

FY 2024 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, in relation to providing the authority to abate interest for taxpayers impacted by declared disasters (Part A); to amend the tax law, in relation to clarifying the definition of limited partner for the purposes of the metropolitan commuter transportation mobility tax (Part B); to amend the tax law, in relation to making the investment tax credit refundable for eligible farmers for five years (Part C); to amend the tax law, in relation to the empire state film production credit and the empire state film post-production credit (Part D); to amend the tax law, in relation to the abatement of penalties for underpayment of estimated tax by a corporation (Part E); to amend the economic development law, in relation to the COVID-19 capital costs tax credit program (Part F); to amend the social services law and the tax law, in relation to creating a tax credit for the creation and expansion of child care (Part G); to amend the tax law, in relation to extending the authorization of any city having a population of one million or more to provide a biotechnology credit against the general corporation tax, unincorporated business tax, and banking corporation tax of such city (Part H); to amend the tax law, in relation to extending the current corporate tax rates (Subpart A); to amend the tax law, in relation to extending the rehabilitation of historic properties tax credit (Subpart B); to amend the tax law, in relation to extending the empire state commercial production tax credit for five years (Subpart C);

to amend the tax law, in relation to extending provisions of law relating to the grade No. 6 heating oil conversion tax credit (Subpart D); to amend subpart B of part PP of chapter 59 of the laws of 2021 amending the tax law and the state finance law relating to establishing the New York city musical and theatrical production tax credit and establishing the New York state council on the arts cultural program fund, in relation to the effectiveness thereof; and to amend the tax law, in relation to the New York city musical and theatrical production tax credit (Subpart E)(Part I); to amend the tax law, in relation to making technical corrections to the credit for companies who provide transportation to individuals with disabilities (Subpart A); to amend the tax law, in relation to eligibility for the brownfield redevelopment tax credit (Subpart B); to amend the tax law, in relation to the pass-through entity tax and city pass-through entity tax and making technical corrections thereto (Subpart C) (Part J); to amend the real property tax law, in relation to simplifying the senior citizens real property tax exemption (Part K); to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effectiveness thereof (Part L); to amend the real property tax law, in relation to requiring excess proceeds from a tax foreclosure sale to be returned to the former owner (Part M); to amend the real property tax law and the state administrative procedure act, in relation to clarifying the solar or wind energy system appraisal model (Part N); to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes permanently; to amend chapter 67 of the laws of 2015, relating to authorizing the city of Yonkers to impose

additional sales tax, in relation to the effectiveness thereof; to amend section 2 of item R of subpart C of part XXX of chapter 58 of the laws of 2020 amending the tax law relating to extending the expiration of the authorization to the county of Genesee to impose an additional one percent of sales and compensating use taxes, in relation to making such provisions permanent; to amend section 2 of item Z of subpart C of part XXX of chapter 58 of the laws of 2020 amending the tax law relating to the imposition of sales and compensating use taxes by the county of Monroe, in relation to making such provisions permanent; to amend section 4 of item EE of subpart C of part XXX of chapter 58 of the laws of 2020 amending the tax law relating to extending the authorization of the county of Onondaga to impose an additional rate of sales and compensating use taxes, in relation to making such provisions permanent; to amend section 2 of item GG of subpart C of part XXX of chapter 58 of the laws of 2020 amending the tax law relating to extending the authority of the county of Orange to impose an additional rate of sales and compensating use taxes, in relation to making such provisions permanent; to amend section 3 of item XX of subpart C of part XXX of chapter 58 of the laws of 2020 amending the tax law relating to extending the authority of the county of Ulster to impose an additional 1 percent sales and compensating use tax, in relation to making such provisions permanent; and to repeal certain provisions of such law relating thereto (Part O); to repeal certain provisions of the tax law, relating to eliminating congestion surcharge registration requirements (Part P); to amend the tax law, in relation to the payment of tax on increased quantities of motor

fuel and Diesel motor fuel on which the taxes pursuant to articles 12-A, 13-A and 28 were not previously paid (Part Q); to amend the tax law, in relation to extending the sales tax exemption for certain sales made through vending machines for those operated by business enterprise program participants (Part R); to amend the tax law, in relation to an increase in the rate of tax on cigarettes (Part S); to amend the tax law, in relation to the revocation of certain certificates and civil penalties for refusal of a cigarette and tobacco inspection (Part T); to amend the tax law and the administrative code of the city of New York, in relation to extending the tax rate reduction under the New York state real estate transfer tax and the New York city real property transfer tax for conveyances of real property to existing real estate investment funds (Part U); to amend the tax law, in relation to permitting the commissioner of taxation and finance to seek judicial review of decisions of the tax appeals tribunal (Part V); to amend the state finance law, in relation to clarifying the deposit timeframe for moneys deposited by the commissioner of taxation and finance (Part W); to amend the tax law, in relation to requiring the New York Racing Association, Inc. to enter into a repayment agreement with the state of New York for the repayment of funds provided by the state for the renovation of Belmont Park (Part X); to amend the tax law, in relation to a keno style lottery game (Part Y); to amend the racing, pari-mutuel wagering and breeding law, in relation to the operations of off-track betting corporations (Part Z); to amend the racing, pari-mutuel wagering and breeding law, in relation to the utilization of funds in the Capital region off-track betting corporations' capital acquisition funds (Part AA);

to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting; to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari- mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part BB); and to amend the tax law, in relation to conforming to the federal taxation of S corporations (Part CC)

PURPOSE:

This bill contains provisions needed to implement the Revenue portion of the FY 2024 Executive Budget.

This memorandum describes Parts A through CC of the bill which are described wholly within the parts listed below.

Part A – Provide Authority to Abate Interest for Taxpayers Impacted by Declared Disasters

Purpose:

This bill would authorize the Commissioner of the Department of Taxation and Finance to abate interest charges on the underpayment of tax for taxpayers who are affected by a presidentially or gubernatorially declared disaster, regardless of a tax deadline extension.

Summary of Provisions and Statement in Support:

The Commissioner is authorized under the Tax Law to extend filing deadlines following a federal or state disaster declaration for up to 90 days, or for a longer period when necessary to align with a related federal extension. When a deadline has been extended, interest and penalties do not accrue during the period of extension for any taxpayer in the disaster area or otherwise affected by the disaster.

Additionally, the Commissioner generally is authorized to abate penalties for good cause, which can include the direct impacts of a declared disaster on specific taxpayers. This authority to abate penalties is not conditioned upon the extension of a filing deadline. However, the Commissioner does not have the authority to abate interest that accrued due to the direct impacts of a disaster when a deadline was not extended. This bill would expand the Commissioner's authority to provide relief to taxpayers affected by authorizing the Commissioner to abate interest that has accrued for the period during which the taxpayer was unable to meet a tax deadline due to direct impacts of a disaster.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would prevent unreasonable interest accumulation on underpayment of tax for victims of disasters.

Effective Date:

This bill would take effect immediately.

Part B – Clarification of the Treatment of Limited Partners for the Metropolitan Commuter Transportation Mobility Tax

Purpose:

This bill would clarify the treatment of certain limited partners for the purpose of the definition of “net earnings from self-employment” in the Metropolitan Commuter Transportation Mobility Tax (“MCTMT”).

Summary of Provisions and Statement in Support:

This bill would amend the definition of “net earnings from self-employment” in the Tax Law to clarify the treatment of limited partners who are actively engaged in the operations of the partnership for purposes of the MCTMT. Currently, the definition references Internal Revenue Code (“IRC”), which defines “net earnings from self-employment” and exempts limited partners from paying self-employment tax in certain circumstances.

The term “limited partner” is not defined within the IRC or the Tax Law. Individuals who are, in fact, self-employed and actively participating in the management of the partnership, can simply label themselves as “limited partners” on paper to avoid paying the MCTMT. This clarifying amendment would provide that only true limited partners are not subject to the MCTMT, while partners who take part in the management or operations of the partnership remain subject to the provisions of the MCTMT.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would increase Metropolitan Transportation Authority revenues by \$20 million annually beginning FY 2024.

Effective Date:

This bill would take effect immediately.

Part C – Modify the Investment Tax Credit for Farmers

Purpose:

This bill would make the investment tax credit (ITC) fully refundable for eligible farmers for five years, through December 31, 2027 and assist farmers with investments in their agri-enterprises.

Summary of Provisions and Statement in Support:

This bill would amend the Tax Law to make the ITC a refundable credit for eligible farmers for five years.

New York has over 33,000 farms encompassing roughly seven million acres of farmland, comprising approximately 20 percent of the state's total land area. These farms produce nearly \$3.2 billion annually in direct economic output and nearly \$6 billion in commodity sales. Agriculture has an enormous economic impact on the economy of this state. Making the ITC broadly refundable will help ensure that our farmers can succeed.

Currently, the ITC is refundable for new businesses only, as such an eligible farmer with little or no taxable income generally cannot receive the full benefit. On average, a farm sees approximately \$15,000 in ITC go unutilized each year. To remedy this and to help our farmers invest in their agri-enterprises, this bill would provide those eligible farmers the ITC as a fully refundable credit for five years. Further, the modifications proposed in this bill would allow our eligible farmers to receive a much-needed benefit that would enable them to continue to update, modernize, and invest in their farming operations.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would provide critical financial assistance and incentive to invest in New York's farm businesses.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2023.

Part D – Extend and Enhance the Film Tax Credit

Purpose:

This bill would amend the Empire State film production credit and the Empire State film post-production credit to increase the annual funding cap, extend the credits for five years, increase available incentives, and make other technical changes.

Summary of Provisions and Statement in Support:

The Empire State film production credit is among the most stable in the nation, and in extending the film tax credit for an additional five years, would increase this stability and help to attract productions. Enhancing the yearly allocation from \$420 million to \$700 million, \$280 million more a year, would allow New York to meet the rising demand for New York's talent and resources. Including a capped credit for "above the line" salaries like those for writers and directors alongside the "below the line" salaries of union

workers already included in the incentive and restoring the credit for qualified expenses from 25% to 30%, where it was prior to 2019, would improve New York's competitiveness with neighboring jurisdictions. These changes will strengthen New York's already successful tax credit, which has supported more than 57,000 jobs and \$12 billion in wages a year.

This bill would extend the Empire State film production credit under Tax Law § 24 and the Empire State film post-production credit under Tax Law § 31 for five years. This bill would also increase the annual funding cap of the credits to \$700 million starting in tax year 2024 and reduce the number of seasons that a relocated television series must be filmed outside New York prior to its first relocated season in New York to be eligible for the credits. Finally, this bill would provide additional incentives by enhancing the credit base.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would increase support for the film production and post-production industries.

Effective Date:

This bill would take effect immediately.

Part E – Abatement of Penalties for Underpayment of Estimated Tax by a Corporation

Purpose:

This bill would create parity between the corporate and personal income tax underpayment penalties by providing the Department of Taxation and Finance (DTF) with the authority to waive or reduce the penalty for underpayment of estimated tax by a corporation for taxpayers impacted by casualty, disaster, or other unusual circumstances.

Summary of Provisions and Statement in Support:

All utility (including providers of telecommunication services), transportation and transmissions, insurance, and business corporations (including S corps), whose applicable tax for the current tax year is reasonably expected to be more than \$1,000 after credits, must file a declaration of estimated tax and make quarterly installment payments. Failure to pay the required installment payments, on time and in the correct amounts, will generate an underpayment penalty for the period of underpayment. Contrary to the Tax Law, which authorizes DTF to waive or reduce a penalty for the underpayment of estimated personal income tax for taxpayers impacted by casualty,

disaster, or other unusual circumstances, there are no statutory provisions authorizing DTF to waive or reduce these penalties.

This bill would create a new Tax Law section to extend the same authority to DTF to provide relief to corporate taxpayers impacted by these circumstances, which would create parity between the corporate and personal income tax underpayment penalties.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would provide a greater level of conformity between parallel personal income and corporation tax situations.

Effective Date:

This bill would take effect immediately.

Part F – Extend the Application Deadline for COVID-19 Capital Costs Tax Credit Program

Purpose:

The bill extends the statutory application deadline for the COVID-19 Capital Costs Tax Credit Program from March 31, 2023 to September 30, 2023 to allow small businesses more time to apply for this tax credit.

Summary of Provisions and Statement in Support:

This amendment to the statute is intended to provide flexibility to the COVID-19 Capital Costs Tax Credit Program and to give small businesses additional time to apply for this tax credit. This bill extends the statutory application deadline from March 31, 2023 to September 30, 2023, for the COVID-19 Capital Costs Tax Credit Program.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would allow more time for small businesses to apply for this tax credit.

Effective Date:

This bill would take effect immediately.

Part G – Create a Tax Credit for Child Care Creation and Expansion

Purpose:

This bill would allow eligible business entities to receive a credit for creating and expanding childcare seats for the children of their employees.

Summary of Provisions and Statement in Support:

This bill would add a new Title 1-A within Article 6 of the Social Services Law to establish the Child Care Creation and Expansion Tax Credit Program. The refundable credit established under this program would be available to businesses that create new childcare seats or expand existing childcare to add new childcare seats, directly or through a third party, for the children of their employees. The allowable credit would be a function of the type of childcare seat created or expanded and the “childcare rate,” which is dictated by the 2022 Child Care Market Rate Survey Report published by the Office of Children and Family Services (“OCFS”).

The amount of the credit available under this program would be capped at \$25 million annually for two years and would be administered by OCFS. The additional childcare seats are necessary to allow employees to effectively work in New York State.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would expand childcare access for those that work in the State. This part would reduce tax revenue by \$25 million annually in FY 2025 and FY 2026.

Effective Date:

This bill would take effect immediately.

Part H - Create a NYC Biotech Tax Credit

Purpose:

This bill would authorize New York City to provide a biotechnology credit against the general corporation tax, unincorporated business tax, and banking corporation tax of such city.

Summary of Provisions and Statement in Support:

New York City has a natural advantage in the bioscience industry. Yet it lags behind other cities, such as Boston and San Diego, in the commercialization of new technologies. This

tax credit will help NYC meet critical targets where the discoveries of basic science are investigated for their commercial properties.

A taxpayer is entitled to a credit if the company: 1) is a qualified emerging technology company engaging in biotechnologies, 2) has no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, 3) has a ratio of research and development funds to net sales of at least six percent, 4) has gross revenues not exceeding twenty million dollars, including affiliates, and 5) has annual sales not exceeding ten million dollars.

New York City previously allowed a biotechnology tax credit, but it expired in 2019. This bill authorizes New York City to offer this tax credit for another three years.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would assist in attracting emerging technology companies in New York City.

Effective Date:

This bill would take effect immediately.

Part I – Extend Certain Provisions of Tax Law

Purpose:

This bill would extend several provisions of the Tax Law related to the temporary Article 9-A tax rates (Subpart A); the rehabilitation of historic properties credit (Subpart B); the Empire State commercial production credit (Subpart C); the tax credit for the phase out of a certain grade of fuel oil (Subpart D); and the New York City musical and theatrical production tax credit (Subpart E).

Summary of Provisions and Statement in Support:

Subpart A: This subpart would amend Tax Law § 210(1)(a) to extend the current 7.25% business income tax rate for three years, through tax year 2026, for taxpayers with a business income base over \$5 million. This subpart would also amend Tax Law § 210(1)(b)(1) to extend the current 0.1875% capital base tax rate for three years, through tax year 2026.

Subpart B: Under current law, the historic properties rehabilitation credit authorized by Tax Law §§ 606(oo), 210-B(26) and 1511(y), is available for taxable years beginning before January 1, 2025. This subpart would make the credit available for an additional five years, through taxable years beginning before January 1, 2030.

Subpart C: This subpart would amend Tax Law §§ 28(a)(1), 210-B(23)(c), and 606(jj)(1) to extend the Empire State commercial production tax credit for five years, through tax years beginning before January 1, 2029.

The Empire State commercial production tax credit program provides incentives to qualified production companies that are principally engaged in and control the production of qualified commercials in New York State. Statewide, up to \$7 million in credits is available annually to be allocated through the program to encourage qualified production companies to produce commercials in the state to help create and maintain jobs, as follows: \$4 million for companies producing commercials downstate and \$3 million for companies producing upstate. This subpart would ensure that these incentives continue to be available.

Subpart D: This subpart would amend Tax Law § 47(a)(1) to extend the grade no. 6 heating oil conversion tax credit for six months.

Currently, the grade no. 6 heating oil conversion tax credit is available to taxpayers who pay costs on or after January 1, 2022, and before July 1, 2023, to convert to other space heating and energy systems. This subpart would extend the period during which a taxpayer can incur and pay eligible conversion costs for an additional six months to January 1, 2024.

Subpart E: This subpart would amend Tax Law § 24-c to extend the current \$3 million per production cap to productions that have their first performance prior to January 1, 2024. The subpart would also increase the aggregate program cap by an additional \$100 million, to \$300 million, and would ensure that the obligation of producers to make contributions to the New York State Council on the Arts Cultural Program Fund continues until December 31, 2027. The subpart would also extend the application deadline to June 30, 2025, and remove the potential \$1.5 million per production cap.

Given the continued impacts of COVID-19 on the theater industry, these amendments would help ensure that the New York City musical and theatrical production credit continues to provide needed assistance.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because Subpart A would increase All Funds revenue by \$810 million in FY 2025, \$1.170 billion in FY 2026, and \$880 million in FY 2027; Subparts B through E would maintain existing financial incentives to support the rehabilitation of historic properties, commercial filming, musical and theatrical production activity, and would assist taxpayer's transition to utilizing cleaner forms of energy.

Effective Date:

This bill would take effect immediately.

Part J – Make Technical Changes to Tax Law

Purpose:

This bill would make several technical changes to the Tax Law related to the tax credit for companies who provide transportation to individuals with disabilities (Subpart A), the brownfield redevelopment tax credit (Subpart B), and the New York State Pass-Through Entity Tax (“PTET”) and the New York City Pass-Through Entity Tax (“NYC PTET”) (Subpart C).

Summary of Provisions and Statement in Support:

Subpart A: Tax Law §§ 210-B(38) and 606(tt), authorizes a tax credit for companies that provide transportation to individuals with disabilities. However, the current law references an expired regulation of the Federal Architecture and Transportation Barriers Compliance Board. (36 CFR 1192.23). This subpart would remove the references to the expired regulation. This subpart would also correct the Tax Law §§ 210-B(38) and 606(tt) references to the Federal Motor Vehicle Safety Standards in the Code of Federal Regulations, 49 CFR 571.

Subpart B: Section 7 of part LL of chapter 58 of the laws of 2022 amended the brownfield redevelopment tax credit to, among other things, allow the site preparation credit component to be claimed for up to seven years from the issuance of the certificate of completion (“CoC”) when the taxpayer was issued a CoC between 7/1/15 and 6/24/21. As part of the amendment in section 7 of part LL of chapter 58 of the laws of 2022, the definition of “site preparation costs” applicable to such taxpayers should have been revised to include costs paid or incurred within 84 months (i.e., seven years) of the issuance of the CoC. However, the amendment of the definition of “site preparation costs” was erroneously written so that it applied to taxpayers accepted into the program between 7/1/15 and 6/24/21, instead of taxpayers issued a CoC between 7/1/15 and 6/24/21. As a consequence, although taxpayers who were issued a CoC between 7/1/15 and 6/24/21 are authorized by law to claim the credit for seven years, the definition of “site preparation costs” only applies to costs paid or incurred by such taxpayers within five years of the issuance of the CoC. In effect, such taxpayers continue to have only five years to claim the relevant credits instead of seven years. This subpart would correct that drafting error.

Subpart C: This subpart would make technical corrections to fix an unintentional mathematical error in the computation of pass-through entity taxable income for the PTET and the NYC PTET. Currently, in calculating pass-through entity taxable income, an entity is required to deduct certain taxes paid, including the PTET, a circular calculation. The same problem exists in calculating city pass-through entity taxable income for the NYC PTET.

This subpart would resolve the unintentional mathematical error by amending the definitions for “pass-through entity taxable income” and “city pass-through entity taxable

income” in Tax Law §§ 860(h) and 867(b) to require entities include any PTET taxes, or substantially similar taxes paid to other jurisdictions that were paid and deducted in the taxable year for federal income tax purposes, in the computation of their pass-through entity taxable income and-city pass-through entity taxable income.

This subpart would also correct the unintentional omission of city resident trusts and estates from participating in NYC PTET where city resident trusts and/or estates are shareholders of S-corporations and/or members or partners in a partnership. Specifically, this subpart would amend the definition of “city taxpayer” to include city resident trusts and estates so that S-corporations and partnerships with city resident trust and estate owners may elect to participate in NYC PTET. Finally, this subpart would also clarify the timeframe by which entities must elect into PTET and NYC PTET and when any such election may be revoked.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it makes conforming changes to the Tax Law.

Effective Date:

This bill would take effect immediately, provided, however, that the amendments in Subpart A would apply to taxable years beginning on or after January 1, 2023; the amendments in Subpart B would take effect in the same manner and on the same date as section 7 of part LL of chapter 58 of the laws of 2022 took effect; and for the amendments in Subpart C sections one and two would be deemed to have been in full force and effect as of the effective date of part C of chapter 59 of the laws of 2021; sections three and seven, would be deemed to have been in full force and effect as of the effective date of section 1 of subpart B of part MM of chapter 59 of the laws of 2022; and sections four, five and six would apply to taxable years beginning on or after January 1, 2023.

Part K – Simplify and Modernize the Senior Citizens Real Property Tax Exemption

Purpose:

This bill would amend the Real Property Tax Law to simplify and modernize the definition of income for senior citizens who apply for the Senior Citizens Exemption under the Real Property Tax Law. The current process is confusing and onerous and may prevent eligible senior citizens from receiving this benefit.

Summary of Provisions and Statement in Support:

The Real Property Tax Law provides for the Senior Citizens Exemption, which reduces the amount of property taxes paid by qualifying persons 65 years of age or older.

The current law on determining the income-threshold is lengthy and confusing, requiring an extensive number of items to be included or excluded from income. Assessors expressed concern that meeting the filing requirements is very burdensome to senior citizens and as a result, some may not be receiving the benefits of the exemption because they are unable to provide the required documentation. The current income definition has sometimes required interpretation and been the subject of litigation.

This bill would simplify income eligibility for the Senior Citizens Exemption by adapting it to the income threshold used for the STAR exemption. The STAR exemption uses federal adjusted gross income, minus the taxable portion of IRA distributions. Any social security benefits that were not included in the applicant's federal adjusted gross income would also be treated as income, except where a municipality has opted to disregard them. Applicants would need to submit only their tax returns to demonstrate eligibility for the exemption.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would make the exemption more accessible for eligible senior citizen homeowners.

Effective Date:

This bill would take effect immediately and would apply to all applications for exemptions pursuant to section 467 of the Real Property Tax Law on assessment rolls that are based on taxable status dates occurring on and after October 1, 2023.

Part L – Extend the Oil and Gas Fee

Purpose:

This bill would extend the existing oil and gas fee authorization to March 31, 2027 to allow the State to recover the cost of setting unit of production values for the oil and gas industry.

Summary of Provisions and Statement in Support:

Real Property Tax Law § 593 sets forth a schedule of fees to recover the cost of setting unit of production values for the oil and gas industry. The law is currently set to expire on March 31, 2024. This bill would extend the expiration date of this provision three years to March 31, 2027.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because the existing fee is set to expire at the conclusion of the 2024 fiscal year.

Effective Date:

This bill would take effect immediately.

Part M – Return Foreclosure Excess to Property Owners

Purpose:

This bill would reform tax enforcement laws to help distressed property owners by providing that, when tax-delinquent property is sold, any excess proceeds shall be returned to the former owner or owners (and lienors, where appropriate).

Summary of Provisions and Statement in Support:

Local governments have the authority via the Real Property Tax Law (RPTL) and other tax enforcement laws to sell real property they have acquired due to delinquent taxes; they generally may retain all proceeds that the sale generates. If there is a surplus from the sale of the property, the local government may be entitled to keep it all. Further, if there are any private lienholders to whom the former owner is in debt, the lienholders receive no part of the surplus and their liens are extinguished. This process can produce a significant windfall to local governments at the expense of their most financially distressed property owners. Moreover, it exacerbates the State's housing crisis to the extent that it removes homeowners from their homes while depriving them of the equity they would need to obtain comparable replacement housing.

This bill would override these highly inequitable laws and require any surplus resulting from a tax foreclosure sale to be distributed fairly. Under the bill, local governments would be made whole for the taxes they are owed, as well as related charges such as interest and administrative expenses. Additionally, any third parties who have liens on the property would also be paid in the same order and to the same extent as they would in a mortgage foreclosure action, and any remaining proceeds from the sale would be returned to the former property owner.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would return excess equity to property owners, instead of creating a potential windfall for taxing jurisdictions.

Effective Date:

The bill would take effect October 1, 2023 and would apply to tax enforcement proceedings commenced on and after that date.

Part N – Clarification of the Wind and Solar Valuation Model

Purpose:

This bill would clarify that the adoption of the solar and wind energy system appraisal model is not subject to the State Administrative Procedure Act (SAPA).

Summary of Provisions and Statement in Support:

As enacted in Chapter 59 of the Laws of 2021, Real Property Tax Law (“RPTL”) § 575-b provided that the Department of Taxation and Finance (DTF), in consultation with the New York State Energy Research and Development Authority, develop and publish an appraisal model for solar and wind energy systems. The goal was to develop a uniform methodology for valuing such facilities to be used by municipalities. The law contained specific public comment periods to be followed by DTF prior to publishing the appraisal model.

After DTF adhered to the public comment periods specified by law and published an appraisal model, DTF was subject to litigation by several municipalities that alleged a failure to comply with the SAPA. As a result of that litigation, which is pending, the Department has been unable to direct municipalities to utilize the appraisal model and has been prohibited from further updates to the model.

This bill would clarify the law to state that, although DTF is required to comply with the notice and public comment requirements contained in RPTL § 575-b, it is not required to comply with the SAPA. The bill would also allow the use of the 2022 appraisal model in 2023 without the need to once again engage in a notice and public comment period.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would restore the appraisal model for immediate application, which supports the State’s climate policy.

Effective Date:

This bill would take effect immediately and shall be deemed to have been in full force and effect on and after the effective date of part X of Chapter 59 of the Laws of 2021, provided that assessing units that failed to use the appraisal model in 2022 would not be held liable for failing to use such model in 2022.

Part O – Make Local Sales Tax Rate Authorizations Permanent

Purpose:

This bill would amend the Tax Law to make permanent the authority for counties and cities to impose additional rates of sales and compensating use taxes for two-year periods and preserve existing revenue distribution related to those additional rates.

Summary of Provisions and Statement in Support:

Each county and city that is authorized to impose an additional rate would still have to adopt a local enactment every two years to impose its additional rate. This bill would not change current laws that require counties to adopt a home rule message and obtain approval through the State legislative process before they can increase sales and compensating use taxes above their current authorized additional tax rate.

This bill would amend Article 29 of the Tax Law to make permanent the authority for counties to impose an additional rate of sales and use taxes of up to 1%, or their current additional rate, if greater, and would authorize cities to impose their current additional rates of sales and use taxes. Further, the bill would preserve current revenue distribution with respect to such additional rates. The bill would obviate the need for those counties and cities to periodically obtain approval through the State legislative process.

Lastly, the bill also would amend and recodify other related provisions of Article 29 of the Tax Law to conform them to the above-described provisions.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would provide local governments with the flexibility and ability to strengthen their finances and help to ensure revenue stability and certainty for local governments for the foreseeable future.

Effective Date:

This bill would take effect immediately.

Part P – Eliminate the Congestion Surcharge Registration Requirements

Purpose:

This bill repeals section 1299-C of the tax law, which would eliminate congestion surcharge registration requirements because there is no longer a need for such requirements and relieve the burden on taxpayers.

Summary of Provisions and Statement in Support:

Based on recent changes in the Tax Law that made Technology Service Providers liable for congestion surcharges, the Department of Taxation and Finance (DTF) reevaluated the congestion surcharge registration requirement and determined there is no longer a business need for such requirement. The elimination of the registration requirement would remove an unnecessary burden on taxpayers.

This bill would also provide that any congestion surcharge registration fees paid prior to the enactment of this bill would not be refundable.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would eliminate an unnecessary burden on taxpayers and allow DTF to redeploy resources to other competing priorities.

Effective Date:

This bill would take effect immediately.

Part Q – Amend Motor Fuel Reporting Designation

Purpose:

This bill would amend the Tax Law and require distributors of motor fuel and Diesel motor fuel to collect, report, and remit taxes to the Department of Taxation and Finance on every gallon of fuel sold including the additional gallons realized due to temperature fluctuations. The bill would eliminate the industry's ability to obtain a windfall by manipulating the gross gallons reported based on temperature fluctuations and promote the collection and payment of tax based on the actual gallons sold.

Summary of Provisions and Statement in Support:

Motor fuel and Diesel motor fuel volume expands in warmer temperatures and contracts in colder temperatures. This change in volume can vary anywhere from 2% to 10%. Agriculture and Markets Law ("AGM Law") allows the bulk delivery of fuel products be reported in temperature compensated gallons (net gallons adjusted based on temperature) or uncompensated gallons (gross volume) during a transfer/sale at the wholesale level. Under the Tax Law, there is no requirement on the method of reporting by the distributor and a distributor is allowed a credit for gallons lost due to shrinkage, evaporation, and several other causes.

There has been an industry trend where distributors report a higher number of gallons sold than were imported. When this happens, the distributor collects additional tax on the fuel at the time of sale but does not remit that additional tax. The industry's position is that there is no statutory requirement to pay tax on sales on either a net volume or gross volume basis. This bill would require distributors of motor fuel and Diesel motor fuel to collect, report, and remit taxes to the Department of Taxation and Finance on every gallon of fuel sold including those additional gallons realized due to temperature fluctuations. The bill would eliminate the industry's ability to obtain a windfall by manipulating the discrepancies between gross and net gallons and promote the collection and payment of tax based on the actual gallons sold.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would increase revenue by \$2 million in FY 2024 and \$4 million annually thereafter.

Effective Date:

This bill would take effect on September 1, 2023 and apply to sales of motor fuel and Diesel motor fuel on or after that date.

Part R – Extend and Limit the Vending Machine Sales Tax Exemption to Business Enterprise Program Vendors for One Year

Purpose:

This bill would extend the existing sales tax exemption for certain food and drink purchased from vending machines for one year, but is limited to vending machines operated by participants in the Business Enterprise Program ("BEP") for blind vendors.

Summary of Provisions and Statement in Support:

Currently, vending machine purchases, up to \$1.50, of certain food and drink items from machines that accept only coin or currency are exempt from sales tax, while purchases of those same items, up to \$2.00, from vending machines that are capable of accepting payment in a form other than coin or currency ("cashless" purchases) are exempt from sales tax, regardless of whether that vending machine also accepts coin or currency. The current exemption is effective through May 31, 2023.

This bill would extend the exemption through May 31, 2024, but limit its application to sales from vending machines operated by participants in the BEP for blind vendors. This extension would allow BEP vendors to remain competitive while transitioning to more modern vending machines.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would support the continued efforts of the New York State Commission for the Blind BEP.

Effective Date:

This bill would take effect on June 1, 2023.

Part S – Increase the State Excise Tax on Cigarettes

Purpose:

This bill would increase the excise tax on cigarettes sold in New York State by \$1.00 aimed to reduce the incidence of smoking, especially among young people.

Summary of Provisions and Statement in Support:

The current excise tax rate on a package of 20 cigarettes sold in New York State is \$4.35. This bill would increase this rate by \$1.00, for an excise tax rate of \$5.35 for each package of 20 cigarettes. The bill would also increase the existing use tax rate on cigarettes by the same amount. Finally, the bill would require that any tax due on account of the increased rate on any cigarettes possessed for sale in the State, as of the close of business on August 31, 2023, must be paid by November 20, 2023.

This bill aims to reduce the incidence of smoking, especially among young people.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget for New York to continue to lead the way for a Tobacco Free Generation. This action would reduce All Funds revenue by \$13 million in FY 2024 and \$22 million in the outyears. This does not include the NYC State Share reduction of \$2 million in FY 2024 and \$4 million in the outyears.

Effective Date:

This bill would take effect September 1, 2023 and would apply to all cigarettes possessed in the State by any person for sale and all cigarettes used in the State by any person on or after that date.

Part T – Revoke Cigarette and Tobacco Taxes Certificate of Registration for Inspection Refusal

Purpose:

This bill would amend the Tax Law to provide for the imposition of a civil penalty for refusal to comply with cigarette and tobacco inspections and strengthen the ability to prevent the sale of illegal cigarettes and tobacco products.

Summary of Provisions and Statement in Support:

The Tax Law currently authorizes the Department of Taxation and Finance (DTF) to conduct regulatory inspections of retail tobacco dealers, but it does not specifically address the consequences of refusal to allow a regulatory inspection. This bill would explicitly provide that a retail dealer who refuses an inspection would be subject to a one-year suspension of its certificate of registration to sell cigarettes and tobacco products. For a second such refusal within three years, the retail dealer's certificate of registration would be permanently revoked.

This bill would also establish penalties for inspection refusal by a retail dealer who does not possess a valid registration because it never obtained one or because its registration was suspended or revoked at the time of refusal. In such circumstances, the bill would set a penalty of up to \$5,000 for the first refusal and up to \$10,000 for a second refusal within three years.

Regulatory inspections are a critical tool in DTF's efforts to enforce New York's tobacco laws. By setting clear penalties for inspection refusals by registered – and unregistered – retail dealers, this bill would strengthen DTF's ability to prevent the sale of illegal cigarettes and tobacco products.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would preserve revenue by improving the DTF's ability to prevent the sale of illegal cigarette and tobacco products.

Effective Date:

This bill would take effect immediately.

Part U – Extend Reduced Transfer Tax Rates for Qualifying REITs for Three Years

Purpose:

This bill would extend for three years tax rate reductions for real estate investment trusts (REITs) under the New York State real estate transfer tax and the New York City real property transfer tax for conveyances.

Summary of Provisions and Statement in Support:

The Tax Law currently authorizes the Tax Department to provide for reduced rates to certain qualifying REITs. Currently, both the New York State and New York City real estate transfer taxes for REITs are set to expire on September 1, 2023. This bill extends, for an additional three years, such tax rates until September 1, 2026. Extending these provisions would maintain and encourage new investments in real estate across the State. These provisions have been routinely extended since 1999.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would continue providing incentives for REITs to invest in the State.

Effective Date:

This bill would take effect immediately.

Part V – Allow Department of Tax and Finance the Right to Appeal Tax Appeals Tribunal Decisions

Purpose:

This bill would provide the Department of Taxation and Finance (DTF) with the right to appeal adverse Tax Appeals Tribunal decisions.

Summary of Provisions and Statement in Support:

The Tax Appeals Tribunal is an independent body with the ability to cancel assessments, invalidate regulations and reverse prior decisions of the State Tax Commission. While a taxpayer may appeal an adverse decision of the Tribunal to a court, DTF may not. This presents a significant flaw in the statute: it denies DTF the right to seek judicial review of an adverse decision that it believes is contrary to the interests of the people of this State. Denying DTF the right to appeal contradicts the independent nature of the Tribunal and is inconsistent with the right to appeal afforded to other State agencies that are subject to independent administrative adjudicators. Massachusetts, New Jersey, Pennsylvania, and many other states with similar

independent administrative tax bodies, provide their tax administrator with the right to appeal the administrative tax body's decisions to a court.

This bill would allow DTF to petition the Appellate Division, Third Department, for review of Tax Appeals Tribunal decisions, as taxpayers can do now.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would align DTF's appeal rights with those afforded to other State agencies that are subject to independent administrative adjudicators.

Effective Date:

This bill would take effect immediately and apply to decisions and orders of the Tax Appeals Tribunal issued on or after that date.

Part W – Technical Correction to the Deposit Timeframe

Purpose:

This bill would clarify that monies deposited by the Department of Taxation and Finance (DTF) must be deposited within three business days, instead of calendar days, after receipt and would increase administrative efficiencies during peak filings periods.

Summary of Provisions and Statement in Support:

This bill would amend State Finance Law § 105 to clarify that DTF has three business days to deposit monies on account of the State. Under existing law, DTF is required to deposit monies received within three calendar days.

The proposed clarification to the deposit timeframe would increase DTF's administrative efficiencies and allow for limited staffing resources to be redeployed to other competing priorities during peak filing periods. This would be particularly beneficial when filing due dates fall near weekends and legal holidays.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would provide administrative efficiencies during monthly and annual peak filing periods.

Effective Date:

This bill would take effect immediately.

Part X – Authorize a Franchised Corporation’s Payment Structure to Fund the Belmont Redevelopment Project

Purpose:

This bill authorizes the New York Racing Association’s (NYRA) payment structure to fund the \$455 million Belmont Redevelopment Project. Upon completion of the redevelopment project at Belmont, racing at Aqueduct would cease, allowing that land to revert to the State and be utilized in a more beneficial manner.

Summary of Provisions and Statement in Support:

There is a franchise agreement between NYRA and New York until 2033. Under the agreement, NYRA operates thoroughbred racing tracks on State land at Aqueduct, Belmont, and Saratoga.

In addition to money received from wagers, NYRA also has other streams of revenue. Four percent of the net win from video lottery terminal machines located at Resorts World NYC and 1.3% of the net win from Nassau and Suffolk Off Track Betting video lottery machines are deposited with NYRA for their capital expenditures.

NYRA has requested authority to use its capital expenditure funds to finance a \$455M “New Belmont” plan. This plan includes renovating its turf tracks and creating access to its 45-acre infield. NYRA approximates the cost of this portion of the renovation to be \$71 million. In addition to new horseracing tracks, this renovation project would also provide Belmont with the ability to host community gatherings and other non-racing events.

NYRA would also demolish the current clubhouse and build a right-sized, modernized clubhouse. NYRA estimates the cost for this portion of the project to be about \$384M. The entire renovation project is expected to be completed within three years.

To assist NYRA in commencing this project, the State would finance the project through a capital appropriation, providing the upfront funding needed throughout the construction process. The Capital Plan assumes that a capital loan will be used to fund the project; however, the State does have the authorization to issue bonds to finance these costs if the need arises.

The capital loan is the most cost effective means of financing the renovation. This method significantly reduces the overall costs to NYRA. Prior to receiving any funds, NYRA must enter into a repayment agreement with the State. This agreement will provide that NYRA will pay the State \$25.8 million annually from its capital budget until the State is repaid in full. The cost of the entire project will be paid from the franchised corporation’s capital funds. While the State loans the franchisee money at the start, the franchisee will ultimately bear the full cost of the project.

In addition to the repayment agreement, NYRA will relinquish its leasehold interest of the property at Aqueduct upon the completion of the Belmont Redevelopment Project allowing it to revert to the State. The State would have access to over 100 acres of prime real estate located near major highways and JFK airport.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would establish the funding mechanism for the Belmont Redevelopment Project.

Effective Date:

This bill would take effect immediately.

Part Y – Eliminate Quick Draw Restrictions

Purpose:

This bill would eliminate certain restrictions on vendor locations selling Quick Draw tickets in order to increase revenue earned for education aid in the State.

Summary of Provisions and Statement in Support:

The sale of Quick Draw tickets is currently limited to only those facilities that are larger than 2,500 square feet. These restrictions were created arbitrarily and, in practice, they reduce the number of eligible license agents by half, substantially reducing the amount of earnings that would otherwise be generated by the game.

In addition to the floor size limitation, Quick Draw sales are also hampered by an increased age restriction on sales at locations where alcohol is sold. The law in New York requires a person to be 18 years of age to play New York lottery games, but individuals must be 21 years of age to play those games inside a facility that serves alcohol.

This bill would eliminate these undue restrictions, allowing New York to finally realize the full potential of this game.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would increase All Funds revenue by \$11 million in FY 2024 and \$22 million annually thereafter.

Effective Date:

This bill would take effect immediately.

Part Z – Relates to the Operation of Off-Track Betting Corporations

Purpose:

This bill addresses numerous issues related to the operation and management of certain off-track betting corporations.

Summary of Provisions and Statement in Support:

In FY 2023, an independent audit of the Catskill Off-Track Betting Corporation (OTB) finances determined that Catskill OTB cannot sustain its operations without the use of video lottery terminals or alternative sources of revenue. To achieve this, Catskill OTB would need legislative authorization to expand its sources of revenue or, in the alternative, to cease operations. This bill authorizes such wind down and closure.

Further, since a county located in the region of Catskill OTB may still want to participate in the off-track betting market, this bill establishes a procedure to allow an OTB to operate outside of its region under certain circumstances.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it improves off-track betting corporate management and increases operational efficiencies.

Effective Date:

This bill would take effect immediately.

Part AA – Extend Authorized Use of Capital Funds by a Certain Off-track Betting Corporation for One Year

Purpose:

This bill would extend for one additional year the authorized non-capital use of capital acquisition funds by the Capital Off-track Betting (OTB) corporation.

Summary of Provisions and Statement in Support:

Current law requires OTBs to set aside a portion of their revenue into a Capital Acquisition Fund (CAF) for the purpose of future capital investments. With advancements in technology to allow for mobile wagers, OTBs no longer need to construct brick and mortar establishments. This bill would allow Capital OTB to use up to \$440,000 of its CAF toward statutory obligations, payroll, and expenditures necessary to accept authorized wagers through March 31, 2024.

Prior to use of these funds, Capital OTB is required to submit an expenditure plan to the Gaming Commission which would determine whether access to the funds is needed and warranted.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would continue to allow Capital OTB to use a portion of its capital acquisition fund to make necessary payments.

Effective Date:

This bill would take effect immediately.

Part BB – Extend Pari-Mutuel Tax Rates and Simulcast Provisions for One Year

Purpose:

This bill would extend for one additional year various provisions of the Racing, Pari-Mutuel Wagering and Breeding Law (PML). This bill is necessary to maintain the current pari-mutuel wagering structure in New York State.

Summary of Provisions and Statement in Support:

This legislation would extend various expiring provisions throughout the PML for another year. Extending these provisions would maintain the pari-mutuel wagering and simulcasting structure that is currently in place in New York State. These provisions were extended numerous times since their original enactment, most recently in the FY 2023 Enacted Budget.

Budget Implications:

This bill is necessary to implement the FY 2024 Executive Budget because it would maintain the current pari-mutuel wagering structure in New York State.

Effective Date:

This bill would take effect immediately.

Part CC - Require State S Corporation Conformity with Federal Return

Purpose:

This bill would amend the Tax Law to require all federal S corporations be treated as S corporations for New York purposes unless the corporation is a qualified New York manufacturer and chooses New York C corporation status.

Summary of Provisions and Statement in Support:

Requiring conformity to federal S corporation status would simplify the New York tax filings of the corporation and shareholders, eliminate potential tax avoidance schemes, and align New York's treatment of S corporations with that of most other states. This bill would amend various provisions within the Tax Law to provide that all federal S corporations be treated as S corporations for New York tax purposes unless the corporation is a qualified New York manufacturer under Tax Law § 210(1)(a)(vi) and chooses New York C corporation status on its tax return. Additionally, this bill would preserve the ability of federal S corporations to receive the benefit of the qualified New York manufacturer rate available to C corporations.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2024 Executive Budget because it would increase All Funds revenue by \$15 million annually beginning in FY 2025.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2024.

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.