

**FY 2018 NEW YORK STATE EXECUTIVE BUDGET**  
**REVENUE ARTICLE VII LEGISLATION**  
**MEMORANDUM IN SUPPORT**

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## REVENUE ARTICLE VII LEGISLATION

### MEMORANDUM IN SUPPORT

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## MEMORANDUM IN SUPPORT

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

AN ACT to amend the alcoholic beverage control law, in relation to the creation of a special license to sell alcoholic beverages at retail for consumption off the premises (Part A); to amend the alcoholic beverage control law, in relation to alcohol in certain motion picture theatres, and providing for the expiration and repeal of such provisions upon the expiration thereof (Part B); to amend the tax law and the administrative code of the city of New York, in relation to the school tax reduction credit for residents of a city with a population of one million or more; and to repeal section 54-f of the state financial law relating thereto (Part C); to amend the real property tax law, in relation to the maximum amount of tax savings allowable under the STAR program (Part D); to amend the real property tax law and the tax law, in relation to making the STAR income verification program mandatory; and repealing certain provisions of such laws relating thereto (Part E); to amend the real property tax law, in relation to authorizing partial payments of property taxes (Part F); to amend the tax law, in relation to the STAR personal income tax credit (Part G); to amend the real property tax law and the tax law, in relation to the applicability of the STAR credit to cooperative apartment corporations; and repealing certain provisions of the tax law relating thereto (Part H); to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effectiveness thereof (Part I); to amend the state finance law, in relation to the veterans' home assistance fund (Part J); to amend the economic development law and the tax law, in relation to life sciences companies (Part K); to amend the economic development law, in relation to the employee training incentive program (Part L); to amend the tax law, in relation to extending the empire state film production credit and empire state film post production credit for three years (Part M); 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 N); to amend the tax law, in relation to extending the alternative fuels and electric vehicle recharging property credit for five years (Part O); to amend the tax law, in relation to the investment tax credit (Part P); to amend the tax law, in relation to the treatment of single member limited liability companies that are disregarded entities in determining eligibility for tax credits (Part Q); to amend the tax law, in relation to extending the top personal income tax rate for three years; and to repeal subparagraph (B) of paragraph 1 of subsection (a), subparagraph (B) of paragraph 1 of subsection (b) and subparagraph (B) of paragraph 1 of subsection (c) of section 601 of the tax law, relating to the imposition of tax (Part R); to amend the tax law and the administrative code of the city of New York, in relation to permanently extending the high income charitable contribution deduction limitation (Part S); to amend the tax law, in relation to increasing the child and dependent care tax credit (Part T); to amend the tax law, in relation to the financial institution data match system for state tax collection purposes (Part U); to amend the civil service law and the tax law, in relation to tax clearances for applicants for civil service employment (Part V); 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, in relation to apportioning premium for certain policies; to amend part J of chapter 63 of the laws of 2001 amending chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to extending certain provisions concerning the hospital excess liability pool; and to amend the tax law, 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 (Part W); to amend 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 making the provisions authorizing service of income executions on individual tax debtors without filing a

warrant permanent (Part X); to amend the tax law, in relation to the taxation of S corporations; and to repeal certain provisions of such law relating thereto (Part Y); to amend the tax law, in relation to the definition of New York source income (Part Z); to close the nonresident partnership asset sale loophole (Part AA); to amend the tax law, in relation to requiring marketplace providers to collect sales tax (Part BB); to amend the tax law, in relation to closing the existing tax loopholes for transactions between related entities under article 28 and pursuant to the authority of article 29 of such law (Part CC); to amend the tax law, in relation to clarifying the imposition of sales tax on gas service or electric service of whatever nature (Part DD); to amend the tax law and the county law, in relation to the imposition of a surcharge on prepaid wireless communications service and devices (Part EE); to amend the public health law and the education law, in relation to tobacco products, herbal cigarettes, and vapor products; and to amend the tax law, in relation to imposing a tax on vapor products (Part FF); to amend the tax law in relation to the amount of untaxed cigarettes required to seize a vehicle and to increase the penalty for the possession or sale of counterfeit tax stamps or the device necessary to manufacture such stamps (Part GG); to amend the tax law, in relation to authorizing jeopardy assessments on cigarette and tobacco product taxes assessed under article 20 thereof (Part HH); to amend the tax law, in relation to the imposition of a tax on cigars under article 20 thereof (Part II); to amend the tax law, in relation to the definition of a conveyance for real estate transfer taxes (Part JJ); to amend the tax law, in relation to the additional real estate transfer tax (Part KK); to amend the racing, pari-mutuel wagering and breeding law, in relation to modifying the funding of and improve the operation of drug testing in horse racing (Part LL); to amend the racing, pari-mutuel wagering and breeding law, the executive law, and the general municipal law, in relation to the operation of charitable gaming; to amend the social services law, in relation to penalties for unauthorized transactions relating to certain public assistance; to amend the tax law, in relation to certain income

derived from the conduct of certain games of chance; and to repeal certain provisions of the executive law, the general municipal law and the tax law relating thereto (Part MM); to amend the racing, pari-mutuel wagering and breeding law, in relation to allowing for the reprivatization of NYRA, and under certain circumstances racing after sunset and a reduction in winter racing days (Part NN); 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 OO); to amend the tax law, in relation to vendor fees paid to vendor tracks (Part PP); to amend the tax law, in relation to capital awards to vendor tracks (Part QQ); and to amend the state finance law, in relation to the distribution of certain gaming aid; and providing for the repeal of such provisions upon expiration thereof (Part RR)

**PURPOSE:**

This bill contains provisions needed to implement the Revenue portion of the FY 2018 Executive Budget.

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

**Part A - Establish a Taste-NY alcohol permit**

**Purpose:**

This bill would amend the Alcoholic Beverage Control Law (ABC) to allow a Taste-NY operator to apply for a special license to sell alcoholic beverages at retail for off premise consumption, along with food and souvenir items.

### Summary of Provisions and Statement in Support:

Under current law, for a Taste-NY store to sell alcoholic beverages, the operator must be a licensed farm brewery, cidery, winery, or distillery. This limits the number of potential operators and the list of items sold at a Taste-NY store.

This bill would amend ABC law by adding a new § 63-b to authorize the issuance of a special license for the sale of alcoholic beverages at retail for consumption off the licensed premises, to those individuals or organizations with a written agreement with the NYS Department of Agriculture & Markets to operate a Taste-NY store. The license would also allow the operator to offer customers limited samples of such alcoholic beverages, sell food intended for off premise consumption, and sell souvenir items. All of these activities, and the types of alcoholic beverages available for sale, would be governed by the new section of law as well as the written agreement. No alcoholic beverages would be sold, or tastings allowed, at a Taste-NY store along the NYS Thruway, and all licenses would be issued consistent with federal law and regulations.

This bill would also amend the ABC law by setting the annual license fee to \$500 for this special license, and add it to applicable lists of licenses pertaining to other various fees, penalties, and the requirement to post notice of a pending application.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by a minimal amount annually, beginning in 2018, as well as continue the effort to promote and expand Taste-NY markets.

### Effective Date:

This bill would take effect 30 days after it shall become law, provided that the amendments made by section 3 of the bill would only take effect under the expiration of the current version of subdivision 3 of section 17 of the ABC law.

## **Part B - Establish a motion picture theater alcohol permit**

### Purpose:

This bill would amend the Alcoholic Beverage Control Law (ABC) to allow the operator of a motion picture theater to apply for a special license to sell alcoholic beverages at retail for on premises consumption.

### Summary of Provisions and Statement in Support:

Under current law, only motion picture theaters that operate and meet the definition of a restaurant, where all seating is at tables, are able to obtain a retail on-premises alcoholic beverage license. This prohibits the ability of a traditional motion picture



theater to obtain a retail on-premises license, and therefore effectively prohibits the sale of alcoholic beverages by traditional motion picture theaters.

This bill would amend the ABC Law by adding a new § 106(16) to allow for on premise alcoholic beverage sales in licensed motion picture theaters under specific conditions. Holders of the license would be required to ensure the purchaser of alcoholic beverages provides evidence of their age by identification documentation as described in § 65(b), would only allow the purchase of one alcoholic beverage per transaction, would only allow alcoholic beverages to be sold or delivered to ticket holders for “PG-13,” “R,” or “NC-17” rated movies, and would allow alcoholic beverage sales from one hour prior to the start of the first motion picture, until the conclusion of the final motion picture.

This bill would also amend the ABC Law § 64-a(6) to clarify that the Authority may issue these special on-premises alcohol licenses only to motion picture theatres meeting certain operational requirements.

This bill would also amend the ABC Law § 64-a(8) to ensure that foods typically found in a motion picture theater, such as popcorn, candy, and light snacks, are sufficient to satisfy the food requirements of a special on-premises license under this chapter.

This bill would also amend the ABC Law by ensuring that motion picture theaters applying for this license are required to follow the municipality notification requirements under § 110-b, allowing for those same municipalities to express an opinion with respect to whether the application should be approved or denied.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$125,000 in FY 2018, from the collection of licensing fees.

#### Effective Date:

This bill would take effect immediately and sunset three years after enactment.

### **Part C - Convert the NYC PIT STAR Rate Reduction Benefit into a credit**

#### Purpose:

This bill would convert the STAR-related New York City Personal Income Tax (PIT) rate reduction benefit into a New York State PIT Credit for New York City (NYC) taxpayers.

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

Since property taxes are comparatively lower in NYC than other parts of the state, the STAR exemption is worth less to property owners in NYC than elsewhere. Yet NYC

taxpayers – both homeowners and renters –support NYC education spending through their personal income taxes. To offset this disparity, residents of NYC receive two benefits:

1. NYC residents with incomes of \$250,000 or less receive a School Tax Relief Credit against their New York State personal income taxes in the amount of \$125 for spouses filing jointly, and \$62.50 for all others. Note that prior to 2016, the credit applied to their NYC personal income taxes; it was changed to a New York State PIT credit as part of the FY 2017 Enacted Budget.
2. NYC residents with incomes below \$500,000 are subject to lower NYC personal income tax rates. The State reimburses NYC for the reduced income tax collections resulting from this PIT rate reduction.

This bill would convert the NYC PIT rate reduction benefit into a New York State PIT credit. Like last year's change to the NYC School Tax Relief Credit, this change would bring about administrative efficiencies to both NYC and the State by enabling the State to provide the benefit directly to NYC residents, rather than using NYC's taxation structure as a pass-through.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget. Converting the rate reduction benefit into a credit would reduce spending by \$277 million in FY 2018 and \$360 million annually thereafter, though only about \$12 million of the out-year savings is a true Financial Plan benefit.

#### Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2017.

### **Part D - Cap STAR benefit growth**

#### Purpose:

This bill would impose a zero percent cap upon the growth in Basic and Enhanced STAR benefits, beginning with the 2017-18 school year.

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

This bill would amend Real Prop. Tax L. § 1306-a to lower the cap on the growth of tax savings under the STAR Program, beginning with the 2017-18 school year. Basic and Enhanced STAR savings would be capped at the FY 2017 savings amounts in subsequent years for these programs. Enacted as part of the 2012 Executive Budget, Real Prop. Tax. L § 1306-a caps the growth of STAR savings at a rate not to exceed 2 percent annually.

STAR was enacted in 1997 to offset rising property taxes for homeowners, and to provide additional targeted property tax relief to senior citizens. Since then, enhancements have been made that contributed to increases in the current and projected cost of the STAR program. The costs of the STAR program increased approximately 36 percent between FY 2002 and FY 2017. The direct costs of the STAR program in FY 2016, including reimbursements made under Real Prop. Tax. L. § 1306-a and St. Fin. L. § 54-f, were over \$3.3 billion. Capping growth of the direct costs to the State of the program at current levels would limit spending at the State level, and would be a critical tool in ensuring a balanced State budget.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget. Capping the exemption benefits would reduce General Fund spending by \$50 million in FY 2018.

Effective Date:

This bill would take effect immediately.

**Part E - Make participation in the Income Verification Program (IVP) mandatory for enhanced STAR recipients**

Purpose:

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

Summary of Provisions and Statement in Support:

In order to be eligible for Enhanced STAR, the applicant's income must not exceed \$86,000 for 2017. Under current law, applicants are required to demonstrate their income eligibility in one of two ways:

1. They may bring income documentation (generally, an income tax return) to the assessor's office each year, as part of an annual renewal application process. The assessor would then determine their eligibility based on the documentation provided.
2. Alternatively, they may enroll in the STAR IVP, which would authorize the Department of Taxation and Finance (Department) to annually determine their income eligibility based upon their personal income tax records. The Department would then notify the assessor of the Department's findings. Applicants who have enrolled in the IVP need not reapply for the exemption so long as they file a personal income tax return each year.

This bill would eliminate the first option and requires all Enhanced STAR recipients to be enrolled in the IVP, effective with applications for the exemption on FY 2018 assessment rolls. This would include recipients of the Senior Citizens Exemption, who previously received Enhanced STAR automatically. The bill would also extend the IVP to applicants for the Enhanced STAR Personal Income Tax (PIT) credit.

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

Verifying eligibility requirements ensures that the appropriate amount of benefit is given to the appropriate taxpayer. For example, prior to the implementation of the STAR Registration Program, numerous properties received Basic STAR exemptions to which they were not entitled. This is because the Department did not have a direct role in the verification of eligibility for Basic STAR (which is subject to a fixed income limit of \$500,000 and restricted to the taxpayer's primary residence). Once the STAR Registration Program was in place and taxpayer identification numbers of all Basic STAR recipients became available to the Department, a more thorough eligibility verification process could be conducted.

As the STAR Registration Program does not extend to the Enhanced STAR exemption, the Department does not have the ability to verify that all Enhanced STAR recipients meet the income (and other) eligibility requirements. This bill would enable it to do so. This would ensure that Enhanced STAR would be granted only in appropriate cases; thus, reducing the cost of the program to the State in the case of undeserved benefits.

Additionally, by making participation in IVP mandatory, the bill would make it easier for qualified senior citizens who file tax returns to keep their Enhanced STAR exemptions—they would no longer need to reapply for the exemption annually by the locally applicable deadline. For qualified senior citizens who do not file tax returns, the Department would develop an uncomplicated application process, comparable to the filing of a simple tax return, ensuring that these taxpayers receive the maximum benefit for which they are eligible.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would relieve local assessors from most of the Enhanced STAR income verification burden and creates consistency with the changes to the STAR exemption program implemented with the FY 2017 Enacted Budget.

Effective Date:

This bill would apply to applications for the Enhanced STAR exemption beginning with FY 2018 assessment rolls.

**Part F - Allow taxpayers to make partial tax payments**

Purpose:

This bill would enable property owners to make partial payments against their property tax bills, subject to local option.

Summary of Provisions and Statement in Support:

Under current law, taxpayers cannot make partial payments of their property taxes, except where there is a statute specifically authorizing partial payments to be made. Although this general prohibition may have been necessary in a past era when accounting for tax receivables was done manually, but in today's digital world, it is no longer sound policy for the following reasons:

1. It creates hardship for taxpayers who may not always have the funds available to pay their property tax bills in full when due.
2. It creates hardship for taxpayers who mistakenly write checks that are slightly below the amount due. In such cases, the checks are returned to the taxpayer, who would be charged interest on the full amount owed if the mistake isn't corrected by the due date (which is often the case).
3. It creates hardship for municipalities since partial payments must be returned, even though municipalities would benefit from having those funds available.

To benefit both taxpayers and municipalities, this bill would now allow for partial payments unless the municipality passes a resolution stating otherwise. The municipality would be authorized to establish conditions under which the partial payment option is permitted (e.g., the imposition of a service charge not to exceed \$10 per payment), or it may eliminate the option altogether if it so chooses.

The amounts that remain due after a partial payment is made would be subject to interest and penalties at the rates that are applicable to late payments. As a result, the amount of interest and penalties due would now be less than if the entire payment had been late.

To ensure that municipalities would have sufficient lead time to adjust their accounting systems, this bill would not impact tax collections until January of 2019.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget since it creates consistency with the changes to the STAR exemption program implemented with the FY 2017 Enacted Budget and provides relief for both taxpayers and municipalities.

Effective Date:

This bill would take effect immediately and apply to the collection of property taxes, special ad valorem levies and special assessments for fiscal years beginning on or after January 1, 2019.

**Part G - Relax the tax secrecy rules for STAR credit**

Purpose:

This bill would make the names and addresses of taxpayers applying for or receiving the STAR credit public information.

Summary of Provisions and Statement in Support:

In 2016, New York State converted the STAR exemption to the STAR credit. For taxpayers receiving the STAR exemption, their names and addresses are publicly available thru the assessment rolls. This bill would apply the existing tax secrecy rules used for the STAR exemption to the STAR credit.

This bill would amend Tax Law § 606(eee)(7) to make publicly available the names and addresses of applicants, and those who are receiving, the STAR credit to the same extent as the names and addresses of individuals who have applied for, or are receiving, the STAR exemption authorized by Real Property Tax Law § 425.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget. Allowing the Department of Taxation and Finance to share STAR credit information with local assessors would supplement the Department's efforts to identify primary residency changes, duplicate exemptions/credits, and other modifications.

Effective Date:

This bill would take effect immediately.

## **Part H - Technical fix for the Co-op's STAR Credit**

### Purpose:

This bill would adjust the STAR credit amount received by tenant-stockholders of cooperative apartment corporations to match the amount that tenant-stockholders would receive if they were separately assessed.

### Summary of Provisions and Statement in Support:

Under existing law, cooperative apartment corporations have their real property valuation assessed for the building as a whole; tenant-stockholders do not receive separate assessments. This makes it difficult for the Department of Taxation and Finance (Department) to properly calculate the STAR credit amount that each tenant-stockholder should receive.

This bill would amend Real Property Tax Law (RPTL) § 425(2)(k)(ii) to require local assessors to provide the Department with a statement setting forth the taxable assessed value attributable to each tenant-stockholder, without regard to the STAR exemption, as well as other information as the commissioner deems necessary to properly calculate the STAR credit. It would also amend Tax Law § 606(eee)(1)(E) to provide that a tenant-stockholder's STAR credit amount would be based upon the taxable assessed value as determined by the assessor. Finally, the bill would repeal Tax law § 606(eee)(6)(A) because this provision dealing with the calculation of the credit for tenant-stockholders would no longer be necessary.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would ensure that a co-op STAR PIT credit does not exceed what the co-op owner would have been charged in school taxes if it were separately assessed.

### Effective Date:

This bill would take effect immediately, provided that it would first be applied beginning with the 2017-2018 school year.

## **Part I - Extend Oil and Gas Fee Expiration Date**

### Purpose:

This bill would extend the existing provisions of Real Property Tax Law § 593 to March 31, 2021.

Summary of Provisions and Statement in Support:

Real Property Tax Law § 593 sets forth a schedule of fees to recover the cost of setting unit of production values for the gas and oil industry. The law is currently set to expire on March 31, 2018. This legislation would extend this section to March 31, 2021.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget to ensure gas and oil producers' assessments would be determined on a uniform, rational basis throughout the State. The implementation of this bill in the FY 2018 Executive Budget would also ensure that the provisions do not lapse before their March 31, 2018 expiration date.

Effective Date:

This bill would take effect immediately.

**Part J - Authorize SUNY Chancellor to certify and approve the disbursement of funds for veterans' homes operated by the SUNY**

Purpose:

This bill would authorize State University of New York ("SUNY") Chancellor, instead of State Education Department (SED), to certify and approve the disbursement of funds for veterans' homes operated by SUNY.

Summary of Provisions and Statement in Support:

Chapter 432 of the Laws of 2016 stipulates that the Commissioner of Health must certify and approve the disbursement of funds for veterans' homes operated by the Department of Health, and that the Commissioner of Education must certify and approve the disbursement of funds for veterans' homes operated by SUNY.

There is currently one veterans' home operated by SUNY, the Long Island State Veterans' Home, which is affiliated with Stony Brook University. As SED has no involvement in the care and maintenance of this home, the SUNY Chancellor is better suited to certify and approve the disbursement of funds used for those purposes. This bill would accomplish that goal.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget to ensure that funds for the veterans' home operated by SUNY are appropriately distributed.



Effective Date:

This bill would take effect on the same date and in the same manner as Chapter 432 of the Laws of 2016.

**Part K - Establish Life Sciences Tax Credits**

Purpose:

This bill would extend the benefits of the Excelsior Jobs Program Act to life sciences companies, and amend the Tax Law to add two new refundable tax credits applicable specifically to life sciences companies that are new businesses: a research and development tax credit for life sciences companies, and an angel investor tax credit for taxpayers that invest in life sciences companies.

Summary of Provisions and Statement in Support:

Life sciences companies are companies in the fields of biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, health informatics, health robotics, or biomedical devices, and organizations and institutions that devote the majority of their efforts in the various stages of research, development, technology transfer and commercialization related to any such fields. New York does not currently offer capital subsidies and tax incentives for such companies. The tax incentives provided by this bill are a concerted effort to increase New York's share of industry-funded bioscience research and development.

This bill would amend the Excelsior Jobs Program Act to extend the program to life sciences companies. In doing so, these companies would become eligible for the existing refundable Excelsior investment tax credit, research and development tax credit, jobs tax credit and real property tax credit. This bill would also amend the Economic Development Law to enable the program to issue credits for an additional three years, through the 2029 tax year.

In addition, this bill would amend the Tax Law to add a refundable credit for life sciences companies that are new businesses, equal to 15 percent of their research and development expenditures, with the rate increasing to 20 percent for small new businesses with less than 10 employees. This tax credit would be available to new life sciences companies for a period of up to ten years, with each new life sciences company eligible to receive the credit for up to five years. The lifetime maximum amount of credits allowed to a particular life sciences company would be \$500,000. The Department of Economic Development would be authorized each year to award \$10 million of credits to life sciences companies, funded with an annual allocation from the Excelsior Jobs Program.

Further, the Tax Law also would be amended to establish a refundable angel investor tax credit available to taxpayers that invest in life sciences companies that are new

businesses with twenty or fewer employees and gross receipts not greater than \$500,000 during the immediately preceding year. The tax credit would equal 25 percent of each angel investment in a life sciences company made during the taxable year and would be available to investors for a period of up to ten years. Each investor would be allowed up to \$250,000 in credits over the course of the ten-year period. The Department of Economic Development would be authorized each year to award \$5 million of credits to angel investors.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would reduce All Funds revenue by \$5 million annually for FY 2020 through FY 2029.

Effective Date:

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

**Part L – Expand the workforce training credit**

Purpose:

This bill would amend the Employee Training Incentive Credit Program to incentivize companies to include incumbent worker training as part of their expansion and retention projects, and expand the credit to include training for employees working in life sciences.

Summary of Provisions and Statement in Support:

A skilled and adaptable workforce is vital to a company's competitiveness in New York. Given the speed at which business processes evolve, enhancing employee skills becomes a crucial component of meeting market demands. To help employers invest in New York's workforce, this bill would amend the Employee Training Incentive Program (ETIP). This revised ETIP program would incentivize companies to include incumbent worker training as part of their expansion and retention projects, without a requirement to create new jobs, and also expand this incentive to the life sciences sector.

Section 1 of the bill would eliminate the requirement that eligible training be provided to employees filling net new jobs and allows such training to cover internship programs in life sciences as well as advanced technology. It would amend the definition of significant capital investment needed for eligibility into the program to require a company to make a capital investment in new business processes or equipment, the cost of which is equal to or exceeds ten dollars for every one dollar of tax credit allowed pursuant to Tax Law §§ 210-B(50) or 606(ddd). Previously, the capital investment was at least \$1 million.

Section 2 of the bill eliminates the requirement that a company must create ten net new jobs to be eligible for the program.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget. It has no impact on the State's Financial Plan.

Effective Date:

This bill would take effect immediately.

**Part M - Extend the Empire State Film Production Tax Credit and Post-Production Tax Credit for three years**

Purpose:

To extend the Empire State film production tax credit and Empire State film post-production tax credit for three years through 2022.

Summary of Provisions and Statement in Support:

This bill would amend the Tax Law to extend the Empire State film production tax credit for three additional tax years (2020-2022), and also provide \$420 million annually in allocable tax credits for each of these additional tax years. Additionally, the increase in the annual allocation from \$7 million to \$25 million for the Empire State film post-production credit, which constitutes a subset of the \$420 million total annual allocation, would be extended for tax years 2020 through 2022. Currently, the funding and increase in the annual allocation for post-production are scheduled to expire for tax years beginning after 2019.

This bill would also extend, for three years (2020-2022), the additional credit available (10 percent) for both film production projects and post-production projects, in certain New York counties, for wages or salaries paid to individuals directly employed by a qualified film production company or qualified post production facility. This additional credit is scheduled to expire for tax years beginning after 2019.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would decrease All Funds revenue by \$31 million in FY 2022.

Effective Date:

This bill would take effect immediately.

## **Part N - Create the New York Youth Jobs Program Tax Credit**

### Purpose:

This bill would extend the Urban Youth Jobs Program tax credit for five years to 2022 and rename the program as the New York Youth Jobs Program tax credit.

### Summary of Provisions and Statement in Support:

This bill would amend subdivisions (a),(d) and (e) of Labor Law § 25-a to authorize additional allocations of \$50 million per year in tax credits to be awarded in 2018, 2019, 2020, 2021 and 2022 for employers participating in the program. The bill would also rename the program as the “New York Youth Jobs Program tax credit” to reflect that the program is now offered statewide.

### Budget Implications:

This bill would decrease All Funds revenue by \$50 million annually in each of FY 2020 through FY 2024.

### Effective Date:

This bill would take effect immediately.

## **Part O - Extend the Alternative Fuels Property and Electric Vehicle Recharging Property Credit for Five Years**

### Purpose:

This bill would extend the Alternative Fuels and Electric Vehicle Recharging Property Credit for five years, through tax years beginning in 2022.

### Summary of Provisions and Statement in Support:

This bill would amend Tax Law §§ 187-b, 210-B and 606 to change the termination date of the Alternative Fuels and Electric Vehicle Recharging Property Credit from December 31, 2017 to December 31, 2022.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would decrease All Funds revenue by \$3 million annually in each of FY 2020 through FY 2024.

Effective Date:

This bill would take effect immediately.

**Part P - Reform the Investment Tax Credit**

Purpose:

This bill would reform the Investment Tax Credit (ITC) statute by identifying certain uses of property for which the ITC would not be allowed.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law §§ 210-B and 606 to provide that the ITC is not allowed with respect to tangible personal property and other tangible property principally used by the taxpayer (i) in the production or distribution of electricity, natural gas, steam, or water delivered through pipes and mains, or (ii) in the creation, production or reproduction, in any medium, of a film, visual or audio recording, or commercial, or in the duplication, for purposes of broadcast in any medium, of a master of a film, visual or audio recording, or commercial. The limitation relating to films, recordings and commercials applies to costs incurred outside of New York State.

When originally enacted, the ITC was targeted specifically at manufacturers considering locations outside New York and provided an incentive to modernize, upgrade, or build new manufacturing facilities in-state. It was never aimed at “captive” industries like retail or utilities, which depend on proximity to their customers. This was codified by prohibiting an ITC for property used in the production of electricity after a Tax Appeals Tribunal decision that would have allowed an electric utility to earn an ITC.

It has always been the Department of Taxation and Finance’s position that the intent of the ITC, and the subsequent electricity prohibition, prohibited property used in the production and distribution of electricity, natural gas, steam, and water delivered through pipes and mains from qualifying for the ITC. While the Department has successfully litigated cases involving property used in the production and distribution of electricity, natural gas, and steam, taxpayers continue to claim ITC for similar property. This bill would clarify that property used in the production or distribution of electricity, natural gas, steam, and water delivered through pipes and mains is not eligible for the ITC. In doing so, the statute would be amend to be consistent with its original intent, provide certainty to taxpayers, and avoid costly litigation.

The exclusion of property used to produce program masters similarly reflects the original intent of the ITC and was a specific recommendation of the New York State Tax Reform and Fairness Commission. The accounting treatment of program masters assigns a cost basis, which is the basis of the ITC, equal to all the costs incurred to produce the content on the master. Thus, it includes all the costs of filming and producing the content, which can be millions of dollars. Moreover, none of that activity

has to occur in New York to generate credit; it is sufficient that the completed master merely be located in New York. Absent this statutory fix, a credit meant to encourage investment in producing tangible goods in New York could continue to be used to support activities and jobs outside of the State.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$20 million annually beginning in FY 2020.

Effective Date:

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

**Part Q - Treat disregarded entities as a single taxpayer for tax credit purposes**

Purpose:

This bill would address a decision of the Tax Appeals Tribunal that reversed the longstanding policy of the Department of Taxation and Finance that single member limited liability companies that are treated as disregarded entities for federal income tax purposes shall be similarly disregarded for purposes of determining their owners' eligibility to claim state tax credits allowed under Article 9, 9-A, 22, 32 (prior to its repeal) or 33 of the Tax Law.

Summary of Provisions and Statement in Support:

This bill would add a new section 43 to the Tax Law to clarify that a single member limited liability company ("SMLLC") that is disregarded as an entity separate from its single member/owner ("a disregarded SMLLC") for federal income tax purposes shall be treated as a disregarded SMLLC for purposes of determining whether its owner is eligible to claim any state tax credit allowed under Article 9, 9-A, 22, 32 (prior to its repeal) or 33 of the Tax Law.

It has been the longstanding policy of the Department of Taxation and Finance to treat a disregarded SMLLC as a division of its owner for purposes of determining tax credit eligibility. Thus, for example, for the last 15 years in administering the tax credits under the Empire Zones program, the certification of a disregarded SMLLC as an Empire Zones business under Article 18-B of the General Municipal Law has been deemed to be the certification of its owner, the taxpayer actually claiming the Empire Zones tax credits. This established one fixed date of certification and precluded the extension of benefit periods through the mere formation of additional SMLLCs. Also, for purposes of the QEZE real property tax credit, property taxes paid by a disregarded SMLLC have been treated as property taxes paid by its single member, the taxpayer claiming the credit.

However, a recent decision of the Tax Appeals Tribunal in *Matter of Lisa A. Weber* (August 25, 2016) reversed the Department's longstanding policy. In this decision, the Tax Appeals Tribunal held that two disregarded SMLLCs owned by the taxpayer, Lisa Weber, should be treated as distinct entities, separate from each other and separate from Ms. Weber, for purposes of determining her eligibility for the Empire Zone wage tax credit derived from the activities of the disregarded SMLLCs.

While this decision was decided in favor of the particular taxpayer, the ramifications of this decision are not as favorable to other taxpayers. The ruling now compels the Department to look at each disregarded SMLLC separately for purposes of determining tax credit eligibility. Potentially, many taxpayers would lose their eligibility to claim Empire Zone tax credits because one disregarded SMLLC was certified but has no employees to satisfy the required employment test while another disregarded entity has the requisite employees but no certification.

This ruling could also affect the QEZE real property tax credit, if the SMLLC is the owner of record of the property, but the owner or another SMLLC actually pays the property taxes. Other credits would potentially be implicated as well. For example, under the Brownfield Redevelopment tax credit program, one disregarded SMLLC of a taxpayer could be issued the required certificate of completion when a brownfield clean-up is completed. But, if another disregarded SMLLC of that same taxpayer constructs tangible property on the same brownfield site, the taxpayer would be ineligible to claim the brownfield tangible property credit.

The Tax Department is not allowed to appeal an adverse Tax Appeals Tribunal decision. Thus, a statutory amendment to the Tax Law is necessary to overturn the Tribunal's ruling and protect taxpayers who relied on the Department's longstanding policy to allow taxpayers to use disregarded SMLLCs to claim tax credits.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it preserves current Financial Plan revenue estimates.

#### Effective Date:

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

### **Part R - Extend the Personal Income Tax top bracket for three years**

#### Purpose:

This bill would extend the top tax bracket under the personal income tax law for three years.

Summary of Provisions and Statement in Support:

This bill would amend the Tax Law to extend, for three years, the top tax bracket under the personal income tax. Currently the top tax bracket, with a rate of 8.82%, is scheduled to expire for taxable years beginning after 2017. This bill would extend the higher bracket for taxable years 2018, 2019 and 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$683 million in FY 2018, \$3.4 billion in 2019, \$4.5 billion in FY 2020, and \$4 billion in 2021.

Effective Date:

This bill would take effect immediately.

**Part S – Permanently extend the high income charitable contribution deduction limitation**

Purpose:

This bill would make permanent the charitable deduction limitations for individuals with adjusted gross income of more than \$10 million.

Summary of Provisions and Statement in Support:

Under current law, for tax years ending before 2018, the New York State itemized charitable tax deduction is limited to 50% of the federal deduction for individuals with adjusted gross income over \$1 million and not greater than \$10 million, and 25% of the federal deduction for individuals with adjusted gross income over \$10 million. These limitations are set to expire at the end of 2017.

Following the expiration of the 2017 limitation, all taxpayers with adjusted gross incomes over \$1 million would be subject to a 50% limitation. Therefore, taxpayers with adjusted gross incomes greater than \$1 million but not more than \$10 million would continue to be subject to a 50% limitation, while taxpayers with adjusted gross income over \$10 million would also be subject to a 50% limitation, rather than the 25% limitation.

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



Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$70 million in FY 2019 and \$140 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part T – Enhance the Child and Dependent Care Credit**

Purpose:

This bill would increase the Child and Dependent Care tax credit (CDCC) under Tax Law § 606(c) for qualified taxpayers with New York adjusted gross income (NYAGI) between \$50,000 and \$150,000.

Summary of Provisions and Statement in Support:

Currently, the CDCC is a minimum of 20% and as much as 110% of the Federal Child and Dependent Care Credit depending on the amount of a taxpayer's NYAGI. Eligible families with lower adjusted gross incomes receive a higher percentage of the federal credit for which they are eligible on their State tax return and, therefore, a larger State credit. The percentage of the federal credit allowed ranges from 20%, for taxpayers whose NYAGI is \$65,000 and above, to 110% for taxpayers whose NYAGI is \$25,000 and below. For taxpayers with a NYAGI between \$50,000 and below \$65,000, the CDCC ranges from 85% to 32% of the federal credit, respectively. The maximum New York State credit is currently \$2,310 for two dependents or more, and \$1,155 for one dependent. The CDCC is refundable at the State level.

The federal credit, which is nonrefundable, allows up to \$3,000 of qualifying expenses for one qualifying person, and up to \$6,000 of expenses for two or more qualifying persons. A qualifying person is a child under age 13 who can be claimed as a dependent, or a disabled spouse or other disabled person that can be claimed as a dependent.

This bill would amend Tax Law § 606(c) to increase the credit for certain household and dependent care services necessary for gainful employment for taxable years after 2017 for taxpayers whose NYAGI is between \$50,000 and \$150,000 annually. This proposal would target middle income working families who are finding it increasingly difficult to afford quality child care.

Under the proposal, all taxpayers with incomes between \$50,000 and \$150,000 would now be eligible for a CDCC ranging from 100% to 60% of the federal credit. The

percentage of the federal credit allowed by New York State would be increased by the following factors:

<i>If NY adjusted gross income is :</i>	<i>The factor is :</i>
At least \$50,000 and less than \$55,000	1.1682
At least \$55,000 and less than \$60,000	1.2733
At least \$60,000 and less than \$65,000	2.322
At least \$65,000 and less than \$150,000	3.000

For example, taxpayers with NYAGI of \$55,000 would see their credit increase from approximately 73% of the federal credit to nearly 93% of the federal credit. Taxpayers with incomes over \$65,000 and less than \$150,000 who currently eligible for a credit equal to 20% of the federal credit would see their credit increase to 60% of the federal credit. The average additional credit for those benefitting would be \$208.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would reduce All Funds revenue by \$42 million annually starting in FY 2020.

Effective Date:

This bill would take effect immediately, and would apply to taxable years after 2017.

**Part U – Allow warrantless bank account data matching**

Purpose:

This bill would expand the financial institution data match system for state tax collection purposes to include information regarding financial accounts for tax debtors with fixed and final tax debts, whether or not a warrant has been filed.

Summary of Provisions and Statement in Support:

Enacted as a part of the 2009 Executive Budget, Tax Law § 1701 allows the Commissioner of Taxation and Finance to develop and operate a financial institution data match system for state tax collection purposes. The financial institution data match system facilitates the identification and seizure of non-exempt financial assets of tax

debtors. Each financial institution doing business in the state must provide, to the Department on a quarterly basis, information for each tax debtor identified by the Department that maintains an account at the institution.

Under current law, in order to obtain information regarding tax debtors' accounts that may be available to levy, the Department must file a public warrant in the appropriate county clerk's office and with the Department of State. This bill would expand the financial institution data match system to require the financial institutions to now include any past due liabilities, including unpaid tax, interest, and penalty, that have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review. As a result, the Department would be able to make more informed and better decisions regarding whether a levy is the best way to resolve a collection case, while also reducing the number of public warrants filed solely for information-gathering purposes, and consequently, eliminating the long-term negative effect the public warrant has on a tax debtor's credit history, even after the outstanding liability is paid off.

It is anticipated that the resulting improved efficiency and effectiveness of the levy program would generate approximately \$15 million in additional revenue annually when fully effective.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$5 million in FY 2018 and \$15 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part V – Require New State Employees to be Compliant 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 are in compliance with their tax obligations.

Summary of Provisions and Statement in Support:

Public employees – who are paid with tax dollars -- are charged with administration and enforcement of laws, rules and regulations, and those who are not in compliance with their tax obligations undermine the credibility of state and local government.

This bill would require tax clearances from the Tax Department to verify that new state employees do not have past-due state tax liabilities 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 the Tax Department, which would provide the applicant with details of the tax compliance issues and how they may be resolved. One such resolution could be the use of an installment payment agreement between the employee and government employer.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$1 million in FY 2018 and \$2 million annually thereafter.

#### Effective Date:

This bill would take effect on June 1, 2017.

### **Part W – Require practitioners to be compliant with State tax obligations before receiving excess medical malpractice coverage**

#### Purpose:

This bill would extend, for one year, the Physician's Excess Medical Malpractice Program, commonly known as the "Section 18 Program", for eligible physicians and dentists for the policy year beginning July 1, 2017. 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 before receiving such coverage

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

This bill would extend the Physician's Excess Medical Malpractice Program through June 30, 2018, 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 from the Department of Taxation and Finance 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 FY 2018 Executive Budget because it would increase All Funds revenue by \$1 million in FY 2018 and \$2 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part X – Permanently extend warrantless wage garnishment**

Purpose:

This bill would make permanent the authority for the Commissioner of Taxation and Finance 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 2014 budget, Tax Law §174-c allows the Commissioner of Taxation and Finance to serve income executions (wage garnishments) on individual tax debtors and, if necessary, on the employers of such tax debtors, without 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, 2017. Thus, the enactment of this bill would make the Commissioner's authority permanent.

Tax Law § 174-c was enacted, in part, to protect individuals from developing a negative credit report and compromising an individual's ability to secure credit. Moreover, insurance companies have begun to establish premium rates based upon an individual's credit report, and it is also common for employers to examine an applicant's credit report when making hiring decisions. The fact that a publicly filed warrant can negatively affect a taxpayer's credit rating is exacerbated by the fact that a warrant remains on the taxpayer's credit rating for seven years, regardless of whether the liability is paid in full. Accordingly, a publicly filed tax warrant, which was required for income executions prior to the enactment of § 174-c, could unnecessarily penalize an individual taxpayer.

Unwarranted income executions have resulted in incremental revenue of \$75 million since § 174-c was enacted. Furthermore, the legislation has resulted in 210,000 taxpayers being issued income executions without public warrants, with a total value of outstanding income executions of approximately \$107.5 million. Of the 210,000 unwarranted income executions served to date, 112,000 have been fully paid.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$15 million annually beginning in FY 2018.

### Effective Date:

This bill would take effect immediately.

## **Part Y – Require New York State S corporation conformity with Federal return**

### Purpose:

This bill would amend the Tax Law to require all corporations subject to tax in New York that are treated as S corporations for federal tax purposes also be treated as S corporations for New York State tax purposes.

### Summary of Provisions and Statement in Support:

Currently, a federal S corporation that is subject to tax in New York under Article 9-A (e.g., the corporation is doing business or owns property in the State) can elect to be taxed as an S corporation, or to be taxed as a C corporation for New York State purposes. If a federal S corporation is taxed as a New York S corporation, the corporation is responsible only for the fixed dollar minimum tax, and the income of the entity is passed through to its shareholders and taxed at that level. Conversely, if the federal S corporation is taxed as a New York C corporation, it computes its tax and pays a tax on an apportioned entire net income or capital base.

Federal S corporations generally choose to pay tax under Article 9-A as New York C corporations when paying tax at the entity level reduces the corporation's tax liability. They also may choose to pay tax under Article 9-A in order to shield its non-resident shareholders from having a New York tax liability.

Further, if a federal S corporation has elected to treat its wholly owned subsidiary as a qualified subchapter S subsidiary ("QSSS") for federal purposes, the QSSS is ignored as a separate taxable entity, and the assets, liabilities, income and deductions of the QSSS are included on the parent's return. However, for New York purposes, the tax treatment of the QSSS is not required to be conformed to the federal treatment and the QSSS under certain circumstances can be a stand-alone Article 9-A taxpayer.

While the Tax Law was amended in 2007 to mandate that a federal S corporation be treated as a New York S corporation in any tax year in which its investment income exceeded 50% of its federal gross income, this mandate did not cover the entire universe of federal S corporations that have elected to be taxed as New York C corporations.

This bill would amend Tax Law § 660(a) to require all federal S corporations that are subject to tax in New York, or that have qualified subchapter S subsidiaries subject to tax in New York, to be treated as S corporations for New York State tax purposes. The bill would also amend §§ 208 and 210-A of Article 9-A and other provisions in Article 22 to conform to the elimination of the S corporation election.

Requiring conformity to the federal S corporation status would simplify the corporation's and shareholders' New York tax filings, eliminate potential tax avoidance schemes, and align New York's treatment of S corporations with that of most other states

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$5 million annually beginning in FY 2019.

Effective Date:

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

**Part Z – Close the co-op sale loophole**

Purpose:

This bill would close the loophole in the personal income tax, and characterize the gain from the sale of entities who own shares in cooperative housing corporations located in New York as New York source income.

Summary of Provisions and Statement in Support:

Currently, the sale by non-residents of real property located in New York and the direct sale of the shares of a cooperative housing corporation in New York may generate New York source income subject to the personal income tax. However, the law does not clearly state that the sale of the ownership interests in an entity, such as a partnership, where more than 50% of the entity's assets consist of shares in a cooperative housing corporation, also generate New York source income, and are therefore subject to the personal income tax.

This ambiguity creates a platform for taxpayers who own shares in cooperative housing corporations to divest of those shares without generating a tax liability under the personal income tax. This ambiguity also creates disparate treatment amongst similarly situated taxpayers. For example, if a nonresident sells his interest in an entity that solely holds rental property in the State, then the gain from the sale would be taxable. However, if the nonresident sells his interest in an entity that solely holds cooperative rental units in the State, the gain is not taxable.

This bill would amend the definition of real property located in this state to include ownership interests in entities that own shares in a cooperative housing corporation where the cooperative units are located in New York for purposes of New York source income in Tax Law § 631(b)(1)(A), thereby allowing the gain from the sale of ownership interests in such entities to be included as New York source income.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$10 million annually beginning in FY 2018.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2017.

**Part AA – Close non-resident asset sale loophole**

Purpose:

This bill would close the loophole and impose a tax on nonresident individuals who are partners in partnerships that sell the partnership's assets, and then classify the transaction as a sale of an intangible partnership interest.

Summary of Provisions and Statement in Support:

This bill would amend the Tax Law to include the gains realized from the sale of an interest in a partnership by nonresident partners as New York source income when the underlying transaction reflects a sale of partnership assets subject to Internal Revenue Code (IRC) § 1060.

IRC § 1060 provides special rules for the sale of a trade or business treated as an asset acquisition. In such transactions, the buyer of the asset is eligible for a step up in basis, while the seller can treat the transaction as the sale of a partnership interest. On the federal level, both the seller and buyer would be subject to taxation.

On the State level, however, this results in a loophole with respect to the State's taxation of nonresidents. This is because an IRC § 1060 election allows the seller to consider the transaction to be the sale of an intangible interest, which is non-taxable, while the buyer considers the transaction to be the purchase of an asset, which is taxable. Gains on these sales are subject to New York State tax for residents, but for non-residents, the gains are exempt from New York State tax.

This legislation would close this loophole by characterizing the transaction for the seller and buyer consistently as a sale of assets, which in turn would subject the nonresident seller to income tax on the gain generated by the sale of assets.



Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$10 million annually beginning in FY 2018.

Effective Date:

This bill would take effect immediately.

**Part BB - Modernize sales tax collection to reflect the Internet economy**

Purpose:

This bill would amend the Tax Law to require marketplace providers to collect sales and use tax on taxable sales of tangible personal property that they facilitate.

Summary of Provisions and Statement in Support:

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

The sales tax is a tax on the customer that is collected by the seller. It is well-established that the Department of Taxation and Finance (“Department”) is also authorized to impose such tax collection responsibilities on parties that facilitate sales (e.g., auctioneers, consignment shops and stores with lease departments).

This bill improves on that concept by treating large marketplace providers that facilitate sales of tangible personal property as “persons required to collect tax” on such sales, 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 provides the forum, physical or virtual, where the transaction occurs. The bill provides an exception for small marketplace providers that facilitate sales exclusively online by excluding such providers that facilitate less than \$100 million in sales in a calendar year.

To minimize the number of persons who have tax collection responsibilities, the bill relieves sellers using 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 the seller’s transactions. In fact, a seller of tangible personal property that makes all of its sales through marketplace providers that certify they would collect the tax would have no New York sales tax collection and remittance responsibilities, and need only file annual information returns.

Shifting the tax collection responsibility to the marketplace provider would have many benefits. It would ease sales tax collection burdens for many small businesses in the

State, streamline the tax collection process, improve taxpayer compliance by reducing the number of persons who handle sales tax monies before they are remitted to the Department, and result in a level playing field for New York's "Main Street" retailers that compete with out-of-state sellers that do not collect tax on sales to New York customers made through marketplace providers.

The bill does not expand the rules concerning sales tax nexus.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$68 million in FY 2018 and \$136 million annually thereafter.

#### Effective Date:

This bill would take effect September 1, 2017 and applies to sales made or uses occurring after that date.

### **Part CC - Close sales tax related entities loopholes**

#### Purpose:

This bill would amend the Tax Law to close the existing tax loopholes for transactions between related entities.

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

With certain exceptions, existing law allows a purchaser to buy tangible personal property or services intended for resale exempt from sales tax. However, certain related entities have exploited this exemption by purchasing high-dollar-value property exempt from sales tax and then leasing the property to a member or owner using long-term leases or lease payments that are a small fraction of the fair market value of the property.

This bill would amend the sales tax definition of "retail sale" to include any transfer of tangible personal property to certain entities when the property would be resold to related person or entities, including; (1) sales to single member LLCs or subsidiaries that are disregarded for federal income tax purposes, for resale to a member or owner; (2) sales to a partnership for resale to one or more partners; and (3) sales to a trustee for resale to a trust beneficiary. This change would remove the incentive to use or create those entities to avoid sales tax.

In addition, current law allows a person or entity that is not a resident of New York State to bring property or services into this state for use within the State without incurring use tax. However, this construct has led to situations where a resident person or entity

creates a new entity, such as a single member LLC, to purchase high-dollar-value property out of state and bring the property into New York to avoid the use tax.

This bill would close this loophole by providing that the use tax exemption in Tax Law § 1118(2) would not apply when a person (other than an individual) brings property or services into this state unless that person has been doing business outside of New York for at least 6 months prior to the date the property is brought in to New York. This amendment would still allow families and ongoing businesses to move into New York without incurring use tax on property or services brought into the State.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$9 million in FY 2018 and \$11 million annually thereafter.

Effective Date:

This bill would take effect immediately.

**Part DD - Make technical amendments to the State and local sales tax statute**

Purpose:

This bill would clarify the imposition of sales tax on the sale of gas service or electric service, of whatever nature.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 1105-C to clarify the sales tax is imposed on the transporting, transmitting, or delivering (T&D) charges for gas or electricity when the transportation, transmission or distribution is delivered by the provider of the commodity.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would preserve All Funds receipts that could otherwise be at risk.

Effective Date:

This bill would take effect immediately.

**Part EE - Apply the Public Safety Communications Surcharge to Prepaid Devices**

Purpose:

This bill would amend the Tax Law to impose the Public Safety Communications Surcharge on the sale of each prepaid wireless communication service or device. This bill also would amend the County Law to authorize any county or city that is currently authorized to impose an Enhanced Emergency Telephone System Surcharge on wireless communications service to adopt a local law to impose such surcharge on the sale of each prepaid wireless communications service or device within that locality.

Summary of Provisions and Statement in Support:

This bill would require sellers to collect a surcharge on the sale of each prepaid wireless communications service or device sold within this state. The market shift from contract plans to prepaid wireless, which is not currently subject to the surcharge, is leading to a steady decline of revenue. The surcharge currently imposed on postpaid wireless communications service is \$1.20 on each device per month. The prepaid surcharge would be imposed on the sale of each prepaid service or device at the rate of \$0.60 per retail sale that is \$30 or less, and \$1.20 per retail sale over \$30.

The bill also would expand the authority of municipalities that are currently authorized to impose a surcharge on postpaid wireless communications service to impose a similar surcharge on the sale of each prepaid service or device. The surcharge currently imposed on postpaid wireless communications service in those municipalities is \$0.30 on each device per month. The prepaid surcharge would be imposed on the sale of each prepaid service or device at the rate of \$0.30 per retail sale.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$7 million in FY 2018 and \$26 million annually thereafter.

Effective Date:

This bill would take effect December 1, 2017.

**Part FF - Tax and regulate vapor products**

Purpose:

To regulate vapor products in the same manner as tobacco products, and impose an excise tax on these products.

### Summary of Provisions and Statement in Support:

Electronic cigarettes, vaping pens, hookah pens and similar devices typically contain nicotine, the highly addictive substance in all tobacco products. Recent studies have shown that emissions from these products may contain tobacco-specific nitrosamines, acetone, formaldehyde, various metal particles and other volatile ultrafine particles that can penetrate deep into the lungs. Although the levels of most of these compounds are lower in emissions than in traditional tobacco cigarettes, these substances still accumulate in indoor air.

Allowing the use of these products indoors sends a contradictory message to youth and the non-smoking public about the acceptability of indoor smoking. Permitting use of these products indoors also creates enforcement difficulties because these products appear very similar to cigarettes. A single rule should be applied to all tobacco products.

This bill would amend various sections of the Public Health Law to extend the regulations on tobacco products to vapor products, defined as the liquid or gel commonly used in e-cigarettes and similar devices, regardless of whether or not it contains nicotine. For example, vapor products would be included under the Clean Indoor Air Act; coupon restrictions would be extended to include vapor products; vapor product use would be prohibited on school grounds and by school bus drivers; and the age verification method would be amended. Additionally, any person who manufactures, sells, or distributes vapor products must ensure all components, containing nicotine, qualify as “special packaging for the protection of children,” as defined in 15 U.S.C. § 1471.

Further, this bill would amend Article 20 of the Tax Law to impose an excise tax on the sale (or use, if not previously taxed) of vapor products at the rate of 10 cents per fluid milliliter. To facilitate administration and collection of the tax, wholesalers and distributors would be required to list the amount of vapor product sold, in milliliters, on any invoices issued to their customers. The bill would add record keeping requirements and civil and criminal penalties for unlawful possession of a vapor product that are equivalent to those in existing law for other tobacco products.

The unregulated marketing of vapor products threatens the gains that have been made in reducing tobacco use by youth and adults in New York. This legislation would protect youth and adults by ensuring that vapor products are appropriately regulated.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by \$3 million in 2018 and \$5 million annually thereafter.

Effective Date:

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

**Part GG - Clarify the amount of untaxed cigarettes required to seize a vehicle**

Purpose:

This bill would align the vehicle seizure provisions of the Tax Law with the presumption of sale provisions of the Tax Law, and conform the Tax Law counterfeit stamp penalty to the Penal Law penalty for criminal possession of a forged instrument.

Summary of Provisions and Statement in Support:

Currently, Tax Law § 1847(a) permits the seizure of a motor vehicle involved in the transportation of more than 10 cartons of untaxed cigarettes. However, the penalty for possession or transport of untaxed cigarettes with “intent to sell” in Tax Law § 1814(d) is not triggered until a person is in possession of more than 25 cartons of untaxed cigarettes.

This proposal would align the quantity that triggers the presumption of sale provision in Tax Law § 1814(d) with the quantity that triggers vehicle seizure in Tax Law § 1847(a) by lowering the presumption of sale quantity from 25 to 10 cartons. Aligning these two Tax Law provisions provides a more consistent and powerful mechanism for Tax Enforcement agents to effectively control cigarette tax evasion.

Additionally, to further control cigarette tax evasion, this bill would align the penalties for counterfeit tax stamps to the penalties for criminal possession of a forged instrument. Under Tax Law § 1814(g), the possession or sale of counterfeit tax stamps, or a device necessary to manufacture counterfeit tax stamps is a class E felony. However, under Penal Law § 170.30, criminal possession of a forged instrument in the first degree, a materially similar crime, is a class C felony. This proposal would increase the felony charge in Tax Law § 1814(g) from a class E felony to a class C felony to mirror the penalties in Penal Law § 170.30.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$1 million annually, beginning in FY 2018.

Effective Date:

This bill would take effect immediately and apply to offenses committed on and after such effective date.

## **Part HH - Expand jeopardy assessments to the cigarette and tobacco tax**

### Purpose:

This bill would authorize the Department of Taxation and Finance to issue jeopardy assessments for the collection of the cigarette and tobacco excise tax.

### Summary of Provisions and Statement in Support:

Where collection of the excise tax on cigarettes and tobacco products would be jeopardized by delay, this bill would provide that tax may be assessed prior to the filing of a return and prior to the deadline to file a return. The assessment would become due and payable immediately upon notice to the taxpayer. The taxpayer would be able to stay collection efforts by filing a bond with the Tax Commissioner to ensure the payment of tax, interest, and penalties. Seized property would be sold once the assessment is finalized, or earlier if the taxpayer fails to attend a hearing, the taxpayer consents to the sale, or where the property is perishable or the expenses of conservation and maintenance would greatly reduce its value.

Currently, there is no provision for jeopardy assessments to assist in the collection of the excise tax on cigarettes and tobacco products. This bill is modeled after Tax Law § 288-a (excise tax on gasoline and similar motor fuel) and Tax Law § 1138 (sales tax), which authorize jeopardy assessments for similar collection efforts of other taxes. The authorization of jeopardy assessments would provide a helpful tool for use in the prevention of evasion of the cigarette and tobacco products excise tax.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$2 million annually, beginning in FY 2018.

### Effective Date:

This bill would take effect immediately.

## **Part II - Reform the taxation of cigars**

### Purpose:

This bill would reform the cigar tax imposed by Article 20 of the Tax Law to remedy compliance and enforcement issues. It would change the method of taxation on cigars from a percentage of the wholesaler's price to a tax equal to 45 cents per cigar.

### Summary of Provisions and Statement in Support:

This bill would reform the cigar tax to remedy compliance and enforcement issues that have arisen because of changes in the business practices of the cigar industry.

Under current law, cigars are taxed at 75% of the wholesale price paid to the manufacturer by a licensed distributor (who is liable for the tax). However, if the manufacturer's invoice is not available, the wholesale price is deemed to be 38% of the price paid by the distributor, unless the distributor can prove a lower price. Significant resources have been expended auditing distributors and litigating challenges to determine the appropriate wholesale price. Additionally, this has created uncertainty, disparate results among taxpayers, and significant revenue losses.

This bill would change the method of taxation on cigars from a percentage of the wholesale price to a tax of 45 cents per cigar. The imposition of a tax equal to 45 cents per cigar simplifies the tax calculation for distributors and eliminates a significant audit issue. The bill would make clear what taxes are due on cigars by eliminating the wholesale price as a basis of the tax.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$12 million in FY 2018 and \$23 million annually thereafter.

### Effective Date:

This bill would take effect on September 1, 2017.

## **Part JJ – Impose the real estate transfer tax on the transfer of a real estate business interest**

### Purpose:

This bill would impose the real estate transfer tax on the transfer of a minority interest in an entity that owns real property.

### Summary of Provisions and Statement in Support:

Section 1 of the bill would amend Tax Law § 1401(e) to expand the definition of "conveyance" to subject the following transfers of interest to the real estate transfer tax (RETT): transfer of an interest in a partnership, limited liability corporation, S corporation, or non-publicly traded C corporation with fewer than one hundred shareholders that owns an interest in real property that is located in New York and has a fair market value that equals or exceeds 50% of all the assets of the entity on the date of the transfer of an interest in the entity. Only those assets that the entity owned for at



least two years, before the date of the transfer of the taxpayer's interest in the entity, would be used in determining the fair market value of all the assets of the entity on the date of the transfer.

Section 2 of the bill would amend Tax Law § 1401(d) to provide that the consideration for such a conveyance would be calculated by multiplying (1) the fair market value of the real property that is located in New York that is owned by the entity; and (2) the percentage of the entity that is conveyed.

This bill would level the playing field between those persons owning real property interests as tenants-in-common and those persons owning interests in closely held entities that own real property. In many cases, a closely held entity, such as an LLC, is formed to hold real property to protect the owners from potential liabilities. Since the entities are closely held and the primary asset owned by the entity is the interest in real property, owners essentially have a direct ownership interest in real property similar to tenants-in-common.

However, unlike the transfer of any tenant-in-common interest, which is subject to RETT, the conveyance of less than a controlling interest in a closely held entity is not currently taxed. This bill would fix that disparity by aligning the treatment of these conveyances for purposes of RETT, with the personal income tax rules for determining the New York source income of a nonresident individual when that nonresident individual sells an interest in an entity that owns real property in New York.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$4 million in FY 2018 and \$5 million annually thereafter.

#### Effective Date:

This bill would take effect immediately and apply to transfers occurring on and after the effective date.

### **Part KK – Close the real estate transfer tax loophole**

#### Purpose:

This bill would authorize the Commissioner of the Department of Taxation and Finance to treat as a conveyance, subject to the additional real estate transfer tax, a conveyance structured in a manner intended to avoid or evade the tax.

### Summary of Provisions and Statement in Support:

Tax Law § 1402-a imposes an additional real estate transfer tax of 1% of the consideration attributable to residential real property on the conveyance of the residential real property where the consideration for the transfer is \$1 million or more. For purposes of this tax, residential real property includes any premises that is, or may be used as, a personal residence at the time of transfer and includes a one-, two-, or three-family house, an individual condominium unit, or a cooperative apartment unit.

The Department has recently seen an increase in transactions that appear to be structured in a manner intended to avoid the additional tax imposed by Tax Law § 1402-a. For example, taxpayers contracting with a real estate developer for construction of a new residential building have entered into separate contracts for the land and the construction and then claimed that land conveyance was not subject to Tax Law § 1402-a because it was vacant when it was conveyed. This bill would authorize the Commissioner to examine the actual transactions and treat any conveyance of an interest in real property made pursuant to an agreement, understanding or arrangement between the grantor and the grantee structured in a manner to avoid or evade the tax as subject to the additional real estate transfer tax.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by \$2 million annually, beginning in FY 2018.

### Effective Date:

This bill would take effect immediately.

### **Part LL – Relieve the General Fund of responsibility for funding equine drug testing in horse racing, require horsepersons to contribute to drug testing research and equipment, and broaden the field of potential New York lab testing providers**

### Purpose:

The change would relieve the State's General Fund of the responsibility for funding equine drug testing in horse racing, by returning the responsibility for such funding to those that actually participate in horse racing; similar to the funding mechanism that existed for more than 50 years, until 1986. This bill would also strengthen support of equine research and testing from Thoroughbred horsepersons, and allow the Gaming Commission to procure qualified New York equine testing labs through a competitive process.

### Summary of Provisions and Statement in Support:

Current law makes the State's General Fund responsible for funding equine drug testing in horse racing, which amounted to \$4.5 million in FY 2017. Such testing is necessary to ensure the integrity of racing results, and protect the wagering public. From 1935 to 1986, the cost of equine drug testing was borne by the participants in horse racing (and from 1979 to 1986, in part by off-track betting corporations). The State assumed those costs in 1986 as an accommodation to the tracks. The tracks now benefit from video lottery gaming subsidies, which the tracks and horsepersons can use to resume their historical responsibility for drug testing costs.

Current law also requires the Gaming Commission to use a "state college within the state with an approved equine science program" for all equine testing; under this restriction, Morrisville College is currently the only qualified provider. Removing the restrictive language would ensure that equine testing in New York is conducted at the highest level of quality, at the most competitive rates, and in a timely manner.

Section 1 would amend Racing, Pari-Mutuel Wagering and Breeding Law section 902 to allow the Gaming Commission to assess horsepersons, racetracks, or both to cover the costs of equine drug testing. The section would also broaden the potential equine drug testing laboratories that the Gaming Commission could use in support of equine drug testing programs. Technical changes are also made to update references to the Gaming Commission and harmonize style.

Section 2 amends Racing, Pari-Mutuel Wagering and Breeding Law section 228(2) to strengthen support of equine drug research and testing from Thoroughbred horsepersons and remove reference to a particular drug testing laboratory. Technical changes are made to update references to the Gaming Commission and harmonize style.

Section 3 provides an effective date.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would transfer costs for necessary equine drug testing from the General Fund to the regulated parties and ensure equine testing at the most competitive rates. The bill is expected to result in \$4.5 million in annual savings to the State's General Fund.

### Effective Date:

This bill would take effect immediately.

## **Part MM - Charitable gaming reform**

### Purpose:

This bill would consolidate the laws governing charitable gaming into the same chapter as other laws the Gaming Commission is charged with enforcing; and it would also modernize how charitable gaming is regulated to allow more flexibility to organizations who conduct gaming activities to support their charitable purposes.

### Summary of Provisions and Statement in Support:

This bill would repeal the charitable gaming provisions currently in Executive Law and two articles of the General Municipal Law, in order to allow its consolidation into a new Article 15 of the Racing, Pari-Mutuel Wagering and Breeding Law, where other laws the Gaming Commission is charged with enforcing are codified.

This bill would add new sections to require the Gaming Commission, to the greatest extent practicable, to:

- Consolidate definitions, several of which are duplicative in current law, to reflect more flexibility for authorized organizations;
- Make charitable gaming forms and applications available in electronic formats that minimize paperwork and are designed to maximize efficiency for authorized organizations, municipalities, and the Gaming Commission;
- Consolidate charitable game age restrictions and revise the minimum age to play bingo to 18 years of age (to be consistent with the minimum age in other forms of legalized gaming activity in the State);
- Consolidate regulation of charitable gaming on Sundays and broaden the ability of authorized organizations to conduct charitable gaming;
- Consolidate regulation of charitable gaming advertising and broaden the ability of authorized organizations to advertise (signage off premises and through the internet);
- Provide flexibility to charitable gaming enforcement by allowing for letters of reprimand and fines;
- Relax restrictions on where charitable games of chance and bingo may be conducted;
- Enhance authorized organizations' revenue efforts by allowing for the use of checks and credit and debit cards in games of chance;
- Reduce the number of years that a charitable organization must be in existence from three to one, to match the current requirement in order to conduct bingo, thus allowing authorized organizations to seek to sell bell jar tickets at bingo;
- Increase prize limitations as follows: a single bell jar prize maximum would increase from \$500 to \$1,000 and the maximum for a series of aggregate prizes would increase from \$3,000 to \$6,000, while the single game of bingo prize maximum would increase from \$1,000 to \$5,000 and the allowable aggregate prizes in a bingo occasion would increase from 3,000 to \$15,000;

- Reduce the number of raffle categories from three to two, simplifying compliance for charitable organizations;
- Ease the ability of a charitable organization to conduct a raffle outside the organization's domicile by simplifying the approval process for the organization;
- Broaden the number of persons available to conduct or assist in the conduct of charitable gaming by removing several automatic bars to participation based on criminal conduct;
- Remove hours restrictions for charitable games other than bell jar and raffles, providing more flexibility to charitable organizations to conduct gaming (the lack of restrictions on the times in which bell jar and raffles are conducted would be maintained from current law);
- Remove the bar on offering alcoholic beverages as prizes in charitable gaming, allowing organizations to offer as prizes gift baskets that contain such beverages; and
- Consolidate charitable gaming severability provisions.

Various fee-setting provisions would also be transferred from statute to Gaming Commission regulation to allow for flexibility to adjust as circumstances warrant. The bill would also make technical amendments to make style consistent throughout the chapter.

Finally, this bill would amend the Racing, Pari-Mutuel Wagering Law, the Social Services Law and the Tax Law to conform references to the recodification of charitable gaming laws into a new article of the Racing, Pari-Mutuel Wagering and Breeding Law.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would enable authorized organizations to enhance revenue to support their charitable purposes, which would generate increased fee revenue for municipalities.

#### Effective Date:

The bill would take effect 90 days after enactment, to allow the Gaming Commission opportunity to amend rules and regulations to conform to the law.

### **Part NN - Re-privatize the New York Racing Association**

#### Purpose:

This bill would re-privatize the New York Racing Association (NYRA) with important oversight and safeguard measures and under certain circumstances allow NYRA nighttime racing and reduce winter racing days at Aqueduct Racetrack.

Summary of Provisions and Statement in Support:

Section 1 of the bill would amend section 207 of the Racing and Gaming Law to re-establish a privately controlled board of directors for NYRA.

Section 2 of the bill would amend section 212 of the Racing and Gaming Law to increase oversight of NYRA by providing enhanced powers for the Franchise Oversight Board.

Section 3 of the bill would amend section 203 of the Racing and Gaming Law to allow, under certain limited circumstances, NYRA to conduct racing after sunset.

Section 4 of the bill would amend section 238 of the Racing and Gaming Law to allow, under certain limited circumstances, NYRA to conduct reduced racing during the winter meet at Aqueduct Racetrack.

Section 5 of the bill would provide an effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2018 Executive Budget because it would preserve All Funds receipts that would otherwise be at risk.

Effective Date:

The bill would take effect April 1, 2017.

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

Purpose:

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

Summary of Provisions and Statement in Support:

Section 1 would amend Racing Law § 1003(a) to extend, for one year, the June 30, 2017 expiration date for in-home simulcasting.

Section 2 would amend Racing Law § 1007(3)(d) to extend, for one year, the current percentage of total pools allocated to purses that a track located in Westchester County receives from a franchised corporation, which currently is scheduled to expire on June 30, 2017.

Section 3 would amend the opening paragraph of Racing Law § 1014(1), to extend, for one year, 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, 2017.

Section 4 would amend Racing Law § 1015(1) to extend, for one year, the provisions governing the simulcasting of races conducted at out-of-state harness tracks, which currently are scheduled to expire on June 30, 2017.

Section 5 would amend the opening paragraph of Racing Law §1016(1), to extend, for one year, 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, 2017.

Section 6 would amend the opening paragraph of Racing Law §1018 to extend, for one year, the current distribution of revenue from out-of-state simulcasting during the Saratoga meet, which expired on September 8, 2016.

Section 7 would amend § 32 of chapter 281 of the Laws of 1994 to extend, for one year, the current amount of off-track betting wagers on New York Racing Association, Inc. (NYRA) pools dedicated to purse enhancement, which currently expires on June 30, 2017.

Section 8 would amend § 54 of chapter 346 of the Laws of 1990 to extend, for one year, binding arbitration for disagreements. These provisions currently expire on June 30, 2017.

Section 9 would amend Racing Law § 238(1)(a) to extend, for one year, the current distribution of revenue from on-track wagering on NYRA races, which currently is scheduled to expire on December 31, 2017.

Extending these provisions would maintain the pari-mutuel betting and simulcasting structure that is currently in place in New York State. The provisions extended by sections one through six of this bill were first enacted in 1994 and section seven was enacted in 1990. These provisions were extended numerous times since their original enactment, most recently in 2016.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2018 Executive Budget because it maintains the current pari-mutuel betting structure in New York State.

#### Effective Date:

This bill would take effect immediately.

## **Part PP – Extend Monticello Video Lottery Terminal rates for one year**

### Purpose:

This bill would extend, for one year, the current distribution of video lottery gaming revenue at Monticello Casino & Raceway.

### Summary of Provisions and Statement in Support:

This bill would extend, for one year, the current commission rate paid to Monticello as a video lottery agent. In 2008, Monticello was given a higher commission rate for a five-year period in exchange for opting out of participating in the vendor's capital award program. Thus, the five-year rate sunset was applied to coincide with the five-year period that other facilities were provided for approval of capital expenditures eligible for reimbursement through the program.

The capital award program was extended for a ninth year (to 2017) by chapter 60 of the Laws of 2016 and is proposed to be extended to 2018 by the 2018 Executive Budget. Since the expiration of Monticello's rate would result in a loss of the enhanced commission, but would not provide for participation in the capital award program, this bill would extend Monticello's rate for an additional year to maintain the original framework of Monticello's rate structure and keep its duration consistent with the capital award program.

Section 1 of the bill amends Section 1612(b)(1)(ii)(F) of the Tax Law to extend, from nine to ten years, the forty-one percent vendor fee paid to a vendor track located in Sullivan County and within sixty miles from any gaming facility in a contiguous state.

Section 2 of the bill provides for an immediate effective date that shall be deemed in effect on and after April 1, 2017.

### Budget Implications:

Enactment of this bill is necessary to implement the 2018 Executive Budget because it would decrease All Funds revenue by \$2 million in 2018.

### Effective Date:

This bill would take effect on April 1, 2017.

## **Part QQ - Extend the Video Lottery Gaming (VLG) 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 amends Tax Law §1612(b)(1)(ii)(h) to extend, by one year until April 1, 2018, the deadline to receive approval for capital projects to be reimbursed through the VLG vendor's capital award. The bill also extends by one year, until April 1, 2020, the deadline to complete these projects. For certain vendor tracks located west of State Route 14, these deadlines are extended to April 1, 2022 for approvals and to April 1, 2024 for completion.

Section 2 provides for an immediate effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2018 Executive Budget because it maintains the current VLG revenue stream.

Effective Date:

This bill would take effect immediately.

**Part RR - Alter local gaming aid distribution**

Purpose:

This bill would provide for a redistribution of available aid associated with hosting a gaming facility to provide aid to a county that hosts a tribal casino, but does not receive a percent of the State share of revenue from that casino.

Summary of Provisions and Statement in Support:

Section 1 of the bill would amend section 97-nnnn of the State Finance Law to reduce funds available for distribution to non-host counties in regions hosting a commercial gaming facility by \$1.4 million in FY 2018 and \$1.55 million in FY 2019 and FY 2020. Section 2 of the bill would amend section 99-h of the State Finance Law to provide a county that hosts a tribal casino but does not receive a percent of the state share of revenue from that casino with an annual distribution of \$2.25 million.

Section 3 of the bill would amend section 99-h of the State Finance Law to reduce funds available for distribution to non-host counties in regions hosting a tribal casino by \$600,000 in FY 2018 and \$500,000 in FY 2019 and FY 2020.

Section 4 of the bill would amend section 54-L of the State Finance Law to reduce the State aid payment to eligible municipalities hosting a VLT facility by \$250,000 in FY 2018 and \$200,000 in FY 2019 and FY 2020.

Section 5 of the bill provides an effective date.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would provide an equitable distribution of State gaming aid.

Effective Date:

The bill would take effect April 1, 2017 and shall expire and be deemed repealed on March 31, 2020, to allow for a reevaluation of gaming activity within the State.

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.