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);

PART T

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

(a) The term "investment capital" means investments in stocks that **(i) satisfy the definition of a capital asset under section 1221 of the internal revenue code at all times the taxpayer owned such stock during the taxable year, (ii)** are held by the taxpayer **for investment** for more than [~~six consecutive months but are not~~] **one year, (iii) the dispositions of which are, or would be, treated by the taxpayer as generating long-term capital gains or losses under the internal revenue code, (iv) for stocks acquired on or after January first, two thousand fifteen, at any time after the close of the day in which they are acquired, have never been** held for sale to customers in the regular course of business[~~, or, if the taxpayer makes the election provided for in subparagraph one of paragraph (a) of subdivision five of section two hundred ten-A of this article, are not qualified financial instruments as described in subdivision five of section two hundred ten-A of this article~~]**, and (v) before the close of the day on which the stock was acquired, are clearly identified in the taxpayer's records as stock held for investment in the same manner as required under section 1236(a)(1) of the internal revenue code for the stock of a dealer in securities to be eligible for capital gain treatment (whether or not the taxpayer is a dealer of securities subject to section 1236), provided, however, that for stock acquired prior to October first, two thousand fifteen that was not subject to section 1236(a) of the internal revenue code, such identification in the taxpayer's records must occur before October first, two thousand fifteen**. Stock in a corporation that is conducting a unitary business with the taxpayer, stock in a corporation that is

included in a combined report with the taxpayer pursuant to the commonly owned group election in subdivision three of section two hundred ten-C of this article, and stock issued by the taxpayer shall not constitute investment capital. For purposes of this subdivision, if the taxpayer owns or controls, directly or indirectly, less than twenty percent of the voting power of the stock of a corporation, that corporation will be presumed to be conducting a business that is not unitary with the business of the taxpayer.

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

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

classified as investment capital after it is acquired. If the taxpayer relies on the presumption in the first sentence of this paragraph but does not own the stock for more than one year, the taxpayer must increase its total business capital in the immediately succeeding taxable year by the amount included in investment capital for that stock, net of any liabilities attributable to that stock computed as provided in paragraph (b) of this subdivision and must increase its business income in the immediately succeeding taxable year by the amount of income and net gains (but not less than zero) from that stock included in investment income, less any interest deductions directly or indirectly attributable to that stock, as provided in subdivision six of this section.

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

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

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

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

(a) **(i)** The term "investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, [~~(i)~~] in the discretion of the commissioner, any interest deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, [~~and (ii) the taxpay-~~

~~er's loss, deduction and/or expense attributable to any transaction, or series of transactions, entered into to manage the risk of price changes or currency fluctuations with respect to any item of investment capital that is held or to be held by the taxpayer, or the aggregate investment capital that is held or to be held by the taxpayer, if all of the risk, or all but a de minimis amount of the risk, is with respect to investment capital,~~] provided, however, that in no case shall investment income exceed entire net income. **(ii)** If the amount **of interest deductions** subtracted under subparagraph (i) [~~or subparagraph (ii)~~] of this paragraph [~~or under both of those subparagraphs~~] exceeds investment income, the excess of such amount over investment income must be added back to entire net income. **(iii) If the taxpayer's investment income determined without regard to the interest deductions subtracted under subparagraph (i) of this paragraph comprises more than eight percent of the taxpayer's entire net income, investment income determined without regard to such interest deductions cannot exceed eight percent of the taxpayer's entire net income.**

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

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

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

(c) "Exempt unitary corporation dividends" means those dividends from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, less, in the discretion of the commissioner, any interest deductions directly or indirectly attributable to such income. Other than dividend income received from corporations that are taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article

thirty-three of this chapter if subject to tax, in lieu of subtracting from this dividend income those interest deductions, the taxpayer may [~~elect~~] **make a revocable election** to reduce the total amount of this dividend income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (b) of this subdivision. **If the taxpayer subsequently revokes this election, the taxpayer must also revoke the elections provided for in paragraph (b) of subdivision six of this section and paragraph (b) of this subdivision.** A taxpayer which does not make this election because it has not received any exempt unitary corporation dividends or is precluded from making this election for dividends received from corporations taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article thirty-three of this chapter if subject to tax will not be precluded from making those other elections.

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

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

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

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

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

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

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

(IV) Intercorporate stockholdings and bills, notes and accounts receivable, and other intercorporate indebtedness between the corporations included in the combined report shall be eliminated.

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

§ 7. Clause (B) of subparagraph 2 and clause (B) of subparagraph 2-a of paragraph (s) of subdivision 9 of section 208 of the tax law, as

added by section 4 of part A of chapter 59 of the laws of 2014, are amended to read as follows:

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

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

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

(d)(i) A corporation with less than one million dollars but at least ten thousand dollars of receipts within this state in a taxable year that is part of a [~~combined reporting~~] **unitary** group **that meets the ownership test** under section two hundred ten-C of this article is deriving receipts from activity in this state if the receipts within this state of the members of the [~~combined reporting~~] **unitary** group that have at least ten thousand dollars of receipts within this state in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

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

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

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

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, [~~or~~] maintaining an office in this state, **or deriving receipts from activity in this state,** for the purposes of this article, if its activities in this state are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article shall not be

subject to tax under this article for that taxable year. For purposes of this article, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

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

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

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

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

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

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

ness income [~~allocated~~] **apportioned** within the state as hereinafter provided. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph**, and, in the case of a qualified emerging technology company, as defined in subparagraph (vii) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vii) of this paragraph**.

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

(vi) for taxable years beginning on or after January first, two thousand fourteen, the amount prescribed by this paragraph for a taxpayer which is a qualified New York manufacturer, shall be computed at the rate of zero percent of the taxpayer's business income base. The term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, **in the case of a combined report,** the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or**, in the case of a combined report,** a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer which has property in New York which is described in **clause (A) of subparagraph (i) of paragraph (b) of** subdivision one of section two hundred ten-B of this article and either (I) the adjusted basis of such property for federal income tax purposes at the close of the taxable year is at least one million dollars or (II) all of its real and personal property is located in New York. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for federal income tax purposes at the close of the taxable year is at least one hundred million dollars.

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

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

~~taxable years commencing on or after January first, two thousand four-teen and before January first, two thousand fifteen, twelve and three-tenths percent for taxable years commencing on or after January first, two thousand fifteen and before January first, two thousand sixteen, fifteen and four-tenths percent for taxable years commencing on or after January first, two thousand sixteen and before January first, two thou-sand eighteen, and twenty-five percent for taxable years beginning on or after January first, two thousand eighteen~~] **of 5.7 percent for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, 5.5 percent for taxable years beginning on or after January first two thousand sixteen and before January first, two thousand eighteen, and 4.875 percent for taxa-ble years beginning on or after January first, two thousand eighteen**.

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

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

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

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

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

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

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

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

(4) [~~**A net operating loss may be carried forward to each of the twenty taxable years following the taxable year of the loss. A net operating loss may be carried back to each of the three taxable years preceding the taxable year of the loss; provided, however no loss can be carried back to a tax year prior to a tax year beginning on or after January, first, two thousand fifteen. A taxpayer must apply both of these limitations in computing such net operating loss deduction.**~~] **A net operating loss may be carried back three taxable years preceding the taxable year of the loss ("the loss year"). However no loss can be carried back to a taxable year beginning before January first, two thousand fifteen. The loss is first carried to the earliest of the three taxable years. If it is not entirely used in that year, it is carried to the second taxable year preceding the loss year, and any remaining amount is carried to the taxable year immediately preceding the loss year. Any unused amount of loss then remaining may be carried forward for as many as twenty taxable years following the loss year. Losses carried forward are carried forward first to the taxable year immediately following the loss year, then to the second taxable year following the loss year, and then to the next immediately subsequent taxable year or years until the loss is used up or the twentieth taxable year following the loss year, whichever comes first.**

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

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

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

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

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

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

on or after January first, two thousand seventeen and before January first, two thousand eighteen; .075 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .050 percent for taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty; .025 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one. The rate of tax for a qualified New York manufacturer [~~for tax years subsequent to taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen~~] shall be **.132 percent for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen,** .106 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen, .085 percent for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen; .056 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .038 percent for taxable years beginning on or after January first, two thousand nineteen and before January first, thousand twenty; .019 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one. **(ii)** In no event shall the amount prescribed by this paragraph exceed three hundred fifty thousand dollars for qualified New York manufacturers and for all other taxpayers five million dollars.

(2) For purposes of subparagraph one of this paragraph, the term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. Moreover, for purposes of computing the capital base in a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this subparagraph, or any combination thereof. A taxpayer or**, in the case of a combined report,** a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in **clause (A) of subparagraph (i) of paragraph (b) of** subdivision one of section [~~210-B~~] **two hundred ten-B** of this article and either (i) the adjusted basis of that property for federal income tax purposes at the close of the taxable year is at least one million dollars or (ii) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regard-

less of the ten million dollar limitation expressed in subparagraph one of such paragraph. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for federal income tax purposes at the close of the taxa-

ble year is at least one hundred million dollars.

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

(1) **(A)** The amount prescribed by this paragraph for New York S corporations**, other than New York S corporations that are qualified New York manufacturers or qualified emerging technology companies,** will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than $100,000	$ 25
more than $100,000 but not over $250,000	$ 50
more than $250,000 but not over $500,000	$ 175
more than $500,000 but not over $1,000,000	$ 300
more than $1,000,000 but not over $5,000,000	$1,000
more than $5,000,000 but not over $25,000,000	$3,000
Over $25,000,000	$4,500

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

For taxable years beginning on or after January 1, 2015 and before January 1, 2016:

If New York receipts are:	**The fixed dollar minimum tax is:**
not more than $100,000	**$ 22**
more than $100,000 but not over $250,000	**$ 44**
more than $250,000 but not over $500,000	**$ 153**
more than $500,000 but not over $1,000,000	**$ 263**
more than $1,000,000 but not over $5,000,000	**$ 877**
more than $5,000,000 but not over $25,000,000	**$2,631**
Over $25,000,000	**$3,947**

For taxable years beginning on or after January 1, 2016 and before January 1, 2018:

If New York receipts are:	**The fixed dollar minimum tax is:**
not more than $100,000	**$ 21**
more than $100,000 but not over $250,000	**$ 42**
more than $250,000 but not over $500,000	**$ 148**
more than $500,000 but not over $1,000,000	**$ 254**
more than $1,000,000 but not over $5,000,000	**$ 846**
more than $5,000,000 but not over $25,000,000	**$2,538**
Over $25,000,000	**$3,807**

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

If New York receipts are:	**The fixed dollar minimum tax is:**
not more than $100,000	**$ 19**
more than $100,000 but not over $250,000	**$ 38**
more than $250,000 but not over $500,000	**$ 131**
more than $500,000 but not over $1,000,000	**$ 225**
more than $1,000,000 but not over $5,000,000	**$ 750**
more than $5,000,000 but not over $25,000,000	**$2,250**

Over $25,000,000	**$3,375**

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

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

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

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

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

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

If New York receipts are:	The fixed dollar minimum tax is:

not more than $100,000	$ 21
more than $100,000 but not over $250,000	$ 63
more than $250,000 but not over $500,000	$ 148
more than $500,000 but not over $1,000,000	$ 423
more than $1,000,000 but not over $5,000,000	$1,269
more than $5,000,000 but not over $25,000,000	$2,961
Over $25,000,000	$4,230

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

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

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

If New York receipts are:	The fixed dollar minimum tax is:
not more than $100,000	$ 25
more than $100,000 but not over $250,000	$ 75
more than $250,000 but not over $500,000	$ 175
more than $500,000 but not over $1,000,000	$ 500
more than $1,000,000 but not over $5,000,000	$1,500
more than $5,000,000 but not over $25,000,000	$3,500
more than $25,000,000 but not over $50,000,000	$5,000
more than $50,000,000 but not over $100,000,000	$10,000
more than $100,000,000 but not over $250,000,000	$20,000
more than $250,000,000 but not over $500,000,000	$50,000
more than $500,000,000 but not over $1,000,000,000	$100,000
Over $1,000,000,000	$200,000

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

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

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

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

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

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

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

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

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

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

[~~A financial instrument is a "qualified financial instrument" if it is marked to market under section 475 or section 1256 of the internal revenue code, provided that loans secured by real property shall not be qualified financial instruments.~~] A financial instrument is a "nonqualified financial instrument" if it is not a qualified financial instrument. **A qualified financial instrument means a financial instrument that is of a type described in any of clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph and that has been marked to market in the taxable year by the taxpayer under section 475 or section 1256 of the internal revenue code. Further, if the taxpayer has in the taxable year marked to market a financial instrument of the type described in any of the clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph, then any financial instrument within that type described in the above specified clause or clauses that has not been marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code is a qualified financial instrument in the taxable year. Notwithstanding the two preceding sentences, (i) a loan secured by real property shall not be a qualified financial instrument, (ii) if the only loans that are marked to market by the taxpayer under section 475 or section 1256 of the internal reven-**

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

(1) Fixed percentage method for qualified financial instruments. In determining the inclusion of receipts and net gains from qualified financial instruments in the apportionment fraction, taxpayers may elect to use the fixed percentage method described in this subparagraph for qualified financial instruments. The election is irrevocable, applies to all qualified financial instruments, and must be made on an annual basis on the taxpayer's original, timely filed return**, determined with regard to extensions of time for filing**. If the taxpayer elects the fixed percentage method, then all income, gain or loss, **including marked to market net gains as defined in clause (J) of subparagraph two of this paragraph,** from qualified financial instruments constitutes business income, gain or loss. If the taxpayer does not elect to use the fixed percentage method, then receipts and net gains are included in the apportionment fraction in accordance with the customer sourcing method described in subparagraph two of this paragraph. Under the fixed percentage method, eight percent of all net income (not less than zero) from qualified financial instruments is included in the numerator of the apportionment fraction. All net income (not less than zero) from quali-

fied financial instruments is included in the denominator of the apportionment fraction.

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

(iv) Net gains (not less than zero) from sales of loans not secured by real property are included in the numerator of the apportionment fraction as provided in this subclause. The amount of net gains from the sale of loans not secured by real property included in the numerator of the apportionment fraction is determined by multiplying the net gains by a fraction, the numerator of which is the amount of gross proceeds from sales of loans not secured by real property to purchasers located within the state and the denominator of which is the amount of gross [~~**receipts**~~] **proceeds** from sales of loans not secured by real property to purchasers located within and without the state. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains (not less than zero) from sales of loans not secured by real property are included in the denominator of the apportionment fraction.

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

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

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

(I) Physical commodities. Net income (not less than zero) from sales of physical commodities are included in the numerator of the apportionment fraction as provided in this [~~**subparagraph**~~] **clause**. The amount of net income from sales of physical commodities included in the numerator of the apportionment fraction is determined by multiplying the net income from sales of physical commodities by a fraction, the numerator of which is the amount of receipts from sales of physical commodities

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

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

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

the internal revenue code because the financial instrument is treated as sold for its fair market value on the last business day of the taxpayer's taxable year.

(ii) The amount of marked to market net gains (not less than zero) from each type of financial instrument that is marked to market included in the numerator of the apportionment fraction is determined by multiplying the marked to market net gains (but not less than zero) from such type of the financial instrument by a fraction, the numerator of which is the numerator of the apportionment fraction for the net gains from that type of financial instrument determined under the applicable clause of this subparagraph and the denominator of which is the denominator of the apportionment fraction for the net gains for that type of financial instrument determined under the applicable clause of this subparagraph. Marked to market net gains (not less than zero) from financial instruments for which the numerator of the apportionment fraction is determined under the immediately preceding sentence are included in the denominator of the apportionment fraction.

(iii) If the type of financial instrument that is marked to market is not otherwise sourced by the taxpayer under this subparagraph, or if the taxpayer has a net loss from the sales of that type of financial instrument under the applicable clause of this subparagraph, the amount of marked to market net gains (not less than zero) from that type of financial instrument included in the numerator of the apportionment fraction is determined by multiplying the marked to market net gains (but not less than zero) from that type of financial instrument by a fraction, the numerator of which is the sum of the amount of receipts included in the numerator of the apportionment fraction under clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) of this subparagraph and subclause (ii) of this clause, and the denominator of which is the sum of the amount of receipts included in the denominator of the apportionment fraction under clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) and subclause (ii) of this clause. Marked to market net gains (not less than zero) for which the amount to be included in the numerator of the apportionment fraction is determined under the immediately preceding sentence are included in the denominator of the apportionment fraction.

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

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

~~function of the business entity; (ii)~~] the seat of management and control of the business entity; and [~~(iii)~~] **(ii)** the billing address of the business entity in the taxpayer's records. The taxpayer must exercise due diligence before rejecting [~~a~~] **the first** method in this hierarchy and proceeding to the next method.

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

6-a. Receipts from the operation of vessels. Receipts from the operation of vessels are included in the numerator of the apportionment fraction as follows. The amount of receipts from the operation of vessels included in the numerator of the apportionment fraction is determined by multiplying the amount of such receipts by a fraction, the numerator of which is the aggregate number of working days of the vessels owned or leased by the taxpayer in territorial waters of the state during the

period covered by the taxpayer's report and the denominator of which is the aggregate number of working days of all vessels owned or leased by the taxpayer during such period. Receipts from the operation of vessels are included in the denominator of the apportionment fraction.

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

The portion of receipts of a taxpayer from aviation services (other than services described in paragraph (a) of this subdivision**, but including the receipts of a qualified air freight forwarder**) to be included in the numerator of the apportionment fraction shall be determined by multiplying its receipts from such aviation services by a percentage which is equal to the arithmetic average of the following three percentages:

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

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

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

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

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

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

(b) The amount of receipts from sales of advertising on television or radio included in the **numerator of the** apportionment fraction is determined by multiplying the total of such receipts by a fraction, the numerator of which is the number of viewers or listeners within the state and the denominator of which is the number of viewers or listeners within and without the state. The total of such receipts from sales of advertising on television and radio is included in the denominator of the apportionment fraction.

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

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

as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property, or (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or

sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, (E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, (F) [~~originally~~] **principally** used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in [~~section 1410(a)(1) of the New York Not-for-Profit Corporation Law~~] **subparagraph one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law** or as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto, or (G) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. **For purposes of clauses (D), (E) and (F) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment advisor, national securities exchange or board of trade, is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment advisor, national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D) and (E) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment advisor under either or both of those clauses may be aggregated.** Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E) and (F) of this subparagraph unless **the property is first placed in service before October first, two thousand fifteen and** (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employ-

ees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or

greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subdivision, the term "goods" shall not include electricity.

(d) Except as otherwise provided in this paragraph, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the [~~higher of the amounts prescribed in paragraphs (c) and~~] **fixed dollar minimum amount prescribed in paragraph** (d) of subdivision one of [~~this~~] section **two hundred ten of this article**. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount **or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount**, any amount of credit allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven and not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, two thousand two, and any amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph [~~(j)~~] **(f)** of this subdivision may elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter, provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

27. Credits of New York S corporations. (a) General. Notwithstanding the provisions of this section, no carryover of credit allowable in a New York C year shall be deducted from the tax otherwise due under this article in a New York S year, and no credit allowable in a New York S year, or carryover of such credit, shall be deducted from the tax imposed by this article. However, a New York S year shall be treated as a taxable year for purposes of determining the number of taxable years to which a credit may be carried over under this section. Notwithstanding the first sentence of this subdivision, however, the credit for the

special additional mortgage recording tax shall be allowed as provided in subdivision [~~fifteen~~] **nine** of this section, and the carryover of any such credit shall be determined without regard to whether the credit is carried from a New York C year to a New York S year or vice-versa.

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

42. Alternative base credit. (a) If the tax imposed on a taxpayer by subdivision one of section two hundred nine of this article is the amount prescribed in **clause (ii) of subparagraph one of** paragraph (b) of subdivision one of section two hundred ten of this article, the taxpayer shall be allowed a credit against the tax imposed under this article equal to the amount of tax paid to another state computed on a tax base identical to the tax base prescribed in such paragraph (b). If the tax imposed on a taxpayer by subdivision one of section two hundred nine of this article is the **highest** amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article **applicable to the taxpayer**, the taxpayer shall be allowed a credit against the tax imposed under this article equal to the amount of tax paid to another state computed on a tax base identical to the tax base prescribed in such paragraph (d).

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

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

(b) The combined business income base is the amount of the combined business income of the combined group that is apportioned to the state, reduced by any **prior net operating loss conversion subtraction and any** net operating loss deduction for the combined group. The combined capital base is the amount of the combined capital of the combined group that is apportioned to the state.

(i) A net operating loss deduction is allowed in computing the combined business income base. Such deduction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group. A combined net operating loss deduction is equal to the amount of combined net operating loss or losses from one or more taxable years that are carried forward **or carried back** to a particular [~~income~~] **taxable** year. A combined net operating loss is the combined business loss incurred in a particular taxable year multiplied by the combined apportionment factor for that year determined as provided in subdivision five of this section.

(ii) The combined net operating loss deduction and combined net operating loss are also subject to the provisions contained in clauses one

through [~~six~~] **seven** of subparagraph (ix) of paragraph (a) of subdivision one of section two hundred ten of this article.

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

(viii) of paragraph (a) of subdivision one of section two hundred ten of this article. Such subtraction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

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

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

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

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

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

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

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

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

(ii) For purposes of article nine-A of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into [~~entire net~~] **business** income [~~or minimum taxable income~~] and the term "partner's entire income" means [~~entire net~~] **business** income [~~or minimum taxable income~~], allocated within the state. For purposes of article twenty-two of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into New York adjusted gross income, and the term "partner's entire income" means New

York adjusted gross income.

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

(C) **(i)** Where the taxpayer is a shareholder of a New York S corporation that is a business located in a tax-free NY area, the shareholder's tax factor shall be that portion of the amount determined in paragraph one of this subdivision that is attributable to the income of the S corporation. Such attribution shall be made in accordance with the ratio of the shareholder's income from the S corporation allocated within the state, entering into New York adjusted gross income, to the shareholder's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment that reasonably reflects the portion of the shareholder's tax attributable to the income of such business. The income of the S corporation allocated within the state shall be determined by multiplying the income of the S corporation by [~~the~~] **a** business allocation factor [~~computed under paragraph (a) of subdivision three of section two hundred ten of this article without regard to subparagraph ten of such paragraph (a)~~] **that shall be determined in clause (ii) of this subparagraph**. In no event may the ratio so determined exceed 1.0.

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

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

(II) The wage factor shall be determined by ascertaining the percentage that the total wages, salaries and other personal service compensation, similarly computed, during such period of employees, except general executive officers, employed at the business's location or locations within the state, bears to the total wages, salaries and other personal service compensation, similarly computed, during such period, of all the business's employees within and without the state, except general executive officers.

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

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

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

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

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

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

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

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

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

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

44. The tax-free NY area excise tax on telecommunication services credit. A taxpayer that is a business or owner of a business that is located in a tax-free NY area approved pursuant to article twenty-one of the economic development law shall be allowed a credit equal to the excise tax on telecommunication services imposed by section one hundred eighty-six-e of this chapter and passed through to such business during the taxable year to the extent not otherwise deducted in computing

entire net income under this article. However, **except as otherwise provided for in this subdivision, if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount,** any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. This credit may be claimed only where any tax imposed by such section one hundred eighty-six-e has been separately stated on a bill from the provider of telecommunication services and paid by such business with respect to such services rendered within a tax-free NY area during the taxable year. Unless the taxpayer has a tax-free NY area allocation factor of one hundred percent, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

amended to read as follows:

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

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

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

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