



Summary of Tax Provisions in SFY 2004-05 Budget

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Overview of State Fiscal Year 2004-05 Budget Tax Actions

Chapters 58-60, 49, 101, 120 of the Laws of 2004, enacted as part of the 2004-05 State budget, provide for a number of tax relief and revenue raising provisions. Listed below are synopses of the tax provisions contained in the legislation. The next section provides descriptions of tax actions enacted since 1995. It is followed by a complete description of all of the tax provisions in the 2004-05 legislation. Finally, the report concludes with two appendices. Appendix A provides a guide to the tax provisions in the budget bills, listing each provision and its bill section, page, description, and effective date. Appendix B gives a brief summary of tax actions from State fiscal year 1995-96 through 2003-04.

Personal Income Tax

Personal income tax provisions in the budget will:

- Increase the credit for long-term care insurance premiums from 10 to 20 percent (also applies for business taxes).
- Include the gain from the sale of residential cooperative housing as New York-source income for nonresidents.

Business Taxes

Business tax provisions include:

- Extending the Metropolitan Commuter Transportation District business tax surcharge for four years.
- Temporarily creating two new minimum tax amounts under the corporate franchise tax.
- Establishing a new credit for film production activity in New York (also applies under the personal income tax and New York City personal income and general corporation taxes.)
- Increasing the Statewide annual aggregate limit for the low-income housing credit from \$4 million to \$6 million (also applies to the personal income tax).

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- Extending credits for alternative fuel vehicles for an additional year (also applies to personal income tax).
 - Extends the Qualified Emerging Technology Company (QETC) credit to biotechnology.
 - Extending basic bank tax and federal Gramm-Leach-Bliley Act transition provisions.
 - Establishing a fourth certified capital company program under the insurance tax.
 - Extending the Empire Zones program from September 13, 2004 to March 31, 2005.
 - Extending and modifying the Power for Jobs Program under Article 9.

Sales and Use Tax

Sales and use tax changes will:

- Postpone reinstatement of the clothing and footwear exemption through May 31, 2005, while providing new one-week exemptions from August 31 through September 6, 2004, and January 31 through February 6, 2005.
- Provide a new exemption for maintenance and certain other services performed on private aircraft.
- Create a credit or refund for certain vessels used in local transportation of passengers on water.
- Extend the exemption for alternative fuel vehicles for an additional year.
- Require companies, including affiliates, entering into contracts with the State to comply with various sales and use tax obligations.
- Extend for four years the sales tax dedication mechanism for the Carousel Center in Syracuse.

Other Provisions Other miscellaneous provisions will:

- Restore former practice with respect to the availability of hearings on certain notice and demands and notices of additional tax due.
- Allow for seven-day sales of alcoholic beverages by wine and liquor stores.
- Fix a potentially unconstitutional calculation in the estate tax for estates with property in other states.
- Extend the waste tire management fee to include tires sold for use on motorcycles, ATVs, and limited use vehicles.

New York City Provisions applicable to New York City taxes administered by the Department of Taxation and Finance include:

- Creation of an earned income credit equal to 5 percent of the federal credit.
- Limiting mortgage recording tax avoidance where mortgages are spread between different properties.
- Allowance for offset of all City taxes against State personal income tax refunds.

Highlights of Prior-Year Budget Tax Legislation

The tax reductions and initiatives included in this year's budget legislation build upon an array of tax cuts and programs enacted over the previous seven fiscal years. Listed below are some highlights of tax legislation enacted since 1995. Appendix B provides greater detail on these and other provisions.

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- Fiscal Year 1995-96**
- Enacted a three-year personal income tax reduction program totaling over \$4 billion per year when fully effective in 1997. Major provisions included reducing the top rate from 7.875 to 6.85 percent, and increasing standard deduction amounts from \$9,500 to \$13,000 for married couples, \$6,000 to \$7,500 for individuals.
 - Enacted a new estate tax deduction equal to a maximum of \$250,000 equity in decedents' principal residences.
 - Reduced the beer tax from 21 to 16 cents per gallon, the diesel motor fuel tax from 10 to 8 cents per gallon, and the container tax from 2 cents to 1 cent per container.
 - Reduced certain petroleum business tax and pari-mutuel tax rates.

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- Fiscal Year 1996-97**
- Repealed the real property gains tax.
 - Created a new tax credit for farmers' school property taxes, and expanded the child care credit.
 - Enacted a temporary exemption from sales tax for clothing and footwear costing less than \$500.
 - Enacted a variety of rate reductions and exemption/credit enhancements in the petroleum business tax.
 - Reduced the rate of tax on the additional franchise tax for

transportation and transmission companies, and allowed trucking and railroad companies the option of being taxed under the general corporate franchise tax.

- Fiscal Year 1997-98**
- Created the school tax relief (“STAR”) program, which when fully effective provides State homeowners a minimum \$30,000 full value exemption against school property taxes. The minimum exemption for homeowners age 65 and over is \$50,000, and New York City residents also receive a personal income tax credit.
 - Replaced the estate tax with a “pickup tax” equal to the maximum federal credit for state death taxes, effective February 1, 2000, and repealed the gift tax, effective January 1, 2000.
 - Enhanced the farmers school property tax and child care credits under the personal income tax, and created a new deduction under the “New York State College Choice Tuition Savings Program.”
 - Created new temporary sales tax exemptions for clothing costing less than \$100, with the exemption becoming permanent on December 1, 1999.
 - Created new corporate tax credits for certain utility costs (“Power for Jobs Program”), and reduced utility tax rates for electricity, gas, and telephone services.
 - Reduced insurance taxes and allowed banks to claim net operating loss deductions.
 - Eliminated the beverage container tax and the tax on motor vehicle damage insurance awards.

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- Fiscal Year 1998-99**
- Accelerated the STAR program enacted with the 1997-98 budget. This included providing the higher exemption and New York City resident income tax credit amounts to elderly residents, previously scheduled to be phased in by the 2001-02 school year, and 2001 tax year, in the 1998-99 school year and 1998 tax year, respectively.
 - Reduced tax rates, including the alternative minimum tax rate and the fixed dollar minimum tax, under the corporate franchise tax.

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- Created an investment tax credit for brokers/dealers in the financial services sector.
 - Expanded the permanent sales tax exemption for clothing to include footwear, and raised the threshold amount from \$100 to \$110.
 - Enacted a sales tax exemption for textbooks purchased by college students.
 - Enriched the child care credit under the personal income tax.
 - Conformed to federal tax relief for family owned businesses under the estate tax.

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- Fiscal Year 1999-00**
- Increased the earned income credit under the personal income tax from 20 percent to 25 percent of the federal credit.
 - Reduced the bank tax rate from 9 percent to 7.5 percent.
 - Reduced the insurance tax rate from 9 percent to 7.5 percent, and the premiums cap rate for non-life companies from 2.6 percent to 2.0 percent.
 - Added two additional sales tax-free weeks for clothing costing less than \$500.
 - Reduced the corporate franchise tax alternative minimum tax rate from 3 percent to 2.5 percent.
 - Provided a wide array of new business and sales tax credits and exemptions.

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- Fiscal Year 2000-01**
- Eliminated the corporate utility gross receipts tax on companies providing energy services, instead taxing these businesses under the corporate franchise tax.
 - Repealed the sales tax on separately purchased electricity and gas.
 - Added a fourth phase of the Power for Jobs Program.
 - Reduced the corporate franchise tax rate on small businesses from 7.5 percent to 6.85 percent, and reduced the S corporation

differential tax rate by 45 percent.

- Created a new “Empire Zones Program Act.”
- Created a new refundable credit or itemized deduction under the personal income tax for college tuition expenses.
- Increased the standard deduction for married couples from \$13,000 to \$14,600 over three years.
- Enriched and expanded the earned income and child care credits.
- Enhanced the sales tax exemption for property and services used to provide telecommunications, Internet access, and digital cable television services.
- Created a new sales tax exemption for certain equipment and services used by radio and TV broadcasters.

Fiscal Year 2001-02

- Added eight new Empire Zones.

Fiscal Year 2002-03

- Provided State, New York City, and Yonkers personal income tax exemptions for tax years 2000 and 2001 (and 2002 for deaths occurring in 2002) for persons dying as a result of the terrorist actions of September 11, 2001, conformed the estate tax to the federal Victims of Terrorism Tax Relief Act of 2001, and included special investment tax credit (ITC) provisions to benefit Lower Manhattan businesses.
- Established a tax amnesty program for taxpayers with unpaid liabilities under the personal income tax, sales and compensating use tax, corporate franchise taxes (other than the bank and insurance taxes), estate tax, and various excise taxes. Participants could receive a waiver of certain penalties and a 2% reduction in the applicable interest rate relating to unpaid liabilities.
- Enacted a cost-of-living adjustment to the maximum income allowed under the enhanced School Tax Relief (STAR) exemption for persons age 65 and over.

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- Modified the definition of brokers or dealers in securities for New York income allocation rules to include those marketing over-the-counter derivatives.
 - Increased the amount of the first quarterly installment of estimated tax for certain taxpayers and changed the order in which tax credits must be taken under Tax Law Articles 9, 9-A, 32 and 33.
 - Increased the aggregate limit for the low income housing tax credit.
 - Permitted gas pipeline companies with contracts in effect when New York's energy taxes were restructured and reduced to continue to recover tax costs as those contracts intended.
 - Added community development loans or investments to the assets that may be used in qualifying as a "thrift" banking corporation.
 - Made clarifications to the Empire Zones program and authorized ten new Empire Zones and establish criteria regarding zone boundaries.
 - Created three temporary sales tax exemption periods in the Liberty Zone and Resurgence Zone in Lower Manhattan.
 - Conformed the State and local sales taxes and the telecommunications excise tax to the Federal Mobile Telecommunications Sourcing Act.
 - Lowered the threshold for mandatory electronic funds transfer (EFT) participation for sales tax vendors.
 - Provided a new index to adjust the base retail price, for purposes of calculating the prepaid sales tax on cigarettes.
 - Raised the excise tax rate on tobacco products.

Fiscal Year 2003-04

- Temporarily increased New York State personal income tax rates by adding two new brackets for tax years 2003 through 2005. The new top rate and bracket for all filing statuses for tax years 2003 to 2005 is 7.7 percent of taxable income in excess of \$500,000 and the new “second to highest” tax rates and taxable income bracket vary by filing status and tax year. The supplemental tax which recaptures the benefits of the lower tax rates was also amended.
- Temporarily increased the New York City Resident personal income tax by adding two New York City resident income tax rates and brackets for tax years 2003 through 2005, in addition to the top 3.4 percent (3.648 percent including the 14 percent additional tax surcharge) that previously applied for tax year 2003. The new top rate and bracket for all filing statuses for all three years 2003-2005 is 4.45 percent of taxable income in excess of \$500,000. The new second to highest rate/bracket varies by filing status and tax year. Also like the state tax, a new supplemental tax was created to recapture the benefits of the lower tax rates.
- Required that flow-through entities such as partnerships, limited liability companies, and S corporations make quarterly estimated tax payments of New York State income tax for nonresident owners such as partners, members, and shareholders. Individual taxpayers who are compliant with their tax and filing responsibilities may obtain a waiver from the entity-level payment and continue to make estimated payments on their own.
- Created a new estimated tax requirement for nonresidents with certain sales or transfers of New York real property. In order for the deed to be recorded and transferred, the nonresident seller must remit estimated tax on the gain, at the highest rate of tax.
- Decoupled New York’s tax code from the federal tax code for both corporate and personal income tax purposes with respect to the 30 percent depreciation bonus contained in the federal *Job Creation and Worker Assistance Act of 2002* (P.L. 107-147) .

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- With certain limited exceptions, required taxpayers who deduct interest or royalty expenses for amounts paid to a related member for the use of intangible assets to add back those deductions to their taxable income.
 - Eliminated the income base component for non-life insurers and made the premiums tax the sole basis of tax. In addition, the premiums tax rate was raised to 1.75 percent on accident and health premiums and 2 percent on all other non-life premiums. The limitation on tax will no longer apply to non-life insurers. Life insurers will continue to be subject to the income-based tax, but will now be subject to a floor amount.
 - Extended for one year the transition provisions relating to the passage of the federal *Gramm-Leach-Bliley Act*.
 - Extended for two years certain provisions of the Tax Law and the Administrative Code of the City of New York relating to the taxation of commercial banks.
 - Provided that for purposes of Article 9-A, S corporations shall be subject only to the fixed dollar minimum tax for tax years beginning in 2003, 2004, and 2005.
 - Increased the State sales and use tax rate from 4 percent to 4.25 percent from June 1, 2003 through May 31, 2005.
 - Suspended the exemption for clothing and footwear priced under \$110 from June 1, 2003 through May 31, 2004 and provided for two week-long temporary exemptions for such clothing and footwear.
 - Enacted the Simplified Sales and Use Tax Administration Act authorizing New York to enter into the Streamlined Sales and Use Tax Agreement.
 - Included a line on the New York State personal income tax return to enable taxpayers to report unpaid sales and compensating use taxes.
 - Included the New York City excise tax on cigarettes in the State sales tax base.
 - Required the Commissioner to promulgate regulations necessary to

implement collections of taxes on sales made to non-native Americans on recognized reservations in the State.

- Allowed wine and liquor stores the option of opening on Sundays, provided they close another day so that they are open no more than six days per week.
- Created a new waste tire management fee of \$2.50 per tire on sales of certain new tires.

Summary of SFY 2004-05 Tax Provisions

Personal Income Tax

Long-Term Care Insurance Health-related budget legislation (Chapter 58 of the Laws of 2004) increases the credit for long-term care insurance from 10 to 20 percent of premiums paid, effective for tax years beginning after 2003. This provision also applies under the corporate franchise, corporate utility, bank, and insurance taxes.

Gains from Residential Coop Sales by Nonresidents The main budget legislation (Chapter 60 of the Laws of 2004) amends the definition of New York source income for nonresidents so that they must pay personal income tax on any gains associated with the sale or other disposition of shares in a cooperative housing corporation (CHC) where the premises represented by the shares are located in New York State and the premises are used solely for residential purposes. This change is effective for taxable years beginning on or after January 1, 2004.

Section 663 of the Tax Law is also amended to require nonresidents to make estimated personal income tax payments of the tax due on any tax due within 15 days of the delivery of the instrument affecting the sale, conveyance, or other disposition. Estimated tax payments are made to the recording officer at the time the instrument is recorded. The estimated tax requirement is effective on November 18, 2004.

Business Taxes

MTA Surcharge Extender Part C of Chapter 60 of the legislation extends for four years the temporary tax surcharge imposed on corporations doing business in the Metropolitan Commuter Transportation District. The MTA surcharge was scheduled to sunset for taxable years beginning on or after January 1, 2006. The surcharge is imposed on businesses subject to Sections 183, 184, 186-a, and 186-e of Article 9, the Corporate Franchise Tax, the Bank Franchise Tax, and the Insurance Franchise Taxes. The provisions of this section are effective immediately.

Temporary Fixed Dollar
Minimum Tax Schedule
Adjustment

The budget (Part E) contains a temporary adjustment to the corporate franchise tax fixed dollar minimum tax schedule. Effective for taxable years beginning in 2004 and 2005, taxpayers with a gross payroll of \$25 million or more would be subject to a \$10,000 fixed dollar minimum tax. Taxpayers with a gross payroll of less than \$25 million but more than \$6,250,000 would be subject to a \$5,000 fixed dollar minimum tax. Prior to this legislation, these taxpayers were subject to a fixed dollar minimum tax of \$1,500. In addition, taxpayers with a gross payroll of between \$500,000 and \$250,001 will receive a fixed dollar minimum tax cut. Previously, these taxpayers were subject to a \$225 fixed dollar minimum tax. Under the budget legislation, taxpayers with a gross payroll of \$500,000 or less would now pay the \$100 fixed dollar minimum tax.

Empire State Film
Production Credit

Corporate franchise and personal income taxpayers can claim a new tax credit for film production activity in New York State (Part P). If the taxpayer satisfies certain criteria regarding a threshold level of activity in the State, the credit equals 10 percent of qualified production costs (generally, “below-the-line” costs) incurred in the production of films and television shows. An additional 5 percent credit is available in New York City, if the City adopts the appropriate local laws. Fifty percent of excess credit is refundable, and any excess credit carried forward is fully refundable in the second year.

The aggregate amount of credit available in any calendar year is \$25 million with an additional \$12.5 million available for the New York City tax credit. Credit is awarded on a first come - first served basis with applications made to the Governor’s Motion Picture Office for the State credit and to the Mayor’s Office of Film, Theater and Broadcasting for the City credit. Any applications received after the full allocation of credit in one calendar year will be treated as having applied on the first day of the succeeding year. The credit sunsets in four years.

Low-Income Housing
Credit

The budget (Part B) increases the statewide, aggregate credit limit for the low income housing tax credit from \$4 million to \$6 million. The New York State low income housing tax credit program is based on the existing federal program and requires an agreement between the taxpayer and the Commissioner of the New York State Division of Housing and Community Renewal for a long-term commitment to low income housing. The amount of the credit depends on the applicable percentage of the qualified basis of each

low income building. The credit amount allocated is allowed as a credit against tax for ten tax years. Unused credits may be carried forward indefinitely. The total amount of credit available is \$6 million each year. The credit program applies to corporate franchise taxpayers, personal income taxpayers, banks, and insurance taxpayers.

Alternative Fuels Credit

The alternative fuels credit available for clean-fuel, electric, and hybrid vehicles and clean-fuel vehicle refueling property is extended for one year (Part D). The credit is now available for vehicles and property placed in service in taxable years beginning on or after January 1, 2004. The credit equals 60 percent of the cost of clean-fuel vehicle property, 50 percent of the cost of clean-fuel vehicle refueling property, \$2,000 for hybrid vehicles, and 50 percent of the incremental cost of an electric vehicle over a similar, gasoline-powered vehicle. The credit applies to certain Article 9 taxpayers, corporate franchise taxpayers, and personal income taxpayers, and sunsets for taxable years beginning after December 31, 2004.

QETC Credit for Biotechnology

Section 4 of Part D of Chapter 59 amends the Public Authorities Law regarding the Qualified Emerging Technology Company (QETC) credit. The legislation adds a definition of “biotechnology” to the list of emerging technology industrial classifications.

Extension of Bank Tax and GLBA Transition Provisions

Part G extends for one year certain provisions of the Tax Law and the Administrative Code of the City of New York relating to the taxation of commercial banks which were scheduled to sunset for taxable years beginning on or after January 1, 2005. These include amendments made in 1985 to the bank taxes imposed by New York State and New York City, that created the current bank tax structure in Article 32 of the Tax Law. Also extended are amendments made in 1987 to the bad debt deduction provisions of both these taxes. This section also extends for two years the transitional provisions relating to the enactment and implementation of the federal *Gramm-Leach Bliley Act*, which were scheduled to sunset for taxable years beginning on or after January 1, 2004. The provisions of this section are effective immediately and apply to taxable years beginning on or after January 1, 2004.

Fourth Certified Capital Company (CAPCO) Credit

Part D of Chapter 59 establishes a fourth CAPCO program under which insurance taxpayers can claim a credit for 100 percent of the amount invested in CAPCOs. This program includes a \$60 million Statewide cap on the total amount of investments for which taxpayers may claim credits. Under this program, each CAPCO must invest one third of its certified capital in qualified businesses in Empire Zones

(EZs), and an additional one third of its certified capital in qualified businesses located in underserved areas outside of EZs. Each CAPCO must also invest at least fifty percent of its total amount of certified capital in biotechnology companies. In total, taxpayers may not claim credits of more than \$6 million in any taxable year under Program Four. Taxpayers may earn credits immediately but may claim credits effective for tax years beginning on or after January 1, 2006.

The legislation also makes certain amendments designed to curb potential misuse of the CAPCO programs. These include restrictions on ownership or other prior relationships between CAPCOs or their affiliates and the qualified businesses they invest in. Other provisions tighten the investment requirements for continued certification of a CAPCO. The legislation also requires CAPCOs certified under Program Four to pay a fee to the Insurance Department equal to thirty percent of any net profits derived from qualified investments. This fee may be reduced by half if the CAPCO makes certain commitments regarding future investments.

The provisions of this section are effective immediately.

Empire Zones Program Extension

The budget (Part O) extended the Empire Zones (EZ) program to March 31, 2005. As a result, businesses can continue to apply for certification to become EZ businesses and Qualified Empire Zone Enterprises (QEZEs). Credits under the EZ program include a wage tax credit, an investment tax credit, a capital tax credit, the QEZE real property tax credit, and the QEZE tax reduction credit. Credits are available to corporate franchise taxpayers, personal income taxpayers, banks, and insurance taxpayers.

A separate law, Chapter 209 of the Laws of 2004, was enacted earlier in the session which clarified that taxpayers who are certified before the expiration of the EZ program would be allowed to continue to claim the QEZE benefits to which they are entitled for the full benefit period.

Power for Jobs Program Modifications

Chapter 59, Part T modifies the program to allow prior recipients of low cost power an option. Businesses with energy allocations under the Power for Jobs program whose contract periods end in 2004 or 2005 may choose to request an electricity savings reimbursement, rather than requesting an extension of their (PfJ) energy contract. Such reimbursements would be equal to the credits available in the prior year to their local distributors of electricity. If this provision survives any constitutional challenge, the PfJ tax credits available to local distributors of electricity will be reduced.

**Petroleum Business
Tax-- Exemption for
Aviation Fuels**

This legislation (Part J) exempts aviation fuel (i.e. kero-jet and aviation gas) used in over-flight miles from the petroleum business tax (PBT). Specifically, this legislation eliminates the PBT where such aviation fuel is consumed during over-flight miles on intra-state flights; the PBT would then apply only to fuel burned on take-offs from points in the State whether the flight is an interstate or intra-state flight. This provision is effective for fuel sold or used on or after November 1, 2004.

The bill also fully exempts, from the PBT, aviation fuel businesses (i.e. airlines) which service four or more cities in the State with direct non-stop flights between these cities. This provision is effective June 1, 2005.

Sales Tax

Clothing Exemption

The legislation (Part A) postpones reinstatement of the sales and use tax exemption for clothing and footwear costing less than \$110 from October 1, 2004 through May 31, 2005. The 2003-04 budget provided that the exemption be reinstated on June 1, 2004. A budget bill enacting emergency appropriations provisions subsequently postponed the reinstatement of this exemption until October 1, 2004.

Part A also provides a one-week sales tax exemption for clothing and footwear costing less than \$110; beginning January 31, 2005 and ending on February 6, 2005. An emergency appropriations budget bill (Chapter 120) created a similar one-week exemption for the seven day period of August 31, 2004 thorough Labor Day, September 6, 2004.

Localities imposing sales tax have the option of taxing or exempting clothing during the one-week periods and during the year-round exemption resuming June 1, 2005.

**Alternative Fuel
Vehicles**

The legislation (Part D) extends the sales and use tax exemption for alternative fuel vehicles through February 28, 2005 (previously, the credit was only available through February 29, 2004). Furthermore, the legislation simplifies the sales tax exemption by providing that the "incremental cost" of a qualified hybrid vehicle is a fixed amount of \$3,000.

**Private Aircraft
Maintenance**

The legislation (Part L) provides sales and use tax exemptions for maintenance and certain other services performed on private aircraft, including property used in performing the service. An exemption is also granted for storage services rendered in conjunction with servicing the aircraft. The exemptions take effect on December 1, 2004 and expire December 1, 2009.

Passenger Water
Vessels

The legislation (Part M) provides a refund or credit for tax paid on the sale to or use by a vessel operator of a vessel with a seating capacity of more than 20 passengers used for local transportation on water of passengers for hire. The provision also applies with respect to parts, equipment, lubricants, diesel motor fuel, maintenance, servicing, or repair purchased and used in the operation of any such vessel by the operator. This provision takes effect on December 1, 2004.

State Contractor
Compliance

The legislation (Part N) requires companies entering into contracts with the State, including their affiliates, to comply with various sales and use tax obligations. Specifically, contractors and subcontractors (including their affiliates) having New York sales in excess of \$300,000 must register for sales tax collection.

Upstate New York
Tourism Council Fund

The legislation (Part Y of Chapter 59) extends a provision enacted by Chapter 383 of the Laws of 2001 that created the Upstate and Downstate New York Tourism Councils. Under the 2001 legislation, the Upstate Tourism Council will be funded, in part, by moneys measured by the amount of State sales tax collected by vendors at the expanded Carousel Center in Syracuse, if the expansion was completed by July 1, 2004. The new law extends the deadline for the expanded Carousel Center to October 1, 2008.

Other Miscellaneous

Hearing Rights

The legislation (Part F) restores former State practice with respect to the availability of hearings on notice and demands and notices of additional tax due issued for amounts assessed because of mathematical or clerical errors, federal changes, or failure to pay tax shown on the return which are deemed to be self-assessed. Specifically, a notice and demand is used when the tax shown due exceeds the amount remitted by the taxpayer or in other self-assessed situations, such as cases involving math errors on the tax return or where failure to perform a certain act (such as failure to timely file a return) gives rise to a penalty. This legislation requires that these assessment cases be issued a notice of demand without being afforded formal hearing rights which resulted from the 1995 *Meyers* case.

As such, taxpayers will have 21 calendar days to remit the payments, as opposed to up to 111 days currently afforded taxpayers because of billing delays caused by the availability of formal hearing rights. This provision will result in the acceleration of payments to the Department of up to 90 days for amounts assessed in these cases. Also, informal

hearing rights will still be available to taxpayers seeking mediation while allowing the Department to receive quicker payment from the vast majority of these mostly “non-contested” cases. This provision applies to notice and demands and notices of additional tax due issued on or after December 1, 2004.

Estate Tax

The legislation (Part I) amends the estate tax to address a likely unconstitutional calculation for estates with property in states other than New York. Previously, the credit for tax paid to other states was limited to either the share of property in other states or the amount of tax actually paid to other states. Because many states now have lower estate taxes than New York, this resulted in an inordinately high effective tax on non-New York property in certain cases.

Effective for estates of decedents dying on or after January 1, 2002, the credit for tax paid to other states is amended to eliminate the limitation based on tax actually paid. Instead, the credit will be computed solely by multiplying the federal credit for state death taxes by the ratio of non-New York property to total property. The change will avoid New York’s imposing a potentially unconstitutional tax on non-New York property located in states with lower estate taxes than New York’s.

In addition, the legislation changes the date when interest begins to run for late payments made with extensions effective for estates of decedents dying on or after February 1, 2000. Interest will no longer accrue from the date of death, but instead will accrue from the date the return is actually filed, which can be extended to up to 6 months from the regular due date of 9 months from the date of death. Finally, the legislation repeals the obsolete former inheritance tax, effective upon enactment.

Alcohol- Seven Day Liquor License

This legislation (Part K) amends the Alcohol Beverage Control Law converting all of the current six day option licenses for wine and liquor stores to seven day licenses. In May 2003, New York State wine & liquor stores were given the option to open on Sundays but were required to close another day so that they were open no more than six days per week. Wine & liquor stores will now have the option to open seven days. The seven day option license becomes effective August 20, 2004.

Waste Tire Fee

The legislation (Part F of Chapter 59) extends the waste tire management fee on sales of new tires in the state to incorporate tires sold for use on motorcycles, all terrain vehicles (ATVs) and limited use vehicles. The waste tire fee of \$2.50 per new tire sold was imposed in 2003 under the Environmental Conservation Law but the fee is administered and collected by the Department. The fee is collected by tire retailers, including car dealers, on sales of new tires for use on cars, trucks, motor homes, buses trailers, or any other vehicle that could qualify for registration under section 401 of the Vehicle and Traffic Law. The budget bill extends this fee to new tires sold for use on vehicles that could qualify for registration under sections 410, 2261 or 2282 of the Vehicle & Traffic law. The expanded fee is effective beginning with tires sold on or after September 19, 2004. The entire waste tire fee will expire on March 31, 2011.

New York City Provisions

Earned Income Credit

The legislation (Part V) also creates an earned income credit equal to 5 percent of the federal credit, effective for tax years beginning after 2003. The Department's mandated annual earned income credit study is likewise expanded to include the New York City credit.

Mortgage Recording Tax Loophole Closer

The legislation (Part Q) amends the definition of a mortgage in New York City to include certain mortgages if the Commissioner of Taxation and Finance finds that transfers of one or both properties in connection with the recording of a spreading agreement or additional mortgage was undertaken to avoid or evade tax rather than for an independent business or financial purpose. Tax has previously been avoided by "spreading" an existing mortgage from one property with a mortgagor (owner) and mortgagee (lender) to another property with a different mortgagor and mortgagee. This change applies to mortgages recorded on or after the ninetieth day after the bill becomes law.

Refund Offsets

The Department is authorized (Part R) to offset income tax refunds to collect warranted tax judgments against all New York City taxes, based on written agreements between the State and City Tax/Finance commissioners. Currently, only New York City personal income and sales taxes are subject to offset.

Appendix A: Summary of FY 2004-05 Tax Provisions

Summary of Tax Provisions in SFY 2004-05 Budget

Section	Page(s)	Subject	Description	Effective Date
Chapter 60 of the Laws of 2004				
Part A	3-8	Sales Tax Clothing Exemption	Postpones reinstatement of the sales and use tax exemption for clothing and footwear costing less than \$110 through May 31, 2005 and provides a one-week sales tax exemption for clothing and footwear costing less than \$110; beginning January 31, 2005 and ending on February 6, 2005.	Immediate
Part B	8	Low Income Housing Tax Credit	Increases the statewide annual aggregate credit limit from \$4 million to \$6 million.	Immediate
Part C	8-15	MTA Surcharge Extender	Extends the corporate tax MTA Surcharge four years through 2009. Also increases the time a taxpayer may be subject to the surcharge.	Immediate; sunsets for TYBOA January 1, 2010.
Part D	15-21	Alternative Fuel Vehicle Incentives	Extends corp and PIT credits until December 31, 2004. Extends the sales and use tax exemption for alternative fuel vehicles through February 28, 2005.	Credits retroactive to January 1, 2004; exemption retroactive to March 1, 2004.
Part E	21	Temporary Fixed Dollar Minimum Tax Schedule Adjustment	Creates two new amounts for Article 9-A taxpayers: 1) Taxpayers with over \$25 million in gross payroll - \$10,000 2) Taxpayers with between \$6.25 million and \$25 million - \$5,000 Also, taxpayers currently subject to the \$225 amount would now be subject to the \$100 amount.	TY beginning in 2004 and 2005; repealed for TYBOA January 1, 2006.
Part F	21-25	Hearing Rights Upon Certain Notice and Demands	Restores former practice with respect to the availability of hearings on notice and demands/notice of additional tax due for assessments relating to math errors, federal changes or failure to pay tax shown on returns which are deemed to be "self-assessed."	Applies to notice and demands/notice of additional tax due issued on or after 12/01/04.
Part G	25-32	Extension of Bank Tax and GLBA Transition Provisions	Extends the State and City bank franchise taxes on commercial banks one year, as well as the bad debt provisions relating to these taxes. Also extends the transition provisions relating to the Gramm-Leach-Bliley Act for two years.	TYBOA January 1, 2004 sunsets for TYBOA January 1, 2006
Part H	32-33	Gains from Residential Coop Sales by Nonresidents	Makes gains from sales of coops by nonresidents (taxable) New York source income under the PIT; also includes estimated tax requirement.	TYBOA January 1, 2004
Part I	34-35	Estate Tax Fix, Other	Fixes potentially unconstitutional calculation of credit for tax paid to other states; runs underpayment interest from due date of return without regard to extensions; repeals inheritance tax.	Deaths on or after 1/1/02 (fix), 2/1/00 (interest), immediately (repeal)
Part J	35	PBT On Aviation Fuel	1) Exempts aviation fuel (ie. kero-jet and aviation gas) used in over-flight miles from the petroleum business tax (PBT). 2) Exempts aviation fuel businesses (ie. airlines) which service four or more cities in the State with direct flights between these cities from PBT.	1) November 1, 2004 2) June 1, 2005

Summary of Tax Provisions in SFY 2004-05 Budget

Section(s)	Page(s)	Subject	Description	Effective Date
<hr/> Chapter 60 of the Laws of 2004 <hr/>				
Part K	35-37	Seven Day Liquor Sales	Amends the Alcohol Beverage Control Law converting all of the current six day option licenses for wine and liquor stores to seven day licenses.	Immediately
Part L	37	Sales Tax- Services to Private Aircraft	Provides sales and use tax exemptions for maintenance and certain other services performed on private aircraft.	December 1, 2004 through December 1, 2009
Part M	37-39	Sales Tax- Vessels Used in Local Transit	Provides a sales tax refund or credit for certain vessels used in local transportation on water of passengers for hire and for related parts, fuel, and services.	December 1, 2004
Part N	39-42	Sales Tax- Responsibilities of State Contractors	Requires companies entering into contracts with the State, including their affiliates, to comply with various sales and use tax obligations.	January 1, 2005
Part O	42	Empire Zones Extender	Extends the sunset date of the Empire Zones program from 9/13/04 to 3/31/05.	Immediately
Part P	43-50	Empire State Film Production Credit	Creates a corporate franchise and personal income tax credit for qualified film production in New York State. The credit equals 20 percent of qualified costs, may be taken against the alternative minimum tax, and is 50 percent refundable in the first year. Excess credit carried forward is fully refundable. A separate 5 percent credit is available for production in cities with a population of one million or more. The statewide credit is capped at \$25 million annually; the city component is capped at \$12.5 million annually.	TYBOA January 1, 2004 through four years after the date of enactment.
Part Q	50-51	NYC MRT Loophole Closer	Attempts to stop MRT evasion where mortgages are "spread" between different properties to avoid tax.	Mortgages recorded 90 day after enactment.
Part R	51-77	NYC Offset	Allows for offset of all NYC taxes against income tax.	Immediately
Part V	88-94	NYC EITC	Creates a NYC earned income credit equal to 5 percent of federal credit.	TYBA 2003

Summary of Tax Provisions in SFY 2004-05 Budget

Section(s)	Page(s)	Subject	Description	Effective Date
Chapter 58 of the Laws of 2004				
Part B	17-18	Long Term Care Insurance Credit	Increases credit from 10 percent to 20 percent of premiums paid.	TYBA 2003
Chapter 59 Laws of 2004				
Part D	16-33	Fourth CAPCO Program	Establishes a fourth CAPCO program that allows insurance taxpayers to claim credits for 100% of investments in CAPCOs up to \$60 million statewide cap. Imposes a fee on Program Four CAPCOs based on net profits derived from qualified investments. Also imposes certain ownership and investment restrictions on all CAPCO programs.	Taxpayers may earn credits immediately and may claim credits for TYBOA January 1, 2006.
		QETC Credit for Biotechnology	Extends the Qualified Emerging Technology Company credit to biotechnology.	TYBOA January 1, 2004
Part F	34	Waste Tire Fee Extension	Extends the waste tire management fee on sales of new tires in the state to incorporate tires sold for use on motorcycles, all terrain vehicles (ATVs) and limited use vehicles.	30 days after bill becomes law.
Part T	43-46	Power for Jobs Program	Modifies program to allow businesses to choose direct reimbursement, rather than an extension of lower cost power contracts.	30 days after bill becomes law.
Part Y	53	Upstate New York Tourism Council Fund	Extends the deadline for the expansion of the Carousel Center in Syracuse to October 1, 2008.	Immediately
Chapter 49 of the Laws of 2004				
Part B	2-4	Sales Tax Clothing	Postpones reinstatement of the sales and use tax exemption for clothing and footwear costing less than \$110 through June 30, 2004.	Immediately
Chapter 101 of the Laws of 2004				
Part A	1-2	Sales Tax Clothing	Postpones reinstatement of the sales and use tax exemption for clothing and footwear costing less than \$110 through July 31, 2004.	Immediately
Chapter 120 of the Laws of 2004				
Part F	4-7	Sales Tax Clothing	Postpones reinstatement of the sales and use tax exemption for clothing and footwear costing less than \$110 through September 30, 2004 and provides a one-week sales tax exemption for clothing and footwear costing less than \$110; beginning August 31, 2004 and ending on Labor Day, September 6, 2004.	Immediately

TYBA Taxable years beginning after

TYBOA Taxable years beginning on or after

TMBOA Taxable months beginning on or after

TYEOA Taxable years ending on or after

Appendix B: Summary of Tax Actions in Fiscal Years 1995-96 Through 2003-04

Fiscal Year 1995-96 Tax Actions

- Personal Income Tax
- Reduced the top tax rate, from 7.875 percent in 1994 to 6.85 percent.
 - Raised the standard deduction as currently scheduled from \$9,500 to \$13,000 for married couples and from \$6,000 to \$7,500 for individuals.
 - Expanded the income threshold where the top rate becomes effective from \$26,000 to \$40,000 for married filers.
 - Retained the household credit and created a new excess deductions credit for 1995 to offset potential tax increases that the enacted tax rate schedule could cause for low and middle income taxpayers.
- Further Tax Reductions
- Reduced the alcoholic beverage tax on beer by 5 cents per gallon.
 - Cut the container tax in half from 2 cents per container to one penny.
 - Enacted a new estate tax deduction equal to a maximum of \$250,000 of the equity in the decedent's principal residence.
 - Reduced the diesel motor fuel excise tax from 10 cents to 8 cents per gallon.
 - Provided an up-front exemption from the petroleum business tax for sales of heating fuel to not-for-profit organizations.
 - Reduced the petroleum business tax on aviation fuels to 5.2 cents per gallon (before surcharge). The monthly minimum petroleum

business tax was reduced from \$25 to \$2, and aviation businesses that are not airlines were allowed to file annually rather than monthly.

- Provided an up-front exemption from the motor fuel excise tax for retail sales of aviation gasoline
- Extended the qualifying periods for the real property transfer gains tax builders' exemption.
- Reduced pari-mutuel tax rates for NYRA races and extended provisions for simulcasting.

Extenders

The temporary Metropolitan Commuter Transportation District business tax surcharge was extended for two years. Certain provisions of the bank tax also were extended for two years.

Other Significant Provisions

Aside from tax reductions, the most significant State tax law change enacted with the budget was the restructuring of New York's franchise and excise taxes on telecommunications to conclude the litigation between the State and interstate telecommunications providers. Other significant provisions:

- Froze the S corporation entity tax at the difference between the corporate franchise tax rate and 7.875 percent;
- Decreased the tax liability threshold for sales tax vendors filing by electronic funds transfer from \$4 million to \$1 million annually; and
- Enacted a sales tax prepayment system for sales of cigarettes to enhance compliance.

**Fiscal Year 1996-97
Tax Actions**

Real Property Gains Tax

The budget eliminated the real property gains tax enacted in 1983, which imposed a 10 percent levy on the gain derived from non-residential property transfers over \$1 million. The repeal was effective June 15, 1996

Personal Income Tax

- Enacted a school property tax credit for farmers beginning in 1997 for taxpayers that derive at least two-thirds of their total income from farming (also available under the corporate franchise tax).

Sales and Use Tax
Reductions

- Enacted a tax credit for the costs of rehabilitating historic barns in the State (also available under the corporate franchise tax).
- Enhanced the child and dependent care credit for taxpayers with adjusted gross income below \$14,000 and established the credit as refundable for residents beginning in 1996.
- Exempted clothing and footwear costing less than \$500 from the 4 percent State sales tax and the 0.25 percent tax imposed in the Metropolitan Commuter Transportation District (MCTD) for the period January 18, 1997 to January 24, 1997, and provided localities (including New York City) with the option to enact the exemption for the same period.
- Expanded the exemption for printed promotional materials and related services, including storage services, when the promotional materials are mailed or shipped to customers.
- Exempted municipal parking services from the State sales tax, local sales tax outside New York City, and the 6 percent parking tax imposed in New York City.
- Simplified the sales tax exemption for shopping papers.
- Expanded the exemption for commercial vessels and aircraft.

Petroleum Business Tax
Relief

- Reduced the PBT rate on diesel motor fuel used by railroads by 7 cents per gallon on January 1, 1997.
- Exempted from the PBT residual petroleum product and non-automotive diesel gallonage used for manufacturing purposes beginning January 1, 1998.
- Exempted residual petroleum and non-automotive diesel gallonage used for commercial purposes from the PBT supplemental tax effective March 1, 1997.
- Reduced the supplemental PBT rate on automotive diesel product by 0.75 cents per gallon effective January 1, 1998, and by an additional 1 cent per gallon on April 1, 1999.
- Increased the credit allowed against the PBT on residual petroleum product and non-automotive diesel product used to generate electricity by 0.5 cents per gallon effective April 1, 1999.

Further Tax Reductions

- Reduced the section 184 gross receipts tax rate as it applies to truckers and railroads from 0.75 percent to 0.6 percent beginning in 1997.
- Allowed trucking and railroad companies currently taxed based on gross receipts (Article 9) the option of converting to an income based tax (Article 9-A) beginning in 1998.

Other Significant Provisions

- Established a tax amnesty program for the personal income tax, the Article 9-A corporate franchise tax, certain taxes imposed under Article 9, and the sales and use tax during the period November 1, 1996 to January 31, 1997.
- Extended the time period to claim a fuel use tax or carrier tax refund for fuel purchased within the State but consumed outside the State, and to claim a refund for erroneous payments under the highway use tax from two to four years.
- Made permanent existing provisions contained in both the State and New York City real estate transfer taxes concerning newly formed real estate investment trusts (REITs), and provided temporary additional tax relief for property transferred into existing REITs.
- Changed the rate used in the S corporation differential tax from 7.59375 to 7.875 in 1995 for small S corporations to correct for an unintended tax increase.
- Expanded the electronic funds transfer (EFT) hardship provisions for certain building suppliers.
- Delayed the implementation of the tax on motor vehicle damage insurance awards from September 1, 1996 to July 1, 1997.
- Provided for reimbursements of petroleum business taxes on aviation fuels.
- Corrected unintended tax increases for certain taxpayers under estate and gift taxes which resulted from a 1994 law change.
- Expanded the electronic funds transfer program to the alcoholic beverage tax for filers with a tax liability threshold of \$5 million.

Fiscal Year 1997-98 Tax Actions

STAR

The budget created a new program that reduced residential school property taxes. The State School Tax Relief (“STAR”) program took effect for taxes levied in fiscal years beginning on July 1, 1998 for the 1998-99 school year. As passed, STAR would provide, when fully effective during the 2001-2002 school year, exemptions against school property taxes, resulting in at least a \$30,000 full value exemption for homeowners under the age of 65, and at least a \$50,000 full value exemption for homeowners age 65 and over with incomes at or below \$60,000.

As part of the property tax relief program, the budget also provided residents of New York City with reductions in the resident City personal income tax. Similar to the property tax relief program, the State will reimburse New York City for its reduced personal income tax revenues.

Estate & Gift Tax

- The unified credit against the estate tax was increased from \$2,950 to \$10,000, thereby increasing the exemption equivalent from \$115,000 to \$300,000, beginning on or after October 1, 1998.
- The unified credit for gift taxes was increased for gifts up to \$300,000 made on or after January 1, 1999.
- The gift tax was repealed for gifts made on or after January 1, 2000.
- The estate tax was replaced with a “pickup” of the tax equal to the maximum federal credit for State death taxes, increasing the exemption level for estates to the current federal level beginning February 1, 2000, with a cap on the exemption equivalent of the pickup of \$1 million.

Personal Income Tax

- Enhanced the Farm School Property tax credit by exempting up to the first \$30,000 of nonfarm federal gross income in the determination of eligibility for the credit. It also provided for subtracting principal payments on farm debt when calculating the income limit for the phase-out of the credit.
- Increased the child and dependent care credit to 100 percent of the federal child care credit for taxpayers with adjusted gross income of \$17,000 or less.

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- Extended the Employment Incentive Credit and Economic Development Zone Employment Incentive Credit to businesses whose owners are taxable under the personal income tax.
 - Established a new solar credit for residential investment in solar electric generating equipment.
 - Provided an exemption from State and local taxation for the pension income of retired Manhattan and Bronx Surface Transit Operating Authority employees, similar to that allowed other public employees.
 - Created the New York State College Choice Tuition Savings Program. New York State residents and nonresidents can establish savings accounts to pay for qualified higher education expenses.

Sales Tax

- Exempted clothing, excluding footwear, costing less than \$100 from the four percent State sales tax and the 0.25 percent tax imposed in the twelve-county Metropolitan Commuter Transportation District (MCTD), for the periods September 1, 1997 through September 7, 1997 and September 1, 1998 through September 7, 1998. Provided that the exemption for such clothing becomes permanent on December 1, 1999, with local option.
- Provided relief to various businesses and consumers selling and purchasing goods and services through coin-operated devices.
- Increased the vendor allowance to three and one-half percent of the State sales tax collected and raised the cap from \$100 to \$150 per quarter.
- Exempted sales of and services to buses used to provide passenger transportation service, including charter and tour services.
- Exempted members of homeowners' associations, including condominium owners and co-op shareholders, from the four percent State, and 0.25 percent MCTD taxes on parking services. Also exempted local sales tax on these services outside the City of New York.

Corporate Tax Provisions

- Created a new tax credit, through the Power for Jobs program, against the tax on furnishing of utility services imposed under the corporation and utility tax.
- Reduced corporation and utility tax rates for electricity, gas and telephone services.
- Extended the investment tax credit carryforward period from 10 to 15 years under the corporation franchise tax.
- Allowed credits for electric vehicles, clean fuel vehicles using natural gas, methanol and other alternative fuels, and clean fuel refueling facility property.
- Created a new tax credit for employers who employ individuals with disabilities.
- Reduced the premiums tax rate and limitation on tax liability for life insurers subject to the corporation franchise tax on insurance companies.
- Allowed insurers subject to the corporation franchise tax on insurance companies to claim a credit for investments in certified capital companies;
- Allowed the formation of captive insurance companies and providing these insurers with preferential tax treatment under the corporation franchise tax on insurance companies.
- Provided a prospective net operating loss deduction for banking corporations for losses incurred on or after January 1, 2001.
- Conformed the treatment of New York S corporations to the treatment of federal Subchapter S corporations and allowed certain banks to elect New York S corporation status.
- Extended, for four years through 2000, certain provisions of the bank tax that apply to commercial banks.
- Extended, for four years through 2000, the 17 percent Metropolitan Transportation Business Tax Surcharge for taxpayers conducting business in the Metropolitan Commuter Transportation District.

Other Significant Provisions

Created the “Taxpayer Bill of Rights Act of 1997.”

- Eliminated the one cent non-refillable beverage container tax (Article 18-A) starting October 1, 1998.
- Extended until October 31, 2002, the alcoholic beverage tax enhanced enforcement provisions enacted as part of Chapter 508 of the Laws of 1993.
- Clarified the operation of the petroleum business tax (PBT) and granted refunds and credits under the PBT and motor fuel excise tax.
- Repealed the tax on motor vehicle damage insurance awards (Article 15).

**Fiscal Year 1998-99
Tax Actions**

STAR

The budget accelerated the STAR program enacted with the 1997-98 budget. It provided a minimum \$50,000 exemption in the 1998-99 school year for senior citizens age 65 and over with incomes of \$60,000 or less. This exemption level was previously \$12,500, with the \$50,000 amount scheduled to phase in during the 2001-02 school year. The legislation also simplified the income definition used to determine the higher senior exemption, and removed income from individual retirement arrangements from the definition.

The legislation also accelerated the higher credit for all senior citizens against the New York City resident personal income tax. These individuals will receive a credit of \$125 (married) or \$62.50 (all others) beginning in the 1998 tax year. Previously, they would have received a \$12 credit, with the higher amounts not applying until the 2001 tax year.

Corporation Franchise Tax

Reduced the corporation franchise tax rate for large and small businesses.

- Reduced the alternative minimum tax for corporation franchise taxpayers.
- Reduced the fixed dollar minimum tax for small business taxpayers.

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- Reduced the Article 22 equivalent rate for determining the S corporation differential tax.
 - Established the “New York State Emerging Industry Jobs Act” to provide an emerging technology employment tax credit and an emerging technology capital credit.
 - Provided an investment tax credit for brokers/dealers in the financial services sector.
 - Required that the MTA Surcharge be calculated as if the Article 9-A corporate franchise tax rate had not changed. The change maintained the same amount of MTA Surcharge revenue that would have prevailed in the absence of the Article 9-A rate reduction.

Sales Tax Changes

- Expanded the existing temporary clothing exemption scheduled for September 1-7, 1998 to include footwear and increased the threshold at which an article of clothing becomes taxable to \$500.
- Provided for a new temporary exemption period for articles of clothing and footwear selling for less than \$500 during the week from January 17th through January 24th, 1999.
- Expanded the permanent exemption scheduled to begin on December 1, 1999 to include footwear and raised the threshold at which items of clothing and footwear become taxable from \$100 to \$110.
- Increased the sales tax exemption threshold for coin-telephone calls from 10 cents or less to 25 cents or less.
- Expanded the exemption for telephone central office equipment.
- Exempted textbooks purchased by full time or part time college students.
- Exempted computer system hardware used in designing and developing computer software for sale.

Personal Income Tax

- Increased the income level at which the maximum child care credit of 100 percent of the federal credit applies. Beginning in tax year 1999, this level increased from \$17,000 to \$35,000 of New York adjusted gross income. In addition, the income level at which the credit equals 20 percent of the federal credit increased from \$30,000 to \$50,000.

Other Provisions

- Increased the maximum acreage limitation under the farmer's school property tax credit from 175 to 250 for the 1998 tax year. The maximum 250 acres was previously scheduled to apply beginning in the 1999 tax year. This change also applied under the corporation franchise tax.
- Created a new subtraction modification for gain from the sale of qualified emerging technology investments, as defined in the "New York State Emerging Industries Jobs Act." Taxpayers must add the gain to income when they sell the investments, resulting in a deferral of tax for the period they hold the investments. This tax benefit also applied under the corporation franchise tax, the bank tax and the insurance tax.
- Created a new exclusion for reparation payments and items of income from stolen assets or insurance payments for victims of Nazi persecution.
- Conformed the estate and gift tax to the most recent federal amendments, including the exclusion for family-owned business assets.
- Reduced the alcoholic beverage tax on beer from 16 cents to 13.5 cents per gallon.
- Reduced the supplemental tax portion of the truck mileage tax by 50 percent.

**Fiscal Year 1999-00
Tax Actions**

- Earned Income Tax Credit** The budget legislation increased the earned income tax credit under the personal income tax from 20 percent of the federal credit to 22.5 percent in 2000 and 25 percent for tax years beginning after 2000. The increase is contingent upon the federal government's approving the increase as maintenance of effort toward the Temporary Assistance to Needy Families program.
- Bank Tax Rate Reduction** The legislation decreased the bank tax rate from 9 percent to 7.5 percent over a three-year period.
- Insurance Tax Rate Reduction** The legislation also reduced the insurance tax rate on entire net income from 9 percent to 7.5 percent over a three-year period. In addition, it reduced the cap rate on premiums for non-life insurance companies from 2.6 percent to 2.0 percent over the three-year period.

Sales Tax Clothing
Exemption

The budget legislation delayed implementation of the permanent exemption for clothing and footwear priced under \$110 from December 1, 1999 to March 1, 2000. However, it added two additional tax-free weeks for clothing costing less than \$500. These weeks occurred September 1-7, 1999 and January 15-21, 2000.

The legislation also provided localities with the flexibility to opt in or out of the permanent exemption effective in March of each year.

Other Personal Income
Tax Reductions

- Enriched the farmers school tax credit by expanding the definition of qualified property to include certain set-aside land, and increased base acreage by certain conservation acreage.
- Extended the “qualified emerging technology company” employment and capital credits from the corporation franchise tax to the personal income tax.
- Streamlined innocent spouse relief by conforming to federal provisions.

Other Business Tax
Reductions

- Extended the credits for “qualifying emerging technology companies” to remanufacturers of certain commodities that would otherwise enter the solid waste stream (applied also to personal income tax).
- Created a new credit of \$500 per automated external defibrillator purchased by all business taxpayers (including the personal income tax).
- Reduced the corporation franchise tax alternative minimum tax rate from 3 percent to 2.5 percent.
- Repealed provisions relating to mergers, acquisitions, and consolidations.
- Provided reductions in the subsidiary capital tax base in the corporation franchise tax for bank and insurance subsidiaries, and for gas and electric subsidiaries.
- Expanded the CAPCO program to provide an additional \$30 million to be invested in certified capital companies.
- Doubled economic development zone and zone equivalent area (ZEA) wage credits, and for ZEAs, increased claim period from two to five years.

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- Expanded alternative fuel tax credits to certain vehicles leased to government entities, provided the company produces the vehicles in New York and creates at least 25 full-time jobs in manufacturing the vehicles.
 - Permitted air freight forwarders to file combined returns with their affiliated airlines, and to allocate their income by the specialized airline industry allocation factors.
 - Reduced the corporate tax on airlines by changing the formula used to apportion income to New York.
 - Ensured that natural gas used to produce electricity for ultimate consumption is not subject to the gas import tax.
 - Eliminated the excess dividends tax for telecommunications companies which provide local telephone service with fewer than one million access lines.
 - Expanded exemptions for farming activities.
 - Provided an exemption for machinery, equipment and apparatus used to upgrade cable television systems to provide telecommunications services for sale. Also exempted machinery and equipment purchased by telecommunications companies for transmission of Internet access services.
 - Extended exemption for hardware used in designing and developing computer software to include hardware used in Internet web site design and development.
 - Exempted certain theatrical property and services from tax.
 - Exempted repair and maintenance services to manufacturing equipment from non-New York City local sales taxes.
 - Reduced the use tax on self-manufactured items which manufacturers use in their businesses.
 - Extended the exemption for hot drinks and certain food items sold from vending machines to include vending machines which accept credit and debit cards.
 - Extended special record keeping and on-site inspection provisions applicable to parking garages located in Manhattan.

Other Sales Tax Provisions

Other Tax Reductions

- Provided a 20 percent petroleum business tax rate reduction for diesel and residual oils used for non-residential heating, and a full reimbursement when these fuels are used in mining or extracting.
- Reduced the beer excise tax by 1 cent per gallon, and expanded the small brewers exemption.
- Exempted from all taxes qualified settlement funds and grantor trusts established for victims or targets of Nazi persecution and amounts received by victims from such funds or trusts.
- Conformed the estate and gift tax to federal law, enriching the deduction for family owned businesses and other provisions.
- Extended lower State and New York City real estate transfer tax rates for transfers to existing real estate investment trusts.
- Reduced the tax applicable to on-track wagering at New York Racing Association racetracks.
- Reduced the boxing and wrestling tax.

Fiscal Year 2000-01 Tax Actions

Energy Tax Reduction

The Article 9 corporate utility franchise tax on gross receipts was amended to no longer apply to companies providing energy services. Effective January 1, 2000 companies providing energy services, including gas and electric providers and pipelines, became taxable under Article 9-A. The other Article 9 gross receipts taxes were substantially reduced over a five-year period. The tax on energy as a commodity and the natural gas import tax will be eliminated by 2005. In addition, a refundable tax credit was provided for any of the gross receipts taxes and the gas import tax on manufacturing uses of energy paid on or after January 1, 2000.

Because it is possible to purchase the commodity of gas or electricity outside of New York, a compensating use tax on electricity and natural gas was imposed by the legislation, effective June 1, 2000. In addition, effective September 1, 2000 the sales tax on charges for separately purchased transmission and distribution of electricity and gas was phased down and will be eliminated by September 1, 2003.

Power for Jobs	A fourth phase of the Power for Jobs Program was added providing 300 megawatts of lower cost power to employers. Allocations began during the Fall of 2000 and three year contracts for the reduced cost power began on or after January 1, 2001.
Personal Income Tax Reductions	<p>The legislation created a new refundable credit or an itemized deduction for allowable college tuition expenses paid by resident taxpayers on behalf of the taxpayer, the taxpayer's spouse, or dependents to enroll or attend qualifying in- or out-of-state institutions of higher education. The credit and deduction are available only for undergraduate study. The maximum amount of allowable college tuition expenses is \$10,000 phased in equally over a four-year period beginning in tax year 2001.</p> <p>The legislation also:</p> <ul style="list-style-type: none"> • Increased the standard deduction for married couples filing a joint tax return from \$13,000 to \$13,400 in tax year 2001, \$14,200 in tax year 2002, and \$14,600 thereafter; • Increased the earned income tax credit (EITC) for low and moderate-income working families from 25 percent of the federal credit in 2001 to 27.5 percent in 2002, and to 30 percent of the federal credit after 2002; and • Increased the child and dependent care credit from 100 percent of the federal to 110 percent for taxpayers with incomes under \$25,000, and applied the 100 percent credit to incomes up to \$50,000, up from \$35,000. The income level at which the credit equals 20 percent of the federal also increased, from \$50,000 to \$65,000. <p>Finally, the legislation created new credits for:</p> <ul style="list-style-type: none"> • Twenty percent of the cost of installing fuel cell electric generating equipment in the taxpayer's principal residence, up to a maximum credit amount of \$1,500; • Up to \$250 of costs associated with each of the following: 1) removing existing residential fuel oil storage tanks, 2) permanently closing existing residential fuel oil storage tanks, and 3) purchasing and installing new replacement tanks; and • Ten percent of the cost of purchasing qualifying long-term care insurance.

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- Business Tax Reductions
- Reduced the corporate franchise tax rate for small businesses from 7.5 percent to 6.85 percent for businesses with entire net income of \$200,000 or less. For small businesses with entire net income between \$200,000 and \$290,000, the rate ranges from 6.85 percent to 7.5 percent.
 - Reduced the S corporation differential tax rate by 45 percent.
 - Created an "Empire Zones Program Act" to encourage the development of businesses in economic development zones (EDZs) throughout the State.
 - Provided an array of tax credits to encourage the construction of environmentally sensitive or "green" buildings.
 - Allowed the use of the economic development zone employment incentive credit against the alternative minimum tax.
 - Exempted qualified homeowners associations, which have no homeowners' taxable income, from payment of the fixed dollar minimum tax under the corporate franchise tax.
 - Allowed the acquiring corporation a certain portion of the investment tax credit (ITC) associated with assets transferred by the transferor corporation in certain transactions.
 - Prevented the elimination of investment tax credits for companies involved in mergers and acquisitions.
 - Provided a new tax credit for qualified transportation improvement contributions.
 - Special provisions under Article 9-A relating to the sale or lease of electric vehicles or clean fuel vehicle property installed in motor vehicles to governmental entities, scheduled to sunset in 2001, were extended to 2003.
 - Created a new credit program entitled the "New York State Low Income Housing Tax Credit Program."
 - Allowed securities brokers/dealers to allocate receipts based on the location of their customers, rather than under an approach based on where they perform their services.
 - Created transitional provisions relating to the enactment and

implementation of the federal Gramm-Leach-Bliley Act of 1999 to allow certain corporations that were taxed under the corporate franchise tax or bank tax in 1999 to maintain that taxable status in 2000. Also permitted certain corporations that are owned by financial holding companies or are financial subsidiaries of banks to elect to be taxed under either the corporate franchise tax or bank tax for the 2000 taxable year.

Sales and Use Tax Deductions

- Established a third Certified Capital Company (CAPCO) program under which insurance taxpayers can claim a credit for 100 percent of the amount invested in CAPCOs.
- Allowed bank taxpayers to situs receipts from management, administrative, or distribution services to regulated investment companies based on the location of the customer. This conformed the siting method for banks to the method allowed for general business corporations.
- Extended the ITC available to corporations, banks, and personal income taxpayers that are broker/dealers in securities to insurance taxpayers.
- Expanded the existing farm production exemption for tangible personal property, building materials, utility services, and services provided to farm real property. Provided commercial horse boarding operations with the same exemptions provided to farms.
- Provided companies developing and operating Internet data centers in New York an exemption for most property and services used in their web site hosting facilities.
- Exempted food and drink sold through a vending machine when such items cost 75 cents or less.
- Modernized and enhanced the exemption for property and services used to provide telecommunications services and Internet access services for sale. Exempted certain purchases for conversion to digital cable television service.
- Provided radio and television broadcasters an exemption for machinery and equipment and certain services used in the production and transmission of live or recorded programs.
- Exempted manufacturing and industrial pollution control equipment and machinery.

Other Tax Reductions

Eliminated the pari-mutuel tax on all races taking place at New York Racing Association (NYRA) race tracks during the three days surrounding a Breeders' Cup Event held at a NYRA track.

- Provided for a 33 percent petroleum business tax (PBT) rate reduction for both diesel motor fuel and residual oil used for non-residential heating purposes.
- Repealed two PBT minimum taxes.
- Reduced the beer tax from 12.5 cents to 11 cents per gallon.
- Accelerated the effective date for the expansion of the small brewers exemption under the beer tax retroactively to January 1, 2000 from the original effective date of March 1, 2001.
- Reduced the supplemental tax portion of the truck mileage tax by 20 percent.

**Fiscal Year 2001-02
Tax Actions**

- The major action of the 2001-02 budget was an increase in the size of the Empire Zones program through the addition of eight new zones.

**Fiscal Year 2002-03
Tax Actions**

The following provisions were enacted as part of Chapters 83-85 of the Laws of 2002:

Victims' Relief and Lower
Manhattan Business
Development

- Provided a State, New York City, and Yonkers personal income tax exemption for tax years 2000 and 2001 (and 2002 for deaths occurring in 2002) for persons dying as a result of the terrorist actions of September 11, 2001. It also conformed the estate tax to the federal Victims of Terrorism Tax Relief Act of 2001, which provides for an increased exemption and tax reductions for estates above \$2.9 million.
- Allowed different treatment regarding ITC recapture for property damaged or destroyed on September 11, 2001; and
- Extended the sunset date of the financial services ITC by five years.

Finally, to promote consumer activity and tourism in Lower Manhattan, the budget legislation designated specific three-day periods in June, July, and August 2002 when certain sales of tangible personal property, restaurant meals, hotel occupancy, and cabaret/ roof garden charges in a designated area of Lower Manhattan will be exempt from the State and Metropolitan Commuter Transportation District (MCTD) sales and use taxes. New York City has exercised its option to provide the exemption from its local sales tax, so such sales will be completely sales tax-free.

Tax Amnesty

Taxpayers with unpaid liabilities under the personal income tax, sales and compensating use tax, corporate franchise taxes (other than the bank and insurance taxes), estate tax, and various excise taxes may be eligible to participate in a tax amnesty program covering unpaid liabilities for certain periods depending upon the type of tax. Amnesty participants can receive a waiver of certain penalties and a 2 percent reduction in the applicable interest rate relating to unpaid liabilities. After the amnesty period concludes, the interest rate applicable to all underpayments will increase by 2 percent.

Personal Income Tax

Personal income tax provisions in the budget :

- Reduced the threshold for mandatory remittance of withholding tax via electronic funds transfer (EFT).
- Clarified the dollar limitation on tuition expenses for purposes of the college tuition tax credit and itemized deduction, attributed tuition paid by a dependent student to the parent, and included New York City personal income tax conforming amendments.
- Amended the residential petroleum tank replacement credit.

Business Taxes

Other provisions in the State budget relating to business taxes:

- Modified the definition of brokers or dealers in securities for New York income allocation rules to include those marketing over-the-counter derivatives.
- Changed the order in which tax credits must be taken under Tax Law Articles 9, 9-A, 32 and 33.

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- Increased the amount of the first quarterly installment of estimated tax for certain taxpayers.
 - Increased the aggregate limit for the low income housing tax credit.
 - Permitted gas pipeline companies with contracts in effect when New York's energy taxes were restructured and reduced to continue to recover tax costs as those contracts intended.
 - Added community development loans or investments to the assets that may be used in qualifying as a "thrift" banking corporation.
 - Made clarifications to the Empire Zones program.
 - Authorized ten new Empire Zones and establish criteria regarding zone boundaries.

Sales and Use Tax

The sales and compensating use tax provisions in the budget legislation:

- Amended the State and local sales taxes and the telecommunications excise tax to respond to the federal Mobile Telecommunications Sourcing Act, and included certain technical corrections with respect to the sales and use taxation of prepaid telephone calling cards.
- Lowered the threshold for mandatory electronic funds transfer (EFT) participation for sales tax vendors.
- Provided a new index to adjust the base retail price, for purposes of calculating the prepaid sales tax on cigarettes, and made clear that the tax required to be prepaid per package of cigarettes is to be rounded to the nearest whole cent;.
- Allowed energy service companies that operate in an area where use of a single retailer model has been approved by the Public Service Commission to qualify for the reduced sales tax rate on certain charges for the transmission and distribution of gas and electricity.

STAR

A separate budget bill provided for annual cost-of-living adjustments to the maximum income allowed under the enhanced School Tax Relief (STAR) exemption for persons age 65 and over.

Other Taxes

Provisions addressing other taxes will:

- Extend the lower New York State real estate transfer tax and New York City real property transfer tax rates for qualifying transfers to existing real estate investment trusts (REITs);
- Extend the enhanced alcoholic beverage tax enforcement provisions until October 31, 2007; and
- Raise the excise tax rate on tobacco products and impose a floor tax on all tobacco products possessed in the State as of a certain date.

**Fiscal Year 2003-04
Tax Actions**

Personal Income Tax

The following provisions were enacted as part of Chapter 62 of the Laws of 2003.

- Temporarily added two New York State income tax rates and brackets for tax years 2003 through 2005. The new top rate and bracket for all filing statuses for tax years 2003 to 2005 is 7.7 percent of taxable income in excess of \$500,000. The supplemental tax which recaptures the benefits of the lower tax rates is also amended.
- Like the State tax, the legislation temporarily added two New York City resident income tax rates and brackets for tax years 2003 through 2005, in addition to the top 3.4 percent rate (3.648 percent including the 14 percent additional tax surcharge) that previously applied for tax year 2003. The new top rate and bracket for all filing statuses for all three years 2003-2005 is 4.45 percent of taxable income in excess of \$500,000.
- Extended the higher New York City resident income tax rates, scheduled to expire after 2003, through 2005. After 2005, the rates will fall to, for example, a top rate of 1.61 percent in 2006 and 1.48 percent after 2006.

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- Decoupled New York's tax code from the federal tax code for both corporate and personal income tax purposes with respect to the depreciation bonus. Bonus depreciation is no longer allowed for taxpayers whose tax year begins in 2003 and who place property in service on or after June 1, 2003. Bonus depreciation claimed by taxpayers for dates prior to the above two restrictions is still allowed, and an exception applies for Liberty Zone property.
 - Made various changes to limited liability company fees. The fees increased from \$50 per member to \$100 per member, and the minimum fee increased from \$325 per entity to \$500 per entity. Likewise, the maximum fee increased from \$10,000 to \$25,000. The fee also extended to apply to single member entities which are exempt from the minimum fee requirements. Finally, the bill amended the due date for filing returns and paying the fee from the fifteenth day of the fourth month following the end of the taxable year (usually April 15th) to within 30 days of the end of the taxable year (usually by January 30th).
 - Required personal income and corporate franchise taxpayers to add back to federal adjusted gross income (FAGI) the expense deduction allowed under Internal Revenue Code section 179 for certain SUVs. An exemption to this addback is allowed for eligible farmers.
 - Created a new requirement that flow-through entities such as partnerships, limited liability companies, and S corporations make quarterly estimated tax payments of New York State income tax for nonresident owners such as partners, members, and shareholders. The payment is based on such person's or corporation's portion of the entity's New York-source entity income after certain deductions, and paid at the highest rate of tax for the year.
 - Created a new estimated tax requirement for nonresidents with certain sales or transfers of New York real property. In order for the deed to be recorded and transferred to the buyer, the nonresident seller must remit estimated tax on the gain, at the highest rate of tax.

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- Eliminated the interest floor applicable to overpayments of taxes. Under prior law, the interest rate on overpayments equaled the federal short term interest rate plus two percentage points, but could not be less than a minimum of 6 percent. The new law, which will take effect in the last quarter of 2003, will allow for the computation of the overpayment interest rate without regard to the 6 percent floor. These new interest rates will apply for *all taxes* administered by the Tax Department, as well as various refunds and other payments due from the state, and certain public corporations and localities that reference the Tax Law for determining their interest rates.

Business Taxes

- Required taxpayers who deduct interest or royalty expenses for amounts paid to a related member for the use of intangible assets to add back those deductions to their taxable income. No addback is required if the royalty payments are made to an unrelated third party for a valid business purpose and are made at arm's length, or if the payments are subject to treatment under a tax treaty.
- Amended Article 33 to significantly change the way insurance companies are taxed. Previously, all Article 33 taxpayers (except captive insurers) were subject to an income-based tax computed on the highest of four bases plus a tax on subsidiary capital, as well as an additional tax on premiums. Total tax liability for both life and non-life insurers could not exceed 2 percent of net premiums under the limitation on tax. This section eliminated the income base component for non-life insurers and makes the premiums tax the sole basis of tax. In addition, the premiums tax rate is raised to 1.75 percent on accident and health premiums and 2 percent on all other non-life premiums. The limitation on tax will no longer apply to non-life insurers. Life insurers will continue to be subject to the income-based tax, but will now be subject to a floor amount. Under the new floor, tax liability before the application of credits may not be less than 1.5 percent of net premiums. The fixed dollar minimum tax of \$250 will still apply to both life and non-life insurers. These provisions are effective immediately and apply to taxable years beginning on or after January 1, 2003.
- Extends for two years certain provisions of the Tax Law and the Administrative Code of the City of New York relating to the taxation of commercial banks which were scheduled to sunset for taxable years beginning on or after January 1, 2003.

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- Provides that for purposes of Article 9-A, S corporations shall be subject only to the fixed dollar minimum tax for tax years beginning in 2003, 2004, and 2005. Normally, S corporations are subject to a differential tax computed on a portion of the difference between the top personal income tax rate and the corporate tax rate, which is higher. Other provisions resulted in the top personal income tax rate (7.7 percent) exceeding the corporate tax rate (7.5 percent) for these years, making the differential tax inapplicable. After 2005, the top personal income tax rate will return to 2002 levels (6.85 percent) and the differential tax will be restored. In addition, S corporations will be subject to the \$800 fixed minimum amount for inactive corporations during these years. This provision is effective immediately and applies to taxable years beginning in 2003, 2004 and 2005.

Sales & Other Taxes

- Increased the state sales and use tax rates imposed by Tax Law sections 1105 and 1110 by 1/4 of a percentage point. The legislation requires that the tax rate remain at 4.25 percent from June 1, 2003 through May 31, 2005. It is scheduled to be returned to 4 percent on June 1, 2005.
- Amended the State and local clothing and footwear exemption. For the June 1, 2003 through May 31, 2004 period, the exemption for clothing and footwear priced under \$110 is suspended. The legislation also provided for two week-long temporary exemptions for clothing and footwear priced under \$110, with local option.
- Enacted the Simplified Sales and Use Tax Administration Act. The Act primarily authorizes New York to enter into the Streamlined Sales and Use Tax Agreement as one of the Streamlined Sales Tax “Implementing States.” The Act does not amend the sales tax impositions, exemptions or other provisions in Tax Law Article 28. Nor does it commit New York to enact any legislation in the future to conform its sales tax to the tax described in the Streamlined Sales and Use Tax Agreement.
- Required a line or lines to be included on the New York State personal income tax returns in order to enable taxpayers to report and pay unpaid state and local sales and compensating

use taxes with their income tax returns. As a result of this amendment, individuals, estates and trusts which are not registered sales tax vendors may report and pay on their personal income tax returns any unpaid state and local sales and compensating use taxes due for the year covered by the income tax return.

- Provided that the New York City excise tax on cigarettes, currently at \$1.50 per pack, is to be included in the state sales tax base. This change is effective September 1, 2003.
- Amended the Tax Law to require the Commissioner to promulgate regulations necessary to implement collections of sales and use taxes on “any retail sale item” as well as cigarette and fuel excise taxes on sales made to non-native Americans on recognized reservations in the state.
- Eliminated general taxpayer support for the regulation of the state’s horse racing industry by assessing a 0.5 percent fee on the industry to finance on-track race judges, stewards, drug testing and the State Racing and Wagering Board that is the state’s regulatory body that oversees the industry.
- Amended the Alcohol Beverage Control Law to allow wine and liquor stores the option of opening on Sundays. Stores exercising this option are allowed to open on Sundays from Noon until 9:00 P.M., but are required to close another day so that they are open no more than six days per week. The option to open Sundays started on May 18, 2003 and remains in effect for five years when it then expires.
- Created a new waste tire management fee on sales of new tires in the state. The new fee of \$2.50 per new tire sold is imposed under the Environmental Conservation Law but the fee will be administered and collected by the Department. The fee will be collected from tire retailers, including car dealers, on sales of new tires for use on cars, trucks, motor homes, buses trailers, or any other vehicle that could qualify for registration under section 401 of the Vehicle and Traffic Law. The tire retailer will be required to remit to the Department \$2.25 for each new tire sold during a sales tax quarter and will be allowed to keep 25 cents per tire sold to cover administrative costs. The tire fee does not apply to recapped or resold (used) tires. It also does not apply to mail-order, phone-order or Internet sales of tires.

For more information concerning the data provided in this publication, please contact:

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
W.A. Harriman State Campus Office
Albany, New York 12227
Phone (518-457-3187)**