

# STATE OF NEW YORK

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## SENATE - ASSEMBLY

January 21, 2015

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT intentionally omitted (Part A); to amend the state finance law, the tax law and the administrative code of the city of New York, in relation to the New York city personal income tax rates (Part B); intentionally omitted (Part C); intentionally omitted (Part D); to amend the real property tax law, in relation to establishing a state-administered recoupment provision to the STAR exemption program (Part E); to amend the state finance law, in relation to making technical corrections to the school tax relief fund; and to provide one-time relief to STAR registrants who failed to file timely STAR exemption applications (Part F); intentionally omitted (Part G); to amend the tax law and the administrative code of the city of New York, in relation to extending the limitation on charitable contribution deductions for certain taxpayers (Part H); to amend the tax law, the administrative code of the city of New York and the labor law, in relation to making certain technical corrections (Part I); to amend the tax law, in relation to a report regarding the empire state commercial production tax credit; and to repeal section 9 of part V of chapter 62 of the laws of 2006, amending the tax law relating to the empire state commercial production tax credit, relating thereto (Part J); to amend the economic development law, in relation to the eligibility of entertainment companies for the excelsior jobs program (Part K); intentionally omitted (Part L); intentionally omitted (Part M); intentionally omitted (Part N); to amend the economic development law and the tax law, in relation to establishing a tax credit for employ-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ers who procure skills training for employees necessary to cultivate a talented workforce (Part O); to amend the tax law, in relation to the metropolitan transportation business tax surcharge on utility services and excise tax on sale of telecommunication services, and the excise tax on telecommunication services imposed by article 9 of such law

(Part P); intentionally omitted (Part Q); intentionally omitted (Part R); to amend the business corporation law, the limited liability company law, the partnership law and the tax law, in relation to the biennial statements filed with the secretary of state (Part S); to amend the tax law, in relation to making corrections to the corporate tax reform provisions; and to repeal certain provisions of such law relating thereto (Part T);

26

PART T

27 Section 1. Paragraph (a) of subdivision 5 of section 208 of the tax  
28 law, as amended by section 4 of part A of chapter 59 of the laws of  
29 2014, is amended to read as follows:

30 (a) The term "investment capital" means investments in stocks that (i)  
31 satisfy the definition of a capital asset under section 1221 of the  
32 internal revenue code at all times the taxpayer owned such stock during  
33 the taxable year, (ii) are held by the taxpayer for investment for more  
34 than ~~[six consecutive months but are not]~~ one year, (iii) the disposi-  
35 tions of which are, or would be, treated by the taxpayer as generating  
36 long-term capital gains or losses under the internal revenue code, (iv)  
37 for stocks acquired on or after January first, two thousand fifteen, at  
38 any time after the close of the day in which they are acquired, have  
39 never been held for sale to customers in the regular course of busi-  
40 ness~~[, or, if the taxpayer makes the election provided for in subpara-~~  
41 ~~graph one of paragraph (a) of subdivision five of section two hundred~~  
42 ~~ten-A of this article, are not qualified financial instruments as~~  
43 ~~described in subdivision five of section two hundred ten-A of this arti-~~  
44 ~~cle], and (v) before the close of the day on which the stock was~~  
45 acquired, are clearly identified in the taxpayer's records as stock held  
46 for investment in the same manner as required under section 1236(a) (1)  
47 of the internal revenue code for the stock of a dealer in securities to  
48 be eligible for capital gain treatment (whether or not the taxpayer is a  
49 dealer of securities subject to section 1236), provided, however, that  
50 for stock acquired prior to October first, two thousand fifteen that was  
51 not subject to section 1236(a) of the internal revenue code, such iden-  
52 tification in the taxpayer's records must occur before October first,  
53 two thousand fifteen. Stock in a corporation that is conducting a  
54 unitary business with the taxpayer, stock in a corporation that is  
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1 included in a combined report with the taxpayer pursuant to the commonly  
2 owned group election in subdivision three of section two hundred ten-C  
3 of this article, and stock issued by the taxpayer shall not constitute  
4 investment capital. For purposes of this subdivision, if the taxpayer  
5 owns or controls, directly or indirectly, less than twenty percent of  
6 the voting power of the stock of a corporation, that corporation will be  
7 presumed to be conducting a business that is not unitary with the busi-  
8 ness of the taxpayer.

9 § 2. Paragraph (d) of subdivision 5 of section 208 of the tax law, as  
10 added by section 4 of part A of chapter 59 of the laws of 2014, is  
11 amended to read as follows:

12 (d) If a taxpayer acquires stock that is a capital asset under section  
13 1221 of the internal revenue code during the ~~[second half of its]~~ taxa-  
14 ble year and owns that stock on the last day of the taxable year, it  
15 will be presumed, solely for purposes of determining whether that stock  
16 should be classified as investment capital after it is acquired, that  
17 the taxpayer held that stock for more than ~~[six consecutive months~~  
18 ~~during the taxable]~~ one year. However, if the taxpayer does not in fact  
19 ~~[hold]~~ own that stock ~~[for more than six consecutive months,]~~ at the  
20 time it actually files its original report for the taxable year in which  
21 it acquired the stock, then the presumption in the preceding sentence  
22 shall not apply and the actual period of time during which the taxpayer  
23 owned the stock shall be used to determine whether the stock should be

24 classified as investment capital after it is acquired. If the taxpayer  
25 relies on the presumption in the first sentence of this paragraph but  
26 does not own the stock for more than one year, the taxpayer must  
27 increase its total business capital in the immediately succeeding tax-  
28 able year by the amount included in investment capital for that stock,  
29 net of any liabilities attributable to that stock computed as provided  
30 in paragraph (b) of this subdivision and must increase its business  
31 income in the immediately succeeding taxable year by the amount of  
32 income and net gains (but not less than zero) from that stock included  
33 in investment income, less any interest deductions directly or indirect-  
34 ly attributable to that stock, as provided in subdivision six of this  
35 section.

36 § 3. Paragraph (e) of subdivision 5 of section 208 of the tax law, as  
37 added by section 4 of part A of chapter 59 of the laws of 2014, is  
38 amended to read as follows:

39 (e) When income or gain from a debt obligation or other security  
40 cannot be apportioned to the state using the [~~business allocation~~  
41 ~~percentage~~] apportionment factor determined under section two hundred  
42 ten-A of this article as a result of United States constitutional prin-  
43 ciples, the debt obligation or other security will be included in  
44 investment capital.

45 § 4. Paragraph (f) of subdivision 5 of section 208 of the tax law is  
46 REPEALED.

47 § 5. Paragraphs (a) and (b) of subdivision 6 of section 208 of the tax  
48 law, paragraph (a) as amended and paragraph (b) as added by section 4 of  
49 part A of chapter 59 of the laws of 2014, are amended to read as  
50 follows:

51 (a) (i) The term "investment income" means income, including capital  
52 gains in excess of capital losses, from investment capital, to the  
53 extent included in computing entire net income, less, [~~(i)~~] in the  
54 discretion of the commissioner, any interest deductions allowable in  
55 computing entire net income which are directly or indirectly attribut-  
56 able to investment capital or investment income, [~~and (ii) the taxpay-~~  
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1 ~~er's loss, deduction and/or expense attributable to any transaction, or~~  
2 ~~series of transactions, entered into to manage the risk of price changes~~  
3 ~~or currency fluctuations with respect to any item of investment capital~~  
4 ~~that is held or to be held by the taxpayer, or the aggregate investment~~  
5 ~~capital that is held or to be held by the taxpayer, if all of the risk,~~  
6 ~~or all but a de minimis amount of the risk, is with respect to invest-~~  
7 ~~ment capital,] provided, however, that in no case shall investment~~  
8 income exceed entire net income. (ii) If the amount of interest  
9 deductions subtracted under subparagraph (i) [~~or subparagraph (ii)~~] of  
10 this paragraph [~~or under both of those subparagraphs~~] exceeds investment  
11 income, the excess of such amount over investment income must be added  
12 back to entire net income. (iii) If the taxpayer's investment income  
13 determined without regard to the interest deductions subtracted under  
14 subparagraph (i) of this paragraph comprises more than eight percent of  
15 the taxpayer's entire net income, investment income determined without  
16 regard to such interest deductions cannot exceed eight percent of the  
17 taxpayer's entire net income.

18 (b) In lieu of subtracting from investment income the amount of those  
19 interest deductions, the taxpayer may [~~elect~~] make a revocable election  
20 to reduce its total investment income, determined after applying the  
21 limitation in subparagraph (iii) of paragraph (a) of this subdivision,  
22 by forty percent. If the taxpayer makes this election, the taxpayer must  
23 also make the elections provided for in paragraphs (b) and (c) of subdivi-  
24 sion six-a of this section. If the taxpayer subsequently revokes this  
25 election, the taxpayer must revoke the elections provided for in para-  
26 graphs (b) and (c) of subdivision six-a of this section. A taxpayer  
27 [~~which~~] that does not make this election because it has no investment  
28 capital will not be precluded from making those other elections.

29 § 5-a. Paragraphs (b) and (c) of subdivision 6-a of section 208 of the  
30 tax law, as added by section 4 of chapter 59 of the laws of 2014, are  
31 amended to read as follows:

32 (b) "Exempt CFC income" means the income required to be included in  
33 the taxpayer's federal gross income pursuant to subsection (a) of  
34 section 951 of the internal revenue code, received from a corporation  
35 that is conducting a unitary business with the taxpayer but is not  
36 included in a combined report with the taxpayer, less, in the discretion  
37 of the commissioner, any interest deductions directly or indirectly  
38 attributable to that income. In lieu of subtracting from its exempt CFC  
39 income the amount of those interest deductions, the taxpayer may [~~elect~~]  
40 make a revocable election to reduce its total exempt CFC income by forty  
41 percent. If the taxpayer makes this election, the taxpayer must also  
42 make the elections provided for in paragraph (b) of subdivision six of  
43 this section and paragraph (c) of this subdivision. If the taxpayer  
44 subsequently revokes this election, the taxpayer must revoke the  
45 elections provided for in paragraph (b) of subdivision six of this  
46 section and paragraph (c) of this subdivision. A taxpayer which does not  
47 make this election because it has no exempt CFC income will not be  
48 precluded from making those other elections.

49 (c) "Exempt unitary corporation dividends" means those dividends from  
50 a corporation that is conducting a unitary business with the taxpayer  
51 but is not included in a combined report with the taxpayer, less, in the  
52 discretion of the commissioner, any interest deductions directly or  
53 indirectly attributable to such income. Other than dividend income  
54 received from corporations that are taxable under a franchise tax  
55 imposed by article nine or article thirty-three of this chapter or would  
56 be taxable under a franchise tax imposed by article nine or article  
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1 thirty-three of this chapter if subject to tax, in lieu of subtracting  
2 from this dividend income those interest deductions, the taxpayer may  
3 [~~elect~~] make a revocable election to reduce the total amount of this  
4 dividend income by forty percent. If the taxpayer makes this election,  
5 the taxpayer must also make the elections provided for in paragraph (b)  
6 of subdivision six of this section and paragraph (b) of this subdivi-  
7 sion. If the taxpayer subsequently revokes this election, the taxpayer  
8 must also revoke the elections provided for in paragraph (b) of subdivi-  
9 sion six of this section and paragraph (b) of this subdivision. A  
10 taxpayer which does not make this election because it has not received  
11 any exempt unitary corporation dividends or is precluded from making  
12 this election for dividends received from corporations taxable under a  
13 franchise tax imposed by article nine or article thirty-three of this  
14 chapter or would be taxable under a franchise tax imposed by article  
15 nine or article thirty-three of this chapter if subject to tax will not  
16 be precluded from making those other elections.

17 § 5-b. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9  
18 of section 208 of the tax law, as amended by section 4 of part A of  
19 chapter 59 of the laws of 2014, is amended to read as follows:

20 (i) any refund or credit of a tax imposed under this article, article  
21 twenty-three, or former article thirty-two of this chapter, for which  
22 tax no exclusion or deduction was allowed in determining the taxpayer's  
23 entire net income under this article, article twenty-three, or former  
24 article thirty-two of this chapter for any prior year, or (ii) [~~a refund~~  
25 ~~or credit of general corporation tax allowed by subdivision eleven of~~  
26 ~~section 11-604 of the administrative code of the city of New York, or~~  
27 ~~(iii)] any refund or credit of a tax imposed under sections one hundred  
28 eighty-three, one hundred eighty-three-a, one hundred eighty-four or one  
29 hundred eighty-four-a of this chapter[~~, and~~];~~

30 § 6. Subclause (ii) of clause (B) of subparagraph 1 of paragraph (r)  
31 of subdivision 9 of section 208 of the tax law, as added by section 4 of  
32 part A of chapter 59 of the laws of 2014, is amended to read as follows:

33 (ii) Measurement of assets. For purposes of this paragraph: (I) Total

34 assets are those assets that are properly reflected on a balance sheet,  
35 computed in the same manner as is required by the banking regulator of  
36 the taxpayers included in the combined return.

37 (II) Assets will only be included if the income or expenses of which  
38 are properly reflected (or would have been properly reflected if not  
39 fully depreciated or expensed, or depreciated or expensed to a nominal  
40 amount) in the computation of the combined group's entire net income for  
41 the taxable year. Assets will not include deferred tax assets and intan-  
42 gible assets identified as "goodwill".

43 (III) Tangible real and personal property, such as buildings, land,  
44 machinery, and equipment shall be valued at cost. Leased assets will be  
45 valued at the annual lease payment multiplied by eight. Intangible prop-  
46 erty, such as loans and investments, shall be valued at book value  
47 exclusive of reserves.

48 (IV) Intercorporate stockholdings and bills, notes and accounts  
49 receivable, and other intercorporate indebtedness between the corpo-  
50 rations included in the combined report shall be eliminated.

51 (V) Average assets are computed using the assets measured on the first  
52 day of the taxable year, and on the last day of each subsequent quarter  
53 of the taxable year or month or day during the taxable year.

54 § 7. Clause (B) of subparagraph 2 and clause (B) of subparagraph 2-a  
55 of paragraph (s) of subdivision 9 of section 208 of the tax law, as  
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1 added by section 4 of part A of chapter 59 of the laws of 2014, are  
2 amended to read as follows:

3 (B) The average value during the taxable year of the assets of the  
4 taxpayer, or, if the taxpayer is included in a combined report, the  
5 assets of the combined reporting group of the taxpayer under section two  
6 hundred ten-C of this article, must not exceed eight billion dollars.

7 (B) The average value during the taxable year of the assets of the  
8 taxpayer, or, if the taxpayer is included in a combined report, the  
9 assets of the combined reporting group of the taxpayer under section two  
10 hundred ten-C of this article, must not exceed eight billion dollars.

11 § 8. Paragraph (d) of subdivision 1 of section 209 of the tax law, as  
12 added by section 5 of part A of chapter 59 of the laws of 2014, is  
13 amended to read as follows:

14 (d) (i) A corporation with less than one million dollars but at least  
15 ten thousand dollars of receipts within this state in a taxable year  
16 that is part of a [~~combined reporting~~] unitary group that meets the  
17 ownership test under section two hundred ten-C of this article is deriv-  
18 ing receipts from activity in this state if the receipts within this  
19 state of the members of the [~~combined reporting~~] unitary group that have  
20 at least ten thousand dollars of receipts within this state in the  
21 aggregate meet the threshold set forth in paragraph (b) of this subdivi-  
22 sion.

23 (ii) A corporation that does not meet any of the thresholds set forth  
24 in paragraph (c) of this subdivision but has at least ten customers, or  
25 locations, or customers and locations, as described in paragraph (c) of  
26 this subdivision, and is part of a [~~combined reporting~~] unitary group  
27 that meets the ownership test under section two hundred ten-C of this  
28 article [~~that~~] is doing business in this state if the number of custom-  
29 ers, locations, or customers and locations, within this state of the  
30 members of the [~~combined reporting~~] unitary group that have at least ten  
31 customers, locations, or customers and locations, within this state in  
32 the aggregate meets any of the thresholds set forth in paragraph (c) of  
33 this subdivision.

34 (iii) For purposes of this paragraph, any corporation described in  
35 paragraph (c) of subdivision two of section two hundred ten-C of this  
36 article shall not be considered.

37 § 8-a. Subdivision 2-a of section 209 of the tax law, as amended by  
38 section 5 of part A of chapter 59 of the laws of 2014, is amended to  
39 read as follows:

40 2-a. An alien corporation shall not be deemed to be doing business,  
41 employing capital, owning or leasing property, [~~or~~] maintaining an  
42 office in this state, or deriving receipts from activity in this state,  
43 for the purposes of this article, if its activities in this state are  
44 limited solely to (a) investing or trading in stocks and securities for  
45 its own account within the meaning of clause (ii) of subparagraph (A) of  
46 paragraph (2) of subsection (b) of section eight hundred sixty-four of  
47 the internal revenue code or (b) investing or trading in commodities for  
48 its own account within the meaning of clause (ii) of subparagraph (B) of  
49 paragraph (2) of subsection (b) of section eight hundred sixty-four of  
50 the internal revenue code or (c) any combination of activities described  
51 in paragraphs (a) and (b) of this subdivision. An alien corporation that  
52 under any provision of the internal revenue code is not treated as a  
53 "domestic corporation" as defined in section seven thousand seven  
54 hundred one of such code and has no effectively connected income for the  
55 taxable year pursuant to clause (iv) of the opening paragraph of subdi-  
56 vision nine of section two hundred eight of this article shall not be  
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1 subject to tax under this article for that taxable year. For purposes of  
2 this article, an alien corporation is a corporation organized under the  
3 laws of a country, or any political subdivision thereof, other than the  
4 United States, or organized under the laws of a possession, territory or  
5 commonwealth of the United States.

6 § 9. Paragraph (d) of subdivision 1 of section 209-B of the tax law,  
7 as added by section 7 of part A of chapter 59 of the laws of 2014, is  
8 amended to read as follows:

9 (d) (i) A corporation with less than one million dollars but at least  
10 ten thousand dollars of receipts within the metropolitan commuter trans-  
11 portation district in a taxable year that is part of a [~~combined report-~~  
12 ~~ing~~] unitary group that meets the ownership test under section two  
13 hundred ten-C of this article is deriving receipts from activity in the  
14 metropolitan commuter transportation district if the receipts within the  
15 metropolitan commuter transportation district of the members of the  
16 [~~combined reporting~~] unitary group that have at least ten thousand  
17 dollars of receipts within the metropolitan commuter transportation  
18 district in the aggregate meet the threshold set forth in paragraph (b)  
19 of this subdivision.

20 (ii) A corporation that does not meet any of the thresholds set forth  
21 in paragraph (c) of this subdivision but has at least ten customers, or  
22 locations, or customers and locations, as described in paragraph (c),  
23 and is part of a [~~combined reporting~~] unitary group that meets the  
24 ownership test under section two hundred ten-C of this article [~~that~~] is  
25 doing business in the metropolitan commuter transportation district if  
26 the number of customers, locations, or customers and locations, within  
27 the metropolitan commuter transportation district of the members of the  
28 [~~combined reporting~~] unitary group that have at least ten customers,  
29 locations, or customers and locations, within the metropolitan commuter  
30 transportation district in the aggregate meets any of the thresholds set  
31 forth in paragraph (c) of this subdivision.

32 (iii) For purposes of this paragraph, any corporation described in  
33 paragraph (c) of subdivision two of section two hundred ten-C of this  
34 article shall not be considered.

35 § 10. The opening paragraph of paragraph (a) of subdivision 1 of  
36 section 210 of the tax law, as amended by section 12 of part A of chap-  
37 ter 59 of the laws of 2014, is amended to read as follows:

38 For taxable years beginning before January first, two thousand  
39 sixteen, the amount prescribed by this paragraph shall be computed at  
40 the rate of seven and one-tenth percent of the taxpayer's business  
41 income base. For taxable years beginning on or after January first, two  
42 thousand sixteen, the amount prescribed by this paragraph shall be six  
43 and one-half percent of the taxpayer's business income base. The taxpay-  
44 er's business income base shall mean the portion of the taxpayer's busi-

45 ness income ~~[allocated]~~ apportioned within the state as hereinafter  
46 provided. However, in the case of a small business taxpayer, as defined  
47 in paragraph (f) of this subdivision, the amount prescribed by this  
48 paragraph shall be computed pursuant to subparagraph (iv) of this para-  
49 graph and in the case of a manufacturer, as defined in subparagraph (vi)  
50 of this paragraph, the amount prescribed by this paragraph shall be  
51 computed pursuant to subparagraph (vi) of this paragraph, and, in the  
52 case of a qualified emerging technology company, as defined in subpara-  
53 graph (vii) of this paragraph, the amount prescribed by this paragraph  
54 shall be computed pursuant to subparagraph (vii) of this paragraph.

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1 § 11. Subparagraph (vi) of paragraph (a) of subdivision 1 of section  
2 210 of the tax law, as amended by section 12 of part A of chapter 59 of  
3 the laws of 2014, is amended to read as follows:

4 (vi) for taxable years beginning on or after January first, two thou-  
5 sand fourteen, the amount prescribed by this paragraph for a taxpayer  
6 which is a qualified New York manufacturer, shall be computed at the  
7 rate of zero percent of the taxpayer's business income base. The term  
8 "manufacturer" shall mean a taxpayer which during the taxable year is  
9 principally engaged in the production of goods by manufacturing, proc-  
10 essing, assembling, refining, mining, extracting, farming, agriculture,  
11 horticulture, floriculture, viticulture or commercial fishing. However,  
12 the generation and distribution of electricity, the distribution of  
13 natural gas, and the production of steam associated with the generation  
14 of electricity shall not be qualifying activities for a manufacturer  
15 under this subparagraph. Moreover, in the case of a combined report, the  
16 combined group shall be considered a "manufacturer" for purposes of this  
17 subparagraph only if the combined group during the taxable year is prin-  
18 cipally engaged in the activities set forth in this paragraph, or any  
19 combination thereof. A taxpayer or, in the case of a combined report, a  
20 combined group shall be "principally engaged" in activities described  
21 above if, during the taxable year, more than fifty percent of the gross  
22 receipts of the taxpayer or combined group, respectively, are derived  
23 from receipts from the sale of goods produced by such activities. In  
24 computing a combined group's gross receipts, intercorporate receipts  
25 shall be eliminated. A "qualified New York manufacturer" is a manufac-  
26 turer which has property in New York which is described in clause (A) of  
27 subparagraph (i) of paragraph (b) of subdivision one of section two  
28 hundred ten-B of this article and either (I) the adjusted basis of such  
29 property for federal income tax purposes at the close of the taxable  
30 year is at least one million dollars or (II) all of its real and  
31 personal property is located in New York. A taxpayer or, in the case of  
32 a combined report, a combined group, that does not satisfy the princi-  
33 pally engaged test may be a qualified New York manufacturer if the  
34 taxpayer or the combined group employs during the taxable year at least  
35 two thousand five hundred employees in manufacturing in New York and the  
36 taxpayer or the combined group has property in the state used in manu-  
37 facturing, the adjusted basis of which for federal income tax purposes  
38 at the close of the taxable year is at least one hundred million  
39 dollars.

40 § 12. Subparagraph (vii) of paragraph (a) of subdivision 1 of section  
41 210 of the tax law, as amended by section 12 of part A of chapter 59 of  
42 the laws of 2014, is amended to read as follows:

43 (vii) For a taxpayer that is defined as a qualified emerging technolo-  
44 gy company under paragraph (c) of subdivision one of section thirty-one  
45 hundred two-e of the public authorities law regardless of the ten  
46 million dollar limitation expressed in subparagraph one of such para-  
47 graph (c) the amount prescribed by this paragraph shall be computed at  
48 the rate ~~[at which the tax is computed in effect for taxable years~~  
49 ~~beginning on or after January first, two thousand thirteen and before~~  
50 ~~January first, two thousand fourteen for such qualified emerging tech-~~  
51 ~~nology companies shall be reduced by nine and two-tenths percent for~~



52 ~~taxable years commencing on or after January first, two thousand four-~~  
53 ~~teen and before January first, two thousand fifteen, twelve and three-~~  
54 ~~tenths percent for taxable years commencing on or after January first,~~  
55 ~~two thousand fifteen and before January first, two thousand sixteen,~~  
56 ~~fifteen and four-tenths percent for taxable years commencing on or after~~  
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1 ~~January first, two thousand sixteen and before January first, two thou-~~  
2 ~~sand eighteen, and twenty-five percent for taxable years beginning on or~~  
3 ~~after January first, two thousand eighteen] of 5.7 percent for taxable~~  
4 ~~years beginning on or after January first, two thousand fifteen and~~  
5 ~~before January first, two thousand sixteen, 5.5 percent for taxable~~  
6 ~~years beginning on or after January first two thousand sixteen and~~  
7 ~~before January first, two thousand eighteen, and 4.875 percent for taxa-~~  
8 ~~ble years beginning on or after January first, two thousand eighteen.~~

9 § 13. Item (IV) of subclause 2 of clause (B) of subparagraph (viii) of  
10 paragraph (a) of subdivision 1 of section 210 of the tax law, as added  
11 by section 12 of part A of chapter 59 of the laws of 2014, is amended to  
12 read as follows:

13 (IV) In lieu of the subtraction described in item (III) of this  
14 subclause, if the taxpayer so elects, the taxpayer's prior net operating  
15 loss conversion subtraction for the tax years beginning on or after  
16 January first, two thousand fifteen and before January first, two thou-  
17 sand seventeen shall equal in each year, not more than one-half of its  
18 net operating loss conversion subtraction pool until the pool is  
19 exhausted. If the pool is not exhausted at the end of such time period,  
20 the remainder of the pool shall be forfeited. The taxpayer shall make  
21 such revocable election on its first return for the tax year beginning  
22 on or after January first, two thousand fifteen and before January  
23 first, two thousand sixteen by the due date for such return (determined  
24 with regard to extensions).

25 § 14. Subclause 4 of clause (B) of subparagraph (viii) of paragraph  
26 (a) of subdivision 1 of section 210 of the tax law, as added by section  
27 12 of part A of chapter 59 of the laws of 2014, is amended to read as  
28 follows:

29 (4) The prior net operating loss conversion subtraction may be used to  
30 reduce the taxpayer's tax on [~~allocated~~] the apportioned business income  
31 base to the higher of the tax on the capital base under paragraph (b) of  
32 this subdivision or the fixed dollar minimum under paragraph (d) of this  
33 subdivision. [~~Any~~] Unless the taxpayer has made the election provided  
34 for in item (IV) of subclause two of this clause, any amount of unused  
35 subtraction shall be carried forward to subsequent tax year or years  
36 until [~~tax~~] the prior net operating loss conversion subtraction pool is  
37 exhausted, but for no longer than twenty taxable years, or the taxable  
38 year beginning on or after January first, two thousand thirty-five but  
39 before January first, two thousand thirty-six, whichever comes first.  
40 Such amount carried forward shall not be subject to the one-tenth limi-  
41 tation for the subsequent tax year or years. However, if the taxpayer  
42 elects to compute its prior net operating loss conversion subtraction  
43 pursuant to item (IV) of subclause two of this clause, the taxpayer  
44 shall not carry forward any unused amount of such subtraction [~~beyond~~  
45 ~~its~~] to any tax year beginning on or after [~~January first, two thousand~~  
46 ~~sixteen and before~~] January first, two thousand seventeen.

47 § 15. The opening paragraph of subparagraph (ix) of paragraph (a) of  
48 subdivision 1 of section 210 of the tax law, as added by section 12 of  
49 part A of chapter 59 of the laws of 2014, is amended to read as follows:

50 In computing the business income base, a net operating loss deduction  
51 shall be allowed. A net operating loss deduction is the amount of net  
52 operating loss or losses from one or more taxable years that are carried  
53 forward or carried back to a particular [~~income~~] taxable year. A net  
54 operating loss is the amount of a business loss incurred in a particular  
55 tax year multiplied by the apportionment factor for that year as deter-  
56 mined under section two hundred ten-A of this article. The maximum net



1 operating loss deduction that is allowed in a taxable year is the amount  
 2 that reduces the taxpayer's tax on [~~allocated~~] the apportioned business  
 3 income base to the higher of the tax on the capital base or the fixed  
 4 dollar minimum. Such deduction and loss are determined in accordance  
 5 with the following:

6 § 16. Clauses 4 and 6 of subparagraph (ix) of paragraph (a) of subdivi-  
 7 sion 1 or section 210 of the tax law, as added by section 12 of part A  
 8 of chapter 59 of the laws of 2014, are amended to read as follows:

9 (4) [~~A net operating loss may be carried forward to each of the twenty  
 10 taxable years following the taxable year of the loss. A net operating  
 11 loss may be carried back to each of the three taxable years preceding  
 12 the taxable year of the loss; provided, however no loss can be carried  
 13 back to a tax year prior to a tax year beginning on or after January,  
 14 first, two thousand fifteen. A taxpayer must apply both of these limita-  
 15 tions in computing such net operating loss deduction.~~] A net operating  
 16 loss may be carried back three taxable years preceding the taxable year  
 17 of the loss ("the loss year"). However no loss can be carried back to a  
 18 taxable year beginning before January first, two thousand fifteen. The  
 19 loss is first carried to the earliest of the three taxable years. If it  
 20 is not entirely used in that year, it is carried to the second taxable  
 21 year preceding the loss year, and any remaining amount is carried to the  
 22 taxable year immediately preceding the loss year. Any unused amount of  
 23 loss then remaining may be carried forward for as many as twenty taxable  
 24 years following the loss year. Losses carried forward are carried  
 25 forward first to the taxable year immediately following the loss year,  
 26 then to the second taxable year following the loss year, and then to the  
 27 next immediately subsequent taxable year or years until the loss is used  
 28 up or the twentieth taxable year following the loss year, whichever  
 29 comes first.

30 (6) Where there are two or more [~~allocated~~] apportioned net operating  
 31 losses, or portions thereof, carried back or carried forward to be  
 32 deducted in one particular tax year from [~~allocated~~] apportioned busi-  
 33 ness income, the earliest [~~allocated~~] apportioned loss incurred must be  
 34 applied first.

35 § 17. Subparagraph (ix) of paragraph (a) of subdivision 1 of section  
 36 210 of the tax law is amended by adding a new clause 7 to read as  
 37 follows:

38 (7) A taxpayer may elect to waive the entire carryback period with  
 39 respect to a net operating loss. Such election must be made on the  
 40 taxpayer's original timely filed return (determined with regard to  
 41 extensions) for the taxable year of the net operating loss for which the  
 42 election is to be in effect. Once an election is made for a taxable  
 43 year, it shall be irrevocable for that taxable year. A separate election  
 44 must be made for each loss year. This election applies to all members of  
 45 a combined group.

46 § 18. Paragraph (b) of subdivision 1 of section 210 of the tax law, as  
 47 amended by section 12 of part A of chapter 59 of the laws of 2014, is  
 48 amended to read as follows:

49 (b) Capital base. (1) (i) The amount prescribed by this paragraph  
 50 shall be computed at .15 percent for each dollar of the taxpayer's total  
 51 business capital, or the portion thereof [~~allocated~~] apportioned within  
 52 the state as hereinafter provided for taxable years beginning before  
 53 January first, two thousand sixteen. However, in the case of a cooper-  
 54 ative housing corporation as defined in the internal revenue code, the  
 55 applicable rate shall be .04 percent until taxable years beginning on or  
 56 after January first, two thousand twenty. The rate of tax for subsequent

1 tax years shall be as follows: .125 percent for taxable years beginning  
 2 on or after January first, two thousand sixteen and before January  
 3 first, two thousand seventeen; .100 percent for taxable years beginning

4 on or after January first, two thousand seventeen and before January  
5 first, two thousand eighteen; .075 percent for taxable years beginning  
6 on or after January first, two thousand eighteen and before January  
7 first, two thousand nineteen; .050 percent for taxable years beginning  
8 on or after January first, two thousand nineteen and before January  
9 first, two thousand twenty; .025 percent for taxable years beginning on  
10 or after January first, two thousand twenty and before January first,  
11 two thousand twenty-one; and zero percent for years beginning on or  
12 after January first, two thousand twenty-one. The rate of tax for a  
13 qualified New York manufacturer [~~for tax years subsequent to taxable~~  
14 ~~years beginning on or after January first, two thousand fifteen and~~  
15 ~~before January first, two thousand sixteen~~] shall be .132 percent for  
16 taxable years beginning on or after January first, two thousand fifteen  
17 and before January first, two thousand sixteen, .106 percent for taxable  
18 years beginning on or after January first, two thousand sixteen and  
19 before January first, two thousand seventeen, .085 percent for taxable  
20 years beginning on or after January first, two thousand seventeen and  
21 before January first, two thousand eighteen; .056 percent for taxable  
22 years beginning on or after January first, two thousand eighteen and  
23 before January first, two thousand nineteen; .038 percent for taxable  
24 years beginning on or after January first, two thousand nineteen and  
25 before January first, thousand twenty; .019 percent for taxable years  
26 beginning on or after January first, two thousand twenty and before  
27 January first, two thousand twenty-one; and zero percent for years  
28 beginning on or after January first, two thousand twenty-one. (ii) In no  
29 event shall the amount prescribed by this paragraph exceed three hundred  
30 fifty thousand dollars for qualified New York manufacturers and for all  
31 other taxpayers five million dollars.

32 (2) For purposes of subparagraph one of this paragraph, the term  
33 "manufacturer" shall mean a taxpayer which during the taxable year is  
34 principally engaged in the production of goods by manufacturing, proc-  
35 essing, assembling, refining, mining, extracting, farming, agriculture,  
36 horticulture, floriculture, viticulture or commercial fishing. Moreover,  
37 for purposes of computing the capital base in a combined report, the  
38 combined group shall be considered a "manufacturer" for purposes of this  
39 subparagraph only if the combined group during the taxable year is prin-  
40 cipally engaged in the activities set forth in this subparagraph, or any  
41 combination thereof. A taxpayer or, in the case of a combined report, a  
42 combined group shall be "principally engaged" in activities described  
43 above if, during the taxable year, more than fifty percent of the gross  
44 receipts of the taxpayer or combined group, respectively, are derived  
45 from receipts from the sale of goods produced by such activities. In  
46 computing a combined group's gross receipts, intercorporate receipts  
47 shall be eliminated. A "qualified New York manufacturer" is a manufac-  
48 turer that has property in New York that is described in clause (A) of  
49 subparagraph (i) of paragraph (b) of subdivision one of section [~~210-B~~]  
50 two hundred ten-B of this article and either (i) the adjusted basis of  
51 that property for federal income tax purposes at the close of the taxa-  
52 ble year is at least one million dollars or (ii) all of its real and  
53 personal property is located in New York. In addition, a "qualified New  
54 York manufacturer" means a taxpayer that is defined as a qualified  
55 emerging technology company under paragraph (c) of subdivision one of  
56 section thirty-one hundred two-e of the public authorities law regard-  
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1 less of the ten million dollar limitation expressed in subparagraph one  
2 of such paragraph. A taxpayer or, in the case of a combined report, a  
3 combined group, that does not satisfy the principally engaged test may  
4 be a qualified New York manufacturer if the taxpayer or the combined  
5 group employs during the taxable year at least two thousand five hundred  
6 employees in manufacturing in New York and the taxpayer or the combined  
7 group has property in the state used in manufacturing, the adjusted  
8 basis of which for federal income tax purposes at the close of the taxa-

9 ble year is at least one hundred million dollars.

10 § 19. Subparagraphs 1 and 2 of paragraph (d) of subdivision 1 of  
11 section 210 of the tax law, as amended by section 12 of part A of chap-  
12 ter 59 of the laws of 2014, are amended to read as follows:

13 (1) (A) The amount prescribed by this paragraph for New York S corpo-  
14 rations, other than New York S corporations that are qualified New York  
15 manufacturers or qualified emerging technology companies, will be deter-  
16 mined in accordance with the following table:

17 If New York receipts are:	The fixed dollar minimum tax is:
18 not more than \$100,000	\$ 25
19 more than \$100,000 but not over \$250,000	\$ 50
20 more than \$250,000 but not over \$500,000	\$ 175
21 more than \$500,000 but not over \$1,000,000	\$ 300
22 more than \$1,000,000 but not over \$5,000,000	\$1,000
23 more than \$5,000,000 but not over \$25,000,000	\$3,000
24 Over \$25,000,000	\$4,500

25 (B) Provided further, the amount prescribed by this paragraph for New  
26 York S corporations that are qualified New York manufacturers, as  
27 defined in subparagraph (vi) of paragraph (a) of this subdivision, and  
28 for New York S corporations that are qualified emerging technology  
29 companies under paragraph (c) of subdivision one of section thirty-one  
30 hundred two-e of the public authorities law regardless of the ten  
31 million dollar limitation expressed in subparagraph one of such para-  
32 graph (c), will be determined in accordance with the following tables.

33 For taxable years beginning on or after January 1, 2015 and before Janu-  
34 ary 1, 2016:

35 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
36 <u>not more than \$100,000</u>	<u>\$ 22</u>
37 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 44</u>
38 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 153</u>
39 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 263</u>
40 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$ 877</u>
41 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,631</u>
42 <u>Over \$25,000,000</u>	<u>\$3,947</u>

43 For taxable years beginning on or after January 1, 2016 and before Janu-  
44 ary 1, 2018:

45 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
46 <u>not more than \$100,000</u>	<u>\$ 21</u>
47 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 42</u>
48 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 148</u>
49 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 254</u>

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1 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$ 846</u>
2 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,538</u>
3 <u>Over \$25,000,000</u>	<u>\$3,807</u>

4 For taxable years beginning on or after January 1, 2018:

5 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
6 <u>not more than \$100,000</u>	<u>\$ 19</u>
7 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 38</u>
8 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 131</u>
9 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 225</u>
10 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$ 750</u>
11 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,250</u>

12 Over \$25,000,000 \$3,375

13 (C) Provided further, the amount prescribed by this paragraph for a  
14 qualified New York manufacturer, as defined in subparagraph (vi) of  
15 paragraph (a) of this subdivision, and a qualified emerging technology  
16 company under paragraph (c) of subdivision one of section thirty-one  
17 hundred two-e of the public authorities law regardless of the ten  
18 million dollar limitation expressed in subparagraph one of such para-  
19 graph (c), that is not a New York S corporation, will be determined in  
20 accordance with the following tables[+]. However, with respect to quali-  
21 fied New York manufacturers, the amounts in these tables will apply in  
22 the case of a combined report only if the combined group satisfies the  
23 requirements to be a qualified New York manufacturer as set forth in  
24 such subparagraph (vi).

25 [~~For tax years beginning on or after January 1, 2014 and before January~~  
26 ~~1, 2015:~~

27 ~~If New York receipts are: The fixed dollar minimum tax is:~~  
28 ~~not more than \$100,000 \$ 23~~  
29 ~~more than \$100,000 but not over \$250,000 \$ 68~~  
30 ~~more than \$250,000 but not over \$500,000 \$ 159~~  
31 ~~more than \$500,000 but not over \$1,000,000 \$ 454~~  
32 ~~more than \$1,000,000 but not over \$5,000,000 \$1,362~~  
33 ~~more than \$5,000,000 but not over \$25,000,000 \$3,178~~  
34 ~~Over \$25,000,000 \$4,500]~~

35 For tax years beginning on or after January 1, 2015 and before January  
36 1, 2016:

37 If New York receipts are: The fixed dollar minimum tax is:  
38 not more than \$100,000 \$ 22  
39 more than \$100,000 but not over \$250,000 \$ 66  
40 more than \$250,000 but not over \$500,000 \$ 153  
41 more than \$500,000 but not over \$1,000,000 \$ 439  
42 more than \$1,000,000 but not over \$5,000,000 \$1,316  
43 more than \$5,000,000 but not over \$25,000,000 \$3,070  
44 Over \$25,000,000 \$4,385

45 For tax years beginning on or after January 1, 2016 and before January  
46 1, 2018:

47 If New York receipts are: The fixed dollar minimum tax is:  
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1 not more than \$100,000 \$ 21  
2 more than \$100,000 but not over \$250,000 \$ 63  
3 more than \$250,000 but not over \$500,000 \$ 148  
4 more than \$500,000 but not over \$1,000,000 \$ 423  
5 more than \$1,000,000 but not over \$5,000,000 \$1,269  
6 more than \$5,000,000 but not over \$25,000,000 \$2,961  
7 Over \$25,000,000 \$4,230

8 For tax years beginning on or after January 1, 2018:

9 If New York receipts are: The fixed dollar minimum tax is:  
10 not more than \$100,000 \$ 19  
11 more than \$100,000 but not over \$250,000 \$ 56  
12 more than \$250,000 but not over \$500,000 \$ 131  
13 more than \$500,000 but not over \$1,000,000 \$ 375  
14 more than \$1,000,000 but not over \$5,000,000 \$1,125  
15 more than \$5,000,000 but not over \$25,000,000 \$2,625  
16 Over \$25,000,000 \$3,750

17 (D) Otherwise, for all other taxpayers not covered by clauses (A), (B)  
18 and (C) of this subparagraph, the amount prescribed by this paragraph  
19 will be determined in accordance with the following table:

20 If New York receipts are:	The fixed dollar minimum tax is:
21 not more than \$100,000	\$ 25
22 more than \$100,000 but not over \$250,000	\$ 75
23 more than \$250,000 but not over \$500,000	\$ 175
24 more than \$500,000 but not over \$1,000,000	\$ 500
25 more than \$1,000,000 but not over \$5,000,000	\$1,500
26 more than \$5,000,000 but not over \$25,000,000	\$3,500
27 more than \$25,000,000 but not over \$50,000,000	\$5,000
28 more than \$50,000,000 but not over \$100,000,000	\$10,000
29 more than \$100,000,000 but not over \$250,000,000	\$20,000
30 more than \$250,000,000 but not over \$500,000,000	\$50,000
31 more than \$500,000,000 but not over \$1,000,000,000	\$100,000
32 Over \$1,000,000,000	\$200,000

33 (E) For purposes of this paragraph, New York receipts are the receipts  
34 included in the numerator of the apportionment factor determined under  
35 section two hundred ten-A for the taxable year.

36 (2) If the taxable year is less than twelve months, the amount of New  
37 York receipts is determined by dividing the amount of the receipts for  
38 the taxable year by the number of months in the taxable year and multi-  
39 plying the result by twelve, and the amount prescribed by this paragraph  
40 shall be reduced by twenty-five percent of the period for which the  
41 taxpayer is subject to tax is more than six months but not more than  
42 nine months and by fifty percent if the period for which the taxpayer is  
43 subject to tax is not more than six months. In the case of a termination  
44 year of a New York S corporation, the sum of the tax computed under this  
45 paragraph for the S short year and for the C short year shall not be  
46 less than the amount computed under this paragraph as if the corporation  
47 were a New York C corporation for the entire taxable year.

48 § 20. Paragraph (f) of subdivision 1 of section 210 of the tax law, as  
49 amended by section 12 of part A of chapter 59 of the laws of 2014, is  
50 amended to read as follows:

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1 (f) For purposes of this section, the term "small business taxpayer"  
2 shall mean a taxpayer (i) which has an entire net income of not more  
3 than three hundred ninety thousand dollars for the taxable year; (ii)  
4 the aggregate amount of money and other property received by the corpo-  
5 ration for stock, as a contribution to capital, and as paid-in surplus,  
6 does not exceed one million dollars; (iii) which is not part of an  
7 affiliated group, as defined in section 1504 of the internal revenue  
8 code, unless such group, if it had filed a report under this article on  
9 a combined basis, would have itself qualified as a "small business  
10 taxpayer" pursuant to this subdivision; and (iv) which has an average  
11 number of individuals, excluding general executive officers, employed  
12 full-time in the state during the taxable year of one hundred or fewer.  
13 If the taxable period to which subparagraph (i) of this paragraph  
14 applies is less than twelve months, entire net income under such subpar-  
15 agraph shall be placed on an annual basis by multiplying the entire net  
16 income by twelve and dividing the result by the number of months in the  
17 period. For purposes of subparagraph (ii) of this paragraph, the amount  
18 taken into account with respect to any property other than money shall  
19 be the amount equal to the adjusted basis to the corporation of such  
20 property for determining gain, reduced by any liability to which the  
21 property was subject or which was assumed by the corporation. The deter-  
22 mination under the preceding sentence shall be made as of the time the  
23 property was received by the corporation. For purposes of subparagraph  
24 [~~iii~~] (iv) of this [~~section~~] paragraph, "average number of individ-

25 uals, excluding general executive officers, employed full-time" shall be  
26 computed by ascertaining the number of such individuals employed by the  
27 taxpayer on the thirty-first day of March, the thirtieth day of June,  
28 the thirtieth day of September and the thirty-first day of December  
29 during each taxable year or other applicable period, by adding together  
30 the number of such individuals ascertained on each of such dates and  
31 dividing the sum so obtained by the number of such dates occurring with-  
32 in such taxable year or other applicable period. An individual employed  
33 full-time means an employee in a job consisting of at least thirty-five  
34 hours per week, or two or more employees who are in jobs that together  
35 constitute the equivalent of a job at least thirty-five hours per week  
36 (full-time equivalent). Full-time equivalent employees in the state  
37 ~~[includes]~~ include all employees regularly connected with or working out  
38 of an office or place of business of the taxpayer within the state.

39 § 21. Subdivision 1 of section 210-A of the tax law, as added by  
40 section 16 of part A of chapter 59 of the laws of 2014, is amended to  
41 read as follows:

42 1. General. Business income and capital shall be apportioned to the  
43 state by the apportionment factor determined pursuant to this section.  
44 The apportionment factor is a fraction, determined by including only  
45 those receipts, net income, net gains, and other items described in this  
46 section that are included in the computation of the taxpayer's business  
47 income (determined without regard to the modification provided in  
48 subparagraph nineteen of paragraph (a) of subdivision nine of section  
49 two hundred eight of this article) for the taxable year. The numerator  
50 of the apportionment fraction shall be equal to the sum of all the  
51 amounts required to be included in the numerator pursuant to the  
52 provisions of this section and the denominator of the apportionment  
53 fraction shall be equal to the sum of all the amounts required to be  
54 included in the denominator pursuant to the provisions of this section.

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1 § 22. Paragraph (c) of subdivision 2 of section 210-A of the tax law,  
2 as added by section 16 of part A of chapter 59 of the laws of 2014, is  
3 amended to read as follows:

4 (c) Receipts from sales of tangible personal property and electricity  
5 that are traded as commodities, as ~~[described]~~ the term "commodity" is  
6 defined in section 475 of the internal revenue code, are included in the  
7 apportionment fraction in accordance with clause (I) of subparagraph two  
8 of paragraph (a) of subdivision five of this section.

9 § 23. The opening paragraph and paragraph 1 of paragraph (a) of subdi-  
10 vision 5 of section 210-A of the tax law, as added by section 16 of part  
11 A of chapter 59 of the laws of 2014, are amended to read as follows:

12 ~~[A financial instrument is a "qualified financial instrument" if it is~~  
13 ~~marked to market under section 475 or section 1256 of the internal~~  
14 ~~revenue code, provided that loans secured by real property shall not be~~  
15 ~~qualified financial instruments.]~~ A financial instrument is a "nonquali-  
16 fied financial instrument" if it is not a qualified financial instru-  
17 ment. A qualified financial instrument means a financial instrument  
18 that is of a type described in any of clauses (A), (B), (C), (D), (G),  
19 (H) or (I) of subparagraph two of this paragraph and that has been  
20 marked to market in the taxable year by the taxpayer under section 475  
21 or section 1256 of the internal revenue code. Further, if the taxpayer  
22 has in the taxable year marked to market a financial instrument of the  
23 type described in any of the clauses (A), (B), (C), (D), (G), (H) or (I)  
24 of subparagraph two of this paragraph, then any financial instrument  
25 within that type described in the above specified clause or clauses that  
26 has not been marked to market by the taxpayer under section 475 or  
27 section 1256 of the internal revenue code is a qualified financial  
28 instrument in the taxable year. Notwithstanding the two preceding  
29 sentences, (i) a loan secured by real property shall not be a qualified  
30 financial instrument, (ii) if the only loans that are marked to market  
31 by the taxpayer under section 475 or section 1256 of the internal reven-

32 ue code are loans secured by real property, then no loans shall be qual-  
33 ified financial instruments, and (iii) stock that is investment capital  
34 as defined in paragraph (a) of subdivision five of section two hundred  
35 eight of this article shall not be a qualified financial instrument. If  
36 a corporation is included in a combined report, the definition of quali-  
37 fied financial instrument shall be determined on a combined basis.

38 (1) Fixed percentage method for qualified financial instruments. In  
39 determining the inclusion of receipts and net gains from qualified  
40 financial instruments in the apportionment fraction, taxpayers may elect  
41 to use the fixed percentage method described in this subparagraph for  
42 qualified financial instruments. The election is irrevocable, applies to  
43 all qualified financial instruments, and must be made on an annual basis  
44 on the taxpayer's original, timely filed return, determined with regard  
45 to extensions of time for filing. If the taxpayer elects the fixed  
46 percentage method, then all income, gain or loss, including marked to  
47 market net gains as defined in clause (J) of subparagraph two of this  
48 paragraph, from qualified financial instruments constitutes business  
49 income, gain or loss. If the taxpayer does not elect to use the fixed  
50 percentage method, then receipts and net gains are included in the  
51 apportionment fraction in accordance with the customer sourcing method  
52 described in subparagraph two of this paragraph. Under the fixed  
53 percentage method, eight percent of all net income (not less than zero)  
54 from qualified financial instruments is included in the numerator of the  
55 apportionment fraction. All net income (not less than zero) from quali-  
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1 fied financial instruments is included in the denominator of the appor-  
2 tionment fraction.

3 § 24. Subclause (iv) of clause (A) of subparagraph 2 of paragraph (a)  
4 of subdivision 5 of section 210-A of the tax law, as added by section 16  
5 of part A of chapter 59 of the laws of 2014, is amended to read as  
6 follows:

7 (iv) Net gains (not less than zero) from sales of loans not secured by  
8 real property are included in the numerator of the apportionment frac-  
9 tion as provided in this subclause. The amount of net gains from the  
10 sale of loans not secured by real property included in the numerator of  
11 the apportionment fraction is determined by multiplying the net gains by  
12 a fraction, the numerator of which is the amount of gross proceeds from  
13 sales of loans not secured by real property to purchasers located within  
14 the state and the denominator of which is the amount of gross ~~receipts~~  
15 proceeds from sales of loans not secured by real property to purchasers  
16 located within and without the state. Gross proceeds shall be determined  
17 after the deduction of any cost incurred to acquire the loans but shall  
18 not be less than zero. Net gains (not less than zero) from sales of  
19 loans not secured by real property are included in the denominator of  
20 the apportionment fraction.

21 § 25. Clause (A) of subparagraph 2 of paragraph (a) of subdivision 5  
22 of section 210-A of the tax law is amended by adding a new subclause (v)  
23 to read as follows:

24 (v) For purposes of this subdivision, a loan is secured by real prop-  
25 erty if fifty percent or more of the value of the collateral used to  
26 secure the loan, when valued at fair market value as of the time the  
27 loan was entered into, consists of real property.

28 § 25-a. Clause (I) of subparagraph 2 of paragraph (a) of subdivision 5  
29 of section 210-A of the tax law, as added by section 16 of part A of  
30 chapter 59 of the laws of 2014, is amended to read as follows:

31 (I) Physical commodities. Net income (not less than zero) from sales  
32 of physical commodities are included in the numerator of the appor-  
33 tionment fraction as provided in this ~~subparagraph~~ clause. The amount of  
34 net income from sales of physical commodities included in the numerator  
35 of the apportionment fraction is determined by multiplying the net  
36 income from sales of physical commodities by a fraction, the numerator  
37 of which is the amount of receipts from sales of physical commodities



38 actually delivered to points within the state or, if there is no actual  
39 delivery of the physical commodity, sold to purchasers located in the  
40 state, and the denominator of which is the amount of receipts from sales  
41 of physical commodities actually delivered to points within and without  
42 the state or, if there is no actual delivery of the physical commodity,  
43 sold to purchasers located within and without the state. Net income (not  
44 less [~~that~~] than zero) from sales of physical commodities is included in  
45 the denominator of the apportionment fraction. Net income (not less than  
46 zero) from sales of physical commodities is determined after the  
47 deduction of the cost to acquire or produce the physical commodities.

48 § 26. Subparagraph 2 of paragraph (a) of subdivision 5 of section  
49 210-A of the tax law is amended by adding a new clause (J) to read as  
50 follows:

51 (J) Marked to market net gains. (i) For purposes of this subdivision,  
52 "marked to market" means that a financial instrument is, under section  
53 475 or section 1256 of the internal revenue code, treated by the taxpay-  
54 er as sold for its fair market value on the last business day of the  
55 taxpayer's taxable year. "Marked to market gain or loss" means the gain  
56 or loss recognized by the taxpayer under section 475 or section 1256 of  
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1 the internal revenue code because the financial instrument is treated as  
2 sold for its fair market value on the last business day of the taxpay-  
3 er's taxable year.

4 (ii) The amount of marked to market net gains (not less than zero)  
5 from each type of financial instrument that is marked to market included  
6 in the numerator of the apportionment fraction is determined by multi-  
7 plying the marked to market net gains (but not less than zero) from such  
8 type of the financial instrument by a fraction, the numerator of which  
9 is the numerator of the apportionment fraction for the net gains from  
10 that type of financial instrument determined under the applicable clause  
11 of this subparagraph and the denominator of which is the denominator of  
12 the apportionment fraction for the net gains for that type of financial  
13 instrument determined under the applicable clause of this subparagraph.  
14 Marked to market net gains (not less than zero) from financial instru-  
15 ments for which the numerator of the apportionment fraction is deter-  
16 mined under the immediately preceding sentence are included in the  
17 denominator of the apportionment fraction.

18 (iii) If the type of financial instrument that is marked to market is  
19 not otherwise sourced by the taxpayer under this subparagraph, or if the  
20 taxpayer has a net loss from the sales of that type of financial instru-  
21 ment under the applicable clause of this subparagraph, the amount of  
22 marked to market net gains (not less than zero) from that type of finan-  
23 cial instrument included in the numerator of the apportionment fraction  
24 is determined by multiplying the marked to market net gains (but not  
25 less than zero) from that type of financial instrument by a fraction,  
26 the numerator of which is the sum of the amount of receipts included in  
27 the numerator of the apportionment fraction under clauses (A), (B), (C),  
28 (D), (E), (F), (G), (H) and (I) of this subparagraph and subclause (ii)  
29 of this clause, and the denominator of which is the sum of the amount of  
30 receipts included in the denominator of the apportionment fraction under  
31 clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) and subclause  
32 (ii) of this clause. Marked to market net gains (not less than zero) for  
33 which the amount to be included in the numerator of the apportionment  
34 fraction is determined under the immediately preceding sentence are  
35 included in the denominator of the apportionment fraction.

36 § 27. Paragraph (e) of subdivision 5 of section 210-A of the tax law,  
37 as added by section 16 of part A of chapter 59 of the laws of 2014, is  
38 amended to read as follows:

39 (e) For purposes of this subdivision, a taxpayer shall use the follow-  
40 ing hierarchy to determine the commercial domicile of a business entity,  
41 based on the information known to the taxpayer or information that would  
42 be known upon reasonable inquiry: (i) [~~the location of the treasury~~

43 ~~function of the business entity; (ii)]~~ the seat of management and  
44 control of the business entity; and [~~(iii)]~~ (ii) the billing address of  
45 the business entity in the taxpayer's records. The taxpayer must exer-  
46 cise due diligence before rejecting [a] the first method in this hierar-  
47 chy and proceeding to the next method.

48 § 28. Section 210-A of the tax law is amended by adding a new subdivi-  
49 sion 6-a to read as follows:

50 6-a. Receipts from the operation of vessels. Receipts from the opera-  
51 tion of vessels are included in the numerator of the apportionment frac-  
52 tion as follows. The amount of receipts from the operation of vessels  
53 included in the numerator of the apportionment fraction is determined by  
54 multiplying the amount of such receipts by a fraction, the numerator of  
55 which is the aggregate number of working days of the vessels owned or  
56 leased by the taxpayer in territorial waters of the state during the  
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1 period covered by the taxpayer's report and the denominator of which is  
2 the aggregate number of working days of all vessels owned or leased by  
3 the taxpayer during such period. Receipts from the operation of vessels  
4 are included in the denominator of the apportionment fraction.

5 § 29. The opening paragraph of clause (A) of subparagraph 1 of para-  
6 graph (b) of subdivision 7 of section 210-A of the tax law, as added by  
7 section 16 of part A of chapter 59 of the laws of 2014, is amended to  
8 read as follows:

9 The portion of receipts of a taxpayer from aviation services (other  
10 than services described in paragraph (a) of this subdivision, but  
11 including the receipts of a qualified air freight forwarder) to be  
12 included in the numerator of the apportionment fraction shall be deter-  
13 mined by multiplying its receipts from such aviation services by a  
14 percentage which is equal to the arithmetic average of the following  
15 three percentages:

16 § 30. Paragraph (b) of subdivision 7 of section 210-A of the tax law  
17 is amended by adding a new subparagraph 3 to read as follows:

18 (3) A corporation is a qualified air freight forwarder with respect to  
19 another corporation:

20 (A) if it owns or controls either directly or indirectly all of the  
21 capital stock of such other corporation, or if all of its capital stock  
22 is owned or controlled either directly or indirectly by such other  
23 corporation, or if all of the capital stock of both corporations is  
24 owned or controlled either directly or indirectly by the same interests,

25 (B) if it is principally engaged in the business of air freight  
26 forwarding, and

27 (C) if its air freight forwarding business is carried on principally  
28 with the airline or airlines operated by such other corporation.

29 § 30-a. Paragraph (b) of subdivision 8 of section 210-A of the tax  
30 law, as added by section 16 of part A of chapter 59 of the laws of 2014,  
31 is amended to read as follows:

32 (b) The amount of receipts from sales of advertising on television or  
33 radio included in the numerator of the apportionment fraction is deter-  
34 mined by multiplying the total of such receipts by a fraction, the  
35 numerator of which is the number of viewers or listeners within the  
36 state and the denominator of which is the number of viewers or listeners  
37 within and without the state. The total of such receipts from sales of  
38 advertising on television and radio is included in the denominator of  
39 the apportionment fraction.

40 § 31. Subparagraph (i) of paragraph (b) and paragraph (d) of subdivi-  
41 sion 1 of section 210-B of the tax law, as added by section 17 of part A  
42 of chapter 59 of the laws of 2014, are amended to read as follows:

43 (i) A credit shall be allowed under this subdivision with respect to  
44 tangible personal property and other tangible property, including build-  
45 ings and structural components of buildings, which are: depreciable  
46 pursuant to section one hundred sixty-seven of the internal revenue  
47 code, have a useful life of four years or more, are acquired by purchase

48 as defined in section one hundred seventy-nine (d) of the internal  
49 revenue code, have a situs in this state and are (A) principally used by  
50 the taxpayer in the production of goods by manufacturing, processing,  
51 assembling, refining, mining, extracting, farming, agriculture, horti-  
52 culture, floriculture, viticulture or commercial fishing, (B) industrial  
53 waste treatment facilities or air pollution control facilities, used in  
54 the taxpayer's trade or business, (C) research and development property,  
55 or (D) principally used in the ordinary course of the taxpayer's trade  
56 or business as a broker or dealer in connection with the purchase or  
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1 sale (which shall include but not be limited to the issuance, entering  
2 into, assumption, offset, assignment, termination, or transfer) of  
3 stocks, bonds or other securities as defined in section four hundred  
4 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as  
5 defined in section four hundred seventy-five (e) of the Internal Revenue  
6 Code, (E) principally used in the ordinary course of the taxpayer's  
7 trade or business of providing investment advisory services for a regu-  
8 lated investment company as defined in section eight hundred fifty-one  
9 of the Internal Revenue Code, or lending, loan arrangement or loan origi-  
10 nation services to customers in connection with the purchase or sale  
11 (which shall include but not be limited to the issuance, entering into,  
12 assumption, offset, assignment, termination, or transfer) of securities  
13 as defined in section four hundred seventy-five (c)(2) of the Internal  
14 Revenue Code, (F) ~~originally~~ principally used in the ordinary course  
15 of the taxpayer's business as an exchange registered as a national secu-  
16 rities exchange within the meaning of sections 3(a)(1) and 6(a) of the  
17 Securities Exchange Act of 1934 or a board of trade as defined in  
18 ~~[section 1410(a)(1) of the New York Not-for-Profit Corporation Law]~~  
19 subparagraph one of paragraph (a) of section fourteen hundred ten of the  
20 not-for-profit corporation law or as an entity that is wholly owned by  
21 one or more such national securities exchanges or boards of trade and  
22 that provides automation or technical services thereto, or (G) princi-  
23 pally used as a qualified film production facility including qualified  
24 film production facilities having a situs in an empire zone designated  
25 as such pursuant to article eighteen-B of the general municipal law,  
26 where the taxpayer is providing three or more services to any qualified  
27 film production company using the facility, including such services as a  
28 studio lighting grid, lighting and grip equipment, multi-line phone  
29 service, broadband information technology access, industrial scale elec-  
30 trical capacity, food services, security services, and heating, venti-  
31 lation and air conditioning. For purposes of clauses (D), (E) and (F) of  
32 this subparagraph, property purchased by a taxpayer affiliated with a  
33 regulated broker, dealer, registered investment advisor, national secu-  
34 rities exchange or board of trade, is allowed a credit under this subdi-  
35 vision if the property is used by its affiliated regulated broker, deal-  
36 er, registered investment advisor, national securities exchange or board  
37 of trade in accordance with this subdivision. For purposes of determin-  
38 ing if the property is principally used in qualifying uses, the uses by  
39 the taxpayer described in clauses (D) and (E) of this subparagraph may  
40 be aggregated. In addition, the uses by the taxpayer, its affiliated  
41 regulated broker, dealer and registered investment advisor under either  
42 or both of those clauses may be aggregated. Provided, however, a taxpay-  
43 er shall not be allowed the credit provided by clauses (D), (E) and (F)  
44 of this subparagraph unless the property is first placed in service  
45 before October first, two thousand fifteen and (i) eighty percent or  
46 more of the employees performing the administrative and support func-  
47 tions resulting from or related to the qualifying uses of such equipment  
48 are located in this state or (ii) the average number of employees that  
49 perform the administrative and support functions resulting from or  
50 related to the qualifying uses of such equipment and are located in this  
51 state during the taxable year for which the credit is claimed is equal  
52 to or greater than ninety-five percent of the average number of employ-

53 ees that perform these functions and are located in this state during  
54 the thirty-six months immediately preceding the year for which the cred-  
55 it is claimed, or (iii) the number of employees located in this state  
56 during the taxable year for which the credit is claimed is equal to or  
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1 greater than ninety percent of the number of employees located in this  
2 state on December thirty-first, nineteen hundred ninety-eight or, if the  
3 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-  
4 eight, the last day of its first taxable year ending after December  
5 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes  
6 subject to tax in this state after the taxable year beginning in nine-  
7 teen hundred ninety-eight, then the taxpayer is not required to satisfy  
8 the employment test provided in the preceding sentence of this subpara-  
9 graph for its first taxable year. For purposes of clause (iii) of this  
10 subparagraph the employment test will be based on the number of employ-  
11 ees located in this state on the last day of the first taxable year the  
12 taxpayer is subject to tax in this state. If the uses of the property  
13 must be aggregated to determine whether the property is principally used  
14 in qualifying uses, then either each affiliate using the property must  
15 satisfy this employment test or this employment test must be satisfied  
16 through the aggregation of the employees of the taxpayer, its affiliated  
17 regulated broker, dealer, and registered investment adviser using the  
18 property. For purposes of this subdivision, the term "goods" shall not  
19 include electricity.

20 (d) Except as otherwise provided in this paragraph, the credit allowed  
21 under this subdivision for any taxable year shall not reduce the tax due  
22 for such year to less than the ~~[higher of the amounts prescribed in~~  
23 ~~paragraphs (e) and]~~ fixed dollar minimum amount prescribed in paragraph  
24 (d) of subdivision one of ~~[this]~~ section two hundred ten of this  
25 article. However, if the amount of credit allowable under this subdivi-  
26 sion for any taxable year reduces the tax to such amount or if the  
27 taxpayer otherwise pays tax based on the fixed dollar minimum amount,  
28 any amount of credit allowed for a taxable year commencing prior to  
29 January first, nineteen hundred eighty-seven and not deductible in such  
30 taxable year may be carried over to the following year or years and may  
31 be deducted from the taxpayer's tax for such year or years but in no  
32 event shall such credit be carried over to taxable years commencing on  
33 or after January first, two thousand two, and any amount of credit  
34 allowed for a taxable year commencing on or after January first, nine-  
35 teen hundred eighty-seven and not deductible in such year may be carried  
36 over to the fifteen taxable years next following such taxable year and  
37 may be deducted from the taxpayer's tax for such year or years. In lieu  
38 of such carryover, any such taxpayer which qualifies as a new business  
39 under paragraph ~~[(j)]~~ (f) of this subdivision may elect to treat the  
40 amount of such carryover as an overpayment of tax to be credited or  
41 refunded in accordance with the provisions of section ten hundred eight-  
42 y-six of this chapter, provided, however, the provisions of subsection  
43 (c) of section ten hundred eighty-eight of this chapter notwithstanding,  
44 no interest shall be paid thereon.

45 § 32. Subdivision 27 of section 210-B of the tax law, as added by  
46 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
47 read as follows:

48 27. Credits of New York S corporations. (a) General. Notwithstanding  
49 the provisions of this section, no carryover of credit allowable in a  
50 New York C year shall be deducted from the tax otherwise due under this  
51 article in a New York S year, and no credit allowable in a New York S  
52 year, or carryover of such credit, shall be deducted from the tax  
53 imposed by this article. However, a New York S year shall be treated as  
54 a taxable year for purposes of determining the number of taxable years  
55 to which a credit may be carried over under this section. Notwithstand-  
56 ing the first sentence of this subdivision, however, the credit for the  
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1 special additional mortgage recording tax shall be allowed as provided  
2 in subdivision [~~fifteen~~ nine] of this section, and the carryover of any  
3 such credit shall be determined without regard to whether the credit is  
4 carried from a New York C year to a New York S year or vice-versa.

5 § 32-a. Subdivision 42 of section 210-b of the tax law, as added by  
6 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
7 read as follows:

8 42. Alternative base credit. (a) If the tax imposed on a taxpayer by  
9 subdivision one of section two hundred nine of this article is the  
10 amount prescribed in clause (ii) of subparagraph one of paragraph (b) of  
11 subdivision one of section two hundred ten of this article, the taxpayer  
12 shall be allowed a credit against the tax imposed under this article  
13 equal to the amount of tax paid to another state computed on a tax base  
14 identical to the tax base prescribed in such paragraph (b). If the tax  
15 imposed on a taxpayer by subdivision one of section two hundred nine of  
16 this article is the highest amount prescribed in paragraph (d) of subdivi-  
17 sion one of section two hundred ten of this article applicable to the  
18 taxpayer, the taxpayer shall be allowed a credit against the tax imposed  
19 under this article equal to the amount of tax paid to another state  
20 computed on a tax base identical to the tax base prescribed in such  
21 paragraph (d).

22 § 33. Subdivision 1, subparagraphs (i) and (ii) of paragraph (d) and  
23 paragraphs (d-1) and (e) of subdivision 4, and subdivision 7 of section  
24 210-C of the tax law, as added by section 18 of part A of chapter 59 of  
25 the laws of 2014, are amended to read as follows:

26 1. Tax. (a) The tax on a combined report shall be the highest of (i)  
27 the combined business income base multiplied by the tax rate specified  
28 in paragraph (a) of subdivision one of section two hundred ten of this  
29 article; (ii) the combined capital base multiplied by the tax rate spec-  
30 ified in paragraph (b) of subdivision one of section two hundred ten of  
31 this article, but not exceeding the limitation provided for in that  
32 paragraph (b); or (iii) the fixed dollar minimum that is attributable to  
33 the designated agent of the combined group. In addition, the tax on a  
34 combined report shall include the fixed dollar minimum tax specified in  
35 paragraph (d) of subdivision one of section two hundred ten of this  
36 article for each member of the combined group, other than the designated  
37 agent, that is a taxpayer.

38 (b) The combined business income base is the amount of the combined  
39 business income of the combined group that is apportioned to the state,  
40 reduced by any prior net operating loss conversion subtraction and any  
41 net operating loss deduction for the combined group. The combined capi-  
42 tal base is the amount of the combined capital of the combined group  
43 that is apportioned to the state.

44 (i) A net operating loss deduction is allowed in computing the  
45 combined business income base. Such deduction may reduce the tax on the  
46 combined business income base to the higher of the tax on the combined  
47 capital base or the fixed dollar minimum amount that is attributable to  
48 the designated agent of the combined group. A combined net operating  
49 loss deduction is equal to the amount of combined net operating loss or  
50 losses from one or more taxable years that are carried forward or  
51 carried back to a particular [~~income~~] taxable year. A combined net oper-  
52 ating loss is the combined business loss incurred in a particular taxa-  
53 ble year multiplied by the combined apportionment factor for that year  
54 determined as provided in subdivision five of this section.

55 (ii) The combined net operating loss deduction and combined net oper-  
56 ating loss are also subject to the provisions contained in clauses one  
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1 through [~~six~~ seven] of subparagraph (ix) of paragraph (a) of subdivision  
2 one of section two hundred ten of this article.

3 (d-1) A prior net operating loss conversion subtraction is allowed in  
4 computing the combined business income base, as provided in subparagraph

5 (viii) of paragraph (a) of subdivision one of section two hundred ten of  
6 this article. Such subtraction may reduce the tax on the combined busi-  
7 ness income base to the higher of the tax on the combined capital base  
8 or the fixed dollar minimum amount that is attributable to the desig-  
9 nated agent of the combined group.

10 (e) (i) Any election made pursuant to paragraph (b) of subdivision  
11 six, ~~[and]~~ paragraphs (b) and (c) of subdivision six-a of section two  
12 hundred eight, and item (IV) of subclause two of clause (B) of subpara-  
13 graph (viii) and clause seven of subparagraph (ix) of paragraph (a) of  
14 subdivision one of section two hundred ten of this article shall apply  
15 to all members of the combined group.

16 (ii) The determination of whether or not the limitation on investment  
17 income provided in subparagraph (iii) of paragraph (a) of subdivision  
18 six of section two hundred eight of this article applies to the combined  
19 group shall be based on the investment income of the combined group,  
20 determined without regard to interest expenses attributable to invest-  
21 ment capital or investment income, and the entire net income of the  
22 combined group.

23 7. Designated agent. Each combined group shall have one designated  
24 agent for the combined group, which shall be a taxpayer. [~~The designated~~  
25 ~~agent is the parent corporation of the combined group. If there is no~~  
26 ~~such parent corporation, or the parent corporation is not a taxpayer,~~  
27 ~~then another member of the combined group that is a taxpayer may be~~  
28 ~~appointed as the designated agent.~~] Only the designated agent may act on  
29 behalf of the members of the combined group for matters relating to the  
30 combined report.

31 § 33-a. Paragraph (b) of subdivision 3 of section 210-C of the tax  
32 law, as added by section 18 of part A of chapter 59 of the laws of 2014,  
33 is amended to read as follows:

34 (b) The election under this subdivision shall be made on an original,  
35 timely filed return of the combined group , determined with regard to  
36 extensions of time for filing. Any corporation entering a commonly owned  
37 group subsequent to the year of election shall be included in the  
38 combined group and is considered to have waived any objection to its  
39 inclusion in the combined group.

40 § 34. Paragraph 1 of subdivision (c) of section 40 of the tax law, as  
41 added by section 4 of part A of chapter 68 of the laws of 2013, is  
42 amended to read as follows:

43 (1) ascertaining the percentage that the average value of the busi-  
44 ness's real and tangible personal property, whether owned or rented to  
45 it, in the tax-free NY area in which the business was located during the  
46 period covered by the taxpayer's report or return bears to the average  
47 value of the business's real and tangible personal property, whether  
48 owned or rented to it, within the state during such period; provided  
49 that the term "value of the business's real and tangible personal prop-  
50 erty" shall have the same meaning as such term has in [~~subparagraph one~~  
51 ~~of]~~ paragraph (a) of subdivision [~~three]~~ two of section [~~two hundred~~  
52 ~~ten]~~ two hundred nine-B of this chapter; and

53 § 35. Clause (ii) of subparagraph (B) of paragraph 2 of subdivision  
54 (d) of section 40 of the tax law, as added by section 4 of part A of  
55 chapter 68 of the laws of 2013, is amended to read as follows:

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1 (ii) For purposes of article nine-A of this chapter, the term "part-  
2 ner's income from the partnership" means partnership items of income,  
3 gain, loss and deduction, and New York modifications thereto, entering  
4 into [~~entire net]~~ business income [~~or minimum taxable income~~] and the  
5 term "partner's entire income" means [~~entire net]~~ business income [~~or~~  
6 ~~minimum taxable income~~], allocated within the state. For purposes of  
7 article twenty-two of this chapter, the term "partner's income from the  
8 partnership" means partnership items of income, gain, loss and  
9 deduction, and New York modifications thereto, entering into New York  
10 adjusted gross income, and the term "partner's entire income" means New

11 York adjusted gross income.

12 § 36. Subparagraph (C) of paragraph 2 of subdivision (d) of section 40  
13 of the tax law, as added by section 4 of part A of chapter 68 of the  
14 laws of 2013, is amended to read as follows:

15 (C) (i) Where the taxpayer is a shareholder of a New York S corpo-  
16 ration that is a business located in a tax-free NY area, the sharehold-  
17 er's tax factor shall be that portion of the amount determined in para-  
18 graph one of this subdivision that is attributable to the income of the  
19 S corporation. Such attribution shall be made in accordance with the  
20 ratio of the shareholder's income from the S corporation allocated with-  
21 in the state, entering into New York adjusted gross income, to the  
22 shareholder's New York adjusted gross income, or in accordance with such  
23 other methods as the commissioner may prescribe as providing an appor-  
24 tionment that reasonably reflects the portion of the shareholder's tax  
25 attributable to the income of such business. The income of the S corpo-  
26 ration allocated within the state shall be determined by multiplying the  
27 income of the S corporation by ~~[the]~~ a business allocation factor  
28 ~~[computed under paragraph (a) of subdivision three of section two~~  
29 ~~hundred ten of this article without regard to subparagraph ten of such~~  
30 ~~paragraph (a)]~~ that shall be determined in clause (ii) of this subpara-  
31 graph. In no event may the ratio so determined exceed 1.0.

32 (ii) The business allocation factor for purposes of this subparagraph  
33 shall be computed by adding together the property factor specified in  
34 subclause (I) of this clause, the wage factor specified in subclause  
35 (II) of this clause and the apportionment factor determined under  
36 section two hundred ten-A of this chapter and dividing by three.

37 (I) The property factor shall be determined by ascertaining the  
38 percentage that the average value of the business's real and tangible  
39 personal property, whether owned or rented to it, within the state  
40 during the period covered by the taxpayer's report or return bears to  
41 the average value of the business's real and tangible personal property,  
42 whether owned or rented to it, within and without the state during such  
43 period; provided that the term "value of the business's real and tangi-  
44 ble personal property" shall have the same meaning as such term has in  
45 paragraph (a) of subdivision two of section two hundred nine-B of this  
46 chapter.

47 (II) The wage factor shall be determined by ascertaining the percent-  
48 age that the total wages, salaries and other personal service compen-  
49 sation, similarly computed, during such period of employees, except  
50 general executive officers, employed at the business's location or  
51 locations within the state, bears to the total wages, salaries and other  
52 personal service compensation, similarly computed, during such period,  
53 of all the business's employees within and without the state, except  
54 general executive officers.

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1 § 37. Subparagraph (B) of paragraph 3 of subdivision (d) of section 40  
2 of the tax law, as added by section 4 of part A of chapter 68 of the  
3 laws of 2013, is amended to read as follows:

4 (B) The term "income of the business located in a tax-free NY area"  
5 means ~~[entire net]~~ business income ~~[or minimum taxable income]~~ calcu-  
6 lated as if the taxpayer was filing separately and the term "combined  
7 group's income" means ~~[entire net]~~ business income ~~[or minimum taxable~~  
8 ~~income]~~ as shown on the combined report, allocated within the state.

9 § 38. Paragraph 1 of subdivision (e) of section 40 of the tax law, as  
10 added by section 4 of part A of chapter 68 of the laws of 2013, is  
11 amended to read as follows:

12 (1) Article 9-A: section ~~[210]~~ 210-B, subdivision ~~[47]~~ 41.

13 § 39. Paragraph 1 of subsection (i) of section 660 of the tax law, as  
14 amended by section 74 of part A of chapter 59 of the laws of 2014, is  
15 amended to read as follows:

16 (1) Notwithstanding the provisions in subsection (a) of this section,  
17 in the case of an eligible S corporation for which the election under



18 subsection (a) of this section is not in effect for the current taxable  
19 year, the shareholders of an eligible S corporation are deemed to have  
20 made that election effective for the eligible S corporation's entire  
21 current taxable year, if the eligible S corporation's investment income  
22 for the current taxable year is more than fifty percent of its federal  
23 gross income for such year. In determining whether an eligible S [~~corpo-~~  
24 ~~ration's investment income~~] corporation is deemed to have made that  
25 election, the [~~investment~~] income of a qualified subchapter S subsidiary  
26 owned directly or indirectly by the eligible S corporation shall be  
27 included with the income of the eligible S corporation.

28 § 40. Subdivision 41 of section 210-B of the tax law, as added by  
29 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
30 read as follows:

31 41. The tax-free NY area tax elimination credit. A taxpayer shall be  
32 allowed a credit to be computed as provided in section forty of this  
33 chapter, against the tax imposed by this article. Unless the taxpayer  
34 has a tax-free NY area allocation factor of one hundred percent, the  
35 credit allowed under this subdivision for any taxable year shall not  
36 reduce the tax due for such year to less than the amount prescribed in  
37 paragraph (d) of subdivision one of section two hundred ten of this  
38 article. However, if the amount of the credit allowable under this  
39 subdivision for any taxable year reduces the tax to such amount or if  
40 the taxpayer otherwise pays tax based on the fixed dollar minimum  
41 amount, any amount of credit not deductible in such taxable year shall  
42 be treated as an overpayment of tax to be credited or refunded in  
43 accordance with the provisions of section one thousand eighty-six of  
44 this chapter. Provided, however, the provisions of subsection (c) of  
45 section one thousand eighty-eight of this chapter notwithstanding, no  
46 interest shall be paid thereon.

47 § 41. Subdivision 44 of section 210-B of the tax law, as added by  
48 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
49 read as follows:

50 44. The tax-free NY area excise tax on telecommunication services  
51 credit. A taxpayer that is a business or owner of a business that is  
52 located in a tax-free NY area approved pursuant to article twenty-one of  
53 the economic development law shall be allowed a credit equal to the  
54 excise tax on telecommunication services imposed by section one hundred  
55 eighty-six-e of this chapter and passed through to such business during  
56 the taxable year to the extent not otherwise deducted in computing  
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1 entire net income under this article. However, except as otherwise  
2 provided for in this subdivision, if the amount of the credit allowable  
3 under this subdivision for any taxable year reduces the tax to the  
4 amount prescribed in paragraph (d) of subdivision one of section two  
5 hundred ten of this chapter or if the taxpayer otherwise pays tax based  
6 on the fixed dollar minimum amount, any amount of credit not deductible  
7 in such taxable year shall be treated as an overpayment of tax to be  
8 credited or refunded in accordance with the provisions of section one  
9 thousand eighty-six of this chapter. This credit may be claimed only  
10 where any tax imposed by such section one hundred eighty-six-e has been  
11 separately stated on a bill from the provider of telecommunication  
12 services and paid by such business with respect to such services  
13 rendered within a tax-free NY area during the taxable year. Unless the  
14 taxpayer has a tax-free NY area allocation factor of one hundred  
15 percent, the credit allowed under this subdivision for any taxable year  
16 shall not reduce the tax due for such year to less than the amount  
17 prescribed in paragraph (d) of subdivision one of section two hundred  
18 ten of this chapter. Provided, however, the provisions of subsection (c)  
19 of section one thousand eighty-eight of this chapter notwithstanding, no  
20 interest shall be paid thereon.

21 § 42. Paragraph (b) of subdivision 47 of section 210-B of the tax law,  
22 as added by section 2 of part HH of chapter 59 of the laws of 2014, is

23 amended to read as follows:

24 (b) Application of credit. The credit allowed under this subdivision  
25 for any taxable year shall not reduce the tax due for such year to less  
26 than the amount prescribed in paragraph (d) of subdivision one of [~~this~~]  
27 section two hundred ten of this article. Provided, however, that if the  
28 amount of the credit allowable under this subdivision for any taxable  
29 year reduces the tax to such amount or if the taxpayer otherwise pays  
30 tax based on the fixed dollar minimum amount, the excess shall be treat-  
31 ed as an overpayment of tax to be credited or refunded in accordance  
32 with the provisions of section one thousand eighty-six of this chapter.  
33 Provided, further, the provisions of subsection (c) of section one thou-  
34 sand eighty-eight of this chapter notwithstanding, no interest shall be  
35 paid thereon.

36 § 43. Paragraph (b) of subdivision 48 of section 210-B of the tax law,  
37 as added by section 2 of part MM of chapter 59 of the laws of 2014, is  
38 amended to read as follows:

39 (b) Carryover. The credit allowed under this subdivision for any taxa-  
40 ble year shall not reduce the tax due for such year to less than the  
41 amount prescribed in paragraph (d) of subdivision one of [~~this~~] section  
42 two hundred ten of this article. However, if the amount of credit allow-  
43 able under this subdivision for any taxable year reduces the tax to such  
44 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
45 minimum amount, any amount of credit not deductible in such taxable year  
46 may be carried over to the following three years, and may be deducted  
47 from the qualified employer's tax for such years.

48 § 44. This act shall take effect immediately and shall be deemed to be  
49 in full force and effect on the same date as part A of chapter 59 of the  
50 laws of 2014, provided, however, that the amendments to paragraph (b) of  
51 subdivision 47 and paragraph (b) of subdivision 48 of section 210-B of  
52 the tax law made by sections forty-two and forty-three of this act shall  
53 not affect the repeal of such subdivisions and shall be deemed to repeal  
54 therewith.