

**2015-16 NEW YORK STATE EXECUTIVE BUDGET**

**REVENUE ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

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**CONTENTS**

| <b>PART</b> | <b>DESCRIPTION</b>   | <b>STARTING PAGE NUMBER</b> |
|-------------|--|-----------------------------|
| A           | Cap annual growth in STAR exemption benefit at zero percent  | 4                           |
| B           | Eliminate entirely the NYC STAR PIT rate reduction benefit for taxpayers with incomes above \$500,000  | 5                           |
| C           | Convert current STAR delinquency/offset program into a tax clearance program   | 6                           |
| D           | Convert the STAR benefit into a tax credit   | 7                           |
| E           | Recoup improperly granted STAR exemptions  | 8                           |
| F           | Allow homeowners who registered for the STAR exemption with the Department of Taxation and Finance, but failed to file timely exemption applications with their local assessors, to receive the benefit of the exemption for tax year 2014 | 9                           |
| G           | Create real property tax relief credit   | 10                          |
| H           | Make permanent the limitation on charitable contribution deductions for high income New York State and New York City personal income taxpayers   | 11                          |
| I           | Amend the personal income tax and MTA mobility tax statutes for technical changes  | 12                          |
| J           | Require commercial production tax credit economic impact report  | 13                          |
| K           | Amend excelsior tax credit qualifying business language  | 14                          |
| L           | Reform the investment tax credit provided for master tapes   | 15                          |
| M           | Create the Urban Youth Jobs Program tax credit   | 16                          |

| <b>PART</b> | <b>DESCRIPTION</b>  | <b>STARTING PAGE NUMBER</b> |
|-------------|---|-----------------------------|
| N           | Reduce the net income tax on small businesses   | 16                          |
| O           | Create the Employee Training Incentive Program (ETIP) tax credit  | 17                          |
| P           | Levy taxes under Tax Law Sections 184 and 184-a on wireless telecommunications businesses   | 18                          |
| Q           | Impose sales tax refund requirements on Article 9 taxpayers   | 20                          |
| R           | Extend and reform the Brownfield Cleanup Program  | 20                          |
| S           | Combine the Department of State biennial information statement and tax return filings and repeal \$9 Department of State filing fee | 22                          |
| T           | Amend the corporate tax reform statute for technical changes  | 23                          |
| U           | Extend the wine tasting sales and use tax exemption to other alcoholic beverages  | 25                          |
| V           | Impose local sales tax on prepaid wireless based on retail location   | 26                          |
| W           | Reform the Industrial Development Authority program   | 26                          |
| X           | Expand sales tax collection requirements for marketplace providers  | 28                          |
| Y           | Close certain sales and use tax avoidance strategies  | 29                          |
| Z           | Exempting solar power purchase agreements from State and local sales tax  | 30                          |
| AA          | Allow petroleum business tax refunds for farm use of highway diesel motor fuel  | 32                          |
| BB          | Amend the estate tax to implement technical changes   | 33                          |
| CC          | Enhance motor fuel tax enforcement  | 34                          |
| DD          | Make warrantless wage garnishment permanent   | 35                          |
| EE          | Lower the outstanding tax debt threshold required to suspend delinquent taxpayers' driver's licenses                                | 36                          |
| FF          | Require practitioners to be compliant with State tax obligations before receiving excess medical malpractice coverage               | 36                          |
| GG          | Require grantees to be current with State tax obligations before receiving a State grant from a State or local authority            | 37                          |

| <b>PART</b> | <b>DESCRIPTION</b>  | <b>STARTING PAGE NUMBER</b> |
|-------------|---|-----------------------------|
| HH          | Authorize New York to enter reciprocal tax collection agreements with other states                          | 38                          |
| II          | Authorize multi-agency data sharing to enhance enforcement initiatives                                      | 39                          |
| JJ          | Authorize a professional and business license tax clearance   | 40                          |
| KK          | Require new State employees to comply with State tax obligations  | 41                          |
| LL          | Allow OCFS to share child care data with the Department of Taxation and Finance                             | 42                          |
| MM          | Extend the Video Lottery Gaming vendor's capital awards program for one year                                | 42                          |
| NN          | Extend certain tax rates and certain simulcasting provisions for one year                                   | 43                          |
| OO          | Expand electronic gaming offerings at Video Lottery Gaming facilities                                       | 44                          |
| PP          | Extend the term of the Reorganization Board of the New York Racing Association, Inc. for an additional year | 45                          |
| QQ          | Implement New York City corporate tax reform  | 46                          |

## MEMORANDUM IN SUPPORT

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

AN ACT to amend the real property tax law, in relation to the maximum amount of savings allowable under the STAR exemption program (Part A); to amend the state finance law, the tax law and the administrative code of the city of New York, in relation to the New York city personal income tax rates (Part B); to amend the real property tax law, the tax law, and section 3 of part B of chapter 59 of the laws of 2012 amending the real property tax law and the tax law relating to the suspension of STAR exemptions of property owned by persons with outstanding tax liabilities, in relation to the suspension of STAR exemptions of property owned by persons with outstanding tax liabilities (Part C); to amend the real property tax law and the tax law, in relation to transitioning the school tax relief (STAR) exemption into a personal income tax credit, and to repeal subdivision 5 of section 520 of the real property tax law relating thereto (Part D); to amend the real property tax law, in relation to establishing a state-administered recoupment provision to the STAR exemption program (Part E); to amend the state finance law, in relation to making technical corrections to the school tax relief fund; and to provide one-time relief to STAR registrants who failed to file timely STAR exemption applications (Part F); to amend the tax law, in relation to the real property tax relief credit (Part G); to amend the tax law and the administrative code of the city of New York, in relation to making the limitation on charitable contribution deductions for certain taxpayers permanent (Part H); to amend the tax law, the administrative code of the city of New York and the labor law, in relation to making certain technical corrections (Part I); to amend the tax law, in relation to a report regarding the empire state commercial production tax credit; and to repeal section 9 of part V of chapter 62 of the laws of 2006, amending the tax law relating to the empire state commercial production tax credit, relating thereto (Part J); to amend the economic development law with relation to the eligibility of entertainment companies for the excelsior jobs program (Part K); to amend the tax law, in relation to costs includible in the investment credit base for the investment tax credit on masters for films, television shows and commercials (Part L); to amend the labor law and the tax law, in relation to a program to provide tax incentives for employers employing at risk youth (Part M); to

amend the tax law, in relation to the business income base rate (Part N); to amend the economic development law and the tax law, in relation to establishing a tax credit for employers who procure skills training for employees necessary to cultivate a talented workforce (Part O); to amend the tax law, in relation to imposing tax on wireless telecommunications businesses pursuant to sections 184 and 184-a of such law (Part P); to amend the tax law, in relation to corporation tax refunds or credits (Part Q); to amend the environmental conservation law, the tax law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law and the state finance law, in relation to the environmental restoration program; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part R); to amend the business corporation law, the limited liability company law, the partnership law and the tax law, in relation to the biennial statements filed with the secretary of state (Part S); to amend the tax law in relation to making corrections to the corporate tax reform provisions; and repealing certain provisions of such law relating thereto (Part T); to amend the tax law, in relation to exempting certain items of tangible personal property furnished to customers by certain cider producers, breweries, and distilleries at tastings (Part U); to amend the tax law, in relation to the imposition of the sales and compensating use tax on prepaid mobile calling services (Part V); to amend the general municipal law, the public authorities law and the tax law, in relation to reforming the industrial development authority program and adding a tax clearance process (Part W); to amend the tax law, in relation to requiring marketplace providers collect sales tax (Part X); to amend the tax law, in relation to closing certain sales and compensating use tax avoidance strategies with regard to taxes imposed by and pursuant to the authority of articles 28 and 29 of the tax law (Part Y); to amend the tax law, in relation to exempting electricity provided by certain sources from the sales tax imposed by article 28 of the tax law and omitting such exemption from the taxes imposed pursuant to the authority of article 29 of the tax law,

unless a locality elects otherwise; and to repeal subdivisions (n) and (p) of section 1210 of such law relating to tax exemptions imposed by resolution in cities having a population of one million or more persons (Part Z); to amend the tax law in relation to allowing a reimbursement of the petroleum business tax for highway diesel motor fuel used in farm production (Part AA); to amend the tax law, in relation to calculating the estate tax imposed under the tax rate table, clarifying the phase out date for certain gift add backs and disallowing deductions relating to intangible personal property for estates of non-resident decedents (Part BB); to amend the tax law in relation to requiring wholesalers of motor fuel to register and file returns (Part CC); to amend part Q of chapter 59 of the laws of 2013 amending the tax law relating to serving an income execution with respect to individual tax debtors without filing a warrant, in relation to the effectiveness thereof (Part DD); to amend the tax law, in relation to the suspension of driver's licenses of persons who are delinquent in the payment of past-due tax liabilities, by lowering the driver's license suspension delinquent past-due tax liability threshold from \$10,000 to \$5,000 (Part EE); to amend chapter 266 of the laws of 1986 amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct; chapter 63 of the laws of 2001 amending chapter 20 of the laws of 2001 amending the military law and other laws relating to making appropriations for the support of government, in relation to extending certain provisions concerning the hospital excess liability pool and requiring a tax clearance for doctors and dentists to be eligible for such excess coverage; and to amend the tax law, in relation to enforcement of delinquent tax liabilities through tax clearances (Part FF); to amend the public authorities law and the tax law, in relation to authorizing clearance of past-due tax liabilities for state or local authority grant applicants (Part GG); to amend the tax law and the state finance law, in relation to allowing the commissioner of taxation and finance to enter into reciprocal tax collection agreements with other states (Part HH); to amend the tax law, in relation to multi-agency disclosure of certain information to other state agencies to enhance tax enforcement and other enforcement initiatives (Part II); to amend the general obligations law and the tax law, in relation to authorizing electronic tax clearances for professional and business licenses (Part JJ); to amend the civil service law and the tax law, in relation to tax clearances for applicants for civil service employment (Part KK); to amend the social services law, in relation to the disclosure of certain information relating to a person receiving public assistance to the commissioner of the

department of taxation and finance (Part LL); to amend the tax law, in relation to capital awards to vendor tracks (Part MM); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part NN); to amend the tax law and the penal law, in relation to video lottery gaming (Part OO); to amend the racing, pari-mutuel wagering and breeding law, in relation to a franchised corporation (Part PP); and to amend the administrative code of the city of New York, in relation to the taxation of business corporations (Part QQ)

**PURPOSE:**

This bill contains provisions needed to implement the Revenue portion of the 2015-16 Executive Budget.

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

**Part A – Cap annual growth in STAR exemption benefit at zero percent**

**Purpose:**

This bill would cap the actual dollar amount of Basic and Enhanced benefits to property owners under the STAR program, beginning with the 2015-2016 school year.

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

This bill will amend RPTL §1306-a to cap the amount of tax savings under the STAR Program applicable to school years beginning with 2015-2016. Basic and Enhanced STAR savings will be capped at the 2014-2015 savings amounts for these programs. Existing law allows all savings to grow at a rate not to exceed 2 percent annually, a limitation that was part of the 2011-12 budget.



STAR was enacted in 1997 to offset rising property taxes for homeowners and to provide additional targeted property tax relief to senior citizens. Since then, a number of program enhancements have been made that contributed to increases in the current and projected cost of the STAR program. The costs of the STAR program increased approximately 34% between 2001-02 and 2013-14. The direct costs of the STAR program in 2013-14, including reimbursements made under RPTL § 1306-a and State Finance Law § 54-f, were over \$3.35 billion. Capping the growth of the direct costs to the State of the program at current levels will limit spending at the State level and is critical for a balanced State budget.

### Budget Implications

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. Capping the exemption benefits would reduce General Fund spending by \$54 million in 2015-16.

### Effective Date

This bill would take effect immediately.

## **Part B – Eliminate entirely the NYC STAR PIT rate reduction benefit for taxpayers with incomes above \$500,000**

### Purpose:

This bill would eliminate the 6% New York City STAR personal income tax rate reduction benefit for New York City taxpayers with incomes above \$500,000.

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

In New York City, public education is largely funded through the City's personal income tax. As such, the STAR program contains two benefits that are specifically designed for New York City residents. One of these benefits is a credit against the City's personal income tax established by section 1310(e) of the Tax Law. The other is a 6% reduction of the City's income tax rate, established by section 1304 of the Tax Law and section 11-1701 of the New York City Administrative Code. The State fully reimburses the City for the cost of both subsidies in accordance with section 54-f of the State Finance Law.

In 2010, the 6% tax rate reduction was removed for the portion of the taxpayer's income that exceeds \$500,000 (see Part EE of Chapter 57 of the laws of 2010). However, under current law, taxpayers with incomes above \$500,000 are still entitled to receive the 6% rate reduction benefit on their first \$500,000 of income. By contrast, the STAR real property tax exemption authorized by section 425 of the Real Property Tax Law is now totally unavailable to taxpayers whose incomes exceed \$500,000. In the interest of

consistency, this bill would eliminate the 6% New York City rate reduction benefit entirely for taxpayers with incomes above \$500,000. Because the State fully reimburses the City for that benefit, this bill would decrease State expenditures.

For 2015, this bill would authorize the Commissioner to adopt emergency regulations to change the withholding tables as appropriate for affected taxpayers, and provides that taxpayers will not be subject to estimated tax underpayment penalties as a result of these rate changes.

This is a new bill.

### Budget Implications

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. Eliminating the NYC STAR PIT rate reduction benefit for taxpayers with incomes above \$500,000 would reduce General Fund spending by \$41 million in 2015-16.

### Effective Date

This bill would take effect immediately and applies to taxable years beginning on or after January 1, 2015.

## **Part C – Convert current STAR delinquency/offset program into a tax clearance program**

### Purpose

This bill would convert the STAR delinquency/offset program into a tax clearance program.

### Summary of Provisions and Statement in Support

This bill would make permanent the program that makes properties ineligible for the STAR exemption if one or more of the owners has past-due state tax liabilities. This bill would also provide that, beginning with the 2015-16 school year, the STAR tax savings would no longer be applied to reduce the taxpayer's past-due state tax liability. Under current law, the dollar value of the lost STAR exemption on the property (i.e., the "STAR tax savings") is applied to reduce the outstanding state tax liability of the property owner or owners. As a result, the property owner with past due tax liabilities experiences no actual change in his or her financial circumstances and may not be inclined to actually pay off his or her tax debt despite the suspension of the exemption. This bill would give property owners a strong incentive to pay down their tax liabilities before their STAR exemptions are suspended. Property owners could reapply for their STAR exemptions once their tax debt is fully paid off.

This is a new bill.

### Budget Implications

Enactment of this bill is necessary to implement the 2015-2016 Executive Budget. Converting current STAR delinquency/offset program into a tax clearance program would reduce General Fund spending by \$1 million in 2015-16.

### Effective Date

This bill would take effect immediately.

## **Part D - Convert the STAR benefit into a tax credit**

### Purpose

This bill would gradually convert the School Tax Relief (STAR) program from a program that offers a real property tax exemption into a program that offers a personal income tax credit.

### Summary of Provisions and Statement in Support

This bill would close the existing STAR exemption program to new applicants and establish a new refundable personal income tax (PIT) credit in its place. Current recipients of STAR exemptions would be permitted to keep those exemptions as long as they continue to own their current homes, but once their homes are transferred to new owners, the new owners would transfer to the PIT credit program. Current STAR recipients would also have the option of giving up their STAR exemptions if they wish to receive the PIT credit instead, but they would be under no obligation to do so.

The eligibility requirements for the new STAR PIT credit would be essentially identical to those of the existing STAR exemption. Most notably, (i) the property would still have to be owned by, and the primary residence of, the applicant(s); (ii) the income of the applicants would have to be less than the applicable limit (\$500,000 for Basic STAR, a much lower figure for Enhanced STAR that is annually adjusted for inflation); and (iii) for Enhanced STAR, all owners would have to be at least 65 years of age (or 62 for spouses and siblings). Likewise, the value of the STAR credit within each school district would be virtually the same as the value of the tax savings under the STAR exemption. The special eligibility features that have been part of the existing STAR program (e.g., allowing co-op tenant-shareholders and trust beneficiaries to receive the benefits even though technically they don't own the property) would be carried over into the new STAR PIT program as well.

## Budget Implications

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. Converting the STAR exemption benefit into a tax credit would generate temporary cost savings of \$100 million annually until full conversion is complete; these savings would ultimately be offset by lower income tax revenues to the State.

## Effective Date

This bill would take effect immediately.

## **Part E – Recoup improperly granted STAR exemptions**

### Purpose:

This bill would authorize the Department of Taxation and Finance (DTF) to recoup improperly granted STAR exemptions.

### Statement in Support and Summary of Provisions:

The STAR Registration Program authorized DTF to direct the removal of Basic STAR exemptions from 2014 assessment rolls for properties that it found to be ineligible (Real Property Tax Law §425(14)). However, DTF is not authorized to remove improperly granted exemptions from assessment rolls filed before 2014. By contrast, local assessors are authorized by current law to recoup improperly granted exemptions on one or more of the six preceding assessment rolls (RPTL §425(12)).

The absence of a lookback provision in the registration statute is not just a theoretical concern: After linking the registration data to its income tax records, DTF was able to ascertain that a number of Basic STAR exemptions were improperly granted on 2011, 2012 and 2013 assessment rolls to property owners whose incomes exceeded \$500,000. (There was no income limitation for Basic STAR on assessment rolls filed prior to 2011).

This bill would authorize DTF to use data collected through the registration process to recoup improperly granted STAR savings on the 2011, 2012 and 2013 rolls along with interest and a penalty. In the future, DTF could go back as far as six years (but never earlier than 2011) to recoup improperly granted exemptions when it detects them. To protect the property owner from potentially erroneous determinations, the bill would also establish notice and grievance procedures associated with any such recoupment. This recoupment program would be administered solely by DTF; local assessors would have no direct role in it.

Budget Implications:

Enactment of this bill would result in revenue of approximately \$1 million in 2015-16 and is necessary to implement the 2015-16 Executive Budget.

Effective Date

This bill would take effect immediately.

**Part F – Allow homeowners who registered for the STAR exemption with the Department of Taxation and Finance, but failed to file timely exemption applications with their local assessors, to receive the benefit of the exemption for tax year 2014**

Purpose:

This bill would provide one-time relief to taxpayers who purchased new homes in 2014 and registered for the STAR exemption with the Department of Taxation and Finance (DTF), but failed to file a timely exemption application with their local assessors.

Summary of Provisions and Statement in Support:

The STAR Registration Program was enacted in 2013 to ensure that the homeowners receiving Basic STAR exemptions truly qualified for them. The program was a great success, with 2.41 million homeowners registering with DTF and retaining their exemptions. That figure represents nearly 90% of the 2.7 million Basic STAR exemptions that had been on the rolls in 2013.

Taxpayer confusion often results from a change in law: a number of individuals who purchased homes during the registration period incorrectly assumed that registering with the State was sufficient to qualify their new homes for STAR. In fact, they needed to file timely applications with their local assessors as required by law (i.e., Real Property Tax Law §425(6)(a)), and there is currently no process in place to grant a STAR exemption to a homeowner who has not done so. This bill would enable DTF to compensate these homeowners for their lost STAR savings, but still requires homeowners to file with their local assessors, if they have not already done so, in order to obtain their exemptions for 2015.

A second STAR-related technical provision in the bill would remove a number of obsolete references from section 97-rrr of the State Finance Law, which establishes the School Tax Relief Fund that supports the STAR program.

This is a new bill.

Budget Implications:

Enactment of this bill would result in one-time cost of about \$1 million in 2015-16.

Effective Date:

This bill would take effect immediately.

**Part G – Create real property tax relief credit**

Purpose:

This bill would provide immediate real property tax relief to property owners across New York State beginning with the 2015 tax year.

Summary of Provisions and Statement in Support:

This bill would provide real property tax relief by adding to and expanding the existing New York State real property tax circuit breaker credits and provide tax relief to homeowners and renters in every county in the State.

New York's circuit breaker credits offer tax relief to help keep New Yorkers in their homes based on their need as determined by household income. Real property tax circuit breakers are "tripped" when the tax as a percentage of household income exceeds a reasonable level.

Under the bill, taxpayers with incomes below \$250,000 would qualify for the credit. Once fully implemented in 2018, the credit would be valued at up to 50 percent of the amount by which property taxes (or, in the case of renters, a specified percentage of their rent) exceeds the six percent burden threshold. The specific amount of the credit within that 50 percent would be determined on a progressive income scale, so that New Yorkers with the highest tax burdens and lowest income levels would receive the greatest amount of relief.

Once the credit is fully phased-in, more than 1.3 million taxpayers would receive an average credit of \$950. Outside of New York City, only the taxes levied by a tax cap-compliant jurisdiction would be included in the credit calculation.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. The cost of the bill is estimated at \$350 million in the first year growing to \$1.66 billion when fully phased-in.

Effective Date:

This bill would take effect immediately.

**Part H – Make permanent the limitation on charitable contribution deductions for high income New York State and New York City personal income taxpayers**

Purpose:

This bill would make permanent the charitable deduction limitation under the State and New York City personal income tax for individuals with adjusted gross income of more than \$1 million and less than \$10 million, and for individuals with adjusted gross income of more than \$10 million.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 615(g) to make permanent the current limitation on the itemized charitable contribution deduction for individuals with adjusted gross income of more than \$10 million. Under current law for individuals with adjusted gross income between \$1 million and \$10 million, the NY itemized deduction is limited to 50% of the federal deduction, and individuals with adjusted gross income over \$10 million are limited to 25% of the federal deduction. These limitations will expire at the end of 2015, after which all individuals with adjusted gross income over \$1 million will be subject to the 50% limitation.

This bill would make permanent the current 50%/25% limitation structure and make conforming amendments to NYC Administrative Code §11-1715(g).

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase All Funds tax receipts by \$70 million in 2016-17, \$140 million in 2017-18, and \$125 million in 2018-19.

Effective Date:

This bill would take effect immediately.

## **Part I – Amend the personal income tax and MTA mobility tax statutes for technical changes**

### Purpose:

This bill would amend the enacted 2015-16 Budget Article VII Revenue bill to refine and complete the actions taken by those bills.

### Summary of Provisions and Statement in Support:

This bill would make needed technical corrections to amendments made in the 2014-15 Enacted Budget (L. 2014, c.59) relating to the personal income tax (PIT) and the metropolitan commuter transportation district tax (MCTMT) to ensure that these amendments accomplish their intended purposes.

- Sections 1 through 3 would correct obsolete cross-references to the Internal Revenue Code (IRC) definition of the term “lump sum distribution” for purposes of the PIT subtraction modification for length of service awards for volunteer firefighters (added by Part KK of Chapter 59) and for purposes of the PIT subtraction modification for pensions. Under both of those provisions, the subtraction modification is not allowed if the taxpayer receives a lump sum distribution.
- Sections 4 and 5 would make corrections to the enhanced real property tax circuit breaker tax credit enacted by Part K of Chapter 59. Section 4 would correct an obsolete reference to the IRC definition of “qualifying relative”. Section 5 would clarify that, in order to qualify for the credit, the taxpayer’s residence must be in New York City.
- Section 6 would amend the original real property tax circuit breaker tax credit to correct the obsolete reference to the IRC definition of “qualifying relative”.
- Section 7 would amend section 806 of the Tax Law (which was amended by Part DD of Chapter 59) to clarify that all self-employed taxpayers subject to the MCTMT, and not just New York State residents, could report their MCTMT liabilities on their PIT returns.
- Section 8 would correct the newly enacted PIT credit for real property taxes (Part R of Chapter 59) to clarify that the tax credit is limited to real property taxes not deducted from the taxpayer’s New York adjusted gross income. The bill also would delete a reference to a combined return that was inadvertently included in that section. The inclusion of this language, which is inapplicable to the PIT, has caused confusion with some taxpayers.
- Section 9 would correct the newly enacted PIT credit for the excise tax on telecommunication services incurred in a tax-free NY area (Part T of Chapter 59) to clarify that the tax credit is limited to telecommunications taxes not deducted from the taxpayer’s New York adjusted gross income.



Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will implement technical corrections that are necessary for the proper implementation of 2015-16 Enacted Budget legislation.

Effective Date:

This bill would take effect immediately, provided that sections 1 and 2 of this act shall be deemed to have been in full force and effect on and after the effective date of part KK of chapter 59 of the laws of 2014; sections 4 and 5 of this act shall be deemed to have been in full force and effect on and after the effective date of part K of chapter 59 of the laws of 2014, section 7 of this act shall be deemed to have been in full force and effect on and after the effective date of part DD of chapter 59 of the laws of 2014; section 8 of this act shall be deemed to have been in full force and effect on and after the effective date of part R of chapter 59 of the laws of 2014; and section 9 shall be deemed to have been in full force and effect on and after the effective date of Part T of chapter 59 of the laws of 2014.

**Part J – Require commercial production tax credit economic impact report**

Purpose:

This bill would institute a new reporting requirement relating to the effectiveness of the Empire State Commercial Production Credit.

Summary of Provisions and Statement in Support:

This bill would create a new annual reporting requirement for the Department of Economic Development with regard to the Empire State Commercial Production Credit. The report would include the total amount of credits allocated, the name and address of each production allocated a tax credit, the total amount of qualified production costs for each production company, the estimated number of employees and credit-eligible man hours and associated wages for each production company allocated a tax credit. Additionally, the report may include recommendations for changes in the calculation, administration and modification of the credit.

The inclusion of a reporting requirement for this credit will result in consistency in reporting among the State's entertainment credits. Both the film production and theater production tax credits have similar reporting requirements.

The first report would be due no later than December 1, 2016.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. It has no impact on the State's Financial Plan.

Effective Date:

This bill would take effect immediately.

**Part K – Amend excelsior tax credit qualifying business language**

Purpose:

This bill would amend the Excelsior Jobs Program to allow entertainment companies to apply for participation in the Program by June 1, 2015.

Summary of Provisions and Statement in Support:

The bill would amend the Excelsior Jobs Program to allow certain entertainment companies to participate in the program. The term "entertainment company" would include an entity principally engaged in the production or post production of motion pictures, televised commercial advertisements, animated films or cartoons, music videos, and television programs. Certain types of companies would be excluded from this definition, including companies principally engaged in the live performance of events, including, but not limited to, theatrical productions, concerts, circuses, and sporting events.

To qualify for Excelsior tax credits, an entertainment company would need to create or obtain net new jobs. These would include jobs obtained by an entertainment company in this state (i) as a result of the termination of a licensing agreement with another entertainment company, (ii) that the commissioner determines to be at risk of leaving the state, (iii) that are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week, and (iv) that are filled for more than six months.

Under current law, entertainment companies are not eligible to participate in the Excelsior Jobs Program. Amending the law to allow entertainment companies to participate in the Program would enable the State to safeguard strategic jobs in the entertainment industry that may be at risk of leaving the State.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget. It has no impact on the State's Financial Plan.

Effective Date:

This bill would take effect immediately.

**Part L – Reform the investment tax credit provided for master tapes**

Purpose:

This bill would reform the Investment Tax Credit (ITC) to ensure that the investment credit base of a master of a film, television show or commercial only includes those costs incurred in New York State and to ensure that no “double-dipping” occurs with respect to the same costs.

Summary of Provisions and Statement in Support:

The bill would amend the ITC allowed under the corporate franchise tax and personal income tax by limiting the investment credit base of a master of a film, television show or commercial to only those costs associated with the creation, production or reproduction of such film, television show or commercial that were incurred solely in New York State and excluding from the base those costs used in the calculation of any other credit allowed under the Tax Law. The corporate franchise tax and personal income tax secrecy provisions would also be amended to allow the Department to disclose information related to such costs claimed on another taxpayer’s return. The qualified New York manufacturer provisions would also be amended to exclude the license of a master of a film, television show or commercial from the sale of a good.

Currently, a production company can produce a film with shooting and production activities occurring in locations all over the world. Once filming is completed, the production company or owner of the film can bring what is called the master to New York and use the master for duplication purposes, such as making copies for transmission on the West Coast, syndication, dubbing, etc. When used for duplication purposes, the master is essentially considered the same as a new piece of manufacturing equipment and may be eligible for the ITC. Under current law, the credit reflects the full cost of creating the master, including filming, production and other activities, regardless of whether those activities occur in New York. As a result, a credit meant to encourage manufacturing, investment and job growth in New York currently is being used to support activities that happen outside of the State.

This reform would more effectively target the State’s investment to filming and production that occur in New York.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate additional revenues of \$15 million annually beginning in 2017-18.

Effective Date:

This bill would take effect immediately and applies to taxable years beginning on or after January 1, 2016.

**Part M – Create the Urban Youth Jobs Program tax credit**

Purpose:

This bill would rename the Youth Works Tax Credit Program as the Urban Youth Jobs Program tax credit, include new criteria to target the program to youths in areas of high unemployment and poverty, and allocate additional money to the program.

Summary of Provisions and Statement in Support:

This bill would amend Labor Law section 25-a to authorize an additional allocation of \$10 million per year for 2015-2017 to be used only for the employment of qualified employees who reside in certain cities and towns with high rates of poverty and unemployment. The name of the Program would be changed from the New York Youth Works Tax Credit Program to the Urban Youth Jobs Program tax credit to reflect the new targeting of the benefits. The bill would also make technical amendments to the Labor Law and the Tax Law to clarify when the tax credits may be claimed.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would re-brand, enhance, and better target this program. It would reduce revenues by \$10 million annually in 2016-17 through 2018-19.

Effective Date:

This bill would take effect immediately.

**Part N – Reduce the net income tax on small businesses**

Purpose:

This bill would reduce the business income base rate for small businesses in New York State.

Summary of Provisions and Statement in Support:

This bill would amend the Tax Law to change the calculation of the business income base rate beginning in 2016 for small businesses. The rate for small businesses would be cut in half in tax year 2016 from 6.5 percent to 3.25 percent, to 2.9 percent in 2017, and further to a new permanent rate of 2.5 percent in 2018 and thereafter. The final rate for small businesses would represent a greater than 60 percent overall cut in the tax rate on such businesses.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would reduce revenues by \$26 million in 2016-17, \$29 million in 2017-18, and \$32 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part O – Create the Employee Training Incentive Program (ETIP) tax credit**

Purpose:

This bill would provide a new tax credit for employers who procure training for employees.

Summary of Provisions and Statement in Support:

This bill would establish the Employee Training Incentive Program in the State of New York. Specifically, the bill would provide for a tax credit for employers that procure skills training for their employees necessary to cultivate a talented workforce that will root participating employers to New York State. The tax credit would equal 50% of eligible training costs, up to ten thousand dollars per employee receiving eligible training.

The New York State Department of Economic Development (DED) would administer the program. DED would determine that a business entity meets the eligibility criteria established under the program and will issue Certificates of Tax Credit to business entities upon successful completion. The total amount of tax credits for any taxable year may not exceed five million dollars and will be allotted from the funds available for tax credits under the Excelsior Jobs Program Act.

New York State faces a significant skills gap in its workforce; thousands of jobs requiring technical skills remain unfilled. Without confidence that an adequately skilled workforce exists to support operations in rapidly evolving industries, employers put off

making significant capital expenditures to update equipment and processes, and even relocate from New York State to regions with greater quantities of skilled workers.

A critical component to retaining mobile businesses in rapidly evolving industries is to ensure that New York State can guarantee such employers a talented and versatile workforce. In order to incentivize employers to create such a workforce in this State, rather than relocating to other states or countries with significant quantities of highly skilled workers, this legislation provides a tax credit to employers undertaking to hire and train new employees or train existing employees on new equipment and processes. This legislation provides the DED with an additional resource to encourage employers to stay and grow in New York State.

This legislation is necessary to fill a gap left by the now defunct Strategic Training Alliance Program, which funded customized worker training for new and existing employers and targeted both new and incumbent employees. Furthermore, the proposed legislation is critical to ensuring that New York State does not fall behind regional competitors vying to attract mobile businesses that rely on skilled employees. Massachusetts, New Jersey, and Pennsylvania all offer programs comparable to that proposed in this legislation. By adopting this legislation, New York State would protect existing jobs at risk of being attracted to more robust labor markets and would stimulate job creation and capital investments that employers in strategic industries have heretofore withheld for lack of workers with the necessary skills and training.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would enable employers to develop a highly skilled and competitive workforce. This bill would have no fiscal impact on the current Financial Plan.

Effective Date:

This bill would take effect immediately and apply to taxable years commencing on and after January 1, 2015.

**Part P – Levy taxes under Tax Law Sections 184 and 184-a on wireless telecommunications businesses**

Purpose:

This bill would impose the taxes in Tax Law §§ 184 and 184-a on mobile telecommunications businesses.

## Summary of Provisions and Statement in Support

As Governor Cuomo's two tax reform commissions reported in 2013, the State's taxes on telecommunication services have failed to keep pace with changes in technology and the telecommunications industry. Salient examples of this issue are the franchise tax on transportation and transmission corporations in Tax Law § 184 and the related Metropolitan Commuter Transportation District surcharge on such businesses in Tax Law §§ 184-a, originally enacted in 1968 and 1982, respectively. While these taxes are imposed on a broad range of transportation and transmission businesses, with respect to telecommunications providers they apply only to local telephone businesses. A "local telephone business" is defined as a business whose services consist of intra-LATA or carrier access service, which were hallmarks of local exchange carriers that provided traditional circuit-switched phone service.

LATAs are regional areas established over 30 years ago to address the Bell System breakup. They represented areas in which a divested Regional Bell operating company was permitted to offer local telephone service. There are 8 LATAs that are within, or partially within, New York State. "Intra-LATA" service is service that is provided wholly within one of these geographic areas. Mobile telecommunications providers are regulated using a different geographic scheme, which does not fit within the taxes imposed by §§ 184 and 184-a. Many mobile telecommunications providers offer their customers nationwide calling plans. As individuals and businesses increasingly replace their traditional local telephone service with mobile telecommunications service, the revenues from these taxes -- which are dedicated to providing critical transportation infrastructure repairs and improvements -- are diminishing. This bill would preserve the current tax base by specifically imposing the §§ 184 and 184-a taxes on mobile telecommunications businesses. A mobile telecommunications business is defined as a business that provides mobile telecommunications services as defined in §§ 1101 of the tax law.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget in order to preserve existing revenue in the current Financial Plan.

### Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2015.

## **Part Q – Impose sales tax refund requirements on Article 9 taxpayers**

### Purpose:

This bill would require Article 9 taxpayers that pass through the economic incidence of a tax to their customers as a separately stated amount to refund such tax to their customers before seeking a refund or credit of that amount from the Department of Taxation and Finance.

### Summary of Provisions and Statement in Support

Often, entities subject to tax under Article 9 of the Tax Law (generally, transportation, utility and telecommunications companies) pass on the taxes imposed on them as separate line items on bills to customers. However, because these companies, and not their customers, are the taxpayers, the companies can obtain a refund of such amounts without passing on the benefit of that refund to their customers. This bill would prevent these companies from seeking a refund or credit of taxes passed on and separately stated on bills or invoices to customers, unless they first refunded such amounts to their customers. Without this change, these companies receive a windfall by obtaining a refund of these separately stated charges, where their customers bore the economic burden. In addition, the bill would help insulate these companies from class action lawsuits alleging they obtained such a windfall at their customers' expense. This requirement is consistent with the refund provisions of the sales tax.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would prevent a negative fiscal impact on the current Financial Plan.

### Effective Date:

This bill would take effect immediately and apply to amended returns or claims for refund submitted on and after January 1, 2015.

## **Part R – Extend and reform the Brownfield Cleanup Program**

### Purpose:

This bill would extend and improve the Brownfield Cleanup Program (BCP), authorize the Department of Environmental Conservation (DEC) to undertake Environmental Restoration Program (ERP) cleanups on behalf of municipalities, streamline the Brownfield Opportunity Area (BOA) program, and exempt hazardous waste generated at certain sites from fees and special assessments.



## Summary of Provisions and Statement in Support:

This bill would extend the BCP redevelopment tax credits for 10 years and improve the BCP by expanding eligibility, targeting tax credits, and streamlining the administrative process. The BCP tax credits are scheduled to sunset on December 31, 2015. This bill, coupled with other provisions of the Executive Budget, would also ensure continuation of the State Superfund Program and the ERP.

The BCP has catalyzed the cleanup of over 190 contaminated sites on more than 1,000 acres, incentivizing redevelopment of brownfields across the State. The BCP, however, has also resulted in the awarding of over \$900 million in tax credits without regard to the need for financial assistance. This bill would implement the NYS Tax Reform and Fairness Commission's recommendation that the BCP be amended to prevent developments that would have gone forward without tax credits from taking advantage of the program.

To make the best use of the State's finite resources, this bill would focus the BCP's tax credits on sites, projects, and areas of the State that are most in need of tax credits to incentivize their redevelopment. The bill would also establish a fast-track BCP-EZ program without tax credits that would provide developers with a streamlined process for receiving post-cleanup liability releases necessary to obtain financing for future site redevelopments. The BCP-EZ program would reduce State spending while ensuring sites are cleaned up with State oversight.

The bill would:

1. Continue the BCP redevelopment tax credits for 10 years with reforms.
2. Limit eligibility for the tangible property credit to:
  - "Upside down" properties (where the property value is less than cleanup costs);
  - Sites located in Environmental Zones (areas with high poverty or unemployment levels); and
  - Affordable housing projects.
3. Provide "bonus" credits for projects located in an Environmental Zone or BOA, affordable housing, or manufacturing.
4. Limit eligible site preparation costs to those needed for effective cleanup.
5. Establish BCP-EZ, a fast-track option without tax credits that provides State oversight of cleanups and liability release.
6. Require sites in the BCP prior to April 1, 2015 to obtain a certificate of completion by December 31, 2017, or meet the new tangible property credit eligibility criteria.
7. Limit the time frame within which the BCP redevelopment tax credits may be claimed.
8. Clarify existing provisions of the BCP and improve administration of the program.

These changes to the BCP would promote predictability and further advance the BCP's environmental cleanup and urban revitalization goals by incentivizing the remediation, strategic reuse, and redevelopment of contaminated properties throughout the State.

The bill would also authorize DEC to undertake ERP projects on behalf of municipalities upon their request and streamline the BOA program. Local governments would benefit from having DEC undertake remediation of their municipally-owned brownfields, which would spur new economic development, and the provisions supporting BOAs, because most BOAs are sponsored by municipal governments.

Finally, this bill would exempt hazardous waste generated at certain remedial sites from fees and special assessments.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will result in more appropriate use of limited tax dollars. This bill would have no fiscal impact in the current Financial Plan period but would provide annual savings outside the Financial Plan period once reforms have an impact.

#### Effective Date:

This bill would take effect April 1, 2015; provided, however that DEC may not charge volunteers for any oversight costs incurred on or after April 1, 2015; provided further that the amendments made by sections 2, 20, 21, 22, 23, 24, 25, 26 and 27 shall only apply to sites accepted into the BCP on and after April 1, 2015; and provided further that the Department of Labor shall update the environmental zones within 90 days.

### **Part S – Combine the Department of State biennial information statement and tax return filings and repeal \$9 Department of State filing fee**

#### Purpose:

This bill would allow the Department of Taxation and Finance (Tax Department) to collect information from corporations, LLCs, and LLPs that is currently collected through statements filed with the Department of State (DOS).

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

Currently, corporations are required to file biennial statements with DOS that confirm corporate contact information needed in the event the Secretary of State is served with process as agent for the corporation. Similar periodic filing requirements apply to LLCs and LLPs, and all such filings require payment of a nominal fee to DOS.

This bill would authorize the Tax Department and DOS to agree to accept annual filings with the Tax Department in lieu of the periodic required filings with DOS. This would allow corporations, LLCs and LLPs to fulfill these contact update requirements when they submit their annual tax returns, which would simplify and improve compliance with these filing requirements. The Tax Department would be authorized to share with DOS the relevant information collected through these filings, and there would be no fee for filing through the Tax Department.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would reduce revenues by \$2.6 million annually beginning in 2015-16.

Effective Date:

This bill would take effect immediately.

**Part T – Amend the corporate tax reform statute for technical changes**

Purpose:

This bill would make technical and clarifying amendments to the corporate tax reform statute included in the 2014-15 Enacted Budget.

Summary of Provisions and Statement in Support:

- Investment capital changes: Clarifies that, in order to qualify as investment capital, the stock may never be used in the regular course of the taxpayer's business. In addition, clarifies that the presumption that stock is investment capital if it is acquired in the 2<sup>nd</sup> half of the taxable year would not apply if the taxpayer in fact does not own the stock when it files its tax return. Deletes the hedging provisions included in the investment capital and exempt income provisions. (Bill §§ 1 – 4)
- Bank modifications: Clarifies the measurement of assets for purposes of the subtraction modification for qualified residential loan portfolios - § 208.9 (r) modification, and clarifies the computation of the \$ 8 billion qualifying test on a combined return for the residential and small business loan subtraction modification - § 208.9(s) modification. (Bill §§ 5, 6) Also clarifies that these modifications do not reduce the numerator and denominator of the apportionment fraction. (Bill § 21)
- Economic nexus: Replaces “combined reporting” group with “unitary” group to ensure proper application of the aggregate economic nexus test. (Bill §§ 7, 8)
- Tax rates and bases: Clarifies that the manufacturing test is applied on a combined basis for the preferential rates for qualified NY manufacturers. Includes actual rates for QETCs, rather than percentage reductions in rates and clarifies

that all corporations in the combined group must be a QETC for the QETC rates to apply. Fixes the capital base 2015 rate for qualified NY manufacturers and QETCs. Makes needed changes to the fixed dollar minimum tables for S corporations that are manufacturers and QETCs. Corrects a cross-reference in the small business definition (Bill §§ 9 -11, 17 -19)

- Prior net operating loss conversion (PNOLC) subtraction and net operating loss (NOL) deduction: clarify that the PNOLC subtraction can be claimed only until the pool is exhausted, and, unless the taxpayer elects to use its subtraction in 2015 and 2016 (including short taxable years) on its first return for the 2015 tax year, the taxpayer may carry forward the PNOLC subtraction pool for no longer than 20 taxable years or until 2035, whichever comes first. The NOL deduction provisions are amended to correct terminology and add references to carrybacks. The bill provides that the NOL must be carried back to the earliest year first. Taxpayer can make an irrevocable election to relinquish entire carryback period. (Bill §§ 12-16)
- Apportionment fraction: Add apportionment rules for mark to market gains, receipts from the operation of vessels, and qualified air freight forwarders. Amends definition of commercial domicile for purposes of the financial transactions apportionment rules to delete reference to treasury function in the hierarchy. Creates a definition of loans secured by real property. (Bill §§ 22-30)
- Tax Credit fixes: The sunset date for the financial services investment tax credit (ITC) was deleted from the corporate reform statute. Reintroduces the sunset date of October 1, 2015 and also adds back affiliate language. (Bill §§ 31, 32)
- Combined reporting: Makes technical conforming changes regarding PNOLC subtraction and NOL deduction on a combined report. Changes the designated agent rule to eliminate the requirement that the designated agent for the report must be the parent corporation. (Bill § 33)
- START-Up technical corrections: Makes technical corrections to the tax-free NY area tax elimination credit to be consistent with Article 9-A provisions amended by corporate reform. (Bill §§34-38)
- Mandatory S election: Makes a technical correction to the clarification made in the corporate tax reform legislation that, when determining if the investment income of a federal Subchapter S corporation is more than 50 percent of its federal gross income so that it is mandated to make the New York S election, the income of any qualified subchapter S subsidiary of the federal subchapter S corporation is required to be included with the income of the S corporation. (Bill § 39)

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it makes technical amendments helpful for administering corporate tax reform legislation, and results in revenue gains of \$7 million in 2016-17 and \$30 million annually thereafter due to the reintroduction of a sunset date of the financial services ITC.

Effective Date:

This bill takes effect immediately and will be deemed to be in full force and effect on the same date as Part A of Chapter 59 of the Laws of 2014.

**Part U – Extend the wine tasting sales and use tax exemption to other alcoholic beverages**

Purpose:

This bill would exempt from use tax the beer, cider and liquor used at tastings held in conformity with the Alcoholic Beverage Control Law, as well as several types of items used to package such beverages.

Summary of Provisions and Statement in Support:

Breweries, distilleries, cideries and wineries are a vital and growing part of New York's economy. For off-premise tastings, a not-for-profit often hosts an event, in which customers are able to have a "tasting" from various New York wine or beer producers. For on premise tastings, a New York producer can offer a sample of their own or another producer's products. These tastings provide the producers with an opportunity to attract new customers and are a key marketing tool.

Under current law, the items that these producers take from inventory to use at these tastings are subject to use tax, including the product (liquor, beer, or cider) being sampled and the packaging materials. This bill would exempt those items from use tax in order to encourage more tastings throughout the State.

The bill would also make technical corrections to the current exemption for wine tastings in section 1115(a)(33) of the Tax Law to clarify that the exemption also extends to bottles, corks, caps, and labels used to package the wine and applies to tastings held off of the winery's premise.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would implement a tax simplification and has minimal impact on the State's Financial Plan.

Effective Date:

This bill would take effect immediately, provided, however, section 2 would take effect June 1, 2015 and would apply in accordance with the transition provisions of sections 1106 and 1217 of the tax law.

## **Part V – Impose local sales tax on prepaid wireless based on retail location**

### Purpose:

This bill would amend the Tax Law to clarify that sales tax applies to prepaid mobile calling services under the same rules that apply to prepaid telephone calling services.

### Summary of Provisions and Statement in Support:

Consumers are increasingly turning to prepaid wireless plans to obtain mobile telephone services. By including “prepaid mobile calling services” – this bill’s term for prepaid wireless services – in the Tax Law’s definition of prepaid telephone calling services, this bill would clarify that, in determining the incidence of the sales tax and the correct local sales tax rate for a prepaid wireless service, retailers must apply the same rules they apply to prepaid telephone calling services. Thus, the rule that the sale is sourced to the location of the retailer where the customer bought the service, whether the customer is initiating the account or recharging an existing account there, would generally apply. Most retailers are currently applying this rule. Finally, the bill would provide retailers with additional flexibility in determining the proper jurisdiction to which to source such sales when they lack the information to use the sourcing rules currently in the law.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would clarify local sales tax imposition and has no impact on the State’s Financial Plan.

### Effective Date:

This bill would take effect immediately.

## **Part W – Reform the Industrial Development Authority program**

### Purpose:

This bill would make reforms to the Industrial Development Authority (IDA) program to make IDAs more transparent and accountable.

### Summary of Provisions and Statement in Support:

This bill would require an IDA to obtain approval from the Department of Economic Development (DED) before it provides any State tax exemption benefits to a new project, or before it increases such benefits for an existing project. To obtain approval

for State benefits, the IDA's application must include job creation and investment targets, any construction schedule, and an expenditure plan, as well as other information. The DED would have to approve or deny the application, or conclude it is not complete, within 45 days, or the application would be deemed approved. DED could not approve an application if the IDA failed to comply with applicable General Municipal Law, Public Authorities Law or Public Officers Law requirements, if the IDA intended to give exemptions only from State taxes, or if the proposed benefits would give a competitive advantage to the agent/project operator over an existing business in a similar industry.

With regard to State tax exemptions provided by IDAs, this bill would authorize the Tax Commissioner to audit IDA projects and IDA agents and project operators to ensure they meet job and investment targets and expenditure limitations. If the Tax Commissioner finds that the goals or State tax exemption requirements have not been met or otherwise complied with, the agent or project operator must pay back the amount of State tax exemption benefits taken.

Currently, IDAs are subject to various requirements when they provide financial assistance in the form of exemptions from State sales and compensating use taxes. These requirements include keeping records of the State sales and use tax benefits they provide and making those records available to the Tax Department, recovering State sales and use tax benefits when the agent/project operator does not comply with various requirements, and paying over those recovered amounts to the Tax Department. This bill would extend these requirements to State imposed mortgage recording and real estate transfer taxes.

An IDA would lose its authority to award State tax benefits, if the IDA and/or its members and officers fail to comply with the Open Meetings Law, the Freedom of Information Law, and other applicable Public Authorities Law and General Municipal Law requirements. IDAs would also have to post certain information on their web sites, including the names of members and officers; notices, agendas, and minutes of its meetings; and other project information. If the Authorities Budget Office (ABO) finds that the IDA has failed to comply with these requirements and the IDA has not come into compliance within 30 days, the ABO will advise DED that such IDA can no longer provide State tax exemption benefits until the IDA satisfies such requirements.

Finally, before an IDA could create a project or provide financial assistance to a project, the IDA would be required to obtain a tax clearance from the Tax Department that the project operator or agent and any "responsible persons" of such operator or agent do not have any past due fixed and final tax liabilities of \$500 or more. If there is any such tax debt, the applicant or responsible person would be required to resolve it by paying it in full or entering into a payment arrangement with the Tax Department and resubmit its application before the IDA could consider the new project or offer financial assistance.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase revenues by \$4 million in 2015-16 and \$9 million annually thereafter.

### Effective Date:

This bill would take effect immediately and apply to any project created or agent or project operator appointed on or after the effective date. It would also apply to any change to financial assistance for an existing project made after the effective date, as well as to any State tax monies recovered on or after the effective date.

## **Part X – Expand sales tax collection requirements for marketplace providers**

### Purpose:

This bill would require marketplace providers to collect sales tax on taxable sales that they facilitate.

### Summary of Provisions and Statement in Support:

This bill would require marketplace providers to collect sales tax on the taxable sales they facilitate. It will ease sales tax collection burdens for many small businesses in the State, streamline the tax collection process and improve taxpayer compliance, and result in a level playing field for New York's businesses.

The sales tax is a tax on the customer that is collected by the seller. The Department of Taxation and Finance (DTF) has long had the authority to impose a tax-collection responsibility on a party 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 improves on that concept by treating all marketplace providers as persons required to collect tax, thereby requiring them to perform all the duties of a vendor, including collecting the tax, filing a tax return, and remitting the tax collected. The bill defines a "marketplace provider" as a person who collects the purchase price, as well as performing one of the other sales functions specified in the bill, such as providing the physical or virtual forum where the transaction occurs. To minimize the number of persons who have tax collection responsibilities, the bill relieves sellers who use unrelated marketplace providers of any such responsibilities, as long as the seller receives in good faith a certification from the marketplace provider on a form authorized by the Department that the marketplace provider is collecting the tax on its behalf. In fact, a seller that uses unrelated marketplace providers for all its sales would have no New York sales tax collection and remittance responsibilities.



Shifting the tax collection responsibility to the marketplace provider will reduce the number of sellers that need to register for tax and will improve tax compliance by reducing the number of persons who handle the sales tax monies before the monies are remitted to DTF. The bill does not expand the rules concerning sales tax nexus. Only marketplace providers that have a sufficient presence in New York would be affected by the proposal.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase all funds receipts by \$59 million annually beginning in 2016-17.

Effective Date:

This bill would take effect March 1, 2016 and would apply in accordance with the transition provisions in §§ 1106 and 1217 of the Tax Law.

**Part Y – Close certain sales and use tax avoidance strategies**

Purpose:

This bill would amend the Tax Law to close certain sales and use tax avoidance strategies.

Summary of Provisions and Statement of Support:

The bill would curb four ways that taxpayers avoid State and local sales and compensating use taxes and, thus, would preserve revenue for the State and for counties and cities that impose sales and use taxes.

First, under current law, a business can avoid sales tax by creating an out-of-state entity to purchase and bring property into the State for use here: because the out-of-state entity was not a resident at the time it bought the item, it would not owe State and local compensating use tax. This bill provides that, if such an entity was not doing business outside New York for at least six months, then it would owe use tax when it brings the item into New York. This provision would not apply to individuals.

Second, this bill would deem a single member limited liability company (LLC) and the LLC's member to be one person. The purchase or sale by either the LLC or its single member would therefore be deemed to be the purchase or sale by the other; as a result, neither the LLC nor the single member could buy something for resale to the other. This provision would eliminate an abusive sales tax avoidance scheme whereby a single-member LLC makes an otherwise taxable purchase but relies on the resale exemption from sales and use tax because it sells the item to its single member.

Third, for leases of tangible personal property between related entities, this bill would require State and local sales tax be due at the inception of the lease on all payments required under the lease. Currently, except for leases of certain motor vehicles, vessels, and airplanes, sales tax is paid each time a lease payment is made. By accelerating the sales tax due on leases between related entities, this bill will prevent one entity from purchasing property for resale without paying sales tax and then creating a lease with a related entity for an extremely long term and low monthly payments in order to delay or avoid payment of sales tax.

Finally, Tax Law § 1111(q) currently prevents tax-free transfers, contributions or distributions of aircraft and vessels between affiliated corporations or partnerships in exchange for stock in the corporation or for an interest in the partnership, or for the corporation or partnership to distribute the property back to a stockholder or partner upon liquidation. This bill would expand this provision to tax-free transfers of any tangible personal property between affiliated corporations or partnerships in exchange for stock in the corporation or for an interest in the partnership, or for the corporation or partnership to distribute the property back to a stockholder or partner upon liquidation. The only exception would be where property is transferred to a corporation in exchange for stock under a merger plan. However, a credit would be allowed against sales or use tax due as the result of a transfer, contribution or distribution for tax paid to New York or another state on the purchase or use of the property.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase revenues by \$5 million in 2015-16 and \$10M annually thereafter.

#### Effective Date:

This bill would take effect immediately and apply in accordance with applicable transitional provisions of sections 1106 and 1217 of the Tax Law.

### **Part Z – Exempting solar power purchase agreements from State and local sales tax**

#### Purpose:

This bill would expand existing sales tax exemptions for solar energy system equipment to include electricity generated by such equipment that is sold under a power purchase agreement (PPA).

#### Summary of Provisions and Statement in Support

This bill would expand the existing exemptions from State and local sales tax for residential and commercial solar equipment to include electricity purchased from a

person primarily engaged in the sale of solar energy systems equipment and/or electricity generated by such equipment if the electricity is sold under a written agreement and generated by equipment that is: (1) owned by a person other than the purchaser of the electricity; (2) installed at the purchaser's residence or non-residential premises; and (3) used to provide heating, cooling, hot water or electricity.

The bill would also amend the existing local option provisions to include the expanded exemptions. If a locality has already elected to provide the existing residential and/or commercial solar equipment exemptions, those exemptions would be expanded to include solar-generated electricity purchased under a PPA for residential and/or commercial premises, respectively. The bill would allow sufficient time for localities that currently elect the residential and/or commercial solar equipment exemptions to repeal those exemptions before the expanded exemptions take effect, if they choose to do so.

PPAs are an increasingly popular way of obtaining solar-generated electricity without the need to invest in solar energy equipment. Under a PPA, the owner of the solar energy equipment installs its equipment on a customer's premises at no charge to the customer, and sells the power generated by the equipment to the customer at a fixed rate established in the PPA. Currently, with the exception of electricity for residential use, which is exempt from State sales tax and taxed at reduced rates in some localities, the sale of electricity and electric service is subject to State and local sales tax regardless of the means by which the electricity is generated. This exemption would enhance the existing exemptions for solar energy system equipment and encourage the deployment of solar installations in New York. This exemption would build on Governor Cuomo's NY-Sun initiative to stimulate the development of solar projects across the State and demonstrate New York's leadership in solar energy innovation and clean, sustainable energy.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would preserve the value of a tax incentive for solar energy at no cost to the State's Financial Plan.

There is no fiscal impact because this option simply provides flexibility for consumers who have other tax-free options to choose from.

#### Effective Date:

This bill would take effect on December 1, 2015.

## **Part AA – Allow petroleum business tax refunds for farm use of highway diesel motor fuel**

### Purpose:

This bill would allow reimbursement of the petroleum business tax paid when highway diesel motor fuel is used in farm production.

### Summary of Provisions and Statement in Support:

Under current law, sales of non-highway diesel motor fuel (i.e., dyed diesel fuel) are exempt from the petroleum business tax when such fuel will be used directly and exclusively in the production for sale of tangible personal property by farming and the fuel is not used on public highways other than for access to adjacent farmlands. In addition, farmers can seek reimbursement of the petroleum business tax on limited purchases of motor fuel (i.e., gasoline) when such fuel is similarly used in farm production. This bill would extend this farming reimbursement to highway diesel motor fuel (i.e., undyed diesel fuel) by authorizing reimbursement of the petroleum business tax on limited purchases of such fuel when the fuel is used directly and exclusively in the production for sale of tangible personal property by farming and is not used on public highways other than for access to adjacent farmlands.

Farmers are able to purchase tax-exempt non-highway diesel motor fuel for their farm production activities, but they also need highway diesel motor fuel for their travels on State highways (beyond the limited field-to-field tax exemption exception). Because the cost of maintaining separate storage tanks for highway and non-highway diesel fuel is prohibitive, many farmers purchase taxed highway diesel motor fuel both for farm production and highway travel purposes in order to assure a supply of the highway diesel motor fuel required for their highway transportation needs. Allowing farmers to seek reimbursement of the business petroleum tax on the highway diesel motor fuel they use in their farm production activities will enable these farmers to purchase and store this undyed fuel in a single storage tank serving both farming and highway fuel needs. These farmers will need to maintain books and records documenting the amount of such fuel used for farm production, as opposed to non-reimbursable highway fuel use.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would implement a needed tax reform and has no impact on the State Financial Plan.

### Effective Date:

This bill would take effect immediately.

## **Part BB – Amend the estate tax to implement technical changes**

### Purpose:

This bill would amend the estate tax to make certain technical changes relating to: (1) extending the applicability of the tax rate table to incorporate decedents dying after April 1, 2015, (2) clarifying the gift add back provision to exclude decedents dying after January 1, 2019, and (3) expressly disallowing a deduction related to intangible personal property for non-resident estates.

### Summary of Provisions and Statement in Support:

Part X of Chapter 59 of the Laws of 2014 (Chapter 59) instituted broad estate tax reform by increasing the New York exclusion amount to the federal exemption amount over five years, beginning with decedents dying on or after April 1, 2014, with the New York exclusion equaling the Federal exemption beginning January 1, 2019. A rate table to calculate the tax imposed was limited in applicability to decedents dying on or after April 1, 2014 and before April 1, 2015. This bill will remove the date limitation.

Chapter 59 also required certain gifts made on or after April 1, 2014 by decedents who were New York residents at the time of the gift to be included in the decedent's New York gross estate. This bill would expressly provide that the gift add back shall not apply to decedents dying on or after January 1, 2019.

The bill would also amend Tax Law § 960(b), disallowing deductions for non-resident decedents related to intangible personal property otherwise includible in a resident decedent's New York gross estate. Current Tax Law § 954(a)(1) and new § 955(a) (added by Chapter 59) limit inclusions in the New York gross estate and deductions therefrom to solely New York property for New York resident decedents. Chapter 59 amended Tax Law § 960(b) to allow for the computation of the tax imposed on a nonresident decedent's New York property to be same as if the decedent had died a resident, but did not have an express provision for disallowing deductions related to intangible personal property. To eliminate any uncertainty, this bill would unequivocally disallow a deduction for property that was never included in a non-resident decedent's New York gross estate.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would maintain the estate tax reform currently assumed in the State's Financial Plan.

### Effective Date:

This bill would take effect immediately, with retroactive applicability to estates of decedents dying on or after April 1, 2014.

## **Part CC – Enhance motor fuel tax enforcement**

### Purpose:

This bill would require wholesalers of motor fuel to register and file information returns. In addition, such wholesalers would be required to make adjustments for prepaid sales tax on motor fuel when purchased and sold in different tax regions.

### Summary of Provisions and Statement in Support:

Currently, wholesalers of motor fuel are not registered and are not required to file motor fuel information returns with the Department of Taxation and Finance (DTF). The lack of registration and information return filing requirements seriously hampers the ability of DTF to monitor motor fuel from importation into this State to the retail station. By not having to register and report purchase and sale information some wholesalers of motor fuel have been able to evade State and local taxes without detection. To close this loophole, it is necessary to require wholesalers of motor fuel to both register and report all their purchases and sales within this State.

This bill would also address a problem that arose when the prepaid sales tax rates on motor fuel were raised in the 2014-15 State Budget. There are now three regions for which motor fuel is prepaid with differing rates. The prepaid sales tax on motor fuel is paid based upon the tax region into which it is imported. Thereafter, wholesalers of motor fuel may move motor fuel from one region to another. This structure has created additional incentives for tax evasion since wholesalers are able to purchase motor fuel in a lower tax region and sell in a higher tax region. This bill would require wholesalers of motor fuel to report purchases and sales and account for any difference in regional rates.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would implement a needed tax enforcement initiative and increase All Funds tax receipts by \$5 million in 2015-16 and \$10 million annually thereafter.

### Effective Date:

This bill would take effect September 1, 2015.

## **Part DD – Make warrantless wage garnishment permanent**

### Purpose:

This bill would make permanent the authority for the Commissioner of Taxation and Finance (the “Commissioner”) to serve income executions (wage garnishments) on individual tax debtors and, if necessary, on the employers of such tax debtors, without the necessity of filing a warrant.

### Summary of Provisions and Statement in Support:

Enacted as a part of the 2013-14 Executive Budget, Tax Law § 174-c allows the Commissioner to serve income executions (wage garnishments) on individual tax debtors and, if necessary, on the employers of such tax debtors, without the necessity of filing a public warrant in the appropriate county clerk’s office and with the Department of State. The law authorizing warrantless income executions is set to expire on April 1, 2015. Thus, the enactment of this bill would allow for the Commissioner to continue to serve income executions on individual taxpayers or, if necessary, on their employers, without first filing a public warrant in the appropriate county clerk’s office and with the Department of State, and would make this authority permanent.

Tax Law § 174-c was enacted, in part, to protect individuals from developing a negative credit report. Historically, negative credit reports have compromised an individual’s ability to secure credit. Currently, however, insurance companies have begun to establish premium rates based upon an individual’s credit report, while it is also common for employers to examine an applicant’s credit report when deciding whether to hire the applicant for employment. The fact that a publicly filed warrant can negatively affect a taxpayer’s credit rating is exacerbated by the fact that the warrant would remain on the taxpayer’s credit rating for seven years, regardless of whether the liability is paid in full. As a result of this, a publicly filed tax warrant, which was required for income executions and any other tax collection method prior to the enactment of § 174-c, could prove to be unnecessarily harsh on an individual taxpayer who becomes subject to an income execution.

Unwarranted income executions have increased revenue by \$29 million since § 174-c was enacted in 2013. Furthermore, the legislation has resulted in nearly 75,000 taxpayers being issued income executions without the filing of a tax warrant, with a total value of outstanding income executions of approximately \$126 million.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will increase All Funds tax receipts by \$15 million annually beginning in 2015-16.

Effective Date:

This bill would take effect immediately.

**Part EE – Lower the outstanding tax debt threshold required to suspend delinquent taxpayers’ driver’s licenses**

Purpose:

This bill would amend the Tax Law to reduce the threshold for driver’s license suspensions for delinquent past-due tax liabilities from \$10,000 to \$5,000.

Summary of Provisions and Statement in Support:

The 2013-14 Enacted Budget authorized the Commissioner of Taxation and Finance (DTF) to establish a new program, in cooperation with the Commissioner of Motor Vehicle (DMV), to aid in the enforcement and collection of past-due tax liabilities by suspending the New York State driver’s licenses of taxpayers who owe \$10,000 or more in past-due tax liabilities. This program has been very successful since its implementation. By lowering the threshold from \$10,000 to \$5,000, more taxpayers with delinquent past-due tax liabilities would be subject to this program, thereby broadening the DTF’s ability to enforce compliance with the Tax Law.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will increase revenues by \$9 million in 2015-16 and \$3 million annually thereafter.

Effective Date:

This bill would take effect immediately, provided that DTF and DMV may take up to two months after enactment to implement these changes.

**Part FF - Require practitioners to be compliant with State tax obligations before receiving excess medical malpractice coverage**

Purpose:

This bill would authorize the purchase of excess medical malpractice liability coverage, commonly known as the “Section 18 Program,” by the Hospital Excess Liability Pool for eligible physicians and dentists for the policy year beginning July 1, 2015. The bill would maintain existing eligibility requirements, and would add a requirement that physicians and dentists applying for coverage receive a tax clearance from the Department of Taxation and Finance.



Summary of Provisions and Statement in Support:

This bill would extend the Physician's Excess Medical Malpractice Program through June 30, 2016 and would extend for one year the methodology for enrolling in the Physician's Excess Medical Malpractice Program pool, continue to limit enrollment to physicians and dentists covered in the prior year, and subject openings due to attrition to a hospital-based formula. The bill also would require physicians and dentists to receive a tax clearance in order for the Superintendent of Financial Services and the Commissioner of Health to purchase for such physicians and dentists a policy for excess medical malpractice insurance coverage.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would provide \$1 million in additional 2015-16 revenue and \$2 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part GG - Require grantees to be current with State tax obligations before receiving a State grant from a State or local authority**

Purpose:

This bill would amend the Public Authorities Law to require a tax clearance for State or local public authority grant applicants. If a grant applicant is found to have past-due tax liabilities, the grant application will be denied.

Statement in Support, Summary of Provisions:

This bill follows a series of successful State initiatives to leverage the privilege of receiving a discretionary benefit with the payment of past-due tax liabilities. This bill would provide that an applicant for a grant of State monies from a state or local public authority must receive a clearance of fixed and final tax liabilities of \$500 or more before the applicant may receive a grant. To obtain the grant, the applicant would need to pay the tax debt in full or enter into an installment payment arrangement with the Department of Taxation and Finance ("DTF").

A tax clearance is an effective and efficient means to enhance tax collections. By using modern processing systems, there would be no inconvenience to applicants without tax liabilities, because these liability checks would run seamlessly in the background as the application for the grant is processed. If the applicant's tax clearance is refused, the

public authority processing the grant application would provide notice to the applicant to contact DTF.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate \$1 million in additional revenue in 2015-16 and \$2 million annually thereafter.

Effective Date:

The bill would take effect immediately provided, however, that DTF and any State or local public authority may work to execute the necessary procedures and technical changes to support the tax clearance process as described in sections one and two of this bill before that date.

**Part HH - Authorize New York to enter reciprocal tax collection agreements with other states**

Purpose:

This bill would authorize the Commissioner of the Department of Taxation and Finance (the "Commissioner") to enter into reciprocal tax collection agreements with other states.

Summary of Provisions and Statement in Support:

This bill would aid in the collection of taxes owed to New York State by taxpayers who now reside in or maintain assets or property in another state. The bill would also authorize the Commissioner to enter into reciprocal tax collection agreements with other states that have a reciprocal law. Additionally the bill would authorize the Commissioner to share with other states the information necessary to properly identify the taxpayer with outstanding tax liabilities.

The agreements between the Commissioner and other states would pertain only to taxes owed that are fixed and final and no longer subject to administrative or judicial review. Because a taxpayer would have previously exhausted protest rights for the underlying tax liabilities, the taxpayer would have only a limited right to protest the tax collection action. Any protests would be sent to the state requesting collection for a determination of the protest on its merits in accordance with the laws of such state.

The agreements between the Commissioner and other states would contain procedures regarding collection of taxes, safeguards against disclosure or inappropriate use of any information identifying taxpayers, threshold amounts, commencement and termination

dates, costs and provide a discharge of obligation or liability to a state with respect to amounts collected from taxpayers and paid to the requesting state.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will provide additional revenue of \$1 million in 2015-16 and \$3 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part II - Authorize multi-agency data sharing to enhance enforcement initiatives**

Purpose:

This bill would create a mechanism for information sharing among various agencies of the State to enhance agency enforcement initiatives.

Statement in Support, Summary of Provisions:

This bill would promote improved communication and cooperation among State agencies with respect to the enforcement of statutes, rules and regulations. Any executive agency of the State (a "member agency") would be authorized to share agency data to a secure data base that would be accessible to all other member agencies. The Department of State, the Worker's Compensation Board, the Department of Labor and the Department of Taxation and Finance (the "Interagency Group") would develop the specifics of the information-sharing data base and ensure that the data is used to ensure efficient use of the State's enforcement resources. The bill would ensure effective oversight and regulation of individuals and entities subject to regulatory jurisdiction. The bill would also maximize agency effectiveness and avoid unnecessary duplication of efforts. The Interagency Group would enter into a memorandum of agreement to implement the bill, including provisions to protect the confidentiality of shared data.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase annual All Funds and off-Budget revenue by a total of \$1 million annually.

Effective Date:

The bill would take effect immediately.

## **Part JJ - Authorize a professional and business license tax clearance**

### Purpose:

This bill would create a new program to aid in enforcing past-due tax liabilities by preventing applicants from receiving or renewing professional or business licenses if they owe certain past-due tax liabilities.

### Statement in Support and Summary of Provisions:

Under the Governor's direction, the State is initiating one of the most comprehensive one-stop electronic licensing initiatives in the country. In return for the privilege of receiving such license, an applicant with fixed and final tax liabilities would be required either to pay the past-due tax liabilities or to enter into a payment agreement with the Department of Taxation and Finance.

The bill would build on the successful driver's license tax clearance program enacted as part of the 2013-14 Budget and on the General Obligations Law § 3-503 license clearance requirements related to delinquent child support obligations. By using modern electronic processing systems, there would be no inconvenience to applicants without tax liabilities, because these liability checks would run seamlessly in the background as the license application is processed. If the applicant's tax clearance is refused, the government agency processing the application would provide notice to the applicant to contact the Tax Department.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate \$3 million annually beginning in 2016-17 as a result of more effective enforcement of tax laws.

### Effective Date:

The bill would take effect on June 1, 2015, provided, however, that the Department of Taxation and Finance and any government entity electing to receive an electronic tax clearance from the Department of Taxation and Finance may work to execute the necessary procedures and technical changes to support the electronic tax clearance process as described in sections one and two of this act before that date; provided, further, that this effective date will not impact the administration of any electronic tax clearance program authorized by another provision of law.

## **Part KK - Require new State employees to comply with State tax obligations**

### Purpose:

This bill would require tax clearances for new State employees and, at local option, for new local government employees to verify that these new public employees comply with their tax obligations.

### Summary of Provisions and Statement in Support:

Public employees are charged with administering and enforcing laws, rules and regulations, and those who do not comply with their tax obligations undermine the credibility of government.

The bill would require tax clearances from the Department of Taxation and Finance (DTF) to verify that new state employees do not have past-due State tax liabilities for which the employee has not entered into a satisfactory payment arrangement and are in compliance with applicable tax return filing requirements. The bill would also authorize local governments to require such tax clearances for new public employees. If the applicant's tax clearance is refused, the government employer would provide notice to the applicant to contact DTF, which would provide the applicant with details of the tax compliance issues and how they may be resolved.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate additional revenue of \$1 million in 2015-16 and \$2 million annually thereafter as a result of more effective enforcement of tax laws.

### Effective Date:

This bill would take effect June 1, 2015; provided, however, that DTF, the Department of Civil Service, any municipal commission, and any other government entity electing to receive a tax clearance from DTF may work to execute the necessary procedures and technical changes to support the tax clearance process as described in sections one and two of this act before that date; provided, further, that this effective date will not impact the administration of any tax clearance program authorized by another provision of law.

## **Part LL - Allow OCFS to share child care data with the Department of Taxation and Finance**

### Purpose:

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

### Summary of Provisions and Statement in Support:

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

DTF audits have revealed that many claimants cannot verify their qualifying expenses, while other audits have uncovered fraudulent claims for these refundable credits. The Office of the State Comptroller has recommended that DTF utilize day care subsidy data maintained by OCFS as it reviews child and dependent care credit claims, but the Social Services Law currently does not allow the sharing of this information with DTF. This bill would amend the Social Services Law to permit that sharing, which would help DTF to verify refund claims by subsidy recipients and would help avoid the payment of ineligible claims.

### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate revenue of \$2 million annually beginning in 2016-17 as a result of more accurate information.

### Effective Date:

The bill would take effect immediately.

## **Part MM - Extend the Video Lottery Gaming vendor's capital awards program for one year**

### Purpose:

This bill would extend for one year the deadline to receive approval and to complete capital projects that are reimbursed through the Video Lottery Gaming (VLG) vendor's capital award.

Summary of Provisions and Statement in Support:

Section 1 would amend Tax Law §1612(b)(1)(ii)(h) to extend by one year, until April 1, 2016, the deadline to receive approval for capital projects to be reimbursed through the VLG vendor's capital award. The bill would also extend by one year, until April 1, 2018, the deadline to complete these projects. For certain vendor tracks located west of State Route 14, these deadlines are extended to April 1, 2020 for approvals and to April 1, 2022 for completion.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it maintains the current VLG revenue stream.

Effective Date:

This bill would take effect immediately.

**Part NN - Extend certain tax rates and certain simulcasting provisions for one year**

Purpose:

This bill would extend for one additional year various provisions of the Racing, Pari-Mutuel Wagering and Breeding Law (the "Racing Law") which expire during the 2015-16 fiscal year.

Summary of Provisions and Statement in Support:

Section 1 would amend Racing Law § 1003(a) to extend the June 30, 2015 expiration date for in-home simulcasting.

Section 2 would amend Racing Law §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 are scheduled to expire on June 30, 2015.

Section 3 would amend the opening paragraph of Racing Law § 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, 2015.

Section 4 would amend Racing Law § 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, 2015.

Section 5 would amend the opening paragraph of Racing Law §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, 2015.

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, which expired on September 8, 2014.

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 expire on June 30, 2015.

Section 8 would amend § 54 of Chapter 346 of the Laws of 1990 to continue binding arbitration for disagreements. These provisions currently expire on June 30, 2015.

Section 9 would amend Racing Law § 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, 2015.

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, and most recently in 2014.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it maintains the current pari-mutuel betting structure in New York State.

#### Effective Date:

This bill would take effect immediately.

### **Part OO - Expand electronic gaming offerings at Video Lottery Gaming facilities**

#### Purpose:

This bill would clarify the State's authority to operate types of video lottery games that would increase revenue and, thereby, State aid to education.



Summary of Provisions and Statement in Support:

Section 1 would amend section 1602 of the Tax Law to add a new subdivision 6 defining “video lottery gaming” (“VLG”). The definition would provide certainty as to the State’s authority to conduct VLG mixed games of chance and skill and games involving player interaction after receiving an initial chance.

Section 2 would conform the definition of VLG in the Penal Law to the definition in the Tax Law.

Section 3 would make the bill effective 30 days after enactment.

Current law authorizes the Gaming Commission’s Division of Lottery to offer VLG, but does not define the contours of the types of games permitted to be offered. The Court of Appeals upheld the constitutionality of VLG in the context of multiple-participation games linked through a central system in which players compete for prizes from a finite depleting pool of electronic instant lottery tickets, yet there is uncertainty about the permissible scope of other games that could be offered as VLG. Accordingly, clarification in legislation about the permissible scope of VLG is desirable, particularly the authorization of video lottery games that combine elements of chance and skill.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would increase aid to education by \$20 million in 2015-16 and \$40 million annually thereafter.

Effective Date:

This bill would take effect 30 days following enactment.

**Part PP - Extend the term of the Reorganization Board of the New York Racing Association, Inc. for an additional year**

Purpose:

This bill would extend the maximum term of the New York Racing Association, Inc. (NYRA) Reorganization Board of Directors from three years to four years.

Summary of Provisions and Statement in Support:

Section one would extend the term of the NYRA Reorganization Board of Directors to four years from three years.

Section two would provide an effective date of June 18, 2015.

This bill would put into place an extension of the NYRA Reorganization Board in the event a prospective governing structure is not enacted prior to the scheduled termination of the Board.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would ensure a governing structure is in place for the New York Racing Association, Inc.

Effective Date:

This bill would take effect June 18, 2015.

**Part QQ - Implement New York City corporate tax reform**

Purpose:

This bill would modernize the system of taxation for general business corporations and banks that do business in New York City by adopting many of the recent statutory changes to the State's corporate tax that go into effect for tax years beginning on or after January 1, 2015. The proposal would also reduce the corporate tax rate for small businesses and manufacturers that operate in the City. These changes to the City's corporate tax law would apply to general business corporations and banks that are not S corporations under subchapter S of the Internal Revenue Code.

Summary of Provisions and Statement in Support:

New York City's current corporate tax structure, which dates back many decades, is outdated, unduly complex and vulnerable to aggressive tax avoidance techniques. The current structure taxes similarly-situated taxpayers differently, and in some instances it creates disincentives to increasing a corporation's activities in the City.

A particular incongruity has resulted from the dramatic changes in the financial services sector. The City continues to tax banks and other financial corporations under separate subchapters of the City's Administrative Code. Thus, a bank and a non-bank financial institution are taxed differently, even when they conduct activities of a similar nature. Furthermore, many large financial services firms that provide bank and non-bank financial services within the same company are nevertheless subject to multiple tax filings and different rules of taxation for such services under the Administrative Code (see Subchapters 2 and 3 of Chapter 6 of Title 11), creating confusion and undue complexity.

The City's corporate tax framework also has not been updated to reflect the shift to a service-based economy. Companies that generate significant receipts from services currently incur greater tax liability if they increase their activity in the City, for example, by adding office space or basing more employees in the City.

Complexities within the City's tax system also complicate tax compliance. These complications create disruptions and uncertainty for businesses while increasing administration costs for the City. Businesses and the City face an additional layer of complexity and administrative burden if the City and New York State use different tax structures to determine corporate taxable income.

This reform proposal would address these issues by modernizing the City's tax law so that it more accurately reflects the realities of the current business environment, creating clarity and certainty in the most commonly disputed areas of law, and conforming closely to the corporate tax amendments enacted last year by New York State.

In particular, general business corporations and banks would be subject to the same corporate tax, and all taxpayers would source their business receipts to the location of their customers. This receipts sourcing methodology allocates the corporation's taxable income among those jurisdictions where its customers are located, and eliminates factors that would increase the corporation's tax liability if it increased its activity in the City. This removes a previous disincentive to locating in the City.

The greater certainty created by the bill, combined with the elimination of impediments for businesses wishing to expand their activity in the City, will make the City's corporate tax system more competitive. Closely conforming to the New York State corporate tax structure will also make it easier for taxpayers to comply with the City's corporate tax, and will facilitate joint City-State tax audits.

Encouraging small businesses and local manufacturers is an important priority for the City, as a matter of job creation and economic stability, and these enterprises will benefit from lower tax rates that reduce the cost of maintaining and growing their businesses in the City.

The bill would make the following important reforms and structural changes:

- Provides that the same corporate tax applies to general business corporations and banks.
- Provides for lower rates of tax for small businesses and manufacturers.
- Repeals the tax on subsidiary capital, and the alternative minimum tax on income plus compensation.
- Eliminates the entire net income base and replaces it with a similar business income base.
- Maintains a business capital tax base and a fixed dollar minimum tax to serve as backstops against the business income base. Raises the maximum tax on capital

to \$10 million but provides for a subtraction of \$10,000, effectively removing small taxpayers from the capital base.

- Exempts dividends and net gains from tax to the extent they arise from stock of non-unitary corporations that the taxpayer owns for more than six months, and exempts dividends from tax to the extent they arise from unitary corporations not included in a combined return.
- Allocates income to New York City by use of a receipts factor that is determined using customer sourcing principles. In lieu of customer sourcing for receipts from qualified financial instruments, taxpayers may elect to source eight percent of receipts from these instruments to New York City.
- Includes a new nexus standard based on deriving \$1 million or more receipts from activity in New York City.
- Simplifies the rules for the net operating loss deduction used to compute the business income base, and converts existing net operating losses to a subtraction to stabilize the value for financial accounting purposes.
- Provides a safe harbor for expense attribution. In determining business income, taxpayers can elect to deduct 60 percent of investment income or other exempt income from entire net income, in lieu of apportioning actual interest expenses. Additionally, interest expense associated with investment income or other exempt income is the only expense that taxpayers are required to add back to entire net income in determining business income.
- Requires a combined return for corporations in a unitary business that meet a more than 50 percent stock ownership test. Permits all corporations that meet the stock ownership test to elect to file a combined return, regardless of whether or not they are unitary. Captive real estate investment trusts (REITS), captive regulated investment companies (RICs) and captive insurance companies are required to be included in the combined return if the ownership test is met.
- Permits New York City and taxpayers to make income allocation adjustments based on New York State income allocation adjustments, under the extended statutes of limitations applicable to federal and New York State changes to income.
- Revises the Administrative Code, where applicable, to reference proposed changes.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it provides further simplicity for corporate taxpayers with operations in New York City. Enactment of this bill would have a revenue neutral impact for New York City in New York City fiscal year 2015-16 and annually thereafter.

#### Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2015.

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.