2009-10 NEW YORK STATE EXECUTIVE BUDGET
REVENUE ARTICLE VII LEGISLATION
MEMORANDUM IN SUPPORT

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MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in
Accordance with Article VII of the Constitution

AN ACT to amend the tax law and the administrative code of the cit of New York, in relation to the definition of presence in New York in determining a taxpayer's New York residency status (Part A); to amend the tax law, in relation to conforming the definition of manufacturing under the capital base to the definition of manufacturing under the entire net income base (Part B); to amend the tax law, in relation to the exemption from the franchise tax on insurance corporations under article thirty-three of such law for tow county cooperative insurance corporations (Part C); to amend the t

law, in relation to increasing the rate of the premiums tax on certain insurance companies and eliminating the franchise tax imposed on insurance companies, and to repeal certain provisions of the tax law relating thereto (Part D); to amend the tax law, in relation to collecti and offset agreements with the United States or other states (Part E to amend the tax law, in relation to the treatment of overcapitalized captive insurance companies (Part F); to amend the tax law, in rela to limiting various underutilized tax credits (Part G); to amend the ta law, in relation to requiring nonresidents to include as a source of income the gain or loss from the sale of a partnership, limited liabili corporation, S corporation or a non-publicly traded C corporation wi one hundred or fewer shareholders to the extent that the gain or los includes gain or loss from real property located in New York (Part H to amend the tax law, in relation to changing the percentage used t complete the mandatory first installment of franchise tax and the metropolitan commuter transportation district business tax surcharg under articles 9, 9-A, 32 and 33 (Part I); to amend the tax law, in relation to adding filing fees for partnerships (Part J); to amend the general municipal law and the tax law, in relation to enacting reform to the empire zones program; and to repeal certain provisions of su laws relating thereto (Part K); to amend the public housing law, in relation to providing a credit against income tax for persons or entiti investing in low-income housing (Part L); to amend the tax law and administrative code of the city of New York, in relation to limiting itemized deductions for certain taxpayers and determining the amo of estimated tax installments to be paid (Part M); to amend the tax l in relation to the treatment of income received by partners for performing investment management services as New York source income received for the performance of services (Part N); to amenc the tax law, in relation to providing taxpayers with a credit for increasing research activities (Part O); to amend the tax law, in relation to the qualified emerging technology company facilities, operations and training credit (Part P); to amend the tax law, in relation to imposing sales tax on cable television service (Part Q); t amend the tax law, in relation to the tobacco products and cigarette taxes to remedy various compliance and enforcement problems an relation to taxing cigars by unit rather than by a percentage of the wholesale price (Part R); to amend the tax law, in relation to includi the amount of any discount given for a coupon in the amounts subj to the sales and compensating use taxes (Part S); to amend the sta finance law, in relation to investment of lottery moneys available an retained on deposit for the payment of lottery prizes (Part T); to am the tax law, in relation to replacing the year-round sales and compensating use tax exemption for clothing and footwear under o hundred ten dollars with two one-week exemption periods with a fiv hundred dollar threshold and authorizing counties and cities that impose such taxes to elect or decline such exemption weeks; and t repeal subdivision (k) of section 1210 of such law relating thereto (F U); to amend the tax law, in relation to imposing state and local sale and compensating use taxes on certain personal services and cred

rating and reporting services currently imposed by a city of one mill
or more, and to repeal section 11-2002 and subchapter 3 of chapte
20 of title 11 of the administrative code of the city of New York, rela
to that city's sales and use taxes on those personal services and cr
rating and reporting services (Part V); to amend the tax law, in relat
to making technical corrections regarding the operation of video lott
gaming and approving the construction or alteration of any facility
housing video lottery gaming; and to amend chapter 383 of the laws
2001, amending the tax law and other laws relating to authorizing th
division of the lottery to conduct a pilot program involving the opera
of video lottery terminals at certain racetracks, in relation to the
effectiveness thereof; and to repeal certain provisions of the tax law
relating thereto (Part W); to amend the tax law and the alcoholic
beverage control law, in relation to taxing flavored malt beverages a
the low liquor tax rate (Part X); to amend the racing, pari-mutuel
wagering and breeding law in relation to licenses for simulcast
facilities, sums relating to track simulcast, simulcast of out-of-state
thoroughbred races, simulcasting of races run by out-of-state harne
tracks and distributions of wagers; to amend chapter 281 of the law
of 1994 amending the racing, pari-mutuel wagering and breeding la
and other laws relating to simulcasting and to amend chapter 346 c
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 provision
thereof; and to amend the racing, pari-mutuel wagering and breedir
law, in relation to extending certain provisions thereof (Part Y); to
amend the tax law, in relation to changing the rate of the prepaid sa
tax on cigarettes (Part Z); to amend the tax law, in relation to curtail
certain abusive sales and use tax avoidance schemes by narrowing
the use tax non-resident exemption for certain items of tangible
personal property and the sales tax exemption for commercial aircr
(Part AA); to repeal subdivision (e-1) of section 1132 of the tax law
relating to a sales tax bad debt credit or refund for purchases made
private label credit cards (Part BB); to amend the tax law and the ru
electric cooperative law, in relation to imposing sales and
compensating use tax on digital products and clarifying the corpora
franchise tax treatment of these products (Part CC); to amend the t
law, chapter 35 of the laws of 2006 amending the tax law relating tc
computing sales and compensating use tax on motor fuel and diese
motor fuel and amending the tax law and the general business law
relating to requiring retail dealers of motor fuel and diesel motor fue
reduce prices for such fuel, and chapter 109 of the laws of 2006
amending the tax law and other laws relating to the sales tax impos
on motor fuel and diesel motor fuel, in relation to repealing the state
and any local sales and compensating use tax cap on motor fuel ar
diesel motor fuel and restoring the percentage rate of those taxes c
those fuels (Part DD); to amend the tax law, in relation to reauthoriz
the commissioner of taxation and finance to require the use of deca
in certain instances (Part EE); to amend the tax law, in relation to
expanding the definition of vendor for purposes of the sales and

compensating use taxes (Part FF); to amend the racing, pari-mutue
wagering and breeding law and the tax law, in relation to authorizin
video lottery gaming at Belmont Park (Part GG); to amend the tax la
and the state finance law, in relation to imposing a state sales and
compensating use tax surcharge on certain beverage products (Pa
HH); to amend chapter 405 of the laws of 1999, amending the real
property tax law relating to improving the administration of the scho
tax relief (STAR) program, in relation to eliminating the expiration a
repeal of the Quick Draw lottery game; and to amend the tax law, ir
relation to the game of Quick Draw (Part II); to amend the tax law, i
relation to participation in more than one joint, multi-jurisdiction and
out-of-state lottery (Part JJ); to amend the alcoholic beverage contr
law, in relation to creating a new grocery or drug store wine license
(Part KK); to amend the tax law, in relation to taxes on beer and wi
under article 18 of the tax law (Part LL); to amend the tax law, in
relation to the special tax on passenger car rentals under article 28-
of such law (Part MM); to amend the tax law, in relation to imposing
state and local sales taxes on certain transportation services (Part
NN); to amend the tax law, in relation to expanding sales taxes on
certain amusement charges; and to repeal sections 1122 and 1123
such law relating thereto (Part OO); to amend the tax law, in relatio
narrowing the sales taxes definition and treatment of capital
improvement (Part PP); to amend the tax law, in relation to the fees
replacement highway use tax credentials (Part QQ); to amend the t
law, in relation to imposing an additional rate of sales tax on certain
luxury property (Part RR); and to amend the tax law, in relation to
reporting information regarding deposits and bank settlements
(Subpart A); to amend the tax law, in relation to authorizing the use
generally accepted statistical sampling to determine the amount of
sales and compensating use tax due under articles 28 and 29 of su
law (Subpart B); to amend the tax law, in relation to imposing a
penalty for failure to keep mandatory records, to provide records in
auditable format or to provide access to mandatory records
maintained electronically (Subpart C); to amend the tax law, in relat
to the failure of a responsible person to collect and pay over
withholding tax (Subpart D); to amend the tax law, in relation to cer
penalties; to amend chapter 61 of the laws of 2005 amending the ta
law relating to certain transactions and related information, in relatio
to making the penalty amount for aiding or assisting in the giving of
fraudulent returns permanent; and to repeal certain provisions of th
tax law relating thereto (Subpart E); to amend the tax law, in relatio
providing expedited hearings relating to cancellations, revocations,
suspensions of certain credentials and to penalties imposed on
persons who aid or assist in the filing of fraudulent tax documents
(Subpart F); to amend the tax law, in relation to establishing an awa
program for significant information concerning noncompliance with
tax laws of the state of New York (Subpart G); to amend the tax law
relation to changing the last quarterly withholding filing date for
employers (Subpart H); to amend the tax law, in relation to a branc
separate office of a bank (Subpart I); to amend the criminal procedu

law, the penal law and the tax law, in relation to creating the offens
"tax fraud act"; to amend the tax law, in relation to simplifying and consolidating the provisions describing the acts that constitute offenses under such law; and to repeal certain provisions of the tax law relating thereto (Subpart J); to amend the county law, in relatio authorizing district attorneys to appoint attorneys employed by the department of taxation and finance as special assistant district attorneys in tax cases (Subpart K); to amend the tax law, in relation clarifying some technical aspects of the voluntary disclosure and compliance program (Subpart L); to amend the tax law, abandoned property law, environmental conservation law, insurance law, lien la mental hygiene law, public health law, real property tax law, social services law, state finance law and the administrative code of the ci of New York, in relation to decreasing the overpayment and increas the underpayment rates of interest, changing the overpayment inte accrual date for sales and compensating use taxes and providing f an interest-free period for refunds or credits of sales and compensating use taxes (Subpart M); to amend the tax law, in relat to requiring certain third-parties to file information returns providing information about vendors, hotel operators and recipients of amusement charges (Subpart N); to amend the tax law, in relation t the filing of tax warrants and related records in the department of state; and to repeal section 6 of such law relating thereto (Subpart and to amend the tax law, in relation to the collection of a penalty a interest on sales and use taxes upon a bulk sale of assets (Subpar (Part SS)

PURPOSE:

This bill contains provisions needed to implement the Revenue portion of the 2009-10 Executive Budget.

This memorandum describes Parts A through SS of the 2008-09 Article VII Revenue bill which are described wholly within the parts listed below.

Part A – Amend definition of "resident individual" for determining residency for the Personal Income Tax

Purpose:

This bill amends the Tax Law and the Administrative Code of the City of New York to amend the term "resident individual" for purposes of determining a taxpayer's New York residency status.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Under the current law, a taxpayer domiciled in New York is not taxed as a resident if, within any 548 consecutive day period: (1) the taxpayer is present in a foreign country or countries for at least 450 days; (2) the taxpayer is not present in the state for more than 90 days; and (3) the taxpayer's spouse and minor children do not reside at the taxpayer's permanent place of abode in New York for more than 90 days. Some taxpayers have exploited the plain language of the law by having their spouses

and minor children avoid using their permanent places of abode in New York, and instead either staying with relatives or in a hotel in New York. In these cases, the spouse and the minor children spend more than 90 days in New York, but not at the taxpayer's permanent place of abode.

This bill would close this loophole by providing that the taxpayer would be taxed as a resident of New York unless the taxpayer's spouse and minor children are not present in New York for more than 90 days. In particular, section one of this bill would amend Tax Law § 605(b) to tax as a New York resident a taxpayer who is out of the country for at least 450 of any 548 consecutive days, but whose spouse and minor children are in New York for more than 90 days of that period, regardless of whether the spouse and children spend any of their time in New York at the taxpayer's principal place of abode. Sections two, three, four and five of this bill would make similar changes to Tax Law §§§1305(a), 1325 and 1340(d), and Administrative Code of the City of New York § 11-1705(b) relating to the New York City and Yonkers personal income taxes.

Budget Implications:

This bill will increase personal income tax receipts as reflected in the State Financial Plan by $5 million annually beginning in SFY 2010-11. Therefore, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part B – Clarify that electric generation facilities do not meet the definition of "manufacturer" under the capital base of the corporation franchise tax

Purpose:

This bill amends the business corporation franchise tax to conform the definition of manufacturer under the capital base to the definition of manufacturer under the entire net income base.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

For tax years beginning on or after January 1, 2009, this bill would conform the definition of manufacturer under the capital base to the definition of manufacturer under the entire net income base. The conforming amendments would specifically exclude electricity generation from the definition of manufacturing and restrict the benefits under the reduced capital base liability cap to taxpayers manufacturing in New York. Existing law imposes a Tax Law Article 9-A exclusion of electricity generation under the entire net income base, but does not impose such a restriction on the capital base. This proposal was included in the 2008-09 Executive Budget proposal.

Budget Implications:

This bill will increase corporation franchise tax receipts reflected in the State Financial Plan by an estimated $18 million in SFY 2009-10 and $16 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

There is no fiscal impact for this bill after SFY 2010-11 because of the $10 million capital base cap expiration.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part C – Limit the exemption provided for town or county cooperative insurance corporations under the Insurance Franchise Tax

Purpose:

This bill would limit the exemption from the franchise tax on insurance corporations for certain town or county cooperative insurance corporations in order to prevent unfair competition.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

The Tax Law currently exempts from taxation town and county co-operative insurance companies that were in existence before 1937. These companies originally were formed by persons desiring to provide insurance on a co-operative basis in a specified geographic area (e.g., one or more towns, or one to three adjoining counties) in order to provide only certain types of insurance, such as fire insurance. However, over the years, their authorization has been enveloped into broader authority under the Insurance Law, enabling these companies to expand both their geographic reach and the types of insurance they offer. As a result, some of the town and county co-operative insurance companies currently exempt from taxation have expanded their business significantly beyond what was originally contemplated when the exemption was enacted. These companies are competing with other property/casualty companies doing business in New York State, yet they have an unfair advantage because they pay no state franchise tax. This bill is intended to level the playing field for large co-operative insurance corporations and other property/casualty companies, and limit the exemption to those companies whose operations are more closely aligned with the original intent of the exemption.

The bill amends the exemption for town and county co-operative insurance corporations in Tax Law §1512(a)(7) to provide that the exemption will apply only to corporations that properly reported direct written premiums to the Superintendent of Insurance of $25 million or less for the taxable year.

Tax Law §1512(a)(7) now provides an exemption to a town or county co-operative insurance corporation “as heretofore contemplated” by Tax Law §187 in effect immediately before January 1, 1974. This exemption shows that it applied only to town and county cooperative insurance companies in existence prior to 1937 (which is when the “heretofore contemplated” language was added to the statute).

Budget Implications:

This bill will increase insurance tax receipts reflected in the State Financial Plan by an estimated $19 million in SFY 2009-10 and $15 million annually thereafter. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part D – Restructure the franchise tax on insurance companies so that all insurance companies

are taxed in an identical manner by paying a tax based on premiums

Purpose:

This bill would restructure the franchise tax on insurance companies so that all insurance companies are taxed in an identical manner by paying a tax based on premiums.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill would simplify the franchise tax on insurance companies in New York and conform the tax base used by life insurance companies to the tax base used by property and casualty insurance companies. Under the bill, all insurance companies will pay a tax based solely on premiums at a rate of 2 percent.

Under current law, different types of insurance companies are taxed differently. Life insurance companies are subject to both a tax based on income and a tax based on premiums. The rate of the premiums tax is 0.7 percent. The sum of the income-based tax and the premiums tax cannot exceed a premiums tax calculated at a rate of 2 percent or be less than a premiums tax calculated at a rate of 1.5 percent. Property and casualty companies are subject only to a premiums tax at the rate of 1.75 percent on accident and health insurance premiums and 2 percent on all other premiums. Before 2003, property and casualty companies were also subject to an income-based tax under Article 33 of the Tax Law.

Section one of the bill would repeal various provisions in Article 33 of the Tax Law that would no longer apply once life insurance companies begin paying a franchise tax based exclusively on premiums. The repealed sections are Tax Law §§ 1501 and 1502, which impose a tax on life insurance companies based on income, Tax Law § 1503, which specifies how entire net income is calculated, and Tax Law § 1504, which concerns the allocation of the tax based on income. Section one of the bill would also repeal Tax Law § 1505, which imposes both a cap and a minimum on the franchise tax on life insurance companies. The cap and the minimum, which are based on the premiums tax, would no longer be necessary when the income-based tax is eliminated. Finally, bill section one would repeal Tax Law § 1502-a, which imposes a premiums tax on property and casualty insurance companies. This section, which essentially cross-references the provisions in the premiums tax under Tax Law § 1510, would be repealed because it would no longer be necessary. Bills sections five through eight would amend Tax Law § 1510 to clarify that all insurance companies authorized by the Superintendent of Insurance to transact business in this State would be subject to the premiums tax imposed under Tax Law § 1510 at a rate of 2 percent of premiums on risks located in New York. In no event would the tax be less than $250. Bill sections two, three, and eight through 35 make changes to other sections of Article 33 and other parts of the Tax Law that would no longer be relevant or necessary when the income-based tax on life insurance companies is eliminated.

Budget Implications:

This bill will increase insurance franchise tax receipts reflected in the State Financial Plan by an estimated $62 million in SFY 2009-10 and $50 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-2010 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009;

provided however that section 4 would apply to taxable years ending after December 31, 2008.

Part E – Enact a reciprocal program with the United States Treasury Department to intercept vendor payments to satisfy tax debts

Purpose:

This bill provides additional authority for the New York State Department of Taxation and Finance ("Tax Department") to enter into certain offset agreements with the federal government and other states.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

The Federal government is interested in entering into an agreement with New York State for the offset of payments to vendors, contractors and other taxpayers for debt owed to the federal government or New York. This agreement would expand a current agreement under which the Federal government and New York State offset tax overpayments owed by the taxpayer to the other party. The new agreement would aid in New York State's efforts to collect delinquent tax debts and other debt (e.g., delinquent student loan payments).

This bill adds a new Tax Law §171-t to clarify that the Tax Department has the requisite authority to enter into agreements with the Federal government and other states to offset tax and nontax payments against tax and nontax debts, provided that the parties grant substantially similar privileges to each other. The debts that may be certified for offset would be debts that are final and no longer subject to administrative or judicial review.

As part of administering the terms of these agreements, the Tax Department would be authorized to share taxpayer information with the Federal government and other participating states and to add any fee for offset services imposed by the federal government or a participating state to the debt and to offset that fee as well. To comply with Federal Law, the United States would not be required under this section to offset tax overpayments owed by it except to the extent that it agrees to do so. This section also includes provisions for the debtor to request a review of the offset in limited circumstances (e.g., has the debt already been paid). Finally, this section includes payment priority rules for tax overpayments owed by New York State or where there is more than one debt owed by a person that is certified to the Tax Department for offset.

Budget Implications:

This bill will increase personal income tax receipts reflected in the State Financial Plan by an estimated $2.5 million in SFY 2009-10 and $15 million annually thereafter. Likewise, this bill will also increase corporate franchise tax receipts by an estimated $2.5 million in SFY 2009-10 and $15 million annually thereafter.

Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately.

Part F – Clarify that captive insurance companies receiving 50 percent or less of their gross

receipts from insurance premiums would no longer meet the definition of an insurance business, and would file a combined return with their closest affiliated taxpayer

Purpose:

This bill would require overcapitalized captive insurance companies whose premiums are 50 percent or less of their gross receipts to file a combined return under Tax Law Article 9-A or 32 with their affiliates.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Corporations have increasingly been using overcapitalized “captive” insurance companies -- that is, insurance companies providing insurance to their parent or affiliates -- as a means to avoid tax on their income. Since insurance companies pay New York tax based only on the premiums they receive, income generated by income-producing assets goes untaxed. The premiums-based tax for captives has led many corporations to transfer to their captives assets far exceeding the level necessary to properly insure the risks of the captives. This bill would address the problem and tax the income from their assets by requiring a captive insurance company that has been capitalized with excessive amounts of assets (demonstrated by the fact that its yearly premiums are 50% or less of its total receipts) to file a combined return with its parent corporation if the parent is a taxpayer or is included in a combined report. If a captive has nexus with New York but is not required to file a combined return under these provisions, the bill would clarify that the captive is an Article 9-A taxpayer.

Section 1 of the bill adds the definition of an “overcapitalized captive insurance company” in a new subdivision 11 to Tax Law § 2. In defining that term, the bill refers to relevant provisions in the Tax Law and the Internal Revenue Code. Section 2 of the bill adds a new subparagraph (7) to Tax Law § 211.4 (a) requiring an overcapitalized captive insurance company to be included in a combined return with the corporation that directly owns over 50% of the voting stock of the captive and is either a taxpayer or member of a combined return group. This new subparagraph (7) also provides that, if no corporation that is a taxpayer or member of a combined group directly owns over 50% of the voting stock, then the overcapitalized captive insurance company must file a combined return with the corporation that indirectly owns over 50% of the captive’s stock and is a taxpayer or member of a combined group. Section 3 of the bill amends subparagraph (1) of Tax Law § 211.4(b) to provide that the entire net income of an overcapitalized captive insurance company required to be included in a combined report under Article 9-A is the “entire net income” required to be computed under Tax Law § 208.9. Section 4 of the bill amends Tax Law § 1452(d) to provide that an overcapitalized captive insurance company that is required to be included in a combined return under Article 32 of the Tax Law is not taxable under Article 9-A of the Tax Law. Section 5 of the bill amends paragraph (4) of Tax Law § 1452(m) relating to the Gramm-Leach-Bliley transitional provisions to state that those transitional provisions do not apply to an overcapitalized captive insurance company. Section 6 of the bill adds a new subparagraph (vi) to Tax Law § 1462(f)(2) of Article 32 of the Tax Law that is similar to the new subparagraph (7) added to Tax Law § 211.4(a) of Article 9-A of the Tax Law by section 1 of the bill. Section 7 of the bill amends Tax Law § 1462(f)(3) of Article 32 of the Tax Law to provide that the entire net income of an overcapitalized captive insurance company required to be included in a combined report under Article 32 is the “entire net income” required to be computed under Tax Law § 1453. Section 8 of the bill amends subdivision (a) of Tax Law § 1500 to provide that the definition of an insurance corporation does not include an overcapitalized captive insurance company. Section 9 of the bill amends subdivision (a) of Tax Law § 1502-b to provide that the tax imposed by that subdivision on captive insurance companies does not apply to overcapitalized captive insurance companies. Section 10 provides that this bill is effective immediately and applies to taxable years beginning on or after January 1, 2009.

Under existing law, captive insurance companies that are licensed by the Superintendent of Insurance pursuant to Article 70 of the Insurance Law (domestic captive insurance companies) are taxed under Tax Law § 1502-b on premiums received, and at very low rates relative to other insurance companies. Captive insurance companies owned by business corporations or banking corporations that are capitalized with large amounts of income-producing assets cannot be required to file a combined return under Article 9-A or Article 32 due to the restriction on combining corporations that are taxable under different Tax Law articles. This bill removes the bar to combination for an overcapitalized captive insurance company.

Budget Implications:

This bill would increase corporate franchise tax receipts reflected in the State Financial Plan by an estimated $33 million in SFY 2009-10 and $29 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part G – Eliminate underutilized tax credits (automated external defibrillator, fuel cell, security guards, alternative fuels, qualified emerging technology company capital tax, and transportation improvement contributions)

Purpose:

This bill would eliminate underused tax credits allowed under the corporate franchise taxes and personal income tax.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill would eliminate 6 credits allowed under the corporate franchise taxes and the personal income tax. All of these credits were enacted to benefit narrow constituencies and are underused, as indicated by the limited number of claimants and by the small total dollar values claimed. The credits that would be eliminated are the automated external defibrillator credit, the fuel cell electric generating credit, the security guards training credit, the alternative fuels credit, the qualified emerging technology company (QETC) capital tax credit, and the transportation improvement contributions credit. As a result of these amendments, none of these credits will be allowed for taxable years beginning on or after January 1, 2009.

Budget Implications:

This bill would increase corporate franchise and personal income tax receipts reflected in the State Financial Plan by an estimated $5.9 million in SFY 2009-10 and $9.0 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-2010 Executive Budget.

Effective Date:

This bill takes effect immediately.

Part H – Include gain from the sale of partnership, S corporation and LLC interests as New York

source income to non-residents to the extent the entity owns real property located in New York

Purpose:

This bill amends Article 22 of the Tax Law to include the gain from the sale of interests in partnerships and other entities as New York source income to nonresidents to the extent that the gain is attributable to the entity's ownership of real property in New York.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Under current law, nonresidents are taxed on income attributable to an ownership interest in real or tangible property located in New York. A nonresident can escape taxation by placing the New York real property in an entity and then selling his or her interest in the entity. New York has traditionally treated the sale of an interest in these entities as a sale of an intangible asset that is not taxable to a nonresident.

This bill would prevent nonresidents from using this loophole to avoid paying New York personal income tax on the sale of real property located in New York. The direct sale of New York real property by a nonresident is subject to New York income tax, as is the sale of New York real property by an entity. This bill ensures that the gain or loss on the direct or indirect sale of New York real property by a nonresident accomplished through the sale of an interest in an entity is subject to New York personal income tax.

In particular, the bill would amend the definition of New York source income for nonresident individuals in Tax Law §631 to include the sale of an interest in a partnership, limited liability corporation, S corporation, or a non-publicly traded C corporation with one hundred or fewer shareholders (hereinafter the "entity") that has real property located in New York. A nonresident would be required to include a portion of the gain or loss from the sale of his or her interest in an entity if fifty percent or more of the entity's assets consist of real property located in New York. This percentage is a figure the numerator of which is the fair market valuation of all the entity's real property located in New York and the denominator of which is the fair market value of all the assets of the entity that the entity has held for at least two years on the date of the sale. If it is determined that the entity's New York real property equals or exceeds the fifty percent threshold, the taxpayer must allocate to New York the gain or loss from the sale of the interest in the entity.

This treatment is consistent with Federal law. Under Internal Revenue Code §897(c)(1)(A)(ii), a nonresident alien is taxed on the sale of his or her interest in a domestic corporation if the fair market value of the real property in the United States equals or exceeds fifty percent of the total assets of the corporation. Similarly, Internal Revenue Code § 897(g) taxes a nonresident alien on the sale of a partnership interest to the extent attributable to real property located in the United States.

Budget Implications:

This bill will increase personal income tax receipts as reflected in the State Financial Plan by $10 million annually beginning in SFY 2010-11. Therefore, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to sales or exchanges of entity interests that occur thirty

or more days after the bill becomes law.

Part I – Change the mandatory first estimated tax installment payment under the corporate franchise taxes from 30 percent to 40 percent

Purpose:

This bill would increase the percentage used by large business taxpayers to compute the mandatory first installment of franchise tax and the Metropolitan Commuter Transportation District (MCTD) surcharge under Articles 9, 9-A, 32 and 33 of the Tax Law.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section one of this bill would amend Tax Law §197-b(1)(a). The amended paragraph would require taxpayers whose tax for the preceding year was in excess of one hundred thousand dollars to remit 40%, instead of 30%, of their preceding year's franchise tax as their mandatory first installment of tax. This amendment would also require taxpayers whose tax for the preceding year was in excess of one hundred thousand dollars, to remit 40%, instead of 30%, of their preceding year's MCTD business tax surcharge as their mandatory first installment.

Sections two through four of the bill would make similar amendments to the franchise tax on business corporations (Article 9-A), banking corporation franchise tax (Article 32) and insurance corporation franchise tax (Article 33).

Section five of the bill provides that the bill takes effect immediately and applies to taxable years beginning on or after January 1, 2010.

Budget Implications:

This bill will increase business tax receipts reflected in the State Financial Plan by an estimated $351 million in SFY 2009-10. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on and after January 1, 2010.

Part J – Impose annual filing fees on partnerships, other than limited liability partnerships, based on their New York source income with an exemption for partnerships whose New York source income is less than one million dollars

Purpose:

This bill amends Article 22 of the Tax Law to extend the annual filing fee currently imposed on limited liability companies and limited partnerships to certain general partnerships based upon their New York source income.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Currently, general partnerships are not subject to the filing fee imposed by Tax Law § 658 on limited

liability companies and limited liability partnerships. This bill would impose a filing fee on certain general partnerships to equalize the treatment of these different types of entities.

Section one of this bill would expand the scope of Tax Law § 658(3)(c), which currently imposes filing fees on limited liability companies and limited liability partnerships, to impose such fees on general partnerships. Partnerships that are not limited liability partnerships and have New York source income of less than one million dollars would be exempt from this filing fee.

Section two of the bill authorizes cities that impose taxes authorized under Article 30 of the Tax Law to amend and adopt laws that are consistent with the amendment to Tax Law § 658 proposed by section 1 of this bill.

Section three of the bill provides that the bill would take effect immediately and apply to taxable years beginning on or after January 1, 2009.

The filing fee under current law for limited liability partnerships is based on the New York State source income of the entity. The fee ranges from $25 for entities with New York source income of not more than $100,000 to $4,500 for entities with New York source income of over $25,000,000.The filing fee was amended in the 2008-2009 Enacted Budget to convert the fee from a per member/partner fee to a fee based on the entity's New York source income.

Budget Implications:

This bill will increase personal income tax receipts as reflected in the State Financial Plan by $50 million annually beginning in SFY 2009-10. Therefore, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on and after January 1, 2009.

Part K – Reform the Empire Zones Program

Purpose:

The purpose of this bill is **to amend the Tax Law and the General Municipal Law to enact reforms to the Empire Zones program.**

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill authorizes numerous program reforms and administrative changes to the Empire Zones Program in order to achieve substantial cost savings and improve the program's strategic focus by more narrowly targeting benefits to firms creating jobs and making capital investment in the State.

Sections one through 13 amend Article 18-B of the General Municipal Law to improve administrative efficiency, increase accountability, and reduce costs of the tax benefits for the Empire Zones Program.

Specifically, §§1 through 13 of the bill establish the following reforms.

- Expands the bases for decertification to include: i) making any misrepresentation of material fact on a business annual report; (ii) failure to invest in a facility substantially in accordance with representation made by the business enterprise in its applications; and (iii) failure to meet the requirements of the cost-benefit analysis provided, however, that the Commissioner of the Department of Economic Development (DED) may consider, in his or her sole discretion, other economic, social and environmental factors when evaluating the costs and benefits of a project to the state and whether continued certification is warranted based on these factors.

- Requires business enterprises to be recertified by the Commissioner of DED by meeting or exceeding a 20:1 ratio of the actual value of wages, benefits and capital investments paid by a business enterprise for at least a three-year period at the location(s) approved by the Commissioner, versus the amount of state tax benefits actually claimed and used by the business enterprise for that time period at those location(s). Business enterprises certified prior to April 1, 2005 will be reviewed in 2009. If they are decertified, they will lose their EZ benefits for 2008 and thereafter. Business enterprises reviewed and decertified thereafter will lose their benefits starting in the year in which they are decertified.

- For new business applicants seeking certification on or after April 1, 2009, the bill requires a 20:1 ratio of estimated value of wages, benefits and capital investments to be paid by a business enterprise versus the estimated value of state tax benefits that may be claimed by that business enterprise, for first three years of certification at locations approved by the Commissioner of DED.

- Limits new certifications beginning April 1, 2009 to firms that are manufacturing enterprises (including high-tech, bio-tech, clean-tech, and agri-business), financial service enterprises, or extraordinary projects. The Commissioner of DED will be the sole certification officer, and will be responsible for promulgating regulations: (a) defining high-tech, bio-tech, clean-tech, financial services, manufacturing, agri-business enterprises, and extraordinary projects, (b) governing criteria for certification (including meeting the requirements of the cost-benefit analysis), and (c) establishing the application process for certification.

- Removes the “economic circumstance or unforeseen conditions” exception to the failure to create new employment or prevent loss of employment grounds for decertification.

- Terminates the authority to designate new Empire Zones and to increase the area of existing zones for applications filed after to April 1, 2009.

- Changes the deadline date for submission to the Governor and the Legislature of an independent report evaluating the Empire Zones program from December 31, 2009 to August 31, 2010.

Sections 14 through 24 of the bill would amend the Tax Law to eliminate carryover credits for taxpayers that are decertified for failure to meet the 20:1 cost benefit analysis under Article 18-B of the General Municipal Law. Sections 26 through 31 would suspend the running of interest on refunds and the accrual of underpayment related penalties for the 2008 tax year during the pendency of the cost benefit analysis in 2009 for those taxpayers subject to review during that time.

Sections 32 through 43 would repeal the QEZE sales and use tax exemptions and replace them with a QEZE credit or refund containing similar provisions. This change to a credit or refund would allow the Department of Taxation and Finance to track the amount and usage of the QEZE sales and use tax benefits, which currently is not possible with the exemption. In addition, the separate requirement that companies receive a QEZE certification from the Department of Taxation and Finance in order to access the sales tax benefits would be repealed because it would no longer be necessary. The remaining sections would amend the various statutes that currently authorize counties, cities, and school districts to piggyback on the state QEZE sales and use tax exemption to conform to the new

refund or credit scheme.

Section 44 would repeal the existing requirement that the Tax Department prepare an annual summary report on Empire Zones tax benefits claimed by certified businesses. This report would be replaced by the public report required by the amendments in bill § 45. This public report would be prepared by Tax Department and would provide the name of each taxpayer that claims an Empire Zones tax benefit and would specify the amount of Empire Zones tax benefits used by or refunded to each taxpayer.

Budget Implications:

This bill will increase tax receipts reflected in the State Financial Plan by an estimated $272 million in SFY 2009-10 and by $292 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill would take effect immediately, provided that §§14 through 25 of this bill shall apply to taxable years beginning on or after April 1, 2009, §§32 and 33 and §§36 through 42 shall take effect on the first day of the sales tax quarter next commencing at least 60 days after this bill becomes a law; provided that any refund or credit allowed pursuant to the amendments made by §33 may not be paid for that quarter for at least two hundred seventy days after this bill becomes a law; and provided that § 35 of this bill shall take effect April 1, 2009.

Part L – Authorize additional credits of $4 million for low-income housing credit

Purpose:

This bill would allow the Commissioner of Housing and Community Renewal to allocate an additional $4 million of State low-income housing credits, which receiving taxpayers may claim each year for 10 years.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

The bill would amend Public Housing Law §22 by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from $20 million to $24 million. Current state law provides for total allocation authority of $20 million.

Budget Implications:

This bill will decrease annual tax receipts by an estimated $4 million beginning with SFY 2009-10 and ending with SFY 2018-19. Enactment of this bill is necessary to implement the Financial Plan submitted with the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately.

Part M – Limit the use of itemized deductions by individuals with incomes over $1 million

Purpose:

This bill limits the use of itemized deductions by an individual whose adjusted gross income is over $1 million.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill would limit the use of itemized deductions by individuals with New York State or New York City adjusted gross incomes over $1 million and allow these individuals to claim only the standard deduction.

Section 1 of the bill adds a new paragraph 3 to Tax Law § 615(f) that reduces by an additional 50% the amount of itemized deductions, except charitable contributions, that can be claimed by an individual with New York adjusted gross income of more than $1 million. Since existing paragraphs 1 and 2 of Tax Law § 615(f) effectively reduce the amount of itemized deductions that can be claimed by an individual with income over $525,000 by 50%, new paragraph 3 added by this section of the bill would completely eliminate the use of itemized deductions, except charitable contributions, by an individual with more than $1 million of New York adjusted gross income.

Section 2 of the bill amends Tax Law § 685(c)(3)(B)(ii) to provide that, for purposes of determining the required installment of estimated tax for 2009, the computation of 100% of the tax for the preceding year shall be made as if paragraph 3 of Tax Law § 615(f), as added by section 1 of this bill, had been in effect in 2008.

Section 3 of the bill makes amendments to §11-1715(f) of the Administrative Code of the City of New York that are similar to the amendments made by section 1 of the bill.

Section 4 of the bill makes amendments to §11-1785(c)(3)(B)(ii) of the Administrative Code of the City of New York that are similar to the amendments made to the Tax Law in section 2 of the bill.

Section 5 of the bill prohibits the imposition of penalties for an underpayment of estimated tax that is attributable to the limitation on itemized deductions as provided in sections 1, 2 and 3 of the bill.

Section 6 of the bill authorizes the Commissioner of Taxation and Finance to prescribe by regulations the method of determining the amount of withholding from wages and to adjust published withholding tables. This section also allows the Commissioner to adopt the regulations on an emergency basis and to use the same procedures with respect to local income taxes authorized for the cities of New York and Yonkers.

Section 7 of the bill provides that the bill becomes effective immediately.

Tax Law §615(f) reduces the amount of itemized deductions that can be claimed by an individual whose New York adjusted gross income exceeds certain thresholds. A maximum reduction of 50% applies to an individual with income over $525,000. A similar provision pertaining to New York City income tax appears in §11-1715(f) of the New York City Administrative Code. In addition, Tax Law §685(c)(3)(B) provides rules for determining the required installment of estimated tax that must be paid during a taxable year.

The Personal Income Tax Regulations prescribe the method for determining withholding amounts that must be deducted from wages and paid over to the Department of Taxation and Finance. In addition, the Department has published withholding tables showing the withholding amounts that apply to various wage brackets for purposes of the New York State, New York City and Yonkers income taxes.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effective immediately.

Part N – Treat income received by non-resident partners for performing investment management services as New York source income

Purpose:

This bill would amend Article 22 of the Tax Law to treat income received by nonresident partners for performing investment management services for investment partnerships doing business in New York as New York source income.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill would treat income received by nonresident partners for performing investment management services for investment partnerships or other entities doing business in New York as New York source income. This income, characterized as capital gain for federal income tax purposes, is in reality a type of compensation to the partners performing the investment management services. However, because it is characterized as capital gain, it currently is not treated as New York source income, and the non-resident partners of these partnerships escape taxation on this type of compensation. This bill will rectify the situation by clarifying that the income is New York source income and properly taxed by the State. Resident partners performing investment management services are currently taxed on all their income from the partnership, and this bill will equalize the treatment of non-resident and resident partners.

Section 1 of the bill would amend §631(b)(1)(B) of the Tax Law to include investment management services to a partnership or other entity in NY as a business carried on in New York.

Section 2 of the bill amends §631 of the Tax Law by adding new subsection (h). This subsection requires taxpayers to include payments received by partners for performing investment management services as New York source income.

Section 3 of the bill provides the bill applies to taxable years beginning on or after January 1, 2009.

Budget Implications:

This bill will increase personal income tax receipts as reflected in the State Financial Plan by $60 million annually beginning in SFY 2009-10. Therefore, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part O – Provide taxpayers with a refundable tax credit for increasing research activities

Purpose:

This bill would encourage New York State taxpayers to invest in research activities in New York by providing a credit for their increased research expenses and issue grants.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

By establishing a new research expenditure credit based on a Federal model (section 41 of the Internal Revenue Code), the bill would provide incentives for businesses in New York State to continue to make research expenditures and issue research-related grants to educational institutions, certain research consortiums, or State or Federal laboratories. These expenditures and grants would benefit New York State's economy and help make New York a desirable location for research activities.

Section one of the bill adds a new section 29 to the Tax Law to provide for a refundable tax credit for certain New York research expenditures made by taxpayers subject to tax under Article 9-A, 22, 32 or 33 of the New York Tax Law. The credit would be equal to ten percent of the taxpayer's New York research expenditures (which include grants) that exceed the average of the taxpayer's research expenditures for the two immediately preceding taxable years. Because the credit is intended to reward taxpayers' increase in research expenditures, taxpayers would not be entitled to a credit during their first year of doing business in New York. The Urban Development Corporation (UDC) will allocate the credit among taxpayers by issuing research expenditure credit certificates that will specify the amount of the credit a taxpayer will be allowed to claim for a particular taxable year. There is a limit on the total amount of the credit that the UDC may allocate during each fiscal year, as follows: (i) $20 million for the State fiscal year commencing April 1, 2009; (ii) $33 million for the State fiscal year commencing April 1, 2010 and (iii) $45 million for the State fiscal year commencing April 1, 2011 and each fiscal year thereafter. By January 31, 2013, and annually thereafter, the Department of Taxation and Finance is required to publish a "Research Expenditures Credit Report."

Sections 2 through 6 of the bill add the appropriate language to allow taxpayers to take the research expenditures credit under Article 9-A, 22, 32 or 33 of the Tax Law.

Section 7 of the bill requires the UDC to promulgate regulations relating to the awarding and allocation of the research expenditure credits, and § 8 requires the UDC to publish an annual report on this credit.

Section 9 of the bill provides that the Chairman of the UDC may not issue any research expenditure credit certificates until the Director of the Division of the Budget, in consultation with the Commissioner of Taxation and Finance, validates that the Empire Zone Program reforms enacted as part of the 2009-10 Executive Budget have resulted in $100 million in savings for the 2009-10 State fiscal year.

Budget Implications:

This bill will have no impact in SFY 2009-10 and will reduce tax receipts reflected in the State Financial Plan by an estimated $35 million in SFY 2010-11 and again in 2013-14 when fully implemented. Enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2009.

Part P – Expand the eligibility criteria for the qualified emerging technologies credits by allowing firms with more than 100 employees to continue receiving benefits and not considering employment outside New York State in determining eligibility

Purpose:

This bill would expand the eligibility criteria for the qualified emerging technologies credits by allowing firms with more than 100 qualifying employees to continue to receive benefits and not considering employment outside New York State in determining eligibility.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

A qualified emerging technology company ("QETC") is allowed a credit under Articles 9-A and 22 of the Tax Law for certain facilities, operations, and training costs or expenditures. To be eligible for the credit, the QETC cannot have more than 100 full-time employees, and 75% of those employees must be employed in New York. This bill would clarify the way the employment test for this credit is applied in order to enable these companies to grow and encourage the location of more emerging technology companies in New York.

Section 1 of the bill amends the facilities, operations, and training credit for a QETC under Tax Law Article 9-A by providing that a QETC that meets the employment requirements in the first year the credit is claimed will not be ineligible in the second and later years if the number of full-time employees of the company in those years exceeds the 100 employee limit provided that at least 75 percent of the full time employees in the second and later taxable years are employed in New York State. This section of the bill also provides that employees who are employed outside the United States are not considered in applying the employment test. In addition, section 1 of the bill provides that an individual partner in a QETC that is a partnership is considered an employee for purposes of the employment test if the partner participates in the partnership on a full-time basis and meets the material participation requirement in the passive activity provisions of section 496(h) of the Internal Revenue Code.

Section 2 of the bill makes amendments similar to those in section 1 of the bill to the QETC facilities, operations and training credit in Article 22 of the Tax Law.

Section 3 of the bill provides that the amendments made by this bill are effective immediately and apply to taxable years beginning on or after January 1, 2010.

Budget Implications:

This bill would have no fiscal impact in 2009-10 or 2010-11. It would reduce tax receipts reflected in the State Financial Plan by an estimated $5 million beginning in SFY 2011-12. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately and applies to taxable years beginning on or after January 1, 2010.

Part Q – Impose sales tax on cable and satellite television/radio services

Purpose:

This bill would impose sales tax on television and radio service provided by cable, satellite or other similar means.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Cable television service and satellite television and radio service represent a significant amount of discretionary consumer spending for entertainment purposes. Twenty-three other states impose a sales tax on cable television service. These services are not currently subject to New York State and local sales taxes. Moreover, certain products sold by cable television providers (e.g., on-demand movies) escape taxation, while similar products sold by other providers (e.g., movie purchases and rentals) are subject to tax.

The bill would amend the Tax Law to impose a State and local sales tax on cable service and tangible personal property or other services provided with cable service, but not on Internet access service, on which tax is prohibited by the federal Internet Tax Freedom Act (47 USC §151 (note §1101, et seq.)), "direct-to-home satellite service," on which local taxes are preempted by federal law (see 47 USC §152 (note)), and "telephony or telegraphy or telephone or telegraph service," the taxation of which is governed by Tax Law §1105(b)(1)(B).

As Tax Law §1105 imposes both a State and local sales tax and federal law prevents the imposition of a local tax on direct-to-home satellite service, it is necessary to impose a separate State tax on that service to create parity between that service and similar services, and preserve local revenue in a manner consistent with federal law. Although, as noted above, local taxes on these services are preempted by federal law, states are expressly permitted to impose tax on these services and to share revenue with local jurisdictions. The State tax on direct-to-home satellite service would be imposed at a rate that is equal to the combined State and local rates in effect in each local jurisdiction where the service is delivered.

The bill would add new definitions of cable service and direct-to-home satellite service. "Cable service" would include the furnishing to purchasers of programs or other content broadcast by one or more television and radio stations or other persons, by means of wire, cable, fiber-optic, laser, microwave, radio wave, satellite, or any other means. "Direct-to-home satellite service" would be defined as only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

The bill would provide that the revenues received by the State from these state rates would be shared with localities and the Mass Transit Operating Assistance Fund based on the combined State and local rates in effect in each local jurisdiction and the Metropolitan Commuter Transportation District (MCTD). The bill would also provide that if the combined State and local rate provisions are found to be invalid by a court of final, competent jurisdiction, the State rate would revert to 8.75%.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $136 million in 2009-10 and $180 million thereafter.

Effective Date:

This bill takes effect on June 1, 2009 and applies to sales occurring and services rendered or after that

date in accordance with the applicable transitional provisions in Tax Law §§1106 and 1217.

Part R – Reform the tobacco products and cigarette taxes to remedy various compliance and enforcement problems and convert the tax on cigars from a value-based tax to a per-unit tax

Purpose:

The purpose of this bill is to reform the tobacco products and cigarette taxes imposed by Article 20 of the Tax Law to remedy various compliance and enforcement problems and to change the method of calculating the tobacco products tax imposed by Article 20 of the Tax Law on cigars from a percentage of wholesaler's price to a 50 cent tax imposed per cigar.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The tobacco products tax and cigarette excise taxes are in need of reform to address various compliance and enforcement problems. This bill would eliminate the condition that a product can be defined as a cigarette only if it is deemed a cigarette by Federal statute. It would thus allow little cigars that are practically indistinguishable from cigarettes to be treated and taxed like cigarettes. The imposition of a 50 cent per unit tax on cigars can be administered more easily, especially with respect to refunds. It makes clear exactly what tobacco products excise and use taxes are due on cigars, and eliminates the use of the wholesale price as a basis of tax, thus precluding manipulation of wholesale price information to deprive the State of legitimate tobacco tax revenues.

This bill would also enhance compliance with, and enforcement of, the tobacco products tax by providing more effective penalties for the possession or sale of contraband tobacco products. Penalties for failure to file informational returns as required are added to assist in the collection of third party information that is needed to identify unreported transactions on audit, to enable the Department to use its audit resources more efficiently, and to permit more effective audits.

In addition, the bill would incorporate, for both tobacco products and cigarette licenses, additional grounds for review based upon suitability and past criminal conduct to help address situations where the applicant should not be licensed or where a license should be canceled or suspended. The character and fitness amendment would provide authority similar (though somewhat narrower than) to that provided to the State Liquor Authority for determining whether to grant or deny a license and whether a current license should be canceled or suspended. Furthermore, the addition of "responsible person" penalties to Article 20 should help control evasion of these taxes by having the liability for evasion attach to those individuals responsible for making sure the tax is paid.

Section 1 of the bill would amend §470 of the Tax Law to remove from the definition of a cigarette the restriction that a product be treated as a cigarette for purposes of the Federal excise tax.

Section 2 of the bill would amend §471-b of the Tax Law to change the tax rate of the Article 20 tobacco products tax on cigars from 37 percent of the wholesaler's price to 50 cents per cigar. Section 3 of the bill would amend §471-c of the Tax Law to make the parallel change to the rate of the use tax on cigars.

Section 4 of the bill would amend §480 of the Tax Law to add the suitability of the applicant or certain officers and owners of the applicant as an additional criterion for the review of an application for a license under Article 20. Section 5 would amend § 480 to add additional bases for the cancellation or suspension of licensees under Article 20, including conviction of a crime bearing on their duties and

obligations, conviction of a crime of moral turpitude, and conduct bearing on the licensee's character and fitness.

Section 6 of the bill would amend §480-a of the Tax Law to authorize the Department to suspend or revoke a retail dealer's certificate of registration if that dealer possesses or sells contraband tobacco products.

Section 7 of the bill would amend §481 of the Tax Law to entirely revise the civil penalties for the possession of contraband tobacco products, other than cigars and snuff. The civil penalty would be 200 percent of the amount of the tobacco products tax on tobacco, other than cigars and snuff, that was not paid or assumed when due. The penalty would apply when and to the extent the amount of tobacco products, other than snuff and cigars, equals or exceeds five pounds. This section would also impose penalties on informational return filers for failing to timely file, failing to file within sixty days of the due date of the return, failing to complete the return in full, and failing to provide accurate information.

Section 8 of the bill would add a new subdivision 2-a to §481 of the Tax Law to impose a monetary penalty equal to the total amount of the tax not paid upon persons who, in their capacity as representative of a corporation, partnership, or sole proprietorship, fail to pay the taxes under Article 20. The penalty imposes tax liability on those individuals responsible for making sure the tax is paid.

Section 9 of the bill would provide that section one of the bill takes effect April 1, 2009, and would establish a transition rule for the certifications required from cigarette manufacturers under section 480-b.1 of the Tax Law. It also would provide that sections two, three and four of the bill would take effect on April 1, 2009 and apply the 50 cent tax per cigar prospectively only, not on existing inventory. It also provides that all other sections of this act would take effect on the first day of the first month next occurring 90 days after this act becomes a law and would apply to sales made on or after this date.

The Tax Law now limits the definition of cigarettes to include only what is deemed a cigarette by federal statute. Currently all tobacco products other than snuff are taxed under the Article 20 tobacco products tax at the rate of thirty-seven percent of the wholesale price. The use tax is imposed at the same rate.

With respect to applications, the suitability of the applicant or its officers or owners is not directly considered in either reviewing the application or deciding whether to cancel or suspend a license. The Tax Law authorizes the Department to cancel or suspend a license when the licensee or its officers or owners have been convicted of a felony bearing on their duties and obligations under the Tax Law. This same authority does not exist in situations where the licensee or its officers or owners have been convicted of a misdemeanor bearing on these same duties and obligations. The Tax Law authorizes the Department to suspend or revoke a retail dealer's certificate of registration when a retail dealer possesses or sells unstamped or unlawfully stamped cigarettes, but does not provide a suspension or revocation remedy for possessing or selling contraband tobacco products.

Civil penalties for tobacco products are based upon the quantity of tobacco products and also contain certain monetary ceilings. There are no specific penalties for the failure to timely file or accurately complete informational returns.

Currently, Article 20 does not include a "responsible person" provision. Such a provision, which can be found in the sales, withholding, and motor fuel taxes, imposes personal liability for tax on those individuals who are responsible for ensuring that the taxpayer's tax obligation is met.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because these provision will generate $10 million in revenue in 2009-10 and $15 million annually thereafter.

Effective Date:

This bill takes effect immediately; provided however that section one takes effect April 1, 2009; provided, further, that any tobacco product manufacturer is required to file a certification between April 16 and April 30, 2008, under §480-b.1 of the Tax Law, with respect to cigarettes that are first being defined as cigarettes as a result of the amendments made by this bill. The certification must be filed no later than 60 days after the date this bill becomes a law. Sections two, three, and four take effect April 1, 2009, and apply to cigars that first become subject to taxation under Article 20 of the Tax Law on or after that date. All other sections of this bill take effect on the first day of the first month next occurring 90 days after this bill becomes a law and apply to sales made on or after this date.

Part S – Treat all discount coupons consistently for sales tax purposes

Purpose:

This bill would amend the Tax Law to include the amount of a discount obtained using a store coupon in the receipt subject to sales and use tax.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Some consumers are confused about the circumstances in which the discount obtained with a coupon is included in the amount subject to sales tax. Currently, if a manufacturer coupon is used, the sales tax is imposed on the sales price, but if a store coupon is used, the sales tax is imposed on the discounted sales price. This bill eliminates any confusion by treating all coupons as manufacturer's coupons for sales tax purposes.

Under existing law, the receipt subject to sales tax is the amount received by the vendor, whether in money or otherwise. Currently, the discounts obtained with certain types of coupons (known as "manufacturer's coupons") are included in the amount subject to sales tax. When a customer presents a manufacturer's coupon to a vendor, the vendor reduces the sale price to the customer, but is reimbursed by a third party (usually, the manufacturer of the product sold) for the amount of the discount. Because the vendor receives the entire sale price, the vendor must collect tax from the customer on the entire amount. The bill would not affect the current treatment of manufacturer's coupons, or any other discount mechanism where a third party reimburses the vendor for a portion of the discounted amount. In the case of the other common type of coupon (known as a "store coupon"), the vendor is merely reducing the price to the customer and is not reimbursed for the discount. Because the vendor only receives payment for the discounted price, only the discounted amount is subject to tax. This bill would include the dollar value of the "store" coupon in the total receipt subject to sales tax.

This bill would add a new definition of "coupon" for purposes of the sales taxes imposed by Tax Law §1105(a), (b), (c) and (d) and the compensating use taxes imposed by Tax Law §1110. The definition would include any instrument presented and surrendered by a purchaser to a vendor to obtain a discount. The definition would not include items presented to receive a discount that are kept by the customer, such as military or student identification cards, membership cards, or frequent shopper

cards. The bill would not affect the treatment of coupons or other discounts for purposes of the taxes imposed on hotel occupancy or admissions in Tax Law §1105(e) and (f).

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $3 million.

Effective Date:

This bill takes effect on June 1, 2009, and applies to sales occurring on or after that date in accordance with the applicable transitional provisions in §§1106 and 1217 of the Tax Law.

Part T – Provide for the investment of lottery moneys available and retained on deposit for the payment of lottery prizes

Purpose:

The bill would provide for the investment of long-term Lottery prize funds to achieve higher returns.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section 1 of this bill amends State Finance Law (SFL) §98-a(1) to allow funds available and retained on deposit for the payment of Lottery prizes to be invested or caused to be invested in obligations other than those provided in §98-a, provided that such other investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Such other investments may be made by a money manager or other advisor recommended by the Division of Lottery (Division) and approved by the Comptroller.

SFL §98-a currently directs that funds available and retained for deposit for the payment of Lottery prizes may only be invested in certain obligations as provided in such section.

This bill will permit the investment of long-term funds available and retained on deposit for the payment of Lottery prizes to be invested or caused to be invested in obligations other than those obligations provided in SFL §98-a, provided that such investment satisfies a prudent investor standard. Such other investments may be made by a money manager or other advisor recommended by the Division and approved by the Comptroller.

This bill would permit the investment of long-term Lottery prize funds to achieve a higher return with little risk. A more diversified investment of such long-term prize funds would yield higher returns and generate more earnings to be used for the payment of Lottery prizes and more aid for education in the State

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because the investment of long-term Lottery prize funds in more diversified investments will generate an additional $37 million in aid to education in 2008-09 and $50 million annually thereafter.

Effective Date:

This bill takes effect immediately.

Part U – Replace the year-round sales tax exemption for clothing and footwear under $110 with two, one-week exemption periods with a $500 threshold

Purpose:

This bill would replace the year-round sales and compensating use tax exemption for clothing and footwear under $110 with two, one-week exemption periods for clothing and footwear under $500, and authorize counties and cities that impose sales and compensating use taxes to elect the exemption weeks.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The State is facing a significant budget deficit. Even though this bill would eliminate the current exemption on clothing and footwear priced under $110, it will allow those consumers who purchase clothing and footwear during the two one-week exemption periods to receive a more significant benefit. This will be especially true if more counties and cities join the State in offering these exemption periods.

Section 1 of the bill would amend Tax Law §1115(a)(30) to provide that clothing and footwear costing less than $500 per item will be exempt from State sales and compensating use taxes during two one-week exemption periods. The periods consist of the Monday before the first Sunday in February through that Sunday and from August 25th through August 31st each year. Currently, clothing and footwear costing less than $110 per item are exempt from State taxes year round. As an amendment to Tax Law § 1115, these changes are automatically incorporated into Tax Law §1210(a), which authorizes counties and cities to impose general sales and use taxes. Thus, a county or city that imposes general sales and use taxes could elect the new exemption weeks. However, New York City's sales and use taxes would continue to exempt clothing and footwear year-round.

Section 2 of the bill would add new Tax Law §1109(g)(9). Tax Law §1109 imposes a 3/8% rate of State sales and use taxes in the Metropolitan Commuter Transportation District (MCTD), which includes seven downstate counties and New York City. Revenues from the Tax Law §1109 taxes are dedicated to the Mass Transportation Operating Assistance (MTOA) Fund established by State Finance Law §88-a. Tax Law §1109(g) provides that, if a county or city located in the MCTD that imposes sales and use taxes elects to provide the clothing and footwear exemption, then that exemption will also apply to the Tax Law §1109 tax in the area of the MCTD located in that county or city. In that case, the county or city must reimburse 50% of the revenue foregone on account of that exemption and the State must reimburse the other 50%. New Tax Law §1109(g)(9) would clarify that New York City, which will continue to have a year-round exemption under the bill, will be required to make that same 50% reimbursement with respect to revenue foregone during the two exemption weeks as if it exempted clothing and footwear costing less than $110 per item, just like other counties and cities. The State will likewise reimburse the MTOA Fund the other 50%.

Section 3 of the bill would make conforming amendments to Tax Law §1210(a)(1), which authorizes counties and cities to impose general sales and use taxes similar to those the State imposes and to elect certain exemptions. Current subparagraph (i) is amended to delete language relating to New York City made obsolete by the expiration of the Tax Law §1107 Municipal Corporation (MAC) taxes on July

31, 2008. Current subparagraph (ii), which authorizes a county with a population between 139,000 and 140,000 to elect the same clothing and footwear exemption that other counties and cities can elect, is deleted as superfluous. Any such county can elect or repeal the same clothing and footwear exemption pursuant to paragraph (1). Current subparagraph (i) is also broken down into more manageable units.

Section 4 of the bill would repeal Tax Law §1210(k), which authorized New York City to elect the clothing and footwear exemption from the § 1107 MAC taxes when those taxes were in effect in the city. The MAC taxes expired on July 31, 2008.

Section 5(a) of the bill would repeal any local law, ordinance, or resolution or part of it providing for the clothing and footwear exemption described in Tax Law §1115(a)(30) of the Tax Law existing on the day before the bill is enacted. Section 5(b) of the bill would authorize counties and cities that impose general sales and use taxes to adopt a resolution effective August 1, 2009, to elect the new exemption weeks. This resolution must be adopted, in exactly the form prescribed by the Tax Department, by July 1, 2009, and must be mailed by certified or registered mail to the Commissioner by that date. The county or city must otherwise comply with Tax Law §1210(d) and (e) mailing and notice requirements. Currently, a county or city can elect or repeal the clothing and footwear exemption effective only on March 1st. After July 1, 2009, a county or city could elect or repeal the exemption weeks by adopting a local law, ordinance, or resolution that takes effect March 1st of a future year, in accord with Tax Law §1210(d). Section 5 of the bill does not apply to New York City, since the year-round exemption in the city is not affected by this bill.

Section 6 of the bill provides the bill would take effect June 1, 2009, in accordance with applicable sales and use tax transitional provisions. However, counties and cities (other than New York City) would immediately be authorized to adopt the resolution described in bill §5 to elect the new clothing and footwear exemption weeks.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $462 million in 2009-10 and $660 million thereafter.

Effective Date:

This bill takes effect June 1, 2009, in accordance with applicable sales and use tax transitional provisions. However, counties and cities (other than New York City) will immediately be authorized to adopt a resolution described in section 5 of this bill to elect the new clothing and footwear exemption weeks.

Part V – Expand state and local sales tax base to cover miscellaneous personal services and credit rating and reporting services now taxed in New York City

Purpose:

This bill imposes State and local sales and compensating use taxes on certain personal services and credit rating and reporting services currently taxed by New York City, and repeals section 11-2002 and Subchapter 3 of Chapter 20 of Title 11 of the New York City Administrative Code imposing that City's taxes on those services.

Statement in Support Summary of Provisions, Existing Law, and Prior Legislative History:

The State is facing a significant budget deficit. At the same time, it is seeking ways to simplify and improve its tax structure. While the State sales tax applies to a variety of consumer purchases, it does not cover personal services (such as beauty, barbering, manicure, pedicure, massage, health salon, or gymnasium services) and credit rating and reporting services. This bill would expand the sales tax base to cover these services, thus conforming the State tax to the taxes already imposed by New York City. Vendors in New York City are already collecting tax on these services, so the State, which administers the City's taxes, and many vendors already have experience with implementing, administering and complying with these taxes. In addition, conforming to the City's taxes will simplify the sales tax returns of sellers in these industries.

Section 1 of the bill would add new paragraphs 10 and 11 to Tax Law §1105(c), which imposes the State's sales taxes. New paragraph 10 would impose the State's sales tax on beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every service sold by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction with those services or charges (together "personal services"). But services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title VIII of the education law, as amended, and such services when performed on pets and other animals would be excluded from this tax.

New paragraph 11 would impose the State's sales tax on credit rating and credit reporting services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies and credit adjustment or collection bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under other provisions of Tax Law §1105. For example, Tax Law §1105(c)(1) imposes a tax on information services that might overlap the new credit rating or reporting service.

These two new paragraphs would tax the same services that are currently taxed by NYC under Tax Law §1212-A(a)(2) and (3). The New York City Administrative Code currently imposes these taxes at the rate of 4%.

Section 4 of this bill would amend Tax Law §1110(a), which imposes the State's compensating use taxes, to impose use tax on credit rating and reporting services. Use tax is not imposed on personal services such as beauty and barbering, since those services are not intended to be taxed when performed outside the State.

Because these taxes are added to Tax Law §§1105(c) and 1110, Tax Law §§1210(a) and 1218 of Article 29 of the Tax Law would automatically incorporate them into both the authority of counties and cities to impose general sales and use taxes and into the local county and city enactments that impose local sales and use taxes. Thus, bill section 9 would amend Tax Law §1212-A(a)(2) and (3) to remove these taxes from Tax Law §1212-A, since New York City would be authorized to impose them by virtue of Tax Law §1210(a) once the bill takes effect.

Section 2 of this bill would amend the closing paragraph of Tax Law §1105(c) to clarify that the wages an employer pays its employee to perform these services are not subject to tax.

Section 3 of this bill would add transition rules to Tax Law §1106(k). Services rendered on or after June 1, 2009, although rendered or agreed to be rendered under a prior contract, would be subject to tax. When a service is sold on a monthly, quarterly, yearly or other term basis, the charge for the

service is subject to the new tax to the extent that the charge is applicable to any period on or after June 1, 2009, and the charge will be apportioned on the basis of the ratio of the number of days falling within that period to the total number of days in the full term or period.

Section 5 of this bill would amend Tax Law §1115(d) to provide that, if the property on which the credit rating or reporting service is performed is delivered outside the State for use outside the State, then the charge for the service is exempt.

Section 6 of this bill would amend Tax Law §1115(z) to provide that Tax Law §1105(c)(10) personal services will not be exempt when purchased by a qualified empire zone enterprise.

Section 7 of this bill would amend Tax Law §1116(b) to provide that an exempt organization's (EO) sales of personal services and credit rating and reporting services are not exempt unless the purchaser is an EO.

Section 8 of this bill would amend the definition of "property and services the use of which is subject to tax" in Tax Law §1131(4) to add a reference to credit rating and reporting services subject to the Tax Law §1110(a) use tax, as amended by bill section 4.

Section 10 of this bill would conform Tax Law §1212-A(b)(1) and (2) to reflect the amendments made by bill section 9, and that New York City would no longer be imposing these taxes pursuant to §1212-A.

Sections 11 and 12 of this bill would repeal New York City Administrative Code §11-2002 and Title 11, Chapter 20, Subchapter 3, respectively, which currently impose these taxes in the city. Once the bill takes effect, these taxes would automatically be incorporated into the taxes imposed by the City in Administrative Code §11-2001.

Section 13 of this bill provides the bill would take effect June 1, 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase State revenues by $78 million in 2009-10 and $104 million thereafter.

Effective Date:

This bill takes effect June 1, 2009.

Part W – Extend the hours of video lottery operation, repeal the sunset date for the VLT Program, and make technical corrections regarding the operation of video lottery gaming

Purpose:

The bill would remove the restriction on the hours of video lottery terminal (VLT) operation, repeal the sunset date for the VLT program, and make technical corrections regarding the operation of Video Lottery Gaming.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Section 1 of this bill amends Tax Law §1612(b) to resolve ambiguities created by Chapters 140 and 286 of 2008. Chapters 140 and 286 created amendments to this subdivision that could not be reconciled and resulted in identically numbered clauses. Additionally, this section makes clear that the term “Native American gaming facility” means a Class III Native American gaming facility. This section also clarifies the provisions of the vendor's capital award.

Section 2 amends Tax Law §1617-a(b) to permit the hours of operation of Video Lottery Gaming to be prescribed by the Division of Lottery (Division) and to clarify the Division's authorization to license an entity to operate VLTs that does not hold a license pursuant to article two or three of the Racing, Pari-Mutuel Wagering and Breeding Law.

Section 3 amends Tax Law §1617-a to authorize the Division to approve the construction or alteration of any facility or building devoted to the operation of a VLT facility after a person or entity selected to operate such VLT facility shall have submitted a statement of the location of proposed facility or building on the premises of a racetrack, together with a plan of such racetrack, and plans of all existing buildings, seating stands and other structures in such form as the Division shall prescribe. This section also provides that the Division may order such engineering examination thereof as the Division may deem necessary and such construction and alteration may be made only with the approval of the Division and after issuance of a permit.

Sections 4 and 5 remove the sunset date for Video Lottery Gaming.

Sections 6 and 7 contain additional technical corrections that clarify Tax Law §1617-a.

Current law only permits the operation of VLTs for no more that sixteen consecutive hours per day and on no day shall such operation be conducted past 2:00 a.m. The elimination of this restriction wouldallow the Division the ability to extend the hours of VLT operation as may be determined by the Division.

The VLT program is currently scheduled to expire on December 31, 2017. The elimination of this sunset would allow participating VLT facilities to better plan for the long-term operation of these facilities.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because the removal of the hour restrictions on the operation of VLTs will generate $45 million in 2009-10 and thereafter.

Effective Date:

This bill takes effect April 1, 2008.

Part X – Impose tax on flavored malt beverages at the low liquor tax rate

Purpose:

The purpose of this bill is to place flavored malt beverages in a new, separate category of alcoholic beverages for purposes of the alcoholic beverage excise tax and to impose the excise tax on this category at the low liquor tax rate.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill would create an alcoholic beverage category of flavored malt beverages for tax purposes under Article 18 of the Tax Law, and would tax them at the low liquor rate for New York State. The products currently are taxed as beer, yet their flavor predominantly comes from a fruit-flavored additive, composed of distilled spirits or liquor, and is intended to resemble the flavor of liquor. These flavored malt beverages are being marketed to a younger population, predominantly women, and a major marketing point is that they do not taste like beer. Although the fruit-flavored additive is meant to entice this population by eliminating the beer taste, the products still have malt in their formula, allowing their continued classification as beers for distribution and tax purposes. Accordingly, it is more appropriate to tax these beverages as liquor. Under the Alcoholic Beverage Control Law, flavored malt beverages fall within the definition of beer and are distributed and regulated as beer. This bill would not change, nor is it intended to affect, that scheme.

Sections 1 through 6 would amend the definition and imposition provisions of the alcoholic beverage excise tax in Article 18 of the Tax Law to impose a separate tax on flavored malt beverages. Flavored malt beverages would include only those beverages that contain both malt and liquor with an alcohol content of more than one half percent and no more than 24 percent by volume of alcohol. Other definitions in the excise tax would be conformed. Flavored malt beverages would be taxed at the rate of $2.54 per gallon, the equivalent rate in gallons of the low liquor rate of 67 cents per liter.

Section 7 would amend the opening paragraph of Tax Law § 424(1)(g) to include references to volume of flavored malt beverages and wines where there is a reference to the gallonage of beer.

Sections 8 through 11 would conform various provisions of Article 18 to the addition of the new flavored malt beverages category and would make clear that flavored malt beverages are to be administered under the excise tax like beer and wines, rather than liquor. As a technical matter, references to wines also would be added whenever gallons are the measuring unit since wines are currently taxed on a per gallon basis. In section 10, the required record retention period was changed from one year to three years to technically conform to the statute of limitations of three years.

Section 12 would give a city of a million or more the option to impose a tax on flavored malt beverages. The tax rate on flavored malt beverages would be imposed at a rate of 39 cents per gallon. If New York City does not exercise this option, it would no longer be able to tax these products at all, even as beer.

Section 13 would provide for a State floor tax to be imposed at a rate of $2.43 per gallon on any flavored malt beverages in the possession or control on April 1, 2009 of any wholesaler or retailer, as defined in the Alcoholic Beverage Control Law. It would also provide for a floor tax to be imposed on any flavored malt beverages in the possession or control on April 1, 2009 of any manufacturer or distributor where the taxes imposed under Article 18 of the Tax Law prior to April 1, 2009 have already been imposed. This floor tax would be imposed on amounts in excess of 25 gallons. If a city imposes a tax on flavored malt beverages to be effective on April 1, 2009, the bill also provides for a city floor tax, identical in operation to the State floor tax, at a rate of 27 cents per gallon at the same time as the floor tax for the state. However, if the city does not exercise this option for April 1, 2009, Tax Law §445(2) would not apply and there would not be a city floor tax. The floor tax must be paid on or before June 22, 2009.

Section 14 would provide a definition of “flavored malt beverages” under the Alcoholic Beverage Control Law.

Section 15 provides that the bill would take effect on April 1, 2009.

Currently, flavored malt beverages are classified and taxed as beer at a rate of 11 cents per gallon under Article 18 of the Tax Law and at a rate of 12 cents per gallon under Title 11 of the Administrative Code of the City of New York. Flavored malt beverages are also treated like beer under the Alcoholic Beverage Control Law.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it will provide $15 million in 2009-10 and $18 million thereafter.

Effective Date:

This bill takes effect on April 1, 2009.

Part Y – Extend for one year lower pari-mutuel tax rates and rules governing simulcasting of out-of-state races

Purpose:

This bill extends for a period of one year various provisions of the Racing, Pari-Mutuel Wagering and Breeding (Racing) Law which expire during the 2009-10 fiscal year.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section 1 amends Racing Law §1003(a) to extend in-home simulcasting from June 30, 2009 to June 30, 2010.

Section 2 amends Racing Law §1007(3)(d) to extend the current percentage of total pools allocated to purses that a track located in Westchester County receives from a franchised corporation from June 30, 2009 to June 30, 2010.

Section 3 amends the opening paragraph of Racing Law §1014(1) to continue the provisions allowing simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is operating and to delay these provisions from governing the simulcasting of out-of-state thoroughbred races on all days whether or not the Saratoga thoroughbred track is operating from June 30, 2009 to June 30, 2010.

Section 4 amends Racing Law §1015(1) to extend the provisions governing the simulcasting of races conducted at out-of-state harness tracks from June 30, 2009 to June 30, 2010.

Section 5 amends the opening paragraph of Racing Law §1016(1) to extend the provisions governing the simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is closed from June 30, 2009 to June 30, 2010.

Section 6 amends the opening paragraph of Racing Law §1018 to extend the current distribution of revenue from out-of-state simulcasting during the Saratoga meet through September 8, 2009.

Section 7 amends §32 of chapter 281 of the Laws of 1994 to extend the current amount of off-track

betting wagers on New York Racing Association, Inc. (NYRA) pools dedicated to purse enhancement from June 30, 2009 to June 30, 2010.

Section 8 amends §54 of chapter 346 of the Laws of 1990 to extend binding arbitration for disagreements from June 30, 2009 to June 30, 2010.

Sections 9 and 10 amend Racing Law §238(1)(a) to extend the current distribution of revenue from on-track wagering on NYRA races.

Section 11 amends Racing Law §1012(5) to extend the authorization for account wagering from June 30, 2009 to June 30, 2010.

Section 12 provides the effective date.

The extension of these provisions will maintain the pari-mutuel betting and simulcasting structure that is currently in place in New York State. The provisions extended by sections one through six of this bill were first enacted in 1994 and section seven was enacted in 1990. These provisions were most recently extended in 2008.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it maintains the current pari-mutuel betting structure in New York State. The extension of these provisions will reduce pari-mutuel tax receipts by $5 million in 2009-10.

Effective Date:

This bill takes effect immediately.

Part Z – Increase prepaid sales tax on cigarettes

Purpose:

This bill increases the rate of the prepaid sales tax rate on cigarettes under Article 28 of the Tax Law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would amend Tax Law §1111(j)(1) by increasing the rate of the prepaid sales tax from seven percent to eight percent of the base retail price on a package of cigarettes.

Section two of the bill provides that the bill takes effect June 1, 2009.

The prepaid sales tax on cigarettes was added in 1995. The prepaid sales tax rate was increased temporarily in 2003 by one-quarter percent when the State sales tax rate was temporarily raised one-quarter percent.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase State revenues by $14 million in 2009-10.

Effective Date:

This bill takes effect June 1, 2009.

Part AA – Prohibit certain sales tax avoidance schemes

Purpose:

This bill would narrow the sales tax exemption for commercial aircraft and the use tax exemption for motor vehicles, vessels, and aircraft in order to curtail certain abusive sales and use tax avoidance schemes.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History

This bill would thwart two common sales tax avoidance schemes used to avoid sales and use tax due on the purchase of motor vehicles, aircraft, and vessels.

The purchase of aircraft, motor vehicles, and vessels is generally subject to sales tax. See Tax Law §1105(a). When a resident purchases the property out-of-state and uses the property in-state, the compensating use tax applies. The Tax Law provides an exemption from the sales and use taxes for commercial aircraft primarily engaged in commerce. See Tax Law section 1115(a)(21). Business entities are taking advantage of the commercial aircraft exemption to avoid sales tax on their purchases of aircraft used primarily to transport corporate executives by having the airplane purchased by a non-resident affiliate, which then charges resident affiliates for use of the aircraft.

Section 1 of this bill would end this method of avoiding sales tax by amending the definition of commercial airplane in Tax Law §1101(b)(17) to provide that an aircraft used primarily to transport the purchaser's personnel or those of an affiliated entity does not qualify for the exemption.

The Tax Law also provides an exemption from the use tax for tangible personal property purchased out-of-state by a non-resident. See Tax Law section 1118(2). Some New York residents are using the "new resident" use tax exemption in Tax Law § 118(2) to avoid the sales tax on motor vehicles, vessels, and aircraft used in-state by forming a new corporation or a limited liability corporation that purchases the item in question out-of-state, brings the item into the State, and then allows the New York resident to use the item at will.

Section 2 of this bill would attack this tax avoidance method by amending Tax Law §1118(2) to provide that the new resident exemption would not apply to the use of an aircraft, vessel, or motor vehicle purchased by a business entity out-of-state for use in-state primarily to carry individuals employed by or otherwise associated in specified ways either (1) with the purchaser if any of the transported individuals were residents at the time of the property's purchase, or (2) with an affiliated entity of the purchaser if the affiliated entity was a resident when the property was purchased.

The bill would define "carry" to mean taking any person from one point to another, whether for business purposes or the pleasure of that person. The term "affiliated persons" has the same meaning given that term in the definition of a vendor in Tax Law §1101(b)(8)(v). Thus, under bill section two, when a resident individual or business creates a new business entity which purchases an aircraft, vessel, or motor vehicle out-of-state for the use of an in-state resident associated with that individual or business, the new business entity would owe use tax. This bill is not intended to limit the common law remedies available to the Department to combat similar use tax avoidance schemes for tangible

personal property generally.

Section 3 of this bill provides that the bill takes effect immediately and applies to sales made and uses occurring on or after June 1, 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would generate $4 million in 2009-10 and $6.3 million in 2010-11.

Effective Date:

This bill takes effect June 1, 2009, and applies to sales made and uses occurring on or after such date.

Part BB – Repeal private label credit card (bad debt) law

Purpose:

This bill would repeal Tax Law §1132(e-1), which allows private label credit card lenders, as well as vendors who use private label credit card lenders to finance their credit card sales, to claim a sales tax credit or refund on accounts financed by or assigned to the lender that are written or charged off as uncollectible.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History

Prior to the enactment of Tax Law §1132(e-1), Tax Law §1132(e) governed vendors' rights to a credit or refund of the sales tax on bad debts. Tax Law § 1132(e) authorized the Department of Taxation and Finance ("Department") to exclude certain uncollectible debts from a vendor's taxable receipts. Such exclusions, however, were not available when an unrelated third party financed or was assigned the sale. See, 20 NYCRR 534.7(b)(3). These Tax Law regulations were upheld by the Court of Appeals in G.E. Capital v. Tax Appeals Tribunal, 2 N.Y.3d 249 (2004).

In response to the G.E. Capital case, the Legislature enacted Chapter 664 of the Laws of

2006. The purpose of this legislation was to expand the potential pool of applicants who could apply for the sales tax bad debt credit or refund to the Department. The legislation expanded the pool of applicants to include vendors who use private label credit card lenders to finance their sales, the lenders, affiliates of those vendors and lenders, and the assignees of the lenders.

The provisions of Chapter 664 of the Laws of 2006 that expand the sales tax bad debt credit or refund to third parties are contrary to the transactional nature of the sales tax. The sales tax is a tax on purchasers that vendors are required to collect. See Tax Law §1132(a)(1). When a vendor self-finances a credit sale and the customer fails to pay the debt, the vendor has paid the tax to the State but has not received payment for the sale. Thus, under the authority of Tax Law §1132(e), 20 NYCRR 534.7(b)(3) rightly limits the eligibility for bad debt credits or refunds to sales financed by the vendor itself.

In contrast, when a vendor uses the services of a private label credit card lender to finance its credit sales, the vendor receives payment for the customer's purchase, including the sales tax owed. If the purchaser subsequently fails to pay the lender, the purchaser has breached the credit card agreement

with the lender -- a matter separate and apart from the sale upon which the vendor has remitted tax. The vendor and the third party financing entity determine the terms and costs of the contract between them. One of those costs reflects the risk that the financed debt will not be repaid.

The lending industry argued for the passage of Tax Law §1132(e-1) on the grounds that the State is receiving a "windfall" because vendors have changed their business model from self-financing their customers' purchases to having the credit card issuers or other third parties finance the sale. In fact, the new law provides the lending industry with a windfall. Changes in business operations routinely cause a change in the tax treatment for goods and services. For example, if a business decides that it can save money by hiring a janitorial service to clean its building rather than use its own employees to clean it, the business would then be required to pay sales tax to the janitorial service company even though it did not have to do so when it used its own employees. In effect, the business has changed the transaction at issue, and the result is a change in tax treatment.

Similarly, before the enactment of §1132(e-1), if a vendor decided it could save on expenses by entering into an agreement with a private label credit card issuer to finance customers' purchases, rather than providing such financing itself through an installment plan, neither the vendor nor the private label credit card issuer would have been eligible for a bad debt credit or refund on those purchases. Since these types of business decisions occur all the time, providing an exemption simply because the business model changed to one where tax was imposed gives this industry a windfall that others do not receive.

By inserting itself into the contractual relationship between the vendor and lender, the State unnecessarily undertook the underwriting of a portion of the consumer credit extended by the lender. The State is not a party to the terms of this lending agreement, and it should not be subsidizing the lending practices of the private label credit card issuers. This establishes a very poor precedent that other lenders will seek to profit from.

Finally, Tax Law §1261(c) requires the Department to verify the transactional details underlying the claims for credits or refunds. Under this section, the Department must certify to the State Comptroller the amounts received with respect to the local jurisdictions that impose local taxes. The Department's monthly certifications, and therefore the Comptroller's payments and debits to localities are based on information collected from returns and the credits or refunds allowed by the Department. The integrity of this system requires that the information provided by the Department be accurate on a transaction-by-transaction basis. Certain provisions of the 2006 legislation, however, may be misconstrued as allowing vendors to compute or substantiate their credit or refunds on worthless accounts on a non-transactional basis and thus does not allow for the level of detail required in order to charge back the local portions of the credit or refunds to the appropriate locality.

Section 1 of the bill would repeal Tax Law §1132(e-1), enacted by Chapter 664 of the Laws of 2006. Section 2 provides that the repeal of that section would be effective on June 1, 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $8 million in 2009-10 and $10 million thereafter.

Effective Date:

The bill takes effect June 1, 2009.

Part CC – Impose a sales tax on digital products and clarify current administrative practice for sourcing receipts from the sale of digital products for purposes of calculating the business corporation franchise tax

Purpose:

This bill would: (1) create new sourcing rules for digital products under the business corporation franchise tax; (2) impose sales and compensating use tax on digital products; and (3) create sales tax sourcing rules for such products.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

The Tax Law has not kept pace with technology. A wide variety of products that were previously available only in tangible form are now available in digital or electronically-delivered form. The Tax Law, however, still imposes sales tax primarily on tangible personal property. Furthermore, many services, both taxable and non-taxable, that used to be performed by individuals are now being performed by computer software applications.

This creates problems for both the corporation franchise tax imposed by Article 9-A of the Tax Law and the State and local sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law. Under the corporation franchise tax, the portion of a corporation's business income attributable to New York is determined by a single receipts factor. Receipts are allocated between New York and other jurisdictions according to where they are "sourced." Receipts are placed into one of five standard categories for purposes of sourcing and allocation: (1) receipts from tangible personal property (including pre-written computer software delivered in tangible form) are sourced to the place where delivered; (2) receipts from the sale of services are sourced to the place where performed; (3) receipts from rentals of real and personal property are sourced to where the property is located; (4) royalties for the use of patents and copyrighted material are sourced to the place where used; and (5) other business receipts are sourced to the place where earned. Sourcing the receipts from digital products is important, since the characterization of the product often controls whether receipts from the sale of the product are taxable as New York income. But the sourcing determination under the corporation franchise tax is problematic, for a single digital product may have attributes of intangible property, tangible personal property, and services.

For purposes of the sales tax, retail consumer products, including music, movies, books, photographs, and video and computer games, are now commonly available in digital rather than tangible form. Because the sales tax is generally imposed on tangible personal property, and on a limited number of services delivered in tangible form or as services to tangible personal property or real property, these products are not subject to sales tax. This causes tax treatment that varies not according to the nature of a product but according to the product's form or the method of its delivery, and also erodes the sales tax base as intangible digital products escape taxation. Pre-written computer software is generally taxable, because it is defined in existing law as tangible personal property regardless of the form in which it is delivered. But while existing law provides rules on how to source tangible as well as digitally-delivered pre-written computer software, even those rules need some clarification. Moreover, the Tax Department needs additional administrative mechanisms to foster better voluntary compliance in this complex area.

This bill would define a "digital product" similarly for the business corporation franchise tax and the sales tax. The definition would encompass a broad category of property and services (e.g., audio

works, video works, audio-visual works, graphic works, games, information and entertainment services, storage of digital products, software in non-tangible form) when delivered via wire, cable, fiber-optic, laser, microwave, radio wave, satellite, or similar or successor media, or any combination thereof. For purposes of the business corporation franchise tax, the bill would source the receipts from the sale of a digital product to the destination of the digital product, and would create a sourcing hierarchy to determine user location based on the information available to the taxpayer. This would help to eliminate confusion and the inconsistent treatment of digital products under current law. The definition is crafted not only to include products and delivery methods currently in use, but to be flexible enough to encompass future technological changes.

The bill would impose sales tax on digital products, such as MP3 music files, ring tones, movies, digital books, digital photographs, downloaded and online games, and other entertainment services. The bill would explicitly exclude: (1) tangible personal property and services subject to sales tax under any other provision of Article 28 of the Tax Law; (2) services (other than games and entertainment services) unless those services would otherwise be subject to tax as currently-enumerated taxable services if delivered in tangible form or as services to tangible personal property or real property; (3) television or radio programming where the purchaser does not select both the content and the time at which the content is displayed; (4) purchaser-selected content sold with television programming for a single charge; and (5) custom computer software. The bill would not impose sales tax on telecommunications services, digital storage, cable or satellite television programming, or satellite radio programming. However, tax would be imposed on pay-per-view or on-demand movies sold by a cable or satellite television provider for a separately-stated charge.

The bill would repeal Tax Law §1105(c)(9), which imposes tax on information and entertainment services delivered via telephony or telegraphy or telephone and telegraph service. The tax imposed by that paragraph would be incorporated into the tax on digital products. This would create parity between like products sold via telecommunications and by other means (e.g., cable, Internet). The bill would also eliminate the additional 5% rate of tax on information and entertainment services delivered aurally.

The bill includes provisions that would source the retail sale of a digital product under the sales tax to the place where it is delivered to the purchaser, based on information reasonably available to the vendor. The bill would define delivery to include furnishing, providing, delivering or accessing a digital product. The bill would also authorize vendors of electronically-delivered pre-written computer software to accept a “multiple points of use” (MPU) certificate from the purchaser under certain circumstances. This would permit the vendor to collect tax on the portion of the receipt allocable to the various jurisdictions in the State in which the software will be used. An MPU certificate would be authorized for retail sales of software for which the receipt is $1,000 or more, or that include ten or more site licenses, or both. A vendor that accepts an MPU certificate and collects and remits tax based on that certificate, under the good faith standards that currently exist for resale and exemption certificates, would be protected from liability for failure to collect and remit the correct amount of tax; liability would rest solely with the purchaser.

Pre-written computer software sold in tangible form would remain taxable as tangible personal property and sourced to the place where delivered to the customer. The bill would also incorporate digital products into various definitions, exemptions, and administrative provisions of the sales tax, and would make various technical amendments. The amendments to the sales tax are necessary to preserve the existing tax base and to promote parity between like products, regardless of the form or method of delivery.

The bill is organized so that the major substantive law changes appear first, followed by conforming

changes and technical amendments to other provisions of law. Sections 1 through 9 of the bill are the changes to the business corporation franchise tax. Sections 10 through 12 of the bill are the major substantive changes to the sales tax, including the definition of “digital product,” the imposition of sales tax on digital products, the sourcing provisions, and the provisions creating the MPU certificate. Sections 13 through 100 of the bill are changes to other provisions of the Tax Law and the Rural Electric Cooperative Law that are necessary to conform to the imposition of tax on digital products.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $15 million in 2009-10 and $20 million thereafter.

Effective Date:

The corporation franchise tax provisions takes effect immediately and applies to taxable years beginning on and after January 1, 2010. The sales tax provisions of the bill take effect on June 1, 2009, and apply to sales or uses occurring on or after that date in accordance with the applicable transitional provisions in Tax Law §§1106 and 1217.

Part DD – Repeal the sales tax cap on motor fuel and diesel motor fuel

Purpose:

This bill would: (1) repeal the sales and compensating use tax cap on motor fuel and diesel motor fuel; (2) restore the percentage rate of sales and compensating use taxes on motor fuel and diesel motor fuel; and (3) repeal the authority for counties and cities that impose sales and use taxes to elect a tax cap.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

In 2006, with gas prices rising, the State enacted an eight cents per gallon cap on the State’s sales and use taxes imposed on certain fuel. Counties were authorized to enact a cap, as well. Due to the falling prices on fuel, and in some cases prices below the cap threshold, the cap is no longer necessary.

This bill would repeal the State’s eight cents per gallon rate of sales and use taxes on motor fuel and diesel motor fuel, and restore the State’s 4% rate of tax on these fuels, effective June 1, 2009. It would also repeal the authority of counties and cities to elect a cents per gallon tax rate, likewise restoring the local percentage rates of tax. The cents per gallon rate was established by Part A of Chapter 35 of the Laws of 2006, as amended by Part M-1 of Chapter 109 of the Laws of 2006, and took effect June 1, 2006.

The repeal is accomplished by amending the effective date provisions of the two laws that enacted the cents per gallon tax rate scheme. Section 5 of the bill would amend the effective date of Part A of Chapter 35 to provide that Part A will expire June 1, 2009. Section 6 of the bill would amend the effective date of Part M-1 of Chapter 109 to provide that relevant sections of Part M-1 would likewise expire June 1, 2009. On that date, Part A and the relevant provisions of Part M-1 would be deemed repealed. Also, any local law, ordinance or resolution enacted by a county or city to elect the cents per gallon rate would also be deemed repealed. However, all provisions of State or local law, ordinance or resolution and of regulations adopted under them would continue in effect for all the taxes accrued

through the effective date of this repeal. The effect of bill §§ 5 and 6 is that the relevant sections of the Tax Law amended or repealed by Parts A and M-1 would be restored to read as they did before Parts A and M-1 took effect, thus restoring State and local sales and use taxes on these fuels at the usual percentage rates, effective June 1, 2009.

Sections 1, 2, and 4 of the bill would amend, respectively, Tax Law §§523(b), 524(c), and 1136(a)(7). These Tax Law sections were amended by Part M-1 to reflect the cents per gallon tax rate. They are amended here to undo those amendments while retaining other technical corrections that should survive the repeal of the cents per gallon tax rate. Section 523(b) relates to determining the rate of the fuel use tax under Article 21-A of the Tax Law. Section 524(c) relates to certain refunds and credits of the fuel use tax. Section 1136(a)(7) relates to the requirement to file sales tax returns.

Section 3 of the bill would amend Tax Law §1111(n). This subdivision currently provides that B20 fuel is taxed at 80% of the State's cents per gallon rate plus 80% of any county or city cents per gallon rate or, if the locality has not elected the cents per gallon rate, then 80% of the receipts or consideration subject to the locality's percentage tax rate. Since the bill would repeal the cents per gallon scheme, subdivision (n) would provide that B20 will be taxed at 80% of the receipts or consideration for both State and local tax purposes.

Section 7 of the bill provides that the repeal of any provision of State or local law, ordinance or resolution by this act would not be construed to take away, impair or affect any right or remedy acquired or given by the provisions repealed. All existing suits or proceedings may be continued and completed; and all offenses committed or penalties or forfeitures incurred will continue and remain in force with the same effect as if the bill was not enacted.

Section 8(a) of the bill would authorize the Commissioner of Taxation and Finance to prescribe the schedules of regional average retail sales prices pursuant to Tax Law §1111(e)(3), as restored by this act, on any date after the bill has become a law. That action will be timely for the period beginning June 1, 2009, if it is taken after the bill has become a law and before June 1, 2009, and the notice prescribed by §1111(e)(3)(iii) is filed after the bill becomes a law and before June 1, 2009.

Section 8(b) of the bill would authorize the Commissioner, on any date after the bill is enacted to adopt by emergency action regulations that set forth the methodology for determining the regional average retail selling prices and for establishing the sales tax components and the motor fuel and diesel motor fuel composite rates for the fuel use taxes imposed by Tax Law Article 21-A for the quarter including the effective date of this act and the next calendar quarter.

Section 9 of the bill provides that the bill shall take effect immediately, however sections one through seven shall take effect June 1, 2009, and apply in accordance with applicable transitional provisions in Articles 28 and 29 of the Tax Law.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $90 million in 2009-10 and $120 million thereafter.

Effective Date:

This bill takes effect immediately, however sections one through seven take effect June 1, 2009, and apply in accordance with applicable transitional provisions in Articles 28 and 29 of the Tax Law.

Part EE – Reauthorize highway use tax decals

Purpose:

This bill would reauthorize the Commissioner of Taxation and Finance to require the use of decals under the Highway Use Tax imposed by Article 21 of the Tax Law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Decals were historically used by the State as an effective means of enforcing the State's highway use tax. Decals provide visible indicia for law and tax enforcement personnel to verify compliance with the State's highway use tax. In 2007, the state repealed the use of decals due to the enactment of Federal legislation prohibiting states from using decals as evidence for highway use tax compliance. In 2008 the Federal government repealed that prohibition. This bill would reauthorize the use of decals.

Decals provide a low-cost and efficient way of enforcing the state's highway use tax. Decals ensure that carriers that operate in this State are registered for the highway use tax, and thus, provide a level playing field for all members of the trucking industry in this State.

Section one of the bill provides that the Commissioner of Taxation and Finance may require the use decals as evidence that a carrier has a valid certificate of registration for the Article 21 highway use tax. The Commissioner may also require the use of distinctive decals for motor vehicles that transport automotive fuels.

Sections two and three of the bill provide the Commissioner with authority to take possession of suspended, revoked or misused decals and to issue replacement decals.

Section four of the bill extends the civil penalty for failing to have a required certificate of registration under the highway use tax to apply to decals as well.

Section five of the bill extends the criminal violation for the use of a suspended, revoked, or wrongful use of a certificate of registration under the highway use tax to apply to decals.

Section six of the bill provides that the bill takes effect immediately.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget to preserve revenue.

Effective Date:

This bill takes effect immediately.

Part FF – Modernize definition of "vendor" to include an affiliate nexus provision

Purpose:

This bill would expand the definition of "vendor" to preclude certain retailers from avoiding the requirement to collect sales and use taxes.

Statement in Support , Summary of Provisions, Existing Law and Prior Legislative History:

Many brick and mortar retailers also have mail order and Internet sales operations that are tightly integrated with their brick and mortar activities. Some of these retailers have circumvented the requirement to collect sales and use tax on their catalog and Internet sales by attempting to avoid nexus with New York, segregating their Internet and catalog operations into affiliates that are separate from their brick and mortar stores, as well as their distribution, headquarters, and other functions. This bill seeks to preclude such a practice and increase the number of remote sellers that are required to collect the State's sales and use tax.

In particular, under the Due Process Clause and the Commerce Clause of the United States Constitution, sales tax nexus depends on a seller's physical presence in the State. While the remote sales affiliates are not themselves physically present in the State, they often receive services from affiliates that are present in the State. For example, the remote sales affiliates frequently use the same trademarks or even the same trade name as the retailer's brick and mortar stores. This saves the remote sales affiliates the trouble and expense of developing and maintaining the value of their own trademarks. By avoiding any physical presence in the State, the remote affiliates are able to avoid any sales tax collection responsibility, thereby reaping a significant advantage over retailers that make sales only through brick and mortar stores in the State.

Section 1 of this bill combats this practice of manipulating the corporate form to avoid sales tax collection responsibilities by adding a new subparagraph (I) to the definition of "vendor" in Tax Law §1101(b)(8). Under the new subparagraph, the presence of an affiliate in the State makes the remote affiliate a vendor in either of two circumstances: (1) where the in-State affiliate uses in the State a trademark, service mark, or trade name the same as or similar to that of the remote affiliate; or (2) where the in-State affiliate engages in activities that help the remote affiliate develop or maintain a market for its goods or services, to the extent that those activities are sufficient to give the State nexus over the remote affiliate under the nexus requirement of the United States Constitution. This latter provision would apply, for example, where a retailer puts its distribution arm into a separate subsidiary that is present in New York and uses that affiliate to distribute into the State the products sold by the retailer's remote sales affiliates.

While the United States Supreme Court has yet to address the circumstances under which the activities of an affiliate may be attributed to a company not otherwise present in the State, the nexus provisions of this bill are a necessary corollary to the physical presence requirement imposed by the Court's Dormant Commerce Clause rulings in the sales tax area. Several other states have passed similar affiliate nexus legislation, including Alabama, Kansas, and Minnesota.

Section 2 of the bill makes the bill effective June 1, 2009 and applicable to sales made and uses occurring on or after that date.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $9 million in 2009-10 and $12 million thereafter.

Effective Date:

This bill takes effect June 1, 2009 and applies to sales made and uses occurring on or after that date in accordance with the applicable transition provisions in Tax Law §§ 1106 and 1217.

Part GG – Authorize video lottery gaming at Belmont Park and modify commission rates at Aqueduct Racetrack

Purpose:

This bill would authorize the operation of video lottery terminals (VLTs) at Belmont Park, increase the commission rates paid to the operator of VLTs at Aqueduct, set the commission rates paid to the operator of VLTs at Belmont Park, and make modifications to the NYRA racing support payment schedule.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section one of this bill amends Racing, Pari-Mutuel Wagering and Breeding Law §212 to create a local advisory board at Belmont Park.

Section two amends Tax Law §1612(b)(1)(ii)(B) to provide a commission to the operator of VLTs at Belmont park of 36.5% of net machine income.

Section three amends Tax Law §1612(b)(1)(iii) to provide that the vendor's marketing allowance for any operator of a racetrack located in Nassau County shall not exceed 8%.

Section four amends Tax Law §1612(b)(1)(ii)(F) to disallow the operator of VLTs at Belmont Park from qualifying for a vendor's capital award.

Section five amends Tax Law §1612(b)(2) to exclude Belmont Park from the distribution to breeding and purse funds established in this paragraph.

Section six amends Tax Law §1612 to add three new subdivisions h, i, and j to establish a mechanism to select an operator of VLTs at Belmont, establish racing support payments from the VLTs at Belmont, and to modify the racing support payment and commission rate at Aqueduct when video lottery gaming commences at Belmont Park.

Section seven and eight amend Tax Law §1617-a to authorize video lottery gaming at Belmont Park.

Section nine provides for the effective dates.

The Video Lottery program was first authorized in 2001. At that time, Belmont Park was specifically prohibited from operating a video lottery facility. This bill would provide the Division of the Lottery with the authority to license the operation of VLTs at Belmont Park.

This bill would also make modifications to the commission rate and racing support payment schedule from Aqueduct to accommodate additional VLTs at Belmont Park.

Budget Implications:

Enactment of this bill is necessary to produce receipts necessary to support the Financial Plan over the forecast period and to generate a franchise payment of at least $370 million in 2010-11 for the right to operate VLTs at Belmont Park.

Effective Date:

This bill takes effect immediately.

Part HH – Impose a state sales and compensating use tax surcharge on certain beverage products

Purpose:

This bill would impose a State sales and compensating use tax surcharge on certain beverage products to discourage excessive caloric intake, reducing the prevalence of obesity and related chronic diseases.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Increasing the price of non-dietetic soft drinks and fruit drinks that contain less than seventy percent of natural fruit juice will discourage individuals, especially children and teenagers, from excessive consumption of these beverages. This will diminish the human and economic costs of obesity, diabetes and other obesity related chronic diseases, especially among youth in New York State.

This bill would impose a new, additional 18% rate of sales and compensating use taxes on (1) fruit drinks that contain less than seventy percent of natural fruit juice (such as drinks, -ades, punches, and certain fruit nectars) and (2) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa), whether or not the item is sold in liquid form (together, “beverage products”). However, diet soda and certain water products would not be subject to the new, additional tax. Pure bottled water is not a beverage product and would not be subject to this additional tax.

Section 1 would amend Tax Law §171-a(1) to provide that revenues from this additional tax would not be deposited in the single account used to receive general State tax revenues. Rather, revenues from this additional tax will be deposited as provided in new Tax Law §1105-D added by section 2 of the bill.

Section 2 would add new Tax Law §1105-D to impose the additional 18% tax rate on beverage products. The new, additional rate is imposed in two paragraphs, one relating to the sales and use taxes on tangible personal property, to which certain exemptions apply. The other paragraph relates to the §1105(d) 'restaurant' and §1105(f)(3) 'roof garden' sales taxes, for which there is no corresponding use tax and to which other exemptions would apply. Each of these new impositions is on the same beverage products, sold in different ways.

Under Tax Law Article 28 terminology, note that a “vendor” “sells” something, and the “receipt” from that sale which is subject to tax is the price for which the beverage product is sold. Those terms relate to the §1105(a) sales tax on tangible personal property, the §1105(d) restaurant sales tax, and the §1110 compensating use tax. But a “recipient” makes a “charge,” or charges for, something subject to the §1105(f)(3) “roof garden” tax.

Subdivision (b) of new §1105-D provides special rules to determine how the new tax applies when the beverage product is sold together with other things for a single price and the other things are not subject to the new tax. For example, a restaurant might sell an all-inclusive meal that includes a beverage product and the other parts of the meal are not subject to the new tax. Or a restaurant, bar or roof garden might sell a mixed drink consisting of a beverage product subject to the new 18% tax mixed with other drinks not subject to the new tax, such as water or pure fruit juice or an alcoholic beverage, or mixed with a combination of these drinks not subject to the new tax. Paragraph (b)(1)

provides that, if the vendor/recipient sells/charges for the beverage product and other things or drinks for a single price, and also sells a similar beverage product separately, then the 18% tax on the beverage product portion of the package or mixed drink will be measured by the price that the similar beverage product is sold for separately. The other parts of the package, such as food items, would not be subject to the new tax. Paragraph (b)(2) provides that, if the vendor/ recipient sells a beverage product as part of a package (for example, admission or a cover charge or food plus a beverage product) or as part of a mixed drink, but does not sell a similar beverage product separately, then the 18% tax will be computed against 500% of the seller's cost for the taxable beverage product that is included in the package or used to prepare the mixed drink. The 500% markup on a cost basis reflects an average markup of beverage products at restaurants, bars and roof gardens. Again, the other parts of the package would not be subject to the new tax. Tax Law §1135 and regulations thereunder require a vendor or recipient to maintain records sufficient to verify all of its purchases and sales. This would include menus, including any inserts describing daily or other special selections, showing items offered for sale and their prices.

Subdivision (c) of new §1105-D indicates which existing sales and use tax exemptions or exclusions apply to the new additional rate of tax. Paragraph (c)(1) provides that beverage products subject to the new tax will not be exempt under Tax Law §1115(a)(8), (24) and (43) as “provisions” for commercial vessels, fishing vessels or ferry boats, respectively. Thus, beverages sold for use on those vessels and boats would be subject to the new tax. Paragraph (c)(2) provides that the §1105(d)(ii)(B) exclusion for food and drink sold to schools and at college food plans will not apply. Thus, they will have to collect this additional 18% tax on their sales of beverage products. Paragraph (c)(3) provides that drink sold in a restaurant operated by a Tax Law §1116(a)(1), (4), (5) or (6) exempt organization (EO), including sales otherwise exempt under §1105(d)(ii), will be subject to the additional tax, unless the purchaser itself is an EO. EOs whose sales would be taxable under this provision includes New York State and its agencies and instrumentalities, charitable organizations, armed services posts, and Indian nations and tribes. Paragraph (c)(4) clarifies that nothing in the bill would tax any food that is exempt under §1115(k), which exempts any food purchased with federal food stamps. “Food” is defined to include these beverage products for purposes of this federally based exemption.

§1105-D(d) provides that Prompt Tax filers for the months of February and March, 2009, must pay the actual amount of the new 18% tax collected in that month, while still allowing the taxpayer to pay based on estimated methods with respect to other tax liabilities it has for those months.

§1105-D(e) provides that vendors and others must state the new tax on bills given to customers separately from the price and also separately from other State and local sales taxes imposed on these beverage products.

§1105-D(f) provides that the taxes imposed by this section will not be included in the taxes used to compute the vendor collection credit allowed to quarterly and monthly filers under Tax Law §1137(f).

§1105-D(g) provides that other provisions of Tax Law Article 28 apply to new §1105-D, to the extent those other sections are consistent with §1105-D.

§1105-D(h) expresses the legislative intent that that the new tax rate be in addition to any other taxes.

§1105-D(i) provides that the new tax is not to be incorporated in §1107, §1108, and §1109 special State taxes or into Article 29 local taxes, which would otherwise be subject to the incorporation provisions in those sections and that article.

§1105-D(j) provides for deposit and disposition of revenues from the new tax into the Health Care Reform Act (HCRA) resources fund established by State Finance Law §92-dd. The Commissioner of Taxation and Finance is authorized to estimate the amount of the new tax revenues for a period for which insufficient data exist. Any error in this estimate is to be corrected as soon as possible once the information is available.

§1105-D(k) provides that diet soda and water products are not subject to the additional 18% tax. “Diet soda” means non-alcoholic carbonated beverage that does not contain sugar and is sweetened with artificial sweetener. “Water products” means plain water, plain water to which only carbonation has been added, and plain water, carbonated or not, with mere natural flavorings added, but not including any carbonated water that contains sugar, fruit juice, or other additives or flavorings.

Section 3 would amend Tax Law §1115(a)(1) to delete the subject beverages from the exemption for food or drink sold for 75 cents or less from a vending machine.

Section 4 would amend State Finance Law §54(1)(j) to exclude the new §1105-D tax revenues from the measure of State moneys used to measure certain per capita state aid under §54.

Section 5 would amend §1817(g) of the Tax Law, which imposes a criminal penalty for the willful failure to charge or State tax separately, to add a reference to the new additional sales tax imposed by §1105-D added by section 1 of the bill. Section 5 would also amend §1817(k) to clarify that the penalties imposed by §1817 would not preclude prosecution under the Penal Law for the willful failure to pay over to the State any tax imposed by new §1105-D.

Section 6 would amend State Finance Law §92-dd, which established the HCRA fund, to add references to revenues from the new tax that are to be deposited in that fund.

ection 7 provides that the bill would take effect June 1, 2009, and apply to sales and charges made, uses occurring, and services provided on or after that date, with the usual sales and use tax transition clause.

Currently, §1105(a), §1105(d) and §1110 impose the State’s 4% sales and use taxes on the beverage products subject to the new additional rate. §1105(f)(3) imposes the State’s 4% sales tax on charges of a roof garden, cabaret or other similar place. §1210(a)(1) of Article 29 of the Tax Law authorizes counties and cities to impose these same sales and use taxes, at rates up to 3%, with many counties and some cities authorized to impose additional rates.

Budget Implications:

Enactment of this bill will increase revenues to the HCRA Fund by $404 million in 2009-10 and $539 million thereafter.

Effective Date:

This bill takes effect June 1, 2009, and applies to sales and charges made, uses occurring, and services provided on or after that date.

Part II – Eliminate the sunset of Quick Draw and eliminate certain restrictions on the game

Purpose:

This bill makes permanent the Division of the Lottery's (Lottery) authority to operate the Lottery's Quick Draw game.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section 1 amends Chapter 405 of the Laws of 1999, as amended by Chapter 57 of the Laws of 2008, to extend permanently the authorization to operate Quick Draw.

Section 2 amends Tax Law §1612(a)(1) to eliminate a number of restrictions associated with conducting Quick Draw, including: (1) requiring no more than 13 hours of daily operations, no more than 8 of which may be consecutive; (2) limiting Quick Draw ticket sales to only premises licensed for the sale of alcoholic beverages for on-premises consumption where at least 25% of gross sales are sales of food; (3) requiring premises that do not sell alcoholic beverages to be a minimum of 2,500 square feet; and (4) requiring a person to be 21 years of age or older to play Quick Draw while in the premises of a licensee who holds a alcoholic beverages license. Removal of these restrictions makes it unnecessary to provide exceptions for bowling establishments and pari-mutuel facilities; therefore, those exceptions are also deleted. An obsolete authorization of emergency rulemaking at the time of Quick Draw start-up is also deleted.

Quick Draw was first authorized in 1995 and was extended in 1999, 2004, 2006, 2007 and 2008. It is currently due to expire on May 31, 2010.

This game supports education as well as provides commissions for Lottery retailers. Sales from the Quick Draw game have generated over $1.5 billion in revenue for education since it was first authorized and is played at over 3,600 locations across the State.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because the elimination of game restrictions will generate an additional $40 million in 2009-10 and $59 million thereafter to support education.

Effective Date:

This bill takes effect immediately.

Part JJ – Permit the state to participate in more than one multi-jurisdictional lottery game

Purpose:

The bill would remove the restriction from participating in the games of more than one government authorized group providing for the operation and administration of a joint, multi-jurisdiction and out-of-state lottery.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section 1 of the bill amends Tax Law §1617 by removing the restriction placed on the Division of the Lottery (Lottery) prohibiting participation in the games of more than one government authorized group providing for the operation and administration of a joint, multi-jurisdiction and out-of-state lottery.

This bill would permit the Lottery Director to participate in more than one joint, multi-jurisdiction, and out-of-state lottery at any single time. Furthermore, eliminating the limitation of only one multi-jurisdictional, out-of-state lottery creates the possibility of future involvement in an international, multi-jurisdictional lottery if such involvement is determined to be beneficial to the mission of the Lottery. By permitting such participation, the Lottery may generate more revenue from the sale of Lottery tickets and further maximize revenue to support state education programs.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because the authorization to join additional multi-jurisdictional lottery games will generate an additional $11 million in 2009-10 and $21 million thereafter to support education.

Effective Date:

This bill takes effect immediately.

Part KK – Allow the sale of wine in grocery and drug stores upon payment of a franchise fee

Purpose:

This bill would permit the sales of wine in grocery or drug stores which currently qualify for a beer license.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Section 1 amends the Alcohol Beverage Control (ABC) Law by adding a new section 79-e to allow persons qualified to hold a beer license to apply for a wine license for sale off premises. It further provides for a franchise fee to be paid to the State Liquor Authority in conjunction with the application. It is also provides that certain existing provisions regarding the sale of wine are waived.

Section 2 amends ABC Law §83 to set the annual license fee for those holding a grocery or drug store wine license at $110.

Section 3 amends ABC Law §100(2-a) to provide for age restrictions on the handling and receipt of payment for employees of persons holding grocery or drug store wine licenses.

Section 4 provides that the bill would take effect on 180th day after its enactment.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would provide $105 million in 2009-10 through various franchise fees, excise taxes, sales taxes and license fees. In 2010-11 it is expected that this proposal will generate $54 million and $3 million each year thereafter.

Effective Date:

This bill takes effect 180 days after enactment.

Part LL – Increase the excise tax on beer and wine

Purpose:

This bill would increase the Article 18 excise tax on beer by 13 cents per gallon and wine by 8.47 cents per liter, and also imposes a floor tax on beer and wines to prevent tax avoidance.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Section 1 amends Tax Law §424(1)(a), (b), (c) and (d) to increase the rate of excise tax on beer and wines. The rate of tax for beer will increase from 11 cents to 24 cents per gallon. The rates of tax for still wines, artificially carbonated sparkling wines, and natural sparkling wines will increase from 18.93 cents per gallon (5 cents per liter) to 51 cents per gallon (13.47 cents per liter).

Section 2 would provide for a State floor tax to be imposed on beer at a rate of 13 cents per gallon and on wines at a rate of 32.07 per gallon in the possession or control on April 1, 2009 of any wholesaler or retailer, as defined in the Alcoholic Beverage Control Law. It would also provide for a floor tax to be imposed on any beer and wines in the possession or control on April 1, 2009 of any manufacturer or distributor where the taxes imposed under Article 18 of the Tax Law prior to April 1, 2009 have already been imposed. The floor tax must be paid on or before June 22, 2009.

Section 3 provides that the bill would take effect on April 1, 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would provide $63 million in 2009-10 and each year thereafter.

Effective Date:

This bill takes effect on April 1, 2009.

Part MM – Increase the auto rental tax from 5 percent to 6 percent

Purpose:

This bill would increase the rate of tax under Tax Law Article 28-A, Special Tax on Passenger Car Rentals (commonly referred to as the Auto Rental Tax), from 5% to 6%.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History

The rate of tax in Article 28-A has not been adjusted since the tax was originally imposed in 1990.

This bill would amend Tax Law § 1160(a)(1) to increase the rate of tax from 5% to 6% on the receipts from every rental of a passenger car that is a retail sale. The bill would also amend Tax Law § 1160(a)(2) to increase the rate of tax from 5% to 6% on the use within this State of any passenger car rented by the user, that is a purchase at retail, but not including leases of one year or more that are subject to tax under Tax Law § 1111(i).

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues in the Dedicated Highway and Bridge Trust Fund by $8 million in 2009-10 and $10 million thereafter.

Effective Date:

This bill takes effect June 1, 2009, in accord with applicable sales and use tax transitional provisions.

Part NN – Impose state and local sales taxes on certain transportation services

Purpose:

This bill would impose sales taxes on certain transportation services.

Statement in Support Summary of Provisions, Existing Law, and Prior Legislative History:

This bill defines transportation service to include the service of transporting, carrying, or conveying a person or persons by any means. The State and local sales tax would be imposed on these defined transportation services. The State revenues from this bill would be directed to the General Fund to address a significant budget deficit.

Section 1 of the bill would add new paragraph (34) to §1101(b) of the Tax Law, to define "transportation service." This term would mean the service of transporting, carrying, or conveying a person or persons by any means, including but not limited to taxicab, charter, black car, limousine, coach, for-hire vehicle, commuter van, or other vehicle service, horse-drawn cab or coach service, pedicab service, and intra-state charter bus, vessel, train, and plane service, charter fishing service, sightseeing service regardless of the means of conveyance; whether one-way or round-trip; whether to a single destination or to multiple destinations; and whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or anything else. A service that begins and ends in this state would be deemed intra-state even if it passes outside the State during a portion of the trip.

However, transportation service would not include (i) "commuter service" consisting of mass transportation service (exclusive of limited stop service to airports, racetracks or any place where entertainment, amusement. or sport activities are held or where recreational facilities are supplied) provided pursuant to a franchise with, or consent of, the City of New York, local transit service, subway or commuter rail service, scheduled public bus service; (ii) vessel or ferry service described in Tax Law §1119(b) or §1115(a)(43); (iii) the transportation of children to and from schools and day camps operated by an entity or organization described in Tax Law §1116(a)(1), (2), (3), (4) or (6); (iv) transportation of persons in connection with funerals; or (v) ambulance, ambulette, or emergency service transportation, whether ground, water, or air. Transportation service would also include transporting, carrying, or conveying property of the person being transported, whether owned by or in the care of such person. In addition to what is included in the definition of "receipt" subject to sales tax, receipts from the sale of transportation service subject to tax would also include any handling, carrying, baggage, booking service, administrative or other charge, of any nature, made in conjunction with the transportation service.

Section 2 would add new paragraph (13) to §1105(c) of the Tax Law, to impose the State's 4 percent sales tax on transportation service, whether or not any tangible personal property is transferred in conjunction therewith, and regardless of whether the charge is paid in this state or out of state as long

as the service is provided in this State. Compensating use tax would not be imposed on transportation service, since the service would be taxed only when rendered in the State and is not intended to be taxed when rendered outside the State. But a charge for the service made outside the State for service rendered in the state would be taxable.

Because this tax is added to §1105(c) of Article 28, §§1210(a) and 1218 of Article 29 of the Tax Law would automatically incorporate it and its related provisions into both the authority of counties and cities to impose general sales and use taxes and into the local county and city enactments that impose local sales and use taxes.

Section 3 of the bill would add a transition rule in new Tax Law § 1106(l). Services rendered on or after June 1, 2009, although rendered or agreed to be rendered under a prior contract, would be subject to tax. When a service is sold on a monthly, quarterly, yearly, or other term basis, the charge for the service is subject to the new tax to the extent that the charge is applicable to any period on or after June 1, 2009, and the charge will be apportioned on the basis of the ratio of the number of days falling within that period to the total number of days in the full term or period.

Section 4 of the bill would add Tax Law §1111(o) to provide a special rule for computing the amount of the tax on a transportation service provided by taxicab, black car, limousine, or other vehicle where the owner or lessor of the vehicle leases or rents the vehicle to another, unrelated person who provides the transportation service, such as a taxicab driver who drives a taxicab owned by another person. In that case (i) the owner or lessor would be deemed to provide the transportation service during the day or other period that the driver uses the vehicle to provide the service, (ii) the owner /lessor would be deemed the vendor of the service provided by the driver, (iii) the tax would be deemed to be imposed on the driver, (iv) the owner/lessor, as vendor, would be required to collect the tax from the driver, based on the local jurisdiction where the driver takes delivery of the vehicle and (v) the receipts subject to such tax would equal two hundred percent of the amount that the owner/ lessor charges the driver for the use of the vehicle during the period, including any charge related to insurance, maintenance, repairs, fuel, the use, rental or economic value of any taxicab or other license or medallion, and any other charge the owner/ lessor makes to the driver for period, regardless of whether the driver transported, carried or conveyed any person or earned any fares with the vehicle during that period.

In addition, §1111(o) would provide that, notwithstanding any law to the contrary: (i) any municipality or public corporation that establishes or regulates taxicab or other vehicle service fares must adjust those fares to include the new State tax and any local tax and must also require that any meters or other devices in the vehicles or otherwise that measure fares be adjusted to include those taxes. Any person that sells taxable transportation services would be required to adjust the meters or other devices in the vehicles or otherwise that measure fares, so that they timely reflect any change in the rates of the taxes. Neither the failure of a municipal or other public corporation to adjust fares nor the failure of a person to adjust the meters or devices would relieve that person from the obligation to collect any taxes due on a timely basis and at the correct combined rate. The special rules for computing tax in §1111(o) would apply only if the person to whom the owner or lessor rents or leases the vehicle is unrelated to the owner or lessor. An unrelated person means a person other than a related person as defined in §14 of the Tax Law. This is designed to prevent the owner /lessor and person (lessee) from setting the rental charge at a rate below market value in order to avoid tax.

The new §1111(o) is intended to deal with the situation where, for example, an owner of taxicabs rents cabs to drivers who are not employees. In that case, the driver will not have to register for sales tax purposes or collect tax. Instead, the vehicle owner will register and collect the new tax from the driver. This will ease burdens on non-owner drivers and improve compliance with the new tax, since there will

be fewer persons collecting tax and the Tax Department will be better able to monitor those required to collect tax.

Section 5 of the bill would amend Tax Law §1115(z) to provide that §1105(c)(13) transportation services will not be exempt when purchased by a qualified empire zone enterprise.

Section 6 of the bill would amend Tax Law §1213, which applies to county and city taxes, to provide where a transportation service begins in one jurisdiction but ends in another jurisdiction, the local tax would be due the jurisdiction or jurisdictions (county/city) where the service commenced.

Section 7 of the bill provides the bill would take effect June 1, 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $45 million in 2009-10 and $60 million thereafter.

Effective Date:

This bill takes effect June 1, 2009.

Part OO – Impose a sales tax on various amusement charges

Purpose:

This bill would impose sales tax on various amusement charges, including admission charges, club dues and cabaret charges, and to repeal sections 1122 and 1123 of the Tax Law relating to amusement charges at qualifying amusement parks and the portion of the charge by a cabaret for dramatic or musical art performances.

Statement in Support Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would expand the types of amusement charges that are subject to State and local sales taxes. Amusement charges currently consist of (1) charges for admission to a place of amusement, (2) dues and initiation fees paid to a social or athletic club, and (3) charges of a cabaret, night club or other similar establishment. These taxes would generally be expanded by amending the definitions of charges subject to the taxes and by removing some exclusions from the tax impositions. All references in this memorandum to sections of law are to sections of the Tax Law unless the context indicates otherwise.

Admissions charges to a place of amusement

Section 1 of the bill would amend Tax Law §1101(d)(2) defining "admission charge" to include charges for sports and amounts paid for the use of any equipment, apparatus, devices, rides and games at the place of amusement. This latter change as to the use of devices, rides and games is intended to address certain issues raised as a result of Fairland Amusements, Inc. (66 NY 2d 932), which held that an amusement ride such as a roller coaster or Ferris wheel is not a "place," and thus that charges to ride are not subject to the admissions tax imposed by §1105(f)(1). This change would make clear that charges to use rides, devices, and facilities in the place, other than lawfully operated video lottery terminals, are also within the definition and thus subject to the Tax Law §1105(f)(1) tax on admission

charges to a place of amusement. Tax Law §1101(d)(2) would also provide that any dues and membership, participation, and usage fees paid at the place of amusement would be part of the admission charge taxable under Tax Law §1105(f)(1).

Section 4 of the bill would amend Tax Law §1101(d)(10) defining "place of amusement" to include places where a performance is given, theaters, fairs, race tracks, exhibitions, circuses, golf courses, gymnasiums, bowling alleys, swimming pools and other places where people engage in sports or athletic activities, campgrounds and parks, and any other place that has equipment, apparatus, exhibit, display, or other facilities for amusement such as devices, rides and games at an amusement park, whether or not contained in an enclosure defining the space and whether or not coin-operated, and such as sports, weight training, or other equipment or apparatus at a club or other place. Currently, "place of amusement" includes any place where any facilities for entertainment, amusement or sports are provided.

Section 8 of the bill would amend Tax Law §1105(f)(1), which imposes the State's 4% sales tax on admission charges to places of amusement in the State. First, the following exclusions from the admission charge tax would be eliminated, so that these admission charges would become subject to tax: charges for admission to horse racing tracks, boxing and wrestling events, live dramatic and musical arts performances, circuses, motion picture theaters (whether or not to see a movie), and places where patrons will participate in a sport such as a swimming, bowling, tennis, etc. Currently, charges to admission to a movie theater are not subject to tax, whether to see a movie, to see a closed circuit TV broadcast or for another purpose (see the Court of Appeals decision in the Matter of United Artists Theatre Circuit, Inc. v. State Tax Commission, 52 NY2d 1013).

In addition to imposing tax on these admission charges, Section 8 would amend Tax Law §1105(f)(1) to impose tax on the charge to use the equipment, apparatus and other facilities at the place of admission, such as amusement park rides and devices, games of chance or skill at an amusement park, or sports equipment or apparatus at a sports club or other place, whether proprietary or otherwise. The usage charges for amusement park rides and devices and games of chance were subject to tax until the decision in Fairland Amusements, Inc. (66 NY 2d 932) held that they were not. But charges for the use of lawfully operated video lottery terminals at a place of amusement would not be subject to tax. Since the imposition is broadened to include tax on charges to use facilities at a place of amusement, these "usage" charges would now be taxable, even if there is no charge for admission to get into the place. Tax Law §1105(f)(1) would also be amended to make clear that these charges are subject to sales tax if the place of amusement is located in New York, even if the consumer pays the charges outside the State. This is clarified since there is no compensating use tax on these charges.

Since these provisions would ensure that both charges for admission and charges for amusement rides and devices are subject to tax, Section 11 would repeal Tax Law §1122, which currently exempts 75% of the admission charge to a place of amusement that sells a combined ticket that entitles the consumer both to admission and to the use of rides and devices at the place under certain circumstances.

Section 13 of the bill would amend Tax Law §1210(a)(4), which authorizes special rules applicable to New York City's general sales taxes. Currently, the city is authorized to impose its 4% sales taxes on admission charges to a place of admission where the consumer will participate in a sport at the place, such as a charge to get into a swimming pool to swim or into a bowling alley to bowl, even though those admission charges are excluded from the State's sales tax. Since this bill would make those charges subject to the State's sales taxes, and since State and local sales taxes are generally

identical, this bill section ensures similar State and local treatment in the City, which would simplify compliance and consumer understanding.

Section 14 of the bill would make the same changes, for the same reasons, to §1210(b)(2), which authorizes New York City to impose segments of the general sales taxes, in the event the city were to repeal its general taxes imposed pursuant to the authority of §1210(a)(1) and (4) and instead to exercise its authority to impose the segmented sales taxes under § 1210(b). Likewise, §1210(b)(2) would be amended to delete unnecessary transitional provision references.

Section 15 of the bill would amend §1210(h) to delete special authority for New York City to impose sales tax on participatory sports admission charges while the §1107 Municipal Corporation (MAC) taxes are in effect. The §1107 MAC taxes expired in 2008.

Club dues and initiation fees

Section 3 of the bill would amend Tax Law §1101(d)(6), to expand the definition of "dues" to include charges made for athletic privileges and facilities and to delete the exclusion for charges made for sports privileges and facilities offered to guests of a club's members. Currently, "dues" include a club's charges to its members for social and sports privileges and facilities. Section 1101(d)(6) would also be amended to include any charges a club makes for the use of other facilities furnished or leased by the club to its members or guests. This change would reverse the holding in Breezy Point Surf Club, Inc. v. State Tax Commission (67 AD2d 760, affd 48 NY2d 776), that the monies a club receives from cabana rentals are not "dues paid to any social or athletic club" but are instead receipts from the rental of real estate and thus are not subject to tax.

Section 6 of the bill would amend Tax Law §1101(d)(13) defining the term "social or athletic club" to add sporting clubs to the roster of clubs whose dues and initiation fees are taxable under §1105(f)(2). "Sporting clubs" would include fishing, hunting, and other sporting clubs. Section 6 would also clarify that the term includes any club whose material activity or purpose is sporting or is a combination of social, athletic or sporting functions.

Section 9 of the bill would amend Tax Law §1105(f)(2), which imposes the State's 4% sales tax on social and athletic club dues and initiation fees, to impose this tax on dues and initiation fees of sporting clubs. Section 1105(f)(2) would also be amended to clarify that these dues and initiation fees are subject to sales tax if the club is located in New York, even if the consumer pays the dues or initiation fees outside the State, since there is no compensating use tax on club dues and initiation fees. Also, an exclusion from tax for dues paid to a homeowner's association would be deleted. This would restore the holding in Merrick Estates Civic Association, Inc. v. State Tax Commission (65 AD2d 669), which held that that sales tax could be imposed on dues paid to the association, when it provides and maintains recreational facilities for the use and benefit of some of its members from the defined community to meet by prearrangement or happenstance, such that the purpose will generally be considered to be "social." Finally, an obsolete transitional provision, relating to dues and fees paid after the provision's initial 1965 effective date, would be deleted.

Cabaret charges

Section 2 of the bill would amend Tax Law §1101(d)(4), which defines the term "charge of a roof garden, cabaret or other similar place" to include a charge made for the use of facilities for entertainment and amusement at the place. Adding these charges is consistent with the goal of this bill to make these entertainment charges taxable. It would be anomalous for these charges to be taxable

at other places but not at these places. Currently, the term means any charge made for admission, refreshment, service, or merchandise.

Section 5 of the bill would amend Tax Law §1101(d)(12) defining the term “roof garden, cabaret or other similar place” (together, “cabaret”) to add to the definition any hotel, restaurant, hall or other public place where music and dancing privileges or any other entertainment, other than instrumental or mechanical music alone, is offered to its customers in conjunction with serving or selling of food, refreshment or merchandise. Also, a performance would be regarded as being furnished for profit even though the cabaret’s other charges are not increased on account of offering the performance. Currently, a place is a cabaret if it furnishes a public performance for profit; but it does not include a place that offers merely live dramatic or musical arts performances in conjunction with selling food, refreshment or merchandise, if those sales are merely incidental to the performance.

Section 7 of the bill would amend Tax Law §1105(d)(1), which imposes the State’s 4% sales tax on a restaurant or tavern’s sales of food and drink. This tax also applies to the restaurant or tavern’s related charges, including any cover, minimum, entertainment or other charge. Section 7 would add to the other charges subject to tax any admission charge the restaurant or tavern makes. This is done to ensure uniformity among different types of establishments that sell food and drink, whether the place is a cabaret where admission charges are taxable or a restaurant.

Section 10 of the bill would amend Tax Law §1105(f)(3), which imposes the State’s 4% sales tax on the charges of a roof garden, cabaret, or other similar place in the State, to clarify that these charges are subject to sales tax if the place is located in New York, even if the consumer pays the charges outside the State, since there is no compensating use tax on these charges.

Since this bill would subject to tax any admission charges to a place of amusement for a live dramatic or musical arts performance, and since a cabaret’s taxable charges include any charge for admission it makes, §12 would repeal §1123, which currently exempts the admission portion of a cabaret’s charge when the cabaret offers a live dramatic or musical arts performance.

Section 16 provides the bill would take effect June 1, 2009, in accord with applicable sales tax transitional provisions.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $53 million in 2009-10 and $70 million thereafter.

Effective Date:

This bill takes effect June 1, 2009, in accord with applicable sales and use tax transitional provisions.

Part PP – Narrow the sales tax definition of capital improvement and its application

Purpose:

This bill would narrow the sales taxes definition and treatment of the term “capital improvement” and certain services related to capital improvements.

Statement in Support Summary of Provisions, Existing Law, and Prior Legislative History:

The main goal of this bill is to narrow the definition of the term "capital improvement" and thus narrow the exemption for services rendered in conjunction with work that constitutes a capital improvement. These goals are met principally in § 1. Another goal is to conform the terms in different provisions of the Tax Law related to the performance of a capital improvement and thereby remove confusing and redundant language. This goal is effected throughout the bill.

Section 1 of the bill would amend Tax Law §1101(b)(9), which defines "capital improvement" for purposes of the State and local sales and compensating use taxes. Currently, a capital improvement is an addition or alteration to real property that (1) substantially adds to the value of the real property or appreciably prolongs its useful life, (2) becomes part of the real property or is permanently affixed so that removal would cause material damage to the real property or to the article itself, and (3) is intended to become a permanent installation. This definition would be amended to add a condition that, where the real property is a building or structure, the addition or alteration must constitute new construction or a new addition to or total reconstruction of existing construction in order for it to qualify as a capital improvement. Thus, building a new building would constitute a capital improvement, as would adding a whole new addition to a building or totally reconstructing a building. But merely adding a new door or new windows would not amount to a capital improvement. This standard of "new construction or a new addition to or total reconstruction of existing construction" is the same standard that currently applies in determining whether the installation of floor coverings constitutes a capital improvement. Since this additional new condition would apply only to work to be done on a building or structure, the condition would not apply to a capital improvement to land that does not result in a building or structure. Since §1101(b)(9) defines capital improvement as an addition or alteration to real property, it is redundant and confusing for it to provide that the installation of a mobile home and certain installations of floor coverings are not an "addition or capital improvement" to real property. The bill corrects this.

When a contractor performs a capital improvement to a building, the contractor, or a subcontractor or other person, often performs other services in conjunction with the labor to build the building. For example, the contractor or a sub might install property on a temporary basis to facilitate the building process. Or the contractor might purchase the service of removing construction debris from the site. These services performed outside the context of a capital improvement would be subject to sales tax under Tax Law §1105(c)(3) or (5). But when performed in conjunction with, or as a necessary prerequisite to, or resulting from the capital improvement building process, they would be exempt as part of the capital improvement. Since the bill narrows the circumstances in which construction amounts to a capital improvement, the exemption for these related services would likewise be narrowed to only those instances where they are rendered in conjunction with new construction or a new addition to or total reconstruction of existing construction.

Section 2 amends §1105(c)(3)(iii) of the Tax Law, which excludes from sales tax the charge for the service of installing tangible personal property when the installation will constitute a capital improvement to real property, property, or land as defined in the Real Property Tax law. Since the definition of capital improvement applies to real property, and the term "real property" includes land, the other terms are deleted here. Likewise, since "capital improvement" is defined as an addition to real property, it is redundant to refer to an "addition to real property" when also referring to a "capital improvement" to real property.

Sections 3-7 make conforming amendments to, respectively, Tax Law §§1105(c)(5), imposing sales tax on maintenance and repair services to real property, 1110(e), defining the measure of the State's use tax in cases where certain property is fabricated for use in a capital improvement, 1115(a)(17), exempting tangible personal property sold by a contractor in certain circumstances, 1115(a)(37)(iii),

exempting certain tangible personal property purchased by an internet data service operator, and 1115 (aa)(1)(iii), exempting certain real estate maintenance and repair services purchased by a broadcaster. Definitions in § 1101 apply to all sections in Article 28, and there is no need to refer in other Article 28 sections to a term "as defined in § 1101." These sections are also conformed to the changes in the definition of capital improvement and the usage of "real property, property or land," to delete unnecessary references to § 1101, and to delete "addition" when used redundantly as a synonym for capital improvement. Bill § 5 also deletes an "ancient" transitional provision relating to real property contracts entered into prior to September 1, 1965.

Section 8provides the bill would take effect June 1, 2009, and apply in accord with applicable sales and use tax transitional provisions.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would result in increased receipts of $120 million in 2009-10 and $160 million annually and thereafter.

Effective Date:

This bill takes effect June 1, 2009, in accord with applicable sales and use tax transitional provisions.

Part QQ – Increase the highway use tax replacement fee

Purpose:

This bill would increase the fees for replacement certificates of registration under the Tax Law Article 21 highway use tax.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The increased replacement fess would more accurately reflect the use of the Tax Department's time and resources expended to administer the HUT registration process.

Section 1 of the bill amends Tax Law § 509 to raise the fee highway use taxpayers must pay to replace a certificate of registration from $4 to $15 in the case of a motor vehicle, and from $2 to $15 in the case of a trailer, semi-trailer, dolly or other device drawn thereby for which a highway use tax certificate of registration is required pursuant to Article 21 of the Tax Law.

Section 2 of the bill provides for an immediate effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $4.6 million in 2009-10.

Effective Date:

This bill takes effect immediately.

Part RR – Impose additional sales and use tax on certain luxury property

Purpose:

This bill would amend the Tax Law to impose an additional five percent sales and use tax on luxury passenger motor vehicles, vessels, aircraft, jewelry, fur clothing, and footwear over certain price thresholds.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Under existing law, luxury items such as certain passenger cars, yachts, aircraft, fur clothing and jewelry are subject to sales and use tax at the same State and local rates as all other tangible personal property. This bill, which is modeled on a federal excise tax that was in effect from 1991 to 2003, would add an additional sales and use tax at the rate of 5% on the retail sale or use within the State of: (1) passenger motor vehicles to the extent the sale price exceeds $60,000; (2) vessels to the extent the sale price exceeds $200,000; (3) aircraft to the extent the sale price exceeds $500,000; and (4) jewelry or fur clothing and footwear, to the extent the sale price exceeds $20,000. For example, if a passenger motor vehicle has a sale price of $90,000, the amount that exceeds the threshold, or $30,000, would be subject to the additional tax.

The sale price would include the amount of any trade-in, and the price of any property installed by the vendor on a passenger motor vehicle, vessel, or aircraft within six months of the purchase, plus any charge for installing that property. However, sale price would not include the sale price of, or installation charges for, any property installed on a passenger motor vehicle to adapt the vehicle for use by a handicapped person, or any replacement of damaged, defective or malfunctioning property.

The tax would not apply to: (1) passenger motor vehicles purchased exclusively for use in the active conduct of a trade or business of transporting persons or property for compensation or hire; (2) commercial vessels, as defined in Tax Law § 1101(b)(16); (3) commercial aircraft, as defined in Tax Law § 1101(b)(17); or (4) demonstrator passenger motor vehicles, vessels, or aircraft. For leases of passenger motor vehicles, vessels, or aircraft of one year or more, the sale price will be the manufacturer's suggested retail price for that vehicle, vessel, or aircraft, including the amount of any trade-in, and the tax would be due at the time the first lease payment is made, or at the time the property is registered with the Commissioner of Motor Vehicles, whichever occurs earlier.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it would increase revenues by $12 million in 2009-10 and $15 million thereafter.

Effective Date:

This bill takes effect on June 1, 2009, and applies to sales occurring on or after that date in accordance with the applicable transitional provisions in §1106 of the Tax Law.

Part SS – Create a comprehensive program to increase compliance with the Tax Law

Purpose:

This bill would create a comprehensive program to encourage compliance with the Tax Law.

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

Section 1 describes the structure of the bill in relation to its Subparts.

Subpart A of the bill would enhance the collection of taxes by requiring banks and other financial institutions to report annually the gross amount of bank settlements, cash deposits, and check deposits into accounts of registered sales tax vendors. The gross deposit information will be used in analyzing sales and other tax returns to determine if there may be underreporting of sales and associated sales tax and/or income tax.

Subpart B of the bill would authorize the Commissioner of Taxation and Finance to use generally accepted statistical sampling techniques to perform audits for sales tax purposes. These audit techniques substantially reduce the time required to complete an audit for both the tax return filer and the Department, permitting the Department to allocate its audit staff to review taxpayers' records more efficiently and effectively.

Subpart C of the bill would impose penalties on persons required to keep sales tax records: (1) for their failure to maintain these records; (2) when these records are actually maintained, for their failure to provide the records for the Department of Taxation and Finance's review in an auditable format; and (3) if the records are maintained in electronic format, for their failure to make the electronic records available and accessible for review by the Department.

Subpart D of the bill would add interest and the failure to file or pay penalty of Tax Law § 685(a) to the Tax Law § 685(g) penalty imposed for failure to collect or pay over tax. The addition of interest and penalty will spur collection and voluntary compliance.

Subpart E of the bill would improve voluntary tax compliance with the Tax Law by increasing penalties on taxpayers for failure to pay tax due to fraud, and on tax preparers for knowingly and purposefully assisting in the filing of clearly fraudulent tax returns. This subpart also would impose a penalty on individuals for the submission of frivolous or fraudulent documents in connection with their personal obligation to pay personal income tax and create penalties for information return filers to increase compliance with the requirements of the motor fuel tax.

Subpart F of the bill would provide an expedited hearing process in cases involving the cancellation, revocation, or suspension of a license, permit, registration, or other credential issued by the Department of Taxation and Finance, and in cases involving penalties for aiding or assisting in the filing of fraudulent tax documents.

Currently, if the collection of taxes is not in jeopardy, taxpayers can exploit the cumbersome administrative procedure to delay the cancellation, revocation, or suspension of their credentials for several years.

Subpart G of the bill would enact a whistleblower statute for tax evasion, by authorizing the Commissioner of Taxation and Finance to pay awards for the reporting of information leading to the detection of substantial underpayments of tax or leading to the prosecution, conviction and punishment of persons guilty of violating, attempting to violate, or conspiring to violate provisions of the Tax Law.

Subpart H of the bill would change the last quarterly withholding filing date from February 28 to the last day of January. This would conform the due date for quarterly returns for the last quarter to the date for the returns for the other three calendar quarters. By receiving the final quarter's withholding information a month earlier, the Department of Taxation and Finance will be able to check the accuracy of more returns prior to the issuance of refunds based on claimed withholding. This will help reduce erroneous

and fraudulent refund claims and save revenue.

Subpart I of the bill would enhance the collection of taxes from New York taxpayers who maintain their bank accounts at bank branches outside the State by providing that a branch or office of a bank is not a separate bank for purposes of receipt of notification and compliance with a tax levy served on any branch or office of the same bank within New York.

Subpart J of the bill would revise the Article 37 criminal enforcement provisions applicable to New York State taxes to treat tax crimes the same as comparable larceny charges and emphasize that a tax crime is a theft of State monies. The provisions are intended to present in the Tax Law clear, fair and strong criminal provisions that will be easily understood by taxpayers and easily applied by law enforcement. The bill will better define tax fraud, eliminate distinctions that produce unfair results, and increase penalties for those who engage in significant tax evasion.

Subpart K of the bill would allow criminal enforcement attorneys employed by the Department of Taxation and Finance to be appointed as special assistant district attorneys in state tax cases. This subpart will help efforts to enforce the Tax Law by eliminating a major obstacle to having the Department of Taxation and Finance criminal enforcement attorneys cross-designated by District Attorneys as assistant district attorneys for the purpose of bringing tax prosecutions.

Subpart L of the bill would clarify that the Voluntary Disclosure and Compliance Program that was enacted by Part CC-1 of Chapter 57 of the Laws of 2008 allows disclosure of return information to the Internal Revenue Service and other taxing authorities. Information sharing between the Department of Taxation and Finance and the IRS is crucial to many of the Department's functions and this bill will insure that the current information exchange programs remain intact and effective.

Subpart M of the bill would increase the underpayment rate of interest to be paid on taxes and other amounts owed by taxpayers, decrease the overpayment rate of interest paid on refunds or credits owed to taxpayers, and provide for an interest accrual date deferral and interest-free period for sales and use tax refunds or credits.

Subpart N of the bill would require certain third parties that transact business with sales tax vendors to file annual information returns in order to improve the Department of Taxation and Finance's ability to monitor voluntary compliance with the sales and compensating use taxes. By streamlining the process by which the Tax Department acquires information from certain third parties, it will assist in conducting audits of vendors, hotel operators, and recipients of amusement charges (sales tax vendors or vendors) and improve their voluntary compliance.

Subpart O of the bill would authorize the filing of all tax warrants by the Department of Taxation and Finance solely at the Department of State in order to effect liens and judgments against the real, personal, and other property of tax debtors.

Subpart P of the bill would amend Tax Law §1141(c) to apply the provisions regarding collection of sales and use taxes upon the sale of business assets in bulk to penalty and interest in addition to the tax itself.

Section 2 of the bill contains a severability clause.

Section 3 of the bill would provide that the bill takes effect as stated in each Subpart of the bill.

Budget Implications:

This bill will preserve $234 million annually in State tax receipts and result in $85 million in additional annual State tax receipts. These receipts are reflected in the State Financial Plan. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill takes effect immediately as provided in each Subpart of the bill.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.