

Chapter 5: City Unincorporated Business Income Tax

§ 11-501 Meaning of terms.

(a) *General.* Unless a different meaning is clearly required, any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference in this chapter to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in this chapter as an appendix or as included by reference to an appendix of another chapter enacted by the same law as enacts this chapter. (The quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this chapter.)

(b) "State", "this state" or "the state" when used in this chapter shall mean the state of New York.

(c) "Local income taxes", when used in this chapter shall mean an income tax imposed by a political subdivision of a state.

(d) "Commissioner of finance" when used in this chapter shall mean the commissioner of finance of the city.

(e) "Department of finance" when used in this chapter shall mean the department of finance of the city.

(f) "Tax appeals tribunal" when used in this chapter shall mean the tax appeals tribunal established by section one hundred sixty-eight of the charter.

(g) "Unincorporated business entire net income" when used in this chapter shall mean the excess of the unincorporated business gross income of an unincorporated business over its unincorporated business deductions.

(h) "Investment capital" when used in this chapter shall mean investments of the unincorporated business in stocks, bonds and other securities, corporate and governmental (excluding governmental stocks, bonds and other securities the interest or dividends from which are fully exempt from tax under this chapter, other than any such governmental stock, bond or other security which is sold or otherwise disposed of during the taxable year in a transaction which results in a gain or loss which is included in computing unincorporated business entire net income for the taxable year), not held for sale to customers in the regular course of business, provided, however, that in the discretion of the commissioner of finance, there shall be deducted from investment capital any liabilities of the unincorporated business which are directly or indirectly attributable to investment capital.

(i) "Investment income" when used in this chapter shall mean income, gains and losses from investment capital, to the extent included in computing unincorporated business entire net income, less, in the discretion of the commissioner of finance, any deductions allowable in computing unincorporated business entire net income which are directly or indirectly attributable to investment capital or investment income, provided, however, that in no case shall investment income exceed unincorporated business entire net income.

(j) "Business capital" when used in this chapter shall mean all assets of the unincorporated business other than investment capital, less liabilities of the unincorporated business not deducted from investment capital, except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect.

(k) "Business income" when used in this chapter shall mean unincorporated business entire net income minus investment income.

(l) "Dealer" when used in this chapter shall mean an individual or unincorporated entity that (A) holds or disposes of property that is stock in trade of the taxpayer, inventory or is otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business, or (B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in property with customers in the ordinary course of the taxpayer's trade or business, provided, however, an individual or unincorporated entity shall not be treated as a dealer based solely on such individual's or entity's ownership of an interest in an entity that is a dealer, and provided, further, that an unincorporated entity shall not be treated as a dealer based solely on the ownership by a dealer of an interest in that unincorporated entity.

(m) "Unincorporated entity" when used in this chapter shall include an entity classified as a partnership for federal income tax purposes regardless of whether the entity is formed as a corporation, joint-stock company, joint-stock association, body corporate or body politic or whether the entity is organized under a federal or state statute, or under a statute of a federally recognized Indian tribe, or under a statute of a country other than the United States that describes or refers to the entity as incorporated.

(n) "Administrative adjustment request" when used in this chapter shall mean a request for an administrative adjustment filed by a partnership under section sixty-two hundred twenty-seven of the internal revenue code.

(o) "Alternative adjustment action" when used in this chapter shall mean (i) a final federal adjustment; (ii) a federal election for alternative payment; or (iii) the filing of an administrative adjustment request.

(p) "Federal election for alternative payment" when used in this chapter shall mean the election described in section sixty-two hundred twenty-six of the internal revenue code, relating to alternative payment of imputed underpayment by a partnership.

(q) "Final federal adjustment" when used in this chapter shall mean a change to an item of gross income, gain, loss, deduction, penalty, credit or a partner's distributive share, of a partnership that is determined under section sixty-two hundred twenty-five of the internal revenue code that is considered final and final under the internal revenue code.

{{"Am. 2025 N.Y. Laws Ch. 59, 5/9/2025, eff. 8/7/2025)}

§ 11-502 Unincorporated business defined.

(a) *General.* An unincorporated business means any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership, a fiduciary, a corporation in liquidation or an unincorporated entity that has made the election permitted under paragraph (b) of subdivision one of section 11-602 of this title (but only for the period during which such election is in effect), but not including any entity subject to tax under chapter six of this title and not including any entity doing an insurance business as a member of the New York insurance exchange described in paragraph one of subsection (b) of section six thousand two hundred one of the insurance law. Unincorporated businesses subject to tax under a local law of the city imposing a tax on utilities shall not be subject to tax under this chapter; provided, however, that unincorporated businesses, other than (1) utility businesses subject to the supervision of the state department of public service and (2) for taxable years beginning on or after August first, two thousand two, utilities as defined in subdivision six of section 11-1101 of this title, which are subject to tax under a local law of the city imposing a tax on vendors of utility services shall be subject to tax under this chapter on that percentage of their entire net income allocable to the city under section 11-508 of this chapter which their receipts other than those taxable under such local law taxing vendors of utility services is of their total receipts. If an individual or an unincorporated entity carries on wholly or partly in the city two or more unincorporated businesses,

all such businesses shall be treated as one unincorporated business for the purposes of this chapter. For purposes of this chapter, an unincorporated entity shall be treated as carrying on any trade, business, profession or occupation carried on in whole or in part in the city by any other unincorporated entity in which the first unincorporated entity owns an interest, and the ownership by an unincorporated entity of an interest in another unincorporated entity that is not carrying on any trade, business, profession, or occupation in whole or in part in the city shall not be deemed the conduct of an unincorporated business by the first unincorporated entity. Notwithstanding anything to the contrary in the preceding sentence, for taxable years beginning on or after August first, two thousand two, an unincorporated business that is a partner in a partnership subject to tax under a local law of the city imposing a tax on utilities, as defined in subdivision six of section 11-1101 of this title, shall not be considered to be carrying on the trade, business, profession or occupation carried on by such partnership.

(b) *Services as employee.* The performance of services by an individual as an employee or as an officer or director of a corporation, society, association, or political entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual.

(c) *Purchase and sale for own account.*

(1) *Definitions.*

(A) *Property.* For purposes of this subdivision, property shall mean real and personal property, including but not limited to, property qualifying as investment capital within the meaning of subdivision (h) of section 11-501 of this chapter, other stocks, notes, bonds, debentures, or other evidences of indebtedness, interest rate, currency, or equity notional principal contracts, foreign currencies, interests in, or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any property described above, and any commodity traded on or subject to the rules of a board of trade or commodity exchange, provided, however, property shall not include:

- (i) debt instruments issued by the taxpayer;
- (ii) accounts receivable held by a factor;
- (iii) property held as stock in trade, inventory or otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business;
- (iv) debt instruments acquired in the ordinary course of the taxpayer's trade or business for funds loaned, services rendered or for the sale, rental or other transfer of property by the taxpayer;
- (v) interests in unincorporated entities; or
- (vi) positions in property described above entered into, assumed, offset, assigned or terminated by a dealer with respect to such positions in property.

(B) *Investor.* For purposes of this subdivision, a taxpayer shall be treated as acquiring, holding or disposing of an interest in an unincorporated entity as an investor if:

(i) the unincorporated entity meets the requirements of subparagraph (B) of paragraph four of this subdivision and the taxpayer does not receive a distributive share of such entity's income, gain, loss, deduction, credit and basis from a business carried on in whole or in part in the city that is materially greater than its distributive share of any other item of income, gain, loss, deduction, credit or basis of such entity; or

(ii) with respect to any other unincorporated entity, the taxpayer is neither a general partner nor authorized under the entity's governing instrument to manage or participate in, nor managing, nor participating in, the day-to-day business of the unincorporated entity.

(2) An individual or other unincorporated entity, except a dealer as defined in subdivision (1) of section 11-501 of this chapter, shall not be deemed engaged in an unincorporated business solely by reason of (A) the purchase, holding and sale for his, her or its own account of property, as defined in paragraph one of this subdivision, or the entry into, assumption, offset, assignment, or other termination of a position in any property so defined, or both, (B) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests in unincorporated entities engaged solely in activities described in subparagraph (A), (B) or (C) of this paragraph, or (C) any combination of the activities described in subparagraphs (A) and (B) of this paragraph and any other activity not otherwise constituting the conduct of an unincorporated business subject to the tax imposed by this chapter, but this paragraph shall not apply if the unincorporated entity is taxable as a corporation for federal income tax purposes.

(3) Notwithstanding anything to the contrary, the receipt by an individual or other unincorporated entity of twenty-five thousand dollars or less of gross receipts during the taxable year (determined without regard to any deductions) from an unincorporated business wholly or partly carried on within the city by such individual or unincorporated entity shall not cause such individual or other unincorporated entity to be treated as not engaged solely in the activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision.

(4) (A) If a taxpayer that is an unincorporated entity is primarily engaged in (i) activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision, or (ii) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests as an investor in unincorporated entities carrying on any unincorporated business in whole or in part in the city, or both, the activities described in subparagraph (A), (B), or (C) of paragraph two of this subdivision carried on by the taxpayer or by any unincorporated entity primarily engaged in the activities described in clause (i) or (ii) of this subparagraph in which the taxpayer owns an interest shall not be deemed an unincorporated business carried on by the taxpayer.

(B) For purposes of subparagraph (A) of this paragraph, an unincorporated entity will be treated as primarily engaged in activities described in clause (i) or (ii) of subparagraph (A) of this paragraph, or both, if at least ninety percent of the value of its total assets is represented by assets described in subparagraph (C) of this paragraph.

(C) For purposes of subparagraph (B) of this paragraph, assets described in this subparagraph include:

- (i) property as defined in paragraph one of this subdivision;
- (ii) interests in unincorporated entities not carrying on any unincorporated business in whole or in part in the city; and
- (iii) interests in unincorporated entities carrying on an unincorporated business in whole or in part in the city held by the taxpayer as an investor, as defined in paragraph one of this subdivision.

(D) For purposes of determining whether a taxpayer meets the requirements of subparagraph (B) of this paragraph, the value of assets described in subparagraph (C) of this paragraph shall be the average monthly gross value of the assets of the taxpayer. For purposes of this paragraph, the value of assets of the taxpayer that consist of real property or marketable securities shall be the fair market value thereof and the value of assets other than real property or marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles. In case it shall appear to the commissioner of finance that the use of gross value in determining whether the requirements of subparagraph (B) of this paragraph are met, improperly or inaccurately reflects the taxpayer's primary activities, the commissioner of finance is authorized in his or her discretion and in such manner as he or she may determine, to reduce the gross value of the taxpayer's assets by liabilities attributable thereto or to eliminate assets, so as to properly and accurately reflect the taxpayer's primary activities.

(d) *Holding, leasing or managing real property.* An owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property. If an owner of real property or lessee or fiduciary (except a dealer holding real property primarily for sale to customers in the ordinary course of his or her trade or business) who is holding, leasing or managing real property is also carrying on an unincorporated business in whole or in part in the city, whether or not such unincorporated business is carried on at or is connected with

such real property, such holding, leasing or managing of real property shall not be deemed an unincorporated business if, and only to the extent that, such real property is held, leased or managed for the purpose of producing rental income from such real property or gain upon the sale or other disposition of such real property. For purposes of this subdivision, the conduct by such owner, lessee or fiduciary, at such real property, of a trade, business, profession or occupation, including, but not limited to, a garage, restaurant, laundry or health club, shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business, if such trade, business, profession or occupation is conducted solely for the benefit of tenants at such real property, as an incidental service to such tenants, and is not open or available to the general public, provided, however, if any such owner, lessee or fiduciary operates a garage, parking lot or other similar facility at such real property that is open or available to the general public, the provision by any such owner, lessee or fiduciary of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business if, and only to the extent that, such monthly or longer term parking, garaging or storing service is provided to tenants at such real property as an incidental service to such tenants. If an owner, lessee or fiduciary holding, leasing or managing real property operates at such real property a garage, parking lot or other similar facility that is open or available to the public, each such owner, lessee or fiduciary shall file, together with and as a part of the returns required under section 11-514 of this chapter, a report or schedule for each such garage, parking lot or other similar facility, or in the discretion of the commissioner, make a separate entry on such returns, identifying the specific location and address, license number and licensed capacity of each such garage, parking lot or other similar facility, and shall include such additional information, data and other matters relating to the provision of such monthly or longer term parking, garaging or storing service to tenants as shall be prescribed by the commissioner of finance. If the separate information required to be reported by any owner, lessee or fiduciary holding, leasing or managing real property for any garage, parking lot or other similar facility at such real property that is open or available to the public is not contained in the returns required under section 11-514 of this chapter, or in any amended returns, in any material respect, the provision of parking, garaging or storing service to tenants at such real property shall be deemed the conduct of an unincorporated business and not incident to the holding, leasing or managing of such real property.

(e) *Sales representative.* An individual, other than one who maintains an office or who employs one or more assistants or who otherwise regularly carries on a business, shall not be deemed engaged in an unincorporated business solely by reason of selling goods, wares, merchandise or insurance for more than one enterprise. For purposes of this subdivision, space utilized solely for the display of merchandise and/or for the maintenance and storage of records normally used in the course of business shall not be deemed an office, and the employment of clerical and secretarial assistance shall not be deemed the employment of assistants.

(f) *Exempt trusts and organizations.* A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall not be deemed an unincorporated business (regardless of whether subject to federal income tax on unrelated business taxable income).

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1987/049.

§ 11-503 Imposition of tax.

(a) *General.* A tax at the rate of four percent is hereby imposed for each taxable year, beginning with taxable years ending after January first, nineteen hundred sixty-six, on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within the city. This tax shall be in addition to any other taxes imposed.

(b) *Credit against tax.*

(1) For each taxable year beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is six hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds six hundred dollars but is less than eight hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is eight hundred dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is eight hundred dollars or more, no credit shall be allowed.

(2) For each taxable year beginning in nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is eight hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds eight hundred dollars but is less than one thousand dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is one thousand dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is one thousand dollars or more, no credit shall be allowed.

(3) For each taxable year beginning after nineteen hundred ninety-six but before two thousand nine:

(A) if the tax computed under subdivision (a) of this section is one thousand eight hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds one thousand eight hundred dollars but is less than three thousand two hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is three thousand two hundred dollars minus the amount of such tax and the denominator of which is one thousand four hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is three thousand two hundred dollars or more, no credit shall be allowed.

(3-a) For each taxable year beginning after two thousand eight:

(A) if the tax computed under subdivision (a) of this section is three thousand four hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds three thousand four hundred dollars but is less than five thousand four hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is five thousand four hundred dollars minus the amount of such tax and the denominator of which is two thousand dollars; or

(C) if the tax computed under subdivision (a) of this section is five thousand four hundred dollars or more, no credit shall be allowed.

(4) If separate partnerships, joint ventures or other unincorporated entities have substantially the same partners or members, each of such partners or members has substantially the same interest in each of such partnerships, joint ventures or other unincorporated entities, and such partnerships, joint ventures or other unincorporated entities are engaged in substantially the same business or businesses or in substantially related businesses, all of such partnerships, joint ventures or other unincorporated entities shall be treated as one unincorporated business for purposes of this subdivision. The preceding sentence shall not be construed to limit or affect the meaning or application of any other provision of this chapter.

(5) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken prior to any other credit allowed by this section.

(c) *Credit relating to stock transfer tax.*

(1) In addition to any other credit permitted under this section, a taxpayer shall be allowed a credit, to be credited or refunded in the manner hereinafter provided in this subdivision, against the tax imposed by this chapter after the allowance of any other credit under this section. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer (except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of the tax law).

(2) For purposes of this subdivision:

(a) the term "taxpayer" shall mean any unincorporated business subject to tax under this chapter registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph (b) of this paragraph, and

(b) the term "market making transaction" shall mean any transaction involving a sale (including a short sale) by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business (including transfers which are part of an underwriting),

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error. Provided, however, that, except as to subclause (c) of clause (ii) of subparagraph (b) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, except as otherwise provided in subdivision (g) of sections 11-512 and 11-514 of this chapter; provided, however, that the provisions of this chapter notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision (c) of section 11-528 of this chapter notwithstanding, interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

(d) *Credit relating to certain sales and compensating use taxes.*

(1) In addition to the credits allowed by subdivisions (b) and (c) of this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by subchapter two of chapter eleven of this title, for any periods embraced within the taxable year of the taxpayer under this chapter.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by this section, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(e) *Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities.*

(1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded, without interest, in the manner hereinafter provided in this section.

(A) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities, and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this chapter. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this chapter. The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for herein shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest." In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city. The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation, whichever period is shorter.

(B) Definitions: When used in this section,

"Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given week.

"Industrial and commercial incentive board" means the board created pursuant to subchapter two of chapter two of this title.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(f) *Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities.*

(1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be:

(A) A maximum of three hundred dollars for each commercial employment and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event; provided, however, that no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (i) that are within an industrial business zone established pursuant to section 22-626 of this code and (ii) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five. The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used.

(B) Definitions: When used in this section,

"Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(g) *[Repealed.]*

(h) *[Repealed.]*

(i) *Relocation and employment assistance credit.*

(1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this paragraph for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be

carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(3) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(4) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph one of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

(j) (1) If a partner in an unincorporated business is taxable under this chapter and is required to include in unincorporated business taxable income his, her or its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such partner shall be allowed a credit against the tax imposed by this chapter equal to the lesser of the amounts determined in subparagraphs (A) and (B) of this paragraph:

(A) The amount determined in this subparagraph is the product of (i) the sum of (I) the tax imposed by this chapter on the unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under this section (except the credit allowed by subdivision (b) or this section) for its taxable year ending within or with the taxable year of the partner, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(B) The amount determined in this subparagraph is the difference between (i) the tax computed pursuant to this chapter on the unincorporated business taxable income of the partner, without allowance of any credits allowed by this section, and (ii) the tax so computed, determined as if the partner had no such distributive share or guaranteed payments with respect to the unincorporated business, provided, however, that the amounts computed in clauses (i) and (ii) of this subparagraph shall be computed with the following modifications:

(I) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss;

(II) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the unincorporated business taxable income of the partner is less than zero, such unincorporated business taxable income shall be treated as zero; and

(III) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero. The amount determined in this subparagraph shall not be less than zero.

(2) (A) Notwithstanding anything to the contrary in paragraph one of this subdivision, the credit or the sum of the credits that may be taken by a partner for a taxable year under this subdivision with respect to an unincorporated business or unincorporated businesses in which he, she or it is a partner shall not exceed the tax imposed on the unincorporated business taxable income of such partner under this chapter for such taxable year reduced by the credit allowed under subdivision (b) of this section. If the credit allowed under paragraph one of this subdivision or the sum of such credits exceeds such tax as so reduced, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under paragraph one of this subdivision shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, in the case of a partner which is a partnership, no credit carryforward to any taxable year shall be allowed unless one or more of the partners therein during such taxable year where persons having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which was allowed the credit for which a carryforward is claimed. In such event, the carryforward allowable on account of such credit shall not exceed the percentage of the amount otherwise allowable, determined by dividing (i) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the credit is carried forward, attributable to such partners, by (ii) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryforward otherwise allowable exceeds the amount allowable pursuant to the preceding sentence shall not be a carryforward to any other taxable year.

(3) The credit allowed under this subdivision shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under this chapter for any taxable year beginning before July first, nineteen hundred ninety-four.

(4) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken after the credit allowed by subdivision (b) of this section is taken, but before any other credit allowed by this section is taken.

(5) The commissioner of finance of the city of New York shall convene a working group, consisting of representatives of the department of finance of the city of New York and representatives of affected industries, and other persons the commissioner deems appropriate, to study the treatment under the unincorporated business tax of income from investment and real estate activities and the impact of the credit permitted by this subdivision, including but not limited to cases where interests in a taxpayer are held by another taxpayer subject to tax on unincorporated business taxable income and the first taxpayer is entitled to claim a deduction for a net operating loss carryover and the second is not entitled to a corresponding deduction with the result, in certain cases, that the net income allocated to the second taxpayer may be subject to an effective rate of tax in excess of the rate imposed by this chapter. In addition, the working group shall also study the tax treatment of parking garages which are open or available to the general public and which also provide available space to tenants. In conducting such study, such working group shall take into account such factors as economic development, tax administration and other goals of tax policy and shall consider alternatives that would reduce disincentives for investing in corporations and other entities engaged in business in the city of New York, such as exempting income from investment activities from the tax on unincorporated business taxable income. The commissioner shall prepare a report based on the deliberations of the working group on or before April fifteenth, nineteen hundred ninety-five.

(k) *Credit relating to certain sales and compensating use taxes on certain services.*

(1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year (and the amount of any interest imposed in connection therewith) which was paid after January first, nineteen hundred ninety-five, less any credit or refund of such taxes (or such interest), with respect to the purchase or use by the taxpayer of the services described in subdivision (b) of section eleven hundred five-b of the tax law.

(2) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law (or of any interest imposed in connection therewith) for which the taxpayer had claimed a credit under this subdivision in a prior taxable year, the amount of such tax (or such interest) refund or credit shall be added to the tax imposed by this chapter, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(l) *Lower Manhattan relocation and employment assistance credit.*

(1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b), (i) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(m) *Film production credit.**

*** Editor's note:** the local law that added this division (m) to this section expired on 12/31/2011 (with such expiration not affecting the carry over of any credit allowed thereunder); see L.L. 2005/002 as amended by L.L. 2006/024.

(1) *Allowance of credit.* A taxpayer which is a qualified film production company as defined in this subdivision and which is subject to tax under this chapter, shall be allowed a credit against the unincorporated business income tax imposed pursuant to this chapter, in accordance with the provisions in paragraph (5) of this subdivision, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product of five percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the city of New York in the production of such qualified film. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film are less than three million dollars, then the portion of the qualified productions costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in the city of New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without the city of New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this subdivision or used in the calculation of the credit provided for under this subdivision shall be used by such taxpayer to claim any other credit allowed pursuant to this title.

(4) *Definitions.* As used in this subdivision, the following terms shall have the following meanings:

(A) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the city of New York directly and predominantly in the production (including pre-production and post production) of a qualified film.

(B) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(C) "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program, or (ii) a production for which records are required under 18 U.S.C. § 2257, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

(D) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(E) "Qualified film production facility" shall mean a film production facility in the city of New York, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(F) "Qualified film production company" is an unincorporated business which is principally engaged in the production of a qualified film and controls

the qualified film during production.

(5) *Application of credit.*

(A) If the amount of the credit allowable under this subdivision for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section 11-526 of this chapter, provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(B) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

(n) *Industrial business zone tax credit.*

(1) For taxable years beginning on or after January first, two thousand six, in addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(2) When used in this subdivision, the following terms shall have the following meanings: "Eligible business" means any business subject to tax under this chapter that (A) has been conducting substantial business operations and engaging primarily in industrial and manufacturing activities at one or more locations within the city of New York or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (B) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (C) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (D) will be engaged primarily in industrial and manufacturing activities at such eligible premises. "Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises. "Full-time employee" means (A) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (B) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by each such person is more than fifteen hours per week but less than thirty-five hours per week. "Industrial business zone" means an area within the city of New York established pursuant to section 22-626 of this code. "Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this chapter. "Industrial and manufacturing activities" means activities involving the assembly of goods to create a different article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services. "Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (A) the date of the completion of the relocation to the eligible premises or (B) ninety days from the commencement of the relocation to the eligible premises, whichever is earlier. "Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include any costs for structural or capital improvements or items purchased in connection with the relocation.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(4) The number of full-time employees for the purposes of calculating an industrial business zone tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible premises by the eligible business in the fifty-two week period immediately following relocation.

(5) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such fifty-two week period ends.

(6) For the purposes of calculating entire net income in the taxable year that an industrial business zone tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(7) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation. Notwithstanding the foregoing, an industrial business zone tax credit allowed under this subdivision shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of this code, through a grant program administered by the business relocation assistance corporation, or through the New York city printers relocation fund grant.

(8) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

(o) *Biotechnology Credit.*

(a) (1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs (3), (4), (5) of this paragraph, subject to the limitations in subparagraphs (6) and (7) of this paragraph, paragraph (b) of this subdivision, and paragraph 3 of subdivision (d) of section 1201-a of the tax law. For the purposes of this subdivision, "qualified emerging technology company" shall mean a company located in city: (A) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (B) a company that has research and development activities in city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, "biotechnologies" shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (A) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (B) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (C) have gross revenues, along with the gross revenues of its "affiliates" and "related members" not exceeding twenty million dollars for the calendar year immediately

preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "affiliates" shall mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer. For the purposes of this subdivision, "related members" shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters six, eleven and seventeen of this title, and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (A) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (B) the costs or expenses associated with quality control of the research and development, (C) fees for use of sophisticated technology facilities and processes, (D) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this subchapter. For the purposes of this subdivision, "research and development property" shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "qualified research expenses" shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(A) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (C) of this paragraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(B) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in city that (i) directly relates to biotechnology activities, and (ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(C) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(D) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in subparagraph (C) of this paragraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in subparagraph (C) of this paragraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(E) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(F) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in city. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred fifty thousand dollars per calendar year for eligible expenditures made during such calendar year.

(7) If the amount of credit allowed under this subdivision for any taxable year exceeds the amount of tax due for such year pursuant to this chapter, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter; provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be

paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning on or after January first, two thousand ten and before January first, two thousand nineteen, and beginning on or after January first, two thousand twenty-three and before January first, two thousand twenty-six.

(b) (1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(A) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was (I) located outside of the city, (II) not doing business, or (III) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(B) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty five thousand dollars per calendar year. In the case of an entity located in city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

(3) For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during each calendar year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such calendar year or other applicable period.

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

(p) *Beer production credit.*

(1) A taxpayer subject to tax under this chapter, that is registered as a distributor under article eighteen of the tax law, and that produces sixty million or fewer gallons of beer in this state in the taxable year, shall be allowed a credit against the tax imposed by this chapter in the amount specified in paragraph two of this subdivision. Provided, however, that no credit shall be allowed for any beer produced in excess of fifteen million five hundred thousand gallons in the taxable year. Notwithstanding anything in this title to the contrary, if a partnership is allowed a credit under this subdivision, a taxpayer that is a partner in such partnership shall not be allowed a credit under this subdivision for any taxable year that includes the last day of the taxable year for which the partnership is allowed such credit.

(2) The amount of the credit per taxpayer per taxable year for each gallon of beer produced in the city of New York on or after January first, two thousand seventeen shall be determined as follows:

(i) for the first five hundred thousand gallons of beer produced in the city of New York in the taxable year, the credit shall equal twelve cents per gallon; and

(ii) for each gallon of beer produced in the city of New York in the taxable year in excess of five hundred thousand gallons, the credit shall equal three and eighty-six one hundredths cents per gallon. The credit allowed under this subdivision for any taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter; provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(q) *Credit for the provision of child care.* In addition to any other credit allowed under this section, a taxpayer whose application for a credit authorized by section 11-144 of this title has been approved by the department of finance shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be determined as provided in such section. To the extent the amount of the credit allowed by this subdivision exceeds the amount of tax due pursuant to this chapter, as calculated without such credit, such excess amount shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, provided, however, that notwithstanding the requirements of section 11-528 of this chapter to the contrary, no interest shall be paid thereon.

(r) *Relocation assistance credit per employee.*

(1) In addition to any other credit allowed by this section other than a credit allowed by subdivision (i) of this section, a taxpayer that has obtained the certifications required by chapter six-E of title twenty-two of this code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying five thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-627 of this code.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the ten succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the tenth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the tenth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such tenth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1987/049, L.L. 1987/051, L.L. 2005/002, L.L. 2006/024, L.L. 2012/061, L.L. 2015/111, and L.L. 2023/166.

§ 11-504 Taxable years to which tax applies; tax for taxable years beginning prior to and ending after January first, nineteen hundred sixty-six.

(a) *General.* The tax imposed by section 11-503 of this chapter, with any modification permitted by subdivision (b) of this section, is imposed for each taxable year beginning with taxable years ending on or after January first, nineteen hundred sixty-six.

(b) *Alternate methods for determining tax for taxable years ending on or after January first, nineteen hundred sixty-six.*

(1) The tax for any taxable year ending on or after January first, nineteen hundred sixty-six and before December thirty-first, nineteen hundred sixty-six, shall be an amount equal to the tax which would have been imposed had section 11-503 of this chapter been in effect for the entire taxable year, multiplied by the number of months (or major portions thereof) in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months (or major portions thereof) in such taxable year.

(2) In lieu of the method of computation of tax prescribed in paragraph one of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending on or after January first, nineteen hundred sixty-six, and before December thirty-first, nineteen hundred sixty-six, which falls within the calendar year nineteen hundred sixty-six, the tax for such taxable year at the election of the taxpayer may be computed on the basis of the unincorporated business taxable income which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of such taxable year ending before December thirty-first, nineteen hundred sixty-six. Such taxable year beginning January first, nineteen hundred sixty-six and ending before December thirty-first, nineteen hundred sixty-six shall be deemed (unless clearly indicated otherwise) to be the taxable year of the taxpayer. For purposes of this paragraph, the unincorporated business exemptions allowable under section 11-510 of this chapter, the credit allowable under subdivision (b) of section 11-503 of this chapter and any net operating loss deduction as modified pursuant to subdivision two of section 11-507 of this chapter shall each be reduced by the same part of such exemptions, credit, or net operating loss deduction (as the case may be) as the number of months (or major portions thereof) in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in such taxable year. Except as provided in paragraph two, the tax for such period ending before December thirty-first, nineteen hundred sixty-six, shall be computed in accordance with the other provisions of this chapter.

§ 11-505 Unincorporated business taxable income.

The unincorporated business taxable income of an unincorporated business shall be the excess of its unincorporated business gross income over its unincorporated business deductions, allocated to the city, less the amount of:

- (1) Its deductions under section 11-509 of this chapter not subject to allocation; and
- (2) Its unincorporated business exemptions under section 11-510 of this chapter.

§ 11-506 Unincorporated business gross income.

(a) (1) *General.* Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, or from the sale or other disposition by an unincorporated entity of an interest in another unincorporated entity if and to the extent such income or gain is attributable to a trade, business, profession or occupation carried on in whole or in part in the city by such other unincorporated entity, with the modifications specified in this section.

(2) The character of a partner's distributive share of gross income, gains, losses and deductions of an unincorporated entity shall be determined as if such gross income, gains, losses and deductions were realized directly by such partner regardless of how the interest in the unincorporated entity was acquired and regardless of whether the distributive share is proportionate to the partner's capital interest in the unincorporated entity, provided, however, this paragraph shall not apply to payments to a partner treated as occurring between the unincorporated entity and one who is not a partner under section seven hundred seven of the internal revenue code, and provided, further, this paragraph shall not affect the determination of whether gross income, gains, losses or deductions of an unincorporated entity are subject to the tax imposed by this chapter as realized from an unincorporated business.

(b) *Modifications increasing federal gross income.* There shall be added to federal gross income of the business the following items attributable to the business:

- (1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party.
- (2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state or local income taxes.
- (3) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, if the property to which such election relates was sold or otherwise disposed of during the taxable year, the amount required by said subdivision to be added to federal gross income.
- (4) The entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining federal gross income but only to the extent that such taxes are incurred and paid in market making transactions.
- (5) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (d) of section 11-503 of this chapter.
- (6) The amount allowed as an exclusion or deduction as rent in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (e) of section 11-503 of this chapter.
- (7) The amount allowed as an exclusion or deduction in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (f) of section 11-503 of this chapter.
- (8) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which would properly be includible for federal income tax purposes had the taxpayer not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred

eighty-four.

(9) Upon the disposition of property to which subdivision fifteen of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in such subdivision fifteen attributable to such property exceeds the aggregate of the amounts described in subdivision fourteen of section 11-507 of this chapter attributable to such property.

(10) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (g) of section 11-503 of this chapter.

(10-a) [Repealed.]

(10-b) [Repealed.]

(11) [Repealed.]

(12) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law (or for any interest imposed in connection therewith) in determining federal gross income, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (k) of section 11-503 of this chapter.

(13) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss, including but not limited to, losses from notional principal contracts, losses, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar losses from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(14) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such loss is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(15) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(16) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(17) For taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest deduction allowed pursuant to section 163(j)(10) of the internal revenue code.

(18) Notwithstanding any other provision of this chapter to the contrary, for taxable years beginning before January first, two thousand twenty-one, the amount of increase in the federal deduction allowed pursuant to any amendment to section 461(l) of the internal revenue code made after March first, two thousand twenty.

(19) For taxable years beginning after December thirty-first, two thousand twenty-four, the amount allowed as an exclusion or deduction in determining federal gross income of any depreciation of qualified production property described in subsection (n) of section one hundred sixty-eight of the internal revenue code. For the purposes of this chapter, such property shall not be treated as section 1245 property as described in section twelve hundred forty-five of the internal revenue code.

(20) For taxable years beginning after December thirty-first, two thousand twenty-four, the amount allowed as an exclusion or deduction in determining federal gross income pursuant to subsection (a) of section one hundred seventy-nine of the internal revenue code.

(21) For taxable years beginning after December thirty-first, two thousand twenty-four, the amount allowed as an exclusion or deduction in determining federal gross income for domestic research or experimental expenditures pursuant to section one hundred seventy-four-A of the internal revenue code.

(22) For taxable years beginning on or after January first, two thousand twenty-five, the increase in the amount allowed as a federal interest deduction pursuant to section one hundred sixty-three of the internal revenue code attributable to additional adjusted taxable income that is attributable to depreciation, amortization, or depletion. For the purposes of this subdivision, "additional adjusted taxable income that is attributable to depreciation, amortization, or depletion" means the difference between the amount of adjusted taxable income computed pursuant to paragraph eight of subsection (j) of section one hundred sixty-three of the internal revenue code and such amount calculated without regard to clause (v) of subparagraph (A) of such paragraph.

(c) *Modifications reducing federal gross income.* There shall be subtracted from federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state or local income taxes under the laws of the United States;

(3) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of the city or this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes;

(3-a) Fifty percent of dividends to the extent includible in gross income for federal income tax purposes and not subtracted under paragraph two or three of this subdivision, provided, however, that there shall be no subtraction pursuant to this paragraph for any portion of a dividend from stock with respect to which a dividend deduction would be disallowed by subsection (c) of section two hundred forty-six of the internal revenue code if the unincorporated business were a corporation;

(4) The amount of any refund or credit for overpayment of income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law, to the extent properly included in gross income for federal tax purposes;

(5) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between:

(a) the amount of gain included in federal gross income with respect to each such property, and

(b) the amount of gain (if smaller than the amount described in subparagraph (a) of this paragraph) that would be included in federal gross income with respect to each such property if the federal adjusted basis of such property on the date of the sale or other disposition had been equal to its fair market value on January first, nineteen hundred sixty-six, or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six; provided, however, that the total modification provided by this subparagraph shall not exceed the taxpayer's net gain from the sale or other disposition of all such property.

(6) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount properly includible in federal gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(7) Upon the disposition of property to which subdivision fifteen of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in subdivision fourteen of section 11-507 of this chapter attributable to such property exceeds the aggregate of the amounts described in subdivision fifteen of section 11-507 of this chapter attributable to such property.

(8) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(9) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes), including but not limited to, dividends, interest, payments with respect to securities loans, income from notional principal contracts, or income and gains, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar income from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(10) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such income or gain is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(11) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(12) The amount of any grant received through either the COVID-19 pandemic small business recovery grant program, pursuant to section sixteen-ff of the New York state urban development corporation act, or the small business resilience grant program administered by the department of small business services, to the extent the amount of either such grant is included in federal taxable income.

(13) For businesses authorized pursuant to the cannabis law to engage in the sale, production, or distribution of (A) adult-use cannabis products, as defined in article twenty-C of the tax law, or (B) medical cannabis, as defined in section three of the cannabis law, the amount of any federal deduction disallowed pursuant to section two hundred eighty-E of the internal revenue code related to the sale, production, or distribution of such adult-use cannabis products or such medical cannabis not used as the basis for any other tax deduction, exemption, or credit and not otherwise required to be added back by subdivision (b) of this section in computing entire net income.

(14) For taxable years beginning after December thirty-first, two thousand twenty-four, for taxpayers that have made an election pursuant to paragraph six of subsection (n) of section one hundred sixty-eight of the internal revenue code with respect to any qualified production property as defined in such subsection, the amount allowed as an exclusion or deduction in determining federal gross income of any depreciation of such qualified production property, pursuant to subsection (a) of section one hundred sixty-seven of such code so that the depreciation deduction and adjusted basis reduction or any other deduction or exclusion allowed by subsection (n) of section one hundred sixty-eight of such code shall not apply.

(15) For taxable years beginning after December thirty-first, two thousand twenty-four, the amount allowed as an exclusion or deduction in determining federal gross income pursuant to subsection (a) of section one hundred seventy-nine of the internal revenue code subject to the dollar limitations in paragraphs one and two of subsection (b) of such section that were in effect for the last tax year beginning before January first, two thousand twenty-five, adjusted in accordance with paragraph six of such subsection using the amounts in paragraphs one and two that were in effect for such tax year and, for the purposes of applying clause (ii) of subparagraph (A) of paragraph three of subsection (f) of section one of the internal revenue code, substituting "calendar year 2017" for "calendar year 2016".

(16) For taxable years beginning after December thirty-first, two thousand twenty-four, the amount allowed as an exclusion or deduction in determining federal gross income for domestic research or experimental expenditures pursuant to section one hundred seventy-four-A of the internal revenue code, provided that such exclusion or deduction is calculated in the same manner as an exclusion or deduction for a foreign research or experimental expenditure described in section one hundred seventy-four of such code, except that the amortization deduction of such expenditures shall be rated over the five-year period beginning with the midpoint of the taxable year in which such expenditures are paid or incurred.

(d) Upon the disposition of property to which subdivisions twenty and twenty-one of section 11-507 apply, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

(e) *Related members expense add back.*

(1) *Definitions.*

(A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that city, the maximum statutory rate of tax imposed by said city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale,

exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) **Valid business purpose.** A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) *Royalty expense add backs.*

(A) For the purpose of computing unincorporated business entire net income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) *Exceptions.*

(i) The adjustment required in this subdivision shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements:

(I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer;

(II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and

(III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that:

(I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof;

(II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and

(III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-503 of this chapter for the taxable year.

(iii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that:

(I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States;

(II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States;

(III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer;

(IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and

(V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this subdivision shall not apply if the taxpayer and the commissioner of finance agree in writing to the application or use of alternative adjustments or computations. The commissioner of finance may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(f) Upon the disposition of property to which subdivisions twenty-three and twenty-four of section 11-507 of this chapter apply, the amount of any gain or loss includible in unincorporated business gross income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

(Am. 2020 N.Y. Laws Ch. 58, 4/3/2020, eff. 4/3/2020; Am. 2020 N.Y. Laws Ch. 121, 6/17/2020, eff. 6/17/2020; Am. 2022 N.Y. Laws Ch. 555, 8/31/2022, retro. eff. 1/1/2021; Am. 2023 N.Y. Laws Ch. 671, 11/17/2023, retro. eff. 1/1/2022; Am. 2026 N.Y. Laws Ch. 59, 5/28/2026, retro. eff. 12/31/2024)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2002/017.

§ 11-507 Unincorporated business deductions.

The unincorporated business deductions of an unincorporated business means the items of loss and deduction directly connected with or incurred in the conduct of the business, which are allowable for federal income tax purposes for the taxable year (including losses and deductions connected with any property employed in the business), with the following modifications:

(1) A deduction shall be allowed for charitable contributions of the unincorporated business, to the extent that such contributions would be deductible for federal income tax purposes if made by a corporation, but not in excess of five per centum of the amount by which the unincorporated business gross income exceeds the sum of (A) the unincorporated business deductions computed without the benefit of any deduction for charitable contributions and (B) the deduction allowed under subdivision (b) of section 11-509 of this chapter, where the election permitted by such subsection has been exercised.

(2) (a) A deduction shall be allowed for net operating losses incurred by the unincorporated business, except as otherwise provided by paragraph (b) of this subdivision, in an amount computed in the same manner as the net operating loss deduction which would be allowed for the taxable year for federal income tax purposes if the unincorporated business were an individual taxpayer (but determined solely by reference to the unincorporated business gross income and unincorporated business deductions, allocated to the city, of the unincorporated business); provided, however, that such net operating loss deduction which would be allowed for the taxable year for federal income tax purposes shall for purposes of this paragraph be determined as if the unincorporated business had elected under section one hundred seventy-two of the internal revenue code to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable years ending after June thirtieth, nineteen hundred eighty-nine. Such deduction shall not include any net operating loss sustained during any taxable year

beginning prior to January first, nineteen hundred sixty-six and for the purposes of this paragraph a net operating loss shall be determined without regard to any deductions allowed pursuant to subdivision (b) of section 11-509 of this chapter and any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such internal revenue code as such section was in full force and effect on December thirty-first, nineteen hundred eighty.

(b) In the case of a partnership, no net operating loss carryback or carryover to any taxable year shall be allowed unless one or more of the partners during such taxable year were persons having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which sustained the loss for which a carryback or carryover is claimed. In such event, the carryback or carryover allowable on account of such loss shall not exceed the percentage of the amount otherwise allowable, determined by dividing (A) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the loss is carried back or carried over, attributable to such partners, by (B) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryback or carryover otherwise allowable exceeds the amount allowable pursuant to the preceding sentence shall not be a carryback or carryover to any other taxable year.

(c) Notwithstanding any other provision of this chapter to the contrary, for taxable years beginning before January first, two thousand twenty-one, any amendment to section one hundred seventy-two of the internal revenue code made after March first, two thousand twenty shall not apply to this chapter.

(3) No deduction shall be allowed (except as provided in section 11509 of this chapter) for amounts paid or incurred to a proprietor or partner for services or for use of capital.

(4) No deduction shall be allowed for income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law.

(5) No deduction shall be allowed for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter; (B) expenses paid or incurred for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; or (C) the amortizable bond premium on any bond the interest income from which is so exempt.

(6) No deduction shall be allowed in respect of the excess of net long-term capital gain over net short-term capital loss, but capital losses incurred in the unincorporated business shall be treated as ordinary losses and shall be allowed in full.

(7) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, no deduction shall be allowed for expenditures with reference to the property to which such election relates, or for depreciation of such property, except as permitted by said subdivision.

(8) A deduction shall be allowed (to the extent not allowable for federal income tax purposes) for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax; (B) ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; and (C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax.

(9) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(A) (i) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste (as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(ii) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(B) However, such deduction shall be allowed only

(i) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(ii) on condition that such facilities have been certified by the state commissioner of environmental conservation or his or her designated representative, in the same manner as provided in either section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with the provision of the environmental conservation law, the sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(iii) on condition that for the taxable year and all succeeding taxable years, no deduction for such expenditures or for depreciation of the same property allowed for federal income tax purposes shall be allowed under this chapter, except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subdivision, for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing unincorporated business deductions for the taxable year and all succeeding taxable years, and

(iv) where the election provided for in subdivision (b) of section 11-509 of this chapter has not been exercised in respect to the same property.

(C) (i) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(ii) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the public health law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(D) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss allowable for federal income tax purposes for such taxable year.

(10) In the case of mines, oil and gas wells and other natural deposits, no deduction of any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen A of the internal revenue code of nineteen hundred fifty-four, as amended, shall be allowed. However, an allowance for depletion with respect to such property shall be deductible in the amount which would be allowable under section six hundred eleven of such internal revenue code if such deduction were computed without reference to such section six hundred thirteen or section six hundred thirteen A of such code. With respect to the computation of depletion pursuant to this section, the basis for such computation for taxable years beginning in nineteen hundred seventy-two shall be the federal basis. For subsequent taxable years, the basis of such computation shall be reduced only by the deduction for the allowance for depletion deductible pursuant to this section. In any taxable year when any such property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing unincorporated business taxable income and there shall be added to or subtracted from federal gross income, so modified, the gain or loss upon such sale or other disposition. In computing such gain or loss, the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to this subdivision.

(11) A deduction shall be allowed for that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty C of the internal revenue code.

(12) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), a deduction shall be allowed for any amount which the taxpayer could have excluded for purposes of this chapter had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(13) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), no deduction shall be allowed for any amount deductible for federal income tax purposes solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(14) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, no deduction shall be allowed for the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

(15) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been disallowed pursuant to subdivision thirteen of this section, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(16) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the holding, leasing or managing of real property or to income or gain therefrom if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(17) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for any expenses directly or indirectly attributable to activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(18) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, no deduction shall be allowed for any losses or expenses directly or indirectly attributable to the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such losses or expenses are attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(19) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(20) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in subdivision twenty-two of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), no deduction shall be allowed for the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(21) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code other than qualified resurgence zone property described in subdivision twenty-two of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), a deduction shall be allowed with respect to such property equal to the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of subdivision twenty-four of this section, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(22) For purposes of subdivisions twenty and twenty-one of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the

Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(23) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, no deduction shall be allowed for the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code.

(24) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, a deduction shall be allowed with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code equal to the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five.

(Am. 2020 N.Y. Laws Ch. 121, 6/17/2020, eff. 6/17/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2002/017.

§ 11-508 Allocation to the city.

(a) *General; allocation of business income.* If an unincorporated business is carried on both within and without the city, as determined under regulations of the commissioner of finance, there shall be allocated to the city, in the manner provided in subdivision (b), (c) or (d) of this section, a fair and equitable portion of its business income. For taxable years beginning before July first, nineteen hundred ninety-six, if the unincorporated business has no regular place of business outside the city, all of such business income shall be allocated to the city.

(b) (1) *Allocation by taxpayer's books.* For taxable years beginning before January first, two thousand five, the portion allocable to the city may be determined from the books of the business if the methods used in keeping such books are approved by the commissioner of finance as fairly and equitably reflecting the income from the city.

(2) (i) If a taxpayer determines the portion of business income to be allocated to the city using the method prescribed in paragraph one of this subdivision on a timely filed original return with respect to each of the two taxable years, each of which must consist of twelve months, immediately preceding the taxpayer's first taxable year beginning on or after January first, two thousand five, the taxpayer may make a one-time election to continue to use that method for taxable years beginning on or after January first, two thousand five and before January first, two thousand twelve. Such election shall be made by using the method prescribed in paragraph one of this subdivision on an original timely filed return with respect to the first taxable year beginning on or after January first, two thousand five and before January first, two thousand six. Such election may not be made, or if made, shall be deemed revoked as of the beginning of the taxable year if, for either of the two taxable years immediately preceding the year in which the election is made, the commissioner of finance has determined the methods used in keeping such books do not fairly and equitably reflect the income from the city.

(ii) (A) A taxpayer that has made the election provided for in subparagraph (i) of this paragraph may revoke it by filing an original or amended return using an allocation method permitted by this section other than the method prescribed in paragraph one of this subdivision unless the commissioner of finance has determined that such method does not fairly and equitably reflect the income from the city.

(B) The election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year if, for any taxable year during which the election is intended to be in effect, the commissioner of finance has determined that the methods used in keeping the taxpayer's books do not fairly and equitably reflect the income from the city.

(C) In the case of a taxpayer that is a partnership or other unincorporated entity, the election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year unless one or more of the persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions for such taxable year were persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions at the end of the taxpayer's last taxable year beginning before January first, two thousand five. For purposes of this clause, a transfer of an ownership interest in unincorporated business gross income or unincorporated business deductions upon the death of a partner or owner to such deceased partner's or owner's estate shall be disregarded but transfers by such decedent's estate shall not be disregarded.

(D) Once the election provided for in subparagraph (i) of this paragraph has been revoked by the taxpayer pursuant to clause (A) or deemed revoked pursuant to clauses (B) or (C) of this subparagraph, the taxpayer shall be barred from using the method prescribed in paragraph one of this subdivision for the taxable year in which the election has been revoked or deemed revoked and any subsequent taxable year.

(c) *Allocation by formula.* If subdivision (b) does not apply to the taxpayer, the portion allocable to the city shall be determined by multiplying (A) the business income by (B) a business allocation percentage to be determined by adding together the percentages computed under paragraphs one, two and three of this subdivision, and dividing the result by the number of percentages; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, a taxpayer that is a "manufacturing business," as defined in subdivision (g) of this section, may determine its business allocation percentage as provided in such subdivision (g):

(1) *Property percentage.* The percentage computed by dividing (A) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the unincorporated business and located both within and without the city. For this purpose, for taxable years beginning before January first, two thousand five, real property shall include real property rented to the unincorporated business and, for this purpose, for taxable years beginning on and after January first, two thousand five, real and tangible personal property shall include real and tangible personal property rented to the unincorporated business and the value of such real and tangible personal property rented to the unincorporated business shall mean the product of (i) eight and (ii) the gross rents payable for the rental of such property during the taxable year.

(2) *Payroll percentage.* The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on both within and without the city.

(3) *Gross income percentage.* The percentage computed by dividing (A) the gross sales or charges for services performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within the city; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, sales of tangible personal property shall not be allocated to the city as hereinabove in this paragraph provided, but shall be allocated to the city only where shipments are made to points within the city, and provided, further, that:

(A) for taxable years beginning on or after July first, two thousand five, for taxpayers having gross receipts for the taxable year (determined without

regard to any deductions) of less than one hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city;

(B) for taxable years beginning on or after July first, two thousand six, for taxpayers having gross receipts for the taxable year (determined without regard to any deductions) of less than three hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city; and

(C) for taxable years beginning on or after July first, two thousand seven, for all other taxpayers, charges for services performed shall be allocated to the city to the extent that the services are performed within the city.

(d) *Other allocation methods.* The portion allocable to the city shall be determined in accordance with rules and regulations of the commissioner of finance if it shall appear to the commissioner of finance that the income from the city is not fairly and equitably reflected under the provisions of either subdivision (b) or subdivision (c) of this section.

(e) *Special rules for real estate.* Income and deductions from the rental of real property, and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivision (b), (c), or (d) of this section, but shall be considered as entirely derived from or connected with the state, other than this state, in which such property is located or, if such property is located in this state, the political subdivision thereof. To the extent that anything in the preceding sentence is inconsistent with any provision of subdivision (d) of section 11-502, subdivision (c) of section 11-506 or subdivision sixteen of section 11-507 of this chapter, the provisions of such subdivisions shall take precedence over the provisions of the preceding sentence.

(e-1) *Special rules for publishers and broadcasters.*

(1) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, there shall be allocated to the city, for purposes of such paragraph three, the gross sales or charges for services arising from sales of subscriptions to, and advertising contained in, such newspapers or periodicals, to the extent that such newspapers or periodicals are delivered to points within the city.

(2) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of such paragraph three, a portion of the gross sales or charges for services arising from the sale of subscriptions to such programs or from the broadcasting of such programs and of commercial messages in connection therewith, such portion to be determined according to the number of listeners or viewers within and without the city.

(3) Notwithstanding anything in this section (other than subdivision (e) of this section) to the contrary, in the case of a taxpayer that is substantially engaged, in the aggregate, in any combination of the businesses referred to in paragraphs one, two and four of this subdivision, the portion of business income allocable to the city shall be determined in accordance with the provisions of subdivision (c) of this section (as modified by paragraphs one, two and four of this subdivision), unless the commissioner of finance determines that the business income from the city is not fairly and equitably reflected under the provisions of such subdivision (c), in which event the provisions of subdivision (d) of this section shall apply in determining the portion of business income allocable to the city and the provisions of subdivision (b) of this section shall not apply. For purposes of this subdivision, a taxpayer shall be deemed to be substantially engaged in a business or businesses referred to in such paragraphs one and two if more than ten percent of the taxpayer's gross receipts for the taxable year are attributable to such business or businesses.

(4) Notwithstanding anything in paragraph one or two of this subdivision to the contrary, for taxable years beginning on or after January first, two thousand two, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of paragraph three of subdivision (c) of this section, the gross sales or charges to subscribers located in the city for subscriptions to such newspapers, periodicals, or program services. For purposes of this paragraph, a subscriber shall be deemed located in the city if, in the case of newspapers and periodicals, the mailing address for the subscription is within the city and, in the case of program services, the billing address for the subscription is within the city. For purposes of this clause, "subscriber" shall mean a member of the general public who receives such newspapers, periodicals or program services and does not further distribute them.

(e-2) *Rules for receipts from certain services to investment companies.*

(1) For taxable years beginning on or after January first, two thousand one, for purposes of paragraph three of subdivision (c) of this section, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with paragraph two of this subdivision shall be deemed to arise from services performed within the city (such portion referred to herein as the New York city portion).

(2) The New York city portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing the number of shares in the investment company which are owned on the last day of the month by shareholders that are domiciled in the city by the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3) (A) For purposes of this subdivision the term "domicile", in the case of an individual shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of this code; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(B) For purposes of this subdivision, the term "investment company" means a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(C) For purposes of this subdivision, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company in their capacity as such.

(D) For purposes of this subdivision, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(E) For purposes of this subdivision, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged

in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(F) For purposes of this subdivision, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(e-3) Rules for receipts for services performed by registered securities or commodities brokers or dealers.

(1) For taxable years beginning after two thousand eight, in the case of a taxpayer which is a registered securities or commodities broker or dealer, for purposes of paragraph three of subdivision (c) of this section, the receipts specified in subparagraphs (A) through (G) of this paragraph shall be deemed to arise from services performed within the city to the extent set forth in such subparagraphs.

(A) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions.

(B) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest.

(C) Gross income, including any accrued interest or dividends, from principal transactions for the purchase or sale of stocks, bonds, foreign exchange and other securities or commodities (including futures and forward contracts, options and other types of securities or commodities derivatives contracts) shall be deemed to arise from services performed within the city either (i) to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of such principal transactions or (ii) if the taxpayer so elects, to the extent that the gross proceeds from such principal transactions (determined without deduction for any cost incurred by the taxpayer to acquire the securities or commodities) are generated from sales of securities or commodities to customers within the city based upon the mailing addresses of such customers in the records of the taxpayer. For purposes of clause (ii) of this subparagraph, the taxpayer shall separately calculate such gross income from principal transactions by type of security or commodity. For purposes of this subparagraph, gross income from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities. For purposes of this subdivision, the term "production credits" means credits granted pursuant to the internal accounting system used by the taxpayer to measure the amount of revenue that should be awarded to a particular branch or office or employee of the taxpayer which is based, at least in part, on the branch's, the office's or the employee's particular activities. Upon request, the taxpayer shall be required to furnish a detailed explanation of such internal accounting system to the department.

(D) (i) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer (such customer being the entity which is contemplating issuing or is issuing securities) or fees earned by the taxpayer for managing an underwriting shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees.

(ii) Receipts constituting the primary spread or selling concession from underwritten securities shall be deemed to arise from services performed within the city to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of the sale of the underwritten securities.

(iii) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(E) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to an entity affiliated with the taxpayer shall be deemed to arise from services performed at the principal place of business of such affiliated entity. For purposes of this subparagraph, an entity shall be considered affiliated with the taxpayer if such entity and the taxpayer have eighty percent or more common direct or indirect, actual or beneficial ownership.

(F) Receipts constituting account maintenance fees shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such account maintenance fees.

(G) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, but excluding fees paid for services described in paragraph one of subdivision (e-2) of this section, shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees.

(2) For purposes of this subdivision, the term "securities" shall have the same meaning as in section 475(c)(2) of the internal revenue code and the term "commodities" shall have the same meaning as in section 475(e)(2) of such code. The term "registered securities or commodities broker or dealer" means a broker or dealer registered as such by the securities and exchange commission or the commodities futures trading commission, and shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at 17 CFR 240.3b-12.

(3) If the taxpayer receives any of the receipts enumerated in paragraph (1) of this subdivision as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the subparagraphs in paragraph (1) of this subdivision. The amount of such receipts shall exclude the amount the taxpayer is required to pay to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in paragraph (1) of this subdivision as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the subparagraphs in paragraph (1) of this subdivision.

(4) If, for purposes of subparagraph (A), (B), (F), or (G) of paragraph (1) of this subdivision, and clause (i) of subparagraph (C) of paragraph (1) of this subdivision, the taxpayer is unable from its records to determine the mailing address of the customer, the receipts described in any of such subparagraphs and such clause shall be deemed to arise from services performed at the branch or office of the taxpayer that generates the transaction for the customer that generated such receipts.

(f) Allocation of investment income.

(1) The investment income of an unincorporated business shall be allocated to the city by multiplying such investment income by an investment allocation percentage to be determined as follows:

(A) multiply the amount of its investment capital invested in each stock, bond or other security (other than governmental securities) during the period covered by its return by the issuer's allocation percentage (determined as provided in paragraph two of this subdivision) of the issuer or obligor thereof;

(B) add together the products so obtained; and

(C) divide the sum so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities; provided,

however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the return, only such portion of such capital shall be taken into account; and provided, further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts shall be allocated in the manner provided in subdivision (b), (c) or (d) of this section.

(2) (A) In the case of an issuer or obligor subject to tax under subchapter two or three-A of chapter six of this title, or subject to tax as a utility corporation under chapter eleven of this title, the issuer's allocation percentage shall be the percentage of the appropriate measure (as defined hereinafter) which is required to be allocated within the city on the report or reports, if any, required of the issuer or obligor under chapter six or eleven of this title for the preceding year. The appropriate measure referred to in the preceding sentence shall be: in the case of an issuer or obligor subject to subchapter two or three-A of chapter six of this title, entire capital; and in the case of an issuer or obligor subject to chapter eleven of this title as a utility corporation, gross income.

(B) In the case of an issuer or obligor subject to tax under part four of subchapter three of chapter six of this title, the issuer's allocation percentage shall be determined as follows:

(i) In the case of a banking corporation described in paragraphs one through eight of subdivision (a) of section 11-640 of this title which is organized under the laws of the United States, this state or any other state of the United States, the issuer's allocation percentage shall be its alternative entire net income allocation percentage, as defined in subdivision (c) of section 11-642 of this title, for the preceding year. In the case of such a banking corporation whose alternative entire net income for the preceding year is derived exclusively from business carried on within the city, its issuer's allocation percentage shall be one hundred percent.

(ii) In the case of a banking corporation described in paragraph two of subdivision (a) of section 11-640 of this title which is organized under the laws of a country other than the United States, the issuer's allocation percentage shall be determined by dividing (I) the amount described in clause (i) of subparagraph (A) of paragraph two of subdivision (a) of section 11-642 of this title with respect to such issuer or obligor for the preceding year, by (II) the gross income of such issuer or obligor from all sources within and without the United States, for such preceding year, whether or not included in alternative entire net income for such year.

(iii) In the case of an issuer or obligor described in paragraph nine of subdivision (a) or in paragraph two of subdivision (d) of section 11-640 of this title, the issuer's allocation percentage shall be determined by dividing the portion of the entire capital of the issuer or obligor allocable to the city for the preceding year by the entire capital, wherever located, of the issuer or obligor for the preceding year.

(C) Provided, however, that if a report or reports for the preceding year are not filed, or if filed do not contain information which would permit the determination of such issuer's allocation percentage, then the issuer's allocation percentage to be used shall, at the discretion of the commissioner of finance, be either (i) the issuer's allocation percentage derived from the most recently filed report or reports of the issuer or obligor or (ii) a percentage calculated, by the commissioner of finance, reasonably to indicate the degree of economic presence in the city of the issuer or obligor during the preceding year.

(3) For purposes of this subdivision, investment capital shall be determined by taking the average value of the gross assets included therein (less liabilities deductible therefrom pursuant to the provisions of subdivision (h) of section 11-501 of this chapter). The value of investment capital which consists of marketable securities shall be the fair market value thereof and the value of investment capital other than marketable securities shall be the value thereof shown on the books and records of the unincorporated business in accordance with generally accepted accounting principles.

(4) [Repealed.]

(g) *Special rules for manufacturing businesses.*

(1) For taxable years beginning on or after July first, nineteen hundred ninety-six and before January first, two thousand eleven, a manufacturing business may elect to determine its business allocation percentage by adding together the percentages determined under paragraphs one, two and three of subdivision (c) of this section and an additional percentage equal to the percentage determined under paragraph three of subdivision (c) of this section, and dividing the result by the number of percentages so added together.

(2) An election under this subdivision must be made on a timely filed (determined with regard to extensions granted) original return for the taxable year. Once made for a taxable year, such election shall be irrevocable for that taxable year. A separate election must be made for each taxable year. A manufacturing business that has failed to make an election as provided in this paragraph shall be required to determine its business allocation percentage without regard to the provisions of this subdivision. Notwithstanding anything in this paragraph to the contrary, the commissioner of finance may permit a manufacturing business to make or revoke an election under this subdivision, upon such terms and conditions as the commissioner may prescribe, where the commissioner determines that such permission should be granted in the interests of fairness and equity due to a change in circumstances resulting from an audit adjustment.

(3) As used in this subdivision, the term "manufacturing business" means an unincorporated business primarily engaged in the manufacturing and sale thereof of tangible personal property; and the term "manufacturing" includes the process (including the assembly process) (i) of working raw materials into wares suitable for use or (ii) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. An unincorporated business shall be deemed to be primarily engaged in the activities described in the preceding sentence if more than fifty percent of its gross receipts for the taxable year are attributable to such activities.

(h) Notwithstanding subdivision (d) of this section, if it shall appear to the commissioner of finance that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, or income of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion, in the case of a business allocation percentage, to adjust it by (1) excluding one or more of the factors therein; (2) including one or more factors, such as expenses, purchases, contract values (minus subcontract values); (3) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining unincorporated business entire net income, or (4) any other similar or different method calculated to effect a fair and proper allocation of the income reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage; provided the income therefrom is also excluded in determining unincorporated business entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

(i) Notwithstanding subdivision (c) of this section, but subject to subdivision (g) of this section, the business allocation percentage shall be computed in the manner set forth in this subdivision.

(1) For taxable years beginning in two thousand nine, the business allocation percentage shall be determined by adding together the following percentages:

- (A) the product of thirty percent and the percentage determined under paragraph one of subdivision (c) of this section,
- (B) the product of thirty percent and the percentage determined under paragraph two of subdivision (c) of this section, and
- (C) the product of forty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(2) For taxable years beginning in two thousand ten, the business allocation percentage shall be determined by adding together the following percentages:

- (A) the product of twenty-seven percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty-seven percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of forty-six percent and the percentage determined under paragraph three of subdivision (c) of this section.

(3) For taxable years beginning in two thousand eleven, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of twenty-three and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty-three and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of fifty-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(4) For taxable years beginning in two thousand twelve, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of twenty percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of sixty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(5) For taxable years beginning in two thousand thirteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of sixteen and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of sixteen and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of sixty-seven percent and the percentage determined under paragraph three of subdivision (c) of this section.

(6) For taxable years beginning in two thousand fourteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of thirteen and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of thirteen and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of seventy-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(7) For taxable years beginning in two thousand fifteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of ten percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of ten percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of eighty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(8) For taxable years beginning in two thousand sixteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of six and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of six and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of eighty-seven percent and the percentage determined under paragraph three of subdivision (c) of this section.

(9) For taxable years beginning in two thousand seventeen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of three and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of three and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of ninety-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(10) For taxable years beginning after two thousand seventeen, the business allocation percentage shall be the percentage determined under paragraph three of subdivision (c) of this section.

(11) The commissioner shall promulgate rules necessary to implement the provisions of this subdivision under such circumstances where any of the percentages to be determined under paragraph one, two or three of subdivision (c) of this section cannot be determined because the taxpayer has no property, payroll or gross receipts from sales or services within or without the city.

§ 11-509 Deductions not subject to allocation.

(a) In computing unincorporated business taxable income, there shall be allowed (without allocation under section 11-508 of this chapter) deductions for reasonable compensation for taxable years beginning before January first, two thousand seven, not in excess of five thousand dollars, and for taxable years beginning on or after January first, two thousand seven, not in excess of ten thousand dollars, for personal services of the proprietor and each partner actively engaged in the unincorporated business, but the aggregate of such deductions shall not exceed twenty per centum of the unincorporated business taxable income computed without the benefit of any deductions under this subdivision or the unincorporated business exemptions under section 11-510 of this chapter.

(b) Subject to the conditions provided in paragraphs three and four of this subdivision at the election of the taxpayer there shall also be allowed (without allocation under section 11-508 of this chapter) either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of the items shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in paragraphs three or four of this subdivision, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that no deduction shall be allowed pursuant to section 11-507 of this chapter for depreciation of the same property, and the total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property shall not exceed its cost or other basis and, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such total shall not exceed its cost or other basis multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income

over its unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, which is used or to be used for purposes of research or development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such deduction does not exceed the expenditures multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income over its unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted, and that, for the taxable year and all succeeding taxable years, no deduction shall be allowed pursuant to section 11-507 of this chapter on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowable for federal income tax purposes on account of such expenditures or on account of depreciation of the same property shall be proportionately reduced in determining the deductions allowable pursuant to section 11-507 of this chapter for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the deduction allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a deduction shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in the taxpayer's return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section 11-523 of this chapter.

(3) For purposes of this paragraph, such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditure relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after December thirty-first, nineteen hundred sixty-five or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under subparagraph (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one may be taken in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's trade or business, (A) the construction, reconstruction, or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five. Provided, however, a deduction under paragraph one of this subdivision shall be allowed with respect to property described in this paragraph only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing. For purposes of the preceding sentence, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subdivision nine of section 11-507 of this chapter may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing, in which event, a deduction shall not be allowed under subdivision nine of section 11-507 of this chapter. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the deductions allowable for any taxable year pursuant to this subdivision exceed the taxpayer's unincorporated business taxable income, determined without the allowance of such deductions, the excess may be carried over to the following taxable year or years and may be deducted (without allocation under section 11-508 of this chapter) in computing unincorporated business taxable income for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the deductions so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal gross income the amount of the difference between such adjusted bases.

§ 11-510 Unincorporated business exemptions.

In computing unincorporated business taxable income, there shall be allowed (without allocation under section 11-508 of this chapter):

(1) an unincorporated business exemption of five thousand dollars, prorated for taxable years of less than twelve months under regulations of the commissioner of finance;

(2) if a partner in an unincorporated business is taxable under this chapter or under any local law imposed pursuant to section one of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, an exemption for the amount of the partner's proportionate interest in the excess of the unincorporated business gross income over the deductions allowed under sections 11-507 and 11-509 of this chapter, but this exemption shall be limited to the amount which is included in the partner's unincorporated business taxable income allocable to the city, or included in a corporate partner's net income allocable to the city, provided, however, no such exemption shall be allowed to an unincorporated business for any taxable year of the unincorporated business beginning after June thirtieth, nineteen hundred ninety-four.

§ 11-511 Declaration of estimated tax.

(a) *Requirement of declaration.* Except as provided in subdivision (j) of this section, every unincorporated business shall make a declaration of its estimated tax for the taxable year, containing such information as the commissioner of finance may prescribe by regulations or instruction, if:

(1) for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed fifteen thousand dollars;

(2) for taxable years beginning in nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed twenty thousand dollars;

(3) for taxable years beginning after nineteen hundred ninety-six but before two thousand nine, its estimated tax can reasonably be expected to exceed one thousand eight hundred dollars; and

(4) for taxable years beginning after two thousand eight, its estimated tax can reasonably be expected to exceed three thousand four hundred dollars.

(b) *Definition of estimated tax.* The term "estimated tax" means the amount which an unincorporated business estimates to be its tax under this chapter for the taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision (c) of section 11-503 of this chapter.

(c) *Time for filing declaration.* Except as hereinafter provided, a declaration of estimated tax required under this section shall be filed on or before April fifteenth of the taxable year provided, however, that if the requirements of subdivision (a) of this section are first met:

(1) after April first and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) after June first and before September second of the taxable year, the declaration shall be filed on or before September fifteenth, or

(3) after September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(d) *Filing of declarations on or before January fifteenth.*

(1) A declaration of estimated tax by an unincorporated business having an estimated unincorporated business taxable income from farming (including oyster farming) for the taxable year which is at least two-thirds of its total estimated unincorporated business taxable income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year.

(2) For taxable years beginning before nineteen hundred ninety-seven, a declaration of estimated tax under this section of forty dollars or less for the taxable year may be filed at any time on or before January fifteenth of the succeeding year under regulations of the commissioner of finance.

(e) *Amendments of declaration.* An unincorporated business may amend a declaration under regulations of the commissioner of finance.

(f) *Return as declaration or amendment.* If on or before February fifteenth of the succeeding taxable year an unincorporated business subject to the estimated tax requirements of this section files its return for the taxable year for which the declaration is required, and pays on or before such date the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth of the succeeding year, and

(2) such return shall be considered as the amendment permitted by subdivision (e) to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(g) *Fiscal year.* This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(h) *Short taxable year.* An unincorporated business subject to the estimated tax requirements of this section and having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the commissioner of finance.

(i) *Declaration of unincorporated business under a disability.* The declaration of estimated tax for an unincorporated business which is unable to make a declaration for any reason shall be made and filed by the committee, fiduciary or other person charged with the care of the property of such unincorporated business (other than a receiver in possession of only a part of such property), or by his or her duly authorized agent.

(j) *Declaration of estimated tax for taxable years beginning prior to July thirteenth, nineteen hundred sixty-six.* Notwithstanding subdivision (c) of this section, no declaration of estimated tax required by subdivision (a) of this section need be filed until September twelfth, nineteen hundred sixty-six.

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1987/051.

§ 11-512 Payments of estimated tax.

(a) *General.* The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following June fifteenth, September fifteenth, and January fifteenth, respectively.

(2) If the declaration is filed after April fifteenth and not after June fifteenth of the taxable year, and is not required to be filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September fifteenth and January fifteenth, respectively.

(3) If the declaration is filed after June fifteenth and not after September fifteenth of the taxable year, and is not required to be filed on or before June fifteenth of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January fifteenth.

(4) If the declaration is filed after September fifteenth of the taxable year, and is not required to be filed on or before September fifteenth of the

taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two, three and four of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) *Amendments of declaration.* If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) *Application to short taxable year.* This section shall apply to a taxable year of less than twelve months in accordance with regulations of the commissioner of finance.

(d) *Fiscal year.* This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(e) *Installments paid in advance.* An unincorporated business may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

(f) *Cross-reference.* For unincorporated businesses with taxable years beginning prior to July thirteenth, nineteen hundred sixty-six, see subdivision (j) of section 11-511 of this chapter.

(g) *Taxpayers with credit relating to stock transfer tax.* The portion of an overpayment attributable to a credit allowable pursuant to subdivision (c) of section 11-503 of this chapter may not be credited against any payment due under this section.

§ 11-513 Accounting periods and methods.

(a) *Accounting periods.* A taxpayer's taxable year under this chapter shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) *Accounting methods.* A taxpayer's method of accounting under this chapter shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, unincorporated business taxable income shall be computed under such method as in the opinion of the commissioner of finance clearly reflects income.

(c) *Change of accounting period or method.*

(1) If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, beginning after January first, nineteen hundred sixty-six, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year, which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the commissioner of finance.

§ 11-514 Returns, payment of tax.

(a) *General.* An unincorporated business income tax return shall be made and filed, and the balance of any tax shown on the face of such return, not previously paid as installments of estimated tax, shall be paid, on or before the fifteenth day of the fourth month following the close of a taxable year for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of the third month following the close of a taxable year for taxable years beginning on or after January first, two thousand sixteen:

(1) by or for every unincorporated business, for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-seven, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ten thousand dollars, or having any amount of unincorporated business taxable income;

(2) by or for every partnership, for taxable years beginning after nineteen hundred ninety-six but before two thousand nine, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than twenty-five thousand dollars, or having unincorporated business taxable income of more than fifteen thousand dollars;

(3) by or for every unincorporated business other than a partnership, for taxable years beginning after nineteen hundred ninety-six but before two thousand nine, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than seventy-five thousand dollars, or having unincorporated business taxable income of more than thirty-five thousand dollars; and

(4) by or for every unincorporated business, for taxable years beginning after two thousand eight, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ninety-five thousand dollars.

(b) *Decedents.* The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be, for taxable years beginning before January first, two thousand sixteen, the fifteenth day of the fourth month following the close of the twelve-month period that began with the first day of such fractional part of the year, and, for taxable years beginning on or after January first, two thousand sixteen, the fifteenth day of the third month following the close of the twelve-month period that began with the first day of such fractional part of the year.

(c) *Individuals under a disability.* The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by such individual's guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), or by such individual's duly authorized agent.

(d) *Estates and trusts.* The return for an estate or trust shall be made and filed by the fiduciary.

(e) *Joint fiduciaries.* If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) *Returns for taxable years ending prior to December thirty-first nineteen hundred sixty-six.* With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth

day of the fourth month following the close of such taxable year or September twelfth, nineteen hundred sixty-six, whichever is later.

(g) *Taxpayers with credit relating to stock transfer tax.* Subdivisions one and two of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision (c) of section 11-503 of this chapter, except that the tax, or balance thereof, payable to the commissioner of finance in full pursuant to subdivision (a) of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision (c) of section 11-503 of this chapter were not allowed.

(Am. 2016 N.Y. Laws Ch. 60, 4/13/2016, eff. 4/13/2016)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1987/051.

§ 11-515 Time and place for filing returns and paying tax.

A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner of finance on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The commissioner of finance shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for payment of any tax.

§ 11-516 Signing of returns and other documents.

(a) *General.* Any return, declaration, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the commissioner of finance. The fact that an individual's name is signed to a return, declaration, statement, or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) *Partnerships.* Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) *Certifications.* The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 11-517 Extensions of time.

(a) *General.* The commissioner of finance may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

(b) *Furnishing of security.* If any extension of time is granted for payment of any amount of tax, the commissioner of finance may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the commissioner of finance may require.

§ 11-518 Requirements concerning returns, notices, records and statements.

(a) *General.* The commissioner of finance may prescribe regulations as to the keeping of records, the content and forms of returns and statements, and the filing of copies of federal income tax returns and determinations. The commissioner of finance may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the commissioner of finance may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) *Notice of qualification as receiver, etc.* Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualification as such to the commissioner of finance, as may be required by regulation.

§ 11-519 Report of change in federal or New York state taxable income.

(a) If the amount of a taxpayer's federal or New York state taxable income reported on such taxpayer's federal or New York state income tax for any taxable year is changed or corrected by the United States internal revenue service or the New York state tax commission or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or the state of New York, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, pursuant to subsection (f) of section six hundred eighty-one of the tax law, executes a notice or waiver of the restrictions provided in subsection (c) of such section of the tax law, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver, or as otherwise required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income tax return shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner of finance may require.

(b) A taxpayer that is a partner in a partnership that is required to report a change or correction in its federal or New York state taxable income pursuant to subdivision (a) of this section shall report its distributive share of such change or correction as if such change or correction was made directly to such taxpayer's federal or New York state taxable income.

(c) Any taxpayer subject to an alternative adjustment action, or that is a partner in a partnership subject to an alternative adjustment action, shall report such alternative adjustment action within ninety days after the alternative adjustment action occurs, as applicable, regardless of the tax impact of such action. The commissioner of finance may require such report to be filed electronically. Such report shall include the identity of any partners of such taxpayer, as applicable, and any other information as the commissioner of finance deems necessary in order to determine the impact of such alternative adjustment action.

(d) The commissioner of finance may prescribe such exceptions to the requirements of this section as such commissioner deems appropriate to facilitate the administration of this section.

{("}Am. 2025 N.Y. Laws Ch. 59, 5/9/2025, eff. 8/7/2025)

§ 11-519.1 Report of change of state sales and compensating use tax liability.

Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 11-520 Change of election.

Any election expressly authorized by this chapter, other than the election authorized by section 11-506 of this chapter, may be changed on such terms and conditions as the commissioner of finance may prescribe by regulation.

§ 11-521 Notice of deficiency.

(a) *General.* If upon examination of a taxpayer's return under this chapter the commissioner of finance determines that there is a deficiency of income tax, the commissioner may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this chapter, the commissioner of finance is authorized to estimate the taxpayer's city unincorporated business taxable income and tax thereon, from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) *Notice of deficiency as assessment.* After ninety days from the mailing of a notice of deficiency or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, after ninety-days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, such notice shall be an assessment of the amount of tax specified therein, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax appeals tribunal a petition under section 11-529 of this chapter. If the notice of deficiency or conciliation decision is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) *Restrictions on assessment and levy.* No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-534 of this chapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition with the tax appeals tribunal contesting such notice, nor, if a petition with respect to the taxable year has been both served upon the commissioner of finance and filed with the tax appeals tribunal, until the decision of the tax appeals tribunal has become final. For exception in the case of judicial review of the decision of the tax appeals tribunal, see subdivision (c) of section 11-530 of this chapter.

(d) *Exceptions for mathematical errors.* If a mathematical error appears on a return (including an overstatement of the amount paid as estimated tax), the commissioner of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency) nor shall such assessment or collection be prohibited by the provisions of subdivision (c) of this section.

(e) *Exception where change in federal or New York state taxable income is not reported.*

(1) If the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver described in such section, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected federal or New York state taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) *Waiver of restrictions.* The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the commissioner of finance.

(g) *Deficiency defined.* For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (i) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by the taxpayer or by the commissioner of finance), and less, (ii) the amounts previously assessed (or collected without assessment) as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

(h) *Exception where change or correction of sales and compensating use tax liability is not reported.*

(1) If a taxpayer fails to comply with section 11-519.1 of this chapter in not reporting a change or correction of his or her sales and compensating use tax liability or in not filing a copy of an amended return or report relating to his or her sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under this chapter by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing where such state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of

subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, and such notice shall be sufficient for purposes of this chapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

§ 11-522 Assessment.

(a) *Assessment date.* The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the commissioner of finance shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-521 of this chapter if no petition is both served on the commissioner of finance and filed with the tax appeals tribunal, or if a petition is filed, then upon the date when a decision of the tax appeals tribunal establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section 11-519 of this chapter concedes the accuracy of a federal or New York state adjustment, change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-523 of this chapter. If a report or amended return or report filed pursuant to section 11-519.1 of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under this chapter resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section 11-523 of this chapter. If a notice of additional tax due, as prescribed in subdivision (e) of section 11-521 of this chapter has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous. If a notice of additional tax due, as prescribed in subdivision (h) of section 11-521 of this chapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) *Other assessment powers.* If the mode or time for the assessment of any tax under this chapter (including interest, additions to tax and assessable penalties) is not otherwise provided for, the commissioner of finance may establish the same by regulations.

(c) *Estimated income tax.* No unpaid amount of estimated tax under section one hundred sixteen shall be assessed.

(d) *Supplemental assessment.* The commissioner of finance may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-521 of this chapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) *Cross-reference.* For assessment in case of jeopardy, see section 11-534 of this chapter.

§ 11-523 Limitations on assessment.

(a) *General.* Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) *Time return deemed filed.* For purposes of this section a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(c) *Exceptions.*

(1) *Assessment at any time.* The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax,

(C) the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state income tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or in not reporting an alternative adjustment action, or in not filing an amended return, or

(D) the taxpayer fails to file a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed.

(2) *Extension by agreement.* Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) *Report of changed or corrected federal or New York state income.* If the taxpayer shall, pursuant to section 11-519 of this chapter, report a change or correction or file an amended return increasing or decreasing federal or New York state taxable income or report the execution of a notice of waiver and the changes and corrections on which it is based, or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal or New York state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) *Deficiency attributable to net operating loss carryback.* If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) *Recovery of erroneous refund.* An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) *Request for prompt assessment.* If a return is required for a decedent or for his or her estate during the period of administration, the tax shall be

assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d) of this section.

(7) *Report on use of certain property.* Under the circumstances described in paragraph two of subdivision (b) of section 11-509 of this chapter, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) *Report concerning waste treatment facility.* Under the circumstances described in paragraph nine of section 11-507 of this chapter, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph.

(9) *Report of changed or corrected sales and compensating use tax liability.* If the taxpayer files a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, the assessment (if not deemed to have been made upon the filing of the report) may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) *Omission of income on return.* The tax may be assessed at any time within six years after the return was filed if (1) a taxpayer omits from his or her city unincorporated business gross income an amount properly includible therein which is in excess of twenty-five per centum of the amount of city unincorporated business gross income stated in the return, or (2) an estate or trust omits income from its return in an amount in excess of twenty-five percent of its income determined as if it were an individual. For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of finance of the nature and amount of such item.

(e) *Suspension of running of period of limitation.* The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision (c) of section 11-521 of this chapter from making the assessment or from collecting by levy.

{'}Am. 2025 N.Y. Laws Ch. 59, 5/9/2025, eff. 8/7/2025)

§ 11-524 Interest on underpayment.

(a) *General.* If any amount of tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) *Exception as to estimated tax.* This section shall not apply to any failure to pay estimated tax under section 11-512 of this chapter.

(c) *Exception for mathematical error.* No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) *Suspension of interest on deficiencies.* If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(e) *Tax reduced by carryback.* If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(f) *Interest treated as tax.* Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) *Interest on penalties or additions to tax.* Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section 11-532 of this chapter, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) *Payment within ten days after notice and demand.* If notice and demand is made for payment of any amount under subdivision (b) of section 11-532 of this chapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(i) *Limitation on assessment and collection.* Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(j) *Interest on erroneous refund.* Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(k) *Satisfaction by credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 11-525 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 chapter 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 tax return 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 chapter 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 percent of the amount 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 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 chapter which is not so shown (including an assessment made pursuant to subdivision (a) of section 11-522 of this chapter) within ten days of the date of a notice and demand therefor, 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 subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, 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 subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph one) 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 chapter 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 (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of section 11-524 with respect to the portion of the deficiency described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such deficiency (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 of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in unincorporated business gross income, as that term is defined in section 11-506, any portion of a deficiency attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any addition to tax is imposed under this subdivision by reason of the preceding sentence, the amount of the addition to tax imposed by paragraph one of this subdivision shall be five percent of the portion of the deficiency which is attributable to the failure described in the preceding sentence.

(c) *Failure to file declaration or underpayment of estimated tax.* If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year (or if no return was filed, ninety percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death. In any case in which there would be no underpayment if this subdivision were applied by substituting "eighty percent" for "ninety percent" where it appears in the second preceding sentence, the addition to tax under this subdivision shall be equal to seventy-five percent of the amount otherwise determined under this subdivision.

(d) *Exception to addition for underpayment of estimated tax.* The addition to tax under subdivision (c) of this section with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(A) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the unincorporated business taxable income shall be placed on an annualized basis by:

(i) multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid, and

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(D) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner:

(I) take the unincorporated business taxable income for all months during the taxable year preceding the filing month,

(II) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(III) determine the tax on the amounts determined under subclause (II), and

(IV) multiply the tax determined under subclause (III) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of clause (i) of this subparagraph:

(I) the base period percentage for any period of months shall be the average percent which the unincorporated business taxable income for the corresponding months in each of the three preceding years bears to the unincorporated business taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of new unincorporated businesses and other similar circumstances, and

(II) the term "filing month" means the month in which the installment is required to be paid;

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) (1) Except as provided in paragraph two hereof, subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall not apply in the case of any taxpayer which had unincorporated business taxable income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(2) The amount treated as the estimated tax under subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

(f) *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) [Repealed.]

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

(g) *Additional penalty.* Any taxpayer who with fraudulent intent shall fail to pay any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this chapter shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) *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 chapter to tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-521, this subdivision shall not apply to –

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

(2) any addition to tax under subdivision (c); and

(3) any additional penalties under subdivisions (g) and (k).

(i) *Determination of deficiency.* For purposes of subdivisions (b) and (c) of this section, the amounts shown as the tax by the taxpayer upon his or her 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.

(j) *Substantial understatement of liability.* If there is a substantial understatement of 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 subdivision, there is a substantial understatement of 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 five 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 the tax imposed which is shown on the return, reduced by any rebate (within the meaning of subdivision (g) of section 11-521). 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 commissioner of finance may waive all or any part of the addition to tax provided by this subdivision 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.

(k) *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 chapter 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 ten thousand dollars.

(2) For purposes of paragraph (1) of this subdivision, 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 member, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph (1) of this subdivision, 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 subdivision shall be in addition to any other penalty provided by law.

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

§ 11-526 Overpayment.

(a) *General.* The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this title, on the person who made overpayment, and the balance shall be refunded. Such credit of an overpayment shall be applied before such overpayment, or any portion thereof, is paid to the state commissioner of taxation and finance

pursuant to section one hundred seventy-one-m of the tax law.

(b) *Credits against estimated tax.* The commissioner of finance may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(c) *Rule where no tax liability.* If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

(d) *Assessment and collection after limitation period.* If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(e) Notwithstanding any provision of law in article fifty-two of the civil practice law and rules to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of the department of finance, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

(Am. 2022 N.Y. Laws Ch. 555, 8/31/2022, eff. 8/31/2022)

§ 11-527 Limitation on credit or refund.

(a) *General.* Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) *Extension of time by agreement.* If an agreement under the provisions of paragraph two of subdivision (c) of section 11-523 of this chapter (extending the period for assessment of income tax) is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund the period for filing a claim for credit or refund, or for making credit or refund if no claims filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) *Notice of change or correction of federal or New York state taxable income.* If a taxpayer is required by section 11-519 of this chapter to report a change or correction in federal or New York state taxable income reported on the taxpayer's federal or New York state income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, or to report an alternative adjustment action, or to file an amended return with the commissioner of finance, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction, or such report of an alternative adjustment action, or such amended return was required to be filed with the commissioner of finance. If the report or amended return required by section 11-519 of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal or New York state change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal or New York state change, correction or items amended on the taxpayer's amended federal or New York state income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) *Overpayment attributable to net operating loss carryback.* A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision (b) of this section in respect of such taxable year, or within the period prescribed in subdivision (c) of this section, where applicable in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) *Failure to file claim within prescribed period.* No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section 11-530 of this chapter after the expiration of the applicable period of limitation specified in this chapter unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(f) *Effect of petition to tax appeals tribunal.* If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-521 of this chapter and if the taxpayer files a timely petition with the tax appeals tribunal under section 11-529 of this chapter, the tax appeals tribunal may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

- (1) as to overpayments determined by a decision of the tax appeals tribunal which has become final;
- (2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax appeals tribunal which has become final;
- (3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and
- (4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(g) *Limit on amount of credit or refund.* The amount of overpayment determined under subdivision (f) of this section shall, when the decision of the tax appeals tribunal has become final, be credited or refunded in accordance with subdivision (a) of section 11-526 of this chapter and shall not exceed the amount of tax which the tax appeals tribunal determines as part of its decision was paid:

- (1) after the mailing of the notice of deficiency, or
- (2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim has been filed (whether or not filed) stating the grounds upon which the tax appeals tribunal finds that there is an overpayment.

(h) *Early return.* For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) *Prepaid tax.* For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by the taxpayer, for taxable years beginning before January first, two thousand sixteen, on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment, and, for taxable years beginning on or after January first, two thousand sixteen, on the fifteenth day of the third month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(j) *Cross-reference.* For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section 11-526 of this chapter.

(k) *Notice of change or correction of sales and compensating use tax liability.* If a taxpayer is required by section 11-519.1 of this chapter to file a report or amended return or report in respect of a change or correction of his or her sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return or report was required to be filed with the commissioner of finance. The amount of such credit or refund shall be computed without change of the allocation of income upon which the taxpayer's return (or any additional assessment) was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(Am. 2016 N.Y. Laws Ch. 60, 4/13/2016, eff. 4/13/2016; Am. 2025 N.Y. Laws Ch. 59, 5/9/2025, eff. 8/7/2025)

§ 11-528 Interest on overpayment.

(a) *General.* Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date (to be determined by the commissioner of finance) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) *Late and amended returns and claims for credit or refund.* Notwithstanding paragraph one or two of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim, for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) *Interest on certain refunds.* To the extent provided for in regulations promulgated by the commissioner of finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provisions of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund of an overpayment.

(5) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) *Advance payment of tax and payment of estimated tax.* The provisions of subdivisions (h) and (i) of section 11-527 of this chapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) *Refund within three months of claim for overpayment.* If any overpayment of tax imposed by this chapter is credited or refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

(d) *Refund of tax caused by carryback.* For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) *No interest until return in processible form.*

(1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(f) *Cross-reference.* For provision with respect to interest after failure to file notice of federal or New York state change under section 11-519 of this chapter, see subdivision (c) of section 11-527 of this chapter.

§ 11-529 Petition to tax appeals tribunal.

(a) *General.* The form of a petition to the tax appeals tribunal, and further proceedings before the tax appeals tribunal in any case initiated by the filing of a petition, shall be governed by such rules as the tax appeals tribunal shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. A decision of the tax appeals tribunal shall be rendered, and notice thereof shall be given, in the manner provided by section one hundred seventy-one of the charter.

(b) *Petition for redetermination of a deficiency.* Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-521 of this chapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for a redetermination of the deficiency. Such petition may also assert a claim for

refund for the same taxable year or years, subject to the limitations of subdivision (g) of section 11-527 of this chapter.

(c) *Petition for refund.* A taxpayer may file a petition with the tax appeals tribunal for the amounts asserted in a claim for refund if:

- (1) the taxpayer has filed a timely claim for refund with the commissioner of finance,
 - (2) the taxpayer has not previously filed with the tax appeals tribunal a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section 11-527 of this chapter, and
 - (3) either: (A) six months have expired since the claim was filed, or (B) the commissioner of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the commissioner of finance. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.
- (4) If the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code, a taxpayer who is eligible to file a petition for refund with the tax appeals tribunal pursuant to this subdivision may request a conciliation conference prior to filing such petition, provided the request is made within the time prescribed for filing the petition. Notwithstanding anything in this subdivision to the contrary, if the taxpayer has requested a conciliation conference in accordance with the procedure established pursuant to section 11-124 of the code, a petition for refund may be filed no later than ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding.

(d) *Assertion of deficiency after filing petition.*

(1) *Petition for redetermination of deficiency.* If a taxpayer files with the tax appeals tribunal a petition for redetermination of a deficiency, the tax appeals tribunal shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-525 of this chapter, if claim therefor is asserted at or before the hearing under the rules of the tax appeals tribunal.

(2) *Petition for refund.* If the taxpayer files with the tax appeals tribunal a petition for credit or refund for a taxable year, the tax appeals tribunal may:

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax appeals tribunal, and within the period in which an assessment would be timely under section 11-523 of this chapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax appeals tribunal.

(3) *Opportunity to respond.* A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner of finance under this subdivision.

(4) *Restriction on further notices of deficiency.* If the taxpayer files a petition with the tax appeals tribunal under this section, no notice of deficiency under section 11-521 of this chapter may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to a change or correction in federal or New York state taxable income or an alternative adjustment action required to be reported under section 11-519 of this chapter or with respect to a state change or correction of sales and compensating use tax liability to be reported under section 11-519.1 of this chapter.

(e) *Burden of proof.* In any case before the tax appeals tribunal under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner of finance:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal or New York state taxable income or an alternative adjustment action required to be reported under section 11-519 of this chapter, and of which change, correction, or alternative adjustment action the commissioner of finance had no notice at the time such commissioner mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under section 11-519.1 of this chapter, and of which change or correction the commissioner of finance had no notice at the time such commissioner mailed the notice of deficiency; and
- (4) whether any person is liable for a penalty under subdivision (k) of section 11-525.

(f) *Evidence of related federal or state determination.* Evidence of a federal or state determination relating to issues raised in a case before the tax appeals tribunal under this section shall be admissible, under rules established by the tax appeals tribunal.

(g) *Jurisdiction over other years.* The tax appeals tribunal shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

(Am. 2025 N.Y. Laws Ch. 59, 5/9/2025, eff. 8/7/2025)

§ 11-530 Review of tax appeals tribunal's decision.

(a) *General.* A decision of the tax appeals tribunal sitting en banc shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified mail, return receipt requested, to the taxpayer and the commissioner of finance.

(b) *Judicial review exclusive remedy.* The review of a decision of the tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) *Assessment pending review; review bond.* Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred seventy-one of the charter after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond (which may be a jeopardy bond under subdivision (h) of section 11-534 of this chapter) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against such taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the

payment of the deficiency (including interests and other amounts) as finally determined and such costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the tax appeals tribunal is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) *Credit, refund or abatement after review.* If the amount of a deficiency determined by the tax appeals tribunal is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited, or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) *Date of finality of tax appeals tribunal's decision.* A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of decision is sent by certified mail to the taxpayer and the commissioner of finance.

§ 11-531 Mailing rules; holidays; miscellaneous.

(a) *Timely mailing.*

(1) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by the United States mail to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of finance or, where relevant, the tax appeals tribunal shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. Except as provided in paragraph two of this subdivision, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulations of the commissioner of finance or, where relevant, the tax appeals tribunal.

(2) (A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner may withdraw such designation for purposes of this title. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(b) *Last known address.* For purposes of this chapter, a taxpayer's last known address shall be given in the last return filed by the taxpayer, unless subsequently to the filing of such return the taxpayer shall have notified the commissioner of finance of a change of address.

(c) *Last day a Saturday, Sunday or legal holiday.* When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(d) *Certificate: unfiled return.* For purposes of this chapter and sections one hundred sixty-eight through one hundred seventy-two of the charter, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this title, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

§ 11-532 Collection, levy and liens.

(a) *Collection procedures.* The taxes imposed by this chapter shall be collected by the commissioner of finance, and the commissioner may establish the mode or time for the collection of any amount due it under this chapter if not otherwise specified. The commissioner of finance shall, upon request, give a receipt for any sum collected under this chapter. The commissioner of finance may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

(b) *Notice and demand for tax.* The commissioner of finance shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) *Issuance of warrant after notice and demand.* If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within the ten days after notice and demand herefor is given to such person under subdivision (b) of this section, the commissioner of finance may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding such person to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner of finance and pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner of finance finds that the collection of the tax or

other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner of finance and upon failure or refusal to pay such tax or other amount the commissioner of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) *Copy of warrant to be filed and lien to be created.* Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) *Judgment.* When a warrant has been filed with the county clerk the commissioner of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) *Execution.* The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) *Taxpayer not a resident of this state.* Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident of this state, and it appears to the commissioner of finance that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the commissioner of finance may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at the taxpayer's last known address, subject to the rules for mailing provided in subdivision (a) of section 11-521 of this chapter. Such warrant shall command the officer or employee to proceed in New York county, and such officer or employee shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner of finance may also, in the commissioner's discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner of finance shall deem proper and sufficient.

(h) *Action by city for recovery of taxes.* Action may be brought by the corporation counsel of the city at the instance of the commissioner of finance as agent and trustee for the city to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced.

(i) *Release of lien or vacating warrant.* The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision (d) or (g) of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-533 Transferees.

(a) *General.* The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the commissioner of finance under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) *Exceptions.*

(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) of this section or the immediately preceding paragraph of this subdivision for the assessment of the liability, the commissioner of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-527 of this chapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-527 of this chapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-527 of this chapter shall be increased by the period from the date of such expiration to the date of agreement.

(c) *Deceased transferor.* If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if such person had lived.

(d) *Evidence.* Notwithstanding the provisions of subdivision (e) of section 11-537 of this chapter the commissioner of finance shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-529 of this chapter for rules as to burden of proof.

§ 11-534 Jeopardy assessment.

(a) *Authority for making.* If the commissioner of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, the commissioner shall, notwithstanding the provision of sections 11-521 and 11-536 of this chapter, and immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the commissioner of finance for the payment thereof.

(b) *Notice of deficiency.* If the jeopardy assessment is made before any notice in respect to the tax to which the jeopardy assessment relates has been mailed under section 11-521 of this chapter, then the commissioner of finance shall mail a notice under such section within sixty days after the making of the assessment.

(c) *Amount assessable before decision of tax appeals tribunal.* The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has heretofore filed a petition with the tax appeals tribunal. The commissioner of finance may, at any time before the tax appeals tribunal renders its decision, abate such assessment, or any unpaid portion thereof, to the extent that the commissioner believes the assessment to be excessive in amount. The tax appeals tribunal may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) *Amount assessable after decision of tax appeals tribunal.* If the jeopardy assessment is made after the decision of the tax appeals tribunal is rendered, such assessment may be made only in respect of the deficiency determined by the tax appeals tribunal in its decision.

(e) *Expiration of right to assess.* A jeopardy assessment may not be made after the decision of the tax appeals tribunal has become final or after the taxpayer has made an application for review of the decision of the tax appeals tribunal.

(f) *Collection of unpaid amounts.* When a petition has been filed with the tax appeals tribunal and when the amount which should have been assessed has been determined by a decision of the tax appeals tribunal which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-526 of this chapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the commissioner of finance.

(g) *Abatement if jeopardy does not exist.* The commissioner of finance may abate the jeopardy assessment if the commissioner finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax appeals tribunal in respect of the deficiency has been rendered or, if no petition is filed with the tax appeals tribunal, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) *Bond to stay collection.* The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the commissioner of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice or deficiency under section 11-521 of this chapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) *Petition to tax appeals tribunal.* If the bond is given before the taxpayer has filed his or her petition under section 11-529 of this chapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the tax appeals tribunal which has become final. If the tax appeals tribunal determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax appeals tribunal is rendered.

(j) *Stay of sale of seized property pending tax appeals tribunal decision.* Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-529 of this chapter for filing a petition with the tax appeals tribunal, and

(2) if a petition is filed with the tax appeals tribunal (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) of this section were not applicable. Such property may be sold if the taxpayer consents to the sale, or if the commissioner of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) *Interest.* For the purpose of subdivision (a) of section 11-524 of this chapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) *Early termination of taxable year.* If the commissioner of finance finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given to the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) *Reopening of taxable period.* Notwithstanding the termination of the taxable period of the taxpayer by the commissioner of finance as provided in subdivision (l) of this section, the commissioner of finance may reopen such taxable period each time the taxpayer is found by the commissioner of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner of finance may be reopened by the taxpayer if the taxpayer files with the commissioner of finance a true and accurate return of taxable income and credits allowed under this chapter for taxable period, together with such other information as the commissioner of finance may by regulations prescribe.

(n) *Furnishing of bond where taxable year is closed by the commissioner of finance.* Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes under this chapter for prior years.

§ 11-535 Criminal penalties; cross-reference.

For criminal penalties, see chapter forty of this title.

§ 11-536 Armed forces relief provisions.

(a) *Time to be disregarded.* In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in

an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter, in respect of the tax liability (including any interest, penalty, or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax;

(B) payment of any tax or any installment thereof or of any other liability to the commissioner of finance, in respect thereof;

(C) filing a petition with the tax appeals tribunal for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax appeals tribunal;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) assessment of tax;

(G) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the commissioner of finance in respect of tax;

(H) collection, by the commissioner of finance, by levy or otherwise of the amount of any liability in respect of tax;

(I) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(J) any other act required or permitted under this chapter or specified in regulations prescribed under this section by the commissioner of finance.

(2) The amount of any credit or refund (including interest).

(b) *Action taken before ascertainment of right to benefits.* The assessment or collection of the tax imposed by this chapter or of any liability to the commissioner of finance in respect of such tax, or any action or proceeding by or on behalf of the commissioner of finance in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a) of this section.

(c) *Members of armed forces dying in action.* In the case of any person who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of such person's death, or with respect to any prior taxable year ending on or after the first day he or she so served in a combat zone, and no returns shall be required in behalf of such person or such person's estate for such year; and the tax for any such taxable year which is unpaid at the date of his or her death, including interest, additions to tax and penalties, if any, shall not be assessed and if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such person's estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to such person's surviving spouse.

§ 11-537 General powers of commissioner of finance.

(a) *General.* The commissioner of finance shall administer and enforce the tax imposed by this chapter and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provision of this chapter; and the commissioner may delegate his or her powers and functions under all parts of this chapter to one of the commissioner's deputies or to any employee or employees of the commissioner's department.

(b) *Examination of books and witnesses.* The commissioner of finance for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons.

(c) *Abatement authority.* The commissioner of finance, of his or her own motion, may abate any small unpaid balance of an assessment of tax under this part, or any liability in respect thereof, if the commissioner of finance determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) *Special refund authority.* Where no questions of fact or law are involved and it appears from the records of the commissioner of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the commissioner of finance at any time, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) *Cooperation with the United States, this state and other states.* Notwithstanding the provisions of section 11-538 of this chapter, the commissioner of finance may permit the secretary of the treasury of the United States or the secretary's delegates, or the proper officer of this or any other state imposing an income tax upon the incomes of individuals, or the authorized representative of any such officer, to inspect any return filed under this chapter or may furnish to such officer or his or her authorized representative an abstract of any such return or supply such officer with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or such officer's representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner of finance and such information is to be used for tax purposes only; and provided further the commissioner of finance may furnish to the secretary of the treasury of the United States or the secretary's delegates or to the tax commission of the state of New York or its delegates such returns filed under this chapter and other tax information, as he or she may consider proper for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the commissioner of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury of the United States or the secretary's delegates or to such tax commission or its delegates. Where the commissioner of finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns or other information.

(f) (1) *Authority to set interest rates.* The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-524, 11-525 and 11-528 of this chapter, but if no such rate or rates of interest are set, such overpayment rate shall be deemed to be set at six

percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subdivision, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) *General rule.*

(A) *Overpayment rate.* The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) *Underpayment rate.* The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) *Federal short-term rate.* For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) *Period during which rate applies.*

(i) *In general.* Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) *Special rule for the month of September, nineteen hundred eighty-nine.* The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(4) *Publication of interest rates.* The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(5) *Cross-reference.* For provisions relating to the power of the commissioner of finance to abate small amounts of interest, see subdivision (c) of this section.

(g) In computing the amount of any interest required to be paid under this chapter by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section 11-525 of this chapter.

§ 11-538 Secrecy requirement and the penalties for violation.

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision four of this section, any officer or employee of such depository, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or to the taxpayer's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns required under this chapter by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the enacting of this chapter. Reports and returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

2. Any officer or employee of the city or the state who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

3. *Cross-reference:* For criminal penalties, see chapter forty of this title.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax and reports and returns with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

5. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

7. Notwithstanding anything in subdivision one of this section, the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in subdivision (e) of section 11-506 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner of finance under this title.

§ 11-539 Inconsistencies with other laws.

If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

§ 11-540 Disposition of revenues.

All revenues resulting from the imposition of the taxes under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.