

# SECTION 685

## Additions to tax and civil penalties

### Tax (TAX) CHAPTER 60, ARTICLE 22, PART 6

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§ 685. Additions to tax and civil penalties.--(a) (1) Failure to file tax return.--

(A) In case of failure to file a tax return under this article on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return.--In case of failure to pay the amounts shown as tax on any return required to be filed under this article on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is

due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one per cent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return.--In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this article which is not so shown (including an assessment made pursuant to subsection (a) of section six hundred eighty-two of this article) within twenty-one calendar days of the date of a notice and demand therefor (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.--

(A) With respect to any return, the amount of the addition under paragraph one of this subsection shall be reduced by the amount of the addition under paragraph two of this subsection for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of such paragraph one, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subsection shall be reduced by the amount of the addition under paragraph one of this subsection (determined without regard to subparagraph (B) of such paragraph) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence.--

(1) If any part of a deficiency is due to negligence or intentional disregard of this article or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph one of this subsection) an amount equal to fifty percent of the interest payable under section six hundred eighty-four with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code, respectively, and the payee fails to include any portion of such payment in New York adjusted gross income, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subsection, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subsection by reason of the preceding sentence, the amount of the penalty imposed by paragraph one of this subsection shall be five percent of the portion of the underpayment which is attributable to the failure described in the preceding sentence.

(c) Failure by individual to pay estimated income tax.--

(1) Addition to the tax.--Except as otherwise provided in this

subsection and subsection (d) of this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the underpayment rate established under subsection (j) of section six hundred ninety-seven of this part, or if no rate is set, at the rate of seven and one-half percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

(2) Amount of underpayment.--For purposes of paragraph one, the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(3) Required installment. (A) Except as provided in paragraph four of this subsection, the amount of any required installment shall be twenty-five percent of the required annual payment.

(B) The required annual payment is the lesser of

(i) ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year), or

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, the tax shown on such return for taxable years beginning in two thousand two shall be the tax calculated as if such years began in two thousand three. Provided further, however, that the tax shown on such return for taxable years beginning in two thousand eight shall be calculated as if paragraph three of subsection (f) of section six hundred fifteen of this article has been in effect for taxable years beginning in two thousand eight. Further provided that the tax shown on such return for taxable years beginning in two thousand eight shall be the tax calculated as if such years began in two thousand nine. Provided, however, that the tax

shown on such return for taxable years beginning in two thousand nine shall be calculated as if paragraph two of subsection (g) of section six hundred fifteen of this article was in effect for taxable years beginning in two thousand nine and ending before two thousand thirteen.

Clause (ii) of this subparagraph shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax.

(i) General. If the New York adjusted gross income shown on the return of the individual for the preceding taxable year exceeds one hundred fifty thousand dollars, clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "one hundred ten percent" for "one hundred percent".

(ii) Separate returns. In the case of a husband and wife who file separate returns pursuant to subsection (b) of section six hundred fifty-one for the taxable year for which the amount of the installment is being determined, clause (i) of this subparagraph shall be applied by substituting "seventy-five thousand dollars" for "one hundred fifty thousand dollars".

(4) Annualized income installment.--(A) In general.--In the case of any required installment, if the individual establishes that the annualized income installment determined under subparagraph (B) of this paragraph is less than the amount determined under paragraph three, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph three by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(B) Determination of annualized income installment.--In the case of any required installment, the annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year. The applicable percentage of the tax

shall be twenty-two and one-half percent in the case of the first installment, forty-five percent in the case of the second installment, sixty-seven and one-half percent in the case of the third installment and ninety percent in the case of the fourth installment, and shall be computed without regard to any increase in the rates applicable to the taxable year unless such increase was enacted at least thirty days prior to the due date of the installment.

(5) Definitions and special rules.--(A) Definition of the term tax and application of credits against tax.--For purposes of this subsection and subsection (d), the term "tax" means the tax imposed under this article minus the credits against tax allowed under this article, other than the credit under section six hundred seventy-three, relating to tax withheld on wages. The credit allowed under section six hundred seventy-three for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(B) Special rule where return filed on or before January thirty-first.--If, on or before January thirty-first of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under paragraph one with respect to any underpayment of the fourth required installment for the taxable year.

(C) Special rules for farmers and fishermen.--For purposes of this subsection, if an individual is a farmer or fisherman for any taxable year there shall be only one required installment for the taxable year, due on January fifteenth of the following taxable year in an amount equal to the required annual payment determined under paragraph three by substituting sixty-six and two-thirds percent for ninety percent and without regard to subparagraph (C) of paragraph three of this subsection. Subparagraph (B) of this paragraph shall be applied by substituting March first for January thirty-first and by treating the required installment under this subparagraph as the fourth required installment. An individual is a farmer or fisherman for any taxable year if the individual's federal gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total federal gross income from all sources for the taxable year

or if such individual's federal gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total federal gross income from all sources shown on such return.

(D) Fiscal years.--In applying this subsection to a taxable year beginning on any date other than January first, there shall be substituted, for the months specified in this subsection, the months which correspond thereto.

(E) Short taxable year.--This subsection shall be applied to taxable years of less than twelve months in accordance with regulations prescribed by the tax commission.

(F) Joint estimated tax of husband and wife.--A husband and wife may make the required annual payment determined under paragraph three as if they were one taxpayer, in which case the liability under paragraph one with respect to the estimated tax shall be joint and several. No such joint payment may be made if husband and wife are separated under a decree of divorce or separate maintenance, or if they have different taxable years. If a joint payment is made but husband and wife determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(6) Trusts and certain estates. (A) General. This subsection shall apply to any trust or estate except as provided in subparagraphs (B) and (C) of this paragraph.

(B) Exception for estates and certain trusts. This subsection shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death to (i) the estate of such decedent or (ii) any trust all of which was treated (under subpart E of part I of subchapter J of chapter one of the internal revenue code) as owned by the decedent and to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(C) Special rule for annualizations. In the case of any estate or trust, subparagraph (B) of paragraph four of this subsection shall be applied by substituting "ending before the date one month before the due

date for the installment" for "ending before the due date for the installment".

(D) In the case of a trust, the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust. Any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and for purposes of this subsection, the amount so treated shall not be treated as a payment of estimated tax made by the trust, but shall be treated as a payment of estimated tax made by such beneficiary on the January fifteenth following the end of the trust's taxable year.

(E) An election under subparagraph (D) of this paragraph shall be made on or before the sixty-fifth day after the close of the taxable year and in such manner as the commissioner of taxation and finance may prescribe.

(F) Extension to last year of estate.--In the case of a taxable year reasonably expected to be the last taxable year of an estate, any reference in subparagraph (D) of this paragraph to a trust shall be treated as including a reference to an estate, and the fiduciary of the estate shall be treated as the trustee.

(d) Exceptions to addition to tax for failure to pay estimated income tax.--

(1) Where tax is small amount.--No addition to tax shall be imposed under subsection (c) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section six hundred seventy-three, is less than three hundred dollars.

(2) Where no tax liability for preceding taxable year.--No addition to tax shall be imposed under subsection (c) for any taxable year if the preceding taxable year was a taxable year of twelve months, the individual did not have any liability for tax under this article for the preceding taxable year and throughout the preceding taxable year the individual was a resident of this state or a nonresident or part-year resident who had New York source income.

(3) Installment due on or after individual's death.--No addition to

tax shall be imposed under subsection (c) with respect to any installment due on or after the individual's death.

(4) Waiver in certain cases.--(A) In general.--No addition to tax shall be imposed under subsection (c) with respect to any underpayment to the extent the tax commission determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals.--No addition to tax shall be imposed under subsection (c) with respect to any underpayment if the tax commission determines that in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year the taxpayer retired after having attained age sixty-two or became disabled, and that such underpayment was due to reasonable cause and not to willful neglect.

(e) Deficiency due to fraud.--(1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to two times the deficiency.

(2) The addition to tax under this subsection shall be in lieu of any other addition to tax imposed by subsection (a) or (b).

(3) In the case of a joint return under section six hundred fifty-one, this subsection shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

(f) Non-willful failure to pay withholding tax.-- If any employer, without intent to evade or defeat any tax imposed by this article or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of section six hundred seventy-four, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The tax commission shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this article for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax.-- Any person required

to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the sum of (i) the total amount of the tax evaded, or not collected, or not accounted for and paid over, and (ii) the interest that has accrued on the total amount of tax evaded on the date this penalty is first imposed until this penalty is paid with interest thereon. No addition to tax under subsections (b) or (e) of this section shall be imposed for any offense to which this subsection applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

(h) Failure to file certain information returns.-- (1) Except as otherwise provided in this paragraph, in case of each failure to file a statement of a payment to another person, required under authority of subsection (d) of section six hundred fifty-eight (relating to information at source) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of fifty dollars for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars.

(2) If any partnership, S corporation, or trust required to file a return or report under subsection (c) or subsection (f) of section six hundred fifty-eight or under section six hundred fifty-nine or six hundred fifty-nine-a of this article for any taxable year fails to file such return or report at the time prescribed therefor (determined with regard to any extension of time for filing), or files a return or report which fails to show the information required under such subsection (c) of section six hundred fifty-nine of this article, or files a return or report which fails to show the information required under subsection (d) of section six hundred fifty-nine-a of this article, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the partnership or S corporation a penalty for each month (or fraction thereof) during which such failure continues (but not to exceed five months). The amount of such penalty

for any month is the product of fifty dollars, multiplied by the number of partners in the partnership or shareholders in the S corporation during any part of the taxable year who were subject to tax under this article during any part of such taxable year, except that, in the case of a trust, the penalty shall be equal to one hundred fifty dollars a month up to a maximum of fifteen hundred dollars per taxable year.

(i) Additional penalty.--Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return, or to supply any information within the time required by or under this article, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this article, to be imposed, assessed and collected by the tax commission. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

(j) Fraudulent statement or failure to furnish statement to employee. -- In addition to any criminal penalties provided by law, any person required under the provisions of section six hundred seventy-two to furnish a statement to an employee, who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section six hundred seventy-two, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this article of fifty dollars.

(k) Failure to supply identifying numbers. -- If any person who is required by regulations prescribed under subsection (b) of section six hundred fifty-eight

(1) to include his identifying number in any return, statement, or other document;

(2) to furnish his identifying number to another person; or

(3) to include in any return, statement or other document made with respect to another person the identifying number of such other person, fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty of five dollars for each such failure described in paragraph one of this

subsection and fifty dollars for each such failure described in paragraphs two and three of this subsection, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed ten thousand dollars; except that for failure to include his own identification number in any return, statement or other document, such penalty shall not be imposed unless such person shall have failed to supply his identification number to the tax commission within thirty days after demand therefor.

(l) Additions treated as tax. -- The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this article to income tax or tax imposed by this article, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section six hundred eighty-one, this subsection shall not apply to --

(1) any addition to tax under subsection (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subsection (c);

(3) any penalty under subsection (h) and any additional penalty under subsection (i); and

(4) any penalties under subsections (j), (k), (q), (r), (s), (u), (v) and (w).

(m) Determination of deficiency. -- For purposes of subsections (b) and (e), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(n) Person defined. For purposes of subsections (g), (i), (o), (q) and (r), the term person includes an individual, corporation, partnership or limited liability company or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member, manager or employee of a limited liability company, who as such officer, employee, manager or member is under a duty to perform the act in respect of which the violation occurs.

(o) Failure to make deposits of taxes. -- In case of failure by any person required by this article, or by regulations of the tax commission under this article, to deposit on the date prescribed therefor any amount of tax imposed by this article in a depository authorized pursuant to subsection (a) of section six hundred ninety-two of this article to receive such deposits, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such person a penalty of five per cent of the amount of the underpayment. For purposes of this subsection the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof, deposited on or before the date prescribed therefor.

\* (p) Substantial understatement of liability.-- (1) If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (g) of section six hundred eighty-one). The excess under the preceding sentence shall be determined without regard to items to which subsection (p-1) of this section applies. The commissioner may waive all or any part of the addition to tax provided by this subsection on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(2) The amount of the understatement under paragraph (1) shall be reduced by that portion of the understatement which is attributable to (A) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or (B) any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(3)(A) Subparagraph (B) of paragraph two of this subsection shall not apply to any item attributable to a tax shelter.

(B) For purposes of this paragraph, the term "tax shelter" means

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of tax.

\* NB Effective until July 1, 2029

\* (p) Substantial understatement of liability.--If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (g) of section six hundred eighty-one). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The tax commission may waive all or any part of the addition to tax provided by this subsection on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

\* NB Effective July 1, 2029

\* (p-1) Reportable transaction understatement.-- (1) If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to twenty percent of the amount of such understatement.

(2) For purposes of this section, the term "reportable transaction understatement" means the sum of:

(A) the product of--

(i) the amount of the increase (if any) in the applicable tax base which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

(ii) the highest rate of tax imposed by this article, and

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under this article which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A) of this paragraph, any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section one thousand two hundred eleven of the internal revenue code) be allowed for such year, shall be treated as an increase in the applicable tax base.

(3) This subsection shall apply to any item which is attributable to--

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of tax.

(4) Paragraph one of this subsection shall be applied by substituting "thirty percent" for "twenty percent" with respect to the portion of any reportable transaction understatement with respect to which the requirement of clause (i) of subparagraph (B) of paragraph ten of this subsection is not met.

(5) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" have the meanings given to such

terms by section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(6) In the case of an understatement (as defined in subsection (p) of this section):

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under subsection (p) of this section, and (B) the addition to tax under subsection (p) of this section shall apply only to the excess of the amount of the substantial understatement (if any) after the application of this subparagraph over the aggregate amount of reportable transaction understatements.

(7) References to an understatement (or a deficiency) in subsection (e) of this section shall be treated as including references to a reportable transaction understatement.

(8) This subsection shall not apply to any portion of any understatement on which a penalty is imposed under subsection (e) of this section.

(9) Except as provided in regulations prescribed by the commissioner, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the commissioner regarding the examination of the return or such other date as is specified by the commissioner.

(10)(A) No penalty shall be imposed under this subsection with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(B) Subparagraph (A) of this paragraph shall not apply to any reportable transaction understatement unless

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with section twenty-five of this chapter,

(ii) there is or was substantial authority for such treatment, and

(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section twenty-five of this chapter shall be treated as meeting the requirements of clause (i) of this subparagraph if the penalty for such failure was rescinded under subsection (x) of this section.

(11)(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief

(i) is based on the facts and law that exist at the time the return which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B)(i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if

(I) the tax advisor is described in clause (ii) of this subparagraph, or

(II) the opinion is described in clause (iii) of this subparagraph.

(ii) A tax advisor is described in this clause if the tax advisor

(I) is a material advisor (within the meaning of section six thousand one hundred eleven of the internal revenue code or within such meaning as it also applies to a New York reportable transaction as defined in section twenty-five of this chapter) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of subsection (b) of section two hundred sixty-seven of the internal revenue code or subsection (b) of section seven hundred seven of the internal revenue code) to any person who so

participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) has a disqualifying financial interest with respect to the transaction.

(iii) For purposes of clause (i) of this subparagraph, an opinion is disqualified if the opinion

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the commissioner may prescribe.

\* NB Repealed July 1, 2029

(p-2) No penalty will be imposed pursuant to subsection (c) or (p) of this section for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine resulting from the denial of an empire zone tax credit claimed by the taxpayer because an empire zone retention certificate was not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return.

(q) Frivolous tax returns and specified frivolous submissions.-- (1) If any individual files what purports to be a return of any tax imposed by this article but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment

is substantially incorrect; and such conduct is due to a position which is frivolous, including a position identified as frivolous under paragraph three of this subsection, or an intent to delay or impede the administration of this article, then such individual shall pay a penalty not exceeding five thousand dollars. This penalty shall be in addition to any other penalty provided by law.

(2) Penalty for specified frivolous submissions. (A) Any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars. This penalty shall be in addition to any other penalty provided by law.

(B) The term "specified frivolous submission" means a specified submission if any portion of that submission (i) is based on a position that the commissioner has identified as frivolous under paragraph three of this subdivision, or (ii) reflects a desire to delay or impede the administration of this chapter.

(C) The term "specified submission" means a request for conciliation conference, a petition to the division of tax appeals, an application for an installment payment agreement, or an offer in compromise.

(D) If the commissioner provides an individual with notice that a submission is a specified frivolous submission and that person withdraws the submission within thirty days after such notice, the penalty imposed under this paragraph will not apply with respect to that submission.

(3) Listing of frivolous positions. The commissioner will prescribe (and periodically revise) a list of positions that the commissioner has identified as frivolous for purposes of this subsection.

(4) Reduction of penalty. The commissioner may reduce the amount of any penalty imposed under this section if the commissioner determines that such a reduction would promote compliance with and administration of this chapter.

(r) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents.--(1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter

arising under this article of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding five thousand dollars.

(2) For purposes of paragraph one of this subsection, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph one of this subsection, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(s) False information with respect to withholding.--In addition to any criminal penalty provided by law, if any individual makes a statement under section six hundred seventy-one which results in a decrease in the amounts deducted and withheld under part five of this article, and as of the time such statement was made, there was no reasonable basis for such statement, such individual shall pay a penalty of five hundred dollars for such statement. The tax commission shall waive the penalty imposed under this subsection if the taxes imposed with respect to the individual under this article for the taxable year are equal to or less than the sum of the credits against such taxes allowed by this article, and the payments of estimated tax which are considered payments on account of such taxes.

(t) Unwarranted reduction in utility costs in an empire zone. If during a taxable year a taxpayer has received a reduction in the rate charged for gas, electric, steam or water sold, or gas, electric, steam or water service rendered, pursuant to subdivision eight of section one hundred eighty-six-a of this chapter, based upon a certification as to

the claiming of a credit under subsection (k) of section six hundred six of this article, and it is finally determined that such taxpayer is not entitled to such credit in any part, such taxpayer shall be liable to a penalty in an amount equal to such reduction in cost, with interest from the last day of such year, at the rate applicable to underpayments of tax pursuant to this article. The tax commission shall have the power, in its discretion, to waive, reduce or compromise such penalty.

(u) Failure of tax return preparer to conform to certain requirements.--(1) Failure to sign return or claim for refund. If a tax return preparer who is required pursuant to paragraph one of subsection (g) of section six hundred fifty-eight of this article to sign a return or claim for refund fails to comply with such requirement with respect to such return or claim for refund, the tax return preparer shall be subject to a penalty of two hundred fifty dollars for each such failure to sign, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year by the tax return preparer must not exceed ten thousand dollars. Provided, however, that if a tax return preparer has been penalized under this paragraph for a preceding calendar year and again fails to sign his or her name on any return that requires the tax return preparer's signature during a subsequent calendar year, then the penalty under this paragraph for each failure will be five hundred dollars, and no annual cap will apply. This paragraph shall not apply if the penalty under paragraph three of subsection (g) of section thirty-two of this chapter is imposed on the tax return preparer with respect to such return or claim for refund.

(2) Failure to furnish identifying number. If a tax return preparer fails to include any identifying number required to be included on any return or claim for refund pursuant to paragraph two of subsection (g) of section six hundred fifty-eight of this article, the tax return preparer shall be subject to a penalty of one hundred dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not willful neglect. The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year must not exceed two thousand five hundred dollars; provided, however, that if a tax return preparer has been penalized under this paragraph for a preceding calendar year and again fails to include the identifying number on one or more returns during a subsequent calendar year, then the penalty under this paragraph for each

failure will be two hundred fifty dollars, and no annual cap will apply. this paragraph shall not apply if the penalty under paragraph four of subsection (g) of section thirty-two of this chapter is imposed on the tax return preparer with respect to such return or claim for refund.

(3) Failure to furnish copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph three of subsection (g) of section six hundred fifty-eight of this article to furnish a copy of such return or claim for refund to the taxpayer, and who fails to comply with such provision with respect to such return or claim for refund, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(4) Failure to retain copy or list. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph four of subsection (g) of section six hundred fifty-eight of this article to: (i) retain a copy of such return or claim for refund or retain on a list the name and taxpayer identifying number of the taxpayer for whom such return or claim for refund was prepared and (ii) make such copy or list available for inspection upon request by the commissioner, and who fails to comply with the retention requirement or who complies with the retention requirement but fails to comply with such request by the commissioner, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to any calendar year shall not exceed twenty-five thousand dollars.

\* (5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subsection (g) of section six hundred fifty-eight of this article, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

\* NB Effective January 1, 2030

(6) For purposes of this subsection, the term "tax return preparer" shall have the same meaning as defined in paragraph five of subsection (g) of section six hundred fifty-eight of this article.

(v) Failure to perform certain acts with respect to the quarterly combined withholding, wage reporting and unemployment insurance return.

(1) Failure to file. (A) Delinquency. (i) General. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, as required by paragraph four of subsection (a) of section six hundred seventy-four of this article, then such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to the greater of one thousand dollars or the product of fifty dollars multiplied by the number of employees shown on the last quarterly combined withholding, wage reporting and unemployment insurance return filed by such employer, or if no such return has been filed, the number of employees may be estimated by the commissioner from any information in the commissioner's possession. The total amount of the penalty imposed by this clause on an employer for any such failure shall not exceed ten thousand dollars.

(ii) Coordination of delinquency penalty with other additions to tax and penalties for failure to file. Except as otherwise provided in subparagraph (C) of this paragraph, an employer failing to file the quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, shall only be liable for the penalty prescribed by this subparagraph; such employer shall not be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section or for the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(B) Late filing. (i) Within thirty days of notice. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article, but files such return or any such portion thereof within thirty days after the date the department sends notice of such failure to such employer by certified mail, then the penalty prescribed by subparagraph (A) of this paragraph shall be abated. In addition, such employer shall not be liable for the addition to tax

prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law. Provided, however, such employer shall remain liable for the other additions to tax prescribed by subsection (a) of this section, if applicable. Provided, further, that where such employer fails to file such return or any such portion thereof by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but is not liable for the penalty prescribed by subparagraph (A) of this paragraph for such failure because such employer complied with the provisions of this clause or clause (iii) of this subparagraph, and where within four successive calendar quarters of such initial failure to file by the prescribed due date, such employer again fails to file such return or portion thereof by such due date, then the provisions of this clause relating to abatement and non-imposition of other additions to tax and penalties for failure to file shall not apply to any such failure within such four successive calendar quarters. In such a case, if such employer files such return or portion thereof within thirty days after the date the department sends notice of such second failure by certified mail, such employer shall be liable for a penalty equal to the lesser of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(ii) After thirty days of notice. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article, but files such return or any such portion thereof more than thirty days after the date the department sends notice of such failure to file to such employer by certified mail, then such employer shall be liable for a penalty equal to the greater of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two

of section five hundred eighty-one of the labor law.

(iii) Late filing prior to notice. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but files such return or any such portion thereof before the department sends notice of such failure to file by certified mail, then the penalty prescribed by subparagraph (A) of this paragraph shall not be imposed. In addition, such employer shall not be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law. Provided, however, such employer shall remain liable for the other additions to tax prescribed by subsection (a) of this section, if applicable. Provided, further, that where such employer fails to file such return or any such portion thereof by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but is not liable for the penalty prescribed by subparagraph (A) of this paragraph for such failure because such employer complied with the provisions of this clause or clause (i) of this subparagraph, and where within four successive calendar quarters of such initial failure to file by the prescribed due date, such employer again fails to file such return or any such portion thereof by such due date, then the provisions of this clause relating to non-imposition of penalties and other additions to tax for failure to file shall not apply to any such failure within such four successive calendar quarters. In such a case, if such employer files such return or portion thereof before the department sends notice of such failure by certified mail, such employer shall be liable for a penalty equal to the lesser of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(C) Audit following failure to file. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return and an audit is subsequently commenced with respect to such employer by the department, the department of labor or both, such

employer shall, in addition to the penalty prescribed by subparagraph (A) of this paragraph, be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section, the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law, or both, as applicable.

(D) Protests and collection. The department of labor shall adjudicate all disputes regarding the imposition of the penalty prescribed by this paragraph (whether alone or in conjunction with the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law), in accordance with the provisions contained in article eighteen of the labor law; provided, however, that the department shall adjudicate disputes in accordance with the procedures prescribed by this chapter where (i) an employer only fails to file the portion of a quarterly combined withholding, wage reporting and unemployment insurance return relating to withholding reconciliation information, (ii) the penalty prescribed by clause (iii) of subparagraph (B) of this paragraph is imposed, or (iii) the department conducts an audit described in subparagraph (C) of this paragraph with respect to withholding tax liability. Once the penalty prescribed by this paragraph is finally determined and no longer subject to administrative or judicial review, the amount thereof shall be deemed to be an obligation owed jointly to the department and the department of labor, and either of such departments may collect such amount in accordance with the procedures prescribed by this chapter or the labor law, as applicable. Any penalty amount so collected shall, if necessary, be allocated as between the withholding tax program and the unemployment insurance program, and shall be deposited and disposed of by the respective department in accordance with applicable law.

(3) Failure to provide complete and correct employee withholding reconciliation information. In the case of a failure by an employer to provide complete and correct quarterly withholding information relating to individual employees on a quarterly combined withholding, wage reporting and unemployment insurance return covering each calendar quarter of a year, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to the product of one hundred dollars multiplied by the number of employees for whom such information is incomplete or incorrect; provided, however, that if the number of such employees cannot be determined from the quarterly combined withholding, wage

reporting and unemployment insurance return, the commissioner may utilize any information in the commissioner's possession in making such determination. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure for each calendar quarter of a year shall not exceed twenty thousand dollars.

(4) Failure to provide complete and correct quarterly withholding information not relating to individual employees. In the case of a failure by an employer to provide complete and correct quarterly withholding information not relating to individual employees on a quarterly combined withholding, wage reporting and unemployment insurance return, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to five percent of the quarterly withholding tax liability required to be shown by such employer for the quarter covered by such return, or if such liability required to be shown by such employer for the quarter cannot be ascertained, the commissioner may estimate such liability from any information in the commissioner's possession. If such employer provides complete and correct quarterly withholding information not relating to individual employees within thirty days after the department sends notice of such failure to the employer by certified mail, then such penalty shall be abated. No penalty under this paragraph shall be imposed if the department is able to properly verify and reconcile withholding and wage reporting information using the information furnished by the employer. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure shall not exceed ten thousand dollars.

(5) Failure to file using prescribed format. In the case of a failure by an employer to file a quarterly combined withholding, wage reporting and unemployment insurance return using the format prescribed by the department pursuant to the authority of paragraph two of subsection (d) of section six hundred fifty-eight of this article and regulations promulgated thereunder, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to the product of fifty dollars multiplied by the number of employees required to be shown on such return. If such employer files such return using the prescribed format within thirty days after the department sends notice of such failure to the employer by certified mail, then such penalty shall be abated. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure shall not exceed ten thousand dollars.

(6) Except as otherwise provided in this subsection, and except for the penalties prescribed by paragraph one of subsection (h) and subsection (k) of this section, the penalties prescribed by this subsection shall be in addition to any other penalty or addition to tax provided by law.

(w) Failure to file report regarding newly hired or re-hired employees. If any employer required to file a report pursuant to section one hundred seventy-one-h of this chapter fails to file such report at the time prescribed therefor, or files a report which fails to show the information required pursuant to such section one hundred seventy-one-h, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the employer a penalty equal to the product of twenty dollars, multiplied by the number of employees the employer failed to report, but the total amount imposed on the employer for all such failures during any calendar year shall not exceed ten thousand dollars. If the failure is a result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, the penalty shall be equal to the product of four hundred fifty dollars multiplied by the number of employees the employer failed to report.

\* (x) Failure to disclose or provide reportable transaction information.-- (1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (a) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be ten thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection with respect to a listed transaction shall be twenty-five thousand dollars.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, and the term "reportable transaction" shall include a "New York reportable transaction" as

defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this section shall be in addition to any other penalty imposed by this chapter.

\* NB Repealed July 1, 2029

\* (y) Failure to disclose or provide reportable transaction return.--

(1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (b) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be twenty thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection with respect to a listed transaction shall be the greater of

(i) fifty thousand dollars or,

(ii) fifty percent of the gross income that the organizer or material advisor derived with respect to activities that were the basis for the requirement to file, disclose or provide information pursuant to section six thousand eleven of the internal revenue code, to the extent such gross income is attributable to the avoidance of any tax imposed under this article.

(C) Clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "seventy-five percent" for "fifty percent" in the case

of an intentional failure or act described in paragraph one of this subsection.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this subsection shall be in addition to any other penalty imposed by this chapter, except that no penalty shall be imposed under subparagraph (A) or clause (i) of subparagraph (B) of paragraph two of subsection (q) of section one thousand eighty-five of this chapter for the same failure that is the basis for a penalty under this subsection. Nothing in this paragraph shall preclude the imposition of a penalty under clause (ii) of subparagraph (B) of paragraph two of subsection (q) of section one thousand eighty-five of this chapter for the same failure that is the basis for a penalty under clause (ii) of subparagraph (B) of paragraph two of this subsection.

\* NB Repealed July 1, 2029

\* (z) Failure to maintain list of advisees.-- (1) If any person who is required to maintain a list under subdivision (c) of section twenty-five of this chapter fails to make a duplicate of such list available, upon written request by the commissioner in accordance with such subsection within twenty business days after the date of the request, such person shall pay a penalty of ten thousand dollars for each day of such failure after such twentieth day.

(2) No penalty shall be imposed by paragraph one of this subsection

with respect to the failure on any day if such failure is due to reasonable cause.

\* NB Repealed July 1, 2029

(aa) Tax preparer penalty.-- (1) If a tax return preparer takes a position on any income tax return or credit claim form that either understates the tax liability or increases the claim for a refund, and the preparer knew, or reasonably should have known, that said position was not proper, and such position was not adequately disclosed on the return or in a statement attached to the return, such income tax preparer shall pay a penalty of between one hundred and one thousand dollars.

(2) If a tax return preparer takes a position on any income tax return or credit claim form that either understates the tax liability or increases the claim for a refund and the understatement of the tax liability or the increased claim for refund is due to the preparer's reckless or intentional disregard of the law, rules or regulations, such preparer shall pay a penalty of between five hundred and five thousand dollars. The amount of the penalty payable by any person by reason of this paragraph shall be reduced by the amount of the penalty paid by such person by reason of paragraph one of this subsection.

(3) For purposes of this subsection, the term "understatement of tax liability" means any understatement of the net amount payable with respect to any tax imposed under this article or any overstatement of the net amount creditable or refundable with respect to any such tax.

(4) For purposes of this subsection, the term "tax return prepared" shall have the same meaning as defined in paragraph five of subsection (g) of section six hundred fifty-eight of this article.

(5) This subsection shall not apply if the penalty under subsection (r) of this section is imposed on the tax return preparer with respect to such understatement.

\* (bb) Promoting abusive tax shelters.-- (1) Any person who

(A)(i) organizes (or assists in the organization of)

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement, or

(ii) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in clause (i) of this subparagraph, and

(B) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(ii) a gross valuation overstatement as to any material matter, and

(C) satisfies any of the following conditions

(i) the person is organized in this state,

(ii) the person is doing business in this state,

(iii) the person is deriving income in this state, or

(iv) the person conducts any of the activities described in subparagraph (A) or (B) of this paragraph within the state of New York, shall pay, with respect to each activity described in subparagraph (A) of this paragraph, a penalty equal to one thousand dollars or, if the person establishes that it is lesser, one hundred percent of the gross income derived (or to be derived) by such person from such activity to the extent such gross income is attributable to the avoidance of any tax imposed under this article; provided, however, that if an activity with respect to which a penalty imposed under this subsection involves a statement described in clause (i) of subparagraph (B) of paragraph one of this subsection, the penalty shall be equal to fifty percent of the gross income derived (or to be derived) from that activity within the state by the person on which the penalty is imposed. For purposes of the preceding sentence, activities described in clause (i) of subparagraph

(A) of this paragraph with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in clause (ii) of subparagraph (A) of this paragraph shall be so treated.

(2)(A) For purposes of this subsection, the term "gross valuation overstatement" means any statement as to the value of any property or services if

(i) the value so stated exceeds two hundred percent of the amount determined to be the correct valuation, and

(ii) the value of such property or services is directly related to the amount of any deduction or credit allowable under this chapter to any participant.

(B) The commissioner may waive all or any part of the penalty provided by paragraph one of this subsection with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(3) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

\* NB Repealed July 1, 2029

(cc) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department will be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. This penalty will be in addition to any other penalty or addition provided by law.

(dd) Failure to supply all the information required or to provide correct information in secretary of state statements. Unless it is shown that such failure to provide the statement and information required by subdivision (e) of section three hundred one of the limited liability company law, subdivision (g) of section 121-1500 of the partnership law, and subdivision (f) of section 121-1502 of the partnership law is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the entity failing to supply complete and correct information, a penalty of two hundred and fifty dollars per limited liability company,

registered limited liability partnership or New York registered foreign limited liability partnership required to provide such information on its filing fee payment form.