

**FY 2019 NEW YORK STATE EXECUTIVE BUDGET**

**REVENUE  
ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

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## MEMORANDUM IN SUPPORT

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

AN ACT to amend the real property tax law, in relation to the annual growth in STAR benefits (Part A); to amend the real property tax law, in relation to making the STAR income verification program mandatory; to amend the tax law, in relation to the calculation of income for basic STAR purposes; to repeal subparagraphs (v) and (vi) of paragraph (b) of subdivision 4, paragraphs (b) and (c) of subdivision 5 and paragraph (c) of subdivision 6 of section 425 of the real property tax law relating to the school tax relief (STAR) exemption; and to repeal section 171-o of the tax law relating to income verification for a city with a population of one million or more (Part B); to amend the real property law, in relation to real property transfer reports (Part C); to amend the real property law, in relation to reports of manufactured housing park owners (Part D); to amend the general municipal law, the education law, the state finance law, the real property tax law and the tax law, in relation to making technical corrections to various statutes impacting property taxes; and to repeal subsection (bbb) of section 606 of the tax law, section 3-d of the general municipal law and section 2023-b of the education law, relating thereto (Part E); to amend the real property tax law, in relation to taxable state land (Part F); to amend the real property tax law, in relation to assessment ceilings; and to amend chapter 475 of the laws of 2013, amending the real property tax law relating to assessment ceilings for local public utility mass real property, in relation to the effectiveness thereof (Part G); to amend the tax law and the administrative code of the city of New York, in relation to extending the statute of limitations for assessing tax on amended returns (Part H); to amend the tax

law, in relation to providing for employee wage reporting consistency between the department of taxation and finance and the department of labor (Part I); to amend the tax law, in relation to sales and compensating use taxes imposed on food and beverages sold by restaurants and similar establishments (Part J); to amend the tax law, in relation to allowing sharing with the comptroller information regarding unwarranted fixed and final debt (Part K); to amend the social services law, in relation to the disclosure of certain information relating to a person receiving public assistance to the commissioner of taxation and finance (Part L); to amend the tax law, in relation to establishing a conditional tax on carried interest (Part M); to amend the tax law, in relation to permitting the commissioner of taxation and finance to seek judicial review of decisions of the tax appeals tribunal (Part N); to amend the tax law and the administrative code of the city of New York, in relation to the definition of resident for tax purposes of the personal income tax (Part O); to amend the tax law, in relation to the empire state child credit (Part P); to amend the tax law, in relation to extending the hire a veteran credit for an additional two years (Part Q); to amend the labor law and the tax law, in relation to enhancing the New York youth jobs program (Part R); to amend the tax law, in relation to the temporary deferral of certain tax credits (Part S); to amend the tax law, in relation to extending the real estate transfer tax statute of limitations for refunds from two to three years and providing for consistent joint liability treatment within the real estate transfer tax (Part T); to amend the tax law, in relation to the taxation of cigars (Part U); to amend the tax law and the administrative code of the city of New York, in relation to sales and use taxes on gas and electric service; and repealing section 1105-C of the tax law relating thereto (Part V); to amend the tax law, in relation to exempting from sales

and use tax certain veterinary drugs and medicines and removing the refund/credit therefor (Part W); to amend the tax law, in relation to providing relief from sales tax liability for certain partners of a limited partnership and members of a limited liability company (Part X); to amend the tax law, in relation to exempting items of food and drink when sold from certain vending machines from the sales and compensating use tax (Part Y); to amend part A of chapter 61 of the laws of 2017, amending the tax law relating to the imposition of sales and compensating use taxes in certain counties, in relation to extending the revenue distribution provisions for the additional rates of sales and use tax of Genesee, Monroe, Onondaga and Orange counties (Part Z); to amend the tax law, in relation to imposing an internet fairness conformity tax and requiring non-collecting sellers to provide specified information to New York purchasers and to the commissioner of taxation and finance (Part AA); to amend the tax law, in relation to imposing a health tax on vapor products (Part BB); to amend the tax law, in relation to the imposition of an opioid epidemic surcharge; and to amend the state finance law, in relation to establishing the opioid prevention, treatment and recovery account (Part CC); to amend the tax law, in relation to establishing a healthcare insurance windfall profit fee (Part DD); to amend the racing, pari-mutuel wagering and breeding law, in relation to adjusting the franchise payment, and authorizing night races under certain circumstances; creating an equine drug testing advisory committee; and providing for the repeal of certain provisions upon the expiration thereof (Part EE); to amend the racing, pari-mutuel wagering and breeding law, in relation to providing funds for the aftercare of retired horses (Part FF); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track

simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part GG); to amend the state finance law, in relation to the commercial gaming revenue fund; and to repeal subdivision 4 of section 97-nnnn of the state finance law relating to base year gaming revenue (Part HH); and to amend the tax law, in relation to commissions paid to the operator of a video lottery facility; to repeal certain provisions of such law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part II)

**PURPOSE:**

This bill contains provisions needed to implement the Revenue portion of the FY 2019 Executive Budget.

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

**Part A – Cap annual growth in STAR benefit amounts at 0%.**

**Purpose:**

This bill would impose a zero percent cap upon the growth in Basic and Enhanced STAR benefits, beginning with the 2018-19 school year.

**Summary of Provisions and Statement in Support:**

STAR was enacted in 1997 to offset rising property taxes for homeowners and to provide additional targeted property tax relief to senior citizens. Since then,

enhancements have been made that have contributed to increases in the current and projected cost of the STAR program. The costs of the STAR program increased approximately 33 percent between FY 2002 and FY 2017. The direct costs of the STAR program in FY 2017 were over \$3.3 billion.

Existing law allows all savings to grow at a rate not to exceed 2 percent annually, as implemented with the FY 2012 Enacted Budget. This bill would amend Real Property Tax Law §1306-a to lower the cap on the growth of tax savings under the STAR Program, beginning with the 2018-19 school year. As a result, Basic and Enhanced STAR savings will be capped at the 2017-18 savings amounts for these programs.

Capping growth of the program at current levels is critical for a balanced State budget. Notably, school tax levy growth has averaged below 2 percent since the enactment of the Governor's property tax cap; reducing STAR benefit growth reinforces the incentive for school districts to continue to control their costs and minimize the growth in their tax levies.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget. Capping the exemption benefits would reduce General Fund spending by \$49 million in FY 2019.

Effective Date:

This bill would take effect immediately.

**Part B – Make Participation in the Income Verification Program (IVP) Mandatory for Enhanced STAR Recipients.**

Purpose:

This bill would make participation in the STAR Income Verification Program (IVP) mandatory for eligible senior citizens wishing to receive Enhanced STAR.

Summary of Provisions and Statement in Support:

In order to be eligible for Enhanced STAR, the applicant's income must not exceed a certain ceiling, which is \$86,000 for 2018. Under current law, applicants are required to demonstrate their income eligibility in one of two ways:

1. They may bring income documentation (generally, an income tax return) to the assessor's office each year as part of an annual renewal application. The assessor determines their eligibility annually based on the documentation provided.



2. Alternatively, they may enroll in the STAR IVP. The Department of Taxation and Finance will then annually determine their income eligibility based upon its income tax records, and will notify the assessor of its findings. Applicants who have enrolled in the IVP need not reapply for the exemption thereafter so long as they file a personal income tax return each year.

This bill would eliminate the first option and would require all Enhanced STAR recipients to be enrolled in the IVP, effective with applications for the exemption on 2019 assessment rolls. This would include recipients of the senior citizens exemption, who previously received Enhanced STAR automatically.

In addition, to ensure that the Department can accurately verify the incomes of low-income persons who are not legally required to file income tax returns, the bill would provide that, in order to receive the exemption, such persons must report the sources and amounts of their income to the Department, in a manner to be prescribed by the Department. Further, to maximize both administrative efficiency and fairness to the taxpayer, the bill would provide that when an eligibility question is resolved by the Department after school taxes have been levied, the Department may pay the refund to the taxpayer directly, or collect the deficiency from the taxpayer directly, as appropriate.

Verifying eligibility requirements ensures that the appropriate amount of benefit is given to the appropriate taxpayer. Prior to the implementation of the STAR Registration Program, numerous properties received Basic STAR exemptions to which they were not entitled. This was largely due to the fact that before the STAR Registration Program was implemented in 2014, the Department had no direct role in the verification of income for Basic STAR (which is subject to a fixed income limit of \$500,000). Once a mandated re-registration program was in place and the taxpayer identification numbers of all Basic STAR recipients became available, a more thorough income verification process was implemented, resulting in ongoing estimated savings of more \$50 million.

The STAR Registration Program does not extend to the Enhanced STAR exemption. As a result, the Department cannot verify that all Enhanced STAR recipients meet the eligibility requirements. This bill would enable it to do so. That will ensure that an Enhanced STAR benefit will be granted only in appropriate cases, and reduce the cost of the program to the State. At the same time, by removing the non-IVP option, the bill would make it easier for qualified senior citizens to keep their Enhanced STAR exemptions, because they will no longer need to reapply for the exemption annually by the locally applicable deadline.

This bill would apply to applications for the Enhanced STAR benefit beginning with 2019 assessment rolls.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget. Making participation in IVP mandatory would reduce General Fund spending by \$35 million annually.

Effective Date:

This bill would take effect immediately.

**Part C – Require Filing RP-5217 for Co-Ops and Co-Op Shares.**

Purpose:

This bill would require a real property transfer report to be filed with the Department of Taxation and Finance (“DTF”) whenever there is a sale of a co-op apartment or unit, or whenever there is a transfer or acquisition of a controlling interest in an entity with an interest in real property (i.e., an equity sale).

Summary of Provisions and Statement in Support:

Under existing law, a real property transfer report (Form RP-5217) needs to be filed whenever a deed is recorded. The report is a public record that contains basic information about sale of real property, most notably, the names of the buyers. Because cooperative housing apartment units are transferred by the sale of a share or shares in a cooperative housing corporation, those transactions, like the transfer or acquisition of an entity with an interest in real property, do not require the filing of a deed and, therefore, do not require the filing of a real property transfer report.

This bill would require a real property transfer report to be filed with the Department of Taxation and Finance (“DTF”) whenever there is a sale of a co-op apartment or unit, or whenever there is a transfer or acquisition of a controlling interest in an entity with an interest in real property (i.e., an equity sale). This is beneficial for two reasons. First, assessment records do not typically contain the names and addresses of co-op ‘owners’ (who technically are not property owners, but are rather shareholders with proprietary leases), which can lead to delays in the issuance of STAR checks to such individuals. Requiring a real property transfer report will provide more information to DTF to help facilitate this process.

Second, requiring real property transfer reports for equity sales of business entities would help both local assessors and DTF value complex property for real property tax purposes. For example, DTF is required to provide advisory appraisals for certain “specialty properties” such as power plants. Because these types of sales often occur by way of an equity sale, it is difficult for DTF to obtain data about comparable sales that can be used for valuation purposes. This proposal would assist both DTF and local assessors by placing equity sales on the same footing as other transfers of real property in New York State.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect on January 1, 2019 and would apply to transfers and acquisitions occurring on and after that date.

**Part D – Reporting Requirement for Mobile Homes.**

Purpose:

This bill would improve the administration of the STAR Credit program by requiring that manufactured home park owners or operators report additional information to the Department of Housing and Community Renewal (“DHCR”) and the Department of Taxation and Finance (“DTF”).

Summary of Provisions and Statement in Support:

Under current law, owners of manufactured home parks must file annual registration statements with DHCR. However, these statements do not typically contain the names and addresses of the tenants residing in those locations. The failure to provide this information can delay the issuance of STAR checks to these individuals.

This bill would amend the Real Property Tax Law to require, beginning in 2019, home park owners to file their registration statements on a quarterly basis, and would also require the park owners to report, for each calendar quarter, the names of all residents and tenants in the park, and such other information as the DHCR Commissioner may require. DHCR would be required to provide DTF with a copy of each quarterly statement within 15 days of receipt.

These reports would help DTF, as well as local assessors, administer the STAR credit and STAR exemption programs and avoid unnecessary delays caused by a lack of tenant information. Many manufactured home parks, by their very nature, regularly have newly manufactured homes entering, and existing manufactured homes leaving, the parks. This results in regular fluctuations in value that have real property tax implications. The transient nature of manufactured home park residents also complicates administration of the STAR credit and exemption, as it is difficult for DTF and local assessors to keep apprised of changes in manufactured home parks because there is no existing requirement that the annual reports that are currently filed with DHCR be shared with DTF, and there is no other source for such information.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect immediately.

**Part E – Technical amendments to property tax laws.**

Purpose:

This bill would make technical amendments to various provisions of law relating to property tax programs.

Summary of Provisions and Statement in Support:

This bill would update or clarify laws relating to property tax programs in six respects:

- Property tax freeze credit: The property tax freeze credit was effective in taxable years 2014 through 2016. The provisions of law that governed the credit remain on the books, though they are now inoperative and obsolete (see Tax Law §606(bbb), General Municipal Law §3-d and Education Law §2023-b). This bill would repeal those obsolete provisions. At the same time, it would preserve the tax cap reporting requirements that they contain by recodifying the substance of subdivision 2 of General Municipal Law §3-d, and subdivision 2 of Education Law §2023-b, as a new General Municipal Law §3-d and Education Law §2023-b, respectively.
- School tax relief fund: The enacted FY 2018 Budget contained a provision that repealed section 54-f of the State Finance Law, as part of the conversion of the New York City tax rate reduction program into a State tax credit program (L.2017, Ch.59, Pt. C). However, a reference to former SFL §54-f still appears in SFL §97-rrr, the statute that establishes a “school tax relief fund.” This bill removes that obsolete reference from §97-rrr.
- Partial payments of property taxes: The enacted FY 2018 Budget contained a provision that broadened the authority of local governments to allow partial payments of property taxes (Real Property Tax Law § 928-a). An issue has arisen in connection with counties that prepare tax bills or maintain the accounting system for one or more municipalities within the county. Under the law as written, if a municipality in such a county adopts a partial payment program, the county could be compelled to make costly software changes to accommodate the municipality’s program. The impact upon the county could be magnified if different municipalities adopt different types of programs. This bill would provide that in a county that provides such services, a municipality may not adopt a partial payment program without the county’s consent.

- Property Tax Payment Deadline Extensions: Section 925-b of the Real Property Tax Law enables local governments to give senior citizens an extra five days to pay their property taxes if they are receiving Enhanced STAR exemptions or senior citizen exemptions. However, seniors receiving Enhanced STAR credits are not currently eligible for such extensions. This bill would make them eligible for these extensions. To ensure that this can be administered effectively, the bill would also modify the Tax Law secrecy provisions to enable the Tax Department to disclose the identities of Enhanced STAR credit recipients to tax receivers and collectors.
- Certification of STAR Exempt Amounts: The Department of Taxation and Finance is required to compute and certify STAR exempt amounts every year at least 20 days before the filing of the tentative assessment roll. The Department is also required to adjust the Enhanced STAR exempt amounts annually to account for inflation, based upon Consumer Price Index data that is released by the United States Department of Labor in October of each year. These two requirements are incompatible in the case of school districts whose taxes are levied upon prior year assessment rolls (as is done in Westchester County), because the required CPI data does not become available until well after the filing of the applicable tentative – and final – assessment rolls. To ensure that property owners in these school districts receive the benefit of the inflation adjustment provided by law, the Tax Department has refrained from establishing those exempt amounts until the required CPI data has become available. This bill would ratify the Department’s practice.
- Limit Married Couples to One STAR Check: A new subparagraph (A) of §606(eee)(6) of Tax Law would make it clear that the STAR credit may only be claimed upon one residence for a married couple, unless they are legally separated. A similar restriction currently applies to the STAR exemption (Real Property Tax Law, §425[4-a][a]). The qualifications for the STAR credit program were designed to mirror those of the STAR exemption program. However, the language in the STAR exemption statute concerning married couples with multiple residences was not carried over into the credit statute due to an oversight. As a result, Tax Law §606(eee) does not expressly bar married couples from receiving STAR credits on two residences simultaneously, as the STAR exemption statute does. This bill clears up any possible ambiguity by expressly providing that a married couple may only receive one STAR benefit at a time, unless legally separated.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect immediately.

## **Part F – State-Owned Lands Tax Cap Limitation.**

### Purpose:

This bill would reform the process for determining the amounts of taxes due on taxable State-owned lands.

### Summary of Provisions and Statement in Support:

This bill would provide that, on and after April 1, 2018, the taxes payable on a taxable parcel of state land shall be equal to (1) the taxes that were payable on that parcel in the prior year multiplied by (2) the “allowable levy growth factor” determined for the applicable local fiscal year or school year under the appropriate tax cap statute (i.e., General Municipal Law §3-c or Education Law §2023-a). As a result, the tax payments on these lands would automatically increase each year by the rate of inflation or two percent, whichever is less.

Tying the rate of growth to the tax cap formula means that, in most cases, the State land tax payments would grow at a rate that matches the growth rate of the overall local tax levy. In more limited cases – namely, where the tax levy has grown at a rate that is below the tax cap – the State land tax payments will increase at a rate in excess of the overall levy. The only time the State land tax payments would grow at a lower rate than the overall tax levy is where the tax cap has been overridden, and even in those cases, the tax payments would still grow by the allowable growth factor.

This formula would not apply to the initial payment of taxes on taxable State land. Accordingly, in the case of newly-acquired taxable State land, or previously-exempt State land that becomes taxable due to a statutory change, the initial tax payment would be determined in the traditional manner (i.e., the taxable assessed value as determined by the local assessor would be multiplied by the local tax rate). Each year thereafter, the prior year’s payment would be annually increased by the allowable levy growth factor.

Current law requires State tax payments to be based on property values that must be reassessed and reevaluated every year. This imposes a very substantial administrative burden on both local and State officials, though the benefit associated with performing these tasks is very limited. This proposal would make property valuations necessary only in the initial year the property is taxable. Thereafter, the payments would automatically grow at the same rate as the local tax burden in general, resulting in a system of fair and reasonable tax payments coupled with mandate relief and increased efficiency.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would provide a system of fair and reasonable tax payments.

Effective Date:

This bill would take effect immediately.

**Part G – Telecom Mass Property Assessments Extender and Fix.**

Purpose:

This bill would extend the law authorizing the State to determine assessment ceilings for telecommunications property for another four years, while providing for a gradual phasing-in of the impacts, in place of the abrupt drop that is now pending.

Summary of Provisions and Statement in Support:

The assessment ceiling program for telecommunications property would be extended by four years, expiring on January 1, 2023. It is currently set to expire on January 1, 2019.

The bill would also provide a smooth transition from current assessment ceiling values to more accurate values. Under existing law, the assessment ceiling established each year, from 2015 through 2017, cannot be 10% below or above the assessments that were determined by local assessors in 2014. As a result, the taxable assessed values of these properties changed only slightly in 2015, and did not change at all in 2016 or 2017. Generally, this has resulted in values that, as of December of 2017, are dramatically higher than what they will be once the program is fully implemented.

This bill would extend and restructure the transitional provisions of the program so these impacts will be phased in gradually. Specifically, it would allow assessment ceilings to deviate from the 2014 assessments by as much as 25% in 2018, 50% in 2019 and 75% in 2020. Then, in 2021, the ceilings will no longer be tied to the 2014 assessments. Absent this provision, the ceilings would generally decline precipitously in 2018, significantly reducing the taxable assessed value of telecommunications property throughout the State and causing a shift in the tax burden to residents and businesses.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect immediately.

**Part H – Extend the statute of limitations on amended tax returns.**

Purpose:

This bill would extend the statute of limitations for assessing additional tax based on changes reported on an amended return for Article 9, Article 9-A, Article 22, and Article 33 taxpayers as well as New York City personal income tax taxpayers.

Summary of Provisions and Statement in Support:

Under current law, the Department of Taxation and Finance, in most cases, has three years from the original filing date of a tax return to audit and assess additional tax. An amended return does not extend the statute of limitations, regardless of when it is filed. Consequently, if a taxpayer amends their return after the three-year statute of limitations expires, and the amended return is audited and subsequently determined by the Department that additional taxes are due, the Department is unable to assess additional tax.

This vulnerability encourages the filing of questionable returns on or near the statutory deadline, including amended returns that claim overpayment of tax and request refunds. Under current law, if it is determined, after the statute of limitations has expired, that a refund should not have been issued, the Department cannot recover the money unless the refund is an “erroneous refund” based on the Department’s clerical or computational error.

This bill would extend the statute of limitations to allow assessments that are based on changes or corrections in an amended return to be made at any time within three years after the amended return is filed. This would allow the Department the time necessary to audit these amended returns and make any necessary additional assessments.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase revenues by \$3 million annually beginning in FY 2019.

Effective Date:

This bill would take effect immediately and apply to amended returns filed on or after the date this bill becomes a law.

**Part I – Provide for employee wage reporting consistency between the Departments of Taxation and Finance and Labor.**

Purpose:

This bill would provide for consistent quarterly reporting requirements for employers and other entities responsible for the collection and remittance of withholding taxes.



### Summary of Provisions and Statement in Support:

Employers and other entities responsible for the collection, remittance, and reporting of withholding taxes are required to file a Form NYS-45 on a quarterly basis. The Form NYS-45 operates as a wage reporting vehicle, and is also used to report both the New York withholding and Unemployment Insurance (“UI”) amounts collected. It is jointly utilized by the Department of Taxation and Finance (DTF) and the Department of Labor (DOL).

Employers and other entities required to file a Form NYS-45 currently provide employee-level detail, including the employee name, social security number, and total UI remuneration paid on a quarterly basis, as required by DOL. However, the Tax Law currently requires reporting of employee-level wage and withholding amounts to DTF on an annual basis.

This bill would amend the Tax Law to provide for consistent quarterly reporting of wage information to both DTF and DOL. The amendments would also require the inclusion of additional employee-level detail on a quarterly basis, including gross federal wage and New York withholding amounts. This additional employee-level information is currently captured and reported to both Departments on an aggregate basis, and the amendments would require only the inclusion of the information already in an employer’s possession. The revisions would also provide for the imposition of penalties if the employer fails to complete an accurate withholding reconciliation on a quarterly basis, rather than an annual basis.

This bill would provide DTF with the documentation necessary to more readily identify issues on employer filings, correct such filings, and improve the personal income tax refund process. The amendments would also enhance the Department’s ability to protect against potential revenue losses and assist in improving the timely issuance of personal income tax refunds. Finally, the amendments would assist in identifying potentially fraudulent filings, including false employer reports and fraudulent personal income tax returns, whereby individuals request personal income tax refunds they are not entitled to.

This bill would not add to the record-keeping requirements of an employer, nor would it require the creation of additional or new records. The additional information required under this bill is already maintained by New York State employers both large and small, therefore the requirements would not be burdensome and the impact to any size employer should not be significant.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would provide annual minimal revenue increases beginning in FY 2020.

Effective Date:

This bill would take effect immediately and be applicable for calendar quarters beginning on or after January 1, 2019.

**Part J – Simplify the sale for resale exemption for prepared food.**

Purpose:

This bill would amend the Tax Law to grant a resale exclusion to restaurants, cafeterias, caterers and others when purchasing prepared food for resale.

Summary of Provisions and Statement in Support:

Sales tax is intended to be collected only once from a retail customer. When businesses purchase goods and services for resale, those purchases are generally exempt from sales tax with the submission of a properly completed resale certificate to the vendor.

However, Tax Law § 1105(d) imposes sales tax on any purchase of sandwiches or other restaurant-type food when sold in establishments such as restaurants, cafeterias, or taverns, or by caterers. As it does not contain a resale exclusion, sales tax still must be paid by a vendor on any purchase of prepared food, and then it must be collected by a vendor from the customer at the time the prepared food is resold.

This bill would instead allow vendors to purchase food exempt from sales tax when they provide a properly completed resale certificate at the time of purchase. This change would promote tax administration efficiencies and conform the Tax Law to the best practices of other states.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect on June 1, 2018 and would apply to sales made on and after that date.

**Part K – Allow Warrantless Tax Debt to Be Assessed Against Unclaimed Funds.**

Purpose:

This bill would aid in the collection of taxes owed to New York State by authorizing the Commissioner of Taxation and Finance to share information with the Comptroller to collect unclaimed funds for taxpayers that have unwarranted fixed and final debts.

Summary of Provisions and Statement in Support:

This bill would aid in the collection of taxes owed to New York State. The bill would authorize the Commissioner to share information with the Comptroller to collect unclaimed funds of taxpayers that have unwarranted fixed and final debt, and require the Comptroller to keep such information confidential. The authorization would pertain only to information regarding taxes owed that are fixed and final and no longer subject to administrative or judicial review.

Common law and case law authorize and permit the Comptroller to satisfy debt owed to the State with unclaimed funds of a debtor/taxpayer when 1) a debt is owed; 2) the debtor/taxpayer received notice of the debt; and, 3) the debtor/taxpayer no longer has any right to administrative or judicial review of the debt. However, the secrecy statutes in the Tax Law prevent the Commissioner from sharing debtor/taxpayer information with the Comptroller when warrants have not been filed. This legislation is needed so the Commissioner has authorization to share taxpayer information with the Comptroller regarding unwarranted fixed and final debts so the debts can be satisfied, in whole or in part, with unclaimed funds.

Enacting this legislation might allow some individuals to avoid having a tax warrant filed against them. Satisfying unwarranted fixed and final debts from unclaimed funds could reduce the number of warrants filed and enable some taxpayers to resolve their unwarranted fixed and final debt after it is reduced by unclaimed funds utilization.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds revenue by \$3 million annually beginning FY 2019.

Effective Date:

This bill would take effect immediately.

**Part L – Allow the Department of Taxation and Finance Access to Dependent and Child Care Data from Other State Agencies.**

Purpose:

This bill would amend the Social Services Law to allow the Office of Children and Family Services (OCFS) to share day care subsidy information with the Department of Tax and Finance (DTF) so that DTF can verify child and dependent care credit claims.

Summary of Provisions and Statement in Support:

The New York State and New York City child and dependent care credits are refundable income tax credits that provide critical support to parents and other caregivers who are working or looking for work. The credit amounts are determined based upon the claimant's income and the claimant's qualified care expenses.

The Office of the State Comptroller has recommended that DTF utilize day care subsidy data maintained by OCFS as it reviews child and dependent care credit claims for auditing purposes, but the Social Services Law does not authorize OCFS to share this information with DTF. This bill would amend the Social Services Law to permit that sharing, which would help DTF to verify refund claims by subsidy recipients and would help avoid the payment of ineligible claims.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds revenue by \$5 million annually beginning in FY 2020.

Effective Date:

The bill takes effect immediately.

**Part M – Close the carried interest loophole.**

Purpose:

This bill would close the carried interest tax loophole at the State level by taxing the carried interest income of hedge fund and private equity investors as ordinary earned income.

Summary of Provisions and Statement in Support:

The carried interest tax loophole allows hedge fund managers and private equity investors to have favorable federal tax treatment of certain investment management services compensation by treating that income as capital gains, rather than as ordinary income. Further, when these fees are characterized as capital gains, New York cannot tax that income when earned in New York by a non-resident.

This bill would close the loophole, for New York State purposes, by requiring this type of income to be treated as income earned from a trade or business. In addition, the income that is treated as income from a trade or business would be subject to a special 17 percent carried interest fairness fee. The fee would remain in effect until federal law is amended to treat the provision of investment management services for federal tax purposes substantially the same as under this legislation. This bill would take effect only if Connecticut, New Jersey, Massachusetts and Pennsylvania enact legislation having substantially the same effect as this bill.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it represents the first step necessary to achieve tax treatment parity between carried interest and other forms of earned income.

### Effective Date:

This bill would take effect when the states of Connecticut, New Jersey, Massachusetts and Pennsylvania enact legislation having substantially the same effect as this act, and the enactments by such states have taken effect in each state and shall apply for taxable years beginning on or after such date; provided, however, if such enactments are already in effect in the states of Connecticut, New Jersey, Massachusetts and Pennsylvania, this act shall take effect immediately and shall apply for taxable years beginning on or after January 1, 2018; provided the Commissioner of Taxation and Finance shall notify the Legislative Bill Drafting Commission upon enactment of such legislation by the states of Connecticut, New Jersey, Massachusetts and Pennsylvania in order that such commission may maintain an accurate and timely effective database of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the Legislative Law and section 70-b of the Public Officers Law.

## **Part N – DTF Right to Appeal DTA Tribunal Decisions.**

### Purpose:

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

### Summary of Provisions and Statement in Support:

The Division of Tax Appeals is an independent body with the ability to cancel assessments, invalidate regulations, and reverse prior decisions of the State tax commission. While a taxpayer may seek judicial review of an adverse decision of the Tax Appeals Tribunal, the Commissioner of DTF is not afforded the same opportunity. As a result, the Commissioner is precluded from appealing adverse decisions that DTF believes are contrary to the interests of the people of this State.

Judicial review presents the quickest and most efficient method of reaching finality: in the absence of judicial review, the Department's only recourse is to seek legislation to reverse significant Tribunal decisions with which the Department disagreed as a matter of law. The most recent example of such corrective legislation is Part Q of the FY 2018 Enacted Budget (L. 2017, ch. 59.) Moreover, providing DTF with the right to appeal is consistent with the majority of states with similar independent administrative tax bodies, which provide the tax administrator with the right to appeal the administrative body's decision to a court.

Finally, there are instances where judicial review is the only avenue for seeking reversal of an adverse opinion. In September 2017, the Tax Appeals Tribunal issued two decisions dealing with the franchise tax on insurance companies that cannot be reversed legislatively. For the first time, the Tribunal issued a decision on international law and voided Department assessments on alien insurers, concluding that the assessments violated the non-discrimination clause of the tax treaty between the United States and Germany. The Tax Appeals Tribunal's interpretation and application of Article 24, the non-discrimination clause of the United States-Germany 1989 Tax Treaty affects the State's tax treatment of non-resident alien insurance corporations for purposes of Article 33 and, for years beginning on or after January 1, 2015, non-resident alien general business, banking and financial services corporations under Article 9-A. These decisions may also affect the State's taxation of non-resident alien individuals. Because the Legislature does not have the authority to pass a law that would overrule the Tribunal's decision, the Department is currently powerless to have this significant issue of international law reviewed by a Court.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

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

**Part O – Clarify New York Residency Requirements for Tax Purposes.**

Purpose:

This bill would codify the Department of Taxation and Finance's long standing policy of counting all days an individual is present in New York to determine statutory residency for personal income tax purposes regardless of whether or not an individual is also a part year domiciliary.

Summary of Provisions and Statement in Support:

This bill would eliminate confusion that exists among some tax law practitioners following a non-precedential determination by an Administrative Law Judge in the Division of Tax Appeals that interpreted the statutory definition of "resident" in Article 22 of the Tax Law to preclude counting the portion of the year an individual is domiciled in the State when determining whether the individual meets the "more than 183 days" requirement to be a "statutory resident."

Such an interpretation is contrary to the Department's long standing construction of the statutory resident provision. This misinterpretation can lead to absurd results, including

the inability to tax those individuals who, “for all intents and purposes,” are residents of the state throughout the taxable year.

This bill would explicitly provide that the days a person is present in New York State would count toward the “more than 183 days” needed to tax such a person as a statutory resident of the State, regardless of whether or not he or she was actually domiciled in New York at some time during the same year. The bill also would make corresponding changes to the New York City personal income tax.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase personal income tax receipts by \$3 million annually beginning in FY 2021.

Effective Date:

This bill would take effect immediately and shall apply to all taxable years for which the statute of limitations for seeking a refund or assessing additional tax is still open.

**Part P – Maintain 2017 Empire State Child Tax Credit Benefits.**

Purpose:

This bill would maintain the amount of the Empire State Child Tax Credit at the same level that existed in 2017, prior to Federal tax reform.

Summary of Provisions and Statement in Support:

Federal tax reform legislation, enacted as Public Law 115-97, increased and enhanced the Federal child tax credit. Because the amount of the Empire State Child Tax Credit is a percentage of the Federal tax credit, the increase in the Federal tax credit and the broadening of the income thresholds in the credit calculation will necessarily flow through to the Empire State Child Tax Credit. This will result in more claims being filed and higher State credit claim amounts.

This bill would tie the New York credit to the 2017 Federal law before reform, thereby avoiding any unintentional revenue loss to the State while preserving the benefits that New York taxpayers currently enjoy.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would maintain the 2017 Credit benefit levels. Failure to enact this bill would reduce All Funds revenue by \$503 million annually beginning FY 2020.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2018.

**Part Q – Extend the Hire a Vet Tax Credit for two years.**

Purpose:

This bill would extend the Hire a Vet Tax Credit for an additional two years, through tax year 2020.

Summary of Provisions and Statement in Support:

This bill would extend by two years the tax credits provided for hiring veterans under Tax Law §§ 210-B(29) (Franchise Tax on Corporations), 606(a-2) (Personal Income Tax), and 1511(g-1) (Franchise Tax on Insurance Corporations).

Currently, the Hire a Vet Tax Credit is available for taxable years beginning on or after January 1, 2015 and before January 1, 2019. The credit is available to qualified taxpayers for the hiring of qualified veterans who commenced employment on or after January 1, 2014 and before January 1, 2018.

This bill would extend this credit for an additional two years beginning on or after January 1, 2019, and before January 1, 2021, for employment commenced before January 1, 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would decrease All Funds revenue by \$37 million in each of FY 2021 and FY 2022.

Effective Date:

This bill takes effect immediately.

**Part R – Enhance the New York Youth Jobs Program.**

Purpose:

This bill would enhance the New York Youth Jobs Program by providing a 50% increase in the amount of tax credits available for employers who hire and employ at-risk youth on a full-time or part-time basis.

Summary of Provisions and Statement in Support:



Employers in New York State that hire and employ at-risk youth on a full-time or part-time basis are eligible for the Youth Jobs Program Tax Credit. Eligible employers must submit an application to the Department of Labor. If the Department approves, the employers are classified as “qualified employers” and will receive a certificate indicating the maximum amount of credit for which they are eligible.

To ensure the continued success of this program, this bill would provide a 50% increase in the credit amounts available for qualified employers beginning on or after January 1, 2018. Further, beginning on or after January 1, 2019, qualified employers would be required to comply with enhanced reporting requirements. The Department of Labor would also be required to issue a final certificate of tax credit to qualified employers detailing the actual amount of credit allowed based on hiring and retention records.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it will enhance the program and provide transparency on program effectiveness.

Effective Date:

This bill would take effect immediately, provided however that (i) section one of this bill would apply to tax years beginning on or after January 1, 2018; (ii) sections four and seven of this bill would apply to tax years beginning on or after January 1, 2018 and before January 1, 2019; and (iii) sections two, three, five, six, eight, and nine of this bill would take effect on January 1, 2019 and would apply to tax years beginning on or after January 1, 2019.

**Part S – Defer business related tax-credit claims.**

Purpose:

This bill would require taxpayers to defer the use and refund of certain business tax related credits for three years.

Summary of Provisions and Statement in Support:

Beginning on or before January 1, 2018 and before January 1, 2021, this bill would require taxpayers to defer the use and refund of certain tax credits if such credits exceed \$2 million in the aggregate. Under this bill, taxpayers would calculate the amount of each credit they would otherwise use and refund absent this provision, and if the total for the specified credits sums to more than \$2 million, taxpayers must reduce each credit proportionally. Taxpayers with \$2 million or less in credit would not be impacted by this provision.

The credits deferred consist generally of business tax credits, with a few specified credits, including the film production, post production and commercial production

credits, the New York Youth Jobs credit and the Hire-a-Vet tax credit, excluded from the deferral requirement. Under this bill, only credit that would otherwise have been used or refunded would be deferred; and credits earned but not used or refunded because of statutory limitations or insufficient liability are subject to their normal rules.

Credit amounts deferred would be accumulated in one of two new credits - temporary deferral nonrefundable payout credit and temporary deferral refundable payout credit. Taxpayers could begin to use the nonrefundable payout credit on their 2021 tax returns, and any amounts not used could be carried forward indefinitely. Taxpayers would be able to use and refund 50 percent of the refundable payout credit on their 2021 tax return, use and refund 75 percent of the remaining credit on their 2022 tax return, and the entire remainder on their 2023 tax return.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it will increase state revenue by \$82 million in FY 2019, \$278 million in FY 2020, \$199 million in FY 2021, \$164 million in FY 2022 and reduce state revenue by \$298 million in FY 2023, \$173 million in FY 2024 and \$49 million in FY 2025.

Effective Date:

This bill would take effect immediately.

**Part T – Amend the refund and joint liability provisions of the real estate transfer tax.**

Purpose:

This bill would extend the statute of limitations for a taxpayer to file an application for a refund of real estate transfer tax (RETT) if the taxpayer claims that the RETT was paid erroneously. The bill would also establish joint liability between the grantor and grantee for payment of the additional tax imposed under the mansion tax component of the RETT.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 1412(a) to extend the statute of limitations from two years to three years for filing an application for a refund by a taxpayer who claims that the RETT was paid erroneously. Currently, Article 31 provides a three-year window for the Department of Taxation and Finance (Department) to assess RETT, but a grantor or grantee claiming to have erroneously paid RETT must file an application for a refund within two years from the date the tax was paid. For most other taxes, the time allowed for requesting a refund equals the time permitted for the Department to assess additional tax. This amendment would promote fairness to taxpayers.

This bill also would amend Tax Law § 1402-a(b) to establish joint liability between the grantor and grantee for payment of the mansion tax. Currently, the liability for the mansion tax is imposed on the grantee; the grantor is liable for the payment of the tax only if the grantee is exempt. Under the basic RETT, the grantor is primarily liable for the tax, but the grantee is jointly and severally liable if the grantor fails to pay. The mansion tax does not include that joint and several liability provision. This bill would make the basic RETT and the mansion tax consistent with one another: under both taxes, the grantor and grantee would be jointly and severally liable for the tax when the party who is liable initially for payment of the tax fails to pay the tax.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because the joint liability provision would increase All Funds receipts by \$1 million annually beginning in FY 2019, and the extended refund statute of limitations would decrease All Funds receipts by \$1 million annually, beginning in FY 2019.

Effective Date:

This bill would take effect immediately; provided, however, section two of the bill would apply to conveyances occurring on or after the fifteenth day after the bill becomes a law.

**Part U – Improve cigar tax enforcement.**

Purpose:

This bill would amend the definition of “wholesale price” on tobacco products such that it would now be defined as the invoice price for which the product is sold to a distributor.

Summary of Provisions and Statement in Support:

Tax Law § 471-b (a) imposes a tax on cigars at a rate of 75% of the wholesale price. Tax Law § 470 defines wholesale price, but provides opportunities for distributors to manipulate the wholesale price and lower the tax due. The burden then shifts to the Department to dispute a distributor’s claimed wholesale price.

Over the last several years, New York State has refunded millions of dollars to tobacco distributors who have claimed a lower wholesale cost. These claims are based on intercompany transactions, which often occur outside of the United States, that are recorded internally at a significantly lower cost than distributors within New York State must pay for the products received. These pricing schemes are nearly impossible to verify, and do not actually reflect the sales pricing in the tobacco marketplace. The refunds of this tax go exclusively to the tobacco industry and are not passed through to the consumer. In addition to the revenue loss from refunds paid, manipulation of the wholesale price between related entities has effectively reduced the tobacco tax rate.

This bill would stem that loss and return the effective tax rate on other tobacco products to 75%.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds receipts by \$12 million in FY 2019 and \$23 million annually thereafter.

Effective Date:

This bill would take effect on September 1, 2018.

**Part V – Discontinue the energy services sales tax exemption.**

Purpose:

This bill would repeal the sales tax exemption for gas and electric service associated with gas and electricity purchased from an energy service company (ESCO).

Summary of Provisions and Statement in Support:

Tax Law §§ 1101(b) and 1105(b) impose sales tax on the transportation, transmission, or delivery of gas or electricity. Tax Law § 1105-C reduces the rate of tax on the transportation, transmission or delivery of gas and electricity to zero where it is sold separately from the commodity. This provision was enacted in the late 1990s to provide an incentive for customers to purchase gas and electricity from third-party energy service companies, often referred to as ESCOs. As a result, a business purchasing its electricity from a local utility company will pay sales tax on their total electric or gas bill, while another business purchasing gas or electricity from an ESCO will pay sales tax only on the gas or electricity, and not on the transportation, transmission or delivery.

Today, this exemption is no longer needed. Competition among ESCOs is well developed as New York utilities offer customers the option of purchasing directly from the company as well as multiple ESCO gas and electricity suppliers. This bill would repeal Tax Law § 1105-C and eliminate unequal treatment among utility customers. As a result, sales tax would apply to charges for transporting, transmitting, or delivering taxable gas or electricity, whether the commodity is purchased from an ESCO or a utility company. The bill would also clarify that transportation, transmission and delivery charges are taxable even if sold separately from gas or electricity.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds receipts by \$96 million in FY 2019 and \$128 million annually thereafter.

Effective Date:

This bill would take effect immediately and would apply to sales made and services rendered on and after June 1, 2018, whether or not under a prior contract.

**Part W – Convert the veterinary sales tax credit to an exemption.**

Purpose:

This bill would convert the existing sales tax credit or refund for certain drugs or medicine used by veterinarians or farmers for livestock or poultry used in farm production to an upfront exemption.

Summary of Provisions and Statement in Support:

Drugs and medicine purchased by a veterinarian for treating livestock and poultry used in farm production are currently taxable at the time of purchase. Veterinarians then apply for a credit/refund of the sales tax paid on qualifying purchases of certain drugs and medicine.

This bill would repeal the existing refund/credit and create an exemption for drugs and medicine purchased or used by veterinarians for such purposes. The bill would also allow farmers to purchase such drugs exempt from sales tax for livestock and poultry used in farm production.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect on June 1, 2018, and apply to sales made and uses on or after that date.

**Part X– Provide responsible person sales tax relief for minority LLC owners.**

Purpose:

This bill would provide relief from responsible persons liability to certain minority members of limited partnerships or limited liability corporations (LLCs). This bill would codify a Department of Taxation and Finance (DTF) policy described in TSB-M-11(17)S.

Summary of Provisions and Statement in Support:

The Tax Law currently imposes personal responsibility for payment of sales and use taxes on certain owners, officers, directors, employees, managers, partners, or members (responsible persons) of businesses that have outstanding sales tax liabilities. A responsible person is jointly and severally liable for the tax owed, along with the business entity or any of the business's other responsible persons. However, the Tax Law also imposes a strict liability on all members of LLCs and limited partners of limited partnerships. Therefore, a member of an LLC or a limited partner of a limited partnership may be held personally liable for the entire tax liability of the limited partnership or LLC, even if the person has no involvement with the day-to-day operations of the business or any duty to act for the business in the collection and payment of sales tax. This *per se* liability can result in harsh consequences for members that have no direct involvement with the business's operations.

This bill would provide relief from this *per se* personal liability for certain limited partners and members that meet the eligibility requirements specified below.

Under this bill, limited partners of a limited partnership and members of an LLC would be eligible for relief if they demonstrate that: (i) they were not under a duty to act for the limited partnership or LLC in complying with the requirements of the sales tax; and (ii) their ownership interest and the percentage of their distributive share of the profits and losses of the limited partnership or LLC are each less than 50%. A limited partner or member must submit an application for relief to the Commissioner. If approved, a limited partner or member will be liable only for their pro-rata share of the original liability of the business, based on the greater of the limited partner's or member's ownership percentage or their distributive share of the business' profits and losses. Such amount would include prorated interest on the business' original liability up to the date of payment of the limited partner or member, but not penalty.

The Commissioner would also be empowered to deny the application of any limited partner or member who had acted for the limited partnership or limited liability company with regard to sales tax compliance, who has been convicted of a tax crime or who has a past-due tax liability. Finally, the bill also makes a technical conforming amendment to the definition of "responsible person" in Tax Law § 1131(1).

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would codify existing DTF practice.

#### Effective Date:

This bill would take effect immediately.

### **Part Y – Increase the vending machine sales tax exemption.**

#### Purpose:

This bill would amend the exemption from sales and use taxes for certain food and drink purchased from a vending machine.

Summary of Provisions and Statement in Support:

Currently, purchases of certain food and drink costing \$1.50 or less from any vending machine are exempt from sales and use tax.

This bill would maintain this exemption for food and drink purchases from vending machines that accept only coin or currency. It would also exempt food and drink purchases of \$2.00 or less from vending machines that are capable of accepting payment in a form other than coin or currency (“cashless” purchases), regardless of whether those vending machines also accept coin or currency.

Additionally, this bill corrects an anomaly so that bottled water sold from a vending machine is also covered by this exemption. This bill would not affect the tax on food and drink sold by a restaurant, tavern, or similar establishment under Tax Law § 1105(d).

The exemption for food and drink purchased from any type of vending machine would expire on May 31, 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase State sales tax receipts by \$2 million in FY 2021 and \$3 million annually thereafter. Local sales tax receipts would be increased by a commensurate amount.

Effective Date:

This bill would take effect June 1, 2018, and apply to sales made and uses occurring on and after that date.

**Part Z – Amend the local sales tax statute for technical changes.**

Purpose:

This bill would make technical corrections to Part A of Chapter 61 of the Laws of 2017 related to the additional rates of sales and use tax for Genesee, Monroe, Onondaga and Orange counties.

Summary of Provisions and Statement in Support:

The authorization for the additional rates of sales and use taxes for counties that currently impose them was extended until November 30, 2020 by Chapter 61 of the Laws of 2017. The revenue distribution provisions for those additional rates were also extended until November 30, 2020, but the revenue distribution provisions for Genesee, Monroe, Onondaga, and Orange Counties were inadvertently extended until November 30, 2019. This bill would extend the revenue distribution provisions for those four counties until November 30, 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it makes the revenue distribution provisions related to additional rates of sales and use taxes consistent for all counties.

Effective Date:

This bill would take effect on the same date as Chapter 61 of the Laws of 2017; provided however, section 1 of this act would be deemed to be in full force and effect on the same day as subpart R of Part A of Chapter 61 of the Laws of 2017; section 2 of this act would be deemed to be in full force and effect on the same day as subpart Z of Part A of Chapter 61 of the Laws of 2017; section 3 of this act would be deemed to be in full force and effect on the same day as subpart EE of Part A of Chapter 61 of the Laws of 2017; and section 4 of this act would be deemed to be in full force and effect on the same day as subpart GG of Part A of Chapter 61 of the Laws of 2017.

**Part AA – Impose an Internet fairness conformity tax.**

Purpose:

This bill would amend the Tax Law to impose an internet fairness conformity tax to collect sales and use tax on taxable sales of tangible personal property that they facilitate.

Summary of Provisions and Statement in Support:

This bill would impose an internet fairness conformity tax by requiring marketplace providers to collect sales tax on taxable sales of tangible personal property by third-party vendors, facilitated by a marketplace that has facilitated over \$100 million in sales in each year since 2016. The bill would not expand the rules concerning sales tax nexus.

The bill would also require sellers and marketplaces that are not collecting New York sales taxes to file information returns regarding sales of tangible personal property that were delivered in New York and to provide notices to purchasers that tax may be due on those purchases.



Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds receipts by \$80 million in FY 2019 and \$159 million annually thereafter.

Effective Date:

This bill would take effect September 1, 2018 and would apply to sales made or uses occurring after that date.

**Part BB – Impose a health tax on vapor products.**

Purpose:

This bill would impose a health tax on vapor products for use with electronic cigarettes and similar devices.

Summary of Provisions and Statement in Support:

Currently, vapor products are not subject to the tax that is imposed on tobacco products pursuant to Article 20 of the Tax Law. This bill would expand Article 20 to impose a tax, at the rate of 10 cents per fluid milliliter, on the sale (or use, if not previously taxed) on vapor products, defined as the liquid or gel commonly used in e-cigarettes and similar devices, regardless of whether or not the device contains nicotine. To facilitate administration and collection of the tax, wholesalers and distributors would be required to list the amount of vapor products sold, in milliliters, on any invoices issued to their customers.

This bill would also add registration and record keeping requirements, and impose civil and criminal penalties for unlawful possession of a vapor product equivalent to those in existing law for other tobacco products.

Enactment of this bill would equalize the tax treatment of tobacco products and the equivalent products used in e-cigarettes.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds revenue by \$3 million in 2019 and \$5 million annually thereafter.

Effective Date:

This bill would take effect on the 180th day after it becomes a law and apply to vapor products that first become subject to taxation under Article 20 of the Tax Law on or after that date.

## **Part CC – Establish an opioid epidemic surcharge.**

### Purpose:

This bill would establish an opioid epidemic surcharge, thereby imposing a surcharge on the first sale of all opioids in the State to fund an opioid prevention, treatment and recovery account.

### Summary of Provisions and Statement in Support:

The use of opioids throughout the State has drastically risen in recent years. As a result, opioid addiction and overdosing has risen to epidemic levels. This bill would enact a surcharge on opioid sales to disincentivize the use of opioids by placing the share of societal costs from opioid use on the manufacturers, producers and distributors who financially gain from the use of these drugs.

The bill would establish an opioid epidemic surcharge, and thereby impose a surcharge in the amount of two cents per morphine milligram equivalent sold, on the first sale of any opioid in the State. Sales made directly to chemical abuse or dependence facilities, as defined in Article 32 of the Mental Hygiene Law, would be exempt from this surcharge. The responsibility to pay this surcharge would be on the establishment that makes such first sale. The first receipts from the surcharge would be due by January 20, 2019, and would cover the period from July 1, 2018 through December 31, 2018. Receipts would be collected monthly thereafter.

This bill would also establish an opioid prevention, treatment and recovery account in the custody of the state comptroller. Revenue generated from the surcharge imposed by this bill and revenue from litigation or enforcement actions initiated against opioid pharmaceutical manufacturers, distributors and wholesalers would be directed to this account for the purpose of providing support for the provision of opioid treatment, recovery and prevention and education services.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds receipts by \$127 million in FY 2019, \$171 million in FY 2020, \$154 million in FY 2021, \$138 million in FY 2022, and \$125 million in FY 2023.

### Effective Date:

This bill would take effect on July 1, 2018.

## **Part DD – Impose a healthcare insurance windfall profit fee.**

Purpose: This bill would impose a healthcare insurance windfall profit fee in the amount of 14% on the net under writing gain from the sale of health insurance in the State.

### Summary of Provisions and Statement in Support:

This bill would impose a healthcare insurance windfall profit fee in the amount of 14% on the net underwriting gain from the sale of health insurance on risks in New York.

The federal government has given a 14 percent tax cut to corporations to be paid for by drastic cuts in funding for important public programs that save lives. Specifically, while the federal corporate tax rate applicable to for-profit health insurers is being reduced from 35% to 21%, the federal funds provided to New York State to finance public health initiatives are being drastically reduced with additional cuts threatened for future years.

This bill would help close the State budget gap due to the reduction in federal funding without imposing an unexpected burden on the insurers whose health insurance rates for the 2018 calendar year were determined before the Federal corporate tax rate was reduced in December 2017.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase All Funds revenue by \$140 million annually beginning in FY 2019.

### Effective Date:

This bill would take effect immediately and apply to all tax periods beginning after December 31, 2017.

## **Part EE – Amend racing operation provisions.**

### Purpose:

This bill would amend the amount of reserves kept by the New York Racing Association (NYRA), allow nighttime racing (under certain circumstances) and create an advisory committee on equine drug testing and research.

### Summary of Provisions and Statement in Support:

Section 1 of the bill would amend section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law relating to calculating allowable reserves by increasing the number of days of operating expenses from forty-five to ninety days.

Section 2 of the bill would amend section 203 of the Racing, Pari-Mutuel Wagering and Breeding Law to allow, under certain limited circumstances, NYRA to conduct racing after sunset.

Section 3 of the bill would create an advisory committee to make recommendations on the structure, operations and funding of equine drug testing and research. Recommendations would be submitted to the Governor and the Legislature by December 1, 2018.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would add flexibility to current racing operations.

Effective Date:

This bill would take effect immediately.

**Part FF – Allow breeding funds to be used for equine aftercare.**

Purpose:

This bill would allow flexibility so monies from the New York State Thoroughbred Breeding and Development Fund and the Agriculture and New York State Horse Breeding Development Fund may be used for aftercare for retired horses.

Summary of Provisions and Statement in Support:

The State has shown a strong commitment to the issue of responsive aftercare for retired horses. As part of this effort, this bill would add needed flexibility to the existing allocation of funds so monies could be used for retired standardbred and thoroughbred horse aftercare.

Section 1 would amend Section 254 of the Racing, Pari-Mutuel Wagering and Breeding Law to allow monies from the New York State Thoroughbred Breeding and Development Fund to be used for aftercare for retired horses.

Section 2 would amend Section 332 of the Racing, Pari-Mutuel Wagering and Breeding Law to allow monies from the Agriculture and New York State Horse Breeding Development Fund to be used for aftercare for retired horses.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would add flexibility to the allocation of monies for retired horse aftercare. There is no impact on State revenues.

Effective Date:

This bill would take effect immediately.

**Part GG – Extend certain tax rates and certain simulcasting provisions for one year.**

Purpose:

This bill would extend for one additional year various provisions of the Racing, Pari-Mutuel Wagering and Breeding (Racing) Law.

Summary of Provisions and Statement in Support:

Section 1 would amend Racing, Pari-Mutuel Wagering and Breeding Law (PML) § 1003(a) to extend the June 30, 2018 expiration date for in-home simulcasting.

Section 2 would amend PML § 1007(3)(d) to extend the current percentage of total pools allocated to purses that a track located in Westchester County receives from a franchised corporation, which currently is scheduled to expire on June 30, 2018.

Section 3 would amend the opening paragraph of PML § 1014, to continue the provisions allowing simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is operating, which currently are scheduled to expire on June 30, 2018.

Section 4 would amend PML § 1015(1) to extend the provisions governing the simulcasting of races conducted at out-of-state harness tracks, which currently are scheduled to expire on June 30, 2018.

Section 5 would amend the opening paragraph of PML §1016(1) to continue the provisions governing the simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is closed, which currently are scheduled to expire on June 30, 2018.

Section 6 would amend the opening paragraph of PML §1018 to extend the current distribution of revenue from out-of-state simulcasting during the Saratoga meet, which expired on September 8, 2017.

Section 7 would amend § 32 of chapter 281 of the Laws of 1994 to extend the current amount of off-track betting wagers on New York Racing Association, Inc. (NYRA) pools dedicated to purse enhancement, which currently are scheduled to expire on June 30, 2018.

Section 8 would amend § 54 of chapter 346 of the Laws of 1990 to continue binding arbitration for disagreements. These provisions currently are scheduled to expire on June 30, 2018.

Section 9 would amend PML § 238(1)(a) to continue the current distribution of revenue from on-track wagering on NYRA races, which currently is scheduled to expire on December 31, 2018.

Extending these provisions would maintain the pari-mutuel betting and simulcasting structure that is currently in place in New York State. The provisions extended by sections one through six of this bill were first enacted in 1994 and section seven was enacted in 1990. These provisions were extended numerous times since their original enactment, most recently in FY 2018.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it maintains the current pari-mutuel betting structure in New York State.

Effective Date:

This bill would take effect immediately.

**Part HH – Eliminate the Video Lottery Gaming (VLG) hold harmless transfer provision.**

Purpose:

This bill would eliminate the VLG hold harmless transfer provision.

Summary of Provisions and Statement in Support:

This bill would amend State Finance Law § 97-nnnn to strike the hold harmless language.

The intent of the hold harmless language is to provide a transparent measure of the impact of commercial casinos on VLG revenue. Currently, a monthly transfer from the casino education account to the VLG education account is required if monthly VLG revenue falls below revenue from the corresponding month in the “base year” of October 2015 to September 2016. Annual revenue during the base year was \$958.2 million. As the change in VLG revenue is based on factors in addition to commercial casinos (including the opening of a new VLT facility, the change in the number of VLT machines at a facility and the number of reported weeks in a month), the transfer fails to achieve its purpose. Additionally, both VLG and casino revenue are ultimately directed to education. For these reasons, this bill would eliminate this unnecessary and complicated transfer.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would amend the current distribution of VLG and casino education revenues.

Effective Date:

This bill would take effect April 1, 2018.

**Part II – Simplify Video Lottery Gaming (VLG) rate and additional commission provisions.**

Purpose:

This bill would simplify the current Video Lottery Gaming (VLG) distribution structure and amend the additional commission provisions to be aligned with the intent of the law.

Summary of Provisions and Statement in Support:

This bill would repeal and replace subdivision (ii) in § 97-nnnn of the Tax Law. Subsections (A) through (D) would simplify the VLG rate structure; (E) would amend the current additional commission structure; (F) would simplify the capital awards distribution; and (G) would include the free play allowance language.

Currently, VLG revenues are distributed for gaming administration, operator commissions, racing support payments, marketing allowances, and capital awards. The remaining amount is directed to education. The distribution formulas change based on certain net machine income (NMI) levels (which vary by facility). Under this bill, the Video Lottery Terminal (VLT) rates would no longer be based on NMI levels, but instead on four categories: VLTs impacted by gaming facilities, those impacted by Native American casinos, those facilities or machines run by OTBs and the larger VLTs.

Under current law, there is a separate distribution for marketing allowances and capital award monies. Marketing allowance is set at either eight or ten percent of NMI. Most facilities receive four percent of NMI (capped at \$2.5 million) for capital awards. Under this bill, the marketing allowance and capital awards would now be included as part of the operator's commission. The amount spent on marketing would shift from a Gaming Commission directive to operator discretion. For capital awards, the Commission would simply approve projects and the reimbursement process would be eliminated. Up to \$2 million could be used on constructing a turf course at the Finger Lakes racetrack.

Three VLG facilities (Finger Lakes, Saratoga and Monticello) are eligible to receive additional commission to be "held harmless" from the impact of a nearby competing casino. Under current law, however, the Finger Lakes and Saratoga facilities will receive an amount in excess of being held harmless. The proposed language would

adhere to the intention of the law and keep these facilities held harmless from the casino impact beginning with the State Fiscal Year ending on March 31, 2018.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it would increase State VLG revenue by \$22 million in FY 2019 and \$20 million annually thereafter.

Effective Date:

This bill would take effect April 1, 2018.

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