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

AN ACT to amend the tax law and the state finance law, in
relation to the imposition of an employer compensation
expense tax (Part );

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

PART __

Section 1. The tax law is amended by adding a new article 24 to read
as follows:

ARTICLE 24

EMPLOYER COMPENSATION EXPENSE TAX

Section 850. Definitions.

851. Employer election.
852. Imposition and rate of tax.
853. Pass through of tax.
854. Payment of tax.
855. Employee credit.
856. Deposit and disposition of revenue.
857. Procedural provisions.

§ 850. Definitions. For purposes of this article:
(a) Employer. Employer means an employer that is required by section
six hundred seventy-one of this chapter to deduct and withhold tax from
wages.
(b) Electing employer. Electing employer is an employer that has made the election provided for in section eight hundred fifty-one of this article.

(c) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(d) Covered employee. Covered employee means an employee of an electing employer who is required to have amounts withheld under section six hundred seventy-one of this chapter and receives annual wages and compensation from his or her employer of more than forty thousand dollars annually.

§ 851. Employer election. (a) Any employer who employs covered employees in the state shall be allowed to make an election to be taxed under this article.

(b) In order to be effective, the election must be made by (1) unanimous consent of all owners of the employer at the time the election is made if the employer is not a corporation; or (2) if the employer is a for-profit or not-for-profit corporation, by any officer or manager of the employer who is authorized under the law of the state where the corporation is incorporated or under the employer's organizational documents to make the election and who represents to having such authorization under penalty of perjury; or (3) if the employer is a trust, by the unanimous consent of all trustees; or (4) if the employer is a governmental entity, by the chief executive officer of such governmental entity.

(c) The election must be made by October first of a calendar year and will take effect for the immediately succeeding calendar year. If an
election is made after October first of a calendar year, it will first take effect in the second succeeding calendar year.

§ 852. Imposition and rate of tax. A tax is hereby imposed on the payroll expense paid by electing employers to covered employees. For two thousand nineteen, the tax shall be equal to one and one-half percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. For two thousand twenty, the tax shall be equal to three percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. For two thousand twenty-one and thereafter, the tax shall be equal to five percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. An electing employer shall only be subject to the tax imposed under this article on the payroll expense paid to any covered employee during the calendar year in excess of forty thousand dollars.

§ 853. Pass through of tax. An employer cannot deduct from the wages or compensation of an employee any amount that represents all or any portion of the tax imposed on the employer under this article.

§ 854. Payment of tax. (a) Employers with payroll expense. The tax imposed on the payroll expense of electing employers under section eight hundred fifty-two of this article must be paid at the same time the electing employer is required to remit payments under section six hundred seventy-four of this chapter; provided however, that electing employers subject to the provisions in section nine of this chapter must pay the tax on the payroll expense at the same time as the withholding tax remitted under the electronic payment reporting system and the electronic funds transfer system authorized by section nine of this chapter.
(b) Responsible person liability. Any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, any trustee of a trust, or any employee of an individual proprietorship, any partner of a partnership or any member of a limited liability company, who as such officer, director, employee, manager, partner or member is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, shall be jointly and severally liable with the electing employer for any tax, penalty or interest owed under this article.

§ 855. Employee credit. A covered employee shall be allowed a credit against the tax imposed under article twenty-two of this chapter, computed pursuant to the provisions of subsection (aaaa) of section six hundred six of this chapter.

§ 856. Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 857. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due under this article.
(b) Notwithstanding the provisions of section six hundred ninety-seven of this chapter, if the commissioner determines that a person is liable for any tax, penalty or interest under this article pursuant to subsection (b) of section eight hundred fifty-four of this article, upon request in writing of such person, the commissioner shall disclose in writing to such person (1) the name of any other person the commissioner has determined to be liable for such tax, penalty or interest under this article for the electing employer, and (2) whether the commissioner has attempted to collect such tax, penalty or interest from such other person or electing employer, the general nature of such collection activities, and the amount collected.

(c) Notwithstanding any other law to the contrary, the commissioner may require that all filings of forms or returns under this article must be filed electronically and all payments of tax must be paid electronically. The commissioner may prescribe the methods for quarterly filings by electing employers, including but not limited to, the inclusion of specific employee-level detail.

§ 2. Section 606 of the tax law is amended by adding a new subsection (aaaa) to read as follows:

(aaaa) Article twenty-four employee credit. A covered employee of an electing employer shall be entitled to a credit against the tax imposed by this article as provided in this subsection. For purposes of this subsection the terms "covered employee" and "electing employer" shall have the same meanings as under section eight hundred fifty of this chapter. (1) For two thousand nineteen, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the covered employer that are subject to tax under this article and (ii) one
and one-half percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. (2) For two thousand twenty, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the covered employer that are subject to tax under this article and (ii) three percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. (3) For two thousand twenty-one and thereafter, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the covered employer that are subject to tax under this article and (ii) five percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. If the amount of the credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess allowed for a taxable year may be carried over to the following
1 year or years and may be deducted from the taxpayer's tax for such year or years.

§ 3. Subdivision 1 of section 171-a of the tax law, as amended by section 15 of part AAA of chapter 59 of the laws of 2017, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-one, twenty-two, twenty-four, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount
the comptroller shall pay any refunds or reimbursements to which taxpay-
ers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thir-
ty, thirty-A, thirty-B or thirty-three of this chapter, and any interest
thereon, which is certified to the comptroller by the commissioner as
the amount to be credited against a past-due legally enforceable debt
owed to a state agency pursuant to paragraph (a) of subdivision six of
section one hundred seventy-one-f of this article, provided, however, he
shall credit to the special offset fiduciary account, pursuant to
section ninety-one-c of the state finance law, any such amount credita-
ble as a liability as set forth in paragraph (b) of subdivision six of
section one hundred seventy-one-f of this article, (iv) and except
further that the comptroller shall pay to the city of New York that
amount of overpayment of tax imposed by article nine, nine-A, twenty-
two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any
interest thereon that is certified to the comptroller by the commission-
er as the amount to be credited against city of New York tax warrant
judgment debt pursuant to section one hundred seventy-one-l of this
article, (v) and except further that the comptroller shall pay to a
non-obligated spouse that amount of overpayment of tax imposed by arti-
cle twenty-two of this chapter and the interest on such amount which has
been credited pursuant to section one hundred seventy-one-c, one hundred
seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or
one hundred seventy-one-l of this article and which is certified to the
comptroller by the commissioner as the amount due such non-obligated
spouse pursuant to paragraph six of subsection (b) of section six
hundred fifty-one of this chapter; and (vi) the comptroller shall deduct
a like amount which the comptroller shall pay into the treasury to the
credit of the general fund from amounts subsequently payable to the
department of social services, the state university of New York, the
city university of New York, or the higher education services corpo-
ration, or the revenue arrearage account or special offset fiduciary
account pursuant to section ninety-one-a or ninety-one-c of the state
finance law, as the case may be, whichever had been credited the amount
originally withheld from such overpayment, and (vii) with respect to
amounts originally withheld from such overpayment pursuant to section
one hundred seventy-one-l of this article and paid to the city of New
York, the comptroller shall collect a like amount from the city of New
York.

§ 4. Subdivision 1 of section 171-a of the tax law, as amended by
section 16 of part AAA of chapter 59 of the laws of 2017, is amended to
read as follows:

1. All taxes, interest, penalties and fees collected or received by
the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two-a thereof and except as
otherwise provided in section two hundred five thereof), nine-A,
twelve-A (except as otherwise provided in section two hundred eighty-
four-d thereof), thirteen, thirteen-A (except as otherwise provided in
section three hundred twelve thereof), eighteen, nineteen, twenty
(except as otherwise provided in section four hundred eighty-two there-
of), twenty-one, twenty-two, twenty-four, twenty-six, twenty-eight
(except as otherwise provided in section eleven hundred two or eleven
hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one
(except as otherwise provided in section fourteen hundred twenty-one
thereof), thirty-three and thirty-three-A of this chapter shall be
deposited daily in one account with such responsible banks, banking
houses or trust companies as may be designated by the comptroller, to
the credit of the comptroller. Such an account may be established in one
or more of such depositories. Such deposits shall be kept separate and
apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or
city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated
spouse pursuant to paragraph six of subsection (b) of section six
hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 5. Subdivisions 2, 3 and paragraph (a) of subdivision 5 of section 92-z of the state finance law, subdivision 2 as amended by section 30 of part T of chapter 57 of the laws of 2007, and subdivision 3 and paragraph (a) of subdivision 5 as added by section 1 of part I of chapter 383 of the laws of 2001, are amended to read as follows:

2. Such fund shall consist of [twenty-five] (a) fifty percent of receipts from the imposition of personal income taxes pursuant to article twenty-two of the tax law, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds, and (b) fifty percent of receipts from the imposition of employer compensation expense taxes pursuant to article twenty-four of the tax law, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds.
3. (a) Beginning on the first day of each month, the comptroller shall deposit all of the receipts collected pursuant to section six hundred seventy-one of the tax law in the revenue bond tax fund until the amount of monthly receipts anticipated to be deposited pursuant to the certificate required in paragraph (b) of subdivision five of this section are met. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in paragraph (a) of subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the revenue bond tax fund.

(b) Beginning on the first day of each month, the comptroller shall deposit all of the receipts collected pursuant to section eight hundred fifty-four of the tax law in the revenue bond tax fund until the amount of monthly receipts anticipated to be deposited pursuant to the certificate required in paragraph (b) of subdivision five of this section are met. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in paragraph (b) of subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the revenue bond tax fund.

(a) The state comptroller shall from time to time, but in no event later than the fifteenth day of each month (other than the last month of
the fiscal year) and no later than the thirty-first day of the last month of each fiscal year, pay over and distribute to the credit of the general fund of the state treasury all moneys in the revenue bond tax fund, if any, in excess of the aggregate amount required to be set aside for the payment of cash requirements pursuant to paragraph (b) of this subdivision, provided that an appropriation has been made to pay all amounts specified in any certificate or certificates delivered by the director of the budget pursuant to paragraph (b) of this subdivision as being required by each authorized issuer as such term is defined in section sixty-eight-a of this chapter for the payment of cash requirements of such issuers for such fiscal year. Subject to the rights of holders of debt of the state, in no event shall the state comptroller pay over and distribute any moneys on deposit in the revenue bond tax fund to any person other than an authorized issuer pursuant to such certificate or certificates (i) unless and until the aggregate of all cash requirements certified to the state comptroller as required by such authorized issuers to be set aside pursuant to paragraph (b) of this subdivision for such fiscal year shall have been appropriated to such authorized issuers in accordance with the schedule specified in the certificate or certificates filed by the director of the budget or (ii) if, after having been so certified and appropriated, any payment required to be made pursuant to paragraph (b) of this subdivision has not been made to the authorized issuers which was required to have been made pursuant to such certificate or certificates; provided, however, that no person, including such authorized issuers or the holders of revenue bonds, shall have any lien on moneys on deposit in the revenue bond tax fund. Any agreement entered into pursuant to section sixty-eight-c of this chapter related to any payment authorized by this
section shall be executory only to the extent of such revenues available
to the state in such fund. Notwithstanding subdivisions two and three of
this section, in the event the aggregate of all cash requirements certi-
fied to the state comptroller as required by such authorized issuers to
be set aside pursuant to paragraph (b) of this subdivision for the
fiscal year beginning on April first shall not have been appropriated to
such authorized issuers in accordance with the schedule specified in the
certificate or certificates filed by the director of the budget or, (ii)
if, having been so certified and appropriated, any payment required to
be made pursuant to paragraph (b) of this subdivision has not been made
pursuant to such certificate or certificates, all receipts collected
pursuant to section six hundred seventy-one of the tax law and section
eight hundred fifty-four of the tax law shall be deposited in the reven-
ue bond tax fund until the greater of [twenty-five] forty percent of the
aggregate of the receipts from the imposition of (A) the personal income
tax imposed by article twenty-two of the tax law and (B) the employer
compensation expense tax imposed by article twenty-four of the tax law
for the fiscal year beginning on April first and as specified in the
certificate or certificates filed by the director of the budget pursuant
to this paragraph or [six] a total of twelve billion dollars has been
deposited in the revenue bond tax fund. Notwithstanding any other
provision of law, if the state has appropriated and paid to the author-
ized issuers the amounts necessary for the authorized issuers to meet
their requirements for the current fiscal year pursuant to the certif-
icate or certificates submitted by the director of the budget pursuant
to paragraph (b) of this section, the state comptroller shall, on the
last day of each fiscal year, pay to the general fund of the state all
sums remaining in the revenue bond tax fund on such date except such
amounts as the director of the budget may certify are needed to meet the
cash requirements of authorized issuers during the subsequent fiscal
year.

§ 6. Subdivision 5 of section 68-c of the state finance law, as added
by section 2 of part I of chapter 383 of the laws of 2001, is amended to
read as follows:

5. Nothing contained in this article shall be deemed to restrict the
right of the state to amend, repeal, modify or otherwise alter statutes
imposing or relating to the taxes imposed pursuant to article twenty-two
and article twenty-four of the tax law. The authorized issuers shall not
include within any resolution, contract or agreement with holders of the
revenue bonds issued under this article any provision which provides
that a default occurs as a result of the state exercising its right to
amend, repeal, modify or otherwise alter the taxes imposed pursuant to
article twenty-two and article twenty-four of the tax law.

§ 7. This act shall take effect immediately; provided, however, that
the amendments to subdivision 1 of section 171-a of the tax law made by
section three of this act shall not affect the expiration of such subdi-
vision and shall expire therewith, when upon such date the provisions of
section four of this act shall take effect.