

**2012-13 NEW YORK STATE EXECUTIVE BUDGET**

**REVENUE ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

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### 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 chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effective date of such chapter (Part A); to amend the real property tax law, the tax law, the administrative code of the city of New York and the state finance law, in relation to the suspension of STAR exemptions and related benefits of persons who are delinquent in the payment of outstanding state tax liabilities (Part B); to amend the tax law, in relation to reforming excise tax on tobacco products, imposing a fixed rate of tax on loose tobacco, and imposing a retail tax on cigars (Part C); to amend chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, in relation to extending the alternative fuels tax exemptions (Part D); to amend the tax law, in relation to making technical amendments to the tax treatment of diesel fuel to reflect industry practice (Part E); to amend the tax law, in relation to the power of the commissioner of taxation and finance to refuse to issue a certificate of authority to collect the sales and compensating use taxes imposed by article 28 of the tax law and pursuant to the authority of article 29 of the tax law (Part F); to amend the tax law and part U of chapter 61 of the laws of 2011, amending the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, relating to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and repealing certain provisions of the tax law and the administrative code of the city of New York relating

thereto, in relation to making permanent, provisions relating to mandatory electronic filing of tax documents and improving sales tax compliance; and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part G); to amend the tax law, in relation to the personal income tax credits for solar energy systems equipment and the sales and use tax exemption provided for such equipment (Part H); to amend the tax law, in relation to extending the empire state commercial production tax credit; and to amend part V of chapter 62 of the laws of 2006 relating to the empire state commercial production tax credit, in relation to the effectiveness thereof (Part I); to amend the public housing law, in relation to the credit against income tax for persons or entities investing in low-income housing (Part J); to amend the tax law, in relation to extending the biofuel production tax credit; and to amend part X of chapter 62 of the laws of 2006, amending the tax law relating to providing tax credits for biofuel production plants, in relation to the effectiveness thereof (Part K); to amend chapter 58 of the laws of 2006, relating to providing an enhanced earned income tax credit, in relation to the effectiveness thereof (Part L); to amend the civil practice law and rules and the debtor and creditor law, in relation to prohibiting banking institutions from deducting levy processing fees from tax and child support levy proceeds (Part M); to amend the tax law, in relation to tax rates and exclusions under the metropolitan commuter transportation mobility tax for professional employer organizations and to amend part B of chapter 56 of the laws of 2011 amending the tax law relating to the tax rates and exclusions under the metropolitan commuter transportation mobility tax, in relation to the effectiveness thereof (Part N); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law

and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part O); and to amend the tax law, in relation to the distribution of revenue collected from the corporate and utilities taxes imposed under sections 183 and 184 of the tax law (Part P)

**PURPOSE:**

This bill contains provisions needed to implement the Revenue portion of the 2012-13 Executive Budget.

This memorandum describes Parts A through P of the 2012-13 Article VII Revenue bill which are described wholly within the parts listed below.

**Part A – Extend fees for the establishment of oil and gas unit of production values.**

Purpose:

This bill would extend fees for the establishment of oil and gas unit of production values by the Department of Taxation and Finance (the Department).

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

The Department establishes “unit of production values” which local assessors must use when assessing oil and gas wells and related facilities, pursuant to Article 5, Title 5 of the Real Property Tax Law. This program, which has been in place since 1981, relieves local assessors of the burden of attaining the necessary expertise to value these properties, while assuring producers that their assessments will be determined on a uniform, rational basis throughout the State.

In recognition of the benefit this program provides for the industry, producers have been obliged since 1992 to pay fees to the State to offset the administrative costs involved in developing these values. The statute imposing those fees – Real Property Tax Law §593 – has always been subject to a sunset clause, and has been repeatedly renewed since enactment. This bill would extend the program until 2015.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget and allow the Department to offset related costs.

Effective Date: This bill takes effect immediately.

**Part B – STAR benefit recovery program for unpaid tax liabilities.**

Purpose:

This bill would create a new program to aid in the enforcement of delinquent tax liabilities by providing for the recovery of STAR benefits from taxpayers who owe certain past-due tax liabilities.

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

This bill would authorize the Department of Taxation and Finance to establish a new program to aid in the enforcement of delinquent tax liabilities by providing for the recovery of STAR benefits from taxpayers who owe certain past-due state tax liabilities. The program would apply to the STAR exemption from real property taxation and to the two STAR-related personal income tax benefits for New York City residents.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget since it would provide an estimated \$1 million in additional revenue on an annual basis and \$5 million in savings, by removing the STAR exemption in cases in which the taxpayer(s) were in arrears with respect to their State tax liabilities.

Effective Date:

This bill would take effect immediately, provided however, the provisions relating to the personal income tax in New York City would apply to taxable years beginning on and after January 1, 2012.

## **Part C – Reform the Tobacco Products Excise Tax.**

### Purpose:

This bill would amend the Tax Law, in relation to reforming excise tax on tobacco products, imposing a fixed rate of tax on loose tobacco, and imposing a retail tax on cigars.

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

Using commercial roll-your-own machines at a retail location to make cigarettes is the newest trend in the tobacco industry. It is an alternative way to manufacture cigarettes while paying the lower tobacco products excise tax rather than the generally much higher cigarette excise tax. These machines use loose tobacco to fill tubes to create cigarettes in minutes rather than in hours if done on home filling machines. Purchasers are often choosing lower taxed tobacco products like pipe tobacco to use in the machines to save even more money. The bill would tax all loose tobacco at the same rate as the excise tax on cigarettes to provide a disincentive for consumers to seek out these machines.

This bill would also reform the excise tax on tobacco products and impose a retail tax on cigars.

Sections 1, 19 through 34, and 35-45 of the bill would make conforming changes to Article 20 by adding the term “cigars” wherever the term “tobacco products” is used, because cigars would be taxed separately from tobacco products. Additionally, the term “wholesale price” would be removed and replaced with weight for record keeping purposes. In several sections, the threshold for cigars would be adjusted in keeping with section 21.

Sections 2 through 9 of the bill would amend section 470 of the Tax Law to remove cigars from the definition of tobacco products and to make conforming changes to other related definitions to reflect this change. The definition for snuff is expanded to reflect the new products in the marketplace that are most closely defined as snuff. A definition of loose tobacco is added to include all tobacco products other than snuff and little cigars. The definition of receipts is added in order to impose the new cigar excise tax at the retail level.

Section 10 of the bill would amend section 471(b)(1)(a) to eliminate the imposition of the tobacco products tax at seventy-five percent of the wholesale price, and replaces it with a fixed rate of \$4.53 per ounce on loose tobacco. This rate brings the tax rate up to par with the imposition on cigarettes.

Section 11 of the bill would add a sunset of June 1, 2012 for the imposition of the tobacco products tax on cigars. This would allow for a month where there is no tax on



cigars in order to provide a period of time to sell down inventories before the imposition of the new cigar excise tax.

Section 12 would make conforming changes to the use tax.

Sections 13 and 14 of the bill would add a new cigar excise tax as section 471-f of the Tax Law and cigar use tax as section 471-g of the Tax Law that is imposed at the rate of fifty percent on the receipts from every retail sale and collected by the retail dealer or paid by the consumer.

Sections 15 and 16 of the bill would add a cigar prepaid tax paid by the distributor at the rate of 20 cents per cigar possessed for use or sale in the state, and allow for a refund or credit with respect to the prepaid tax.

Sections 17 and 18 of the bill would add sections 471-j and 471-k to the bill to address some administration provisions for the cigar excise tax.

Section 21 of the bill would amend section 474 of the Tax Law to lower the threshold for the invoice requirement from more than 250 cigars to more than 50 cigars to make the amount similar to the requirement for cigarettes.

Section 31 of the bill would amend section 480-a(2)(d) by incorporating by reference the sales tax certificate of authority penalties contained in section 1134 of the Tax Law to be similarly applicable to a certification of registration.

Section 37 of the bill would add section 481-a to the Tax Law to establish parallel relevant penalties for retail dealers as are found in section 1145 of the Tax Law.

Section 46 of the bill provides that the bill would take effect July 1, 2012, except that section 11 of the bill would take effect immediately.

Budget Implications:

Enactment of this bill is necessary to implement the Executive Budget, because it will increase tax receipts by \$18 million in SFY 2012-13 and \$24 million each year thereafter.

Effective Date:

This bill takes effect July 1, 2012 except that section 11 takes effect immediately.

**Part D – Extend the alternative fuels tax exemptions for five years.**

Purpose:

This bill would extend the sunset from September 1, 2012 to September 1, 2017 for the tax exemptions for alternative fuels, including E85, CNG, hydrogen, and B20.

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

Extending the exemptions for alternative fuel 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.

This bill would extend the sunset for the exemptions in the Tax Law for alternative fuels from September 1, 2012 to September 1, 2017. Unless this sunset is extended, the Tax Law will no longer allow full exemptions for E85, CNG, and hydrogen, and partial exemptions for B20 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).

Existing law includes an exemption for E85, CNG and hydrogen, and a partial exemption for B20. This exemption is set to sunset on September 1, 2012.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget. All Funds sales and use, petroleum business, and motor fuel taxes would be reduced by a total of \$1.5 million in SFY 2012-13 and \$3 million annually in each of 2013-14, 2014-15, 2015-16 and 2016-17 and \$1.5 million in 2017-18.

Effective Date:

This bill takes effect immediately.

**Part E – Make technical amendments to the tax classification of diesel motor fuel.**

Purpose:

This bill would amend how certain types of diesel motor fuel are classified for purposes of the taxes on diesel motor fuel under the New York State Tax Law.

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

Section 1 of the bill would delete crude oil from the definition of diesel motor fuel in section 282.14 of Article 12-A of Tax Law and, by virtue of cross references, Articles 13-A, 28 and 29 of the Tax Law. Section 3 of the bill would remove the exemption for crude oil from Article 13-A of the Tax Law as it is no longer subject to tax.

Sections 2 and 4 through 6 of the bill would amend the Tax Law to allow a distributor of diesel motor fuel to sell undyed “qualified biodiesel” to another distributor of diesel motor fuel without inclusion of the Article 12-A, 13-A, 28 and 29 taxes. Section six would also make a technical change to remove the criteria that non-highway diesel motor fuel cannot be sold without the pre-paid sales tax if such fuel was previously subject to tax.

The Tax Department became aware of a marketplace problem with the new Tax Law fuel definitions enacted under Chapter 61 of the Laws of 2011. Under the new diesel fuel definitions, diesel motor fuel labeled B-100 or B-99 (qualified biodiesel), when undyed, is treated as highway diesel motor fuel and subject to tax when sold in the State. Qualified biodiesel (whether dyed or clear) when imported from outside the State by a registered distributor is not subject to tax at that point. Rather, the tax is imposed on the first sale in the State of undyed qualified biodiesel. This bill would allow undyed qualified biodiesel to be sold in this State without tax between registered fuel distributors (inter-distributor sales).

While in many cases, the 38 cents per gallon highway tax would be refunded when the biodiesel is ultimately blended with diesel fuel and dyed (e.g. for sale in residential market), the cash flow burden would preclude the in-State seller from competing on price with the out-of-state seller. This disparate treatment creates an uneven playing field to the detriment of in-State sellers of biodiesel. An in-State seller would be offering product priced at about 38 cents per gallon more expensive than an out of State seller - based solely on tax treatment. This market inequity would appear to handicap the development of a robust renewable fuels distribution market within the State.

After enactment of Chapter 61 last year, the Tax Department also became aware that crude oil, originating in North Dakota, is being transshipped by rail through New York State with a destination of refineries in New Jersey and Pennsylvania. To prevent any unintended tax consequences, this bill would remove crude oil from the diesel motor fuel Tax Law definition. This change will have no adverse tax evasion or compliance effects.

Budget Implications:

Enactment of this bill is necessary to address an unintended impact on taxpayers and to maintain the estimated State revenue stream in State fiscal year 2012-13 and future fiscal years.

Effective Date:

This bill would take effect June 1, 2012, provided that sections 5 and 6 shall apply to sales made and uses occurring on and after that date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the Tax Law.

**Part F – Expand Criteria to Refuse to Issue Sales Tax Certificates of Authority.**

Purpose:

This bill would improve tax collection by expanding the criteria the Department of Taxation and Finance uses to refuse to issue a Certificate of Authority due to outstanding liability under the Tax Law.

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

Vendors are not permitted to engage in taxable sales without first being issued a Certificate of Authority from the Department of Taxation and Finance. Section 1 would amend section 1134(a)(4)(B) of the Tax Law to expand the criteria the Department of Taxation and Finance may use to refuse to issue a Certificate of Authority for sales and use tax purposes. Current law allows the Department to refuse to issue a Certificate of Authority if any tax finally determined to be due from the applicant under the Tax Law has not been paid in full; or sales or use taxes due from persons required to collect tax on behalf of this entity, or another entity for which the person was also required to collect tax, have not been paid in full. This bill would allow the Department to refuse to issue a Certificate of Authority for any unpaid type of tax determined to be due from a person that is a "person required to collect tax" for the entity applying for the Certificate of Authority, not just for that person's unpaid sales and use taxes as under current law.

Section 2 would amend section 1146(g) of the Tax Law to allow disclosure by the Commissioner, to an applicant who has been refused a Certificate of Authority, of the name and amount of tax due of the persons required to collect tax whose tax liabilities were grounds for the Certificate of Authority refusal. This amendment should result in a payment of tax so the Certificate of Authority may be issued. This proposal would expand the type of liability checks the Department currently runs for each new sales tax registration, and which it successfully executed for all registered sales tax vendors as part of the re-registration project authorized by the Legislature as part LL-1 of Chapter 57 of the laws of 2008. This has been an effective and efficient tool to collect outstanding tax liabilities. Expanding the scope of these liability checks would enable the Department to more efficiently collect on additional past due tax liabilities. There is no legislative history.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it will increase receipts by \$1 million in SFY 2012-13 and each year thereafter.

Effective Date:

This bill takes effect immediately.

**Part G – Make Permanent Certain Modernization Provisions of the Tax Law.**

Purpose:

Make Tax Modernization Provisions Permanent: (a) To maintain improvements to the administration of the Tax Department’s electronic filing and payment mandates, creating efficiencies and cost savings; and (b) to maintain improvements to sales tax compliance tools.

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

a. Electronic Filing Mandates

Originally, the Tax Law provided for mandates in two separate sections of the law— Section 658(g)(10) for tax preparers of personal income tax (PIT) returns and Section 29 for all other preparers and for business self-filers. There were also penalty provisions that applied directly to those provisions, and corresponding provisions in the Administrative Code of the City of New York. Last year, the provisions in part U of Chapter 61 improved the administration of the Tax Department’s electronic filing and payment mandates by consolidating all preparer and self-filer requirements into one section of the Tax Law (an amended Section 29), and extended e-filing requirements to PIT self-filers who use tax software to prepare their PIT returns. It also imposed appropriate penalties for failure to comply with the mandates. The bill also repealed sections of the Tax Law and the Administrative Code of the City of New York that were no longer needed as a result of its provisions. Currently, these beneficial e-file mandate provisions would expire on December 31, 2012, at which time, the Tax Law would revert to having two disparate sections of law setting forth e-file mandate requirements at lower thresholds than those which would be in place during the 2012 tax filing season.

This bill would make the very important e-file improvement provisions enacted last year permanent. Consolidating the e-file and e-pay mandates into one section of the Tax Law would make the mandate requirements more readily understandable, eliminating confusion among self-filers and practitioners that existed previously when the mandates were set forth in two different sections with different requirements. The bill would also keep consistent the terminology used in connection with the mandates. For example,

confusion existed previously because section 29 refers to “authorized tax documents” while section 658(g)(10)) referred to “authorized returns.” The provisions sought to be made permanent make clear that both preparer and self-filer mandates cover “authorized tax documents.” To produce further efficiencies and cost savings to the State, the threshold trigger for the preparer e-file mandate was reduced in the 2011 legislative session from preparation of 100 tax documents to preparation of 5 tax documents. Making the provisions permanent would prevent the State from reverting back to the previous threshold of 100, which would result in a decline of e-filed returns in the 2013 tax filing season.

Continuation of these provisions would also maintain the requirement for tax filing seasons beyond 2012 that PIT self-filers using tax software to prepare their returns must also e-file them. Requiring preparers and self-filers that use tax preparation software to e-file recognizes that persons using tax software to prepare returns are capable of e-filing. Importantly, Tax Law §34 passed in 2010 (no separate charge for e-filing of a NYS return) means no additional financial burden may be imposed upon self-filers for the e-filing of a NYS tax document. Continuing the threshold reduction for preparers would also be consistent with recent e-file trends (e.g., IRS has reduced their threshold for the 2012 filing season).

Overall, this bill would maintain for future years the cost savings realized by the State by the increase in e-filing that is anticipated during the coming year’s tax filing season. E-file and e-pay of taxes would create cost and tax administration efficiencies beneficial to both the State and taxpayers. A taxpayer’s use of e-file and e-pay reduces the number of errors that may be associated with the filing of a paper return. With e-file, an error can be immediately detected and the taxpayer prompted to correct and resubmit their return. Also with e-file, the taxpayer gets an official acknowledgement when their return has been received. Moreover, e-filed tax returns are processed quicker than paper; potentially resulting in faster refunds. In addition, the more taxpayers that e-file and e-pay, the more cost savings the State would realize since administrative cost savings are linked to each and every tax document e-filed with the Department. Currently, these provisions would expire on December 31, 2012. This bill proposes to make these very important provisions permanent.

#### b. Improving Sales Tax Compliance

Last year, Part U of Chapter 61 amended section 1137 of the Tax Law to authorize the Commissioner to require vendors that (1) failed to collect, truthfully account for, or (2) pay over sales tax moneys, or to file returns as required by law, to take actions the Commissioner deems necessary to ensure that sales tax moneys are paid, including giving notice to such vendor requiring more frequent payment of tax. Prior to the enactment of Part U, Section 1137 authorized the Commissioner to require a non-compliant vendor to deposit sales tax moneys into a separate account, in trust for and payable to the Commissioner. However, trust accounts proved to be an ineffective means of protecting tax revenues because they were difficult to establish and administer, required multiple signatures and procedural steps, and also required

cooperation with various banks. The segregated account provisions enacted last year simplify this process for vendors and the Department. Under this amendment, vendors set up their own separate bank account into which only sales tax moneys will be deposited, authorize the Department to debit that account, and deposit the sales tax moneys into that account at least weekly.

The Department has begun to implement this amendment, and a recently completed a statistical analysis indicated that sales tax vendors selected for the segregated account pilot program made increased timely payments for the last sales tax quarter of 2011. The analysis indicates that a positive statistical correlation existed for payment increases, compared to the prior year, for these vendors in three of the four industry groups selected for the segregated accounts pilot project. The statistical study controlled for differences in payments made by vendors in these industries who were not selected for participation in the program. For those vendors selected for the pilot project, the estimated increase in quarterly payments compared to the prior year was \$1,100 per vendor, as compared with similar vendors in the same industry who were not selected for the project.

The bill would continue to give the Department a more effective tool to ensure that trust tax moneys that a vendor has collected for the State are paid promptly to the Department and not diverted for other purposes. The segregated account provisions would expire December 31, 2012. This bill would make these very important changes permanent.

#### Budget Implications:

Enactment of this bill would be necessary to implement the 2012-2013 Executive Budget. It would generate additional All Funds Revenue of \$5 million in SFY 2012-13 and \$20 million annually thereafter.

#### Effective Date:

The bill would take effect immediately, provided however, that section 2 would be deemed to have taken effect on the same date and in the same manner as the amendments to section 29 of the Tax Law contained in section 13 of part U of chapter 61 of the laws of 2011 took effect.

### **Part H – Expand sales tax exemption for solar energy systems equipment and expand income tax credit for such systems.**

#### Purpose:

This bill would expand the income tax credit and sales and use tax exemptions for qualified solar energy systems equipment.

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

In his 2012 State of the State address, the Governor announced the NY SUN Solar program to expand solar production in the State. This bill begins to implement the program through expansion of two existing tax incentives, both of which need to be updated to reflect changing market conditions in the solar industry, and to further encourage the development of solar energy systems on commercial properties. Tax incentives for solar energy installations have proven to be an effective tool to help achieve the State's policy objectives of reducing energy costs, improving the environment, and stimulating job creation in the clean energy economy. This bill further implements those goals.

First, the Personal Income Tax credit under Tax Law (TL) § 606(g-1)(2) is available only to those that own solar energy systems. Leased and third-party systems, however, are gaining in popularity, and should also be eligible for the current tax credit. Indeed, for some customers, it will be more feasible to lease the equipment or contract with a provider to purchase power. The end result – installed solar energy systems – provides the same societal benefits regardless of the method of procuring the solar energy systems. The bill would thus amend TL § 606(g-1)(2) to cover expenditures for the lease of solar energy equipment and purchases of power generated by such equipment.

Second, the State sales and use tax exemptions under TL § 1115(ee) and the local optional sales tax exemption under TL § 1210(a)(1), (n)(1) are available only to solar energy systems installed on residential properties. The development of such systems on commercial properties, however, should also be encouraged; because of the large rooftops often associated with such properties, as well as their high energy demand, commercial properties are often well-suited for solar development. Accordingly, the bill would eliminate this "residential" requirement, thus expanding the sales tax exemptions to cover systems used to provide heating/cooling, hot water, or electricity to any structure, including commercial properties. To align the exemptions with the State's net metering law, the amended exemptions would apply only to solar energy equipment that does not exceed an installed capacity rating of two megawatts or the thermal equivalent thereof. Of note, under TL § 1218, to avoid having the expanded exemption apply to its local sales and use tax, the city or county to which the exemption applies would have to repeal any local law that adopted the prior exemption for residential systems; *i.e.*, the city or county can opt out of the exemption.

### Budget Implications:

This bill would result in a revenue loss of \$2 million in 2012-13 and \$5 million per year thereafter thru 2015-16. Beginning in 2016-17 the revenue loss will be \$3 million per year as a result of the continuing sales tax exemption. Enactment of this bill is necessary to implement the 2012-13 Executive Budget because the revenue losses are included in the State Financial Plan.



Effective Date:

This bill would take effect immediately, provided that:

- (1) section 1 of the bill would apply to leases of solar energy systems equipment and purchases of power under written agreements entered into on or after the date the bill would become law; provided, however, that the amendments to paragraph 2 of subsection (g-1) of the Tax Law made by section 1 shall not apply to any taxable year commencing on or after January 1, 2015; and
- (2) sections 2, 3, and 4 of the bill would apply to sales made or uses occurring on or after September 1, 2012.

**Part I – Extend Empire State Commercial Production Tax Credit for five years.**

Purpose:

This bill would extend the Empire State Commercial Production Credit until December 31, 2016.

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

The Empire State Commercial Production Credit is currently available for taxable years beginning on or after January 1, 2007 and expires on December 31, 2011. In general, the credit is available to qualifying taxpayers under Articles 22 and 9-A in an amount equal to 20 percent of the qualifying production costs incurred in the actual filming or recording of a qualified commercial in New York that exceed the average of the 3 previous years' costs for which the credit was applied, plus 5 percent of costs above \$500,000 in the calendar year in the Metropolitan Commuter Transportation District (MCTD) and above \$200,000 in the calendar year outside the MCTD.

This bill would extend the expiration of the tax credit by five years until December 31, 2016.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget. This bill will decrease tax receipts by \$7 million annually for five years, beginning with SFY 2013-14.

Effective Date:

This bill takes effect immediately.

**Part J – Authorize additional credits of \$8 million for low-income housing credit for each of the next five fiscal years.**

Purpose:

This bill would increase the aggregate amount of low-income housing tax credit the Commissioner of Housing and Community Renewal may allocate from \$32 million to \$40 million in 2012 and authorizes an increase in \$8 million increments annually for the next four fiscal years.

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

Section one of the bill would amend §22 of the Public Housing Law by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from \$32 million to \$40 million in 2012. Section two of the bill would amend §22 of the Public Housing Law by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from \$40 million to \$48 million in 2013. Section three of the bill would amend §22 of the Public Housing Law by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from \$48 million to \$56 million in 2014. Section four of the bill would amend §22 of the Public Housing Law by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from \$56 million to \$64 million in 2015. Section five of the bill would amend §22 of the Public Housing Law by increasing the aggregate amount of low-income housing tax credit the Commissioner may allocate from \$64 million to \$72 million in 2016. Current State law provides for total allocation authority of \$32 million.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-2013 Executive Budget. This bill will decrease annual tax receipts by an estimated \$8 million in SFY 2013-2014, \$16 million in SFY 2014-2015, \$24 million in SFY 2015-2016, \$32 million in SFY 2016-2017, and \$40 million in SFY 2017-2018.

Effective Date:

This bill would take effect immediately; provided, however, section two would take effect on April 1, 2013, section three would take effect on April 1, 2014, section four would take effect on April 1, 2015 and section five would take effect on April 1, 2016.

## **Part K – Extend the Biofuel Production Tax Credit through the 2019 taxable year.**

### Purpose:

This bill would extend the Biofuel Production Tax Credit until December 31, 2019.

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

For purpose of the corporate franchise and personal income taxes, a biofuel production credit is available for taxable years beginning after 2005 and through 2012. Biofuel producers in New York State are eligible for a New York State tax credit of \$0.15 per gallon of biodiesel (B100) or ethanol produced after the production facility has produced and made available for sale 40,000 gallons of biofuel per year. The maximum credit available is \$2.5 million per taxpayer per taxable year for no more than four consecutive taxable years per production facility. If the taxpayer is in a partnership or is a shareholder of a New York S corporation, the maximum credit amount is applied at the entity level, so the aggregate credit allowed to all partners or shareholders may not exceed \$2.5 million.

This credit currently applies to taxable years beginning before January 1, 2013. This bill would extend the tax credit through taxable years before January 1, 2020.

### Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget. This bill will decrease annual tax receipts by an estimated \$10 million beginning with SFY 2014-2015.

### Effective Date:

This bill takes effect immediately.

## **Part L – Make permanent the Noncustodial Parent Earned Income Tax Credit.**

### Purpose:

This bill would make permanent the Noncustodial Parent Earned Income Tax Credit.

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

The credit is available to noncustodial parents who pay child support for a qualifying child with whom they do not reside. This credit rewards working noncustodial parents who augment their wages, and it provides a substantial work incentive for those not

working or working only intermittently. The credit is intended to encourage low-income noncustodial parents to comply with child support orders. It is also intended to encourage low-income noncustodial parents to become more involved in the economic and social well-being of their children.

This credit currently applies to taxable years beginning before January 1, 2013. This amendment would make the tax credit permanent.

### Budget Implications

Enactment of this bill is necessary to implement the 2012-13 Executive Budget. This bill will decrease annual tax receipts by an estimated \$4 million beginning with SFY 2014-15.

### Effective Date

This bill takes effect immediately.

## **Part M – Prohibit banks from charging fees on levied bank accounts.**

### Purpose:

This bill would enhance the collection of delinquent taxes and child support by prohibiting banking institutions from deducting processing fees from the proceeds of levies executed to collect delinquent taxes or child support.

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

Among the fees that many banks charge their depositors is a fee for processing levies served by execution on the depositors' funds. It is not uncommon for this fee to be as much as \$100. Provided there are sufficient funds in the account, banks routinely deduct the levy processing fee from those funds prior to forwarding the remaining levy proceeds to the executing creditor. In State Fiscal Year (SFY) 2011, there were 73,572 levies served on banking institutions from which proceeds were remitted to the Department of Taxation and Finance that did not pay the full levy.

On the federal level, banks cannot deduct processing fees from I.R.S. levies. The genesis of this policy was a federal court decision that interpreted the Internal Revenue Code to give IRS levies precedence over a Bank's unexecuted right to setoff. *State Bank of Fraser v. United States*, 861 F. 2d 954, 961 (6<sup>th</sup> Cir. 1988); IRM 5.17.3.9.4.3 (12-07-2001); IRM 5.11.4.3.3 (9-14-2010).

The Second Circuit and the New York Court of Appeals, applying State law, have found exactly the opposite, that the Legislature intended the provisions of Debtor and Creditor

Law §151 that encapsulates the common law right of setoff to override a creditor's right to levy by execution pursuant to the CPLR. *Aurora Maritime Co., v. Abdullah Mohamed Fahem & Co.*, 85 F.3d 44,46 (2<sup>nd</sup> Cir. 1996); *Industrial Commissioner v. Five Corners Tavern, Inc.*, 47 N.Y.2d 639, 647, 393 N.E2d 1005, 1009, 419 N.Y.S.2d 931, 935-936 (1979). Thus, by operation of Debtor and Creditor law §151, banks are empowered to setoff levy processing fees prior to remitting the levy proceeds.

This bill would narrowly overrule judicial precedent by stating a new legislative intent to maximize tax and child support revenues by prohibiting banking institutions from deducting processing fees from levy proceeds.

Section one of the bill would amend §5232 of the CPLR by adding a new subdivision (i) that prohibits banking institutions from setting off and applying levy processing fees against the proceeds of tax or child support levies.

Section two would amend §151(d) of the Debtor and Creditor Law to cross-reference the prohibition on the set off of levy processing fees against the proceeds of tax or child support levies as provided for in section one.

This is a new bill.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it would generate a revenue gain of \$5 million in SFY 13 and \$7 million annually thereafter, which is included in the State Financial Plan.

Effective Date: This bill takes effect 90 days after it becomes a law.

### **Part N – Extend the recently enacted lower Metropolitan Commuter Transportation Mobility Tax Rates for employers to professional employer organizations.**

#### Purpose:

This bill would extend the recently enacted lower Metropolitan Commuter Transportation Mobility Tax (MCTMT) rates for employers to professional employer organizations.

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

Amendments to the MCTMT enacted as part of the 2011 Extraordinary Session were an important part of the Governor's initiative to help small businesses. Professional employer organizations provide a valuable service to small businesses by allowing them to provide employee benefits in a cost efficient way. However, because professional

employer organizations are the employer of record of all employees of their small business clients, they cannot access the recently enacted lower MCTMT rates for small businesses. This bill would amend Section 801 of the Tax Law to take these lower rates into account in the tax calculation for professional employer organizations and make a technical correction to the tax imposition language applicable to employers. This bill would also make a technical correction to the effective date of Part B of Chapter 56 of the Laws of 2011 to clarify that the lower MCTMT rate for self-employed individuals on their earnings attributable to the Metropolitan Commuter Transportation District applies to taxable years beginning on or after January 1, 2012.

Budget Implications:

Enactment of this bill is necessary to implement recently enacted MCTMT cuts as intended by the Legislature. There is no fiscal impact since the bill would only affect employers already included in the original revenue estimate.

Effective Date:

This bill takes effect immediately; provided however that the amendment in Section 1 of this bill concerning professional employer organizations take effect for the quarter beginning on April 1, 2012.

**Part O – Extend for one year lower Pari-Mutuel tax rates and rules governing simulcasting of out-of-state races.**

Purpose:

This bill would extend for a period of one year various provisions of the Racing, Pari-Mutuel Wagering and Breeding (Racing) Law which expire during the 2011-12 fiscal year.

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

Section 1 would amend Racing Law § 1003(a) to extend in-home simulcasting from June 30, 2012 to June 30, 2013.

Section 2 would amend Racing Law §107(3)(d) to extend the current percentage of total pools allocated to purses that a track located in Westchester County receives from a franchised corporation from June 30, 2012 to June 30, 2013.

Section 3 would amend the opening paragraph of Racing Law § 1014(1) to continue the provisions allowing simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is operating and to delay these provisions from governing the simulcasting of out-of-state thoroughbred races on all days whether or not the Saratoga thoroughbred track is operating from June 30, 2012 to June 30, 2013.

Section 4 would amend Racing Law § 1015(1) to extend the provisions governing the simulcasting of races conducted at out-of-state harness tracks from June 30, 2012 to June 30, 2013.

Section 5 would amend the opening paragraph of Racing Law §1016(1) to extend the provisions governing the simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is closed from June 30, 2012 to June 30, 2013.

Section 6 would amend the opening paragraph of section 1018 of the Racing, Pari-Mutuel Wagering and Breeding Law to extend the current distribution of revenue from out-of-state simulcasting during the Saratoga meet through September 8, 2012.

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 from June 30, 2012 to June 30, 2013.

Section 8 would amend § 54 of chapter 346 of the Laws of 1990 to extend binding arbitration for disagreements from June 30, 2012 to June 30, 2013.

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

Section 11 would amend Racing Law § 1012(5) to extend the authorization for account wagering from June 30, 2012 to June 30, 2013.

The extension of 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 most recently extended in 2011.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it maintains the current pari-mutuel betting structure in New York State.

Effective Date:

This bill takes effect immediately.

**Part P – Redistribute the statewide collected transmission tax between the upstate (PTOA) and downstate (MMTOA) transit accounts in an equitable manner, replacing the existing yearly transfer between the two accounts.**

Purpose:

This bill would redistribute the revenue collected from the corporate and utilities taxes imposed under Tax Law sections 183 and 184 to provide an equitable share to the public transportation systems operating assistance account, and replace the yearly transfer that has occurred from the Metropolitan Mass Transportation Operating Assistance Account (MMTOA) to the Public Transportation Operating Assistance (PTOA) account.

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

This bill would amend subdivision 3 of section 205 of Tax Law to provide that, on and after April 1, 2012, after reserving amounts for refunds and reimbursements, twenty percent of the moneys collected from the taxes imposed by sections 183 and 184 of Tax Law shall be deposited to the credit of the Dedicated Highway and Bridge Trust Fund created by State Finance Law section 89-b, fifty-four percent shall be deposited in the Mass Transportation Operating Assistance Fund to the credit of the MMTOA account and twenty-six percent shall be deposited in the Mass Transportation Operating Assistance Fund to the credit of the PTOA account, both created by State Finance Law section 88-a.

This bill would not increase the tax rate. It only redistributes the amount currently deposited in the Mass Transportation Operating Assistance Fund between the two accounts within the fund, in accordance to a regional split. Since the taxes are collected statewide, the new distribution is based upon population within the downstate and upstate service districts.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it replaces the annual transfer that had occurred between MMTOA to PTOA. Without this tax redistribution, the PTOA account would not receive revenues for operating aid to upstate transit systems.

Effective Date:

This bill takes effect April 1, 2012.

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.