These proposed revisions to Part 9 replace the previously posted draft dated December 2019. In addition to minor corrections and clarifications and changes for consistency with other proposed regulations, this draft makes the following change: in section 9-1.3, adds to the list of activities deemed insufficient to subject a corporation to the tax surcharge activities that are typically engaged in by banking corporations, to reflect that corporations previously subject to tax under Article 32 are now subject to tax under Article 9-A. The Department welcomes comments on these proposed changes.

Section 1. Part 9 of Subchapter A of Title 20 of the Codes, Rules and Regulations of the State of New York is repealed and a new part 9, entitled Metropolitan Transportation Business Tax Surcharge, is added to read as follows.

Part 9

Metropolitan Transportation Business Tax Surcharge

Subpart 9 – 1 General

Subpart 9 – 2 MCTD Apportionment Percentage

Subpart 9 – 3 Property Factor of MCTD Apportionment Percentage

Subpart 9 – 4 Receipts Factor of MCTD Apportionment Percentage

Subpart 9 – 5 Payroll Factor of MCTD Apportionment Percentage

Subpart 9 – 6 Other Rules

Subpart 9-1 General

Section 9-1.1. Definitions.

(a) The term “Metropolitan Commuter Transportation District” (abbreviated in this Part as MCTD) is defined in Public Authorities Law section 1262 and includes the City of New York
(New York, Bronx, Kings, Queens and Richmond Counties) and the Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

(b)(1) The term “surcharge taxpayer” means every corporation other than a New York S corporation, as defined in section 208(1-A), that is exercising its corporate franchise or doing business, employing capital, owning or leasing property in a corporate or organized capacity, maintaining an office or deriving receipts from activity in the MCTD.

(2) In the case of a combined group that has at least one corporation included in the combined report that is itself exercising its corporate franchise or doing business, employing capital, owning or leasing property in a corporate or organized capacity, maintaining an office or deriving receipts from activity in the MCTD:

(i) The term “surcharge taxpayer” means every such corporation.

(ii) Where the surcharge taxpayer is either permitted or required by a provision of this Part to take some action, such action shall be taken by the combined group’s designated agent.

(iii) For purposes of determining the MCTD apportionment percentage, pursuant to Subpart 9-2 of this Part, and of computing the property, business receipts, and payroll factors, pursuant to Subparts 9-3, 9-4, and 9-5 of this Part, respectively, the term “surcharge taxpayer” shall include each corporation properly includable in the combined report.

(c) The term “surcharge base” means the tax computed pursuant to the rules for section 210(1), before the deduction of any credits allowed. In the case of a combined report, the term “surcharge base” means the tax due on the combined report and also includes the amount of fixed dollar minimum tax for each member of the combined group that is itself exercising its corporate franchise or doing business, employing capital, owning or leasing property in a
corporate or organized capacity, maintaining an office or deriving receipts from activity in the MCTD.

(d) The terms “doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office in the MCTD” have the same meaning as in subdivisions (b) through (e) of section 1-3.2 of this Subchapter, except that the definitions of such terms shall be adapted to this Part. For example: “tax surcharge” shall be substituted for “tax”; “surcharge taxpayer” shall be substituted for “taxpayer”; “the MCTD” shall be substituted for “New York State” and “the state”; and “any corporation” shall be substituted for “foreign corporation.”

(e) The term “deriving receipts from activity” has the same meaning as in subdivision (f) of section 1-3.2 of this Subchapter, except that the definition of such term shall be adapted to this Part. For example: “tax surcharge” shall be substituted for “tax”; “the MCTD” shall be substituted for “New York State” and “the state”; “MCTD receipts” shall be substituted for “New York receipts”; and “any corporation” shall be substituted for “foreign corporation.” If a surcharge taxpayer elects to use the fixed percentage method to apportion receipts from qualified financial instruments to the State pursuant to section 210-A(5)(a)(1) and section 4-2.4(c) of this Subchapter, and further described in section 9-4.1(d) of this Part, then 90 percent of the eight percent specified pursuant to such election shall be used to determine whether the taxpayer is deriving receipts from activity in the MCTD. In addition, the same adjustments by the Commissioner to the receipts thresholds apply, based on an annual year-end review of the Consumer Price Index by the Commissioner, pursuant to section 1-3.2(f)(5) of this Subchapter, except that the authority to make such adjustments to the MCTD receipts thresholds is found in section 209-B(1)(e).
Section 9-1.2. Imposition of the tax surcharge. [Tax Law, Section 209-B]

(a) In addition to the tax imposed by section 209, a tax surcharge is imposed on every surcharge taxpayer for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the MCTD.

(b) The tax surcharge is imposed on the surcharge base that is apportioned to the MCTD based on the surcharge taxpayer’s business activity carried on within the MCTD.

(c) The tax surcharge will not be allowed as a deduction in the computation of any tax imposed under the Tax Law; and the credits otherwise allowable under Article 9-A will not be allowed against the tax surcharge.

(d) Every surcharge taxpayer that continues to do business, employ capital, own or lease property in a corporate or organized capacity, or derive receipts from activity in the MCTD after it has been dissolved by the filing of a certificate of dissolution, by proclamation or otherwise, or after it surrenders its authority to do business is subject to the tax surcharge.

(e) Every surcharge taxpayer that is a foreign corporation subject to tax under section 1-3.2 of this Subchapter and is engaged within the MCTD in any one or more of the activities described in subdivision (a) of this section is subject to the tax surcharge regardless of whether it is authorized to do business in New York State.

(f)(1) A corporation engaged within the MCTD in any of the activities described in subdivision (a) of this section is subject to the tax surcharge:

(i) for any taxable year or part of a taxable year during which it engages in any of the activities described in subdivision (a) of this section; and
(ii) for any subsequent taxable year during which it engages in any of the activities described in subdivision (a) of this section.

(2)(i) A corporation deriving receipts from activity in the MCTD is deemed to be deriving receipts for all of its taxable year or part of its taxable year from the date in such taxable year of its first receipt derived from activity in the MCTD.

(ii) A corporation doing business in the MCTD because it issues credit cards, as described in section 1-3.2(b)(3) of this Subchapter and adapted to this Part, is deemed to be doing business for all of its taxable year or part of its taxable year from the date in such taxable year on which it issues its first credit card in the MCTD.

(3)(i) A corporation deriving receipts from activity in the MCTD in its first taxable year, if also deriving receipts in the subsequent taxable year, is deemed to be deriving receipts from the beginning of the subsequent taxable year.

(ii) A corporation doing business in the MCTD because it issues credit cards, as described in section 1-3.2(b)(3) of this Subchapter and adapted to this Part, in its first taxable year, if also doing business in the subsequent taxable year, is deemed to be doing business from the beginning of the subsequent taxable year.

Section 9-1.3. Activities deemed insufficient to subject corporations to the tax surcharge. [Tax Law, Section 209-B(3)]

A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, maintaining an office or deriving receipts from activity within the MCTD because of:

(a) the maintenance of cash balances with banks or trust companies in the MCTD;

(b) the ownership of shares of stock or securities that are kept in the MCTD if:
(1) kept in a safe deposit box, safe, vault or other receptacle rented for such purpose;
(2) pledged as collateral security; or
(3) deposited into safekeeping or custody accounts with one or more banks, trust companies or brokers who are members of a recognized security exchange;
(c) the taking of any action by a bank, trust company or broker in the MCTD incidental to the rendering of safekeeping or custodian service to the corporation as described in subdivision (b)(3) of this section;
(d) the maintenance of an office in the MCTD by one or more officers or directors of the corporation who are not employees of the corporation, unless the corporation is otherwise doing business or employing capital in the MCTD or owns or leases property in the MCTD;
(e) the keeping of books or records of the corporation in the MCTD, unless such books or records are kept by employees of the corporation or if such corporation otherwise does business, employs capital, owns or leases property, or maintains an office in the MCTD;
(f) the acquisition of one or more security interests in real or tangible personal property located in the MCTD;
(g) the acquisition of title to property located in the MCTD through the foreclosure of a security interest;
(h) the holding of meetings of the board of directors in the MCTD, where such directors are not employees of the corporation and if the corporation is not otherwise doing business or employing capital in the MCTD and does not own or lease property in the MCTD; or
(i) any combination of the foregoing activities.

Subpart 9-2 MCTD Apportionment Percentage

Section 9-2.1. Apportionment of surcharge base to the MCTD.
(a) A surcharge taxpayer must apportion its surcharge base by multiplying such surcharge base by its MCTD apportionment percentage.

(b) The MCTD apportionment percentage is determined by a three-factor formula, as described in section 9-2.2 of this Subpart.

Section 9-2.2. Computation of the MCTD apportionment percentage.

(a) The surcharge taxpayer's MCTD apportionment percentage is computed using a formula consisting of three factors, expressed as percentages. The three factors are:

(1) real and tangible personal property that is located within the MCTD and all such property that is located in New York State, including real and tangible personal property that is rented to the surcharge taxpayer;

(2) business receipts from within the MCTD and all business receipts from New York State; and

(3) payroll within the MCTD and all payroll from New York State.

(b) The MCTD apportionment percentage is computed by adding together the surcharge taxpayer's real and tangible personal property factor, business receipts factor and payroll factor, and dividing by three. If a factor is missing, the other two factors will be added together and the total divided by two. If two factors are missing, the remaining factor is the MCTD apportionment percentage. A factor is missing only if both the numerator and the denominator are zero.

Subpart 9-3 Property Factor of MCTD Apportionment Percentage

Section 9-3.1. Computation of the property factor.

(a) The percentage of the surcharge taxpayer's real property and tangible personal property, whether owned by or rented to the surcharge taxpayer, that is within the MCTD is
determined by dividing the average value of such property within the MCTD (without deduction of any encumbrances) by the average value of all such property within New York State (without deduction of any encumbrances). For purposes of this section, the value of real property owned by the surcharge taxpayer and the value of tangible personal property owned by the surcharge taxpayer means the adjusted basis of such properties for Federal income tax purposes. The value of real and tangible personal property rented to the surcharge taxpayer is addressed in the provisions of section 9-3.3 of this Subpart.

(b) The term “real property” includes land, buildings, structures, and improvements thereon. In addition, it includes shares in a cooperative housing corporation, as defined in IRC section 216(b), in connection with the grant or transfer of a proprietary leasehold. Such shares in a cooperative housing corporation will be deemed to be owned within New York State if the property owned or leased by such corporation, as described in IRC section 216(b)(1)(B), is located in New York State, and such shares will be deemed to be owned within the MCTD if such property is located within the MCTD.

(c) The term “tangible personal property” means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise. It does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of any interest in property and evidences of debt.

(d)(1) The average value of real property owned by the surcharge taxpayer and tangible personal property owned by the surcharge taxpayer is determined in accordance with the provisions of section 3-2.4 of this Subchapter applicable to the valuation of assets included in business capital. The same method of valuation must be used consistently with respect to property located within the MCTD and all property located in New York State.
(2) For purposes of paragraphs (3) and (4) of subdivision (e) of this section, the average value of tangible personal property owned by the surcharge taxpayer that is in transit and is considered to be within the MCTD will be determined based on the value of such property during the time that it is in transit.

(e) For purposes of computation of the property factor, tangible personal property owned by the surcharge taxpayer:

(1) is considered to be within the MCTD for as long as it remains physically situated or located within the MCTD, even though it may be stored in a bonded warehouse;

(2) is considered to be situated or located within the MCTD if held within the MCTD by an agent or other such person or entity acting on behalf of the surcharge taxpayer, or by a consignee;

(3) that is in transit between locations of the surcharge taxpayer, is considered to be within the MCTD if its final destination is within the MCTD;

(4) that is in transit between a buyer and a seller, is considered to be within the MCTD if its final destination is within the MCTD and the property is included by the surcharge taxpayer in the denominator of its property factor in accordance with its regular accounting practices.

(f) For purposes of computation of the property factor, omnibuses and other rolling equipment such as construction equipment or trucks located within the MCTD and all such rolling equipment located in New York State must be apportioned to the MCTD by a fraction. Such fraction may be based on any of the following measures: miles operated within the MCTD compared to total miles operated in New York State; time operated within the MCTD compared to total time operated in New York State; the number of pickup and delivery locations within the MCTD compared to the total of such locations in New York State; or any other measure that
fairly apportions such operations to the MCTD. Operations within the MCTD are included in the numerator of the fraction, and 100 percent of operations in New York State are included in the denominator. Omnibus operations while engaged in school bus operations must be disregarded in determining the fraction.

Section 9-3.2. Election for fair market value.

(a) On or before the due date for filing its original report (determined with regard to extensions of time for filing) for its first taxable year beginning on or after January 1, 2015, the surcharge taxpayer may make a one-time revocable election to use fair market value, as defined in section 3-2.3 of this Subchapter, as the value of all its real property and tangible personal property owned. Such election must be made on the surcharge taxpayer’s original report for its first taxable year beginning on or after January 1, 2015 and shall not be made on an amended report.

(b) The election under this section:

(1) will not apply to any taxable year with respect to a combined report unless the combined group’s designated agent makes, or has made, a valid election pursuant to subdivision (a) of this paragraph and applies such election to all corporations properly included in the combined report;

(2) will continue to be in effect until revoked by the surcharge taxpayer or the combined group’s designated agent, if applicable, on a report for a subsequent taxable year, and will be deemed to have been revoked starting with such subsequent taxable year.

(c) In no event shall the election under this section or the revocation of the election be for a part of a taxable year.

Section 9-3.3. Real and tangible personal property rented to the surcharge taxpayer.
(a)(1) Real and tangible personal property rented to the surcharge taxpayer must be included for purposes of computation of the property factor under section 9-3.1 of this Subpart.

(2) The value of real and tangible personal property in New York State that is rented to the surcharge taxpayer is determined by multiplying the gross rents payable during the period covered by the report by eight.

(b) The term “gross rents” as used in this section means the actual sum of money or other consideration payable, directly or indirectly, either by the surcharge taxpayer or for its benefit for the use or possession of the property and includes:

(1) Any amount payable for the use or possession of real and tangible personal property, or any part of such property, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

Example 1: A surcharge taxpayer, pursuant to the terms of a lease, pays the lessor $1,000 per month and at the end of the year pays the lessor one percent of its gross sales. Its gross sales were $400,000, resulting in a gross rent of $16,000.

(2) Any amount payable as additional rent or payable in lieu of rent, such as interest, taxes, insurance, repairs or any other amount made payable by the terms of a lease or other arrangement.

Example 2: A surcharge taxpayer, pursuant to the terms of a lease, pays its lessor $24,000 a year. It also pays real estate taxes of $4,000 and interest on a mortgage in the amount of $2,000 pursuant to the lease. The taxpayer’s gross rent is $30,000.
(3) The proportionate part of the cost of any improvement to real and tangible personal property made by or on behalf of the surcharge taxpayer that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease).

However, where a building is erected on land leased by or on behalf of the surcharge taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the surcharge taxpayer. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing entire net income, regardless of whether the lease contains an option for renewal.

Example 3: A surcharge taxpayer enters into a 21-year lease of certain premises at a rental of $20,000 a year. After the expiration of one year, it installs a new store front at a cost of $10,000 that reverts to the owner upon the expiration of the lease. Its gross rent for the first year is $20,000. However, for subsequent years its gross rent is $20,500 ($20,000 annual rent plus 1/20th of $10,000, the cost of the improvement apportioned on the basis of the unexpired term of the lease).

Example 4: A surcharge taxpayer leases a parcel of vacant land for 40 years at an annual rental of $5,000 and erects a building on the land that costs $600,000. The value of the land is determined by multiplying the annual rent of $5,000 by eight. The value of the building is determined as if owned by the surcharge taxpayer.
(c) The term “gross rents” does not include:

1. intercorporate rents if both the lessor and the lessee are properly included in a combined report under Article 9-A;
2. amounts payable as separate charges for water and electric service furnished by the lessor;
3. amounts payable for storage, unless the storage space is designated for the surcharge taxpayer or under its control;
4. amounts payable pursuant to a capital lease;
5. any portion of a rental payment payable for space subleased from the surcharge taxpayer and not used by it. However, the amount of rent received by the surcharge taxpayer from the sublease must be included in the receipts factor of the MCTD apportionment percentage, if required to be included pursuant to Subpart 9-4 of this Part.

Example 5: A surcharge taxpayer leases a building located in the MCTD, to be used in manufacturing. The rent is $20,000 a year. The taxpayer subleases 40 percent of the building to one or more subtenants. Since 40 percent of the rent paid by the taxpayer is applicable to the portion of the building subleased, 40 percent of the rent, or $8,000, is excluded in computing the taxpayer’s gross rent for the building, for purposes of determining the building’s average value, regardless of the actual amount of rent received by the taxpayer from the sublease.

(d) For purposes of subdivision (c) of this section, the term “capital lease” means any lease that meets at least one of the following:
(1) The present value of the minimum lease payments is 90 percent of the fair value of the property to the lessor.

(2) The lease term is 75 percent or more of the leased property's estimated economic life.

(3) The lease contains a bargain (less than fair value) purchase option.

(4) Ownership is transferred to the lessee by the end of the lease term.

(e) In exceptional cases, use of the general method described in this section may result in inaccurate valuations of rented real or tangible personal property. In such cases, any other method that properly reflects the value may be adopted by the Commissioner either on his or her own motion or at the request of the surcharge taxpayer. Another method of valuation may not be used unless approved by the Commissioner. A request for a different method of valuation must provide full information with respect to the property, including the basis for the valuation proposed by the surcharge taxpayer. Once approved or required by the Commissioner, such other method of valuation must be used in subsequent taxable years unless the facts materially change. If the facts materially change, the surcharge taxpayer must report such change in facts to the Commissioner and the Commissioner may consent to or require a change from the method of valuation previously approved.

Subpart 9-4 Receipts Factor of MCTD Apportionment Percentage

Section 9-4.1. Computation of the receipts factor.

The percentage of a surcharge taxpayer’s receipts within the MCTD is determined pursuant to the apportionment rules described in section 210-A and the provisions of Part 4 of this Subchapter, with the following exceptions:

(a) The numerator of the apportionment fraction under section 210-A is the denominator for purposes of the MCTD receipts factor.
(b) The numerator of the MCTD receipts factor is determined by applying the rules of section 210-A as if those rules made reference to the MCTD rather than to New York State.

(c) In the case of a combined report, the combined group’s receipts factor of the MCTD apportionment percentage will be determined after the elimination of intercorporate and interentity receipts.

(d) Adjustment must be made for qualified financial instruments (QFIs), as defined in section 210-A and Part 4 of this Subchapter, and other statutorily imposed apportionment percentages for purposes of the MCTD receipts factor, as follows:

(1) If a surcharge taxpayer elects to use the fixed percentage method to apportion receipts from QFIs to the State pursuant to section 210-A(5)(a)(1) and section 4-2.4(c) of this Subchapter, the fixed percentage method applies in computing the receipts factor under this Subpart.

(2) If eight percent of the receipts specified in a provision of section 210-A(5) are required by such provision and Subpart 4-2 of this Subchapter to be included in the numerator of the apportionment fraction under section 210-A(5), then 90 percent of the eight percent will be considered to be within the MCTD, and 100 percent of the eight percent will be considered to be within New York State. This rule also is applicable in determining the amount of any other receipts received by a credit card processor that are deemed to have been generated within the MCTD. (See section 4-2.15 of this Subchapter.)

(e) If the receipts specified in a provision of section 210-A are not includable in the numerator of the apportionment fraction, pursuant to such provision and Part 4 of this Subchapter, then such receipts will not be included in determining the MCTD apportionment percentage.
Section 9-5.1. Computation of the payroll factor.

(a) The percentage of the surcharge taxpayer's payroll apportioned to the MCTD is determined by dividing the wages, salaries and other personal service compensation of the surcharge taxpayer's employees within the MCTD, except general executive officers, during the period covered by the report by the total amount of such compensation of all of the surcharge taxpayer’s employees within the State, except general executive officers, during the period covered by the report.

(b) Wages, salaries and other compensation include all amounts paid for services rendered to the surcharge taxpayer by its employees, after intercorporate eliminations of such amounts paid by members of a combined group, and do not include amounts paid by the surcharge taxpayer that do not have the element of compensation for personal services already rendered or to be rendered.

(c) Wages, salaries and other compensation are computed either on the cash or the accrual basis, in accordance with the method of accounting used in computing the entire net income of the surcharge taxpayer.

(d)(1) Employees within the MCTD include all employees regularly connected with or working out of an office or place of business of the surcharge taxpayer within the MCTD, including by telecommuting and irrespective of where the services of such employees were performed. However, the Commissioner may permit or require the surcharge taxpayer to instead compute the payroll factor on the basis of the amount of compensation paid for services performed within the MCTD if both of the following are established: (i) that a substantial part of the surcharge taxpayer’s payroll was paid to employees either attached to an office in the MCTD but who performed a substantial part of their services outside the MCTD or attached to an office
outside the MCTD but who performed a substantial part of their services within the MCTD; and (ii) that the computation of the payroll factor according to the general rule stated above would not properly reflect the amount of the surcharge taxpayer's business done within the MCTD by its employees.

(2) Services performed within the MCTD will be deemed to be:

(i) in the case of an employee whose compensation depends directly on the volume of business secured by such employee, for example, a salesperson on a commission basis, the amount received by such employee for such business attributable to the employee’s efforts within the MCTD;

(ii) in the case of an employee whose compensation depends on achieving results other than as described in subparagraph (i) of this paragraph, the proportion of the total compensation that the value of such employee’s services within the MCTD bears to the value of all of the employee’s services within the State;

(iii) in the case of an employee compensated on a time basis, the proportion of the total amount received by such employee that such employee’s working time within the MCTD bears to the employee’s total working time within the State; and

(iv) in the case of an employee compensated by a combination of the bases of subparagraphs (i) through (iii) of this paragraph, the aggregate of the amounts derived at pursuant to (i) through (iii).

Section 9-5.2. Definition of employee.

(a) For purposes of computing the payroll factor, the term “employee” means any individual whose relationship with respect to the surcharge taxpayer is that of employer and employee, as described in subdivision (b) of this section. The wages, salaries and other personal
service compensation of every such individual, except general executive officers, will be included in the computation of the payroll factor of the MCTD apportionment percentage.

(b) Generally, the relationship of employer and employee exists when the surcharge taxpayer has the right to control and direct the individual not only as to the result to be accomplished by such employee but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship as well as the measure, method and designation of the employee’s compensation are immaterial.

(c) A director of a corporation is not an employee. Therefore, compensation paid to directors for acting in their capacity as directors should not be included in computing the payroll factor. In addition, a partner in a partnership cannot be an employee of that partnership.

(d)(1) For purposes of this section, a general executive officer is an appointed or elected officer of the corporation who either has company-wide authority with respect to his or her assigned functions or duties or is responsible for an entire division of the company. Specifically, a general executive officer:

(i) will have been elected by the shareholders of the corporation;

(ii) will have been elected or appointed by the board of directors of the corporation; or

(iii) if initially appointed by another officer, will have had such appointment ratified by the board of directors of the corporation.

(2) If the jurisdiction of incorporation is other than New York State, the officer of the corporation must be elected or appointed in accordance with the laws of the state or country of incorporation.
(3) General executive officers include the chairman, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and any other officer charged with and performing general executive duties of the corporation.

(4) Any person who has merely been designated as an officer but who is not an appointed or elected officer, as described in paragraph (1) of this subdivision, is not a general executive officer.

(5) Personal service compensation paid to general executive officers of the taxpayer for acting in the role of a general executive officer should not be included in the computation of the payroll factor.

Subpart 9-6 Other Rules

Section 9-6.1. The tax surcharge rate. [Tax Law, Section 209-B(1)(a) and (f)]

To compute the tax surcharge, the surcharge base is multiplied by the MCTD apportionment percentage and the following applicable rate:

(a) For taxable years or portions of taxable years beginning on or after January 1, 2015 and before January 1, 2016, the rate is 25.6 percent.

(b) For taxable years beginning on or after January 1, 2016, the Commissioner of Taxation and Finance is authorized to determine the rate, under section 209-B(1)(f), and the rate will be as follows. For succeeding taxable years, the rate will remain the same as the rate last determined by the Commissioner, unless the Commissioner determines a new rate, as specified in this section.

(1) For taxable years beginning on or after January 1, 2016 and before January 1, 2017, the rate is 28 percent.
(2) For taxable years beginning on or after January 1, 2017 and before January 1, 2018, the rate is 28.3 percent.

(3) For taxable years beginning on or after January 1, 2018 and before January 1, 2019, the rate is 28.6 percent.

(4) For taxable years beginning on or after January 1, 2019 and before January 1, 2020, the rate is 28.9 percent.

(5) For taxable years beginning on or after January 1, 2020 and before January 1, 2021, the rate is 29.4 percent.

Section 9-6.2. Discretionary adjustment to the MCTD apportionment percentage.

(a) In certain circumstances, use of the rules and methods described in Subparts 9-3, 9-4, and 9-5 of this Part may not properly reflect the surcharge taxpayer’s business activities. Under such circumstances, where it appears that the MCTD apportionment percentage does not properly reflect the surcharge taxpayer's business activities carried on within the MCTD, the Commissioner, in his or her discretion, or at the request of the surcharge taxpayer, and pursuant to the rules and standards set forth in section 4-4.1 of this Subchapter, may adjust the MCTD apportionment percentage or require that the surcharge taxpayer use a different apportionment formula or a different apportionment method to more accurately reflect the surcharge taxpayer's business activity carried on within the MCTD.

(b) If the MCTD apportionment percentage for a taxable year has been adjusted, or a different apportionment formula or method has been used for a taxable year, pursuant to subdivision (a) of this section, the surcharge taxpayer may not employ another apportionment percentage, or another apportionment formula or method, without the prior written consent of the Commissioner.
Section 9-6.3. Applicability of rules on administration of tax.

All of the procedural provisions concerning the administration of the tax imposed by section 209, in law and in regulation, including the provisions of Article 27 and the regulations promulgated thereunder, shall apply to the tax surcharge.