

**FY 2023 NEW YORK STATE EXECUTIVE BUDGET**

**REVENUE  
ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

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## MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in  
Accordance with Article VII of the Constitution

AN ACT to amend the tax law, in relation to accelerating the middle-class tax cut (Part A); to amend the tax law, in relation to providing an enhanced investment tax credit to farmers (Subpart A); to amend the tax law and chapter 60 of the laws of 2016 amending the tax law relating to creating a farm workforce retention credit, in relation to the effectiveness of such credit (Subpart B); and to amend the tax law, in relation to establishing a farm employer overtime credit (Subpart C) (Part B); to amend the tax law and the administrative code of the city of New York, in relation to expanding the small business subtraction modification (Part C); to amend the tax law, in relation to excluding certain loan forgiveness awards from state income tax (Part D); to amend the economic development law and the tax law, in relation to creating the COVID-19 capital costs tax credit program (Part E); to amend the tax law and the state finance law, in relation to extending and expanding the New York city musical and theatrical production tax credit and the purposes of the New York state council on the arts cultural programs fund; and to amend subpart B of part PP of chapter 59 of the laws of 2021 amending the tax law and the state finance law relating to establishing the New York city musical and theatrical production tax credit and establishing the New York state council on the arts cultural program fund, in relation to the effectiveness thereof (Part F); to amend the tax law, in relation to establishing a permanent rate for the

metropolitan transportation business tax surcharge (Part G); to amend the tax law, in relation to extending and modifying the hire a vet credit (Part H); to amend the tax law, in relation to establishing a tax credit for the conversion from grade no. 6 heating oil usage to biodiesel heating oil and geothermal systems (Part I); to amend the public housing law, in relation to extending the credit against income tax for persons or entities investing in low-income housing (Part J); to amend the tax law, in relation to extending the clean heating fuel credit for three years (Part K); to amend chapter 604 of the laws of 2011 amending the tax law relating to the credit for companies who provide transportation to people with disabilities, in relation to the effectiveness thereof; and to amend the tax law, in relation to the application of a credit for companies who provide transportation to individuals with disabilities (Part L); to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit (Part M); to amend the labor law, in relation to extending the New York youth jobs program tax credit (Part N); to amend the labor law, in relation to extending the empire state apprenticeship tax credit program (Part O); to amend the tax law, in relation to extending the alternative fuels and electric vehicle recharging property credit (Part P); to amend the labor law, in relation to the program period for the workers with disabilities tax credit program; and to amend part MM of chapter 59 of the laws of 2014 amending the labor law and the tax law relating to the creation of the workers with disabilities tax credit program, in relation to the effectiveness thereof (Part Q); to amend the tax law, in relation to making changes conforming to the federal

taxation of S corporations; and to repeal certain provisions of such law relating thereto (Part R); to amend the tax law, in relation to the investment tax credit (Part S); to amend the tax law, in relation to exempting certain fuels used by tugboats and towboats from the petroleum business tax (Part T); to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes; and to repeal certain provisions of such law relating thereto (Part U); to amend the tax law, in relation to requiring vacation rental marketplace providers collect sales tax (Part V); to amend the tax law in relation to requiring publication of changes in withholding tables and interest rates (Part W); to amend the tax law, in relation to expanding the definition of financial institution under the financial institution data match program (Part X); to amend the real property tax law and chapter 475 of the laws of 2013, relating to assessment ceilings for local public utility mass real property, in relation to extending the assessment ceiling for local public utility mass real property to January 1, 2027 (Part Y); to amend the real property tax law, in relation to good cause refunds for the STAR program (Subpart A); to amend the real property tax law, in relation to moving up the deadline for taxpayers to switch from the STAR exemption to the STAR credit (Subpart B); to amend the tax law, in relation to clarifying the applicable income tax year for the basic STAR credit (Subpart C); to amend the tax law, in relation to allowing names of STAR credit recipients to be shared with assessors outside of New York state (Subpart D); and to amend the tax law and the real property tax law, in relation to allowing decedent reports to be given to assessors and improving the tax enforcement

process as it relates to decedents (Subpart E) (Part Z); to amend the real property tax law, in relation to the grievance process with respect to the valuation of solar and wind energy systems (Part AA); to amend the tax law, in relation to establishing a homeowner tax rebate credit (Part BB); to amend the racing, pari-mutuel wagering and breeding law, in relation to gaming facility determinations and licensing (Part CC); to amend the racing, pari-mutuel wagering and breeding law, in relation to the utilization of funds in the Catskill and Capital regions off-track betting corporation's capital acquisition funds; and to amend chapter 59 of the laws of 2021 amending the racing, pari-mutuel wagering and breeding law, relating to the utilization of funds in the Catskill and Capital regions off-track betting corporation's capital acquisition funds, in relation to the effectiveness thereof (Part DD); and to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting; to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part EE)

**PURPOSE:**

This bill contains provisions needed to implement the Revenue portion of the FY 2023 Executive Budget.

This memorandum describes Parts A through EE of the bill which are described wholly within the parts listed below.

**Part A – Accelerate the Middle-Class Tax Cut**

Purpose:

This bill would accelerate the middle-class tax cuts and change the completion date to Tax Year 2023 rather than Tax Year 2025. The tax cut would take full effect in Tax Year 2023.

Summary of Provisions and Statement in Support:

This bill would effectuate a tax cut in Tax Year 2023 for the middle-class by skipping the interim tax brackets for Tax Years 2023 and 2024 and would implement the lower rates originally planned for Tax Year 2025.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget and it would expedite an anticipated tax benefit to low and middle-income New York taxpayers.

Effective Date:

This bill would take effect immediately.

**Part B – Enhances Tax Credits for Farmers**

Purpose:

This bill would enhance the investment tax credit for farmers for property used in farming and agriculture, increase the farm workforce retention credit from \$600 to \$1,200 per eligible employee and extend the credit for an additional year through tax year 2025, and create a new tax credit for New York State farmers to be called the Farm Employer Overtime Credit.

Summary of Provisions and Statement in Support:



Subpart A of this bill would amend the Tax Law to enhance the investment tax credit (ITC) under the corporate franchise tax and the personal income tax for farmers. Currently, the ITC is equal to four percent of the investment credit base under the personal income tax or five percent of the first \$350 million of the investment credit base and four percent of the investment credit base in excess of \$350 million under the corporate franchise tax. This subpart would increase the credit under both taxes to 20 percent of the investment credit base for eligible farmers for property principally used by the farmer in the production of goods by farming, agriculture, horticulture, floriculture or viticulture. This enhancement of the ITC would provide farmers with incentives to increase their investment in farming property.

Subpart B of this bill would amend Tax Law § 42(e) to double the per employee amount for the farm workforce retention credit. In addition, this credit would be extended for an additional year through tax year 2025. For tax years 2021 through 2025, the credit would equal \$1,200 per eligible employee.

Subpart C of this bill would add a new Tax Law § 42-a and amend Tax Law §§ 42, 210-B, and 606 to establish the farm employer overtime credit.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would provide multiple avenues of support to New York State farmers.

Effective Date:

Subpart A of this bill would take effect immediately and apply to property placed in service on or after April 1, 2022. Subpart B of this bill would take effect immediately. Subpart C of this bill would take effect immediately and would apply to taxable years beginning on or after January 1, 2022.

**Part C – Provide Small Business Tax Relief**

Purpose:

This bill would expand the small business tax relief subtraction modification under the personal income tax.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 612 and New York City Administrative Code § 11-1712 to expand the small business tax relief subtraction modification for taxable years beginning on or after January 1, 2022.

This bill would increase the small business subtraction modification for taxpayers from five percent to fifteen percent of the net business or net farm income included in the taxpayer's federal adjusted gross income from such small business. Under current law, a small business is a sole proprietorship, and in the case of a farm business, also a partnership, limited liability company or S corporation, that employs one or more persons during the taxable year and has net business income or net farm income of less than \$250,000. The bill would expand the definition of a small business to include a limited liability company, partnership, or New York S corporation that is not a farm business and during the taxable year employs one or more persons and has New York gross business income less than \$1.5 million. In order to claim the subtraction modification, a taxpayer's share of flow-through income from all partnerships, limited liability companies, or S corporations (including ones that are not small businesses) attributable to a non-farm business must be less than \$250,000. In the case of a limited liability company or partnership, the New York gross business income has the same meaning as New York source gross income as defined in Tax Law § 658(c)(3) and in the case of a New York S corporation, the New York gross business income has the same meaning as New York receipts as defined in Tax Law § 210-A.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would deliver critical tax relief to New York's small businesses.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2022.

**Part D – Create a Tax Exemption for Student Loan Forgiveness Awards**

Purpose:

This bill would exclude income attributable to loan forgiveness awards under programs administered by the Higher Education Service Corporation (HESC) from New York State income tax.

Summary of Provisions and Statement in Support:

HESC makes monetary awards under several student loan forgiveness programs described in Article 14 of the NYS Education Law to attract employees to certain necessary professions, such as nursing, social work and farming. These payments are taxable income for federal purposes and for purposes of the Tax Law. This bill would add a new paragraph (46) to Tax Law § 612(c) to exclude the amount of these awards

from New York State income tax and relieve students of the burden of paying state income tax on the value of these awards.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would allow New York taxpayers to receive existing loan forgiveness benefits without incurring an additional tax burden.

Effective Date:

This bill would take effect immediately and apply to tax years beginning on or after January 1, 2022.

**Part E – Create a Tax Credit for Small Business COVID-19 -Related Expenses**

Purpose:

This bill would create the COVID-19 capital costs tax credit program that will provide critical assistance to small businesses that incurred expenses related to the COVID-19 pandemic or for infectious disease migration.

Summary of Provisions and Statement in Support:

This bill would add a new Article 26 to the Economic Development Law to establish the COVID-19 capital costs tax credit program.

The refundable credit would be available to small businesses with \$2.5 million or less of gross receipts that incurred qualifying COVID-19 capital costs from January 1, 2021, through December 31, 2022, to comply with public health or other emergency orders or regulations related to the COVID-19 pandemic, or to generally increase the safety of their business locations as it relates to infectious disease migration, including those related to social distancing, sanitization, and air purification. A small business would be eligible for a credit of 50 percent of their qualifying costs, up to \$25,000, in the taxable year that includes their application deadline for such credit as determined by the Commissioner. By reducing costs incurred by small businesses to comply with COVID-19 related orders and regulations, the State can continue on the path of reinvigorating the economy and making businesses safer for all New Yorkers.

The amount of the credit under the program would be capped at \$250 million and would be administered by the Department of Economic Development.

This bill would also add a new Tax Law § 47 and amend Tax Law §§ 210-B and 606 to make the tax credit applicable to the corporation franchise tax and personal income tax under Tax Law Articles 9-A and 22.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it provides needed tax incentives for small businesses to comply with orders and regulations pertaining to the COVID-19 pandemic and to increase the safety of their business locations as it relates to infectious disease migration.

Effective Date:

This bill would take effect immediately.

**Part F – Extend the New York City Musical and Theatrical Production Tax Credit**

Purpose:

This bill would amend the New York City musical and theatrical production credit to extend the application deadline and the time that the individual \$3 million cap is available, double the funding for the credit, and clarify how contributions made by theater producers to the Council on the Arts should be spent.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law § 24-c to (1) extend the \$3 million per production cap to productions who have their first performance prior to January 1, 2023; (2) extend the initial application deadline for a production from December 31, 2022 to June 30, 2023; (3) double the overall cap on the program from \$100 million to \$200 million; (4) clarify how the money contributed by theatrical productions to the New York State Council on the Arts Cultural Programs Fund (“the Fund”) is to be spent; and (5) make a technical correction to ensure that the producers’ obligation to make contributions to the Fund continues until December 31, 2025.

Given the continued impacts of COVID-19 on the theater industry, these amendments will help ensure that the New York City musical and theatrical production credit continues to provide needed assistance.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it increases financial assistance to an industry that is struggling during this pandemic and supports tourism in the New York City region.

Effective Date:

This bill would take effect immediately.

## **Part G – Establish a Permanent Rate for the Article 9-A MTA Surcharge**

### Purpose:

This bill would establish a permanent tax rate for the Article 9-A MTA surcharge beginning with the 2023 tax year.

### Summary of Provisions and Statement in Support:

Chapter 59 of the Laws of 2014 amended Tax Law § 209-B to authorize the Tax Commissioner to annually determine the tax rate for the metropolitan transportation business tax surcharge (the “MTA surcharge”), replacing the fixed rate previously set by statute, beginning with the 2016 tax year.

Pursuant to this statutory authority, the Tax Commissioner has set the MTA surcharge rate, beginning on December 31, 2015 for the 2016 tax year, by emergency adoption of amendments to the business corporation franchise tax regulations, § 9-1.2.

The rate as set by regulation has increased as follows: 28% for 2016; 28.3% for 2017; 28.6% for 2018; 28.9% for 2019; 29.4% for 2020; and 30% for 2021 and 2022.

This bill would make the 30% rate permanent beginning with the 2023 tax year.

Returning to a permanent rate set by statute would provide taxpayers with certainty in planning for their business operations and when computing deferred tax assets and liabilities on their balance sheets. Also, the Department would save the resources involved in annually determining a new rate, adopting an emergency regulation, and publishing guidance for the new rate.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would provide certainty for Article 9-A taxpayers, as it is for the other business taxes.

### Effective Date:

This bill would take effect immediately.

## **Part H - Extend and Enhance the Hire-A-Vet Tax Credit for Three Years**

### Purpose:

This bill would encourage the hiring of more veterans by extending the Hire-a-Vet tax credit for an additional three years, increasing the amount of the credit, and expanding the definition of qualified veteran.

Summary of Provisions and Statement in Support:

This bill would extend the Hire-a-Vet tax credit provided under Tax Law §§ 210-B(29), 606(a-2), and 1511(g-1) for an additional three years, through tax years beginning before January 1, 2026, for veterans who begin employment before January 1, 2025.

This bill would expand the employer's credit eligibility by adding Space Force veterans to the definition of qualified veteran and eliminating the requirement that the veteran be discharged after September 11, 2001. This bill also would increase the available credit from ten percent to fifteen percent of the wages paid to the qualified veterans hired, both disabled and non-disabled. Additionally, this bill would increase the total available credit to \$15,000 for all qualified veterans when employed full-time and establishes a credit of \$7,500 per qualified veteran when employed part-time.

Budget Implications:

Enactment of this bill is necessary to implement the 2023 Executive Budget because it would enhance and extend an existing tax credit to support the hiring of veterans.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2022.

**Part I – Provide Tax Credits for the Phase Out of a Certain Grade of Fuel Oil**

Purpose:

This proposal would provide a refundable tax credit for the costs incurred by taxpayers to convert from grade no. 6 heating oil usage to biodiesel fuel or a geothermal system.

Summary of Provisions and Statement in Support:

Chapter 591 of the Laws of 2021 enacted Environmental Conservation Law § 19-0329 to prohibit, beginning July 1, 2023, the use of grade no. 6 heating oil for heating any building or facility in New York State. This proposal creates a new Grade No. 6 Heating Oil Conversion Tax Credit against the corporation franchise tax and personal income tax for eligible taxpayers that incur expenses to convert from grade no. 6 heating oil usage to biodiesel heating oil or a geothermal system.

Taxpayers that meet the eligibility requirements described below may claim a tax credit equal to fifty percent of the conversion costs for all of the taxpayer's buildings located in a municipality paid by such taxpayer on or after January 1, 2022 and before July 1, 2023. The credit cannot exceed five hundred thousand dollars per municipality. The expenses and costs included as part of the Grade No. 6 Heating Oil Conversion Tax Credit cannot be included in the calculation of any other credit under the Tax Law.

- To be eligible to claim the credit, a business entity must:
  - incur expenses to convert from grade no. 6 heating oil to biodiesel heating oil or a geothermal system at any building located in New York State outside the city of New York;
  - not be principally engaged in the generation or distribution of electricity, power or energy;
  - be in compliance with all environmental conservation laws and regulations; and
  - be current and in compliance with all state tax obligations.

The Department of Taxation & Finance, in consultation with the New York State Energy Research and Development Authority (NYSERDA) will develop an application process to certify the expenses necessary to claim the credit. In order to claim the credit, the taxpayer's application must be approved and its expenses certified by NYSERDA.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it will assist taxpayer's transition to utilizing cleaner forms of energy.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2022.

**Part J – Increase the State Low-Income Housing Tax Credit Aggregate Cap Growth**

Purpose:

This bill would increase the aggregate dollar amount allocable for the state low income housing tax credit by \$7 million for each of the next four years.

Summary of Provisions and Statement in Support:

This bill would amend Public Housing Law § 22(4) to increase the aggregate annual amount of low-income housing tax credit the Commissioner of Housing and Community Renewal may allocate by \$7 million for 2022, 2023, 2024 and 2025.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it enhances existing support for low-income housing initiatives.

Effective Date:

This bill would take effect immediately; provided, however, section two of this act shall take effect April 1, 2023; section three of this act shall take effect April 1, 2024; and section four of this act shall take effect April 1, 2025.

**Part K – Extend the Clean Heating Fuel Tax Credit for Three Years**

Purpose:

This bill would extend the expiration dates for the corporate and personal income tax credits for purchasing bio-heating fuel for residential purposes until January 1, 2026.

Summary of Provisions and Statement in Support:

The bill would amend Tax Law §§ 210-B and 606 to extend the expiration date for the corporate and personal income tax credits, respectively, for purchasing bio-heating fuel for residential purposes until January 1, 2026. The credit is equal to \$.01 per percent of bio-heating fuel not to exceed 20 cents per gallon, purchased by the taxpayer.

The current corporate and personal income tax credits for the purchase of bio-heating fuel expire January 1, 2023. This extension supports the use of clean energy in homes.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would continue to incentivize the use of a sustainable energy source for both individual and corporate taxpayers.

Effective Date:

This bill would take effect immediately.

**Part L – Extend the Tax Credit for Companies who Provide Transportation to Individuals with Disabilities an Additional Six Years**



Purpose:

This bill would extend the corporate franchise tax credit for companies who provide transportation to individuals with disabilities for six years.

Summary of Provisions and Statement in Support:

This bill would amend Chapter 604 of the Laws of 2011 and Tax Law § 210-B.38 to extend the credit for companies who provide transportation to individuals with disabilities for six years, through 2028.

The credit is available to businesses that incur an incremental cost for upgrading a vehicle used in providing a taxicab or livery service so that the vehicle is accessible to persons with disabilities; or that purchase certain new taxicab or livery service vehicles that are accessible to persons with disabilities. The credit is available for the cost up to \$10,000 per vehicle.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it maintains existing financial incentives to support transportation services for persons with disabilities.

Effective Date:

This bill would take effect immediately.

**Part M – Extend the Film Tax Credit for Three Years**

Purpose:

This bill would extend the Empire State film production credit and the Empire State film post-production credit for three years.

Summary of Provisions and Statement in Support:

This bill would extend by three years the Empire State film production credit under Tax Law § 24 and for the Empire State film post-production credit under Tax Law § 31.

Currently, the Empire State film production credit and post-production credit are available for taxable years beginning on or after January 1, 2015 and before January 1, 2027. This bill would extend these credits an additional three years to taxable years beginning before January 1, 2030.

In addition, the bill would require that, on or after January 1, 2023, taxpayers receiving a film production credit contribute  $\frac{1}{2}$  of one percent of the credit allowed to the empire state entertainment diversity job training development fund. Currently, they contribute  $\frac{1}{4}$  of one percent.

Finally, the bill would require applicants for the film production credit on or after January 1, 2023 to file a diversity plan with the Governor's Office for Motion Picture and Television Development outlining specific goals for hiring a diverse workforce.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it maintains existing support for the film production and post-production industries.

Effective Date:

This bill would take effect immediately.

**Part N – Extend the New York Youth Jobs Program Tax Credit for an Additional Five Years**

Purpose:

This bill would extend the New York youth jobs program tax credit for an additional five years.

Summary of Provisions and Statement in Support:

Currently, the employers in New York State that hire and employ at-risk youth on a full-time or part-time basis are eligible for the youth jobs program tax credit. This bill would amend Labor Law § 25-a to change the expiration date of the New York Youth Jobs Program tax credit from December 31, 2022 to December 31, 2027.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it maintains existing financial incentives for hiring at-risk youth.

Effective Date:

This bill would take effect immediately.

**Part O – Extend the Empire State Apprenticeship Tax Credit for an Additional Five Years**

Purpose:

This bill would extend the Empire State Apprenticeship Tax Credit program for an additional five years, through 2027.

Summary of Provisions and Statement in Support:

The Empire State Apprenticeship Tax Credit provides tax incentives to qualified employers for hiring new qualified apprentices on or after January 1, 2018. The personal income tax and corporate franchise tax credits are currently available through 2022. This legislation would extend eligibility through 2027.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it maintains existing financial incentives for the hiring and training of qualified apprentices.

Effective Date:

This bill would take effect immediately.

**Part P – Extend the Alternative Fuels and Electric Vehicle Recharging Property Credit for Five Years**

Purpose:

This bill would extend the Alternative Fuels and Electric Vehicle Recharging Property Credit for five years, through the tax year that begins in 2027.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law §§ 187-b, 210-B, and 606 to change the expiration date of the Alternative Fuels and Electric Vehicle Recharging Property Credit from December 31, 2022 to December 31, 2027.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would extend an incentive to utilize energy efficient and environmentally-friendly fuel sources.

Effective Date:

This bill would take effect immediately.

## **Part Q – Extend the Workers with Disabilities Tax Credit for Six Years**

### Purpose:

This bill would extend the workers with disabilities tax credit for six years.

### Summary of Provisions and Statement in Support:

The bill would extend the workers with disabilities tax credit for an additional six years. The credit provides tax incentives to employers of qualified full-time employees with disabilities. The tax credit is currently available until January 1, 2023. This legislation would extend eligibility through tax years beginning before January 1, 2029.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it maintains existing support for workers with disabilities.

### Effective Date:

This bill would take effect immediately.

## **Part R – Require S-Corporation Conformity with Federal Return**

### Purpose:

This bill would amend the Tax Law to require all corporations treated as subchapter S corporations for federal tax purposes to be treated as subchapter S corporations for New York tax purposes.

### Summary of Provisions and Statement in Support:

This bill would amend provisions of Tax Law Articles 9-A, 13 and 22 to provide that all federal subchapter S corporations will be treated as subchapter S corporations for New York tax purposes. Requiring conformity to Federal S corporation status would simplify corporation and shareholder New York tax filings, eliminate potential tax avoidance schemes, and align New York's treatment of S corporations with that of most other states.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would increase All Funds revenue by \$13 million annually beginning in FY 2024.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2023.

**Part S – Eliminate the Investment Tax Credit for Production of Master Tapes**

Purpose:

This bill would reform the investment tax credit (ITC) to exclude from eligibility property used in the production or duplication of a master or any visual or audio recording, including films, television shows or commercials.

Summary of Provisions and Statement in Support:

This bill would amend Tax Law §§ 210-B and 606 to provide that the ITC is not allowed with respect to tangible personal property and other tangible property principally used by the taxpayer in the creation, production, or reproduction, in any medium, of any audio or visual recording, including but not limited to films, television shows, commercials, and musical recordings.

The exclusion of property used to produce program masters reflects the original intent of the ITC, which was to incentivize manufacturers to modernize, upgrade or build new manufacturing facilities in New York. The accounting treatment of program masters assigns a cost basis, which is the basis of the ITC, equal to all the costs incurred to produce the content on the master. Thus, it includes all the costs of filming and producing the content, which can be millions of dollars. Moreover, none of that activity has to occur in New York to generate the credit; it is sufficient that the completed master merely be located in New York. Absent this statutory fix, a credit meant to encourage investment in manufacturing in New York could continue to be used to support activities and jobs outside of the State. Lastly, it should be noted that many of the costs incurred in New York in the production of a master would qualify for the Empire State Film Production Credit, which is more generous than the ITC.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would increase All Funds revenue by \$75 million annually beginning in FY 2025.

## **Part T – Exempt Certain Water Vessels from the Petroleum Business Tax**

### Purpose:

This bill would exempt motor fuel, diesel motor fuel, or residual petroleum product used by tugboats and towboats from the Petroleum Business Tax under Article 13-A.

### Summary of Provisions and Statement in Support:

Tugboat and towboat operators have had continued difficulty with accurately determining the quantity of taxable fuel burned in interstate waters. The bill would alleviate that burden by amending the Tax Law to provide an exemption from the Article 13-A tax on petroleum businesses to tugboats and towboats for their use of motor fuel, diesel motor fuel, or residual petroleum product. The bill also would allow tugboats and towboats to apply for reimbursement where the tax has already been paid.

Current law provides similar relief from the Petroleum Business Tax for other industries engaged in interstate commerce or transportation, including passenger commuter ferries. Exempting tugboats and towboats from the Petroleum Business Tax and allowing reimbursement when the tax has already been paid would promote consistent treatment of the different water vessels.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would equalize tax treatment among the different water vessels.

### Effective Date:

This bill would take effect September 1, 2022 and would apply to uses of motor fuel, diesel motor fuel and residual petroleum product on and after such date; provided however that the amendments to the opening paragraph of section 301-c of the tax law made by section 2 of this act would not affect the repeal of amendments in such opening paragraph made by section 5 of part W-1 of chapter 109 of the laws of 2006.

## **Part U – Make Local Sales Tax Rate Authorizations Permanent**

### Purpose:

This bill would amend the Tax Law to make permanent the authority for counties and cities to impose additional rates of sales and compensating use taxes for three-year periods.

### Summary of Provisions and Statement in Support:

This bill would amend Article 29 of the Tax Law to make permanent the authority for counties to impose an additional rate of sales and use taxes of up to 1 percent, or their current additional rate, if greater, and would authorize cities to impose their current additional rates of sales and use taxes. The bill would also obviate the need for those counties and cities to periodically obtain approval through the State legislative process.

Each county and city that is authorized to impose an additional rate would still have to adopt a local enactment every two years to impose its additional rate. This bill would not change current laws that require counties to adopt a home rule message and obtain approval through the State legislative process before they can increase sales and compensating use taxes above their current authorized additional tax rate.

The bill also would amend and recodify other related provisions of Article 29 of the Tax Law to conform them to the above-described provisions.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it provides local governments with the flexibility and ability to shore up their finances and helps to ensure revenue stability and certainty for local governments in the foreseeable future.

#### Effective Date:

This bill would take effect immediately.

### **Part V – Modernize Tax Law to Include the Vacation Rental Industry**

#### Purpose:

This bill would amend the Tax Law to require vacation rental marketplace providers to collect sales tax on vacation rentals that they facilitate.

#### Summary of Provisions and Statement in Support:

This bill would update the Tax Law to clarify that the sales tax is imposed on vacation rentals, which will reflect the high prevalence of vacation rentals made through marketplaces in recent years. The bill would reverse the “bungalow” rule,” which excluded from sales tax rentals of furnished living units (e.g., bungalows, cabins, etc.) without typical hotel amenities. Finally, the bill would also include vacation rentals in the imposition of the \$1.50 NYC hotel unit fee.

The Department has long had the authority to impose a tax-collection responsibility on a vendor that facilitates a sale by, among other things, collecting the sales price and tax due from the customer, such as auctioneers, consignment shops, and stores with

leased departments. This bill would build on that concept by treating entities that facilitate vacation rentals (such as Airbnb, VRBO, etc.) as persons required to collect tax on such sales, thereby requiring them to collect tax, file returns, and remit the tax collected. The bill would define a “vacation rental marketplace provider” as a person who collects the rent and provides the forum, physical or virtual, where the transaction occurs.

The bill would relieve persons renting properties through vacation rental marketplace providers of any tax collection responsibilities, as long as that person receives, in good faith, a certification from the vacation rental marketplace provider, on a form authorized by the Department, that the vacation rental marketplace provider is collecting the tax on such transactions. A seller of vacation rentals that makes all of its sales through vacation rental marketplace providers who certify that the providers will collect the tax would have no New York sales tax registration, collection, filing or remittance responsibilities.

This bill would require vacation rental marketplace providers to collect sales tax on the vacation rentals that they facilitate, thereby easing the sales tax collection burdens for many individuals who rent their residences as vacation rentals, improve taxpayer compliance, and level the playing field for New York’s hotel operators that compete with vacation rental marketplaces that do not collect tax on vacation rentals in the state.

Additionally, sales tax collection by the vacation rental marketplace provider would reduce the number of small vacation rental providers that need to collect sales tax. It would also improve tax compliance by reducing the number of persons who handle sales tax payments before they are remitted to the Department and reduce the compliance burden of small registered rental providers.

This bill would exclude from the definition of “persons required to collect tax” and “person required to collect any tax imposed by this article” persons who rent their own property for three days or fewer in a calendar year and who do not use a vacation rental marketplace provider to facilitate that rental.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would increase All Funds revenue by \$22 million in FY 2023 and \$43 million annually thereafter.

#### Effective Date:

This bill would take effect immediately and apply to collections of rent by the operator or vacation rental marketplace provider on or after September 1, 2022.



## **Part W – Streamline the Withholding Table and Quarterly Interest Rate Publication Process**

### Purpose:

This bill will streamline notice of tax withholding tables, and modify the current statutory deadline for publishing notice of quarterly interest rates for overpayment and underpayment of tax in the *State Register*.

### Summary of Provisions and Statement in Support:

Tax Law § 671(a)(1) requires employers to deduct and withhold from employee wages each calendar year an amount substantially equivalent to the income tax reasonably estimated to be due. Section 671(a)(1) also requires the Tax Commissioner to prescribe by regulation the method of determining the amount of tax to be withheld from such wages, with due regard to the New York withholding exemptions of the employee and the sum of any credits allowable against tax.

This statute has historically been interpreted to mean that withholding tables must be promulgated as regulations. However, consistent with the State Administrative Procedure Act, only a summary of the tables is published in the *State Register* because the withholding tables are very lengthy and exceed 2,000 words. The complete tables are currently published only on the Department's website. This bill would codify the posting of withholding tables on the Department's website and provide for subsequent publication of notice in the *State Register* that new withholding tables have been posted.

Tax Law §§ 697(j)(6) and 1096(e)(5) require notice of quarterly interest rates for the overpayment and underpayment of tax to be published in the *State Register* no later than 20 days before they take effect. Quarterly interest rates are set based on a statutory formula that includes the federal short term interest rate. The State relies on federal rates to determine quarterly interest rates. However, in light of the timeframe for publishing federal rates, the current statutory structure for publishing needs to be modified to allow the Department sufficient time to calculate the rate and provide the required notice.

This bill would require the Department to publish quarterly interest rates on the Department's website and provide for subsequent publication of notice of the rates in the *State Register*, which will better allow for the Department to meet the statutory timeframe based on the availability of federal rates.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it allows for more efficient promulgation of necessary tax information.

### Effective Date:

This bill would take effect immediately.

## **Part X – Expand the Financial Institution Data Management Program**

### Purpose:

This bill would expand the definition of “financial institution” for the Financial Institution Data Management program to include virtual currency businesses.

### Summary of Provisions and Statement in Support:

This proposal would expand the definition of “financial institution” in Tax Law § 1701 to include virtual currency businesses licensed by the Department of Financial Services (DFS). Expanding the definition of a financial institution to include virtual currency businesses would allow DTF’s vendor for the Financial Institution Data Management (FIDM) program to conduct outreach to virtual currency businesses licensed by DFS and whose identities are publicly available on DFS’s website and bring these virtual currency businesses into the FIDM program. Through the FIDM program, DTF receives information regarding financial accounts held by taxpayers with outstanding tax debts. This information is used to identify financial sources that could be used to satisfy the outstanding debt and issue levies or negotiate with taxpayers about their ability to pay. DTF collects over \$100 million annually through collection efforts related to financial sources obtained through the FIDM program. Expanding the program to include virtual currency businesses will grow the pool of financial assets that could be used to satisfy outstanding tax debts. Virtual or cryptocurrency assets are currently estimated to be in the trillions of dollars.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would increase All Funds revenue by \$25 million in FY 2024 and each year thereafter.

### Effective Date:

This bill would take effect immediately.

## **Part Y – Extend and Amend the Telecommunications Assessment Ceiling Program for Four Years**

### Purpose:

This bill would extend and amend the provisions of Real Property Tax Law Article 4, Title 5, to January 1, 2027.

Summary of Provisions and Statement in Support:

The telecommunications ceiling program was enacted to create a standardized, State-level process for determining the taxable assessed value of telecommunications mass property, benefiting both the industry and local governments. The program was originally enacted in 2013 (c.475) with a sunset date of January 1, 2019, but the expiration date was changed to January 1, 2023 by the 2019-2020 Revenue Bill (L.2019, c.59, pt. G). This bill would keep the program in place through 2027.

The bill also would relieve the burden on local governments whose assessed values are challenged even though they mirror the State's ceiling values. Current law essentially obliges the local assessing unit to defend the State's values while precluding it from even introducing the ceiling value as evidence. Under the bill, the local assessing unit could choose to have the challenge against its value consolidated with the challenge to the State's ceiling value for the same property, thereby freeing the local assessing unit from the need to mount a protracted defense. If the local assessing unit preferred to keep the proceedings separate, it would be permitted to introduce the State's ceiling value and would be entitled to request and make use of the company's inventory data as well.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because the program will expire without an extension.

Effective Date:

This bill would take effect immediately.

**Part Z – Enact STAR Administrative Reforms**

Purpose:

This proposal would enhance the equity and efficacy of the STAR Exemption and Credit programs.

Summary of Provisions and Statement in Support:

Subpart A of the bill would simplify provisions of the STAR exemption program by allowing the Department to send a refund check directly to the homeowner. This will reduce the burden on local municipalities by no longer requiring them to correct tax bills

or issue refunds when the Department approves late good cause applications, while expediting the availability of relief to affected homeowners.

Subpart B would allow taxpayers to seamlessly switch from the STAR exemption to the credit until the 45<sup>th</sup> day before the filing of the final assessment roll. This will ease administration by giving assessors and the Department more time to process changes.

Subpart C would clarify the “income tax year” that is used to determine eligibility for the Basic STAR credit. Though it is clear in the law that eligibility for the Basic and Enhanced STAR exemptions is based on the second most recent income tax year (e.g., eligibility for a STAR exemption in 2022 is based on 2020 income), and that the same is true for the Enhanced STAR credit, the Basic STAR credit lacks explicit language to this effect.

Subpart D would allow the Commissioner to share lists of STAR credit recipients with assessment officials outside New York State if the laws of the other state allow similar sharing. This would make it easier to determine whether individuals who own homes in multiple states are improperly trying to obtain multiple exemptions, tax credits or other forms of tax relief, under laws that, like STAR, limit the exemption, tax credit or other tax relief to the homeowner’s primary residence.

Subpart E would allow the Commissioner to share lists of decedents with assessors, so they may update their records accordingly. Though current law allows such lists to be provided to county directors of real property tax services, numerous assessors have asked to receive such reports directly. This will allow assessors to update their rolls with this information more promptly and efficiently.

Subpart E also would establish a formal mechanism for an executor, heir or other responsible party to notify local officials directly of a property owner’s death. This would help ensure that tax-related notices reach the proper party, while reducing the burdens on local governments when the taxes on a decedent’s property go unpaid.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it provides multiple improvements on existing STAR administrative processes, as well as facilitates intergovernmental data sharing.

#### Effective Date:

This bill would take effect immediately.

### **Part AA – Solar and Wind Valuation Program Technical Corrections**

#### Purpose:

This bill would clarify how to challenge assessments based on the Tax Department's solar and wind valuation model.

Summary of Provisions and Statement in Support:

Under the recently-enacted Real Property Tax Law §575-b, when valuing solar and wind energy systems with a nameplate capacity of 1 megawatt or more, local assessors must use a valuation model and discount rates developed by the State Tax Department in consultation with NYSERDA and others. The law is silent as to how property owners may challenge the values so determined, if they consider them excessive. Local assessors are not in a position to defend a valuation model or discount rates that they have no control over and are bound by law to apply. They should only be accountable for the specific inputs (e.g. system site) they chose to enter into the State's model. Challenges to the validity and accuracy of the model itself and/or the associated discount rates should be raised only in an Article 78 proceeding against the Tax Department, the party that determined them.

This proposal would structure the law accordingly by providing that:

(1) upon request, the assessor has to give the property owner a copy of the inputs that the assessor used in the model;

(2) the property owner has the opportunity to specifically identify the errors to those inputs and provide supporting information to the assessor showing why a change should be made;

(3) the assessor can choose to make changes based on the request and info provided by the property owner, and if the assessor chooses not to make a change, or makes a change the property owner disagrees with, the property owner can then grieve to the Board of Assessment Review. The only basis for a grievance to the Board of Assessment Review would be that the model inputs made by the assessor are incorrect. Challenges to the model itself or the rates used therein would have to be brought against the Tax Department in an Article 78 proceeding.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it provides improvements to the current dispute process under Real Property Tax Law §575-b.

Effective Date:

This bill would take effect immediately.

## **Part BB – Provide a Homeowner Tax Rebate Credit**

### Purpose:

This proposal would provide property tax relief to New York’s homeowners in the form of a new Homeowner Tax Rebate Credit.

### Summary of Provisions and Statement in Support:

This proposal creates a Homeowner Tax Rebate Credit against personal income tax for Tax Year 2022. This credit would be available as an advance payment (check) issued to income-eligible resident taxpayers who own and reside in property receiving Basic or Enhanced STAR.

The amount of the credit would be a percentage of the property’s Basic or Enhanced STAR savings, whichever applies, using a progressive income-based schedule:

- For taxpayers with Basic STAR exemptions or credits:
  - If income is not over \$75,000, the credit would be 163 percent of the 2021 STAR savings for locations outside of New York City and 125 percent in New York City.
  - If income is over \$75,000 but not over \$150,000, the credit would be 115 percent of the 2021 STAR savings for locations outside of New York City as well as 115 percent in New York City.
  - If income is over \$150,000 but not over \$200,000, the credit would be 66 percent of the 2021 STAR savings for locations outside of New York City and 105 percent in New York City.
  - If income is over \$200,000 but not over \$250,000, the credit would be 18 percent of the 2021 STAR savings for locations outside of New York City and 100 percent in New York City.
- For taxpayers with Enhanced STAR exemptions or credits, the credit would be 66 percent of the 2021 STAR savings for locations outside of New York City and 110 percent in New York City.
- No credit would be given where income is above \$250,000.
- No credit would be given where the calculated benefit is less than \$100.

This credit program is built upon the foundation of the property tax relief credit that was available in Tax Years 2016 through 2019. Updates would include decreasing the highest income bracket to \$250,000 from \$275,000, substantially increasing the value of

the credit (as a percentage of the STAR benefit), making homeowners in New York City eligible, instituting a \$100 credit minimum, and eliminating the school district tax cap compliance provision. Some of the other parameters would be modified to ensure timely and accurate payment of the credit.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget since these benefits will provide meaningful property tax relief to homeowners.

Effective Date:

This bill would take effect immediately.

**Part CC – Authorize Casino Licenses**

Purpose:

This bill would authorize the awarding of up to three additional casino licenses.

Summary of Provisions and Statement in Support:

This bill authorizes the New York State Gaming Facility Location Board to issue a request for applications (RFA) and the Gaming Commission to award licenses to no more than three additional applicants, and removes the restriction that a facility cannot be located in Zone One (i.e., Downstate). The tax on gross gaming revenues shall be determined by the Commission during the competitive bidding process.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it will authorize the process to award up to three additional casino licenses, which is expected to foster economic development and increase revenues for education aid once the licenses are awarded and the projects move forward.

Effective Date:

This bill would take effect immediately.

**Part DD – Extend Authorized Use of Capital Funds by Certain Off-track Betting Corporations for One Year**

Purpose:

This bill would extend for one additional year the authorized use of capital acquisition funds by the Capital Off-track betting (OTB) corporation.

Summary of Provisions and Statement in Support:

Section 1 would amend Racing, Pari-Mutuel Wagering and Breeding Law (PML) § 509(a) to allow Capital OTB to use 23 percent of its capital acquisition fund, not to exceed \$440,000, towards statutory obligations, payroll, and expenditures necessary to accept authorized wagers during FY 2023.

Section 2 would amend part LLL of chapter 59 of the laws of 2021 to remove the prior sunset provision.

Section 3 states that this act shall take effect immediately.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it will continue to allow Capital OTB to use a portion of its capital acquisition fund to make necessary payments.

Effective Date:

This bill would take effect immediately.

**Part EE – Extend Pari-Mutuel Tax Rates and Simulcast Provisions For One Year**

Purpose:

This bill would extend for one additional year various provisions of the Racing, Pari-Mutuel Wagering and Breeding Law (PML).

Summary of Provisions and Statement in Support:

Section 1 would amend PML § 1003(a) to extend the June 30, 2022 expiration date for in-home simulcasting.

Section 2 would amend PML § 1007(3)(d) to extend the percentage of total pools allocated to purses that a track located in Westchester County receives from a franchised corporation, which expires on June 30, 2022.



Section 3 would amend the opening paragraph of PML § 1014 to extend the simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is operating, which expires on June 30, 2022.

Section 4 would amend PML § 1015(1) to extend the provisions governing the simulcasting of races conducted at out-of-state harness tracks, which expires on June 30, 2022.

Section 5 would amend the opening paragraph of PML §1016(1) to extend the provisions governing the simulcasting of out-of-state thoroughbred races on any day the Saratoga thoroughbred track is closed, which expires on June 30, 2022.

Section 6 would amend the opening paragraph of PML §1018 to extend the distribution of revenue from out-of-state simulcasting during the Saratoga meet, which expired on September 8, 2021.

Section 7 would amend § 32 of chapter 281 of the Laws of 1994 to extend the amount of off-track betting wagers on New York Racing Association, Inc. (NYRA) pools dedicated to purse enhancement, which expires on June 30, 2022.

Section 8 would amend § 54 of chapter 346 of the Laws of 1990 to extend arbitration for disagreements, which expires on June 30, 2022.

Section 9 would amend PML § 238(1)(a) to extend the distribution of revenue from on-track wagering on NYRA races, which expired on December 31, 2021.

Extending these provisions would maintain the pari-mutuel wagering and simulcasting structure that is currently in place in New York State. The provisions extended by sections one through six of this bill were first enacted in 1994 and section seven was enacted in 1990. These provisions were extended numerous times since their original enactment, most recently in FY 2022.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2023 Executive Budget because it would maintain the current pari-mutuel wagering structure in New York State.

Effective Date:

This bill would take effect immediately.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.