units are termi-
8 nated and another local government unit assumes jurisdiction over the
9 terminated local government unit or units pursuant to any other
10 provision of law.

11 (b) "Dependent school district" means a school district that is
12 subject to article fifty-two of the education law and that has a popu-
13 lation of less than one million.

14 (c) "Efficiency plan" means a plan that identifies shared services
15 actions and/or consolidation actions to be fully implemented by all
16 local government units in a county that are signatories to the plan.

17 (d) "Independent special district" means a special district as defined
18 by section one hundred two of the real property tax law that either (i)
19 has a separate independent elected board, and either has the authority
20 to levy a tax, or can require a municipal corporation to levy a tax on
21 its behalf, or (ii) has a separate independent board appointed by the
22 governing body of another municipal corporation and either has the
23 authority to levy a tax or can require a municipal corporation to levy a
24 tax on its behalf.

25 (e) "Lead local government unit" means the county, or if the county
26 has elected not to participate in the preparation of an efficiency plan,
27 the city, town, or village within the county with the largest population

1 as of the two thousand ten federal census that has elected to partic-
2 ipate in the preparation of an efficiency plan.

3 (f) "Local government unit" means a municipal corporation or an inde-
4 pendent special district that is subject to the provisions of section
5 three-c of this article.

6 (g) "Shared services actions" means functional consolidations by which
7 one local government unit completely provides a service or function for
8 another local government unit, which no longer engages in that function
9 or service; shared or cooperative services between and among local
10 government units; and regionalized delivery of services between and
11 among local government units. These shared services actions may be for
12 services or functions including but not limited to: procurement, real
13 estate and facility management, fleet management, business and financial
14 services, administrative services, payroll administration, time and
15 attendance, benefits administration and other transactional human
16 resources functions, contract management, grants management, transporta-
17 tion services, facilities and functions, human services facilities and
18 functions, customer service facilities and functions and information
19 technology infrastructure, processes, services and functions.

20 2. Certification of compliance with tax levy limit. (a) Upon the
21 adoption of the budget of a local government unit, the chief executive
22 officer or budget officer of such local government unit shall certify to
23 the state comptroller and the commissioner of taxation and finance that
24 the budget so adopted does not exceed the tax levy limit prescribed in
25 section three-c of this article and, if the governing body of the local
26 government unit did enact a local law or approve a resolution to over-
27 ride the tax levy limit, that such local law or resolution was subse-
28 quently repealed. Such certification shall be made in a form and manner

1 prescribed by the state comptroller in consultation with the commission-
2 er of taxation and finance.

3 (b) In order for such certification to give rise to a real property
4 tax freeze credit under subsection (bbb) of section six hundred six of
5 the tax law, such certification shall be made no later than the twenty-
6 first day of the fiscal year to which it applies.

7 (c) Notwithstanding any other law to the contrary, if such a certif-
8 ication has been made and the actual tax levy of the local government
9 unit exceeds the applicable tax levy limit, the excess amount shall be
10 placed in reserve and used in the manner prescribed by subdivision six
11 of section three-c of this article, even if a tax levy in excess of the
12 tax levy limit had been authorized for the applicable fiscal year by a
13 duly adopted local law or resolution.

14 (d) Notwithstanding any provision of law to the contrary, every local
15 government unit shall report both its proposed budget and its adopted
16 budget to the office of the state comptroller at the time and in the
17 manner as he or she may prescribe, whether or not such budget has been
18 or will be certified as provided by this subdivision.

19 3. Local government efficiency plans. (a) The chief executive officer
20 or budget officer of each lead local government unit shall submit to the
21 secretary of state by June first, two thousand fifteen, an efficiency
22 plan that if fully implemented will result in savings over the aggregate
23 tax levies for fiscal years beginning in two thousand fourteen for all
24 local government units that are signatories to such plan of (1) at least
25 one percent in fiscal years beginning in two thousand seventeen; (2) at
26 least two percent in fiscal years beginning in two thousand eighteen;
27 and (3) at least three percent in fiscal years beginning in two thousand
28 nineteen.

1 (i) The chief executive officer or budget officer of each local
2 government unit and dependent school district that is a signatory to an
3 efficiency plan shall submit to the chief executive officer or budget
4 officer of the lead local government unit by June first, two thousand
5 fifteen, a written certification that the local government unit or
6 dependent school district agrees to undertake its best efforts to fully
7 implement by the end of the local fiscal year beginning in two thousand
8 seventeen the consolidation actions and/or shared services actions spec-
9 ified for the local government unit or dependent school district in such
10 plan.

11 (ii) The chief financial officer of a local government unit and the
12 chief fiscal officer of the dependent school district, that is a signa-
13 tory to an efficiency plan shall submit to the chief executive officer
14 of the lead local government unit by June first, two thousand fifteen, a
15 written certification that in his or her professional opinion, full
16 implementation by the end of the local fiscal year beginning in two
17 thousand seventeen, of the consolidation and/or shared services actions
18 that are to be taken by such local government unit itself as specified
19 in such plan will result in the savings set forth in the efficiency plan
20 attributable to such local government unit or dependent school district.

21 (iii) The chief financial officer of each local government unit and
22 dependent school district that is a signatory to an efficiency plan
23 shall submit to the lead local government unit by June first, two thou-
24 sand fifteen, a written certification that in his or her professional
25 opinion, full implementation of the consolidation and/or shared services
26 actions as specified for all of the local government units and dependent
27 school districts that are signatories to such plan will result in
28 savings over the aggregate tax levies for fiscal years beginning in two

1 thousand fourteen for all local government units that are signatories to
2 such plan of (1) at least one percent in fiscal years beginning in two
3 thousand seventeen; (2) at least two percent in fiscal years beginning
4 in two thousand eighteen; and (3) at least three percent in fiscal years
5 beginning in two thousand nineteen.

6 (b) The chief financial officer of each lead local government unit
7 shall submit the following documents to the secretary of state on or
8 before July first, two thousand fifteen: (i) the efficiency plan; (ii)
9 a list of all local government units and dependent school districts that
10 are signatories to such plan; (iii) all of the certifications required
11 by paragraph (a) of this subdivision; and (iv) an analysis of the aggre-
12 gate amount of savings set forth in such plan attributable to all local
13 government units and dependent school districts that are signatories to
14 such plan that will be achieved if the shared services actions and/or
15 consolidation actions identified in such plan are fully implemented by
16 the end of the local fiscal year beginning in two thousand seventeen.
17 The secretary of state shall review such documents to determine whether
18 the requirements of this subdivision have been met with respect to each
19 local government unit and dependent school district that is a signatory
20 to the efficiency plan and shall notify the commissioner of taxation and
21 finance of such determinations no later than July thirty-first, two
22 thousand fifteen.

23 § 4. Section 1590 of the real property tax law is amended by adding a
24 new subdivision 3 to read as follows:

25 3. Each municipal corporation shall submit to the commissioner the
26 data files used to prepare its tax rolls and tax bills no later than ten
27 days after the annexation of the warrant for the collection of taxes for
28 the applicable fiscal year, or where no such warrant is annexed, no

1 later than ten days after the last date prescribed by law for the levy
2 of taxes of the applicable fiscal year, provided that if its tax rolls
3 or tax bills, or both, are prepared by a different governmental entity,
4 that entity shall be jointly responsible for submitting the applicable
5 data files to the commissioner.

6 § 5. Notwithstanding any other law to the contrary, the director of
7 the budget may direct the state comptroller to withhold any state aid
8 payments due to a school district that failed to fully implement by the
9 end of the 2016--2017 school year or local government unit that failed
10 to fully implement by the end of the local fiscal year beginning in
11 2017, the consolidation actions and/or shared services actions specified
12 for such school district or local government unit in an efficiency plan
13 prepared pursuant to section 2023-b of the education law or section 3-d
14 of the general municipal law.

15 § 6. This act shall take effect immediately, provided that the
16 provisions of subdivision 3 of section 1590 of the real property tax law
17 as added by section four of this act shall apply to tax rolls and tax
18 bills of school districts and cities with a population of 125,000 or
19 more for fiscal years starting on or after July 1, 2013, and to tax
20 rolls and tax bills for other municipal corporations for fiscal years
21 starting on or after January 1, 2014, except that in the case of tax
22 rolls and tax bills for fiscal years that started prior to the effective
23 date of this act, the data files used to prepare tax rolls and tax bills
24 shall be submitted to the commissioner of taxation and finance no later
25 than 60 days after the effective date of this act.

26 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
27 sion, section or part of this act shall be adjudged by any court of
28 competent jurisdiction to be invalid, such judgment shall not affect,

1 impair, or invalidate the remainder thereof, but shall be confined in
2 its operation to the clause, sentence, paragraph, subdivision, section
3 or part thereof directly involved in the controversy in which such judg-
4 ment shall have been rendered. It is hereby declared to be the intent of
5 the legislature that this act would have been enacted even if such
6 invalid provisions had not been included herein.

7 § 3. This act shall take effect immediately provided, however, that
8 the applicable effective date of Parts A through FF of this act shall be
9 as specifically set forth in the last section of such Parts.