

STATE OF NEW YORK

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2009-2010 Regular Sessions

IN ASSEMBLY

June 11, 2009

Introduced by M. of A. FARRELL, SILVER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the administrative code of the city of New York, the business corporation law and the not-for-profit corporation law, in relation to bringing certain city tax laws into closer conformity with certain state tax laws; and to repeal certain provisions of the administrative code of the city of New York relating thereto

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

- 1 Section 1. Clause (A) of subparagraph 8 of paragraph (a) of subdivi-
 2 sion 3 of section 11-604 of the administrative code of the city of New
 3 York, as added by chapter 625 of the laws of 1996, is amended to read as
 4 follows:
 5 (A) For taxable years beginning on or after July first, nineteen
 6 hundred ninety-six and before January first, two thousand eleven, a
 7 manufacturing corporation may elect to determine its business allocation
 8 percentage by adding together the percentages determined under subpara-
 9 graphs one, two and three of this paragraph and an additional percentage
 10 equal to the percentage determined under subparagraph two of this para-
 11 graph, and dividing the result by the number of percentages so added
 12 together.
 13 § 2. Paragraph (a) of subdivision 3 of section 11-604 of the adminis-
 14 trative code of the city of New York is amended by adding a new subpara-
 15 graph 10 to read as follows:
 16 (10) Notwithstanding subparagraphs one through five of this paragraph,
 17 but subject to subparagraph eight of this paragraph, the business allo-
 18 cation percentage, to the extent that it is computed by reference to the
 19 percentages determined under subparagraphs one, two and three of this
 20 paragraph, shall be computed in the manner set forth in this subpara-
 21 graph.

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

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1 (A) For taxable years beginning in two thousand nine, the business
2 allocation percentage shall be determined by adding together the follow-
3 ing percentages:

4 (i) the product of thirty percent and the percentage determined under
5 subparagraph one of this paragraph,

6 (ii) the product of forty percent and the percentage determined under
7 subparagraph two of this paragraph, and

8 (iii) the product of thirty percent and the percentage determined
9 under subparagraph three of this paragraph.

10 (B) For taxable years beginning in two thousand ten, the business
11 allocation percentage shall be determined by adding together the follow-
12 ing percentages:

13 (i) the product of twenty-seven percent and the percentage determined
14 under subparagraph one of this paragraph,

15 (ii) the product of forty-six percent and the percentage determined
16 under subparagraph two of this paragraph, and

17 (iii) the product of twenty-seven percent and the percentage deter-
18 mined under subparagraph three of this paragraph.

19 (C) For taxable years beginning in two thousand eleven, the business
20 allocation percentage shall be determined by adding together the follow-
21 ing percentages:

22 (i) the product of twenty-three and one-half percent and the percent-
23 age determined under subparagraph one of this paragraph,

24 (ii) the product of fifty-three percent and the percentage determined
25 under subparagraph two of this paragraph, and

26 (iii) the product of twenty-three and one-half percent and the
27 percentage determined under subparagraph three of this paragraph.

28 (D) For taxable years beginning in two thousand twelve, the business
29 allocation percentage shall be determined by adding together the follow-
30 ing percentages:

31 (i) the product of twenty percent and the percentage determined under
32 subparagraph one of this paragraph,

33 (ii) the product of sixty percent and the percentage determined under
34 subparagraph two of this paragraph, and

35 (iii) the product of twenty percent and the percentage determined
36 under subparagraph three of this paragraph.

37 (E) For taxable years beginning in two thousand thirteen, the business
38 allocation percentage shall be determined by adding together the follow-
39 ing percentages:

40 (i) the product of sixteen and one-half percent and the percentage
41 determined under subparagraph one of this paragraph,

42 (ii) the product of sixty-seven percent and the percentage determined
43 under subparagraph two of this paragraph, and

44 (iii) the product of sixteen and one-half percent and the percentage
45 determined under subparagraph three of this paragraph.

46 (F) For taxable years beginning in two thousand fourteen, the business
47 allocation percentage shall be determined by adding together the follow-
48 ing percentages:

49 (i) the product of thirteen and one-half percent and the percentage
50 determined under subparagraph one of this paragraph,

51 (ii) the product of seventy-three percent and the percentage deter-
52 mined under subparagraph two of this paragraph, and

53 (iii) the product of thirteen and one-half percent and the percentage
54 determined under subparagraph three of this paragraph.

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1 (G) For taxable years beginning in two thousand fifteen, the business
2 allocation percentage shall be determined by adding together the follow-
3 ing percentages:

4 (i) the product of ten percent and the percentage determined under
5 subparagraph one of this paragraph,

6 (ii) the product of eighty percent and the percentage determined under
7 subparagraph two of this paragraph, and

8 (iii) the product of ten percent and the percentage determined under
9 subparagraph three of this paragraph.

10 (H) For taxable years beginning in two thousand sixteen, the business
11 allocation percentage shall be determined by adding together the follow-
12 ing percentages:

13 (i) the product of six and one-half percent and the percentage deter-
14 mined under subparagraph one of this paragraph,

15 (ii) the product of eighty-seven percent and the percentage determined
16 under subparagraph two of this paragraph, and

17 (iii) the product of six and one-half percent and the percentage
18 determined under subparagraph three of this paragraph.

19 (I) For taxable years beginning in two thousand seventeen, the busi-
20 ness allocation percentage shall be determined by adding together the
21 following percentages:

22 (i) the product of three and one-half percent and the percentage
23 determined under subparagraph one of this paragraph,

24 (ii) the product of ninety-three percent and the percentage determined
25 under subparagraph two of this paragraph, and

26 (iii) the product of three and one-half percent and the percentage
27 determined under subparagraph three of this paragraph.

28 (J) For taxable years beginning after two thousand seventeen, the
29 business allocation percentage shall be the percentage determined under
30 subparagraph two of this paragraph.

31 (K) The commissioner shall promulgate rules necessary to implement the
32 provisions of this subparagraph under such circumstances where any of
33 the percentages to be determined under subparagraph one, two or three of
34 this paragraph cannot be determined because the taxpayer has no proper-
35 ty, receipts or wages within or without the city.

36 § 3. Paragraph 1 of subdivision (g) of section 11-508 of the adminis-
37 trative code of the city of New York, as added by chapter 625 of the
38 laws of 1996, is amended to read as follows:

39 (1) For taxable years beginning on or after July first, nineteen
40 hundred ninety-six and before January first, two thousand eleven, a
41 manufacturing business may elect to determine its business allocation
42 percentage by adding together the percentages determined under para-
43 graphs one, two and three of subdivision (c) of this section and an
44 additional percentage equal to the percentage determined under paragraph
45 three of subdivision (c) of this section, and dividing the result by the
46 number of percentages so added together.

47 § 4. Section 11-508 of the administrative code of the city of New York
48 is amended by adding a new subdivision (i) to read as follows:

49 (i) Notwithstanding subdivision (c) of this section, but subject to
50 subdivision (g) of this section, the business allocation percentage
51 shall be computed in the manner set forth in this subdivision.

52 (1) For taxable years beginning in two thousand nine, the business
53 allocation percentage shall be determined by adding together the follow-
54 ing percentages:

55 (A) the product of thirty percent and the percentage determined under
56 paragraph one of subdivision (c) of this section,

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1 (B) the product of thirty percent and the percentage determined under
2 paragraph two of subdivision (c) of this section, and

3 (C) the product of forty percent and the percentage determined under
4 paragraph three of subdivision (c) of this section.

5 (2) For taxable years beginning in two thousand ten, the business
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (A) the product of twenty-seven percent and the percentage determined
9 under paragraph one of subdivision (c) of this section,

10 (B) the product of twenty-seven percent and the percentage determined
11 under paragraph two of subdivision (c) of this section, and

12 (C) the product of forty-six percent and the percentage determined
13 under paragraph three of subdivision (c) of this section.

14 (3) For taxable years beginning in two thousand eleven, the business
15 allocation percentage shall be determined by adding together the follow-
16 ing percentages:

17 (A) the product of twenty-three and one-half percent and the percent-
18 age determined under paragraph one of subdivision (c) of this section,

19 (B) the product of twenty-three and one-half percent and the percent-
20 age determined under paragraph two of subdivision (c) of this section,
21 and

22 (C) the product of fifty-three percent and the percentage determined
23 under paragraph three of subdivision (c) of this section.

24 (4) For taxable years beginning in two thousand twelve, the business
25 allocation percentage shall be determined by adding together the follow-
26 ing percentages:

27 (A) the product of twenty percent and the percentage determined under
28 paragraph one of subdivision (c) of this section,

29 (B) the product of twenty percent and the percentage determined under
30 paragraph two of subdivision (c) of this section, and

31 (C) the product of sixty percent and the percentage determined under
32 paragraph three of subdivision (c) of this section.

33 (5) For taxable years beginning in two thousand thirteen, the business
34 allocation percentage shall be determined by adding together the follow-
35 ing percentages:

36 (A) the product of sixteen and one-half percent and the percentage
37 determined under paragraph one of subdivision (c) of this section,

38 (B) the product of sixteen and one-half percent and the percentage
39 determined under paragraph two of subdivision (c) of this section, and

40 (C) the product of sixty-seven percent and the percentage determined
41 under paragraph three of subdivision (c) of this section.

42 (6) For taxable years beginning in two thousand fourteen, the business
43 allocation percentage shall be determined by adding together the follow-
44 ing percentages:

45 (A) the product of thirteen and one-half percent and the percentage
46 determined under paragraph one of subdivision (c) of this section,

47 (B) the product of thirteen and one-half percent and the percentage
48 determined under paragraph two of subdivision (c) of this section, and

49 (C) the product of seventy-three percent and the percentage determined
50 under paragraph three of subdivision (c) of this section.

51 (7) For taxable years beginning in two thousand fifteen, the business
52 allocation percentage shall be determined by adding together the follow-
53 ing percentages:

54 (A) the product of ten percent and the percentage determined under
55 paragraph one of subdivision (c) of this section,

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1 (B) the product of ten percent and the percentage determined under
2 paragraph two of subdivision (c) of this section, and

3 (C) the product of eighty percent and the percentage determined under
4 paragraph three of subdivision (c) of this section.

5 (8) For taxable years beginning in two thousand sixteen, the business
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (A) the product of six and one-half percent and the percentage deter-
9 mined under paragraph one of subdivision (c) of this section,

10 (B) the product of six and one-half percent and the percentage deter-
11 mined under paragraph two of subdivision (c) of this section, and

12 (C) the product of eighty-seven percent and the percentage determined
13 under paragraph three of subdivision (c) of this section.

14 (9) For taxable years beginning in two thousand seventeen, the busi-
15 ness allocation percentage shall be determined by adding together the
16 following percentages:

17 (A) the product of three and one-half percent and the percentage
18 determined under paragraph one of subdivision (c) of this section,

19 (B) the product of three and one-half percent and the percentage
20 determined under paragraph two of subdivision (c) of this section, and

21 (C) the product of ninety-three percent and the percentage determined
22 under paragraph three of subdivision (c) of this section.

23 (10) For taxable years beginning after two thousand seventeen, the
24 business allocation percentage shall be the percentage determined under
25 paragraph three of subdivision (c) of this section.

26 (11) The commissioner shall promulgate rules necessary to implement
27 the provisions of this subdivision under such circumstances where any of
28 the percentages to be determined under paragraph one, two or three of
29 subdivision (c) of this section cannot be determined because the taxpay-
30 er has no property, payroll or gross receipts from sales or services
31 within or without the city.

32 § 5. Subdivision (b) of section 11-642 of the administrative code of
33 the city of New York is amended by adding a new paragraph 1-a to read as
34 follows:

35 (1-a) Notwithstanding the provisions of paragraph one of this subdivi-
36 sion, each banking corporation described in paragraph nine of subdivi-
37 sion (a) of section 11-640 of this part subject to the tax imposed by
38 this part that substantially provides management, administrative or
39 distribution services to an investment company, as such terms are
40 defined in subparagraph (G) of paragraph two of subdivision (a) of this
41 section, shall determine the portion of its entire net income derived
42 from business carried on within the city by multiplying such income by
43 an income allocation percentage obtained as follows:

44 (A) For taxable years beginning in two thousand nine, the income allo-
45 cation percentage shall be determined by adding together the following
46 percentages:

47 (i) the product of eighteen percent and the percentage determined
48 under paragraph one of subdivision (a) of this section,

49 (ii) the product of forty-six percent and the percentage determined
50 under paragraph two of subdivision (a) of this section, and

51 (iii) the product of thirty-six percent and the percentage determined
52 under paragraph three of subdivision (a) of this section.

53 (B) For taxable years beginning in two thousand ten, the income allo-
54 cation percentage shall be determined by adding together the following
55 percentages:

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- 1 (i) the product of sixteen percent and the percentage determined under
2 paragraph one of subdivision (a) of this section,
3 (ii) the product of fifty-two percent and the percentage determined
4 under paragraph two of subdivision (a) of this section, and
5 (iii) the product of thirty-two percent and the percentage determined
6 under paragraph three of subdivision (a) of this section.
7 (C) For taxable years beginning in two thousand eleven, the income
8 allocation percentage shall be determined by adding together the follow-
9 ing percentages:
10 (i) the product of fourteen percent and the percentage determined
11 under paragraph one of subdivision (a) of this section,
12 (ii) the product of fifty-eight percent and the percentage determined
13 under paragraph two of subdivision (a) of this section, and
14 (iii) the product of twenty-eight percent and the percentage deter-
15 mined under paragraph three of subdivision (a) of this section.
16 (D) For taxable years beginning in two thousand twelve, the income
17 allocation percentage shall be determined by adding together the follow-
18 ing percentages:
19 (i) the product of twelve percent and the percentage determined under
20 paragraph one of subdivision (a) of this section,
21 (ii) the product of sixty-four percent and the percentage determined
22 under paragraph two of subdivision (a) of this section, and
23 (iii) the product of twenty-four percent and the percentage determined
24 under paragraph three of subdivision (a) of this section.
25 (E) For taxable years beginning in two thousand thirteen, the income
26 allocation percentage shall be determined by adding together the follow-
27 ing percentages:
28 (i) the product of ten percent and the percentage determined under
29 paragraph one of subdivision (a) of this section,
30 (ii) the product of seventy percent and the percentage determined
31 under paragraph two of subdivision (a) of this section, and
32 (iii) the product of twenty percent and the percentage determined
33 under paragraph three of subdivision (a) of this section.
34 (F) For taxable years beginning in two thousand fourteen, the income
35 allocation percentage shall be determined by adding together the follow-
36 ing percentages:
37 (i) the product of eight percent and the percentage determined under
38 subparagraph one of subdivision (a) of this section,
39 (ii) the product of seventy-six percent and the percentage determined
40 under paragraph two of subdivision (a) of this section, and
41 (iii) the product of sixteen percent and the percentage determined
42 under paragraph three of subdivision (a) of this section.
43 (G) For taxable years beginning in two thousand fifteen, the income
44 allocation percentage shall be determined by adding together the follow-
45 ing percentages:
46 (i) the product of six percent and the percentage determined under
47 paragraph one of subdivision (a) of this section,
48 (ii) the product of eighty-two percent and the percentage determined
49 under paragraph two of subdivision (a) of this section, and
50 (iii) the product of twelve percent and the percentage determined
51 under paragraph three of subdivision (a) of this section.
52 (H) For taxable years beginning in two thousand sixteen, the income
53 allocation percentage shall be determined by adding together the follow-
54 ing percentages:
55 (i) the product of four percent and the percentage determined under
56 paragraph one of subdivision (a) of this section,

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1 (ii) the product of eighty-eight percent and the percentage determined
2 under paragraph two of subdivision (a) of this section, and

3 (iii) the product of eight percent and the percentage determined under
4 paragraph three of subdivision (a) of this section.

5 (I) For taxable years beginning in two thousand seventeen, the income
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (i) the product of two percent and the percentage determined under
9 paragraph one of subdivision (a) of this section,

10 (ii) the product of ninety-four percent and the percentage determined
11 under paragraph two of subdivision (a) of this section, and

12 (iii) the product of four percent and the percentage determined under
13 paragraph three of subdivision (a) of this section.

14 (J) For taxable years beginning after two thousand seventeen, the
15 income allocation percentage shall be the percentage determined under
16 paragraph two of subdivision (a) of this section.

17 (K) The commissioner shall promulgate rules necessary to implement the
18 provisions of this paragraph under such circumstances where any of the
19 percentages to be determined under paragraph one, two or three of subdi-
20 vision (a) of this section cannot be determined because the taxpayer has
21 no compensation, receipts or deposits within or without the city.

22 § 6. Subdivision 9 of section 11-601 of the administrative code of the
23 city of New York, as renumbered by chapter 808 of the laws of 1992, is
24 renumbered subdivision 14 and four new subdivisions 10, 11, 12 and 13
25 are added to read as follows:

26 10. "REIT" means a real estate investment trust as defined in section
27 eight hundred fifty-six of the internal revenue code.

28 11. "RIC" means a regulated investment company as defined in section
29 eight hundred fifty-one of the internal revenue code.

30 12. "Captive REIT" means a REIT (a) that is not regularly traded on an
31 established securities market, and (b) more than fifty percent of the
32 voting stock of which is owned or controlled, directly or indirectly, by
33 a single corporation that is not exempt from federal income tax and is
34 not a REIT. Any voting stock in a REIT that is held in a segregated
35 asset account of a life insurance corporation (as described in section
36 eight hundred seventeen of the internal revenue code) shall not be taken
37 into account for purposes of determining whether a REIT is a captive
38 REIT.

39 13. "Captive RIC" means a RIC (a) that is not regularly traded on an
40 established securities market, and (b) more than fifty percent of the
41 voting stock of which is owned or controlled, directly or indirectly, by
42 a single corporation that is not exempt from federal income tax and is
43 not a RIC. Any voting stock in a RIC that is held in a segregated asset
44 account of a life insurance corporation (as described in section eight
45 hundred seventeen of the internal revenue code) shall not be taken into
46 account for purposes of determining whether a RIC is a captive RIC.

47 § 7. Paragraph (a) of subdivision 4 of section 11-603 of the adminis-
48 trative code of the city of New York, as amended by section 3 of part C
49 of chapter 93 of the laws of 2002, is amended to read as follows:

50 (a) Corporations subject to tax under subchapter three of this chapter
51 or under chapter eleven of this title, any trust company organized under
52 a law of this state all of the stock of which is owned by not less than
53 twenty savings banks organized under a law of this state, bank holding
54 companies filing a combined return in accordance with subdivision (f) of
55 section 11-646 of this chapter, a captive REIT or a captive RIC filing a
56 combined return under subdivision (f) of section 11-646 of this chapter,

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1 housing companies organized and operating pursuant to the provisions of
2 article two of the private housing finance law, housing development fund
3 companies organized pursuant to the provisions of article eleven of the
4 private housing finance law, corporations described in section three of
5 the tax law, a corporation principally engaged in the operation of
6 marine vessels whose activities in the city are limited exclusively to
7 the use of property in interstate or foreign commerce, provided, howev-
8 er, such a corporation will not be subject to tax under this subchapter
9 solely because it maintains an office in the city, or employs capital in
10 the city, in connection with such use of property, a corporation princi-
11 pally engaged in the conduct of a ferry business and operating between
12 any of the boroughs of the city under a lease granted by the city and a
13 corporation principally engaged in the conduct of an aviation, steam-
14 boat, ferry or navigation business, or two or more of such businesses,
15 all of the capital stock of which is owned by a municipal corporation of
16 this state, shall not be subject to tax under this subchapter; provided,
17 however, that any corporation, other than (1) a utility corporation
18 subject to the supervision of the state department of public service,
19 and (2) for taxable years beginning on or after August first, two thou-
20 sand two, a utility as defined in subdivision six of section 11-1101 of
21 this title, which is subject to tax under chapter eleven of this title
22 as a vendor of utility services shall be subject to tax under this
23 subchapter, but in computing the tax imposed by this section pursuant to
24 the provisions of clause one of subparagraph (a) of paragraph A of
25 subdivision one of section 11-604, business income allocated to the city
26 pursuant to paragraph (a) of subdivision three of such section shall be
27 reduced by the percentage which such corporation's gross operating
28 income subject to tax under chapter eleven of this title is of its gross
29 operating income.

30 § 8. Subdivisions 7 and 8 of section 11-603 of the administrative code
31 of the city of New York, as amended by chapter 525 of the laws of 1988,
32 are amended to read as follows:

33 7. For any taxable year of a real estate investment trust as defined
34 in section eight hundred fifty-six of the internal revenue code in which
35 such trust is subject to federal income taxation under section eight
36 hundred fifty-seven of such code, such trust shall be subject to a tax
37 computed under either clause one of subparagraph (a) of paragraph (a)
38 A of subdivision one of section 11-604 of this subchapter with respect
39 to its entire net income, or clause four, whichever is greater, and
40 shall not be subject to any tax under subchapter three of this chapter,
41 except for a captive REIT required to file a combined return under
42 subdivision (f) of section 11-646 of this chapter. In the case of such
43 a ~~trust~~ real estate investment trust, including a captive REIT as
44 defined in section 11-601 of this chapter, the term "entire net income"
45 means "real estate investment trust taxable income" as defined in para-
46 graph two of subdivision (b) of section eight hundred fifty-seven (as
47 modified by section eight hundred fifty-eight) of the internal revenue
48 code plus the amount taxable under paragraph three of subdivision (b) of
49 section eight hundred fifty-seven of such code, subject to the modifica-
50 tion required by subdivision eight of section 11-602 of this subchapter
51 (other than the modification required by clause two of paragraph (a) and
52 by paragraph (f) thereof) including the modifications required by para-
53 graphs (d) and (e) of subdivision three of section 11-604 of this
54 subchapter.

55 8. For any taxable year beginning on or after January first, nineteen
56 hundred eighty-one of a regulated investment company, as defined in

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1 section eight hundred fifty-one of the internal revenue code, in which
2 such company is subject to federal income taxation under section eight
3 hundred fifty-two of such code, such company shall be subject to a tax
4 computed under clause one or four of subparagraph (a) of paragraph E of
5 subdivision one of section 11-604 of this subchapter, whichever is
6 greater, and such company shall not be subject to any tax under subchap-
7 ter three of this chapter, except for a captive RIC required to file a
8 combined return under subdivision (f) of section 11-646 of this chapter.
9 [The] In the case of such a regulated investment company, including a
10 captive RIC as defined in section 11-601 of this chapter, the term
11 "entire net income" used in subdivision one of this section means
12 "investment company taxable income" as defined in paragraph two of
13 subdivision (b) of section eight hundred fifty-two, as modified by
14 section eight hundred fifty-five, of the internal revenue code plus the
15 amount taxable under paragraph three of subdivision (b) of section eight
16 hundred fifty-two of such code subject to the modifications required by
17 subdivision eight of section 11-602 of this subchapter, other than the
18 modification required by clause two of paragraph (a) and by paragraph
19 (f) thereof, including the modification required by paragraphs (d) and
20 (e) of subdivision three of section 11-604 of this subchapter.

21 § 9. Subdivision 4 of section 11-605 of the administrative code of the
22 city of New York, as amended by chapter 170 of the laws of 1994, is
23 amended to read as follows:

24 4. ~~[In the discretion of the commissioner of finance, any]~~ (a) Any
25 taxpayer which owns or controls either directly or indirectly substan-
26 tially all the capital stock of one or more other corporations, or
27 substantially all the capital stock of which is owned or controlled
28 either directly or indirectly by one or more other corporations or by
29 interests which own or control either directly or indirectly substan-
30 tially all the capital stock of one or more other corporations, ~~[may be~~
31 ~~required or permitted to make a report on a combined basis covering any~~
32 ~~such other corporations and setting]~~ (hereinafter referred to in this
33 paragraph as "related corporations"), shall make a combined report
34 covering any related corporations if there are substantial intercorpo-
35 rate transactions among the related corporations, regardless of the
36 transfer price for such intercorporate transactions. It is not necessary
37 that there be substantial intercorporate transactions between any one
38 corporation and every other related corporation. It is necessary, howev-
39 er, that there be substantial intercorporate transactions between the
40 taxpayer and a related corporation or, collectively, a group of such
41 related corporations. The report shall set forth such information as
42 the commissioner of finance may require~~[, provided, however, that no]~~.

43 In determining whether there are substantial intercorporate trans-
44 actions, the commissioner shall consider and evaluate all activities and
45 transactions of the taxpayer and its related corporations. Activities
46 and transactions that will be considered include, but are not limited
47 to: manufacturing, acquiring goods or property, or performing services,
48 for related corporations; selling goods acquired from related corpo-
49 rations; financing sales of related corporations; performing related
50 customer services using common facilities and employees for related
51 corporations; incurring expenses that benefit, directly or indirectly,
52 one or more related corporations; and transferring assets, including
53 such assets as accounts receivable, patents or trademarks from one or
54 more related corporations.

55 (1) No taxpayer may be permitted to make a report on a combined basis
56 covering any such other corporations where ~~[(a)]~~ such taxpayer or any

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1 such other corporation allocates in accordance with clause (A) of
2 subparagraph six of paragraph (a) of subdivision three of section 11-604
3 of this subchapter and such taxpayer or any such other corporation does
4 not so allocate[~~, or (b)~~].

5 (2) No taxpayer may be permitted to make a report on a combined basis
6 covering any such other corporations where such taxpayer or any such
7 other corporation allocates in accordance with subparagraph seven of
8 paragraph (a) of subdivision three of section 11-604 of this subchapter
9 and such taxpayer or any such other corporation does not so allocate[~~+~~
10 ~~provided, further that~~].

11 (3) Except as provided in the first undesignated paragraph of this
12 subdivision, no combined report covering any corporation not a taxpayer
13 shall be required unless the commissioner of finance deems such a report
14 necessary, because of inter-company transactions or some agreement,
15 understanding, arrangement or transaction referred to in subdivision
16 five of this section, in order properly to reflect the tax liability
17 under this subchapter [~~and provided, further, that a~~].

18 (4) A corporation [~~which cloaks the application of section nine~~
19 ~~hundred thirty six of the internal revenue code with respect to a~~
20 ~~particular federal taxable year] organized under the laws of a country
21 other than the United States shall not[~~, in the case of a taxpayer,~~] be
22 required or permitted to make a report on a combined basis [~~with respect~~
23 ~~to a taxable year under this subchapter which is the same as such federal~~
24 ~~taxable year (or a portion thereof), and, in the case of a corpo-~~
25 ~~ration which is not a taxpayer, no combined report covering such corpo-~~
26 ~~ration with respect to such taxable year under this subchapter shall be~~
27 ~~required or permitted~~].~~

28 (5) (i) For purposes of this subparagraph, the term "closest control-
29 ling stockholder" means the corporation that indirectly owns or controls
30 over fifty percent of the voting stock of a captive REIT or captive RIC,
31 is subject to tax under this subchapter or otherwise required to be
32 included in a combined report under this subchapter, and is the fewest
33 tiers of corporations away in the ownership structure from the captive
34 REIT or captive RIC. The commissioner is authorized to prescribe by
35 regulation or published guidance the criteria for determining the clos-
36 est controlling stockholder.

37 (ii) A captive REIT or a captive RIC must be included in a combined
38 report with the corporation that directly owns or controls over fifty
39 percent of the voting stock of the captive REIT or captive RIC if that
40 corporation is subject to tax or required to be included in a combined
41 report under this subchapter.

42 (iii) If over fifty percent of the voting stock of a captive REIT or
43 captive RIC is not directly owned or controlled by a corporation that is
44 subject to tax or required to be included in a combined report under
45 this subchapter, then the captive REIT or captive RIC must be included
46 in a combined report with the corporation that is the closest control-
47 ling stockholder of the captive REIT or captive RIC. If the closest
48 controlling stockholder of the captive REIT or captive RIC is subject to
49 tax or otherwise required to be included in a combined report under this
50 subchapter, then the captive REIT or captive RIC must be included in a
51 combined report under this subchapter.

52 (iv) If the corporation that directly owns or controls the voting
53 stock of the captive REIT or captive RIC is described in subparagraph
54 one, two or four of this paragraph as a corporation not permitted to
55 make a combined report, then the provisions in clause (iii) of this
56 subparagraph must be applied to determine the corporation in whose

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1 combined report the captive REIT or captive RIC should be included. If,
2 under clause (iii) of this subparagraph, the corporation that is the
3 closest controlling stockholder of the captive REIT or captive RIC is
4 described in subparagraph one, two or four of this paragraph as a corpo-
5 ration not permitted to make a combined report, then that corporation is
6 deemed to not be in the ownership structure of the captive REIT or
7 captive RIC, and the closest controlling stockholder will be determined
8 without regard to that corporation.

9 (v) If a captive REIT owns the stock of a qualified REIT subsidiary
10 (as defined in paragraph two of subsection (i) of section eight hundred
11 fifty-six of the internal revenue code), then the qualified REIT subsid-
12 iary must be included in a combined report with the captive REIT.

13 (vi) If a captive REIT or a captive RIC is required under this subpar-
14 agraph to be included in a combined report with another corporation, and
15 that other corporation is also required to be included in a combined
16 report with another related corporation or corporations under this para-
17 graph, then the captive REIT or the captive RIC must be included in that
18 combined report with those corporations.

19 (vii) If a captive REIT or a captive RIC is not required to be
20 included in a combined report with another corporation under clause (ii)
21 or (iii) of this subparagraph, or in a combined return under the
22 provisions of subparagraph (v) of paragraph two of subdivision (f) of
23 section 11-646 of this chapter, then the captive REIT or captive RIC is
24 subject to the opening provisions of this paragraph and the provisions
25 of subparagraph three of this paragraph. The captive REIT or captive RIC
26 must be included in a combined report under this subchapter with another
27 corporation if either the substantial intercorporate transactions
28 requirement in the opening provisions of this paragraph or the inter-
29 company transactions or agreement, understanding, arrangement or trans-
30 action requirement of subparagraph three of this paragraph is satisfied
31 and more than fifty percent of the voting stock of the captive REIT or
32 the captive RIC and substantially all of the capital stock of that other
33 corporation are owned and controlled, directly or indirectly, by the
34 same corporation.

35 (b) (1) (i) In the case of a combined report the tax shall be measured
36 by the combined entire net income or combined capital[~~o~~] of all the
37 corporations included in the report, including any captive REIT or
38 captive RIC; provided, however, in no event shall the tax measured by
39 combined capital exceed the limitation provided for in paragraph F of
40 subdivision one of section 11-604 of this subchapter.

41 (ii) In the case of a captive REIT or captive RIC required under this
42 subdivision to be included in a combined report, entire net income must
43 be computed as required under subdivision seven (in the case of a
44 captive REIT) or subdivision eight (in the case of a captive RIC) of
45 section 11-603 of this chapter. However, the deduction under the inter-
46 nal revenue code for dividends paid by the captive REIT or captive RIC
47 to any member of the affiliated group that includes the corporation that
48 directly or indirectly owns over fifty percent of the voting stock of
49 the captive REIT or captive RIC shall not be allowed for taxable years
50 beginning on or after January first, two thousand nine. The term "affil-
51 iated group" means "affiliated group" as defined in section fifteen
52 hundred four of the internal revenue code, but without regard to the
53 exceptions provided for in subsection (b) of that section.

54 (2) In computing combined entire net income intercorporate dividends
55 shall be eliminated, in computing combined business and investment capi-
56 tal intercorporate stock holdings and intercorporate bills, notes and

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1 accounts receivable and payable and other intercorporate indebtedness
2 shall be eliminated and in computing combined subsidiary capital inter-
3 corporate stockholdings shall be eliminated.

4 § 10. Subdivision (d) of section 11-640 of the administrative code of
5 the city of New York, as amended by chapter 298 of the laws of 1985, is
6 amended to read as follows:

7 (d) Corporations taxable under subchapter two. Notwithstanding the
8 provisions of this part, all corporations of classes now or heretofore
9 taxable under subchapter two of this chapter shall continue to be taxa-
10 ble under subchapter two, except: (1) corporations organized under arti-
11 cle five-a of the banking law; (2) corporations subject to article
12 three-A of the banking law, or registered under the federal bank holding
13 company act of nineteen hundred fifty-six, as amended, or registered as
14 a savings and loan holding company (but excluding a diversified savings
15 and loan holding company) under the federal national housing act, as
16 amended, which make a combined return under the provisions of subdivi-
17 sion (f) of section 11-646; ~~and~~ (3) banking corporations described in
18 paragraph nine of subdivision (a) of section 11-640; and (4) any captive
19 REIT or captive RIC that is required to be included in a combined return
20 under the provisions of section 11-646 of this subchapter. Provided,
21 however, that a corporation described in paragraph three of this subdivi-
22 sion which was subject to the tax imposed by subchapter two of this
23 chapter for its taxable year ending during nineteen hundred eighty-four
24 may, on or before the due date for filing its return (determined with
25 regard to extensions) for its taxable year ending during nineteen
26 hundred eighty-five, make a one time election to continue to be taxable
27 under such subchapter two. Such election shall continue to be in effect
28 until revoked by the taxpayer. In no event shall such election or revo-
29 cation be for a part of a taxable year.

30 § 11. Subdivision (g) of section 11-640 of the administrative code of
31 the city of New York is amended by adding a new paragraph 4 to read as
32 follows:

33 (4) The provisions of this subdivision shall not apply to a captive
34 REIT or a captive RIC.

35 § 12. Subparagraph (ii) of paragraph 11 of subdivision (e) of section
36 11-641 of the administrative code of the city of New York, as amended by
37 chapter 170 of the laws of 1994, is amended to read as follows:

38 (ii) sixty percent of dividend income from subsidiary capital, except
39 as provided in paragraph 16 of this subdivision, and

40 § 13. Subdivision (e) of section 11-641 of the administrative code of
41 the city of New York is amended by adding a new paragraph 16 to read as
42 follows:

43 (16) one hundred percent of dividend income from subsidiary capital
44 received during the taxable year if that dividend income is directly
45 attributable to a dividend from a captive REIT or captive RIC for which
46 the captive REIT or captive RIC claimed a federal dividends paid
47 deduction and that captive REIT or captive RIC is included in a combined
48 report or return under subchapter two or part four of subchapter three
49 of this chapter.

50 § 14. Paragraph 2 of subdivision (f) of section 11-646 of the adminis-
51 trative code of the city of New York is amended by adding a new subpara-
52 graph (iv) to read as follows:

53 (iv) (A) For purposes of this subparagraph, the term "closest control-
54 ling stockholder" means the corporation that indirectly owns or controls
55 over fifty percent of the voting stock of a captive REIT or captive RIC,
56 is subject to tax under this subchapter or otherwise required to be

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1 included in a combined return under this chapter and is the fewest tiers
2 of corporations away in the ownership structure from the captive REIT or
3 captive RIC. The commissioner is authorized to prescribe by regulation
4 or published guidance the criteria for determining the closest control-
5 ling stockholder.

6 (B) A captive REIT or a captive RIC must be included in a combined
7 return with the banking corporation or bank holding company that direct-
8 ly owns or controls over fifty percent of the voting stock of the
9 captive REIT or captive RIC if that banking corporation or bank holding
10 company is subject to tax or required to be included in a combined
11 return under this subchapter.

12 (C) If over fifty percent of the voting stock of a captive REIT or
13 captive RIC is not directly owned or controlled by a banking corporation
14 or bank holding company that is subject to tax or required to be
15 included in a combined return under this subchapter, then the captive
16 REIT or captive RIC must be included in a combined return with the
17 corporation that is the closest controlling stockholder of the captive
18 REIT or captive RIC. If the closest controlling stockholder of the
19 captive REIT or captive RIC is a banking corporation or bank holding
20 company that is subject to tax or otherwise required to be included in a
21 combined return under this subchapter, then the captive REIT or captive
22 RIC must be included in a combined return under this subchapter.

23 (D) If the corporation which directly owns or controls the voting
24 stock of the captive REIT or captive RIC is described in subparagraph
25 (ii) of paragraph four of this subdivision as a corporation not permit-
26 ted to make a combined return, then the provisions in clause (C) of this
27 subparagraph must be applied to determine the corporation in whose
28 combined return the captive REIT or captive RIC should be included. If,
29 under clause (C) of this subparagraph, the corporation that is the clos-
30 est controlling stockholder of the captive REIT or captive RIC is
31 described in subparagraph (ii) or (iv) of paragraph four of this subdivi-
32 vision as a corporation not permitted to make a combined return, then
33 that corporation is deemed to not be in the ownership structure of the
34 captive REIT or captive RIC, and the closest controlling stockholder
35 will be determined without regard to that corporation.

36 (E) If a captive REIT owns the stock of a qualified REIT subsidiary
37 (as defined in paragraph two of subsection (i) of section eight hundred
38 fifty-six of the internal revenue code), then the qualified REIT subsid-
39 iary must be included in any combined return required to be made by the
40 captive REIT that owns its stock.

41 (F) If a captive REIT or a captive RIC is required under this subpara-
42 graph to be included in a combined return with another corporation, and
43 that other corporation is required to be included in a combined return
44 with another corporation under other provisions of this subdivision, the
45 captive REIT or captive RIC must be included in that combined return
46 with those corporations.

47 (G) If the banking corporation or bank holding company that directly
48 or indirectly owns or controls over fifty percent of the voting stock of
49 the captive REIT or captive RIC and is the closest controlling stock-
50 holder of the captive REIT or captive RIC is a member of an affiliated
51 group (1) that does not include any corporation that is engaged in a
52 business that a subsidiary of a bank holding company would not be
53 permitted to engage in, unless such business is de minimis, and (2)
54 whose members own assets the combined average value of which does not
55 exceed eight billion dollars, then the captive REIT or captive RIC must
56 not be included in a combined return under this subchapter. In that

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1 instance, the captive REIT or captive RIC is subject to the provisions
2 of subdivision seven or eight of section 11-603 of this chapter. The
3 term "affiliated group" means "affiliated group" as defined in section
4 fifteen hundred four of the internal revenue code, but without regard to
5 the exceptions provided for in subsection (b) of that section.

6 § 15. Paragraph 3 of subdivision (f) of section 11-646 of the adminis-
7 trative code of the city of New York, as added by chapter 298 of the
8 laws of 1985, is amended to read as follows:

9 (3) (i) In the case of a combined return, the tax shall be measured by
10 the combined entire net income, combined alternative entire net income
11 or combined assets of all the corporations included in the return,
12 including any captive REIT or captive RIC. The allocation percentage
13 shall be computed based on the combined factors with respect to all the
14 corporations included in the combined return. In computing combined
15 entire net income and alternative entire net income, intercorporate
16 dividends and all other intercorporate transactions shall be eliminated,
17 and in computing combined assets, intercorporate stockholdings and
18 intercorporate bills, notes and accounts receivable and payable and
19 other intercorporate indebtedness shall be eliminated.

20 (ii) In the case of a captive REIT required under this subdivision to
21 be included in a combined return, "entire net income" means "real estate
22 investment trust taxable income" as defined in paragraph two of subdivi-
23 sion (b) of section eight hundred fifty-seven (as modified by section
24 eight hundred fifty-eight) of the internal revenue code, plus the amount
25 taxable under paragraph three of subdivision (b) of section eight
26 hundred fifty-seven of that code, subject to the modifications required
27 by section 11-641 of this chapter. In the case of a captive RIC required
28 under this subdivision to be included in a combined return, "entire net
29 income" means "investment company taxable income" as defined in para-
30 graph two of subdivision (b) of section eight hundred fifty-two (as
31 modified by section eight hundred fifty-five) of the internal revenue
32 code, plus the amount taxable under paragraph three of subdivision (b)
33 of section eight hundred fifty-two of that code, subject to the modifi-
34 cations required by section 11-641 of this chapter. However, the
35 deduction under the internal revenue code for dividends paid by the
36 captive REIT or captive RIC to any member of the affiliated group that
37 includes the corporation that directly or indirectly owns over fifty
38 percent of the voting stock of the captive REIT or captive RIC shall be
39 limited to twenty-five percent for taxable years beginning on or after
40 January first, two thousand nine and before January first, two thousand
41 eleven and shall not be allowed for taxable years beginning on or after
42 January first, two thousand eleven. The term "affiliated group" means
43 "affiliated group" as defined in section fifteen hundred four of the
44 internal revenue code, but without regard to the exceptions provided for
45 in subsection (b) of that section.

46 § 16. Paragraph F of subdivision 1 of section 11-604 of the adminis-
47 trative code of the city of New York, as added by chapter 525 of the
48 laws of 1988, is amended to read as follows:

49 § 16. Paragraph F of subdivision 1 of section 11-604 of the adminis-
50 trative code of the city of New York, as added by chapter 525 of the
51 laws of 1988, is amended to read as follows:

52 F. Notwithstanding any other provision of this subdivision to the
53 contrary, for taxable years beginning after nineteen hundred eighty-sev-
54 en and before two thousand nine the amount of tax computed on the basis
55 of the taxpayer's total business and investment capital, or the portion
56 thereof allocated within the city, shall in no event exceed three

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1 hundred fifty thousand dollars and for taxable years beginning after two
 2 thousand eight the amount of tax computed on the basis of the taxpayer's
 3 total business and investment capital, or the portion thereof allocated
 4 within the city, shall in no event exceed one million dollars.

5 § 17. Clause 4 of subparagraph (a) of paragraph E of subdivision 1 of
 6 section 11-604 of the administrative code of the city of New York, as
 7 amended by chapter 525 of the laws of 2008, is amended to read as
 8 follows:

9 (4) for taxable years ending on or before June thirtieth, nineteen
 10 hundred eighty-nine, one hundred twenty-five dollars ~~and~~, for taxable
 11 years ending after June thirtieth, nineteen hundred eighty-nine and
 12 beginning before two thousand nine, three hundred dollars, and for taxa-
 13 ble years beginning after two thousand eight:

14 <u>If New York city</u>	<u>Fixed dollar</u>
15 <u>receipts are:</u>	<u>minimum tax is:</u>
16 <u>Not more than \$100,000</u>	<u>\$25</u>
17 <u>More than \$100,000 but not over \$250,000</u>	<u>\$75</u>
18 <u>More than \$250,000 but not over \$500,000</u>	<u>\$175</u>
19 <u>More than \$500,000 but not over \$1,000,000</u>	<u>\$500</u>
20 <u>More than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,500</u>
21 <u>More than \$5,000,000 but not over \$25,000,000</u>	<u>\$3,500</u>
22 <u>Over \$25,000,000</u>	<u>\$5,000</u>

23 For purposes of this clause, New York city receipts are the receipts
 24 computed in accordance with subparagraph two of paragraph (a) of subdi-
 25 vision three of this section for the taxable year. For taxable years
 26 beginning after two thousand eight, if the taxable year is less than
 27 twelve months, the amount prescribed by this clause shall be reduced by
 28 twenty-five percent if the period for which the taxpayer is subject to
 29 tax is more than six months but not more than nine months and by fifty
 30 percent if the period for which the taxpayer is subject to tax is not
 31 more than six months. If the taxable year is less than twelve months,
 32 the amount of New York city receipts for purposes of this clause is
 33 determined by dividing the amount of the receipts for the taxable year
 34 by the number of months in the taxable year and multiplying the result
 35 by twelve, plus;

36 § 18. Subdivision (b) of section 11-643.5 of the administrative code
 37 of the city of New York, as added by local law number 37 of the city of
 38 New York for the year 1986, subparagraph (ii) of paragraph 1 and para-
 39 graph 2 as amended by chapter 525 of the laws of 1988, is amended to
 40 read as follows:

41 (b) Alternative minimum tax. If the tax under subdivision (a) of this
 42 section is less than any of the following amounts, the tax shall be the
 43 larger of the following amounts:

44 (1) ~~(i) Except~~ For taxable years beginning before two thousand elev-
 45 en, except in the case of a corporation organized under the laws of a
 46 country other than the United States, one-tenth of a mill upon each
 47 dollar of taxable assets, or the portion thereof allocated to the city.
 48 For taxable years beginning after two thousand ten, except in the case
 49 of a taxpayer described in clause (i), (ii), or (iii) below, one-tenth
 50 of a mill upon each dollar of taxable assets, or the portion thereof
 51 allocated to the city.

52 (i) In the case of a taxpayer whose net worth ratio is less than five
 53 percent but greater than or equal to four percent and whose total assets
 54 are comprised of thirty-three percent or more of mortgages, one-twenty-
 55 fifth of a mill upon each dollar of taxable assets, or the portion ther-
 56 eof allocated to the city.

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1 (ii) In the case of a taxpayer whose net worth ratio is less than four
2 percent and whose total assets are comprised of thirty-three percent or
3 more of mortgages, one-fiftieth of a mill upon each dollar of taxable
4 assets, or the portion thereof allocated to the city.

5 (iii) A taxpayer (whether or not a qualified institution as defined in
6 subparagraph (B) of paragraph five of subsection (f) of section four
7 hundred six of the federal national housing act, as amended, or as
8 defined in paragraph two of subsection (i) of section thirteen of the
9 federal deposit insurance act, as amended) shall not be subject to the
10 provisions of this paragraph for that portion of the taxable year in
11 which it had outstanding net worth certificates issued in accordance
12 with paragraph five of subsection (f) of section four hundred six of the
13 federal national housing act, as amended, or issued in accordance with
14 subsection (i) of section thirteen of the federal deposit insurance act,
15 as amended.

16 ~~[(iii)]~~ (iv) For the purposes of this part[]: (A) the term "taxable
17 assets" shall mean the average value of total assets reduced by any
18 amount of money or other property received from or attributable to
19 amounts received from the federal deposit insurance corporation pursuant
20 to subsection (c) of section thirteen of the federal deposit insurance
21 act, as amended, or the federal savings and loan insurance corporation
22 pursuant to paragraph one, two, three or four of subsection (f) of
23 section four hundred six of the federal national housing act, as
24 amended. Total assets are those assets which are properly reflected on a
25 balance sheet the income or expenses of which are properly reflected (or
26 would have been properly reflected if not fully depreciated or expensed
27 or depreciated or expensed to a nominal amount) in the computation of
28 alternative entire net income for the taxable year or in the computation
29 of the eligible net income of the taxpayer's international banking
30 facility for the taxable year.

31 ~~[(iii) A taxpayer shall not be subject to the provisions of this para-~~
32 ~~graph for that portion of the taxable year (A) in which it was a "quali-~~
33 ~~fied institution" as defined in subparagraph (B) of paragraph five of~~
34 ~~subsection (f) of section four hundred six of the federal national hous-~~
35 ~~ing act, as amended, or as defined in paragraph two of subsection (i) of~~
36 ~~section thirteen of the federal deposit insurance act, as amended, and~~
37 ~~(B) in which it had outstanding net worth certificates issued in accord-~~
38 ~~ance with such paragraph five or issued in accordance with such~~
39 ~~subsection (i) provided it would have been exempt from any tax deter-~~
40 ~~mined on the basis of the deposits held by it or the interest paid on~~
41 ~~such deposits pursuant to subparagraph (I) of such paragraph five or~~
42 ~~paragraph nine of such subsection (i).]~~

43 (B) The term "net worth ratio" shall mean the percentage of net worth
44 to assets on the last day of the taxable year. The term "net worth"
45 means the sum of preferred stock, common stock, surplus, capital
46 reserves, undivided profits, mutual capital certificates, reserve for
47 contingencies, reserve for loan losses and reserve for security losses
48 minus assets classified loss. The term "assets" means the sum of mort-
49 gage loans, nonmortgage loans, repossessed assets, real estate held for
50 development or investment or resale, cash, deposits, investment securi-
51 ties, fixed assets and other assets (such as financial futures, goodwill
52 and other intangible assets) minus assets classified loss. In no event
53 shall assets be reduced by reserves for losses.

54 (C) The term "mortgages" shall mean loans secured by real property
55 within or without the state, participations in and securities collater-
56 alized by pools of residential mortgages, whether or not issued or guar-

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1 anted by a United States government agency, and loans secured by stock
2 in a cooperative housing corporation. The percentage of total assets
3 comprised of mortgages shall be an amount equal to the ratio of the
4 average of the four quarterly balances of such mortgages ending within
5 the taxable year, to the average of the four quarterly balances of all
6 assets ending within the taxable year. Such quarterly balances shall be
7 computed in the same manner as the report of condition required for
8 federal deposit insurance corporation or federal savings and loan insur-
9 ance corporation purposes, whether or not such report is required. For
10 taxable periods of less than one year, the taxpayer shall compute such
11 ratio using the number of such quarterly balances ending within such
12 taxable period.

13 (2) For taxable years beginning before two thousand eleven, [In] in
14 the case of a corporation organized under the laws of a country other
15 than the United States, (i) two and six-tenths mills upon each dollar of
16 such part of the taxpayer's issued capital stock on the last day of the
17 taxable year, at its face value, but if such taxpayer has stock without
18 par value, such stock shall be taken at its actual or market value, and
19 not less than five dollars per share, as may be determined by the
20 commissioner of finance, or (ii) if the taxpayer does not have issued
21 capital stock, two and six-tenths mills upon each dollar of such part of
22 the amount by which its average total assets exceeds its average total
23 liabilities, as the gross income of such taxpayer derived from business
24 carried on within the city during such taxable year bears to its gross
25 income derived from all business, both within and without the city
26 during said year; except that if the period covered by the return is
27 other than twelve months, the tax shall be prorated on the basis of the
28 number of months or major portions thereof included in the return. For
29 purposes of this paragraph, the term "gross income" shall have the same
30 meaning as it has in the laws of the United States relating to federal
31 income taxes.

32 (3) Three percent of the taxpayer's alternative entire net income, or
33 portion thereof allocated to the city, for the taxable year, or part
34 thereof.

35 (4) One hundred twenty-five dollars.

36 § 19. Paragraph 3 of subdivision (b) of section 11-641 of the adminis-
37 trative code of the city of New York is REPEALED.

38 § 20. Section 11-641 of the administrative code of the city of New
39 York is amended by adding a new subdivision (k-1) to read as follows:

40 (k-1) A net operating loss deduction shall be allowed which shall be
41 presumably the same as the net operating loss deduction allowed under
42 section one hundred seventy-two of the internal revenue code, except
43 that in every instance where such deduction is allowed under this
44 subchapter:

45 (1) any net operating loss included in determining such deduction
46 shall be adjusted to reflect the inclusions and exclusions from entire
47 net income required by the other provisions of this section;

48 (2) such deduction shall not include any net operating loss sustained
49 during any taxable year beginning prior to January first, two thousand
50 nine, or during any taxable year in which the taxpayer was not subject
51 to the tax imposed by this subchapter;

52 (3) such deduction shall not exceed the deduction for the taxable year
53 allowed under section one hundred seventy-two of the internal revenue
54 code augmented by the excess of the amount allowed as a deduction pursu-
55 ant to subdivision (h) or (i) of this section, whichever is applicable,
56 over the amount allowed as a deduction pursuant to section one hundred

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1 sixty-six or five hundred eighty-five of the internal revenue code, for
2 each taxable year in which the taxpayer had a net operating loss which
3 is carried to the taxable year of the deduction under this provision, in
4 the aggregate, (except to the extent such excess was previously deducted
5 in computing entire net income); and

6 (4) the net operating loss deduction allowed under section one hundred
7 seventy-two of the internal revenue code shall for purposes of this
8 subdivision be determined as if the taxpayer had elected under such
9 section to relinquish the entire carryback period with respect to net
10 operating losses.

11 § 21. Section 11-639 of the administrative code of the city of New
12 York is amended by adding a new subdivision (c) to read as follows:

13 (c) For taxable years beginning on or after January first, two thou-
14 sand eleven, (1) a banking corporation is doing business in the city in
15 a corporate or organized capacity if (i) it has issued credit cards to
16 one thousand or more customers who have a mailing address within the
17 city as of the last day of its taxable year, or (ii) it has merchant
18 customer contracts with merchants and the total number of locations
19 covered by those contracts equals one thousand or more locations in the
20 city to whom the banking corporation remitted payments for credit card
21 transactions during the taxable year, or (iii) it has receipts of one
22 million dollars or more in the taxable year from its customers who have
23 been issued credit cards by the banking corporation and have a mailing
24 address within the city, or (iv) it has receipts of one million dollars
25 or more arising from merchant customer contracts with merchants relating
26 to locations in the city, or (v) the sum of the number of customers
27 described in subparagraph (i) of this paragraph plus the number of
28 locations covered by its contracts described in subparagraph (ii) of
29 this paragraph equals one thousand or more, or the amount of its
30 receipts described in subparagraphs (iii) and (iv) of this paragraph
31 equals one million dollars or more. For purposes of this paragraph,
32 receipts from processing credit card transactions for merchants include
33 merchant discount fees received by the banking corporation.

34 (2) As used in this subdivision, the term "credit card" includes bank,
35 credit, travel and entertainment cards.

36 § 22. Subparagraph (D) of paragraph 2 of subdivision (a) of section
37 11-642 of the administrative code of the city of New York, as added by
38 chapter 298 of the laws of 1985, is amended to read as follows:

39 (D) (i) Interest, and fees and penalties in the nature of interest,
40 from bank, credit, travel and entertainment card receivables are earned
41 within the city if the mailing address of the card [~~holder's domicile~~]
42 holder in the records of the taxpayer is in the city[✓]; and

43 (ii) Service charges and fees from such cards are earned within the
44 city if the card is serviced in the city; and

45 (iii) Receipts from merchant discounts are earned within the city if
46 the merchant is located within the city.

47 § 23. Paragraph 2 of subdivision (f) of section 11-646 of the adminis-
48 trative code of the city of New York is amended by adding a new subpara-
49 graph (v) to read as follows:

50 (v) For taxable years beginning on or after January first two thousand
51 eleven, a banking corporation doing business in the city solely because
52 it meets one or more of the tests in subparagraphs (i) through (v) of
53 paragraph one of subdivision (c) of section 11-639 of this chapter
54 (referred to in this subparagraph as the "credit card bank") will not be
55 included in a combined return pursuant to subparagraph (i) of this para-
56 graph with another banking corporation or bank holding company which is

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1 doing business in the city unless the credit card bank or the commis-
2 sioner shows that the inclusion of the credit card bank in the combined
3 return is necessary to properly reflect the tax liability of the credit
4 card bank, the banking corporation or bank holding company under this
5 subchapter. However, any banking corporation that meets one or more of
6 the tests in subparagraphs (i) through (v) of paragraph one of
7 subsection (c) of section 11-639 of this chapter and was included in a
8 combined return for its last taxable year beginning before January
9 first, two thousand eleven may continue to be included in a combined
10 return for future taxable years, provided that once that banking corpo-
11 ration has been included in a combined return for any taxable year
12 beginning on or after January first, two thousand eleven, it must
13 continue to be included in a combined return until it obtains the
14 consent of the commissioner to cease being included in a combined return
15 because the combined return no longer properly reflects the tax liabil-
16 ity under this subchapter of any of the corporations included in the
17 combined return. Further, the credit card bank will be included in a
18 combined return with (A) any banking corporation not subject to tax
19 under this subchapter sixty-five percent or more of whose voting stock
20 is owned or controlled, directly or indirectly, by the credit card bank,
21 or (B) any banking corporation or bank holding company not subject to
22 tax under this subchapter which owns or controls, directly or indirect-
23 ly, sixty-five percent or more of the voting stock of the credit card
24 bank, or (C) any banking corporation not subject to tax under this
25 subchapter sixty-five percent or more of the voting stock of which is
26 owned or controlled, directly or indirectly, by the same corporation or
27 corporations that own or control, directly or indirectly, sixty-five
28 percent or more of the voting stock of the credit card bank, if the
29 corporation or corporations described in clauses (A), (B) and (C) of
30 this subparagraph provide services for or support to the credit card
31 bank's operations, unless the credit card bank or the commissioner shows
32 that the inclusion of any of those corporations in the combined return
33 fails to properly reflect the tax liability of the credit card bank. For
34 purposes of this subparagraph, services for or support to the credit
35 card bank's operations include such activities as billing, credit inves-
36 tigation and reporting, marketing, research, advertising, mailing,
37 customer service, information technology, lending and financing
38 services, and communications services, but will not include accounting,
39 legal or personnel services.

40 § 24. Paragraph 9 of subdivision (a) of section 11-640 of the adminis-
41 trative code of the city of New York, as amended by chapter 298 of the
42 laws of 1985, is amended to read as follows:

43 (9) any corporation sixty-five percent or more of whose voting stock
44 is owned or controlled, directly or indirectly, by a corporation or
45 corporations subject to article three-a of the banking law, or regis-
46 tered under the federal bank holding company act of nineteen hundred
47 fifty-six, as amended, or registered as a savings and loan holding
48 company (but excluding a diversified savings and loan holding company)
49 under the federal national housing act, as amended, or by a corporation
50 or corporations described in any of the foregoing paragraphs of this
51 subdivision, provided the corporation whose voting stock is so owned or
52 controlled is principally engaged in a business, regardless of where
53 conducted, which (i) might be lawfully conducted by a corporation
54 subject to article three of the banking law or by a national banking
55 association or (ii) is so closely related to banking or managing or
56 controlling banks as to be a proper incident thereto, as set forth in

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1 paragraph eight of subsection (c) or subparagraph (F) of paragraph four
2 of subsection (k) of section four of the federal bank holding company
3 act of nineteen hundred fifty-six, as amended, or (iii) holds and
4 manages investment assets, including but not limited to bonds, notes,
5 debentures and other obligations for the payment of money, stocks, part-
6 nership interests or other equity interests, and other investment secu-
7 rities, and which is not a business described in subparagraph (i) or
8 (ii) of this paragraph.

9 § 25. Paragraph 1 of subdivision (g) of section 11-640 of the adminis-
10 trative code of the city of New York, as amended by section 7 of part P
11 of chapter 383 of the laws of 2001, is amended to read as follows:

12 (1) Notwithstanding anything to the contrary contained in this section
13 other than subdivision (m) of this section, a corporation that was in
14 existence before January first, two thousand and was subject to tax
15 under subchapter two of this chapter for its last taxable year beginning
16 before January first, two thousand, shall continue to be taxable under
17 subchapter two for all taxable years beginning on or after January
18 first, two thousand and before January first, two thousand one. The
19 preceding sentence shall not apply to any taxable year during which such
20 corporation is a banking corporation described in paragraphs one through
21 eight of subdivision (a) of this section. Notwithstanding anything to
22 the contrary contained in this section other than subdivision (m) of
23 this section, a banking corporation that was in existence before January
24 first, two thousand and was subject to tax under this subchapter for its
25 last taxable year beginning before January first, two thousand, shall
26 continue to be taxable under this subchapter for all taxable years
27 beginning on or after January first, two thousand and before January
28 first, two thousand one. Provided, however, that nothing in this subdivi-
29 sion shall prohibit a corporation that elected pursuant to subdivision
30 (d) of this section to be taxable under subchapter two of this chapter
31 from revoking that election in accordance with such subdivision (d).

32 For purposes of this paragraph, a corporation shall be considered to
33 be subject to tax under subchapter two of this chapter for a taxable
34 year if such corporation was not a taxpayer but was properly included in
35 a combined report filed pursuant to subdivision four of section 11-605
36 of this chapter for such taxable year and a corporation shall be consid-
37 ered to be subject to tax under this subchapter for a taxable year if
38 such corporation was not a taxpayer but was properly included in a
39 combined report filed pursuant to subdivision (f) or (g) of section
40 11-646 of this chapter for such taxable year. A corporation that was in
41 existence before January first, two thousand but first becomes a taxpay-
42 er in a taxable year beginning on or after January first, two thousand
43 and before January first, two thousand one, shall be considered for
44 purposes of this paragraph to have been subject to tax under subchapter
45 two of this chapter for its last taxable year beginning before January
46 first, two thousand if such corporation would have been subject to tax
47 under such subchapter for such taxable year if it had been a taxpayer
48 during such taxable year. A corporation that was in existence before
49 January first, two thousand but first becomes a taxpayer in a taxable
50 year beginning on or after January first, two thousand and before Janu-
51 ary first, two thousand one, shall be considered for purposes of this
52 paragraph to have been subject to tax under this subchapter for its last
53 taxable year beginning before January first, two thousand if such corpo-
54 ration would have been subject to tax under this subchapter for such
55 taxable year if it had been a taxpayer during such taxable year.

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1 § 26. Paragraph 2 of subdivision (g) of section 11-640 of the adminis-
2 trative code of the city of New York, as added by section 5 of part HH
3 of chapter 63 of the laws of 2000, is amended to read as follows:

4 (2) Notwithstanding anything to the contrary contained in this section
5 other than subdivision (m) of this section, a corporation formed on or
6 after January first, two thousand and before January first, two thousand
7 one may elect to be subject to tax under this subchapter or under
8 subchapter two of this chapter for its first taxable year beginning on
9 or after January first, two thousand and before January first, two thou-
10 sand one in which either (i) sixty-five percent or more of its voting
11 stock is owned or controlled, directly or indirectly by a financial
12 holding company, provided the corporation whose voting stock is so owned
13 or controlled is principally engaged in activities that are described in
14 section 4(k)(4) or 4(k)(5) of the federal bank holding company act of
15 nineteen hundred fifty-six, as amended and the regulations promulgated
16 pursuant to the authority of such section or (ii) it is a financial
17 subsidiary. An election under this paragraph may not be made by a corpo-
18 ration described in paragraphs one through eight of subdivision (a) of
19 this section or in subdivision (e) of this section. In addition, an
20 election under this paragraph may not be made by a corporation that is a
21 party to a reorganization, as defined in subsection (a) of section 368
22 of the internal revenue code of 1986, as amended, of a corporation
23 described in paragraph one of this subdivision if both corporations were
24 sixty-five percent or more owned or controlled, directly or indirectly
25 by the same interests at the time of the reorganization.

26 An election under this paragraph must be made by the taxpayer on or
27 before the due date for filing its return (determined with regard to
28 extensions of time for filing) for the applicable taxable year. The
29 election to be taxed under subchapter two of this chapter shall be made
30 by the taxpayer by filing the return required pursuant to subdivision
31 one of section 11-605 of this chapter and the election to be taxed under
32 this subchapter shall be made by the taxpayer by filing the return
33 required pursuant to subdivision (a) of section 11-646 of this chapter.
34 Any election made pursuant to this paragraph two shall be irrevocable
35 and shall apply to each subsequent taxable year beginning on or after
36 January first, two thousand and before January first, two thousand one,
37 provided that the stock ownership requirements described in subparagraph
38 (i) of this paragraph are met or such corporation described in subpara-
39 graph (ii) of this paragraph continues as a financial subsidiary.

40 § 27. Paragraphs 1 and 2 of subdivision (h) of section 11-640 of the
41 administrative code of the city of New York, as added by section 8 of
42 part P of chapter 383 of the laws of 2001, are amended to read as
43 follows:

44 (1) Notwithstanding anything to the contrary contained in this section
45 other than subdivision (m) of this section, a corporation that was in
46 existence before January first, two thousand one and was subject to tax
47 under subchapter two of this chapter for its last taxable year beginning
48 before January first, two thousand one, shall continue to be taxable
49 under subchapter two for all taxable years beginning on or after January
50 first, two thousand one and before January first, two thousand three.
51 The preceding sentence shall not apply to any taxable year during which
52 such corporation is a banking corporation described in paragraphs one
53 through eight of subdivision (a) of this section. Notwithstanding
54 anything to the contrary contained in this section other than subdivi-
55 sion (m) of this section, a banking corporation that was in existence
56 before January first, two thousand one and was subject to tax under this

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1 subchapter for its last taxable year beginning before January first, two
2 thousand one, shall continue to be taxable under this subchapter for all
3 taxable years beginning on or after January first, two thousand one and
4 before January first, two thousand three. Provided, however, that noth-
5 ing in this subdivision shall prohibit a corporation that elected pursu-
6 ant to subdivision (d) of this section to be taxable under subchapter
7 two of this chapter from revoking that election in accordance with
8 subdivision (d) of this section.

9 For purposes of this paragraph, a corporation shall be considered to
10 be subject to tax under subchapter two of this chapter for a taxable
11 year if such corporation was not a taxpayer but was properly included in
12 a combined report filed pursuant to subdivision four of section 11-605
13 of this chapter for such taxable year and a corporation shall be consid-
14 ered to be subject to tax under this subchapter for a taxable year if
15 such corporation was not a taxpayer but was properly included in a
16 combined report filed pursuant to subdivision (f) or (g) of section
17 11-646 of this chapter for such taxable year. A corporation that was in
18 existence before January first, two thousand one but first becomes a
19 taxpayer in a taxable year beginning on or after January first, two
20 thousand one and before January first, two thousand three, shall be
21 considered for purposes of this paragraph to have been subject to tax
22 under subchapter two of this chapter for its last taxable year beginning
23 before January first, two thousand one if such corporation would have
24 been subject to tax under such subchapter for such taxable year if it
25 had been a taxpayer during such taxable year. A corporation that was in
26 existence before January first, two thousand one but first becomes a
27 taxpayer in a taxable year beginning on or after January first, two
28 thousand one and before January first, two thousand three, shall be
29 considered for purposes of this paragraph to have been subject to tax
30 under this subchapter for its last taxable year beginning before January
31 first, two thousand one if such corporation would have been subject to
32 tax under this subchapter for such taxable year if it had been a taxpay-
33 er during such taxable year.

34 (2) Notwithstanding anything to the contrary contained in this section
35 other than subdivision (m) of this section, a corporation formed on or
36 after January first, two thousand one and before January first, two
37 thousand three may elect to be subject to tax under this subchapter or
38 under subchapter two of this chapter for its first taxable year begin-
39 ning on or after January first, two thousand one and before January
40 first, two thousand three in which either (i) sixty-five percent or more
41 of its voting stock is owned or controlled, directly or indirectly by a
42 financial holding company, provided the corporation whose voting stock
43 is so owned or controlled is principally engaged in activities that are
44 described in section 4(k)(4) or 4(k)(5) of the federal bank holding
45 company act of nineteen hundred fifty-six, as amended and the regu-
46 lations promulgated pursuant to the authority of such section or (ii) it
47 is a financial subsidiary. An election under this paragraph may not be
48 made by a corporation described in paragraphs one through eight of
49 subdivision (a) of this section or in subdivision (e) of this section.
50 In addition, an election under this paragraph may not be made by a
51 corporation that is a party to a reorganization, as defined in
52 subsection (a) of section 368 of the internal revenue code of 1986, as
53 amended, of a corporation described in paragraph one of this subdivision
54 if both corporations were sixty-five percent or more owned or
55 controlled, directly or indirectly by the same interests at the time of
56 the reorganization.

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1 An election under this paragraph must be made by the taxpayer on or
2 before the due date for filing its return ~~*(determined* with regard to~~
3 extensions of time for filing) for the applicable taxable year. The
4 election to be taxed under subchapter two of this chapter shall be made
5 by the taxpayer by filing the return required pursuant to subdivision
6 one of section 11-605 of this chapter and the election to be taxed under
7 this subchapter shall be made by the taxpayer by filing the return
8 required pursuant to subdivision (a) of section 11-646 of this chapter.
9 Any election made pursuant to this paragraph shall be irrevocable and
10 shall apply to each subsequent taxable year beginning on or after Janu-
11 ary first, two thousand one and before January first, two thousand
12 three, provided that the stock ownership requirements described in
13 subparagraph (i) of this paragraph are met or such corporation described
14 in subparagraph (ii) of this paragraph continues as a financial subsid-
15 iary.

16 § 28. Paragraphs 1 and 2 of subdivision (i) of section 11-640 of the
17 administrative code of the city of New York, as added by section 6 of
18 part G3 of chapter 62 of the laws of 2003, are amended to read as
19 follows:

20 (1) Notwithstanding anything to the contrary contained in this section
21 other than subdivision (m) of this section, a corporation that was in
22 existence before January first, two thousand three and was subject to
23 tax under subchapter two of this chapter for its last taxable year
24 beginning before January first, two thousand three, shall continue to be
25 taxable under subchapter two for all taxable years beginning on or after
26 January first, two thousand three and before January first, two thousand
27 four. The preceding sentence shall not apply to any taxable year during
28 which such corporation is a banking corporation described in paragraphs
29 one through eight of subdivision (a) of this section. Notwithstanding
30 anything to the contrary contained in this section other than subdivi-
31 sion (m) of this section, a banking corporation that was in existence
32 before January first, two thousand three and was subject to tax under
33 this subchapter for its last taxable year beginning before January
34 first, two thousand three, shall continue to be taxable under this
35 subchapter for all taxable years beginning on or after January first,
36 two thousand three and before January first, two thousand four.
37 Provided, however, that nothing in this subdivision shall prohibit a
38 corporation that elected pursuant to subdivision (d) of this section to
39 be taxable under subchapter two of this chapter from revoking that
40 election in accordance with subdivision (d) of this section.

41 For purposes of this paragraph, a corporation shall be considered to
42 be subject to tax under subchapter two of this chapter for a taxable
43 year if such corporation was not a taxpayer but was properly included in
44 a combined report filed pursuant to subdivision four of section 11-605
45 of this chapter for such taxable year and a corporation shall be consid-
46 ered to be subject to tax under this subchapter for a taxable year if
47 such corporation was not a taxpayer but was properly included in a
48 combined report filed pursuant to subdivision (f) or (g) of section
49 11-646 of this chapter for such taxable year. A corporation that was in
50 existence before January first, two thousand three but first becomes a
51 taxpayer in a taxable year beginning on or after January first, two
52 thousand three and before January first, two thousand four, shall be
53 considered for purposes of this paragraph to have been subject to tax
54 under subchapter two of this chapter for its last taxable year beginning
55 before January first, two thousand three if such corporation would have
56 been subject to tax under such subchapter for such taxable year if it

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1 had been a taxpayer during such taxable year. A corporation that was in
2 existence before January first, two thousand three but first becomes a
3 taxpayer in a taxable year beginning on or after January first, two
4 thousand three and before January first, two thousand four, shall be
5 considered for purposes of this paragraph to have been subject to tax
6 under this subchapter for its last taxable year beginning before January
7 first, two thousand three if such corporation would have been subject to
8 tax under this subchapter for such taxable year if it had been a taxpay-
9 er during such taxable year.

10 (2) Notwithstanding anything to the contrary contained in this section
11 other than subdivision (m) of this section, a corporation formed on or
12 after January first, two thousand three and before January first, two
13 thousand four may elect to be subject to tax under this subchapter or
14 under subchapter two of this chapter for its first taxable year begin-
15 ning on or after January first, two thousand three and before January
16 first, two thousand four in which either (i) sixty-five percent or more
17 of its voting stock is owned or controlled, directly or indirectly by a
18 financial holding company, provided the corporation whose voting stock
19 is so owned or controlled is principally engaged in activities that are
20 described in section 4(k)(4) or 4(k)(5) of the federal bank holding
21 company act of nineteen hundred fifty-six, as amended and the regu-
22 lations promulgated pursuant to the authority of such section or (ii) it
23 is a financial subsidiary. An election under this paragraph may not be
24 made by a corporation described in paragraphs one through eight of
25 subdivision (a) of this section or in subdivision (e) of this section.
26 In addition, an election under this paragraph may not be made by a
27 corporation that is a party to a reorganization, as defined in
28 subsection (a) of section 368 of the internal revenue code of 1986, as
29 amended, of a corporation described in paragraph one of this subdivision
30 if both corporations were sixty-five percent or more owned or
31 controlled, directly or indirectly by the same interests at the time of
32 the reorganization.

33 An election under this paragraph must be made by the taxpayer on or
34 before the due date for filing its return (determined with regard to
35 extensions of time for filing) for the applicable taxable year. The
36 election to be taxed under subchapter two of this chapter shall be made
37 by the taxpayer by filing the return required pursuant to subdivision
38 one of section 11-605 of this chapter and the election to be taxed under
39 this subchapter shall be made by the taxpayer by filing the return
40 required pursuant to subdivision (a) of section 11-646 of this chapter.
41 Any election made pursuant to this paragraph shall be irrevocable and
42 shall apply to each subsequent taxable year beginning on or after Janu-
43 ary first, two thousand three and before January first, two thousand
44 four, provided that the stock ownership requirements described in
45 subparagraph (i) of this paragraph are met or such corporation described
46 in subparagraph (ii) of this paragraph continues as a financial subsid-
47 iary.

48 § 29. Paragraphs 1 and 2 of subdivision (j) of section 11-640 of the
49 administrative code of the city of New York, as added by section 6 of
50 part G of chapter 60 of the laws of 2004, are amended to read as
51 follows:

52 (1) Notwithstanding anything to the contrary contained in this section
53 other than subdivision (m) of this section, a corporation that was in
54 existence before January first, two thousand four and was subject to tax
55 under subchapter two of this chapter for its last taxable year beginning
56 before January first, two thousand four, shall continue to be taxable

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1 under subchapter two for all taxable years beginning on or after January
2 first, two thousand four and before January first, two thousand six. The
3 preceding sentence shall not apply to any taxable year during which such
4 corporation is a banking corporation described in paragraphs one through
5 eight of subdivision (a) of this section. Notwithstanding anything to
6 the contrary contained in this section other than subdivision (m) of
7 this section, a banking corporation that was in existence before January
8 first, two thousand four and was subject to tax under this subchapter
9 for its last taxable year beginning before January first, two thousand
10 four, shall continue to be taxable under this subchapter for all taxable
11 years beginning on or after January first, two thousand four and before
12 January first, two thousand six. Provided, however, that nothing in
13 this subdivision shall prohibit a corporation that elected pursuant to
14 subdivision (d) of this section to be taxable under subchapter two of
15 this chapter from revoking that election in accordance with subdivision
16 (d) of this section.

17 For purposes of this paragraph, a corporation shall be considered to
18 be subject to tax under subchapter two of this chapter for a taxable
19 year if such corporation was not a taxpayer but was properly included in
20 a combined report filed pursuant to subdivision four of section 11-605
21 of this chapter for such taxable year and a corporation shall be consid-
22 ered to be subject to tax under this subchapter for a taxable year if
23 such corporation was not a taxpayer but was properly included in a
24 combined report filed pursuant to subdivision (f) or (g) of section
25 11-646 of this chapter for such taxable year. A corporation that was in
26 existence before January first, two thousand four but first becomes a
27 taxpayer in a taxable year beginning on or after January first, two
28 thousand four and before January first, two thousand six, shall be
29 considered for purposes of this paragraph to have been subject to tax
30 under subchapter two of this chapter for its last taxable year beginning
31 before January first, two thousand four if such corporation would have
32 been subject to tax under such subchapter for such taxable year if it
33 had been a taxpayer during such taxable year. A corporation that was in
34 existence before January first, two thousand four but first becomes a
35 taxpayer in a taxable year beginning on or after January first, two
36 thousand four and before January first, two thousand six, shall be
37 considered for purposes of this paragraph to have been subject to tax
38 under this subchapter for its last taxable year beginning before January
39 first, two thousand four if such corporation would have been subject to
40 tax under this subchapter for such taxable year if it had been a taxpay-
41 er during such taxable year.

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

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1 subdivision (a) of this section or in subdivision (e) of this section.
2 In addition, an election under this paragraph may not be made by a
3 corporation that is a party to a reorganization, as defined in
4 subsection (a) of section three hundred sixty-eight of the internal
5 revenue code of nineteen hundred eighty-six, as amended, of a corpo-
6 ration described in paragraph one of this subdivision if both corpo-
7 rations were sixty-five percent or more owned or controlled, directly or
8 indirectly by the same interests at the time of the reorganization.

9 An election under this paragraph must be made by the taxpayer on or
10 before the due date for filing its return (determined with regard to
11 extensions of time for filing) for the applicable taxable year. The
12 election to be taxed under subchapter two of this chapter shall be made
13 by the taxpayer by filing the return required pursuant to subdivision
14 one of section 11-605 of this chapter and the election to be taxed under
15 this subchapter shall be made by the taxpayer by filing the return
16 required pursuant to subdivision (a) of section 11-646 of this chapter.
17 Any election made pursuant to this paragraph shall be irrevocable and
18 shall apply to each subsequent taxable year beginning on or after Janu-
19 ary first, two thousand four and before January first, two thousand six,
20 provided that the stock ownership requirements described in subparagraph
21 (i) of this paragraph are met or such corporation described in subpara-
22 graph (ii) of this paragraph continues as a financial subsidiary.

23 § 30. Paragraphs 1 and 2 of subdivision (k) of section 11-640 of the
24 administrative code of the city of New York, as added by section 6 of
25 part I of chapter 62 of the laws of 2006, are amended to read as
26 follows:

27 (1) Notwithstanding anything to the contrary contained in this section
28 other than subdivision (m) of this section, a corporation that was in
29 existence before January first, two thousand six and was subject to tax
30 under subchapter two of this chapter for its last taxable year beginning
31 before January first, two thousand six, shall continue to be taxable
32 under subchapter two of this chapter for all taxable years beginning on
33 or after January first, two thousand six and before January first, two
34 thousand eight. The preceding sentence shall not apply to any taxable
35 year during which such corporation is a banking corporation described in
36 paragraphs one through eight of subdivision (a) of this section.
37 Notwithstanding anything to the contrary contained in this section other
38 than subdivision (m) of this section, a banking corporation that was in
39 existence before January first, two thousand six and was subject to tax
40 under this subchapter for its last taxable year beginning before January
41 first, two thousand six, shall continue to be taxable under this
42 subchapter for all taxable years beginning on or after January first,
43 two thousand six and before January first, two thousand eight. Provided,
44 however, that nothing in this subdivision shall prohibit a corporation
45 that elected pursuant to subdivision (d) of this section to be taxable
46 under subchapter two of this chapter from revoking that election in
47 accordance with subdivision (d) of this section.

48 For purposes of this paragraph, a corporation shall be considered to
49 be subject to tax under subchapter two of this chapter for a taxable
50 year if such corporation was not a taxpayer but was properly included in
51 a combined report filed pursuant to subdivision four of section 11-605
52 of this chapter for such taxable year and a corporation shall be consid-
53 ered to be subject to tax under this subchapter for a taxable year if
54 such corporation was not a taxpayer but was properly included in a
55 combined report filed pursuant to subdivision (f) or (g) of section
56 11-646 of this part for such taxable year. A corporation that was in

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1 existence before January first, two thousand six but first becomes a
2 taxpayer in a taxable year beginning on or after January first, two
3 thousand six and before January first, two thousand eight, shall be
4 considered for purposes of this paragraph to have been subject to tax
5 under subchapter two of this chapter for its last taxable year beginning
6 before January first, two thousand six if such corporation would have
7 been subject to tax under such subchapter for such taxable year if it
8 had been a taxpayer during such taxable year. A corporation that was in
9 existence before January first, two thousand six but first becomes a
10 taxpayer in a taxable year beginning on or after January first, two
11 thousand six and before January first, two thousand eight, shall be
12 considered for purposes of this paragraph to have been subject to tax
13 under this subchapter for its last taxable year beginning before January
14 first, two thousand six if such corporation would have been subject to
15 tax under this subchapter for such taxable year if it had been a taxpay-
16 er during such taxable year.

17 (2) Notwithstanding anything to the contrary contained in this section
18 other than subdivision (m) of this section, a corporation formed on or
19 after January first, two thousand six and before January first, two
20 thousand eight may elect to be subject to tax under this subchapter or
21 under subchapter two of this chapter for its first taxable year begin-
22 ning on or after January first, two thousand six and before January
23 first, two thousand eight in which either (i) sixty-five percent or more
24 of its voting stock is owned or controlled, directly or indirectly by a
25 financial holding company, provided the corporation whose voting stock
26 is so owned or controlled is principally engaged in activities that are
27 described in section 4(k)(4) or 4(k)(5) of the federal bank holding
28 company act of nineteen hundred fifty-six, as amended and the regu-
29 lations promulgated pursuant to the authority of such section or (ii) it
30 is a financial subsidiary. An election under this paragraph may not be
31 made by a corporation described in paragraphs one through eight of
32 subdivision (a) of this section or in subdivision (e) of this section.
33 In addition, an election under this paragraph may not be made by a
34 corporation that is a party to a reorganization, as defined in
35 subsection (a) of section 368 of the internal revenue code of 1986, as
36 amended, of a corporation described in paragraph one of this subdivision
37 if both corporations were sixty-five percent or more owned or
38 controlled, directly or indirectly by the same interests at the time of
39 the reorganization.

40 An election under this paragraph must be made by the taxpayer on or
41 before the due date for filing its return (determined with regard to
42 extensions of time for filing) for the applicable taxable year. The
43 election to be taxed under subchapter two of this chapter shall be made
44 by the taxpayer by filing the return required pursuant to subdivision
45 one of section 11-605 of this chapter and the election to be taxed under
46 this subchapter shall be made by the taxpayer by filing the return
47 required pursuant to subdivision (a) of section 11-646 of this part. Any
48 election made pursuant to this paragraph shall be irrevocable and shall
49 apply to each subsequent taxable year beginning on or after January
50 first, two thousand six and before January first, two thousand eight,
51 provided that the stock ownership requirements described in subparagraph
52 (i) of this paragraph are met or such corporation described in subpara-
53 graph (ii) of this paragraph continues as a financial subsidiary.

54 § 31. Paragraphs 1 and 2 of subdivision (1) of section 11-640 of the
55 administrative code of the city of New York, paragraph 1 as amended by

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1 chapter 636 of the laws of 2008 and paragraph 2 as amended by chapter 96
2 of the laws of 2007, are amended to read as follows:

3 (1) Notwithstanding anything to the contrary contained in this section
4 other than subdivision (m) of this section, a corporation that was in
5 existence before January first, two thousand eight and was subject to
6 tax under subchapter two of this chapter for its last taxable year
7 beginning before January first, two thousand eight, shall continue to be
8 taxable under such subchapter for all taxable years beginning on or
9 after January first, two thousand eight and before January first, two
10 thousand ten. The preceding sentence shall not apply to any taxable year
11 during which such corporation is a banking corporation described in
12 paragraphs one through eight of subdivision (a) of this section.
13 Notwithstanding anything to the contrary contained in this section other
14 than subdivision (m) of this section, a banking corporation or corpo-
15 ration that was in existence before January first, two thousand eight
16 and was subject to tax under this subchapter for its last taxable year
17 beginning before January first, two thousand eight, shall continue to be
18 taxable under this subchapter for all taxable years beginning on or
19 after January first, two thousand eight and before January first, two
20 thousand ten or in which the corporation satisfies the requirements for
21 a corporation to elect to be taxable under this subchapter. Provided
22 further, that nothing in this subdivision shall prohibit a corporation
23 that elected pursuant to subdivision (d) of this section to be taxable
24 under subchapter two of this chapter from revoking that election in
25 accordance with subdivision (d) of this section. For purposes of this
26 paragraph, a corporation shall be considered to be subject to tax under
27 subchapter two of this chapter for a taxable year if such corporation
28 was not a taxpayer but was properly included in a combined report filed
29 pursuant to subdivision four of section 11-605 of this chapter for such
30 taxable year and a corporation shall be considered to be subject to tax
31 under this subchapter for a taxable year if such corporation was not a
32 taxpayer but was properly included in a combined report filed pursuant
33 to subdivision (f) or (g) of section 11-646 of this part for such taxa-
34 ble year. A corporation that was in existence before January first, two
35 thousand eight but first becomes a taxpayer in a taxable year beginning
36 on or after January first, two thousand eight and before January first,
37 two thousand ten, shall be considered for purposes of this paragraph to
38 have been subject to tax under subchapter two of this chapter for its
39 last taxable year beginning before January first, two thousand eight if
40 such corporation would have been subject to tax under such subchapter
41 for such taxable year if it had been a taxpayer during such taxable
42 year. A corporation that was in existence before January first, two
43 thousand eight but first becomes a taxpayer in a taxable year beginning
44 on or after January first, two thousand eight and before January first,
45 two thousand ten, shall be considered for purposes of this paragraph to
46 have been subject to tax under this subchapter for its last taxable year
47 beginning before January first, two thousand eight if such corporation
48 would have been subject to tax under this subchapter for such taxable
49 year if it had been a taxpayer during such taxable year.

50 (2) Notwithstanding anything to the contrary contained in this section
51 other than subdivision (m) of this section, a corporation formed on or
52 after January first, two thousand eight and before January first, two
53 thousand ten may elect to be subject to tax under this subchapter or
54 under subchapter two of this chapter for its first taxable year begin-
55 ning on or after January first, two thousand eight and before January
56 first, two thousand ten in which either (i) sixty-five percent or more

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1 of its voting stock is owned or controlled, directly or indirectly by a
2 financial holding company, provided the corporation whose voting stock
3 is so owned or controlled is principally engaged in activities that are
4 described in section 4(k)(4) or 4(k)(5) of the federal bank holding
5 company act of nineteen hundred fifty-six, as amended and the regu-
6 lations promulgated pursuant to the authority of such section or (ii) it
7 is a financial subsidiary. An election under this paragraph may not be
8 made by a corporation described in paragraphs one through eight of
9 subdivision (a) of this section or in subdivision (e) of this section.
10 In addition, an election under this paragraph may not be made by a
11 corporation that is a party to a reorganization, as defined in
12 subsection (a) of section 368 of the internal revenue code of 1986, as
13 amended, of a corporation described in paragraph one of this subdivision
14 if both corporations were sixty-five percent or more owned or
15 controlled, directly or indirectly by the same interests at the time of
16 the reorganization.

17 An election under this paragraph must be made by the taxpayer on or
18 before the due date for filing its return (determined with regard to
19 extensions of time for filing) for the applicable taxable year. The
20 election to be taxed under subchapter two of this chapter shall be made
21 by the taxpayer by filing the return required pursuant to subdivision
22 one of section 11-605 of this chapter and the election to be taxed under
23 this subchapter shall be made by the taxpayer by filing the return
24 required pursuant to subdivision (a) of section 11-646 of this part. Any
25 election made pursuant to this paragraph shall be irrevocable and shall
26 apply to each subsequent taxable year beginning on or after January
27 first, two thousand eight and before January first, two thousand ten,
28 provided that the stock ownership and activities requirements described
29 in subparagraph (i) of this paragraph are met or such corporation
30 described in subparagraph (ii) of this paragraph continues as a finan-
31 cial subsidiary.

32 § 32. Section 11-640 of the administrative code of the city of New
33 York is amended by adding a new subdivision (m) to read as follows:

34 (m) (1) Notwithstanding anything in this part to the contrary, if any
35 of the conditions described in paragraph three of this subdivision apply
36 to a corporation that has made either the election to be taxable under
37 subchapter two of chapter six of this title pursuant to the Gramm-Leach-
38 Bliley transitional provisions in this section, or the election pursuant
39 to subdivision (d) of this section to continue to be taxable under
40 subchapter two of chapter six of this title (hereinafter the "electing
41 corporation"), then such corporation shall be deemed to have revoked the
42 election as of the first day of the taxable year in which such condition
43 applied.

44 (2) Notwithstanding anything in this part to the contrary, if any of
45 the conditions described in paragraph three of this subdivision apply to
46 a corporation required to be taxable under subchapter two of chapter six
47 of this title pursuant to the Gramm-Leach-Bliley transitional provisions
48 in this section (hereinafter the "grandfathered corporation"), such
49 corporation, if it is otherwise described in subdivision (a) of this
50 section, shall be taxable under this part as of the first day of the
51 taxable year in which such condition applied.

52 (3) The provisions of paragraph one and paragraph two of this subdivi-
53 sion shall apply if any of the following conditions exist or occur with
54 respect to the electing corporation or the grandfathered corporation in
55 a taxable year (including any short taxable year) beginning on or after
56 January first, two thousand nine:

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1 (A) the corporation ceases to be a taxpayer under subchapter two of
2 chapter six of this title;

3 (B) the corporation becomes subject to the fixed dollar minimum tax
4 under clause four of subparagraph a of paragraph (E) of subdivision one
5 of section 11-604 of this chapter;

6 (C) the corporation has no wages or receipts allocable to New York
7 city pursuant to subdivision three of section 11-604 of this chapter, or
8 is otherwise inactive; provided that this subparagraph shall not apply
9 to a corporation which is engaged in the active conduct of a trade or
10 business, or substantially all of the assets of which are stock and
11 securities of corporations which are directly or indirectly controlled
12 by it and are engaged in the active conduct of a trade or business;

13 (D) sixty-five percent or more of the voting stock of the corporation
14 becomes owned or controlled directly by a corporation that acquired the
15 stock in a transaction (or series of related transactions) that quali-
16 fies as a purchase within the meaning of paragraph three of subsection
17 (h) of section three hundred thirty-eight of the internal revenue code
18 unless the corporation whose stock was acquired and the corporation
19 acquiring the stock were, immediately prior to such purchase, members of
20 the same affiliated group (as such term is defined in section fifteen
21 hundred four of the internal revenue code without regard to the exclu-
22 sions provided for in subsection (b) of such section); or

23 (E) the corporation, in a transaction or series of related trans-
24 actions, acquires assets, whether by contribution, purchase, or other-
25 wise, having an average value (determined in accordance with subdivision
26 two of section 11-604 of this chapter, or, if greater, a total tax
27 basis, in excess of forty percent of the average value, or, if greater,
28 the total tax basis, of all the assets of the corporation immediately
29 prior to such acquisition and as a result of such acquisition the corpo-
30 ration is principally engaged in a business that is different from the
31 business immediately prior to such acquisition, provided that such
32 different business is described in subparagraph (i) or (ii) of paragraph
33 nine of subdivision (a) of this section.

34 § 33. Clause (B) of subparagraph 2 of paragraph (a) of subdivision 3
35 of section 11-604 of the administrative code of the city of New York, as
36 amended by chapter 513 of the laws of 2002, is amended to read as
37 follows:

38 (B) services performed within the city, provided, however, that (i) in
39 the case of a taxpayer engaged in the business of publishing newspapers
40 or periodicals, receipts arising from sales of advertising contained in
41 such newspapers and periodicals shall be deemed to arise from services
42 performed within the city to the extent that such newspapers and period-
43 icals are delivered to points within the city, (ii) receipts received
44 from an investment company arising from the sale of management, adminis-
45 tration or distribution services to such investment company shall be
46 deemed to arise from services performed within the city to the extent
47 set forth in subparagraph five of this paragraph, (iii) in the case of
48 taxpayers principally engaged in the activity of air freight forwarding
49 acting as principal and like indirect air carriage, receipts arising
50 from such activity shall be deemed to arise from services performed
51 within the city as follows: one hundred percent of such receipts if both
52 the pickup and delivery associated with such receipts are made in the
53 city and fifty percent of such receipts if either the pickup or delivery
54 associated with such receipts is made in the city, ~~and~~ (iv) for taxa-
55 ble years beginning on or after January first, two thousand two, in the
56 case of a taxpayer engaged in the business of publishing newspapers or

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1 periodicals, or broadcasting radio or television programs, whether
2 through the public airwaves or by cable, direct or indirect satellite
3 transmission, or any other means of transmission, receipts arising from
4 sales of subscriptions, advertising or broadcasting shall be deemed to
5 arise from services performed within the city to the extent provided in
6 subparagraph nine of this paragraph, and (v) for taxable years beginning
7 after two thousand eight, in the case of a taxpayer which is a regis-
8 tered securities or commodities broker or dealer, the receipts specified
9 in subparagraph ten of this paragraph shall be deemed to arise from
10 services performed within the city to the extent set forth in such
11 subparagraph ten,

12 § 34. Paragraph (a) of subdivision 3 of section 11-604 of the adminis-
13 trative code of the city of New York is amended by adding a new subpara-
14 graph 10 to read as follows:

15 (10) (A) In the case of a taxpayer which is a registered securities or
16 commodities broker or dealer, the receipts specified in items (i)
17 through (vii) of this clause shall be deemed to arise from services
18 performed within the city to the extent set forth in each of such items.

19 (i) Receipts constituting brokerage commissions derived from the
20 execution of securities or commodities purchase or sales orders for the
21 accounts of customers shall be deemed to arise from services performed
22 at the mailing address in the records of the taxpayer of the customer
23 who is responsible for paying such commissions.

24 (ii) Receipts constituting margin interest earned on behalf of broker-
25 age accounts shall be deemed to arise from services performed at the
26 mailing address in the records of the taxpayer of the customer who is
27 responsible for paying such margin interest.

28 (iii) Gross income, including any accrued interest or dividends, from
29 principal transactions for the purchase or sale of stocks, bonds,
30 foreign exchange and other securities or commodities (including futures
31 and forward contracts, options and other types of securities or commod-
32 ities derivatives contracts) shall be deemed to arise from services
33 performed within the city either (I) to the extent that production cred-
34 its are awarded to branches, offices or employees of the taxpayer within
35 the city as a result of such principal transactions or (II) if the
36 taxpayer so elects, to the extent that the gross proceeds from such
37 principal transactions (determined without deduction for any cost
38 incurred by the taxpayer to acquire the securities or commodities) are
39 generated from sales of securities or commodities to customers within
40 the city based upon the mailing addresses of such customers in the
41 records of the taxpayer. For purposes of subitem (II) of the preceding
42 sentence, the taxpayer shall separately calculate such gross income from
43 principal transactions by type of security or commodity. For purposes of
44 this item, gross income from principal transactions shall be determined
45 after the deduction of any cost incurred by the taxpayer to acquire the
46 securities or commodities. For purposes of this subparagraph, the term
47 "production credits" means credits granted pursuant to the internal
48 accounting system used by the taxpayer to measure the amount of revenue
49 that should be awarded to a particular branch or office or employee of
50 the taxpayer which is based, at least in part, on the branch's, the
51 office's or the employee's particular activities. Upon request, the
52 taxpayer shall be required to furnish a detailed explanation of such
53 internal accounting system to the department.

54 (iv) (I) Receipts constituting fees earned by the taxpayer for advi-
55 sory services to a customer in connection with the underwriting of secu-
56 rities for such customer (such customer being the entity which is

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1 contemplating issuing or is issuing securities) or fees earned by the
2 taxpayer for managing an underwriting shall be deemed to arise from
3 services performed at the mailing address in the records of the taxpayer
4 of such customer who is responsible for paying such fees.

5 (II) Receipts constituting the primary spread or selling concession
6 from underwritten securities shall be deemed to arise from services
7 performed within the city to the extent that production credits are
8 awarded to branches, offices or employees of the taxpayer within the
9 city as a result of the sale of the underwritten securities.

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

21 (v) Receipts constituting interest earned by the taxpayer on loans and
22 advances made by the taxpayer to a corporation affiliated with the
23 taxpayer but with which the taxpayer is not permitted or required to
24 file a combined report pursuant to subdivision four of section 11-605 of
25 this subchapter shall be deemed to arise from services performed at the
26 principal place of business of such affiliated corporation.

27 (vi) Receipts constituting account maintenance fees shall be deemed to
28 arise from services performed at the mailing address in the records of
29 the taxpayer of the customer who is responsible for paying such account
30 maintenance fees.

31 (vii) Receipts constituting fees for management or advisory services,
32 including fees for advisory services in relation to merger or acquisi-
33 tion activities but excluding fees paid for services described in item
34 (ii) of clause (B) of subparagraph two of this paragraph, shall be
35 deemed to arise from services performed at the mailing address in the
36 records of the taxpayer of the customer who is responsible for paying
37 such fees.

38 (B) For purposes of this subparagraph, the term "securities" shall
39 have the same meaning as in section 475(c)(2) of the internal revenue
40 code and the term "commodities" shall have the same meaning as in
41 section 475(e)(2) of the internal revenue code. The term "registered
42 securities or commodities broker or dealer" means a broker or dealer
43 registered as such by the securities and exchange commission or the
44 commodities futures trading commission, and shall include an over-the-
45 counter derivatives dealer as defined under regulations of the securi-
46 ties and exchange commission at title 17, part 240, section 3b-12 of the
47 code of federal regulations (17 CFR 240.3b-12).

48 (C) If the taxpayer receives any of the receipts enumerated in clause
49 (A) of this subparagraph as a result of a securities correspondent
50 relationship such taxpayer has with another registered securities or
51 commodities broker or dealer with the taxpayer acting in this relation-
52 ship as the clearing firm, such receipts shall be deemed to arise from
53 services performed within the city to the extent set forth in each of
54 the items of clause (A) of this subparagraph. The amount of such
55 receipts shall exclude the amount the taxpayer is required to pay to the
56 correspondent firm for such correspondent relationship. If the taxpayer

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1 receives any of the receipts enumerated in clause (A) of this subpara-
2 graph as a result of a securities correspondent relationship, such
3 taxpayer has with another registered securities or commodities broker or
4 dealer with the taxpayer acting in this relationship as the introducing
5 firm, such receipts shall be deemed to arise from services performed
6 within the city to the extent set forth in each of the items of clause
7 (A) of this subparagraph.

8 (D) If, for purposes of item (i) or (ii), subitem (I) of item (iv), or
9 item (vi), or (vii) of clause (A) of this subparagraph, the taxpayer is
10 unable from its records to determine the mailing address of the custom-
11 er, the receipts enumerated in any of such items shall be deemed to
12 arise from services performed at the branch or office of the taxpayer
13 that generates the transaction for the customer that generated such
14 receipts.

15 § 35. Subdivision (a) of section 11-1108 of the administrative code of
16 the city of New York, as amended by chapter 808 of the laws of 1992, is
17 amended to read as follows:

18 a. In the manner provided in this section the commissioner of finance
19 shall refund or credit, without interest, any tax, penalty or interest
20 erroneously, illegally or unconstitutionally collected or paid, if
21 application for such refund shall be made to the commissioner of finance
22 within ~~[one year from the payment thereof]~~ three years from the time the
23 return was filed or two years from the time the tax was paid, whichever
24 of such periods expires later, or if no return was filed, within two
25 years from the time the tax was paid. If the claim is filed within the
26 three-year period, the amount of the credit or refund shall not exceed
27 the portion of the tax paid within the three years immediately preceding
28 the filing of the claim plus the period of any extension of time for
29 filing the return. If the claim is not filed within the three-year peri-
30 od, but is filed within the two-year period, the amount of the credit or
31 refund shall not exceed the portion of the tax paid during the two years
32 immediately preceding the filing of the claim. Whenever a refund or
33 credit is made or denied by the commissioner of finance, he or she shall
34 state his or her reason therefor and give notice thereof to the taxpayer
35 in writing. The commissioner of finance may, in lieu of any refund
36 required to be made, allow credit therefor on payments due from the
37 applicant.

38 § 36. The administrative code of the city of New York is amended by
39 adding a new section 11-130 to read as follows:

40 § 11-130 Financial institution data match system for tax collection
41 purposes. 1. Definitions. As used in this section:

42 (a) "Debt" means all liabilities, including unpaid tax, interest, and
43 penalty, that the commissioner of finance is required by law to collect
44 and that have been reduced to judgment by the docketing of a city tax
45 warrant in the office of the county clerk of the appropriate county.

46 (b) "Tax debtor" means a natural person or any entity other than a
47 natural person named on a city tax warrant and identified thereon as a
48 judgment debtor.

49 (c) "Financial institution" means any financial institution authorized
50 or required to participate in a financial institution data match system
51 or program for child support enforcement purposes under federal or state
52 law.

53 2. Financial institution data match system for tax collection
54 purposes. (a) To assist the commissioner of finance in the collection of
55 debts, the department of finance shall develop and operate a financial
56 institution data match system for the purpose of identifying and seizing

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1 the non-exempt assets of tax debtors as identified by the commissioner
2 of finance. The commissioner is authorized to designate a third party to
3 develop and operate this system. Any third party designated by the
4 commissioner to develop and operate a financial data match system shall
5 keep all information it obtains from both the department and the finan-
6 cial institution confidential, and any employee, agent or representative
7 of that third party is prohibited from disclosing that information to
8 anyone other than the department or the financial institution.

9 (b) Each financial institution doing business in the city shall, in
10 conjunction with the commissioner or the commissioner's authorized
11 designee, develop and operate a data match system to facilitate the
12 identification and seizure of non-exempt financial assets of tax debtors
13 identified by the commissioner or the commissioner's authorized desig-
14 nee. If a financial institution has a data match system developed or
15 used to administer the child support enforcement programs of this state,
16 and if that system is approved by the commissioner or the commissioner's
17 authorized designee, the financial institution may use that system to
18 comply with the provisions of this section.

19 3. Each financial institution shall provide identifying information
20 each calendar quarter to the department of finance for each tax debtor
21 identified by the department who or that maintains an account at the
22 institution.

23 The identifying information shall include the tax debtor's name,
24 address, and social security number or other taxpayer identification
25 number, and all account numbers and balances in each account.

26 4. A financial institution that complies with this section will not be
27 liable under state or city law to any person for the disclosure of
28 information to the commissioner or the commissioner's authorized desig-
29 nee, or any other action taken in good faith to comply with this
30 section.

31 5. Both the financial institution furnishing a report to the commis-
32 sioner under this section and the commissioner's authorized designee are
33 prohibited from disclosing to the tax debtor that the name of the tax
34 debtor has been received from or furnished to the commissioner, unless
35 authorized in writing by the commissioner to do so. A violation of this
36 subdivision will result in the imposition of a civil penalty equal to
37 the greater of one thousand dollars or the amount in the account of the
38 person to whom the disclosure was made for each instance of unauthorized
39 disclosure by the financial institution. That civil penalty can be
40 assessed and collected under this code as if that penalty were tax.

41 6. A financial institution may disclose to its depositors or account
42 holders that the department of finance has the authority to request
43 certain identifying information on certain depositors or account holders
44 under the financial institution data match system for city tax
45 collection purposes.

46 § 37. The administrative code of the city of New York is amended by
47 adding a new section 11-131 to read as follows:

48 § 11-131 Voluntary disclosure and compliance program. a. Notwith-
49 standing the provisions of any other law to the contrary, there is here-
50 by established a voluntary disclosure and compliance program, as
51 described in this section, to be administered by the commissioner, for
52 all eligible taxpayers as described in this section, owing any tax
53 imposed or previously imposed under this title.

54 b. For purposes of the voluntary disclosure and compliance program
55 established under this section, an eligible taxpayer is an individual,
56 partnership, estate, trust, corporation, limited liability company,

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1 joint stock company, or any other company, trustee, receiver, assignee,
2 referee, society, association, business or any other person subject to a
3 tax imposed by this title and who meets the following criteria: (1) the
4 taxpayer is not currently under audit by the department; (2) the taxpay-
5 er is one who is voluntarily disclosing a New York city tax liability
6 that the department has not determined, calculated, researched or iden-
7 tified at the time of the disclosure; (3) the taxpayer is not currently
8 a party to any criminal investigation being conducted by an agency of
9 the state or any political subdivision thereof; and (4) the taxpayer is
10 not seeking to disclose participation in a tax avoidance transaction
11 that is a federal or New York state reportable or listed transaction.

12 c. Under the voluntary disclosure and compliance program, upon
13 execution of a voluntary disclosure and compliance agreement by the
14 eligible taxpayer and the commissioner, the commissioner shall waive any
15 applicable penalties for the following: (1) failure to pay any such tax
16 liability; (2) failure to file a return or report with respect to any
17 such tax liability; and (3) failure to pay estimated tax. In addition,
18 no criminal action or proceeding shall be brought against an eligible
19 taxpayer relating to the tax liability covered by the agreement. This
20 agreement shall not preclude the auditing of the returns filed to deter-
21 mine if those returns were completed in accordance with existing law and
22 regulation. Intentional failure to pay all the taxes, plus related
23 interest, pursuant to the voluntary disclosure and compliance agreement
24 entered into between the taxpayer and the commissioner, shall invalidate
25 any waiver of penalty, invalidate the forbearance of any administrative
26 or criminal action or proceeding.

27 d. To participate in the voluntary disclosure and compliance program,
28 an eligible taxpayer must apply by submitting a disclosure statement in
29 the form and manner prescribed by the commissioner. The disclosure
30 statement shall contain all the information the commissioner reasonably
31 deems necessary to effectively administer the program. As long as all
32 the requirements of the voluntary disclosure and compliance program are
33 met, no application shall be denied solely because the taxpayer has
34 admitted that the delinquency was the result of willful or fraudulent
35 conduct. Except in instances where the taxpayer has failed to comply
36 with the terms of a voluntary disclosure and compliance agreement, the
37 commissioner shall not use the taxpayer's disclosure as evidence in any
38 proceeding brought against the taxpayer or reveal the contents of the
39 disclosure to any law enforcement or other agency. However, the disclo-
40 sure of any returns or reports filed under this program with the secre-
41 tary of the treasury of the United States, his or her delegates, or the
42 proper tax officer of any state or city is permitted as otherwise
43 provided for in this title.

44 e. (1) If the taxpayer and the tax liability are eligible under the
45 voluntary disclosure and compliance program, the commissioner is author-
46 ized to enter into a voluntary disclosure and compliance agreement with
47 the taxpayer. A voluntary disclosure and compliance agreement will be in
48 a form to be established by the commissioner and include such terms as
49 the commissioner may reasonably require to satisfy the taxpayer's
50 disclosed tax obligations and enable and require the taxpayer to comply
51 with the applicable provisions of this title in the future. The taxpayer
52 must pay the tax and the related interest that are the subject of the
53 voluntary disclosure and compliance agreement when the agreement is
54 executed or within the time stated on a bill issued to the taxpayer by
55 the commissioner. In the event the commissioner is satisfied that the
56 taxpayer cannot make immediate full payment of the disclosed tax liabil-

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1 ity, the commissioner may enter into an installment payment program with
2 the taxpayer for the payment of the tax and interest due. The commis-
3 sioner may require a financial disclosure statement setting forth infor-
4 mation concerning the taxpayer's current assets, liabilities, earnings,
5 and other financial information before entering into an installment
6 payment plan with the taxpayer. In addition to any other information and
7 terms that the commissioner determines are appropriate, the voluntary
8 disclosure and compliance agreement shall provide that, if the taxpayer
9 complies with the terms of the compliance agreement, the taxpayer will
10 not be subject to any criminal tax prosecution in New York city for the
11 conduct disclosed by the taxpayer.

12 (2) If the taxpayer intentionally provides false material information
13 or omits material information in his or her submissions to the commis-
14 sioner, or attempts to intentionally defeat or evade a tax due pursuant
15 to the agreement executed under this section, or intentionally fails to
16 comply with the terms of the compliance agreement, such agreement shall
17 be deemed rescinded.

18 f. Unless the commissioner on his or her own motion redetermines the
19 amount of tax due, including applicable interest, no refund shall be
20 granted or credit allowed with respect to any taxes, including applica-
21 ble interest, paid under this program. The commissioner may promulgate
22 regulations, issue forms and instructions, and take any and all other
23 actions necessary to implement the provisions of the program established
24 under this section.

25 g. The commissioner shall publicize the program provided for in this
26 section so as to maximize public awareness of and participation in such
27 program.

28 h. For purposes of this section, the term "taxpayer" includes any
29 person required to collect any of the taxes specified in subdivision a
30 of this section.

31 i. The voluntary disclosure and compliance application, the disclosure
32 statement, the voluntary disclosure and compliance agreement, and other
33 documents filed by an eligible taxpayer pursuant to the program estab-
34 lished by this section are deemed to be reports and returns: (a) subject
35 to the secrecy provisions of this title in the same manner and to the
36 same extent as if such documents were referred to in any of the secrecy
37 provisions of this title; and (b) for purposes of the criminal
38 provisions of chapter forty of this title.

39 § 38. The administrative code of the city of New York is amended by
40 adding a new section 11-132 to read as follows:

41 § 11-132 Mandatory electronic filing and payment. a. For purposes of
42 this section, the following terms have the specified meanings:

43 (1) "Authorized tax document" means a tax document which the commis-
44 sioner of finance has authorized to be filed electronically.

45 (2) "Electronic" means computer technology.

46 (3) "Original tax document" means a tax document that is filed during
47 the calendar year for which that tax document is required or permitted
48 to be filed.

49 (4) "Tax" means any tax or other matter administered by the commis-
50 sioner of finance pursuant to the administrative code or any other
51 provision of law.

52 (5) "Tax document" means a return, report or any other document relat-
53 ing to a tax or other matter administered by the commissioner of
54 finance.

55 (6) "Tax return preparer" means any person who prepares for compen-
56 sation, or who employs or engages one or more persons to prepare for

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1 compensation, any authorized tax document. For purposes of this section,
2 the term "tax return preparer" also includes a payroll service.

3 (7) "Tax software" means any computer software program intended for
4 tax return preparation purposes. For purposes of this section, the term
5 "tax software" includes, but is not limited to, an off-the-shelf soft-
6 ware program loaded onto a tax return preparer's or taxpayer's computer,
7 an online tax preparation application, or a tax preparation application
8 hosted by the department.

9 b. The commissioner may, by rule, require that if a tax return preparer
10 prepared more than one hundred original tax documents during any
11 calendar year beginning on or after January first, two thousand nine,
12 and if, in any succeeding calendar year that tax return preparer
13 prepares one or more authorized tax documents using tax software, then,
14 for that succeeding calendar year and for each subsequent calendar year
15 thereafter, all authorized tax documents prepared by that tax return
16 preparer must be filed electronically, in accordance with instructions
17 prescribed by the commissioner.

18 c. The commissioner may, by rule, require that if a taxpayer does not
19 utilize a tax return preparer to prepare an authorized tax document
20 during any calendar year beginning on or after January first, two thou-
21 sand ten, but instead prepares that document itself using tax software,
22 then, for that calendar year and for each subsequent calendar year ther-
23 eafter, all authorized tax documents prepared by the taxpayer using tax
24 software must be filed electronically, in accordance with instructions
25 prescribed by the commissioner.

26 d. The commissioner may, by rule, require that any tax liability or
27 other amount due shown on, or required to be paid with, an authorized
28 tax document required to be filed electronically pursuant to subdivision
29 b or c of this section must be paid by the taxpayer electronically, in
30 accordance with instructions prescribed by the commissioner.

31 e. Failure to electronically file or electronically pay. The commis-
32 sioner may, by rule, impose penalties for failing to electronically file
33 or electronically pay as follows: (1) If a tax return preparer is
34 required to file authorized tax documents electronically pursuant to
35 subdivision b of this section, and that preparer fails to file one or
36 more of those documents electronically, then that preparer will be
37 subject to a penalty of fifty dollars for each failure to electronically
38 file an authorized tax document, unless it is shown that the failure is
39 due to reasonable cause and not due to willful neglect. For purposes of
40 this paragraph, reasonable cause shall include, but not be limited to, a
41 taxpayer's election not to electronically file the authorized tax docu-
42 ment.

43 (2) If a taxpayer is required to electronically pay any tax liability
44 or other amount due shown on, or required to be paid with, an authorized
45 tax document required to be filed electronically pursuant to subdivision
46 b or c of this section, and that taxpayer fails to electronically pay
47 one or more of those liabilities or other amounts due, then that taxpay-
48 er will be subject to a penalty of fifty dollars for each failure to
49 electronically pay.

50 (3) The penalties provided for by this subdivision must be paid upon
51 notice and demand, and will be assessed, collected and paid in the same
52 manner as the tax to which the electronic transaction relates. However,
53 if the electronic transaction relates to another matter administered by
54 the commissioner of finance, then the penalty will be assessed,
55 collected and paid in the same manner as prescribed by the chapter of
56 the code that relates to collection of the general corporation tax.

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1 f. Any provision of the New York city charter or this code requiring
2 electronic payment or electronic filing of a tax return is not affected
3 by this section and will remain in full force and effect.

4 g. The commissioner of finance is authorized to promulgate any rules
5 necessary to implement this section.

6 § 39. Subdivision (a) of section 11-524 of the administrative code of
7 the city of New York, as amended by chapter 241 of the laws of 1989, is
8 amended to read as follows:

9 (a) General. If any amount of tax is not paid on or before the last
10 date prescribed in this chapter for payment, interest on such amount at
11 the underpayment rate set by the commissioner of finance pursuant to
12 section 11-537 of this chapter, or, if no rate is set, at the rate of
13 ~~[six]~~ seven and one-half percent per annum shall be paid for the period
14 from such last date to the date paid, whether or not any extension of
15 time for payment was granted. Interest under this subdivision shall not
16 be paid if the amount thereof is less than one dollar.

17 § 40. Subdivision (j) of section 11-524 of the administrative code of
18 the city of New York, as amended by section 1 and as relettered by
19 section 26 of chapter 241 of the laws of 1989, is amended to read as
20 follows:

21 (j) Interest on erroneous refund. Any portion of tax or other amount
22 which has been erroneously refunded, and which is recoverable by the
23 commissioner of finance, shall bear interest at the underpayment rate
24 set by the commissioner of finance pursuant to section 11-537 of this
25 chapter, or, if no rate is set, at the rate of ~~[six]~~ seven and one-half
26 percent per annum from the date of the payment of the refund, but only
27 if it appears that any part of the refund was induced by fraud or a
28 misrepresentation of a material fact.

29 § 41. Subdivision (c) of section 11-525 of the administrative code of
30 the city of New York, as amended by chapter 241 of the laws of 1989, is
31 amended to read as follows:

32 (c) Failure to file declaration or underpayment of estimated tax. If
33 any taxpayer fails to file a declaration of estimated tax or fails to
34 pay all or any part of an installment of estimated tax, the taxpayer
35 shall be deemed to have made an underpayment of estimated tax. There
36 shall be added to the tax for the taxable year an amount at the under-
37 payment rate set by the commissioner of finance pursuant to section
38 11-537 of this chapter, or, if no rate is set, at the rate of ~~[six]~~
39 seven and one-half percent per annum upon the amount of the underpayment
40 for the period of the underpayment but not beyond the fifteenth day of
41 the fourth month following the close of the taxable year. The amount of
42 the underpayment shall be the excess of the amount of the installment
43 which would be required to be paid if the estimated tax were equal to
44 ninety percent of the tax shown on the return for the taxable year (or
45 if no return was filed, ninety percent of the tax for such year) over
46 the amount, if any, of the installment paid on or before the last day
47 prescribed for such payment. No underpayment shall be deemed to exist
48 with respect to a declaration or installment otherwise due on or after
49 the taxpayer's death. In any case in which there would be no underpay-
50 ment if this subdivision were applied by substituting "eighty percent"
51 for "ninety percent" where it appears in the second preceding sentence,
52 the addition to tax under this subdivision shall be equal to seventy-
53 five percent of the amount otherwise determined under this subdivision.

54 § 42. Paragraphs 1 and 2 of subdivision (f) of section 11-537 of the
55 administrative code of the city of New York, paragraph 1 as amended by
56 section 1 of part U of chapter 60 of the laws of 2004 and paragraph 2 as

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1 amended by chapter 241 of the laws of 1989 and subparagraph (B) of para-
2 graph 2 as amended by section 1 of part E of chapter 63 of the laws of
3 2003, are amended to read as follows:

4 (1) Authority to set interest rates. The commissioner of finance shall
5 set the overpayment and underpayment rates of interest to be paid pursu-
6 ant to sections 11-524, 11-525 and 11-528 of this chapter, but if no
7 such rate or rates of interest are set, such overpayment rate [~~or rates~~]
8 shall be deemed to be set at six percent per annum and such underpayment
9 rate shall be deemed to be set at seven and one-half percent per annum.
10 Such overpayment and underpayment rates shall be the rates prescribed in
11 paragraph two of this subdivision, but the underpayment rate shall not
12 be less than [~~six~~] seven and one-half percent per annum. Any such rates
13 set by the commissioner of finance shall apply to taxes, or any portion
14 thereof, which remain or become due or overpaid on or after the date on
15 which such rates become effective and shall apply only with respect to
16 interest computed or computable for periods or portions of periods
17 occurring in the period during which such rates are in effect.

18 (2) General rule. (A) Overpayment rate. The overpayment rate set under
19 this subdivision shall be the sum of (i) the federal short-term rate as
20 provided under paragraph three of this subdivision, plus (ii) two
21 percentage points.

22 (B) Underpayment rate. The underpayment rate set under this subdivi-
23 sion shall be the sum of (i) the federal short-term rate as provided
24 under paragraph three of this subdivision, plus (ii) [~~five~~] seven
25 percentage points.

26 § 43. Subdivision 1 of section 11-606 of the administrative code of
27 the city of New York, as amended by chapter 241 of the laws of 1989, is
28 amended to read as follows:

29 1. To the extent the tax imposed by section 11-603 of this subchapter
30 shall not have been previously paid pursuant to section 11-608 of this
31 subchapter,

32 (a) such tax, or the balance thereof, shall be payable to the commis-
33 sioner of finance in full at the time the report is required to be
34 filed, and

35 (b) such tax, or the balance thereof, imposed on any taxpayer which
36 ceases to do business in the city or to be subject to the tax imposed by
37 this subchapter shall be payable to the commissioner of finance at the
38 time the report is required to be filed; all other taxes of any such
39 taxpayer, which pursuant to the foregoing provisions of this section
40 would otherwise be payable subsequent to the time such report is
41 required to be filed, shall nevertheless be payable at such time.

42 If the taxpayer, within the time prescribed by section 11-605 of this
43 subchapter, shall have applied for an automatic extension of time to
44 file its annual report and shall have paid to the commissioner of
45 finance on or before the date such application is filed an amount prop-
46 erly estimated as provided by said section, the only amount payable in
47 addition to the tax shall be interest at the underpayment rate set by
48 the commissioner of finance pursuant to section 11-687 of this chapter,
49 or, if no rate is set, at the rate of [~~six~~] seven and one-half percent
50 per annum upon the amount by which the tax, or the portion thereof paya-
51 ble on or before the date the report was required to be filed, exceeds
52 the amount so paid. For purposes of the preceding sentence:

53 (1) an amount so paid shall be deemed properly estimated if it is
54 either: (A) not less than ninety percent of the tax as finally deter-
55 mined (computed without regard to any credit allowable under subdivision
56 eleven of section 11-604 of this subchapter), or (B) not less than the

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1 tax shown (computed without regard to any credit allowable under subdivi-
2 sion ~~eleven of section 11-604 of this subchapter~~) ~~on~~ ~~the~~ taxpayer's
3 report for the preceding taxable year, if such preceding year was a
4 taxable year of twelve months; and

5 (2) the time when a report is required to be filed shall be determined
6 without regard to any extension of time for filing such report.

7 § 44. Subdivision 9 of section 11-608 of the administrative code of
8 the city of New York, as amended by chapter 241 of the laws of 1989, is
9 amended to read as follows:

10 9. The commissioner of finance may grant a reasonable extension of
11 time, not to exceed six months, for payment of any installment of esti-
12 mated tax required pursuant to this section, on such terms and condi-
13 tions as the commissioner may require including the furnishing of a bond
14 or other security by the taxpayer in an amount not exceeding twice the
15 amount for which any extension of time for payment is granted, provided
16 however that interest at the underpayment rate set by the commissioner
17 of finance pursuant to section 11-687 of this chapter, or, if no rate is
18 set, at the rate of [~~six~~] seven and one-half percent per annum for the
19 period of the extension shall be charged and collected on the amount for
20 which any extension of time for payment is granted under this subdivi-
21 sion.

22 § 45. Subdivision (i) of section 11-645 of the administrative code of
23 the city of New York, as amended by chapter 241 of the laws of 1989, is
24 amended to read as follows:

25 (i) Extension of time. The commissioner of finance may grant a reason-
26 able extension of time, not to exceed six months, for payment of any
27 installment of estimated tax required pursuant to this section, on such
28 terms and conditions as the commissioner may require, including the
29 furnishing of a bond or other security by the taxpayer in an amount not
30 exceeding twice the amount for which any extension of time for payment
31 is granted, provided, however that interest at the underpayment rate set
32 by the commissioner of finance pursuant to section 11-687 of this chap-
33 ter, or, if no rate is set, at the rate of [~~six~~] seven and one-half
34 percent per annum for the period of the extension shall be charged and
35 collected on the amount for which any extension of time for payment is
36 granted under this subdivision.

37 § 46. The opening paragraph of subdivision (b) of section 11-647 of
38 the administrative code of the city of New York, as amended by chapter
39 241 of the laws of 1989, is amended to read as follows:

40 If the taxpayer, within the time prescribed by subdivision (c) of
41 section 11-646 of this part, shall have applied for an automatic exten-
42 sion of time to file its annual return and shall have paid to the
43 commissioner of finance on or before the date of such application is
44 filed an amount properly estimated as provided by said subdivision the
45 only amount payable in addition to the tax shall be interest at the
46 underpayment rate set by the commissioner of finance pursuant to section
47 11-687 of this chapter, or, if no rate is set, at the rate of [~~six~~]
48 seven and one-half percent per annum upon the amount by which the tax,
49 or portion thereof payable on or before the date the return was required
50 to be filed, exceeds the amount so paid. For the purposes of the preced-
51 ing sentence:

52 § 47. Subdivisions 1 and 10 of section 11-675 of the administrative
53 code of the city of New York, as amended by section 9 and subdivision 10
54 as renumbered by section 27 of chapter 241 of the laws of 1989, are
55 amended to read as follows:

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1 1. General. If any amount of tax is not paid on or before the last
2 date prescribed in whichever of the named subchapters is applicable for
3 payment, interest on such amount at the underpayment rate set by the
4 commissioner of finance pursuant to section 11-687 of this subchapter,
5 or, if no rate is set, at the rate of [~~six~~] seven and one-half percent
6 per annum shall be paid for the period from such last date to the date
7 paid, whether or not any extension of time for payment was granted.
8 Interest under this subdivision shall not be paid if the amount thereof
9 is less than one dollar.

10 10. Interest on erroneous refund. Any portion of tax or other amount
11 which has been erroneously refunded, and which is recoverable by the
12 commissioner of finance, shall bear interest at the underpayment rate
13 set by the commissioner of finance pursuant to section 11-687 of this
14 subchapter, or, if no rate is set, at the rate of [~~six~~] seven and one-
15 half percent per annum from the date of the payment of the refund, but
16 only if it appears that any part of the refund was induced by fraud or a
17 misrepresentation of a material fact.

18 § 48. Subdivision 3 of section 11-676 of the administrative code of
19 the city of New York, as amended by chapter 241 of the laws of 1989, is
20 amended to read as follows:

21 3. Failure to file declaration or underpayment of estimated tax. If
22 any taxpayer fails to file a declaration of estimated tax under subchap-
23 ter two or three of this chapter, or fails to pay all or any part of an
24 amount which is applied as an installment against such estimated tax, it
25 shall be deemed to have made an underpayment of estimated tax. There
26 shall be added to the tax for the taxable year an amount at the under-
27 payment rate set by the commissioner of finance pursuant to section
28 11-687 of this subchapter, or, if no rate is set, at the rate of [~~six~~]
29 seven and one-half percent per annum upon the amount of the underpayment
30 for the period of the underpayment but not beyond the fifteenth day of
31 the third month following the close of the taxable year. The amount of
32 the underpayment shall be, with respect to any installment of estimated
33 tax computed on the basis of the preceding year's tax, the excess of the
34 amount required to be paid over the amount, if any, paid on or before
35 the last day prescribed for such payment or, with respect to any other
36 installment of estimated tax, the excess of the amount of the install-
37 ment which would be required to be paid if the estimated tax were equal
38 to ninety percent of the tax shown on the return for the taxable year
39 (or if no return was filed, ninety percent of the tax for such year)
40 over the amount, if any, of the installment paid on or before the last
41 day prescribed for such payment. In any case in which there would be no
42 underpayment if "eighty percent" were substituted for "ninety percent"
43 each place it appears in this subdivision, the addition to the tax shall
44 be equal to seventy-five percent of the amount otherwise determined. No
45 underpayment shall be deemed to exist with respect to a declaration or
46 installment otherwise due on or after the termination of existence of
47 the taxpayer.

48 § 49. Paragraphs (a) and (b) of subdivision 5 of section 11-687 of the
49 administrative code of the city of New York, paragraph (a) as amended by
50 local law number 39 of the city of New York for the year 2003, paragraph
51 (b) as amended by chapter 241 of the laws of 1989, subparagraph (B) of
52 paragraph (b) as amended by local law number 38 of the city of New York
53 for the year 2003, are amended to read as follows:

54 (a) Authority to set interest rates. The commissioner of finance shall
55 set the overpayment and underpayment rates of interest to be paid pursu-
56 ant to sections 11-606, 11-608, 11-645, 11-647, 11-675, 11-676, and

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1 11-679 of this chapter, but if no such rate or rates of interest are
2 set, such ~~overpayment rate~~ ~~(see subdivision 11-679)~~ shall be deemed to be set at ~~six~~
3 percent per annum and such underpayment rate shall be deemed to be set
4 at seven and one-half percent per annum. Such overpayment and underpay-
5 ment rates shall be the rates prescribed in paragraph (b) of this subdivi-
6 sion but the underpayment rate shall not be less than ~~[six]~~ seven and
7 one-half percent per annum. Any such rates set by the commissioner of
8 finance shall apply to taxes, or any portion thereof, which remain or
9 become due or overpaid on or after the date on which such rates become
10 effective and shall apply only with respect to interest computed or
11 computable for periods or portions of periods occurring in the period
12 during which such rates are in effect.

13 (b) General rule. (A) Overpayment rate. The overpayment rate set under
14 this subdivision shall be the sum of (i) the federal short-term rate as
15 provided under paragraph (c) of this subdivision, plus (ii) two percent-
16 age points.

17 (B) Underpayment rate. The underpayment rate set under this subdivi-
18 sion shall be the sum of (i) the federal short-term rate as provided
19 under paragraph (c) of this subdivision, plus (ii) ~~[five]~~ seven percent-
20 age points.

21 § 50. Subdivisions (a) and (b) of section 11-715 of the administrative
22 code of the city of New York, as amended by chapter 765 of the laws of
23 1985, are amended to read as follows:

24 (a) Interest on underpayment; quarterly return. If any amount of tax
25 required to be paid together with a return, other than the final return
26 for a tax year, is not paid on or before the last date prescribed for
27 payment (without regard to any extension of time granted for payment),
28 interest on such amount at the rate set by the commissioner of finance
29 pursuant to subdivision (h) of this section, or, if no rate is set, at
30 the rate of ~~[six]~~ seven and one-half percent per annum, shall be paid
31 for the period from such last date until twenty days after the end of
32 the tax year during which such payments were due or until such prior
33 time as the tax paid for the tax year equals seventy-five percent of the
34 full tax required to be paid for the tax year. Such interest shall be
35 paid with the final return for the tax year to which it relates. In
36 computing the amount of interest to be paid, such interest shall be
37 compounded daily. Interest under this subdivision shall not be paid if
38 the amount thereof is less than one dollar.

39 (b) Interest on underpayment; final return. If any amount of tax
40 required to be paid together with the final return for a tax year is not
41 paid on or before the last date prescribed for payment (without regard
42 to any extension of time granted for payment), interest on such amount
43 at the rate set by the commissioner of finance pursuant to subdivision
44 (h) of this section, or, if no rate is set, at the rate of ~~[six]~~ seven
45 and one-half percent per annum, shall be paid for the period from such
46 last date to the date of payment. In computing the amount of interest to
47 be paid, such interest shall be compounded daily. Interest under this
48 subdivision shall not be paid if the amount thereof is less than one
49 dollar.

50 § 51. Paragraphs 1 and 2 of subdivision (h) of section 11-715 of the
51 administrative code of the city of New York, paragraph 1 as amended by
52 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 2
53 of part E of chapter 63 of the laws of 2003, are amended to read as
54 follows:

55 (1) Authority to set interest rates. The commissioner of finance shall
56 set the rate of interest to be paid pursuant to subdivisions (a) and (b)

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1 of this section, but if no such rate of interest is set, such rate shall
2 be deemed to be set at ~~six~~ seven and one-half percent per annum. Such
3 rate shall be the same for each subdivision and shall be the rate
4 prescribed in paragraph two of this subdivision but shall not be less
5 than ~~six~~ seven and one-half percent per annum. Any such rate set by
6 the commissioner of finance shall apply to taxes, or any portion there-
7 of, which remain or become due on or after the date on which such rate
8 becomes effective and shall apply only with respect to interest computed
9 or computable for periods or portions of periods occurring in the period
10 in which such rate is in effect.

11 (2) General rule. The rate of interest set under this subdivision
12 shall be the sum of (i) the federal short-term rate as provided under
13 paragraph three of this subdivision, plus (ii) ~~five~~ seven percentage
14 points.

15 § 52. Subdivision (a) of section 11-817 of the administrative code of
16 the city of New York, as amended by chapter 765 of the laws of 1985, is
17 amended to read as follows:

18 (a) Interest on underpayments. If any amount of tax is not paid on or
19 before the last date prescribed for payment (without regard to any
20 extension of time granted for payment), interest on such amount at the
21 rate set by the commissioner of finance pursuant to subdivision (g) of
22 this section, or, if no rate is set, at the rate of ~~six~~ seven and
23 one-half percent per annum, shall be paid for the period from such last
24 date to the date of payment. In computing the amount of interest to be
25 paid, such interest shall be compounded daily. Interest under this
26 subdivision shall not be paid if the amount thereof is less than one
27 dollar.

28 § 53. Paragraphs 1 and 2 of subdivision (g) section 11-817 of the
29 administrative code of the city of New York, paragraph 1 as amended by
30 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 3
31 of part E of chapter 63 of the laws of 2003, are amended to read as
32 follows:

33 (1) Authority to set interest rates. The commissioner of finance shall
34 set the rate of interest to be paid pursuant to subdivision (a) of this
35 section, but if no such rate of interest is set, such rate shall be
36 deemed to be set at ~~six~~ seven and one-half percent per annum. Such
37 rate shall be the rate prescribed in paragraph two of this subdivision
38 but shall not be less than ~~six~~ seven and one-half percent per annum.
39 Any such rate set by the commissioner of finance shall apply to taxes,
40 or any portion thereof, which remain or become due on or after the date
41 on which such rate becomes effective and shall apply only with respect
42 to interest computed or computable for periods or portions of periods
43 occurring in the period in which such rate is in effect.

44 (2) General rule. The rate of interest set under this subdivision
45 shall be the sum of (i) the federal short-term rate as provided under
46 paragraph three of this subdivision, plus (ii) ~~five~~ seven percentage
47 points.

48 § 54. Subdivision (a) of section 11-905 of the administrative code of
49 the city of New York, as amended by chapter 241 of the laws of 1989, is
50 amended to read as follows:

51 (a) Interest on underpayments. If any amount of tax is not paid on or
52 before the last date prescribed for payment (without regard to any
53 extension of time granted for payment), interest on such amount at the
54 underpayment rate set by the commissioner of finance pursuant to subdivi-
55 sion (g) of this section, or, if no rate is set, at the rate of ~~six~~
56 seven and one-half percent per annum, shall be paid for the period from

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1 such last date to the date of payment. In computing the amount of inter-
2 est to be paid, such interest shall be compounded daily. Interest under
3 this subdivision shall not be paid if the amount thereof is less than
4 one dollar.

5 § 55. Paragraphs 1 and 2 of subdivision (g) of section 11-905 of the
6 administrative code of the city of New York, paragraph 1 as amended by
7 section 2 of part U of chapter 60 of the laws of 2004, paragraph 2 as
8 amended by chapter 241 of the laws of 1989 and subparagraph (B) of para-
9 graph 2 as amended by section 4 of part E of chapter 63 of the laws of
10 2003, are amended to read as follows:

11 (1) Authority to set interest rates. The commissioner of finance shall
12 set the overpayment and underpayment rates of interest to be paid pursu-
13 ant to subdivision (a) of this section and subdivision (a) of section
14 11-906 of this chapter, but if no such overpayment rate [~~or rates~~] of
15 interest are set, such rate or rates shall be deemed to be set at six
16 percent per annum and such underpayment rate shall be deemed to be set
17 at seven and one-half percent per annum. Such rates shall be the over-
18 payment and underpayment rates prescribed in paragraph two of this
19 subdivision but the underpayment rate shall not be less than [~~six~~] seven
20 and one-half percent per annum. Any such rates set by the commissioner
21 of finance shall apply to taxes, or any portion thereof, which remain or
22 become due or overpaid on or after the date on which such rates become
23 effective and shall apply only with respect to interest computed or
24 computable for periods or portions of periods occurring in the period in
25 which such rates are in effect.

26 (2) General rule. (A) Overpayment rate. The overpayment rate set under
27 this subdivision shall be the sum of (i) the federal short-term rate as
28 provided under paragraph three of this subdivision, plus (ii) two
29 percentage points.

30 (B) Underpayment rate. The underpayment rate set under this subdivi-
31 sion shall be the sum of (i) the federal short-term rate as provided
32 under paragraph three of this subdivision, plus (ii) [~~five~~] seven
33 percentage points.

34 § 56. Subdivision (a) of section 11-1114 of the administrative code of
35 the city of New York, as amended by chapter 765 of the laws of 1985, is
36 amended to read as follows:

37 (a) Interest on underpayments. If any amount of tax is not paid on or
38 before the last date prescribed for payment (without regard to any
39 extension of time granted for payment), interest on such amount at the
40 rate set by the commissioner of finance pursuant to subdivision (g) of
41 this section, or, if no rate is set, at the rate of [~~six~~] seven and
42 one-half percent per annum, shall be paid for the period from such last
43 date to the date of payment. In computing the amount of interest to be
44 paid, such interest shall be compounded daily. Interest under this
45 subdivision shall not be paid if the amount thereof is less than one
46 dollar.

47 § 57. Paragraphs 1 and 2 of subdivision (g) of section 11-1114 of the
48 administrative code of the city of New York, paragraph 1 as amended by
49 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 5
50 of part E of chapter 63 of the laws of 2003, are amended to read as
51 follows:

52 (1) Authority to set interest rates. The commissioner of finance shall
53 set the rate of interest to be paid pursuant to subdivision (a) of this
54 section, but if no such rate of interest is set, such rate shall be
55 deemed to be set at [~~six~~] seven and one-half percent per annum. Such
56 rate shall be the rate prescribed in paragraph two of this subdivision

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1 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
2 Any such rate set by the commissioner of finance shall apply to taxes,
3 or any portion thereof, which remain or become due on or after the date
4 on which such rate becomes effective and shall apply only with respect
5 to interest computed or computable for periods or portions of periods
6 occurring in the period in which such rate is in effect.

7 (2) General rule. The rate of interest set under this subdivision
8 shall be the sum of (i) the federal short-term rate as provided under
9 paragraph three of this subdivision, plus (ii) ~~[five]~~ seven percentage
10 points.

11 § 58. Subdivision (a) of section 11-1213 of the administrative code of
12 the city of New York, as amended by chapter 765 of the laws of 1985, is
13 amended to read as follows:

14 (a) Interest on underpayments. If any amount of tax is not paid over
15 or paid on or before the last date prescribed for payment (without
16 regard to any extension of time granted for payment), interest on such
17 amount at the rate set by the commissioner of finance pursuant to subdivi-
18 sion (g) of this section, or, if no rate is set, at the rate of ~~[six]~~
19 seven and one-half percent per annum, shall be paid for the period from
20 such last date to the date of payment. In computing the amount of inter-
21 est to be paid, such interest shall be compounded daily. Interest under
22 this subdivision shall not be paid if the amount thereof is less than
23 one dollar.

24 § 59. Paragraphs 1 and 2 of subdivision (g) of section 11-1213 of the
25 administrative code of the city of New York, paragraph 1 as amended by
26 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 6
27 of part E of chapter 63 of the laws of 2003, are amended to read as
28 follows:

29 (1) Authority to set interest rates. The commissioner of finance shall
30 set the rate of interest to be paid pursuant to subdivision (a) of this
31 section, but if no such rate of interest is set, such rate shall be
32 deemed to be set at ~~[six]~~ seven and one-half percent per annum. Such
33 rate shall be the rate prescribed in paragraph two of this subdivision
34 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
35 Any such rate set by the commissioner of finance shall apply to taxes,
36 or any portion thereof, which remain or become due on or after the date
37 on which such rate becomes effective and shall apply only with respect
38 to interest computed or computable for periods or portions of periods
39 occurring in the period in which such rate is in effect.

40 (2) General rule. The rate of interest set under this subdivision
41 shall be the sum of (i) the federal short-term rate as provided under
42 paragraph three of this subdivision, plus (ii) ~~[five]~~ seven percentage
43 points.

44 § 60. Paragraphs 1 and 2 of subdivision d of section 11-1317 of the
45 administrative code of the city of New York, paragraph 1 as amended by
46 chapter 765 of the laws of 1985, paragraph 2 as amended by chapter 241
47 of the laws of 1989 and subparagraph (B) of paragraph 2 as amended by
48 section 7 of part E of chapter 63 of the laws of 2003, are amended to
49 read as follows:

50 (1) If any amount of tax is not paid on or before the last date
51 prescribed for payment (without regard to any extension of time granted
52 for payment), interest on such amount at the rate set by the commission-
53 er of finance pursuant to paragraph two of this subdivision, or, if no
54 rate is set, at the rate of ~~[six]~~ seven and one-half percent per annum,
55 shall be paid for the period from such last date to the date of payment.
56 In computing the amount of interest to be paid, such interest shall be

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1 compounded daily. Interest under this subdivision shall not be paid if
2 the amount thereof is less than one dollar. The interest imposed by this
3 subdivision shall be paid and disposed of in the same manner as other
4 revenues from this chapter. Unpaid interest may be enforced in the same
5 manner as the tax imposed by this chapter.

6 (2) (A) The commissioner of finance shall set the rate of interest to
7 be paid pursuant to paragraph one of this subdivision, but if no such
8 rate of interest is set, such rate shall be deemed to be set at [~~six~~]
9 seven and one-half percent per annum. Such rate shall be the rate
10 prescribed in subparagraph (B) of this paragraph but shall not be less
11 than [~~six~~] seven and one-half percent per annum. Any such rate set by
12 the commissioner of finance shall apply to taxes, or any portion there-
13 of, which remain or become due on or after the date on which such rate
14 becomes effective and shall apply only with respect to interest computed
15 or computable for periods or portions of periods occurring in the period
16 in which such rate is in effect.

17 (B) General rule. The rate of interest set under this subdivision
18 shall be the sum of (i) the federal short-term rate as provided under
19 paragraph three of this subdivision, plus (ii) [~~five~~] seven percentage
20 points.

21 § 61. Subdivision (a) of section 11-1413 of the administrative code of
22 the city of New York, as amended by chapter 765 of the laws of 1985, is
23 amended to read as follows:

24 (a) Interest on underpayments. If any amount of tax is not paid on or
25 before the last date prescribed for payment (without regard to any
26 extension of time granted for payment), interest on such amount at the
27 rate set by the commissioner of finance pursuant to subdivision (g) of
28 this section, or, if no rate is set, at the rate of [~~six~~] seven and
29 one-half percent per annum, shall be paid for the period from such last
30 date to the date of payment. In computing the amount of interest to be
31 paid, such interest shall be compounded daily. Interest under this
32 subdivision shall not be paid if the amount thereof is less than one
33 dollar.

34 § 62. Paragraphs 1 and 2 of subdivision (g) of section 11-1413 of the
35 administrative code of the city of New York, paragraph 1 as amended by
36 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 8
37 of part E of chapter 63 of the laws of 2003, are amended to read as
38 follows:

39 (1) Authority to set interest rates. The commissioner of finance shall
40 set the rate of interest to be paid pursuant to subdivision (a) of this
41 section, but if no such rate of interest is set, such rate shall be
42 deemed to be set at [~~six~~] seven and one-half percent per annum. Such
43 rate shall be the rate prescribed in paragraph two of this subdivision
44 but shall not be less than [~~six~~] seven and one-half percent per annum.
45 Any such rate set by the commissioner of finance shall apply to taxes,
46 or any portion thereof, which remain or become due on or after the date
47 on which such rate becomes effective and shall apply only with respect
48 to interest computed or computable for periods or portions of periods
49 occurring in the period in which such rate is in effect.

50 (2) General rule. The rate of interest set under this subdivision
51 shall be the sum of (i) the federal short-term rate as provided under
52 paragraph three of this subdivision, plus (ii) [~~five~~] seven percentage
53 points.

54 § 63. Subdivision (a) of section 11-1515 of the administrative code of
55 the city of New York, as amended by chapter 765 of the laws of 1985, is
56 amended to read as follows:

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1 (a) Interest on underpayments. If any amount of tax is not paid on or
2 before the last date prescribed for payment (without regard to any
3 extension of time granted for payment), interest on such amount at the
4 rate set by the commissioner of finance pursuant to subdivision (g) of
5 this section, or, if no rate is set, at the rate of ~~[six]~~ seven and
6 one-half percent per annum, shall be paid for the period from such last
7 date to the date of payment. In computing the amount of interest to be
8 paid, such interest shall be compounded daily. Interest under this
9 subdivision shall not be paid if the amount thereof is less than one
10 dollar.

11 § 64. Paragraphs 1 and 2 of subdivision (g) of section 11-1515 of the
12 administrative code of the city of New York, paragraph 1 as amended by
13 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 9
14 of part E of chapter 63 of the laws of 2003, are amended to read as
15 follows:

16 (1) Authority to set interest rates. The commissioner of finance shall
17 set the rate of interest to be paid pursuant to subdivision (a) of this
18 section, but if no such rate of interest is set, such rate shall be
19 deemed to be set at ~~[six]~~ seven and one-half percent per annum. Such
20 rate shall be the rate prescribed in paragraph two of this subdivision
21 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
22 Any such rate set by the commissioner of finance shall apply to taxes,
23 or any portion thereof, which remain or become due on or after the date
24 on which such rate becomes effective and shall apply only with respect
25 to interest computed or computable for periods or portions of periods
26 occurring in the period in which such rate is in effect.

27 (2) General rule. The rate of interest set under this subdivision
28 shall be the sum of (i) the federal short-term rate as provided under
29 paragraph three of this subdivision, plus (ii) ~~[five]~~ seven percentage
30 points.

31 § 65. Subdivision (a) of section 11-2114 of the administrative code of
32 the city of New York, as amended by chapter 765 of the laws of 1985, is
33 amended to read as follows:

34 (a) Interest on underpayments. If any amount of tax is not paid on or
35 before the last date prescribed for payment (without regard to any
36 extension of time granted for payment), interest on such amount at the
37 rate set by the commissioner of finance pursuant to subdivision (g) of
38 this section, or, if no rate is set, at the rate of ~~[six]~~ seven and
39 one-half percent per annum, shall be paid for the period from such last
40 date to the date of payment. In computing the amount of interest to be
41 paid, such interest shall be compounded daily. Interest under this
42 subdivision shall not be paid if the amount thereof is less than one
43 dollar.

44 § 66. Paragraphs 1 and 2 of subdivision (g) of section 11-2114 of the
45 administrative code of the city of New York, paragraph 1 as amended by
46 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 10
47 of part E of chapter 63 of the laws of 2003, are amended to read as
48 follows:

49 (1) Authority to set interest rates. The commissioner of finance shall
50 set the rate of interest to be paid pursuant to subdivision (a) of this
51 section, but if no such rate of interest is set, such rate shall be
52 deemed to be set at ~~[six]~~ seven and one-half percent per annum. Such
53 rate shall be the rate prescribed in paragraph two of this subdivision
54 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
55 Any such rate set by the commissioner of finance shall apply to taxes,
56 or any portion thereof, which remain or become due on or after the date

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1 on which such rate becomes effective and shall apply only with respect
2 to interest computed or computable for periods or portions of periods
3 occurring in the period in which such rate is in effect.

4 (2) General rule. The rate of interest set under this subdivision
5 shall be the sum of (i) the federal short-term rate as provided under
6 paragraph three of this subdivision, plus (ii) ~~five~~ seven percentage
7 points.

8 § 67. Subdivision (a) of section 11-2414 of the administrative code of
9 the city of New York, as amended by chapter 765 of the laws of 1985, is
10 amended to read as follows:

11 (a) Interest on underpayments. If any amount of tax is not paid on or
12 before the last date prescribed for payment (without regard to any
13 extension of time granted for payment), interest on such amount at the
14 rate set by the commissioner of finance pursuant to subdivision (g) of
15 this section, or, if no rate is set, at the rate of ~~six~~ seven and
16 one-half percent per annum, shall be paid for the period from such last
17 date to the date of payment. In computing the amount of interest to be
18 paid, such interest shall be compounded daily. Interest under this
19 subdivision shall not be paid if the amount thereof is less than one
20 dollar.

21 § 68. Paragraphs 1 and 2 of subdivision (g) of section 11-2414 of the
22 administrative code of the city of New York, paragraph 1 as amended by
23 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 11
24 of part E of chapter 63 of the laws of 2003, are amended to read as
25 follows:

26 (1) Authority to set interest rates. The commissioner of finance shall
27 set the rate of interest to be paid pursuant to subdivision (a) of this
28 section, but if no such rate of interest is set, such rate shall be
29 deemed to be set at ~~six~~ seven and one-half percent per annum. Such
30 rate shall be the rate prescribed in paragraph two of this subdivision
31 but shall not be less than ~~six~~ seven and one-half percent per annum.
32 Any such rate set by the commissioner of finance shall apply to taxes,
33 or any portion thereof, which remain or become due on or after the date
34 on which such rate becomes effective and shall apply only with respect
35 to interest computed or computable for periods or portions of periods
36 occurring in the period in which such rate is in effect.

37 (2) General rule. The rate of interest set under this subdivision
38 shall be the sum of (i) the federal short-term rate as provided under
39 paragraph three of this subdivision, plus (ii) ~~five~~ seven percentage
40 points.

41 § 69. Subdivision (a) of section 11-2515 of the administrative code of
42 the city of New York, as amended by chapter 765 of the laws of 1985, is
43 amended to read as follows:

44 (a) Interest on underpayments. If any amount of tax is not paid or
45 paid over on or before the last date prescribed for payment (without
46 regard to any extension of time granted for payment), interest on such
47 amount at the rate set by the commissioner of finance pursuant to subdi-
48 vision (g) of this section, or, if no rate is set, at the rate of ~~six~~
49 seven and one-half percent per annum, shall be paid for the period from
50 such last date to the date of payment. In computing the amount of inter-
51 est to be paid, such interest shall be compounded daily. Interest under
52 this subdivision shall not be paid if the amount thereof is less than
53 one dollar.

54 § 70. Paragraphs 1 and 2 of subdivision (g) of section 11-2515 of the
55 administrative code of the city of New York, paragraph 1 as amended by
56 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 12

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1 of part E of chapter 63 of the laws of 2003, are amended to read as
2 follows:

3 (1) Authority to set interest rates. The commissioner of finance shall
4 set the rate of interest to be paid pursuant to subdivision (a) of this
5 section, but if no such rate of interest is set, such rate shall be
6 deemed to be set at ~~[six]~~ seven and one-half percent per annum. Such
7 rate shall be the rate prescribed in paragraph two of this subdivision
8 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
9 Any such rate set by the commissioner of finance shall apply to taxes,
10 or any portion thereof, which remain or become due on or after the date
11 on which such rate becomes effective and shall apply only with respect
12 to interest computed or computable for periods or portions of periods
13 occurring in the period in which such rate is in effect.

14 (2) General rule. The rate of interest set under this subdivision
15 shall be the sum of (i) the federal short-term rate as provided under
16 paragraph three of this subdivision, plus (ii) ~~[five]~~ seven percentage
17 points.

18 § 71. Subdivision (a) of section 11-2714 of the administrative code of
19 the city of New York, as amended by chapter 765 of the laws of 1985, is
20 amended to read as follows:

21 (a) Interest on underpayments. If any annual vault charge is not paid
22 on or before the last date prescribed for payment (without regard to any
23 extension of time granted for payment), interest on such amount at the
24 rate set by the commissioner of finance pursuant to subdivision (g) of
25 this section, or, if no rate is set, at the rate of ~~[six]~~ seven and
26 one-half percent per annum, shall be paid for the period from such last
27 date to the date of payment. In computing the amount of interest to be
28 paid, such interest shall be compounded daily. Interest under this
29 subdivision shall not be paid if the amount thereof is less than one
30 dollar.

31 § 72. Paragraphs 1 and 2 of subdivision (g) of section 11-2714 of the
32 administrative code of the city of New York, paragraph 1 as amended by
33 chapter 241 of the laws of 1989 and paragraph 2 as amended by section 13
34 of part E of chapter 63 of the laws of 2003, are amended to read as
35 follows:

36 (1) Authority to set interest rates. The commissioner of finance,
37 shall set the rate of interest to be paid pursuant to subdivision (a) of
38 this section, but if no such rate of interest is set, such rate shall be
39 deemed to be set at ~~[six]~~ seven and one-half percent per annum. Such
40 rate shall be the rate prescribed in paragraph two of this subdivision
41 but shall not be less than ~~[six]~~ seven and one-half percent per annum.
42 Any such rate set by the commissioner of finance shall apply to vault
43 charges, or any portion thereof, which remain or become due on or after
44 the date on which such rate becomes effective and shall apply only with
45 respect to interest computed or computable for periods or portions of
46 periods occurring in the period in which such rate is in effect.

47 (2) General rule. The rate of interest set under this subdivision
48 shall be the sum of (i) the federal short-term rate as provided under
49 paragraph three of this subdivision, plus (ii) ~~[five]~~ seven percentage
50 points.

51 § 73. Section 1004 of the business corporation law, as renumbered by
52 chapter 834 of the laws of 1962, is amended to read as follows:

53 §.1004. Certificate of dissolution; filing.

54 (a) The department shall not file such certificate unless the consent
55 of the state ~~[tax commission]~~ department of taxation and finance to the

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1 dissolution is attached thereto. Upon such filing, the corporation is
2 dissolved:

3 (b) Notwithstanding paragraph (a) of this section, with respect to any
4 corporation that has done business in the city of New York and incurred
5 liability for any tax or charge under chapter six, seven, eight, ten,
6 eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-four,
7 twenty-five or twenty-seven of title eleven of the administrative code
8 of the city of New York, the department shall not file such certificate
9 unless the consent of the commissioner of finance of the city of New
10 York to the dissolution is also attached thereto.

11 § 74. Paragraph (c) of section 1007 of the business corporation law,
12 as amended by chapter 834 of the laws of 1962, is amended to read as
13 follows:

14 (c) Notwithstanding this section and section 1008, tax claims and
15 other claims of this state ~~[and]~~, of the United States and of the
16 department of finance of the city of New York shall not be required to
17 be filed under those sections, and such claims shall not be barred
18 because not so filed, and distribution of the assets of the corporation,
19 or any part thereof, may be deferred until determination of any such
20 claims.

21 § 75. Section 1004 of the not-for-profit corporation law is amended to
22 read as follows:

23 § 1004. Certificate of dissolution; filing; effect.

24 (a) The department of state shall not file a certificate of dissol-
25 ution unless the consent of the state ~~[tax-commission]~~ department of
26 taxation and finance to the dissolution is attached thereto. Upon
27 filing the certificate, the corporation is dissolved.

28 (b) Notwithstanding paragraph (a) of this section, with respect to any
29 corporation that has done business in the city of New York and incurred
30 liability for any tax or charge under chapter six, seven, eight, ten,
31 eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-four,
32 twenty-five or twenty-seven of title eleven of the administrative code
33 of the city of New York, the department of state shall not file a
34 certificate of dissolution unless the consent of the commissioner of
35 finance of the city of New York to the dissolution is also attached
36 thereto.

37 § 76. Paragraph (c) of section 1007 of the not-for-profit corporation
38 law, as amended by chapter 434 of the laws of 2006, is amended to read
39 as follows:

40 (c) Notwithstanding this section and section 1008 (Jurisdiction of
41 supreme court to supervise dissolution and liquidation), tax claims and
42 other claims of this state ~~[and]~~, of the United States and of the
43 department of finance of the city of New York shall not be required to
44 be filed under those sections, and such claims shall not be barred
45 because not so filed, and distribution of the assets of the corporation,
46 or any part thereof, may be deferred until determination of any such
47 claims.

48 § 77. The administrative code of the city of New York is amended by
49 adding a new section 11-133 to read as follows:

50 § 11-133 Consent to dissolution of a corporation. Where a corporation
51 files an application for consent to dissolution with the commissioner of
52 finance for purposes of obtaining non-judicial dissolution under article
53 ten of the business corporation law or article ten of the not-for-profit
54 corporation law, such consent shall be issued by the commissioner only
55 if the commissioner has determined that all fees, taxes, penalties and
56 interest imposed on such corporation under chapters six, seven, eight,

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1 ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-
2 four, twenty-five and twenty-seven of this title have been (a) paid in
3 full, or (b) paid pursuant to an offer in compromise pursuant to para-
4 graph c or d of subdivision two of section fifteen hundred four of the
5 New York city charter. Notwithstanding the preceding sentence, the
6 commissioner of finance is authorized in his or her discretion and in
7 such manner and on such terms as he or she may determine to issue a
8 consent to dissolution if a written agreement for payment of such fees,
9 taxes, penalties and interest is executed with the commissioner. Such
10 applications shall be filed in the form and manner determined by the
11 commissioner.

12 § 78. Paragraph 1 of subdivision (f) of section 11-525 of the adminis-
13 trative code of the city of New York, as amended by chapter 765 of the
14 laws of 1985, is amended to read as follows:

15 (1) If any part of a deficiency is due to fraud, there shall be added
16 to the tax an amount equal to [~~fifty percent of~~] two times the deficien-
17 cy.

18 § 79. Paragraph 2 of subdivision (f) of section 11-525 of the adminis-
19 trative code of the city of New York is REPEALED.

20 § 80. Section 11-525 of the administrative code of the city of New
21 York is amended by adding a new subdivision (1) to read as follows:

22 (1) False or fraudulent document penalty. Any taxpayer that submits a
23 false or fraudulent document to the department shall be subject to a
24 penalty of one hundred dollars per document submitted, or five hundred
25 dollars per tax return submitted. Such penalty shall be in addition to
26 any other penalty or addition provided by law.

27 § 81. Paragraph (a) of subdivision 6 of section 11-676 of the adminis-
28 trative code of the city of New York, as amended by chapter 765 of the
29 laws of 1985, is amended to read as follows:

30 (a) If any part of a deficiency is due to fraud, there shall be added
31 to the tax an amount equal to [~~fifty percent of~~] two times the deficien-
32 cy.

33 § 82. Paragraph (b) of subdivision 6 of section 11-676 of the adminis-
34 trative code of the city of New York is REPEALED.

35 § 83. Section 11-676 of the administrative code of the city of New
36 York is amended by adding a new subdivision 15 to read as follows:

37 15. False or fraudulent document penalty. Any taxpayer that submits a
38 false or fraudulent document to the department shall be subject to a
39 penalty of one hundred dollars per document submitted, or five hundred
40 dollars per tax return submitted. Such penalty shall be in addition to
41 any other penalty or addition provided by law.

42 § 84. Paragraph 1 of subdivision (d) of section 11-1114 of the admin-
43 istrative code of the city of New York, as amended by chapter 765 of the
44 laws of 1985, is amended to read as follows:

45 (1) If any part of an underpayment of tax is due to fraud, there shall
46 be added to the tax a penalty equal to [~~fifty percent of~~] two times the
47 underpayment.

48 § 85. Paragraph 2 of subdivision (d) of section 11-1114 of the admin-
49 istrative code of the city of New York is REPEALED.

50 § 86. Section 11-1114 of the administrative code of the city of New
51 York is amended by adding a new subdivision (1) to read as follows:

52 (1) False or fraudulent document penalty. Any taxpayer that submits a
53 false or fraudulent document to the department shall be subject to a
54 penalty of one hundred dollars per document submitted, or five hundred
55 dollars per tax return submitted. Such penalty shall be in addition to
56 any other penalty or addition provided by law.

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1 § 87. Section 11-2503 of the administrative code of the city of New
2 York is amended to read as follows:

3 § 11-2503 Records to be kept. a. Every operator shall keep records of
4 every occupancy and of all rent paid, charged or due thereon and of the
5 tax payable thereon, in such form as the commissioner of finance may by
6 regulation require. Such records shall be available for inspection and
7 examination at any time upon demand by the commissioner of finance or
8 his or her duly authorized agent or employee and shall be preserved for
9 a period of three years, except that the commissioner of finance may
10 consent to their destruction within that period or may require that they
11 be kept longer.

12 b. Notwithstanding the provisions of section three hundred five and
13 three hundred nine of the state technology law or any other law, the
14 commissioner may require any person who has elected to maintain in an
15 electronic format any portion of the records required to be maintained
16 by that person under this chapter, to make the electronic records avail-
17 able and accessible to the commissioner, notwithstanding that the
18 records are also maintained in a hard copy format.

19 § 88. Paragraph 1 of subdivision (d) of section 11-2515 of the admin-
20 istrative code of the city of New York, as amended by chapter 765 of the
21 laws of 1985, is amended to read as follows:

22 (1) If any part of an underpayment of tax is due to fraud, there shall
23 be added to the tax a penalty equal to ~~[fifty percent of]~~ two times the
24 underpayment.

25 § 89. Paragraph 2 of subdivision (d) of section 11-2515 of the admin-
26 istrative code of the city of New York is REPEALED.

27 § 90. Section 11-2515 of the administrative code of the city of New
28 York is amended by adding a new subdivision (i) to read as follows:

29 (i) Any person required to make or maintain records under this chapter
30 who fails to make or maintain or make available to the commissioner
31 these records is subject to a penalty not to exceed one thousand dollars
32 for the first quarterly period or part thereof for which the failure
33 occurs and not to exceed five thousand dollars for each additional quar-
34 terly period or part thereof for which the failure occurs. This penalty
35 is in addition to any other penalty provided for in this chapter but may
36 not be imposed and collected more than once for failures for the same
37 quarterly period or part thereof. If the commissioner determines that a
38 failure to make or maintain or make available records in any quarterly
39 period was entirely due to reasonable cause and not to willful neglect,
40 the commissioner must remit the penalty imposed for that quarterly peri-
41 od. These penalties will be paid and disposed of in the same manner as
42 other revenues from this chapter. These penalties will be determined,
43 assessed, collected, paid and enforced in the same manner as the tax
44 imposed by this chapter, and all the provisions of this chapter relating
45 to tax will be deemed also to apply to the penalties imposed by this
46 subdivision. For purposes of the penalty imposed by this subdivision, a
47 person will be considered to have failed to make or maintain the
48 required records when the commissioner of finance determines that the
49 records made or maintained by that person for a quarterly period do not
50 enable the commissioner to verify occupancy or the amounts received for
51 such occupancy or the taxability of that occupancy and to conduct a
52 complete audit.

53 § 91. Section 11-2515 of the administrative code of the city of New
54 York is amended by adding a new subdivision (j) to read as follows:

55 (j) Any person required to make or maintain records under this chapter
56 who fails to present and make available these records in an auditable

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1 form is subject to a penalty not to exceed one thousand dollars for each
2 quarterly period or part thereof for which records maintained by that
3 person are not presented and made available by that person in auditable
4 form, even if these records are adequate to verify credits, receipts,
5 and the taxability thereof and to perform a complete audit. This penalty
6 is in addition to any other penalty provided for in this chapter, but
7 will not be imposed and collected more than once for these failures for
8 the same quarterly period or part thereof. If the commissioner deter-
9 mines that any failure described in this subdivision for a quarterly
10 period was entirely due to reasonable cause and not to willful neglect,
11 the commissioner must remit the penalty imposed for that quarter. The
12 penalties imposed by this subdivision will be paid and disposed of in
13 the same manner as other revenues from this chapter. These penalties
14 will be determined, assessed, collected, paid and enforced in the same
15 manner as the tax imposed by this chapter, and all the provisions of
16 this chapter relating to tax will be deemed also to apply to the penal-
17 ties imposed by this subdivision. For purposes of the penalty imposed by
18 this subdivision, a person will be considered to have failed to present
19 and make records available in auditable form when the records presented
20 by that person for that quarter lack sufficient organization, such as by
21 date, invoice number, sales receipts, or sequential numbering, or are
22 otherwise inadequate (without reorganizing, reordering or otherwise
23 rearranging the records into an auditable form) to permit direct recon-
24 ciliation of the receipts, invoices or other source documents with the
25 entries for the quarterly period in the books and records and on the
26 returns of that person.

27 § 92. Section 11-2515 of the administrative code of the city of New
28 York is amended by adding a new subdivision (k) to read as follows:

29 (k) Any person who, having elected to maintain in an electronic format
30 any portion or all of the records he or she is required to make and
31 maintain by this chapter, fails to present and make these records avail-
32 able and accessible to the commissioner in electronic format, is subject
33 to a penalty not to exceed five thousand dollars for each quarterly
34 period or part thereof for which these electronic records are not
35 presented and made available and accessible upon request, notwithstand-
36 ing that the records may also be maintained and available in hard copy
37 format. This penalty is in addition to any other penalty provided for in
38 this chapter, but may not be imposed and collected more than once for a
39 failure for the same quarterly period or part thereof. Provided, howev-
40 er, nothing in this subdivision will prevent the separate imposition, if
41 applicable, of any penalty imposed by subdivision (i) or (j) of this
42 section for the same quarterly period or part thereof. If the commis-
43 sioner determines that the failure to present and make electronically
44 maintained records available and accessible for a quarterly period was
45 entirely due to reasonable cause and not to willful neglect, the commis-
46 sioner must remit the penalty imposed for that quarter. These penalties
47 will be paid and disposed of in the same manner as other revenues from
48 this chapter. These penalties will be determined, assessed, collected,
49 paid and enforced in the same manner as the tax imposed by this chapter,
50 and all the provisions of this chapter relating to tax will be deemed
51 also to apply to the penalty imposed by this subdivision. For purposes
52 of the penalty imposed by this subdivision, a failure to present and
53 make available and accessible a record maintained in electronic format
54 includes not only the denial of access to the requested records that
55 were maintained electronically, but also the failure to make available
56 to the commissioner the information, knowledge, or means necessary to

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1 access and otherwise use the electronically maintained records in the
2 inspection and examination of these records:

3 § 93. Section 11-2515 of the administrative code of the city of New
4 York is amended by adding two new subdivisions (l) and (m) to read as
5 follows:

6 (l) Aiding or assisting in the giving of fraudulent returns, reports,
7 statements or other documents. Any person who, with the intent that tax
8 be evaded, for a fee or other compensation or as an incident to the
9 performance of other services for which that person receives compen-
10 sation, aids or assists in, or procures, counsels, or advises the prepa-
11 ration or presentation under this chapter, or in connection with any
12 matter arising under this chapter, of any return, report, declaration,
13 statement or other document that is fraudulent or false as to any mate-
14 rial matter, or supplies any false or fraudulent information, whether or
15 not such falsity or fraud is with the knowledge or consent of the person
16 authorized or required to present that return, report, declaration,
17 statement or other document, will pay a penalty not exceeding five thou-
18 sand dollars. The definitions in subsection (l) of section one thousand
19 eighty-five of the tax law apply for the purposes of this penalty.

20 (m) False or fraudulent document penalty. Any taxpayer that submits a
21 false or fraudulent document to the department will be subject to a
22 penalty of one hundred dollars per document submitted, or five hundred
23 dollars per tax return submitted. This penalty will be in addition to
24 any other penalty provided by law.

25 § 94. Subdivision (c) of section 11-4001 of the administrative code of
26 the city of New York, as added by chapter 765 of the laws of 1985, is
27 amended to read as follows:

28 (c) As used in this chapter, the term "felony" and the term "misdemeanor"
29 shall have the same meaning as they have in the penal law, and the
30 disposition of such offenses and the sentences imposed therefor shall be
31 as provided in such law, except: (1) notwithstanding the provisions of
32 paragraph a of subdivision one of section 80.00 and paragraph (a) of
33 subdivision one of section 80.10 of the penal law relating to the fine
34 for a felony, the court may impose a fine not to exceed the greater of
35 double the amount of the underpaid tax liability resulting from the
36 commission of the crime or fifty thousand dollars, [~~except that~~] or, in
37 the case of a corporation the fine may not exceed the greater of double
38 the amount of the underpaid tax liability resulting from the commission
39 of the crime or two hundred fifty thousand dollars, and (2) notwith-
40 standing the provisions of subdivision one of section 80.05 and para-
41 graph (b) of subdivision one of section 80.10 of the penal law relating
42 to the fine for a class A misdemeanor, the court may impose a fine not
43 to exceed ten thousand dollars, except that in the case of a corporation
44 the fine may not exceed twenty thousand dollars.

45 § 95. Section 11-4001 of the administrative code of the city of New
46 York is amended by adding a new subdivision (d) to read as follows:

47 (d) As used in this chapter:

48 (1) "city" shall mean the city of New York; and

49 (2) "state" shall mean the state of New York.

50 § 96. Section 11-4002 of the administrative code of the city of New
51 York is REPEALED and a new section 11-4002 is added to read as follows:

52 § 11-4002 Tax fraud acts. (a) As used in this chapter, "tax fraud act"
53 means willfully engaging in an act or acts or willfully causing another
54 to engage in an act or acts pursuant to which a person:

55 (1) fails to make, render, sign, certify, or file any return or report
56 required under the provisions of any designated chapter of this title or

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1 any rule or regulation promulgated thereunder within the time required
2 by or under the provisions of any designated chapter of this title or
3 such rule or regulation;

4 (2) knowing that a return, report, statement or other document under
5 any designated chapter of this title contains any materially false or
6 fraudulent information, or omits any material information, files or
7 submits that return, report, statement or document with the city or the
8 state, or with any public office or public officer of the city or the
9 state;

10 (3) knowingly supplies or submits materially false or fraudulent
11 information in connection with any return, audit, investigation, or
12 proceeding or fails to supply information within the time required by or
13 under the provisions of any designated chapter of this title or any rule
14 or regulation promulgated under any designated chapter of this title;

15 (4) engages in any scheme to defraud the city or the state or a
16 government instrumentality of the city or of the state by false or frau-
17 dulent pretenses, representations or promises as to any material matter,
18 in connection with any tax imposed under any designated chapter of this
19 title or any matter under any designated chapter of this title;

20 (5) fails to remit any tax collected in the name of the city or the
21 state or on behalf of the city or the state when such collection is
22 required under any designated chapter of this title;

23 (6) fails to collect any tax required to be collected under chapter
24 twelve, thirteen, twenty-three-A, twenty-three-B or twenty-five of this
25 title;

26 (7) with intent to evade any tax imposed under any designated chapter
27 of this title, fails to pay that tax; or

28 (8) issues an exemption certificate, interdistributor sales certif-
29 icate, resale certificate, or any other document capable of evidencing a
30 claim that taxes imposed under a designated chapter of this title do not
31 apply to a transaction, which he or she does not believe to be true and
32 correct as to any material matter, which omits any material information,
33 or which is false, fraudulent, or counterfeit.

34 (b) For purposes of this section, the term "willfully" shall mean
35 acting with either intent to defraud, intent to evade the payment of
36 taxes or intent to avoid a requirement of this title, a lawful require-
37 ment of the commissioner or a known legal duty.

38 (c) For purposes of this chapter, the term "designated chapter" shall
39 mean chapter five, six, seven, eight, nine, eleven, twelve, thirteen,
40 fourteen, fifteen, twenty-one, twenty-two, twenty-three-A, twenty-four,
41 twenty-five or twenty-seven of this title.

42 § 97. Section 11-4003 of the administrative code of the city of New
43 York is REPEALED and a new section 11-4003 is added to read as follows:

44 § 11-4003 City criminal tax fraud in the fifth degree. A person
45 commits city criminal tax fraud in the fifth degree when he or she
46 commits a tax fraud act. City criminal tax fraud in the fifth degree is
47 a class A misdemeanor.

48 § 98. Section 11-4004 of the administrative code of the city of New
49 York is REPEALED and a new section 11-4004 is added to read as follows:

50 § 11-4004 City criminal tax fraud in the fourth degree. A person
51 commits city criminal tax fraud in the fourth degree when he or she
52 commits a tax fraud act or acts and, with the intent to evade any tax
53 due under any designated chapter of this title, or to defraud the city
54 or the state or any instrumentality of the city or the state, the person
55 pays the city or the state or any public office or public officer of the
56 city or the state or any instrumentality of the city or state (whether

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1 by means of underpayment or receipt of refund or both), in a period of
2 not more than one year in excess of three thousand dollars less than the
3 tax liability that is due. City criminal tax fraud in the fourth degree
4 is a class E felony.

5 § 99. Section 11-4005 of the administrative code of the city of New
6 York is REPEALED and a new section 11-4005 is added to read as follows:

7 § 11-4005 City criminal tax fraud in the third degree. A person
8 commits city criminal tax fraud in the third degree when he or she
9 commits a tax fraud act or acts and, with the intent to evade any tax
10 due under any designated chapter of this title, or to defraud the city
11 or the state or any instrumentality of the city or the state, the person
12 pays the city or the state or any public office or public officer of the
13 city or the state or any instrumentality of the city or state (whether
14 by means of underpayment or receipt of refund or both), in a period of
15 not more than one year in excess of ten thousand dollars less than the
16 tax liability that is due. City criminal tax fraud in the third degree
17 is a class D felony.

18 § 100. Section 11-4006 of the administrative code of the city of New
19 York is REPEALED and a new section 11-4006 is added to read as follows:

20 § 11-4006 City criminal tax fraud in the second degree. A person
21 commits city criminal tax fraud in the second degree when he or she
22 commits a tax fraud act or acts and, with the intent to evade any tax
23 due under any designated chapter of this title, or to defraud the city
24 or the state or any instrumentality of the city or the state, the person
25 pays the city or the state or any public office or public officer of the
26 city or the state or any instrumentality of the city or state (whether
27 by means of underpayment or receipt of refund or both), in a period of
28 not more than one year in excess of fifty thousand dollars less than the
29 tax liability that is due. City criminal tax fraud in the second degree
30 is a class C felony.

31 § 101. Section 11-4010 of the administrative code of the city of New
32 York is REPEALED and section 11-4007 of the administrative code of the
33 city of New York is renumbered section 11-4010.

34 § 102. The administrative code of the city of New York is amended by
35 adding a new section 11-4007 to read as follows:

36 § 11-4007 City criminal tax fraud in the first degree. A person
37 commits city criminal tax fraud in the first degree when he or she
38 commits a tax fraud act or acts and, with the intent to evade any tax
39 due under any designated chapter of this title, or to defraud the city
40 or the state or any instrumentality of the city or the state, the person
41 pays the city or the state or any public office or public officer of the
42 city or the state or any instrumentality of the city or state (whether
43 by means of underpayment or receipt of refund or both), in a period of
44 not more than one year in excess of one million dollars less than the
45 tax liability that is due. City criminal tax fraud in the first degree
46 is a class B felony.

47 § 103. Section 11-4008 of the administrative code of the city of New
48 York is REPEALED and a new section 11-4008 is added to read as follows:

49 § 11-4008 Aggregation. For purposes of this chapter, the payments due
50 and not paid under any designated chapter of this title pursuant to a
51 common scheme or plan or due and not paid, within one year, may be
52 charged in a single count, and the amount of underpaid tax liability
53 incurred, within one year, may be aggregated in a single count.

54 § 104. Section 11-4009 of the administrative code of the city of New
55 York is REPEALED and a new section 11-4009 is added to read as follows:

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1 § 11-4009 Non-preemption; penal law anticipatory offenses and accessori-
2 al liability apply. (a) Unless expressly stated otherwise, the penal
3 ties provided in this chapter or under any other chapter of this title
4 shall not preclude prosecution for any offense under the penal law or
5 any other criminal statute.

6 (b) The offenses specified in title G of the penal law and the
7 provisions of article twenty of the penal law are applicable to all
8 offenses defined in this chapter.

9 § 105. Subdivision (a) of section 11-4012 of the administrative code
10 of the city of New York, as added by chapter 765 of the laws of 1985 and
11 paragraph 2 as amended by chapter 508 of the laws of 2004, is amended to
12 read as follows:

13 (a) Attempt to evade or defeat tax. [~~(1) Any person who willfully~~
14 ~~attempts in any manner to evade or defeat any tax imposed by chapter~~
15 ~~thirteen of this title or the payment thereof shall, in addition to~~
16 ~~other penalties provided by law, be guilty of a misdemeanor.~~

17 ~~(2)] Any person who willfully attempts in any manner to evade or~~
18 ~~defeat any tax imposed by chapter thirteen of this title or payment~~
19 ~~thereof where: (1) such tax is unpaid on ten thousand cigarettes or more~~
20 ~~or (2) such person has previously been convicted two or more times of a~~
21 ~~[violation of paragraph one of this subdivision] crime set forth in this~~
22 ~~chapter relating to cigarette taxes; shall be guilty of a class E felo-~~
23 ~~ny.~~

24 § 106. Subdivision (f) of section 11-4012 of the administrative code
25 of the city of New York, as amended by local law number 2 of the city of
26 New York for the year 2000, is amended to read as follows:

27 (f) Any willful act or omission, other than those described in section
28 11-4002 of this chapter or subdivision (a), (b), (c), (d), (e) or (g) of
29 this section, by any person which constitutes a violation of any
30 provision of chapter thirteen of this title or subchapter one of chapter
31 two of title twenty of the code shall constitute a misdemeanor.

32 § 107. Section 11-4016 of the administrative code of the city of New
33 York, as added by chapter 765 of the laws of 1985, is amended to read as
34 follows:

35 § 11-4016 Hotel room occupancy tax. (a) [~~Any person required under~~
36 ~~chapter twenty-five of this title to make any return or report, who~~
37 ~~willfully fails to make such return or report at the time or times so~~
38 ~~required, shall be guilty of a misdemeanor.~~

39 ~~(b) The penalties provided for in this section shall not preclude~~
40 ~~prosecution pursuant to the penal law with respect to the willful fail-~~
41 ~~ure of any person to pay over to the city any hotel room occupancy tax~~
42 ~~imposed by chapter twenty-five of this title, whenever such person has~~
43 ~~been required to collect and has collected any such tax. In any such~~
44 ~~prosecution under the penal law, a person who has been required to~~
45 ~~collect and has collected any such tax shall be deemed to have acted in~~
46 ~~a fiduciary character with respect to the city, and the tax collected~~
47 ~~shall be deemed to have been entrusted to such person by the city.~~

48 ~~(c)] Any person who willfully fails to file a registration certificate~~
49 ~~as required pursuant to the provisions of chapter twenty-five of this~~
50 ~~title and such data in connection therewith as the commissioner of~~
51 ~~finance by regulation or otherwise may require, or willfully fails to~~
52 ~~display or surrender a certificate of authority as required by chapter~~
53 ~~twenty-five of this title, or willfully assigns or transfers such~~
54 ~~certificate of authority, shall be guilty of a misdemeanor, provided,~~
55 ~~however, that the provisions of this subdivision shall not apply to a~~

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1 failure to surrender a certificate of authority which is required to be
2 surrendered where business never commenced.

3 ~~(d)~~ (b) Any person who willfully fails to charge separately the tax
4 imposed under chapter twenty-five or willfully fails to state such tax
5 separately on any bill, statement, memorandum or receipt issued or
6 employed by such person upon which the tax is required to be stated
7 separately as provided in such chapter, or who shall refer or cause
8 reference to be made to this tax in a form or manner other than required
9 by such chapter, shall be guilty of a misdemeanor.

10 § 108. Section 11-508 of the administrative code of the city of New
11 York is amended by adding a new subdivision (e-3) to read as follows:

12 (e-3) Rules for receipts for services performed by registered securi-
13 ties or commodities brokers or dealers.

14 (1) For taxable years beginning after two thousand eight, in the case
15 of a taxpayer which is a registered securities or commodities broker or
16 dealer, for purposes of paragraph three of subdivision (c) of this
17 section, the receipts specified in subparagraphs (A) through (G) of this
18 paragraph shall be deemed to arise from services performed within the
19 city to the extent set forth in such subparagraphs.

20 (A) Receipts constituting brokerage commissions derived from the
21 execution of securities or commodities purchase or sales orders for the
22 accounts of customers shall be deemed to arise from services performed
23 at the mailing address in the records of the taxpayer of the customer
24 who is responsible for paying such commissions.

25 (B) Receipts constituting margin interest earned on behalf of broker-
26 age accounts shall be deemed to arise from services performed at the
27 mailing address in the records of the taxpayer of the customer who is
28 responsible for paying such margin interest.

29 (C) Gross income, including any accrued interest or dividends, from
30 principal transactions for the purchase or sale of stocks, bonds,
31 foreign exchange and other securities or commodities (including futures
32 and forward contracts, options and other types of securities or commod-
33 ities derivatives contracts) shall be deemed to arise from services
34 performed within the city either (i) to the extent that production cred-
35 its are awarded to branches, offices or employees of the taxpayer within
36 the city as a result of such principal transactions or (ii) if the
37 taxpayer so elects, to the extent that the gross proceeds from such
38 principal transactions (determined without deduction for any cost
39 incurred by the taxpayer to acquire the securities or commodities) are
40 generated from sales of securities or commodities to customers within
41 the city based upon the mailing addresses of such customers in the
42 records of the taxpayer. For purposes of clause (ii) of this subpara-
43 graph, the taxpayer shall separately calculate such gross income from
44 principal transactions by type of security or commodity. For purposes of
45 this subparagraph, gross income from principal transactions shall be
46 determined after the deduction of any cost incurred by the taxpayer to
47 acquire the securities or commodities. For purposes of this subdivision,
48 the term "production credits" means credits granted pursuant to the
49 internal accounting system used by the taxpayer to measure the amount of
50 revenue that should be awarded to a particular branch or office or
51 employee of the taxpayer which is based, at least in part, on the
52 branch's, the office's or the employee's particular activities. Upon
53 request, the taxpayer shall be required to furnish a detailed explana-
54 tion of such internal accounting system to the department.

55 (D) (i) Receipts constituting fees earned by the taxpayer for advisory
56 services to a customer in connection with the underwriting of securities

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1 for such customer (such customer being the entity which is contemplating
2 issuing or is issuing securities) or fees earned by the taxpayer for
3 managing an underwriting shall be deemed to arise from services
4 performed at the mailing address in the records of the taxpayer of such
5 customer who is responsible for paying such fees.

6 (ii) Receipts constituting the primary spread or selling concession
7 from underwritten securities shall be deemed to arise from services
8 performed within the city to the extent that production credits are
9 awarded to branches, offices or employees of the taxpayer within the
10 city as a result of the sale of the underwritten securities.

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

22 (E) Receipts constituting interest earned by the taxpayer on loans and
23 advances made by the taxpayer to an entity affiliated with the taxpayer
24 shall be deemed to arise from services performed at the principal place
25 of business of such affiliated entity. For purposes of this subpara-
26 graph, an entity shall be considered affiliated with the taxpayer if
27 such entity and the taxpayer have eighty percent or more common direct
28 or indirect, actual or beneficial ownership.

29 (F) Receipts constituting account maintenance fees shall be deemed to
30 arise from services performed at the mailing address in the records of
31 the taxpayer of the customer who is responsible for paying such account
32 maintenance fees.

33 (G) Receipts constituting fees for management or advisory services,
34 including fees for advisory services in relation to merger or acquisi-
35 tion activities, but excluding fees paid for services described in para-
36 graph one of subdivision (e-2) of this section, shall be deemed to arise
37 from services performed at the mailing address in the records of the
38 taxpayer of the customer who is responsible for paying such fees.

39 (2) For purposes of this subdivision, the term "securities" shall have
40 the same meaning as in section 475(c) (2) of the internal revenue code
41 and the term "commodities" shall have the same meaning as in section
42 475(e) (2) of such code. The term "registered securities or commodities
43 broker or dealer" means a broker or dealer registered as such by the
44 securities and exchange commission or the commodities futures trading
45 commission, and shall include an OTC derivatives dealer as defined under
46 regulations of the securities and exchange commission at title 17, part
47 240, section 3b-12 of the code of federal regulations (17 CFR
48 240.3b-12).

49 (3) If the taxpayer receives any of the receipts enumerated in para-
50 graph (1) of this subdivision as a result of a securities correspondent
51 relationship such taxpayer has with another registered securities or
52 commodities broker or dealer with the taxpayer acting in this relation-
53 ship as the clearing firm, such receipts shall be deemed to arise from
54 services performed within the city to the extent set forth in each of
55 the subparagraphs in paragraph (1) of this subdivision. The amount of
56 such receipts shall exclude the amount the taxpayer is required to pay

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1 to the correspondent firm for such correspondent relationship. If the
2 taxpayer receives any of the receipts enumerated in paragraph (1) of
3 this subdivision as a result of a securities correspondent relationship
4 such taxpayer has with another registered securities or commodities
5 broker or dealer with the taxpayer acting in this relationship as the
6 introducing firm, such receipts shall be deemed to arise from services
7 performed within the city to the extent set forth in each of the subpar-
8 agraphs in paragraph (1) of this subdivision.

9 (4) If, for purposes of subparagraph (A), (B), (F), or (G) of para-
10 graph (1) of this subdivision, and clause (i) of subparagraph (C) of
11 paragraph (1) of this subdivision, the taxpayer is unable from its
12 records to determine the mailing address of the customer, the receipts
13 described in any of such subparagraphs and such clause shall be deemed
14 to arise from services performed at the branch or office of the taxpayer
15 that generates the transaction for the customer that generated such
16 receipts.

17 § 109. This act shall take effect immediately, provided, however, that
18 sections two, four through seventeen, nineteen, twenty, twenty-four
19 through thirty-four, seventy-eight, seventy-nine, eighty-one, eighty-two
20 and one hundred eight of this act shall apply to taxable years or taxa-
21 ble periods beginning on or after January 1, 2009; sections twenty-one
22 through twenty-three of this act shall apply to taxable years beginning
23 on or after January 1, 2011; section thirty-five of this act shall apply
24 to taxable periods beginning on or after January 1, 2009; sections
25 seventy-three through seventy-seven of this act shall take effect Octo-
26 ber 1, 2009; sections eighty-seven and ninety through ninety-three of
27 this act shall apply to actions taken, omissions and failures occurring
28 on and after the effective date of this act, except that subdivision (i)
29 of section 11-2515 of the administrative code of the city of New York,
30 as added by section ninety of this act, shall only apply to records
31 required to be made and maintained for periods commencing on or after
32 such date; sections eighty-four, eighty-five, eighty-eight and eighty-
33 nine of this act shall apply to taxable periods beginning more than 30
34 days after the date on which this act shall have become a law; and
35 sections ninety-four through one hundred seven of this act shall apply
36 to offenses committed on and after the effective date of this act;
37 provided further, however, that sections thirty-nine through seventy-two
38 of this act shall apply to the interest chargeable or due on taxes or on
39 any other amounts, or any portion thereof, which remain or become due on
40 or after the effective date of this act; notwithstanding any other
41 provision of law, for the calendar quarter in which this act becomes a
42 law, the New York city department of finance may provide appropriate
43 general notice of the new interest rates for the remainder of such
44 calendar quarter within twenty days after the date on which this act
45 shall have become a law, without needing to have notice of the rates
46 published in advance in the City Record, and shall cause such a notice
47 to be published in the City Record as soon as is practicable; provided,
48 however, that if this act becomes a law less than thirty days before the
49 end of such calendar quarter, such department may also provide appropri-
50 ate general notice of such new interest rates for the subsequent calen-
51 dar quarter at the same time it provides general notice for the remain-
52 der of such quarter, without needing to have notice of the rates
53 published in advance in the City Record, and shall cause such a notice
54 to be published in the City Record as soon as is practicable.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A8867

SPONSOR: Farrell (MS)

TITLE OF BILL: An act to amend the administrative code of the city of New York, the business corporation law and the not-for-profit corporation law, in relation to bringing certain city tax laws into closer conformity with certain state tax laws; and to repeal certain provisions of the administrative code of the city of New York relating thereto

SUMMARY OF PROVISIONS: Sections 1 and 2 amend section 11-604 of the New York City Administrative Code ("Administrative Code") to provide for a single sales factor for the General Corporation Tax to be phased in over a period of ten years.

Sections 3 and 4 similarly amend section 11-508 of the Administrative Code to provide for a single sales factor for the Unincorporated Business Tax.

Section 5 similarly amends section 11-642 of the Administrative Code to provide for a single sales factor for the Banking Corporation Tax insofar as it relates to banking corporations that substantially provide management administrative or distributive services to investment companies.

Sections 6 through 9 amend sections 11-601, 11-603 and 11-605 of the Administrative Code relating to the filing of combined General Corporation Tax returns by affiliated corporations. The amendments are designed, in part, to make the filing of a combined return mandatory where there are substantial intercorporate transactions among the related corporations, regardless of the transfer prices charged in those intercorporate transactions. The amendments also require a "captive" regulated investment company or a "captive" real estate investment trust to be included in a combined return with a related New York City taxpayer where a greater-than-50 percent ownership test is met.

Sections 10 through 15 amend sections 11-640, 11-641 and 11-646 of the Administrative Code to require a "captive" regulated investment company or a "captive" real estate investment trust to be included in a combined Banking Corporation Tax return with a related New York City taxpayer where the greater-than-50 percent ownership test is satisfied.

Section 16 amends section 11-604 of the Administrative Code to increase the maximum amount that can be owed under the alternative general corporation tax measured by business and investment capital from \$350,000 to \$1 million.

Section 17 amends section 11-604 of the Administrative Code to change the fixed dollar minimum for tax years beginning after 2008 from a single amount of \$300 applicable to all corporate taxpayers to a sliding scale ranging from \$25 to \$5000 based on the taxpayer's annual receipts

allocated to New York City.

Section 18 amends section 11-643.5(b) of the Administrative Code for tax years beginning after 2010 so that one of the alternative taxes under the Bank Tax's alternative minimum tax will be based on taxable assets allocated to the city even if the bank is organized under the laws of a country other than the United States. Under this amendment, most banks will be subject to a tax of one-tenth of a mill, or one one-hundredth of a cent, for every dollar of taxable assets allocated to New York City, as banks organized in the United States are currently. However, certain banks with a net worth ratio of under five percent will be taxed on their allocated assets at a lower rate, and a bank will not be subject to the allocated asset tax for any part of a period in which that bank has outstanding net worth certificates issued under a certain provision of the Federal National Housing Act.

Sections 19 and 20 amend section 11-641 of the Administrative Code to allow banks to have a net operating loss (NOL) deduction for losses incurred in tax years after 2008. The deduction will only be allowed for NOLs carried forward to future tax years. No NOLs may be carried back to past years.

Sections 21 through 23 amend section 11-639, 11-642 and 11-646 of the Administrative Code related to the Bank Tax to tax credit card companies with customers having a mailing address in New York City regardless of whether the credit card company has a physical location in the city. This change will apply to taxable years beginning on or after January 1, 2011.

Sections 24 through 32 amend section 11-640 of the Administrative Code to conform to the New York State Tax Law's treatment of when corporations are subject to the General Corporation Tax (GCT) and when they are treated as banks subject to the Bank Tax. Under these amendments, if a corporation meets certain conditions set forth in new subdivision (rn), it will be subject to the Bank Tax even if it had previously elected to be subject to the GCT, or had been grandfathered as subject to GCT, under the Gramm Leach Bliley transitional provisions.

Sections 33 and 34 amend section 11-604 of the Administrative Code to change the sourcing of certain General Corporation Tax receipts from the services of registered brokers and dealers of securities and commodities to require sourcing by means of the customer's mailing address.

Section 35 amends section 11-1108 of the Administrative Code to provide for a statute of limitations on Utility Tax refund claims of three years from the time the return is filed or two years from the time the tax is paid. This is the same limitations period for refunds as that for refunds of GCT, UBT and Bank Tax.

Section 36 adds a new section 11-130 to the Administrative Code to enact as a tax compliance and enforcement initiative, a new financial institution data matching program similar to the program applicable to State taxes, which was enacted by chapter 57 of the Laws of 2008. This program will provide a system for identifying and seizing the non-exempt assets of tax debtors in financial institutions.

Section 37 adds a new Section 11-131 to the Administrative Code to establish a comprehensive voluntary disclosure and compliance program.

Section 38 of the bill adds a new section 11-132 to the Administrative

Code to authorize the New York City Commissioner of Finance to require by rule that with respect to taxes administered by the Commissioner of Finance, any tax preparer who filed more than one hundred returns or other tax documents in a single calendar year and again files more than one hundred returns or other tax documents in a succeeding year using tax software, must file electronically for the subsequent year and any succeeding year thereafter. This section will also require that a taxpayer who does not use a preparer but itself uses tax software to prepare returns or other tax documents that the Commissioner of Finance has authorized to be filed electronically, then, for that calendar year and for each subsequent calendar year thereafter, all tax documents prepared by the taxpayer using tax software must be filed electronically. The Commissioner of Finance will be authorized to impose monetary penalties for the failure to file or pay electronically when such filing or payment is required by rule.

Sections 39 through 72 of this bill amend each chapter of the Administrative Code pertaining to an income or excise tax administered by the City of New York that includes a provision authorizing the Commissioner of Finance to set by publication of notice the interest rates on underpayments, and in some chapters, on overpayments, of these City taxes. These sections amend these Code provisions to increase the rate of interest imposed by the City on underpayments of income and excise taxes from the federal short-term rate plus five percent to the federal short-term rate plus seven percent. In addition, these sections increase the default rate for underpayments, should the Commissioner of Finance not set the rate by publication of notice, from six percent to seven and one-half percent.

Sections 73 and 75 of the bill amend §§ 1004 of the Business Corporation Law ("BCL") and the Not-for-Profit Corporation Law ("NPCL"), respectively, to provide that the Department of State shall not file a certificate of dissolution for a corporation that has done business in the City of New York and incurred tax liability to the City under chapters six, seven, eight, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-four, twenty-five or twenty-seven of title 11 of the Administrative Code without attaching a consent from the New York City Commissioner of Finance (the "Commissioner").

Sections 74 and 76 of the bill amend §§ 1007 of the BCL and NPCL, respectively, to add tax claims and other claims of the New York City Department of Finance to those of the State and federal government, which are not required to be filed by a date specified in a notice published and mailed by a dissolving corporation in order to be preserved. These sections further provide that, as with claims of the State and federal governments, the City's claims are not barred if not so filed and that distribution of the assets of a dissolving corporation, or any part thereof, may be deferred until determination of outstanding claims of the City's Department of Finance.

Section 77 adds a new § 11-133 to the Administrative Code to provide that the Commissioner shall issue a consent to dissolution of a corporation under the BCL or NPCL only if the Commissioner has determined that all fees, taxes, penalties and interest imposed on the corporation under chapters six, seven, eight, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-four, twenty-five and twenty-seven of title 11 of the Administrative Code have been paid in full or paid pursuant to an offer of compromise under §1504 of the City's Charter. Notwithstanding this requirement, the Commissioner may issue a consent to dissolution of a corporation if the corporation executes a written

agreement with the Commissioner to pay all such fees, taxes, penalties and interest.

Sections 78 to 86 amend certain UBT, GCT, Bank Tax and Utility Tax penalty provisions to conform to newly revised state corporate Franchise Tax penalty provisions. Specifically, the section will conform section 11-525 (applicable to the UBT), 11-676 (applicable to the GCT and Bank Tax), and 11-1114 of the Administrative Code (applicable to the Utility Tax) to the newly revised section 1085 of the Tax Law, which increases the penalty for deficiencies due to fraud and adds a new false and fraudulent penalty.

Sections 87 through 93 amend sections 11-2503 and 11-2515 of the Administrative Code to conform the Hotel Tax to certain recently enacted Sales Tax amendments in sections 1135 and 1145 of the Tax Law including records access requirements and additional penalty provisions. The State sales tax has provisions that are the New York State counterpart to the Hotel Tax.

Sections 94 through 107 revise various city criminal tax provisions in Chapter 40 of the Administrative Code to conform to recently revised criminal provisions set forth in article 37 of the Tax Law. Specifically, these sections revise sections 11-4001 through 11-4009 as well as sections 11-4012 and 11-4016 of the Administrative Code to generally conform to the recently revised and reenacted sections 1800 through 1807 and 1814, 1817 and 1832 of the Tax Law. These changes will remove a number of crimes applicable to specific taxes such as the GCT and UBT and replace them with a set of new provisions that will define and punish crimes applicable to all city taxes, but will retain certain tax-specific crimes for taxes such as the Cigarette Tax and the Hotel Tax.

Section 108 amends section 11-508 of the Administrative Code change the sourcing of certain Unincorporated Business Tax receipts from the services of registered brokers and dealers of securities and commodities to require sourcing by means of the customer's mailing address.

REASONS FOR SUPPORT: This business tax reform package is championed by the City and the Partnership for New York City for the benefit of both the private and public sector by modernizing our tax system to make it easier to file and administer taxes, as well as to end the incentive to locate property and employees outside of New York City.

Currently, corporations in New York City are taxed based on a formula that takes property, payroll, and sales receipts into account. The disadvantage of this approach is that small businesses and other companies can drastically reduce their tax liability by either starting operations or moving operations outside of the City. New York State, as well as many other cities and states, have realized this provision represents a competitive disadvantage and have moved to a single factor method that looks only at sales receipts. Since New York City has not conformed to this approach, we have continued to lose businesses to neighboring cities and states. This is illustrated by the fact that a third of New York City's hedge fund industry is currently located in Greenwich, Connecticut.

The 2005-06 State Budget provided for the conversion from a four-factor apportionment formula to a single sales factor apportionment formula,

phased in over a three-year period, with the full implementation for taxable years beginning on or after January 1, 2008. The enactment of a single sales factor by New York State was designed to encourage corporations to open offices and create employment in the State. The use of a single sales factor reduces the tax burden of certain corporations because neither assets nor payroll are considered in apportioning entire net income. The 2007-08 State Budget accelerated the implementation of single factor apportionment so that it became fully effective for taxable years beginning on or after January 1, 2007. Since that time, the City has been working with the business community in an effort to bring the City into conformity with the single sales factor in an effort to retain and create new employment opportunities for city residents

Given the economic downturn for the past year, the City and the business community reached an agreement on a package of conformity items that included single sales factor along with several "loophole closers" that were also adopted by the State in 2007. The net fiscal impact on New York City's budget of adopting a single sales factor and conforming with the "loop hole closers" is an additional \$167 million in City Fiscal Year (CFY) 2010. The positive fiscal impacts phase out over the next six CFYs and become revenue negative in CFY 2016, year seven of the implementation of the single sales factor. Among the items that conform to the 2007 State tax law changes are:

- o Requiring combined filing by economically related affiliates if there are substantial intercorporate transactions, and for captive real estate investment trusts (REITs) and regulated investment companies

- o (RICs). This addresses an issue that vexes all tax administrators - the shifting of income to jurisdictions with more favorable tax rates and expenses to those with higher rates. These are rules that are currently in place at the State level, but not at the City level. a Including for the first time a Net Operating Loss (NOL) carry-over provision for Banks that will give them an immediate benefit of freeing up capital by claiming deferred tax assets to offset major losses in these rough, economic times. The NOL provision allows banks to use current losses to offset future profits for tax purposes.

- o Requiring companies that go out of business in New York City to pay all of their obligations before they are allowed to dissolve.

- o Mandating electronic data matching by financial institutions to help uncover funds in the accounts held by tax debtors; and

- o Enhancing tax enforcement by, among other things, increasing underpayment interest rates, increasing the penalty for deficiencies due to fraud and adding a new false and fraudulent penalty and adopting a set of new criminal penalty provisions applicable to City taxes.

The benefits of the proposed legislation also include reduction in overhead and administrative costs associated with tax filings, allowing additional joint State-City tax audits and coordination between the State and City on future business tax changes.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature.

