

FY 2022 NEW YORK STATE EXECUTIVE BUDGET

**REVENUE
ARTICLE VII LEGISLATION**

MEMORANDUM IN SUPPORT

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MEMORANDUM IN SUPPORT

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

AN ACT to amend the tax law, in relation to imposing a tax surcharge on wealthy taxpayers (Part A); to amend the tax law, in relation to delaying tax reductions (Part B); to amend the tax law and the state finance law, in relation to the imposition of a pass-through entity tax (Part C); to amend the economic development law and the tax law, in relation to child care services expenditures under the excelsior jobs program and the employer provided child care credit (Part D); to amend the tax law, in relation to reforming and simplifying various business tax provisions thereof; and to repeal certain provisions of such law related thereto (Part E); to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit (Part F); to amend the tax law, in relation to wage filer reporting and reconciliation (Part G); relating to constituting a new chapter 7-A of the consolidated laws, in relation to the creation of a new office of cannabis management, as an independent entity within the division of alcoholic beverage control, providing for the licensure of persons authorized to cultivate, process, distribute and sell cannabis and the use of cannabis by persons aged twenty-one or older; to amend the public health law, in relation to the description of cannabis; to amend the vehicle and traffic law, in relation to making technical changes regarding the definition of cannabis; to amend the penal law, in relation to the qualification of certain offenses involving cannabis and to exempt certain persons from prosecution for the use, consumption, display, production or distribution of cannabis; to amend the tax law, in relation to providing for the levying of taxes on cannabis; to amend the criminal procedure law, the civil practice law and rules, the general business law, the alcoholic beverage control law, the general obligations law, the social services law, the state finance law, the penal law and the vehicle and traffic law, in relation to making conforming changes; to amend chapter 90 of the laws

of 2014 amending the public health law, the tax law, the state finance law, the general business law, the penal law and the criminal procedure law relating to medical use of marihuana, in relation to the effectiveness thereof; to repeal title 5-A of article 33 of the public health law relating to medical use of marihuana; to repeal article 33-B of the public health law relating to the regulation of cannabinoid hemp and hemp extract; to repeal subdivision 4 of section 220.06 and subdivision 10 of section 220.09 of the penal law relating to criminal possession of a controlled substance; to repeal sections 221.10 and 221.30 of the penal law relating to the criminal possession of marihuana; and to repeal paragraph (f) of subdivision 2 of section 850 of the general business law relating to drug related paraphernalia (Part H); to amend the tax law, in relation to requiring vacation rental marketplace providers collect sales tax (Part I); to amend the tax law, to impose sales tax on such admissions to race tracks and simulcast facilities; and to repeal section 227, section 306, section 406, subparagraph (ii) of paragraph b of subdivision 4 of section 1008 and paragraph b of subdivision 5 of section 1009 of the racing, pari-mutuel, wagering and breeding law, relating to certain taxes on admissions to race tracks and simulcast facilities (Part J); to amend the tax law, in relation to increasing the interest free period for certain sales tax refunds (Part K); to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes; and to repeal certain provisions of such law relating thereto (Part L); to amend the tax law, in relation to exempting from sales and use tax certain tangible personal property or services (Part M); to amend the tax law, in relation to increasing the total dollar amount for vendors' gross receipts necessary for registration filing (Part N); to amend the tax law, in relation to imposing liability for real estate transfer taxes on responsible persons, prohibiting grantors from passing real estate transfer tax to grantees, and exempting certain organizations from the LLC disclosure requirement (Part O); to amend the tax law, in relation to restrictions on certain retail dealers whose registrations have been revoked or who have been forbidden from selling cigarettes or tobacco products (Part P); to amend the tax law, in

relation to the timing and method for filing certain returns (Part Q); to amend the tax law, in relation to determining liability for the collection of taxes on medallion taxicab trips and congestion surcharges (Part R); to amend the tax law, in relation to increasing tax return preparer penalties for failure to register and requiring the display of certain documents by tax return preparers (Part S); 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 T); to amend the real property law and the tax law, in relation to electronic submission of consolidated real property transfer forms; and to repeal certain provisions of the real property law relating thereto (Part U); to amend the real property tax law, in relation to providing that beginning with assessment rolls used to levy school district taxes for the 2021--2022 school year, no application for a new enhanced exemption under this section may be approved (Subpart A); to amend the real property tax law, in relation to extending the cutoff date for a STAR credit switch (Subpart B); to amend the tax law, in relation to tax returns of deceased individuals (Subpart C); to amend the real property tax law, in relation to the powers of the state board of real property tax services and the commissioner of taxation and finance; to amend the tax law, in relation to requiring the commissioner of taxation and finance verify the income eligibility of recipients of the basic STAR exemption; and to repeal certain provisions of the real property tax law relating thereto (Subpart D); and to amend the real property law, in relation to exemptions for manufactured home park owners or operators and mobile home owners; and to repeal certain provisions of such law relating thereto (Subpart E)(Part V); to amend the real property tax law, in relation to facilitating the administration of the real property tax, and to repeal section 307 of such law relating thereto (Part W); to amend the real property tax law and the general municipal law, in relation to promoting the development of renewable energy projects (Part X); to amend the racing, pari-mutuel wagering and breeding law, in relation to authorizing mobile sports wagering; and providing for the repeal of certain provisions of such law relating thereto (Part Y); authorizing a

request for information related to gaming facility licenses (Part Z); to amend the tax law, in relation to a keno style lottery game (Part AA); to amend the tax law, in relation to restrictions on certain lottery draw game offerings (Part BB); to amend the racing, pari-mutuel wagering and breeding law, in relation to the office of the gaming inspector general; and to repeal certain provisions of such law relating thereto (Part CC); 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 to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part DD); to amend chapter 109 of the laws of 2006 amending the tax law and other laws relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, in relation to extending the alternative fuels tax exemptions for five years (Part EE); to amend the tax law and chapter 60 of the laws of 2016 amending the tax law relating to creating a farm workforce retention credit, in relation to extending the provisions of such credit through tax year 2024 (Part FF); to amend the public housing law, in relation to extending the credit against income tax for persons or entities investing in low-income housing (Part GG); to amend chapter 59 of the laws of 2014, amending the tax law relating to a musical and theatrical production credit, in relation to the effectiveness thereof; and to amend the tax law in relation to increasing the aggregate cap on the amount of such credit (Part HH); to amend the tax law, in relation to extending hire a veteran credit for an additional year (Part II); to amend chapter 61 of the laws of 2011 amending the economic development law, the tax law and the real property tax law, relating to establishing the economic

transformation and facility redevelopment program and providing tax benefits under that program and to amend the economic development law, in relation to extending the tax credits under the economic transformation and facility redevelopment program (Part JJ); to amend the general business law, in relation to requiring the implementation of the secure choice program by a certain date (Part KK); and in relation to temporarily suspending certain racing support payments (Part LL)

PURPOSE:

This bill contains provisions needed to implement the Revenue portion of the FY 2021 Executive Budget.

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

Part A – Enact Temporary PIT High Income Surcharge

Purpose:

This bill would impose a temporary personal income tax surcharge on high-income taxpayers.

Summary of Provisions and Statement in Support:

This bill would impose a temporary income tax surcharge on high-income taxpayers for Tax Years 2021 through 2023. The parameters of the surcharge would be governed by a new Tax Law § 602, which would include a schedule of surcharge rates and provisions for payment of the surcharge. The bill would allow taxpayers to pre-pay their Tax Year 2022 and 2023 surcharge liabilities in Tax Year 2021 and would allow a deduction beginning in Tax Year 2024 corresponding to the amount of any pre-payment.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$1.5 billion in FY 2022, \$1.4 billion in FY 2023, \$1.2 billion in FY 2024 and \$367 million in FY 2025. An All Funds revenue decrease of \$160 million would occur in FY 2026.

Effective Date:

This bill would take effect immediately.

Part B – Delay Middle Class Tax Cut by One Year

Purpose:

This bill would delay the middle class personal income tax cuts by one year.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 601 to delay the ongoing phase-in of the middle class personal income tax rate cuts by one year. As a result, the rate schedules applicable for Tax Year 2020 would also apply for Tax Year 2021, and the rate schedules currently applicable for Tax Years 2021-2024 would each be delayed by one year.

The bill would authorize the Tax Department to adjust withholding tables for Tax Year 2021 in order to implement these changes to the 2021 rate schedules. The bill would also waive Tax Law § 685(c) penalties for estimated tax due on or before September 15, 2021, that were underpaid because of the rate changes made by this bill.

This amendment would generate increased revenue to the State of New York by applying tax rates from the preceding tax year. Given the extraordinary and unexpected financial crisis realized globally as a result of the COVID-19 pandemic, this measure is necessary to help ensure the State's financial integrity.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$394 million in FY 2022, \$403 million in FY 2023, \$445 million in FY 2024, \$464 million in FY 2025 and \$368 million in FY 2026.

Effective Date:

This bill would take effect immediately.

Part C – Enact a Pass-Through Entity Tax

Purpose:

This bill would create an optional pass-through entity tax for partnerships and S corporations to pay and deduct State taxes at the entity level in exchange for a personal income tax credit.

Summary of Provisions and Statement in Support:

A new Article 24-A is created to enact an optional pass-through entity tax on the New York sourced income of partnerships and S corporations that are comprised solely of individual partners or shareholders. Electing entities will pay a 6.85% percent tax on their New York sourced ordinary income (and guaranteed payments for partnerships).

Tax Law § 606 is amended to provide partners, members and shareholders of electing entities with a refundable tax credit equal to 92 percent of his or her proportionate or pro rata share of taxes paid by an electing entity under Article 24-A. Additionally, Tax Law § 620 is amended to provide a resident tax credit for taxes paid under substantially similar

taxes to other states. Finally, the bill provides that 50 percent of receipts from the new tax will be deposited into the Revenue Bond Tax Fund.

The new pass-through entity tax will permit partners, members and shareholders of electing entities to indirectly deduct SALT taxes paid under Article 24-A for Federal purposes as outlined in IRS Notice 2020-75.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it mitigates the impact of the cap on SALT deductions.

Effective Date:

This bill would take effect for tax years beginning on or after January 1, 2022.

Part D – Enact Employer Child Care Credits

Purpose:

This bill would create a new Excelsior Child Care Services Tax Credit, extend the Excelsior Investment Tax Credit for participants in the Excelsior Jobs Program to encourage expenditures for child care services, and double the existing Employer Provided Child Care Credit.

Summary of Provisions and Statement in Support:

This bill would amend Economic Development Law § 355 to expand the Excelsior Investment Tax Credit to include expenditures for child care services and to create an Excelsior Child Care Services Tax credit for net new child care services expenditures for the operation, sponsorship or direct financial support of a child care services program.

To ensure that New York State’s economic development goals focus on supporting working families, Empire State Development (ESD) seeks to create these bonus incentives for participants in the Excelsior Jobs Program to create and provide child care services. Participants receiving the Excelsior Jobs Program credit would be eligible for a 5 percent Excelsior Investment Tax Credit (above the traditional 2 percent) for the provision of child care, and a 6 percent Excelsior Child Care Services Tax Credit for ongoing net child care expenditures provided by the participant. Under this credit, the more a participant covers of ongoing employee child care services, the greater the tax credit the participant can receive. Through these credit incentives, New York State is supporting working parents, particularly working women, who disproportionately leave the workforce to care for families, by focusing on access to child care in discussions concerning business location and attraction.

This bill also would amend Tax Law § 44 to double the amount of the employer provided child care credit to 200 percent of the credit that is allowed under section 45F of the Internal Revenue Code and increases the per entity cap to \$500,000 per taxable year.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it makes it more affordable for employers to offer child care benefits to their employees.

Effective Date:

This bill would take effect immediately, provided however that the amendments made by section 5 of the bill would apply to taxable years beginning on or after January 1, 2022.

Part E – Reform and Simplify Various Business Tax Provisions

Purpose:

This bill would amend the Tax Law to reform and simplify various business tax provisions.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 184 to eliminate the Tax Law Article 9 tax and filing requirements for foreign bus and taxicab corporations that make fewer than 12 trips into the State per calendar year. Currently, during the period that the State tax on motor fuel exceeds two cents per gallon, these foreign bus and taxicab corporations have a filing requirement and must annually pay a tax equal to \$15 per trip into the State. These foreign corporations making fewer than 12 trips into the State would also continue to be exempt from taxation under Tax Law Article 9-A. Since 2010, only five taxpayers have been subject to the \$15 dollar per trip tax, with an average total annual tax submission of \$100.

The bill would also amend provisions of Tax Law Articles 9-A, 13 and 22 to provide that all Federal subchapter S corporations will be treated as subchapter S corporations for State tax purposes. Requiring conformity to Federal S corporation status would simplify corporation and shareholder New York tax filings, eliminate potential tax avoidance schemes, and align State's treatment of S corporations with that of most other states.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$6 million annually beginning FY 2023.

Effective Date:

This bill would take effect immediately. Section 1 of the bill would apply to taxable years beginning on or after January 1, 2021; sections 2 through 20 would apply to taxable years beginning on or after January 1, 2022.

Part F – Extend the Film Tax Credit for One Year

Purpose:

This bill would extend the Empire State Film Production Credit and the Empire State Film Post Production Credit for one year.

The bill also would amend the post production tax credit to make work performed in 11 counties (specifically Saratoga, Warren, Washington, Columbia, Dutchess, Greene, Orange, Putnam, Rensselaer, Sullivan, Ulster) eligible for the additional 10 percent tax credit increase on labor costs under the Empire State Film Post Production Program.

Finally, this bill would amend the film tax credit program by removing the exception for pilots to the minimum project budget requirements.

Summary of Provisions and Statement in Support:

This bill would extend by one year the tax credits provided by the Empire State Film Production Credit under Tax Law § 24 and for the Empire State Film Post Production Credit under Tax Law § 31, and also remove the exception for pilots to the minimum project budget requirements in the film tax credit program under Tax Law § 24.

Currently, the Empire State Film Production Credit and Post Production Credit is available for taxable years beginning on or after January 1, 2015 and before January 1, 2026. This bill would extend these credits an additional one year to taxable years beginning before January 1, 2027.

This bill also would amend Tax Law § 31(a)(6) to make work performed in 11 counties eligible for the additional 10 percent tax credit increase on labor costs under the Empire State Film Post Production Program.

Originally enacted in 2004, the New York State Film Tax Credit Program currently incentivizes the film and TV economy in New York State by allowing production companies to be eligible to receive a fully refundable credit of 25 percent of qualified production costs and post production costs incurred in the State. In order to grow and foster the post production, editing, and VFX economy of New York State, legislation was enacted in 2010 to create a separate post production tax credit program. This allowed projects which were filmed outside of New York State or otherwise wouldn't qualify for

the film production incentive to receive a credit on their post production costs only. The creation of the post production only program led to the significant growth of post production companies across the State; new companies were founded, existing companies were expanded and invested in additional infrastructure, and international companies created new offices in the State.

In order to incentivize production across New York State, and not just in the New York City, Long Island, and the lower Hudson Valley, in 2013 legislation was enacted creating a “bump” of an additional 10 percent tax credit in both the film and post production tax credit programs on labor done “upstate” in 42 specific counties.

In 2016 an additional 12 counties were added to the “upstate bump”; however, this legislation inadvertently covered only the film production tax credit program and not the post production. In 2017, one county (Suffolk) was removed from the “upstate bump”. Thus, currently there are 11 counties where film production activities are further incentivized but post production activities are not.

As the film and TV production economy continues to grow across the State, it is important to support the relocation and growth of post production and editing companies to cities and towns throughout the State, and especially in the 11 counties in question. There are 22 upstate qualified production facilities in these counties and extending this bump to those counties for projects in the post production only program would help them recruit companies to co-locate as well as help existing companies and editors in those counties attract work.

This bill also would amend Tax Law § 24(b)(3) to remove the exception for pilots to the minimum project budget requirements in the film tax credit program to ensure that incentivized projects have significant job creation and economic development purposes.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would enhance the effectiveness of the credit and improve utilization of allocated credit amounts.

Effective Date:

This bill would take effect immediately, provided however, bill section 5 would apply to applications that are filed with the Governor’s Office for Motion Picture and Television Development on or after April 1, 2021; provided, further, however that bill section 2 would take effect on the same date and in the same manner as section 5 of chapter 683 of the laws of 2019.

Part G – Increase Wage and Withholding Filing Penalty

Purpose:

This bill would increase the maximum penalty imposed on employers for failure to provide complete and accurate wage reporting and withholding reports. Furthermore, it would increase the penalty calculation from \$50 per employee to \$100 per employee.

Summary of Provisions and Statement in Support:

Each year the Department must reconcile over 200,000 discrepancies between the withholding reported by employees on their personal income tax returns and the withholding reported by employers on their quarterly combined withholding, wage reporting and unemployment insurance returns (the NYS-45 form). An analysis into the cause of these discrepancies has revealed that well over half of these discrepancies are caused by late or erroneous employer filings. These errors require significant Department resources to resolve and unnecessarily delay taxpayer refunds. Increasing the penalty for failure to timely and correctly file withholding returns would provide a financial incentive for employers to correctly and timely file, increasing tax compliance and improving the Department's ability to issue refunds to taxpayers in a timely manner.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$2 million annually beginning FY 2022.

Effective Date:

This bill would take effect immediately and apply to returns filed on or after June 1, 2021.

Part H - Enact the Cannabis Regulation and Taxation Act

Purpose:

This bill would create and amend existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York State.

Summary of Provisions and Statement in Support:

This bill would create a new section of law authorizing adult-use cannabis, and would merge existing law for medical cannabis and cannabinoid hemp. Regulation of cannabis benefits public health by enabling government oversight of the production, testing, labeling, distribution, and sale of cannabis. The creation of a regulated cannabis program would enable New York State to regulate licensed entities, ensure quality

control and consumer protection, determine product potency, and set age and quantity restrictions through a comprehensive regulatory framework.

This bill would establish the Office of Cannabis Management (OCM) within the Division of Alcohol Beverage Control, governed by a five-member Cannabis Control Board overseeing the adult-use, medical and cannabinoid hemp industries. The powers of this new office include: the establishment of cultivation and processing standards; the licensure of all business entities in the production and distribution chain; the inspection and enforcement of program standards; and the development and issuance of program regulations.

Article 3 governs New York State's Medical Cannabis Program, which regulates the manufacture, sale, and use of medical cannabis. The Office of Cannabis Management will supervise the continued expansion of the medical cannabis program and ensure patient access and product affordability, and encourage further medical cannabis research opportunities. Additionally, the bill extends the current medical cannabis excise tax provisions, as well as the current revenue distributions for an additional seven years, provided that the previously unallocated portion (45 percent) of medical cannabis tax revenues will now be directed to the New York State Cannabis Revenue Fund.

Article 4 of the bill would regulate and control the cultivation, processing, manufacturing, distribution and sale of cannabis products for adults over 21 years of age. This bill would utilize a two-tier market structure (similar to the alcohol model) for the adult-use cannabis industry. In general, the model prohibits vertical integration and would be coupled with licensing limits and supply management to control market concentration and encourage social equity applicant participation.

This bill would establish a robust social and economic equity program to actively encourage members of communities who have been disproportionately impacted by the policies of cannabis prohibition to participate in the new industry through the implementation of a social and economic equity plan – providing technical assistance, training, loans and mentoring to qualified social and economic equity applicants. Additionally, this bill ensures the enforcement framework of legalization does not replicate the arrest disparities and criminalization of prohibition.

Article 5 of the bill would provide a regulatory framework to comprehensively regulate cannabinoid hemp (CBD products) including the licensing, of processing, extracting and retail sale of cannabinoid hemp. The bill provides production standards, testing requirements and product labeling provisions to safeguard the quality of cannabinoid hemp products available on the market. All hemp growing and cultivation will continue to be regulated by the Department of Agriculture and Markets.

This bill would amend Tax Law to add a new Article 20-C, Tax on Adult-Use Cannabis Products, to impose two taxes. The first tax is based on the milligrams of total THC in adult-use cannabis products with a different per milligram of total THC rate depending on the product category. Edibles will be taxed at a rate of \$0.04 per milligram of THC,

concentrates will be taxed at \$0.01 per of milligram total THC and cannabis flower will be taxed at rate of \$0.007 per milligram THC. The total THC per milligram tax is imposed on the sale from the wholesaler to a retail dispensary. The second tax is a surcharge imposed on the sale by the retail dispensary to the consumer at a rate of 10.25 percent of the selling price. In addition, adult use cannabis product would be subject to State and local sales and use tax.

Revenues from the State's wholesale THC-based tax and cannabis retail surcharge shall be deposited in the New York State Cannabis Revenue Fund. Revenues shall be expended for the following purposes: Cannabis social equity fund, administration of the regulated cannabis program, data gathering, monitoring and reporting, the governor's traffic safety committee, social and economic equity plan of the office of cannabis management, substance abuse, harm reduction and mental health treatment and prevention, public health education and intervention, research on cannabis uses and applications, program evaluation and improvements, and any other identified purpose recommended by the director of the Office of Cannabis Management and approved by the Director of the Budget. Beginning in FY 2023 revenues shall be first distributed to the Cannabis Social Equity Fund in the amount of \$100 million over four years and \$50 million thereafter. The State and local sales tax collections will be distributed in a manner that is consistent with the current State and local sales tax revenue distribution statutes.

All counties, and cities with a population of 100,000 or more residents, would have the opportunity to opt-out of the provisions of Article 4 of the bill with the passage of a local law, ordinance or resolution by a majority vote of their governing body. Municipal governments that allow cannabis licenses will be able to dictate the time, place, and manner of operations through local zoning powers.

The bill also would create conforming changes to a number of different laws including amending the public health law, in relation to the description of cannabis; the vehicle and traffic law, in relation to making technical changes regarding the definition of cannabis and the enforcement of driving violations; the penal law, in relation to the qualification of certain offenses involving cannabis and to exempt certain persons from prosecution for the use, consumption, display, production or distribution of cannabis; the tax law, in relation to providing for the levying of taxes on cannabis; the criminal procedure law, the civil practice law and rules, the general business law, and the state finance law.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$20 million in FY 2022, \$118 million in FY 2023, \$162 million in FY 2024, \$252 million in FY 2025, \$350 million in FY 2026, and \$374 million in FY 2027.

Effective Date:

This bill would take effect immediately; provided, however, that the amendments to the penal law made by section fifty-five of this act shall not affect the repeal of such article and shall be deemed to be repealed therewith; provided further that the amendments to section 89-h of the state finance law made by section fifty-eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith; provided further, that the amendments to section 221.00 of the penal law made by section fifteen of this act shall be subject to the expiration of such section when upon such date the provisions of section fifteen-a of this act shall take effect; provided, however, that the amendments to subdivision 2 of section 3371 of the public health law made by section sixty-one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; provided further, that the amendments to subdivision 3 of section 853 of the general business law made by section sixty-two of this act shall not affect the repeal of such subdivision and shall be deemed to be repealed therewith; and provided further, that the amendments to subdivision 5 of section 410.91 of the penal law made by section sixty-three of this act shall be subject to the expiration and reversion of such subdivision when upon such date the provisions of section sixty-three-a of this act shall take effect; provided however that taxes imposed by section 37 of this Act would take effect on March 1, 2022 and would apply to sales by a distributor to a person who sells adult use cannabis products at retail, and retail sales of adult use cannabis products on and after such date.

Part I – Modernize Tax Law to Include the Vacation Rental Industry

Purpose:

This bill would amend the Tax Law to impose sales tax on vacation rentals and require vacation rental marketplace providers to collect sales tax on taxable sales of the vacation rentals that they facilitate.

Summary of Provisions and Statement in Support:

This bill would update the Tax Law to impose sales tax on vacation rentals and to reflect the high prevalence of vacation rentals made through marketplaces. The bill would also include vacation rentals in the imposition of the \$1.50 NYC hotel unit fee.

This bill would require vacation rental marketplace providers to collect sales tax on the vacation rentals that they facilitate. It would ease sales tax collection burdens for many individuals who rent their residences as vacation rentals, improve taxpayer compliance and level the playing field for New York's hotel operators that compete with vacation rental marketplaces that do not collect tax on vacation rentals in the State.

The Department has long had the authority to impose a tax-collection responsibility on a vendor that facilitates a sale by, among other things, collecting the sales price and tax due from the customer, such as auctioneers, consignment shops and stores with leased departments. This bill would build on that concept by treating entities that facilitate

vacation rentals (such as Airbnb, VRBO, etc.) as persons required to collect tax on such sales, thereby requiring them to collect tax, file returns and remit the tax collected. The bill would define a “vacation rental marketplace provider” as a person who collects the rent and provides the forum, physical or virtual, where the transaction occurs. To minimize the number of persons with tax collection responsibilities, the bill would relieve persons renting properties through vacation rental marketplace providers of any such responsibilities, as long as the that person receives, in good faith, a certification from the vacation rental marketplace provider, on a form authorized by the Department, that the vacation rental marketplace provider is collecting the tax on such transactions. A seller of vacation rentals that makes all of its sales through vacation rental marketplace providers who certify that they will collect the tax would have no New York sales tax registration, collection, filing or remittance responsibilities.

Sales tax collection by the vacation rental marketplace provider would reduce the number of small vacation rental providers that need to collect sales tax. It would also improve tax compliance by reducing the number of persons who handle sales tax payments before they are remitted to the Department and reduce the compliance burden of small registered rental providers.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$10 million in FY 2022 and \$18 million annually thereafter.

Effective Date:

This bill would take effect immediately and apply to collections of rent by the operator or vacation rental marketplace provider on or after September 1, 2021.

Part J – Reform the State Racing Admissions Tax

Purpose:

This bill would repeal the State racing admissions taxes in the Racing, Pari-Mutuel, Wagering and Breeding Law (RPWBL), and impose State sales tax on charges for admissions to race tracks.

Summary of Provisions and Statement in Support:

Under current law, admissions to thoroughbred, harness and quarter horse race tracks are subject to a four percent State tax under the RPWBL. Certain simulcast facilities and theaters are authorized to charge admissions, which are also subject to a four percent State tax under the RPWBL. Unlike most other admission charges, these

charges are not subject to sales tax. These taxes are administered by the Tax Department and are generally due after the end of a racing meet.

This bill would repeal the State admissions taxes in the RPWBL, and impose the State sales tax on those admissions at the same rate. This would create a more consistent and efficient administration system for the Department, race tracks, and simulcast facilities; many of which already file periodic sales tax returns. The bill also provides that any admission charges collected prior to the repeal of the RPWBL provisions would continue to be administered under those provisions as if they had not been repealed.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would address an administrative burden on the Tax Department.

Effective Date:

This bill would take effect September 1, 2021, and would apply to admissions on and after that date.

Part K – Increase the Interest Free Period for Certain Sales Tax Refunds

Purpose:

This bill would increase the amount of time the Tax Department gets to review and issue sales tax refund claims of \$100,000 or more without having to accrue and pay out interest.

Summary of Provisions and Statement in Support:

Under current law, the State must pay interest on any sales tax refund that is not paid within three months. This bill would extend the Tax Department's time, from three months to six months, to process sales tax refund claims of \$100,000 or more before interest must be paid.

The Department routinely processes claims for large sales tax refunds covering thousands of transactions where the taxpayer overpaid tax on purchases. In these instances, the Department often must request and review additional documentation from the taxpayer to support the refund claim. When these reviews take more than three months, the State must pay interest on the refund. This bill would grant the Department three more months, six months in total, to review and process these large refund claims before interest will accrue, while maintaining the current three-month review period for refunds under \$100,000.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it provides the Tax Department more time to accurately review and process high-value refund requests without incurring and paying out interest.

Effective Date:

This bill would take effect immediately and apply to refund or credit claims submitted on or after March 1, 2022.

Part L – Make Permanent Local Sales Tax Rate Authorizations

Purpose:

This bill would make permanent the authority for counties and certain cities to impose local sales tax at the rate of four percent, or their current rate if higher.

Summary of Provisions and Statement in Support:

All counties and cities have the authority to impose sales tax at a base rate of three percent. Most counties and certain cities have the authority to impose an additional sales tax rate of one percent, and some have authority to impose a higher rate. Excluding New York City (which has a permanent additional sales tax rate and would not be affected by this bill), 54 of the 57 remaining counties and 5 cities have additional rates of sales tax. All of those counties and four of the cities must seek State legislation to renew those additional rates on a periodic basis. Once the State legislation takes effect, these counties and cities must enact a local law, ordinance or resolution to extend the additional rate and notify the Tax Department within the time frames established by the Tax Law. These time frames are critical to the Department's ability to implement and notify affected vendors of any changes to the local tax rate.

Historically, this renewal period occurred every odd-numbered year. Over the last two renewal cycles, the renewal was extended to three years, which led to some confusion among localities.

This bill would give all 57 counties outside of New York City, and the 5 cities that currently have additional rates, permanent authority to impose a 1 percent additional rate of sales tax (for a total of 4 percent) or their currently authorized additional rate, whichever is higher. This would eliminate the need for these counties and cities to seek State legislation authorization on a periodic basis to renew those rates and, thus, retain those revenue streams. It would also provide parity to the three counties (Saratoga, Warren and Washington) that currently do not have authority to impose additional rates.

These counties and cities, except the city of Mount Vernon (which has permanent authority), would be required to renew their local enactments extending the additional

rates every two years. These localities would remain subject to the existing requirements and time frames to give notice of their local enactments to the Tax Department. In addition, the bill would require that all local rates terminate on the same date. This would restore the traditional odd-year renewal cycle, make the renewal periods uniform for all affected cities and counties, and reduce confusion and the potential for costly errors.

The bill would preserve the status quo with respect to existing preemption rights as between cities and counties and would provide that existing revenue distribution provisions remain in effect, notwithstanding any expiration date in current law, unless such provision is later amended or repealed.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it provides local governments with the flexibility and ability to shore up their finances and helps to ensure revenue stability and certainty for local governments in the foreseeable future.

Effective Date:

This bill would take effect immediately.

Part M – Extend Certain Sales Tax Exemption Related to the Dodd-Frank Protection Act for Three Years

Purpose:

This bill would extend for three years the exemption from sales and use tax for certain sales or services transacted between financial institutions and their subsidiaries.

Summary of Provisions and Statement in Support:

Certain financial institutions were required under the Dodd-Frank Wall Street Reform and Consumer Protection Act to create subsidiaries and then transfer property or services to those subsidiaries. Certain transactions between these now-separate entities are currently exempt from sales taxes so long as the transfers are made on or before June 30, 2021, or made on or before June 30, 2024, pursuant to binding contracts entered into on or before June 30, 2021. This bill would extend this exemption for an additional three years to cover sales made on or before June 30, 2024, or made on or before June 30, 2027, pursuant to binding contracts entered into on or before June 30, 2024.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it continues to address the unintended consequence of the Dodd-Frank Protection Act as it pertains to separate legal entities and its impact on financial institutions.

Effective Date:

This bill would take effect immediately.

Part N – Make Technical Correction to Sales Tax Remote Vendor Registration

Purpose:

This bill is a technical correction to § 1134(a)(1)(i) of the Tax Law to conform this section with changes made to the sales volume threshold at which remote vendors must register for purposes of collecting sales tax.

Summary of Provisions and Statement in Support:

Part J of Chapter 39 of the Laws of 2019 changed § 1101(b)(8)(iv) of the Tax Law by raising the sales volume threshold that triggers sales tax registration and collection requirements for vendors with no physical presence in the State from \$300,000 over the four previous sales tax quarters to \$500,000 over that period. However, the registration requirements outlined in § 1134(a)(1)(i) of the Tax Law still require registration for purposes of collecting sales tax when the gross receipts from sales of property delivered in New York exceeds \$300,000 over the four previous sales tax quarters. This technical correction would increase the registration threshold to \$500,000 in §1134(a)(1)(i) of the Tax Law in order to conform it to §1101(b)(8)(iv).

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it makes the necessary confirming changes to the remote vendors language.

Effective Date:

This bill would take effect immediately.

Part O – Enhance RETT Compliance

Purpose:

This bill would amend the real estate transfer tax (RETT) to add responsible person billing language to Article 31, prohibit grantors (sellers) from passing the basic RETT through to grantees (buyers), and provide a technical fix to the LLC disclosure

requirements enacted last year by exempting publicly traded companies, REITs, UPREITs, and mutual funds from the requirement to list all members/shareholders.

Summary of Provisions and Statement in Support:

Section 1 would amend Tax Law § 1401 to include any responsible person of a business entity in its definition of “person.” This would enable the Tax Department to assess taxes even in transactions between temporary entities that dissolve after the transaction takes place.

Section 2 would amend Tax Law § 1404 to clarify that the grantor (seller), and only the grantor, is responsible for paying the basic RETT, and that the grantor is not allowed to pass through the cost of the RETT to the grantee. Section 2 also would provide a cause of action to a grantee who is forced to pay the RETT because the grantor failed to do so to recover the amount paid.

Section 3 would exempt publicly traded companies, REITs, and mutual funds that are members of LLCs from having to disclose all of their members/shareholders on a RETT return in a sale of a building with up to 4 residential units.

Section 4 would provide that disclosure of LLC members’ identities is not subject to tax secrecy provisions.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would ensure RETT is assessed and remitted by the appropriate entity.

Effective Date:

This act shall take effect immediately; provided however that sections 1 and 2 of this act shall take effect July 1, 2021, and shall apply to conveyances occurring on or after such date other than conveyances that are made pursuant to binding written contracts entered into on or before April 1, 2021, provided that the date of execution of such contract is confirmed by independent evidence, such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the Commissioner of Taxation and Finance.

Part P – Make Technical Changes to Cigarette Licensing Provisions

Purpose:

This bill would prohibit a retail dealer with a revoked or suspended cigarette license from possessing any taxed cigarettes and tobacco products during the period of

revocation or suspension. The bill would also prohibit a retail dealer who failed to obtain a cigarette license from possessing any taxed cigarettes or tobacco products.

Summary of Provisions and Statement in Support:

This bill would prohibit revoked or suspended retail dealers from possessing taxed cigarettes and tobacco products and would require them to remove those products from their stores, reducing the opportunity to make unlawful sales. Such retail dealers would be afforded ten days from the date that their revocation becomes effective to complete such removal. Retail dealers whose registration was revoked prior to the effective date of this bill and remains revoked as of the effective date of the bill would be afforded ten days from the effective date of the bill to complete the removal. Retail dealers would be permitted to sell or transfer their existing inventory to a licensed retail dealer.

The bill would also provide that a revoked or suspended retail dealer, or a retail dealer that has not received a certificate of registration, that possesses cigarettes or tobacco products is presumed to be selling such products in violation of the Tax Law.

Tax Law § 480 prohibits retail dealers from selling cigarettes or tobacco products unless they are registered under Tax Law § 480-a. Recent amendments to Tax Law § 480-a provided enhanced revocation penalties for retail dealers who are found selling or possessing untaxed cigarettes or tobacco products.

Typically, upon revocation or cancellation of a retail dealer's registration, the retail dealer remains in possession of significant inventory of lawfully stamped cigarettes and tobacco products upon which the excise tax and prepaid sales tax has been paid. That inventory may become worthless during the period of revocation, creating a significant economic incentive for the retail dealer to continue to sell its inventory despite having its authority to sell revoked.

Tax Department investigators frequently find that such retail dealers continue to store and display cigarettes and tobacco products in their business location plainly visible to the public, even though they are prohibited from selling such product. However, because current law does not prohibit a revoked retail dealer from possessing taxed cigarettes and tobacco products, investigators must catch the retail dealer making a sale. This diminishes the impact of the revocation, which was intended to disincentivize retail dealers from engaging in unlawful cigarette and tobacco product trafficking.

Persons who violated the laws governing cigarette and tobacco product sales, and who had their license suspended or revoked as a result, should not be allowed to avoid the consequences of their revocation or suspension by retaining cigarettes and tobacco products that they are barred from selling and, too often, making unlawful sales when investigators are not present.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would ensure that the amendments enacted in 2020 to enhance revocation penalties for retail dealers who are found selling or possessing untaxed cigarettes or tobacco products are able to have their intended impact.

Effective Date:

This bill would take effect immediately.

Part Q – Simplify Certain Tax Filing and Reporting Requirements

Purpose:

This bill would reduce the tax return filing frequency for Alcoholic Beverage Tax (ABT) and Highway Use Tax (HUT) taxpayers.

Summary of Provisions and Statement in Support:

Certain small producers are permitted to file annual ABT returns, upon application and approval by the Tax Department. This bill would allow the Department to expand the universe of distributors who qualify for annual filing under the ABT. This bill would allow the Department to permit less frequent filing for small distributors operating under “farm” production licenses issued under the Alcoholic Beverage Control Law and for producers whose production amount does not exceed the amounts allowed under such farm production licenses. This bill would ease compliance burdens for hundreds of small ABT taxpayers.

This bill would also reduce the filing frequency for small carriers by raising the filing thresholds. Currently, Tax Law § 505 requires most carriers to file monthly HUT returns, but carriers whose total HUT liability for the previous calendar year was not more than \$4,000 are required to file quarterly returns, and carriers whose total HUT liability for the previous calendar year was not more than \$250 are required to file annual returns.

Under this bill, carriers whose total HUT liability for the previous calendar year was not more than \$1,200 would be required to file annual returns, and carriers whose total HUT liability for the previous calendar year was not more than \$12,000 would be required to file quarterly returns. Carriers whose total HUT liability for the previous calendar year was more than \$12,000 would continue to be required to file monthly returns.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would address an administrative burden on the Department and compliance burden on certain tax filers.

Effective Date:

This bill would take effect immediately, provided, however, that section two would apply to returns required to be filed on or after January 1, 2022.

Part R – Amend the Collection and Reporting of Taxicab Tax and Congestion Surcharge

Purpose:

This bill would amend the Tax Law to make the Technology Service Provider (TSP) responsible for collecting and remitting the taxicab tax and congestion surcharge.

Summary of Provisions and Statement in Support:

The TSP collects the “trip record” for taxicab trips, HAIL vehicle trips and dispatch trips. The trip record includes the license number of the taxicab or HAIL vehicle, the time of the trip, the start and end point of the trip and an itemized breakdown of the fare. Where the fare is paid by credit or debit card, the TSP also collects the full fare, including the taxicab trip tax imposed by Tax Law Art. 29-A and the congestion surcharge imposed by Tax Law Art. 29-C.

Consistent with the Department’s long-standing authority to impose tax-collection responsibility on persons that collect the receipts on taxable transactions, this bill would require the TSP to file returns with the State reporting the trip data collected by the TSP. The bill would also require the TSP to remit the taxicab trip taxes and congestion surcharges due on taxable trips from the fares collected by the TSP and make the TSP jointly liable for such taxes and surcharges. The TSP would be allowed to retain from the fares collected any fees it is entitled to under a contract with a taxicab or HAIL vehicle owner and its liability would be limited to the proceeds paid to a taxicab or HAIL vehicle owner, or any person on behalf of such taxicab or HAIL vehicle owner, from such fares.

DTF currently receives trip information from TLC. However, the information is sometimes unreliable and makes it difficult for DTF to determine whether owners and agents remit the proper amount of taxes and surcharges to the State. Without accurate data, the Department cannot verify assertions by agents and owners that they properly report the amount of taxes and surcharges due.

This bill would greatly improve the Department’s ability to verify that the State timely receives the correct amount of taxes and surcharges. It would also improve tax collections and protect revenue by minimizing the number of persons handling tax monies before they are remitted to the Department.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would streamline and improve upon the Tax Department's existing collection and enforcement mechanisms for the taxicab tax and congestion surcharge.

Effective Date:

This bill would take effect immediately and would apply to trips occurring on or after June 1, 2021.

Part S – Update Tax Preparer Regulation and Enforcement

Purpose:

This bill would amend the Tax Law in relation to tax return preparer penalties for failure to register and to require the display of certain documents by tax return preparers.

Summary of Provisions and Statement in Support:

This bill would eliminate the cure period for penalties resulting from failure to register or re-register as a tax return preparer or facilitator and for failure to pay the annual registration fee by a commercial tax return preparer. Tax return preparers and facilitators who fail to register or re-register with the Tax Department would be subject to a penalty of \$500 for the first day of non-compliance and \$200 for each subsequent day of non-compliance, up to a maximum penalty of \$10,000 for any calendar year. Commercial tax return preparers who fail to pay the annual registration fee would be subject to a penalty of up to \$10,000 for any calendar year.

The bill also would require tax return preparers and facilitators to prominently and conspicuously display their current registration certificate, a current price list and the Consumer Bill of Rights Regarding Tax Preparers published by the Tax Department pursuant to General Business Law § 372. Failure to comply with any of the posting requirements would result in penalties assessed against the tax return preparer or facilitator.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$15 million annually beginning in FY 2022.

Effective Date:

This bill would take effect immediately, provided however that paragraph (3) of subdivision (h) of section 32 of the Tax Law, as added by section 3 of the bill, would take effect on January 1, 2022.

Part T – Allow DTF the Right to Appeal DTA Tribunal Decisions

Purpose:

This bill would provide the Tax Department with the right to appeal adverse Tax Appeals Tribunal decisions.

Summary of Provisions and Statement in Support:

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

In the absence of judicial review, the Department's only recourse is to seek legislation to reverse significant Tribunal decisions with which the Department disagrees as a matter of law (e.g., L.2010, c. 57, pt. C; L.1993, c. 57, § 126). Recently, though, the Tribunal determined that it was not bound by legislation enacted to correct an earlier Tax Appeals Tribunal decision and a Court of Appeals ruling upholding the retroactivity of that legislation (*Matter of Franklin C. Lewis*, Tax Appeals Tribunal, May 20, 2020). It instead concluded that "...the finality of Tribunal decisions as a public policy must be weighed against the Legislature's acceptable public purpose of correcting what it considers to be a mistake of the Tribunal. Under the specific facts of this case, we find that the integrity of the finality of Tribunal decisions expressed by Tax Law § 2016 as a public policy prevails over the Legislature's public purpose in correcting a mistake of this Tribunal." Since this and other decisions against the State cannot be appealed, the Tax Appeals Tribunal has as a practical matter neutralized the Legislature's authority to correct what it determines are erroneous interpretations of law.

The Tax Appeals Tribunal also renders decisions in areas of law that cannot be reversed legislatively. In 2017, for example, the Tribunal ruled on the scope of the federal Employment Retirement Income Security Act of 1974 (ERISA) (*Matter of Murphy*, Tax Appeals Tribunal, Feb. 9, 2017) and issued two decisions interpreting the tax treaty between the United States and Germany (*Matter of Bayerische Beamtenkrankenkasse AG*, Tax Appeals Tribunal, Sept. 11, 2017, and *Matter of Landschaftliche Brandkasse Hannover*, Tax Appeals Tribunal, Sept. 11, 2017). The

Legislature does not have the authority to pass a law that would overrule these Tribunal decisions (that power sits with the U.S. Congress).

The Tribunal also routinely renders decisions on matters of constitutional law. Although the Tribunal and its predecessor State Tax Commission historically viewed constitutional challenges to statutes as outside the scope of its jurisdiction (see, e.g., *Matter of Fourth Day Enterprises*, Tax Appeals Tribunal, Oct. 27, 1988; *Matter of Tampa Marketing*, State Tax Commission, Feb 13, 1980), it later revised this view (see, e.g., *Matter of Eisenstein*, Tax Appeals Tribunal, Mar 27, 2003) and now regularly renders decisions on the constitutionality of statutes, regulations and agency actions as applied to specific taxpayers (see, e.g., *Matter of Disney*, Tax Appeals Tribunal, Aug. 6, 2020; *Matter of Stein*, Tax Appeals Tribunal, May 2, 2019).

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

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 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 U – Modernize and Merge Real Property Tax Forms and Processes

Purpose:

This bill would facilitate the modernization and consolidation of the process for reporting real property transfers and for paying the associated tax and fees.

Summary of Provisions and Statement in Support:

When real property is sold, two different State-prescribed forms must be filed, both on paper, and a real estate transfer tax (RETT) has to be paid (unless an exemption applies). The two forms (TP-584 and RP-5217) ask for much of the same information, but they cannot be readily combined because one is a RETT return that is subject to the secrecy provisions of the Tax Law, and the other is a real property tax form that, by law, is fully subject to public disclosure.

This bill would authorize the Commissioner of Taxation and Finance to combine these two forms into a consolidated real property transfer form and to implement an online system for e-filing this consolidated form and paying the associated taxes and fees. This reform would greatly streamline the real property transfer process for practitioners

and other affected parties, while ensuring that the confidential portion of the RETT return remains subject to the secrecy protections. The bill would also protect the interest of county clerks by ensuring that they will continue to receive the same fees that they now collect (\$9 per RP-5217 and \$1 per TP-584), even though users of the online system will be e-filing the forms with, and paying the taxes and fees to, the Tax Department.

The Department's e-filing system would be optional for all parties who wish to continue to use the existing process; however, it should be noted that in New York City and Westchester County, which have instituted their own electronic deed recording systems, the Department's e-filing option would be available only if the city or county opted to allow it to be used.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part V – Improve and Enhance STAR Program Administration

Purpose:

This bill would enhance the administration of the STAR (School Tax Relief) program in various respects.

Summary of Provisions and Statement in Support:

Subpart A of this bill would promote the transition from the exemption program to the credit program by closing the Enhanced STAR exemption to new applicants. Effective in 2021, when a low or middle-income property owner with a Basic STAR exemption "ages-up" and wishes to begin receiving Enhanced STAR, the property owner would register for the Enhanced STAR credit. An owner would no longer be able to submit an application for a new Enhanced exemption. This subpart would not impact current recipients of the Enhanced exemption, who would be permitted to stay in the exemption program and to rejoin the exemption program if they lost the exemption because their income rose above the limit. Also, an owner currently receiving the Basic STAR exemption who opted not to apply for the Enhanced STAR credit would be allowed to stay in the Basic STAR exemption program.

Subpart B would provide that property owners who wish to switch from the STAR exemption to the STAR credit must do so by May 1 in order for the switch to be effectuated on the current year's school tax bills in most jurisdictions. Currently, the

deadline for such switches is June 15, which is not enough time for State and local officials to have the exemptions removed from the data files that are used to generate school tax bills. Owners who switch from the exemption to the credit after May 1 will receive the STAR exemption on the current year's school tax bill and, if the credit is worth more than the exemption, will also be sent a check for the difference.

Subpart C would improve local assessment administration by allowing the Department to provide decedent reports to assessors directly. Legislation was enacted in 2019 to ensure that Enhanced STAR exemptions are promptly removed once an eligible owner dies by allowing the Tax Department to notify the county property tax director of the decedent's name, address and date of death as reported on a personal income tax return filed on behalf of a decedent. This subpart would expedite the removal of unwarranted Enhanced STAR exemptions by allowing the Tax Department to notify assessors directly as well.

Subpart D would promote a more expeditious resolution of STAR exemption appeals by providing that such appeals shall be determined by the Commissioner, or his or her designee, rather than by the State Board of Real Property Tax Services, a body of volunteer public servants that only convenes a few times a year. This subpart would also consolidate the various provisions relating to STAR exemption appeals into a single subdivision, while simplifying the process to make it less cumbersome.

Subpart E would make the STAR program more beneficial for residents of mobile home parks by converting their STAR exemptions into STAR credits, effective in 2022. This would increase their STAR benefits in two ways: First, they would all receive the benefit of the valuation "floor" that ensures they will receive at least what they would be entitled to if their mobile homes were worth \$20,000 (Tax Law § 606[eee][6][B][i]); there is no similar provision in the exemption context. Second, they would no longer be subject to the 2% administrative fee that park owners may now deduct for record-keeping expenses related to the exemption (Real Property Law § 233[w][3]). In addition, taking mobile homes out of the exemption program altogether would greatly reduce the complexity of the STAR data management requirements for both State and local officials, thereby expediting the processing of checks to these owners.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget. Closing the Enhanced STAR Exemption to new applicants would reduce General Fund spending by an estimated \$35 million in FY 2022.

Effective Date:

This bill would take effect immediately, provided, however, that the amendments to subdivision w of section 233 of the real property law made by sections 1, 2 and 3 of subpart E of this bill would be applicable beginning with assessment rolls used to levy school district taxes for the 2022--2023 school year.

Part W – Make Technical and Conforming Changes to Real Property Tax Law

Purpose:

This bill would facilitate the administration of the real property tax.

Summary of Provisions and Statement in Support:

Section 1 would provide that a majority of the duly appointed members of State Board of Real Property Services constitutes a quorum for the transaction of business.

Section 2 would repeal an obsolete statute that expired in 1981.

Section 3 would remove a reference to the Board that was erroneously left in the law when the Board and ORPS were merged into the Tax Department in 2010.

Sections 4, 5, 7, 8 and 9 would allow the cancelation of hearings on various tentative ORPTS determinations – i.e., on special franchise assessments and values, telecommunications ceilings, railroad ceilings, oil and gas assessments, and equalization rates – where no complaints have been filed. Often, ORPTS sends out hearing notices and receives no complaints, but the hearing remains on the calendar since the statutes do not provide for the cancelation of a hearing on the basis that no complaints have been filed.

Section 6 would clarify local option exemption requirements relating to population restrictions and filing requirements. Various exemption statutes are written so as to apply to jurisdictions with populations within a specified range. Those statutes generally contain local option features that enable those jurisdictions to opt out, opt in, or modify the terms of the exemption. Questions have arisen as to whether such options, once exercised, remain in effect if the population of the jurisdiction shifts out of the specified range. This bill would clarify that they do. Section 6 would also clarify that when an exemption statute contains local option features and provides that a duplicate copy of the local law exercising the local option shall be filed with a state agency other than the Department of State, a failure to file the duplicate copy does not render the local law ineffective, unless the exemption statute in question explicitly provides otherwise. Filing of local laws with the Secretary of State would remain mandatory, as has always been the case.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget.

Effective Date:

This bill would take effect immediately, provided however, that notwithstanding the provisions of subdivision 2 of section 497 of the real property tax law as added by section 6 of the bill, the decision issued by the Appellate Division, Third Department on April 16, 2020, in the Matter of Laertes Solar, LLC v Assessor of the Town of Harford, cited as 182 A.D.3d 826, 122 N.Y.S.3d 427, and 2020 NY Slip Op 02302, motion for leave to appeal dismissed in part and otherwise denied by the Court of Appeals on November 19, 2020, would remain binding upon the parties thereto, and provided further that the amendment to title 5 of article 4 of the real property tax law made by section 7 of the bill would not affect the repeal of such title and would be deemed to be repealed therewith.

Part X – Promote the Development of Renewable Energy Projects

Purpose:

This bill would amend the real property tax law and general municipal law in relation to establishing a standardized approach for real property tax assessment for solar and wind infrastructure.

Summary of Provisions and Statement in Support:

This bill would extend the existing real property tax exemption for renewable energy projects to continue to meet the clean energy goals established under the Climate Leadership and Community Protection Act, and provide appropriate and fair property taxation for wind and solar projects that are uniform across the State. The bill would establish a process for creating a standard methodology for the assessment of wind and solar projects that facilitates meeting New York’s aggressive carbon reduction goals, while still leaving municipalities the flexibility to negotiate Payments in Lieu of Taxes (PILOT) agreements. The great majority of projects reimburse municipalities and school districts through PILOT agreements.

The option to exempt solar and energy systems from real property taxes has helped to spur the development of renewable energy across New York State and contributed to reductions in harmful emissions while promoting economic development and creating thousands of good paying jobs. The extension contemplated in this bill would provide assurance to developers of renewable energy projects that the option for a real property tax exemption will exist well into the future, while also clarifying the responsibilities of the developer and the local taxing jurisdiction.

This bill would also delineate how a local jurisdiction will be notified of construction of a renewable project and the amount of time to require a PILOT agreement. These additions to the law provide surety and a guarantee of fair play for both the taxing jurisdiction and the project developer.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part Y – Authorize Mobile Sports Wagering and Establish a Casino Tax Rate Petition Process

Purpose:

This bill would authorize mobile sports wagering in NY and establish a process for casinos to petition for a lower tax rate.

Summary of Provisions and Statement in Support:

Sports wagering is now legal online in 14 states, including the bordering states of New Jersey and Pennsylvania, while in New York it is only permitted in-person at the four Upstate commercial gaming facilities and Native American Class III gaming facilities. For many New Yorkers, it is easier to use New Jersey's platform to place a mobile sports wager than to travel in-person to one of the New York facilities. An industry study found that nearly 20 percent of New Jersey's online sports wagering handle comes from New York residents, costing the State millions of dollars in lost tax revenue.

This bill would authorize mobile sports wagering in the State. The Gaming Commission will select a platform provider(s) through a competitive bidding process. The platform provider(s) must demonstrate that the necessary safeguards against addictions and abuses are in place. All revenues shall be directed to the State Lottery Fund for education aid.

Overall, the Upstate casinos have struggled financially, and their initial revenue projections have not come to fruition. The facility closures for six months and capacity restrictions this fiscal year have only exacerbated these issues. This bill would put a petition process in place for the casinos to demonstrate their need for a lower tax rate based on certain criteria including their financial projections, the use of the additional funds, impact on the overall competitive landscape and other economic factors.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by over \$500 million when full potential is realized.

Effective Date:

This bill would take effect immediately.

Part Z – Authorize a Request for Information for Gaming Facility Licenses

Purpose:

This bill would authorize the Gaming Commission to issue a Request for Information (RFI) for the purpose of soliciting interest regarding the three unawarded gaming facility licenses.

Summary of Provisions and Statement in Support:

New York can award up to seven gaming facility licenses. The Upstate NY Gaming Economic Development Act outlined the process and procedures in which four upstate gaming facility licenses were eventually awarded. There are currently four casinos in the Upstate region.

This bill would allow the Gaming Commission to issue an RFI to seek information from parties interested in developing and/or operating one of the three remaining gaming facilities. The RFI will assess interest in the unawarded licenses by focusing on determining the appropriate size and scope of development, the value of the gaming facility licenses, and the process that should be used in award consideration.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would allow the Commission to request information for the remaining gaming facility licenses.

Effective Date:

This bill would take effect immediately.

Part AA – Eliminate Quick Draw Restrictions

Purpose:

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

Summary of Provisions and Statement in Support:

The restrictions imposed on Quick Draw by the 1995 authorizing legislation were experimental. In practice, the size restriction has reduced the eligible license agents by half, substantially reducing the amount of earnings that would otherwise be generated by the game. New York is the only State with these limitations on Quick Draw style-games.

The 2,500 square foot limitation has the effect of arbitrarily limiting Quick Draw sales. Additionally, the age that a person may play Quick Draw in any establishment that serves alcoholic beverages should conform to the age restriction for all other Lottery games. Eliminating these restrictions will strengthen the game's ability to produce additional sales and earnings.

The Quick Draw restrictions were intended to protect against the possibility that Quick Draw would be abused by players. However, after more than 22 years' experience, Quick Draw has proved to be no more likely to be abused than other Lottery games. Following the authorization of Quick Draw in 1995, the State authorized video lottery gaming, which offers a much faster paced form of gaming with none of the restrictions imposed on Quick Draw present there. In this current gaming environment, the limitations on Quick Draw are an unnecessary impediment to the further expansion of the game.

Section 1 of the bill would amend Section 1612(a)(1) of the Tax Law to eliminate: (i) the restriction limiting sales of Quick Draw tickets to premises larger than 2,500 square feet, (ii) the restriction requiring that a person must be 21 years of age to play Quick Draw on premises where alcoholic beverages are served, and (iii) an obsolete authorization of emergency rulemaking power.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$15 million in FY 2022 and \$30 million annually thereafter.

Effective Date:

This bill would take effect immediately.

Part BB – Remove Restriction on Lottery Draw Game Offerings

Purpose:

This bill would remove the statutory limitations on the number of per day offerings for certain lottery draw games (e.g., Take 5, Pick 10, Lotto, and new games introduced).

Summary of Provisions and Statement in Support:

Currently, Take 5, Pick 10, Lotto, and any other games introduced are statutorily limited to no more than one drawing per day. In June 2019, the Cash4Life game switched from twice-a-week drawings to daily drawings, which resulted in a significant increase in

sales. In FY 2022, the Gaming Commission plans to increase the number of Take 5 draws to two per day.

Removing this language also provides flexibility to the Gaming Commission to determine the appropriate number of draws per day, per draw game, while increasing revenue directed to education. It also provides that a determination may be made quickly, depending on the facts and circumstances.

Section 1 of the bill would amend Section 1612(a)(B)(4) and (5) of the Tax Law to remove the restriction limiting the number of daily offerings of Pick 10, Take 5, Lotto, and future lottery games tickets to a single daily offering.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$7 million in FY 2022 and \$9 million annually thereafter.

Effective Date:

This bill would take effect immediately.

Part CC – Decouple the Gaming Commission and the Gaming Inspector General

Purpose:

This bill would consolidate the function of the Gaming Inspector General under the authority of the State Inspector General.

Summary of Provisions and Statement in Support:

This bill addresses two primary concerns:

- Currently, all Gaming Inspector General resources are comingled with the resources of the Gaming Commission. To mitigate any impression that a conflict of interest exists with this structure, the Gaming Inspector General would be consolidated with the State Inspector General.
- The statute that codifies the jurisdiction of the Gaming Inspector General is located in Title 9 of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law (Destination Resort Gaming). To further clarify that the Gaming Inspector General has jurisdiction over all racing and wagering laws, sections 1368 through 1371 would be relocated to Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

- When the Workers' Compensation and Welfare Inspector General titles were consolidated under the State Inspector General, a similar approach was taken, as the existing statutes were left intact, but the operational authority was transferred to the State Inspector General.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget. The Gaming Commission's State Operations General Fund resources would be reduced by \$395,000 and four FTE's in FY 2022; these resources would be transferred to the State Inspector General.

Effective Date:

This bill would take effect immediately.

Part DD – Extend Pari-Mutuel Tax Rate and Simulcast Provisions for One Year

Purpose:

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

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, 2021 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, 2021.

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, 2021.

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, 2021.

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, 2021.

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 through September 8, 2020.

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, 2021.

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, 2021.

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, 2021.

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 2021.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains the current pari-mutuel betting structure in New York State.

Effective Date:

This bill would take effect immediately.

Part EE – Extend the Alternative Fuels Exemptions for Five Years

Purpose:

This bill would extend the alternative fuel tax exemptions for fuel types E-85, CNG and hydrogen, and the partial exemption for B-20, until September 1, 2026.

Summary of Provisions and Statement in Support:

Currently E-85, CNG, and hydrogen are fully exempt and B20 is partially exempt from the motor fuel taxes (Article 12-A), the petroleum business taxes (Article 13-A), fuel use taxes (Article 21-A) and State and local sales and compensating use taxes (Articles 28

and 29). This bill would extend the sunset date for these exemptions from September 1, 2021, to September 1, 2026. Extending these exemptions would continue to provide an incentive for the use of renewable fuels and is part of a comprehensive strategy to reduce dependence on foreign oil and to increase the use of clean energy fuels.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains existing support for the renewable energy sector.

Effective Date:

This bill would take effect immediately.

Part FF – Extend the Farm Workforce Retention Credit for Three Years

Purpose:

This bill would extend the Farm Workforce Retention Credit for three years through tax year 2024.

Summary of Provisions and Statement in Support:

This bill would extend the Farm Workforce Retention Credit for three years so the credit is available for tax years beginning before January 1, 2025. Currently, this credit is set to expire at the end of Tax Year 2021.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains existing support for farm employers.

Effective Date:

This bill would take effect immediately.

Part GG – Extend Low-Income Housing Credits for Five Years

Purpose:

This bill would increase the aggregate dollar amount allocable for the state low income housing tax credit by \$8 million for each of the next five years.

Summary of Provisions and Statement in Support:

This bill would amend Public Housing Law § 22(4) to increase the aggregate amount of low-income housing tax credit the Commissioner of Housing and Community Renewal may allocate from \$104 million to \$144 million, in \$8 million increments annually for the next five fiscal years.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains existing support for low-income housing initiatives.

Effective Date:

This bill would take effect immediately; provided, however, section two of this bill would take effect on April 1, 2022; section three of this bill would take effect on April 1, 2023; section four of this bill would take effect on April 1, 2024; and section five of this bill would take effect on April 1, 2025.

Part HH – Extend and Enhance the Musical and Theatrical Production Credit for Four Years

Purpose:

This bill would extend the sunset date of the musical and theatrical production credit in the Tax Law for four years through January 1, 2026 and increase the annual credit cap to \$8 million.

Summary of Provisions and Statement in Support:

This bill would extend the sunset date of the musical and theatrical production tax credit for four additional years – to January 1, 2026. The musical and theatrical production credit encourages touring musical and theatrical productions in New York theaters outside the City of New York. This provision allows eligible production companies taxable under Tax Law Articles 9-A and 22 to claim a refundable credit equal to 25 percent of qualified production costs and transportation expenditures.

Additionally, this bill would increase the annual tax credit cap from \$4 million to \$8 million effective immediately.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains and enhances support for musical and theatrical production companies.

Effective Date:

This bill would take effect immediately.

Part II – Extend the Hire-A-Vet Credit for Two Years

Purpose:

This bill would extend the tax credit provided for hiring a veteran for an additional two years, through tax years beginning before 2024.

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 credit is available for taxable years beginning on or after January 1, 2015, and before January 1, 2022. 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, 2021.

This bill would extend this credit an additional two years to taxable years beginning before January 1, 2024, for employment commenced before January 1, 2023.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains existing support for veteran employment initiatives.

Effective Date:

This bill would take effect immediately.

Part JJ – Extend the Economic Transformation and Facility Redevelopment Program Tax Credit for Five Years

Purpose:

This bill would extend the Economic Transformation and Facility Redevelopment Program tax credits for an additional five years.

Summary of Provisions and Statement in Support:

The Economic Transformation and Facility Redevelopment Program tax credits allowed under Tax Law § 35 are currently scheduled to expire December 31, 2021. Section 1 of this bill would extend this program by five years until December 31, 2026.

The tax credits are currently available for closed facilities as defined in Economic Development Law § 400(11), including correctional facilities selected by the Governor for closure by March 31, 2021. This bill would amend the definition to include correctional facilities selected by the Governor for closure by March 31, 2026.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it maintains the necessary tax incentives to support surrounding communities affected by prison and other facility closures.

Effective Date:

This bill would take effect immediately.

Part KK – Extend Implementation Deadline for the Secure Choice Program

Purpose:

This bill would amend the General Business Law to extend the deadline to open the Secure Choice Program for enrollment.

Summary of Provisions and Statement in Support:

The COVID-19 pandemic has delayed implementation of the New York State Secure Choice Savings Program. This bill would extend the statutory deadline for implementing the program from April 12, 2020, to December 31, 2021.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part LL – Temporarily Suspend Certain Racing Support Payments

Purpose:

This bill would temporarily suspend payments required by law from Rivers Casino to Saratoga Casino and Raceway to keep their horsemen and breeders held harmless at 2013 levels adjusted for inflation.

Summary of Provisions and Statement in Support:

Rivers is the only casino statutorily required to make a hold harmless payment for horsemen purses and breeding funds to support a Video Lottery Gaming (VLG) facility. The original intent was to offset any reduction in net machine income (NMI) that Saratoga may sustain as a result of Rivers' opening. Due to COVID-19, Saratoga has experienced significant declines in NMI, a share of which is directed to support horsemen purses and breeding funds (racing support payments). As a result, present law would require Rivers to subsidize this difference between the 2013 racing support payments level adjusted for inflation and the significantly reduced amounts for these purposes due to COVID-19's impact on VLG NMI. This was never the intent of the law and therefore should be adjusted.

This bill would temporarily suspend the racing support payment obligations from Rivers and Saratoga while any COVID-19 related restrictions are in effect for either facility. These payment obligations would resume accruing once each facility operates without any COVID-19 related restrictions for six full and consecutive calendar months. Additionally, racing support payments for January and February 2020 would be made by Rivers in six equal installment payments of \$106,407 beginning with the first month after it operates without any COVID-19 related restrictions for six full and consecutive calendar months.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would alleviate an increased burden on Rivers casino caused by COVID-19.

Effective Date:

This bill would take effect immediately.

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.