



# Summary of Tax Provisions in SFY 2012-13 Budget



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# Summary of SFY 2012-13 Tax Provisions

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## Tax Credits

### New York Youth Works Tax Credit Program

Part T of Chapter 59 of the Laws of 2012 extends certain deadlines in the New York Youth Works Tax Credit Program. The deadline to apply to participate in the program is extended from June 1, 2012 to November 30, 2012. The deadline for employees to commence employment is extended from July 1, 2012 to December 31, 2012.

The refundable credit equals \$500 per month for up to six months for each qualified full-time employee or \$250 per month for each qualified part-time employee. An additional \$1,000 per full-time job or \$500 per part-time job is available if the employee remains employed for at least six additional months. The program is administered by the New York State Department of Labor.

### Biofuel Production Credit

Part K of Chapter 59 of the Laws of 2012 extends the sunset date for the biofuel production credit to authorize credits for tax years beginning before January 1, 2020. The credit equals 15 cents per gallon of biofuel produced in excess of the first 40,000 gallons brought to market. The refundable credit is capped at \$2.5 million per taxpayer per year for up to four consecutive years for each biofuel plant. The cap is applied at the entity level in the case of flow-through entities.

### New York State Low-Income Housing Credit

Part J of Chapter 59 of the Laws of 2012 increases the amount of low-income housing credit that may be allocated by the New York State Division of Housing and Community Renewal from \$32 million to \$40 million, effective immediately. Part J further increases the allocation to \$48 million, effective April 1, 2013.

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Empire State Commercial  
Production Credit

Part I of Chapter 59 of the Laws of 2012 reauthorizes and extends the Empire State commercial production tax credit. The Governor's Office for Motion Picture and Television Development (MP/TV) is authorized to issue \$7 million in credits annually from 2012 through 2014 to corporate franchise and personal income taxpayers meeting certain thresholds of commercial production activity.

The commercial production credit consists of three components:

- Incremental cost component (\$1 million): 20 percent of qualified production costs in excess of the average of the three prior years' costs. The credit is distributed on a *pro rata* basis among all credit applicants; however no individual company may receive an annual allocation of greater than \$300,000.
- Metropolitan Commuter Transportation District (MCTD) component (\$3 million): 5 percent of qualified production costs in excess of \$500,000 during the calendar year for work within the MCTD. This component is also awarded on a *pro rata* basis, but with no limitation per company.
- Outside MCTD component (\$3 million): 5 percent of qualified production costs in excess of \$200,000 during the calendar year for work outside the MCTD. This component is allocated in the same manner as the MCTD component. If the total amount authorized for this credit component exceeds credit claims, MP/TV may redirect the excess allocation to the incremental cost component.

Fifty percent of the credit is refundable in the first year, with the remainder fully refundable in the following year.

Noncustodial Parent  
Earned Income Tax Credit

Part L of Chapter 59 of the Laws of 2012 extends the enhanced earned income tax credit (EITC) for certain noncustodial parents for two years. The current credit was scheduled to sunset December 31, 2012. The new law extends the credit for tax years 2013 and 2014.

To qualify for the enhanced EITC, claimants must be a resident taxpayer, age 18 and over, and have a minor child with whom they do not reside. The credit is equal to the greater of 20 percent

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of the Federal EITC that the taxpayer would otherwise be able to claim for one qualifying child (if he/she were a custodial parent), or 2.5 times the EITC for taxpayers without qualifying children. Claimants must have a child support order in effect for at least half the tax year and have made their required support payments.

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## Tax Modernization

### E-file Mandate and Tax Modernization

Part G of Chapter 59 of the Laws of 2012 amends some of the provisions enacted in 2011 as part of the tax modernization legislation found in the State Budget. These new provisions include:

- Extending the sunset date for the e-file mandate for tax preparers and for individual taxpayers using software to prepare their tax returns, for one year through 2013.
- Repealing the \$25 penalty for failure to file a tax return electronically for personal income tax filers.
- Changing the e-file mandate threshold for tax preparers from more than five tax documents to more than ten different taxpayers.
- Amending the definition of “authorized tax document” to exclude any tax return or report containing an authorized tax document that the Tax Department does not allow to be electronically filed.
- Extending through December 31, 2013 the authority of the Tax Commissioner to require certain sales tax vendors to deposit the sales tax they collect into a separate account.

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## Corporate Taxes

### Gramm-Leach-Bliley Transitional Provisions

Part R of Chapter 59 of the Laws of 2012 extends the transitional provisions relating to the enactment and implementation of the Federal Gramm-Leach-Bliley Act through the 2014 tax year. However, only corporations that meet the definition of a banking corporation in Section 1452(a) of the Tax Law would be allowed to remain an Article 32 taxpayer under the transitional provisions.

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## Fuel Taxes

### Alternative Fuel Exemptions Extended

Part D of Chapter 59 of the Laws of 2012 extends the alternative fuel tax exemptions for fuel types E-85, CNG and hydrogen and the partial exemption for B-20 for two years. Under current law, these exemptions were scheduled to expire on September 1, 2012. Part D extends this expiration date until September 1, 2014.

The two-year extension continues the full exemption from the excise tax, petroleum business tax (PBT) and State and local sales taxes for fuel products identified as E-85 (a fuel blend consisting of ethanol and motor fuel meeting the American Society of Testing Materials standard D5798 for fuel ethanol), compressed natural gas (CNG), and hydrogen when they are suitable for use in a motor vehicle engine. The extension also applies to the reduced tax rates under the excise tax and PBT for fuel products identified as biodiesel-B-20 (20 percent bio-product (e.g., soybean oil), 80 percent diesel fuel). The rate reduction is 20 percent under both taxes. Finally, the extension continues the partial exemption for B-20 under the State and Local Sales tax. Twenty percent of taxable receipts from B-20 are excluded from the sales tax base.

The provisions of this part are effective immediately upon enactment.

### Diesel Motor Fuel Tax Definitions -Technical Fix

Part E of Chapter 59 of the Laws of 2012 makes technical amendments to the classifications of diesel motor fuel in the tax law. The provision eliminates the commodity of crude oil from the definition of diesel motor fuel. The legislation also allows tax-free inter-distributor sales of undyed qualified biodiesel in the State.

The provisions of this part take effect on June 1, 2012.

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## Real Property Taxes

### Extending Oil and Gas Charges

Part A of Chapter 59 of the Laws of 2012 extends the provisions for charges to oil and gas producers, which would have expired on March 31, 2012, through March 31, 2015. No changes were made to the fee schedule.

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Eliminating STAR for Those with Past Due Obligations

Part B of Chapter 59 of the Laws of 2012 provides for suspension of STAR property tax benefits to homeowners who have past-due state tax obligations. The suspension will begin with the 2013-14 school year. Taxpayers who have outstanding tax liabilities will receive at least 45 days notice from the Department that their STAR exemption may be suspended if no action is taken to satisfy such liability. The notice will also contain provisions explaining the steps a taxpayer can take to satisfy their past due liability and to have their suspension lifted. Taxpayers may only protest the notification based on mistake of fact.

Any suspended STAR benefit will be offset against the taxpayer's past-due state tax obligations and only those taxpayers owing at least \$4,500 will be targeted in this program. Finally, assessors and Boards of Assessment Review may not change a determination by the Tax Department.

The Legislation is effective immediately, and expires at the end of the 2015-16 school year.

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Miscellaneous Provisions

MCTMT Rates for Professional Employer Organizations

Part N of Chapter 59 of the Laws of 2012 provides professional employer organizations (PEOs) a method of applying the new Metropolitan Commuter Transportation Mobility Tax (MCTMT) rate structure for employers using their services. PEOs are firms that provide employer administrative services to clients, such as disbursing payroll, paying taxes, and administering fringe benefits. The PEO is considered the employer of record for tax purposes.

Prior to last year's amendments to the MCTMT rate structure for employers, PEO's and their client firms faced the same tax rate, 0.34 percent of payroll expense in the downstate Metropolitan Commuter Transportation District, regardless of size. Part B of Chapter 56 of the Laws of 2011, enacted in December 2011, created a tiered rate structure based on the size of an employer's quarterly payroll expense. Because the MCTMT is imposed on the employer of record, a PEO would likely face a higher rate than if the tax were imposed on each individual client firm. This

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new law looks through the PEO to the client firm to determine the appropriate rate of tax. This section is effective for quarters beginning on or after April 1, 2012.

This section also makes a technical correction to the effective date of Part B of Chapter 56 of the Laws of 2011 to clarify that the lower MCTMT rate for self-employed individuals on their earnings attributable to the Metropolitan Commuter Transportation District applies to tax years beginning on or after January 1, 2012.

Extend the Lower  
Pari-Mutuel Tax Rates

Part O of Chapter 59 of the Laws of 2012 extends the lower pari-mutuel tax rates that were re-authorized by the Laws of 2011 for one year. In addition, it extends the authorization for account wagering and rules governing simulcasting and wagering on simulcast out-of-state thoroughbred and harness races for one year.

Distribution of Revenue  
from Sections 183 and 184

Part P of Chapter 59 of the Laws of 2012 amends the distribution of moneys collected from sections 183 and 184 of the Tax Law starting on April 1, 2012. The 20 percent distribution to the Dedicated Highway and Bridge Trust Fund is unchanged. The remaining 80 percent that was previously devoted entirely to the Mass Transportation Operating Assistance Account is reduced to 54 percent, with the remaining 26 percent dedicated to the Public Transportation Systems Operating Assistance Account. This distribution method expires on April 1, 2013.

Amend Hotel Room  
Remarketer Sales Tax  
Compliance

Part Q of Chapter 59 of the Laws of 2012 facilitates the compliance of hotel room remarketers with the State and local sales tax collection obligations adopted with the SFY 2009-10 Enacted Budget (Chapter 57 of the Laws of 2010). These provisions:

- Provide a method to compute the portion of the bill taxable as rent when an occupancy is sold together with other items for a single price.
- Permit room remarketers to provide the information about the amount of the sales tax due on any invoice given to the customer prior to the completion of the occupancy.

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- Allow room remarketers to report sales of occupancies in the sales tax filing period in which the occupancy ended, rather than in the sales tax period during which they collected the consideration for the occupancy.
  - Simplify the process by which a room remarketer claims credit for sales tax paid on its acquisition of a hotel room.

Part Q also amends the New York City Administrative Code to make similar changes with respect to the locally-imposed New York City Hotel Room Occupancy Tax.

This part takes effect September 1, 2012 and shall apply to occupancies that commence on or after such date.

Public Safety  
Communications  
Surcharge

Part X of Chapter 55 of the laws of 2012 amends how moneys collected from the Public Safety Communications Surcharge (Tax Law Section 186-f) are allocated. Previously, \$9.0 million was allocated for grants and reimbursements to counties for costs of improvements to or operations of public safety answering points. Under Part X, \$7.0 million is specifically allocated for grants that are to be awarded under previously established conditions. \$2.0 million is specifically allocated for reimbursements to counties for operating expenses.



# Appendix A: Index of SFY 2012-13 Tax Provisions

## Summary of Tax Provisions in SFY 2012-13 Budget

### Chapter 59 of the Laws of 2012 (S.6259-D/A.9059-D)

| Section(s) | Page(s) | Subject   | Description  | Effective Date                  |
|------------|---------|---|--|---------------------------------|
| Part A     | 4       | Oil and Gas Charges   | Extends the provisions for charges to oil and gas for three years, through March 31, 2015  | Immediately                     |
| Part B     | 4-7     | Eliminating STAR for those with past due obligations  | Eliminates the STAR property tax benefit for homeowners who have past due state tax obligations.   | Immediately                     |
| Part D     | 7       | Extends the alternative fuel exemptions for two years                                       | Extends the sunset date from September 1, 2012 to September 1, 2014 for the current fuel tax exemptions for alternative fuels including E85, CNG, hydrogen and B20.                              | Immediately                     |
| Part E     | 7-10    | Makes technical amendments to the classification of diesel motor fuel in the Tax Law.       | Eliminates crude oil as a covered product in the definition of diesel motor fuel in the Tax Law. Allows tax-free inter-distributor sales of qualified biodiesel in the State.                    | June 1, 2012                    |
| Part G     | 10-12   | Amends some of the Tax Modernization provisions enacted in 2011 as part of the State Budget | Makes numerous amendments to the e-file mandate and extends, for one year the commissioners authority to require some sales tax vendors to deposit the tax they collect into a separate account. | Immediately                     |
| Part I     | 12-14   | Empire State Commercial Production Credit   | Reauthorizes and extends credit; revises allocation.   | Immediately                     |
| Part J     | 14-15   | New York State Low-Income Housing Credit  | Authorizes an additional \$8 million in 2012 and 2013, respectively.   | Immediately                     |
| Part K     | 15-16   | Biofuel Production Credit   | Extends sunset to January 1, 2020.   | Immediately                     |
| Part L     | 17      | Noncustodial Parent EITC  | Extends the enhanced earned income tax credit for certain noncustodial parents for two years.  | Immediately                     |
| Part N     | 17-18   | Metropolitan Commuter Transportation Mobility Tax   | provides professional employer organizations a method of applying the new Metropolitan Commuter Transportation Mobility Tax rate structure for employers.  | Quarter beginning April 1, 2012 |
| Part O     | 18-22   | Extend the lower Pari-Mutuel Tax Rates  | Extends the lower pari-mutuel tax rates for one year, and extends the rules governing simulcasting out-of-state races.   | Immediately                     |

| Summary of Tax Provisions in SFY 2012-13 Budget    |         |  |   |                   |
|--|---------|--|---|-------------------|
| Chapter 59 of the Laws of 2012 (S.6259-D/A.9059-D) |         |  |   |                   |
| Section(s)   | Page(s) | Subject  | Description   | Effective Date    |
| Part P   | 22      | Distribution of Revenue from Section 183 & 184 | Amends the distribution of moneys collected from sections 183 and 184 of the Tax Law.   | Immediately       |
| Part Q   | 22-26   | Hotel room remarketer amendments               | Facilitates compliance of hotel room remarketers with legislation passed in the 2009-10 Budget that requires them to collect State and local sales tax on the rent for hotel occupancy. | September 1, 2012 |
| Part R   | 26-31   | GLBA Transitional Provisions                   | Extends GLBA provisions through tax year 2014; adds requirements to remain in Article 32.   | Immediately       |
| Part T   | 33-34   | New York Youth Works Tax Credit Program        | Extends application and employment deadlines.   | Immediately       |

| Summary of Tax Provisions in SFY 2012-13 Budget    |         |  |   |                |
|--|---------|--|---|----------------|
| Chapter 55 of the Laws of 2012 (S.6255-D/A.9055-D) |         |  |   |                |
| Section(s)   | Page(s) | Subject                                | Description   | Effective Date |
| Part X   | 34      | Public Safety Communications Surcharge | Changes the distribution of monies from Section 186-f of the Tax Law. | Immediately    |

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# Appendix B: Summary of Tax Changes Enacted in 2011 Extraordinary Legislative Session

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Chapter 56 of the Laws of 2011, enacted on December 9, 2011, contained a number of Tax Law changes. Appendix B provides a listing of the provisions enacted. For more detailed descriptions, please see the following technical memoranda (TSB-Ms):

[TSB-M-12\(3\)I](#) - Summary of Personal Income Tax Changes Enacted in Extraordinary Legislative Session

[TSB-M-12\(1\)MCTMT](#) – Legislative Amendments to the Metropolitan Commuter Transportation Mobility Tax

[TSB-M-12\(3\)C](#) - Summary of Corporation Tax Changes Enacted in Extraordinary Legislative Session

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## Personal Income Tax Changes

The personal income tax brackets and rates for tax years 2012 through 2014 were restructured. This restructuring reduces tax rates for middle-class taxpayers and reduces the highest rate from 8.97 percent to 8.82 percent. The top rate starts at a higher taxable income level than the prior law.

The tax benefit recapture provisions were restructured. The New York State standard deduction and other tax bracket parameters are indexed for tax years 2013 and 2014.

Absent further legislative amendments, the tax tables for 2015 and after revert to the tables and tax rates in effect for tax year 2008 (i.e., the highest rate will be 6.85%).

However, the dollar amounts in those tax tables will be indexed by the cost of living percentage adjustments, if any, computed for tax years 2013 and 2014.

## Metropolitan Commuter Transportation Mobility Tax (MCTMT) Changes

For self-employed individuals, for tax years beginning on or after January 1, 2012, an individual will be subject to the MCTMT only if his or her net earnings from self-employment attributable to the MCTD exceed \$50,000 for the tax year. The prior threshold was \$10,000.

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For employers, effective for the calendar quarter beginning on April 1, 2012, the quarterly payroll expense threshold that an employer must exceed to make the employer liable for the MCTMT increased from \$2,500 in any calendar quarter to \$312,500 in any calendar quarter. Also for employers, a new rate structure with rates based on size of payroll expense will start on the quarter beginning April 1, 2012. Previously, a flat 0.34 percent rate applied.

Public school districts will now receive an up-front exemption from tax. Previously, these districts paid the MCTMT, but were later reimbursed by the State. Also, private elementary and secondary schools will be exempt from the tax.

#### Corporate Tax Changes

The entire net income tax rate was reduced from 6.5 percent to 3.25 percent, the alternative minimum taxable income rate was reduced from 1.5 percent to 0.75 percent, and the amounts of the fixed dollar minimum tax were cut in half for eligible qualified New York manufacturers. These cuts are in effect for tax years beginning on or after January 1, 2012 and before January 1, 2015.

#### Tax Credits

Chapter 56 created two new credits available for certain corporate taxpayers and personal income taxpayers.

The Empire State Jobs Retention Program tax credit was created to provide financial incentives to retain strategic businesses at risk of leaving the state due to natural disasters. This credit is administered by the Empire State Development Corporation.

The New York Youth Works Tax Credit Program was established to encourage businesses to create job opportunities for at-risk youths. This credit is administered by the New York State Department of Labor.

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

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