



Summary of Tax Provisions in SFY 2009-10 Budget

Contents

Summary of SFY 2009-10 Tax Provisions	<i>Personal Income Tax</i>	
	Temporary New York State Income Tax Rate Increase	1
	Limit on the Use of Itemized Deductions	2
	Amend Definition of “Presence in New York” for Determining Residency	2
	Filing Fees for Certain Non-LLC Partnerships	3
	Gains from the Sale of Interests in Partnerships or Other Entities	3
	Reciprocal Offset Program	3
	New York Higher Education Loan Program	3
	<i>Sales and Use Tax</i>	
	Affiliate Nexus	3
	Sales Tax on Transportation Services	4
	Commercial Aircraft and Nonresident Use Tax	4
	Article 28-A Special Tax on Passenger Car Rentals	4
	Prepaid Sales Tax on Cigarettes	5
	<i>Business Taxes</i>	
	Tax Treatment of Overcapitalized Captive Insurance Companies	5
	Change to the Tax Classification of HMOs	6
	Mandatory First Installment	6
	Telecommunications Study	7
	Replace County Law Wireless Surcharge with New Tax Law Section 186-f	7
	<i>Miscellaneous Taxes</i>	
	Alcoholic Beverage Tax Rate Increase on Beer and Wine	7
	Tobacco Products Increase	8
	Cigarette Registration Fee	8

Reauthorized Use of Highway Use Tax (HUT) Decals	8
Increased HUT Registration Fees	9
Pari-Mutuel Tax Extender	9

Compliance

Sales Tax Record Keeping Requirements and Penalties	9
Withholding Tax	10
Expedited Hearings	10
Increased Interest Rate for Underpayment of Tax	10
Modified Payment of Interest on Sales Tax Refunds	10
Withholding Due Date	10
Assistant District Attorney Designation	11
Third-Party Information Sharing for Sales Tax Compliance	11
Voluntary Disclosure Program Technical Amendment	11
Criminal Enforcement Provisions	11
Civil Fraud Penalties	12

Tax Credits

Empire Zones Reform	13
Empire State Film Production Credit	15
Tax Credit Repeal	15
Low-Income Housing Credit	15

Miscellaneous Provisions

Registration of Certain Tax Return Preparers and Refund Anticipation Loan (RAL) Facilitators	16
Additional Consumer Protection and Disclosure for RALs	18
Bad Check Fee	18
Eliminate the Middle Class STAR Rebates	18
Expanded Bottle Bill	19
Real Estate Transfer Tax (RETT) Revenue Distribution	19

Summary of SFY 2009-10 Tax Provisions

Personal Income Tax

Temporary New York State Income Tax Rate Increase

Part Z-1 of Chapter 57 of the Laws of 2009 amends the Tax Law to temporarily add two New York State income tax rates and brackets for tax years 2009 through 2011. The new top rate and bracket for all filing statuses for tax years 2009 to 2011 is 8.97 percent of taxable income in excess of \$500,000. The new “second to highest” tax rate is 7.85 percent and its taxable income bracket varies by filing status as shown below:

<u>Filing Status</u>	<u>Tax Rate</u>	<u>Taxable Income</u>
Single	7.85%	\$200,000 to \$500,000
Head of Household	7.85%	\$250,000 to \$500,000
Married Joint	7.85%	\$300,000 to \$500,000

The supplemental tax, which recaptures the benefits of the lower tax rates is also amended. For taxpayers with taxable income in the “second to highest” bracket, the recapture of rates below the “second to highest” bracket begins when New York adjusted gross income (NYAGI) is \$300,000 and is completed when NYAGI equals \$350,000. The recapture of rates below the highest rate begins when NYAGI is \$500,000 and is completed when NYAGI equals \$550,000, with an overall limitation on tax liability equal to the highest tax rate multiplied by taxable income. Thus, for tax years 2009-2011, a flat rate of 8.97 percent of taxable income will apply for taxpayers with NYAGI in excess of \$550,000.

Because the new law is retroactive to January 1, 2009, withholding tables for these high-income employees will reflect 12 months of the higher withholding within the remaining months of 2009. Similarly, for taxpayers who make quarterly estimated payments, they must recompute their 2008 liability using the new 2009 rate schedule and supplemental tax in order to avoid underpayment penalty under the 100 percent of prior year’s liability safe harbor.

Limit on the Use of
Itemized Deductions

Part W-1 of Chapter 57 of the Laws of 2009 further limits the use of itemized deductions, except charitable contributions, by taxpayers with New York Adjusted Gross Income (NYAGI) over \$1 million. New York already limits the availability of itemized deductions for certain high income taxpayers. Currently, the maximum percentage of disallowed deductions equals 50 percent for all taxpayers with NYAGI above \$525,000. This provision completely eliminates the use of itemized deductions, except for the current 50 percent of charitable contributions, by a taxpayer with more than \$1 million of NYAGI. This part is effective for taxable years beginning on or after January 1, 2009.

Amend Definition of
"Presence in New York" for
Determining Residency

Part A-1 of Chapter 57 of the Laws of 2009 redefines the term "presence" in New York when determining a taxpayer's New York residency status under the 548 day rule. Under the current 548 day rule, a taxpayer domiciled in New York is not taxed as a resident if, within an 548 consecutive day period, (1) the taxpayer is present in a foreign country for at least 450 days; (2) the taxpayer is not present in the state for more than 90 days; and (3) his or her spouse and minor children do not reside at the taxpayer's permanent place of abode in New York for more than 90 days. This provision amends the definition and taxes as a New York resident a New York domiciliary who is out of the country for at least 450 of any 548 consecutive days, but whose spouse and minor children are in New York for more than 90 days of that period, regardless of whether the spouse and children spend any of their time in New York at the taxpayer's permanent place of abode. This part is effective for taxable years beginning on or after January 1, 2009.

Filing Fees For Certain
Non-LLC Partnerships

Part H-1 of Chapter 57 of the Laws of 2009 extends the annual filing fee currently imposed on limited liability companies and limited partnerships to general partnerships based upon their New York source gross income. General partnerships whose New York source gross income is less than \$1 million dollars are exempt from this provision. The fee equals \$1,500 for gross incomes between \$1 million and \$5 million, \$3,000 for gross incomes between \$5 million and \$25 million, and \$4,500 for gross incomes exceeding \$25 million. This part is effective for tax years beginning on or after January 1, 2009.

Gains from the Sale of Interests in Partnerships and Other Entities

Part F-1 of Chapter 57 of the Laws of 2009 includes the gain from the sale of interests in certain partnerships and other entities as New York source income to nonresidents to the extent that the gain is attributable to the entity's ownership of real property in New York. A nonresident is required to include a portion of the gain or loss from the sale of his or her interest in an entity if 50 percent or more of the entity's assets consist of real property located in New York. The entities covered by the provision include partnerships, limited liability companies, S corporations, and non-publicly traded C corporations with 100 or fewer shareholders. This part is effective immediately and applies to sales or exchanges of entity interests occurring 30 or more days after enactment.

Reciprocal Offset Program

Part D-1 of Chapter 57 of the Laws of 2009 provides authority to the Department of Taxation and Finance (the Department) to enter into a reciprocal offset agreement with the Federal government or another state. The provision allows New York to enter into an agreement with the U.S. Treasury Department to collect unpaid State debt through offset of Federal non-tax payments, and for the Federal government to collect delinquent non-tax debt by the offset of State payments. This part is effective immediately.

New York Higher Education Loan Program (NYHELP)

Part J of Chapter 57 of the Laws of 2009 creates the New York Higher Education Loan Program (NYHELP). The program will be administered by the New York State Higher Education Service Corporation (HESC). Interest paid on NYHELPS student loans are deductible for purposes of any income or franchise tax imposed by the State or its political subdivisions.

Sales and Use Tax

Affiliate Nexus

Part P-1 of Chapter 57 of the Laws of 2009 updates the definition of a sales tax vendor to include an "affiliate nexus" provision. The law provides that a vendor required to collect sales tax includes a remote seller of taxable tangible personal property or services if an affiliated person that is a sales tax vendor uses the same trademarks, service marks, or trade names as those used by the remote seller. It also provides that a remote seller is required to register as a sales tax vendor if an affiliated person engages in activities in the State that inure to the benefit of the seller and

help it develop or maintain a market for its goods or services in the state. This latter provision applies to the extent that such activities of the in-state affiliate are sufficient to satisfy the nexus requirement of the United States Constitution. The law specifies that the term “affiliate” has the same meaning as in Tax Law section 1101(b)(8)(v)(B). This part is effective June 1, 2009.

Sales Tax on
Transportation Services

Part U-1 of Chapter 57 of the Laws of 2009 imposes State and local sales tax on certain transportation services. Transportation service is defined as livery service provided by limousine, black car, or other motor vehicle with a driver. However, the sales tax will not apply to taxicab and bus services, scheduled public transportation services, or services provided in connection with a funeral. This part is effective June 1, 2009.

Commercial Aircraft and
Nonresident Use Tax

Part N-1 of Chapter 57 of the Laws of 2009 narrows the sales tax exemption for commercial aircraft and the use tax exemption for motor vehicles, vessels, and aircraft to thwart two abusive tax avoidance schemes. First, Tax Law section 1101(b)(17) is amended to provide that an aircraft used primarily to transport the purchaser’s personnel (including agents, employees, officers, members, partners, managers or directors) or those of an affiliated entity does not qualify for the exemption. Second, the use tax exemption for property purchased by the user while a nonresident of New York (Tax Law section 1118(2)) is amended to provide that it does not apply to the use of an aircraft, vessel, or motor vehicle purchased by a business entity out-of-state for use in-state primarily to carry certain individuals. Such individuals include those employed by or otherwise associated with either (1) the purchaser, if any of the transported individuals were residents at the time of the property’s purchase, or (2) an affiliated entity of the purchaser, if the affiliated entity was a resident when the property was purchased. This part is effective June 1, 2009.

Article 28-A Special Tax on
Passenger Car Rentals

Part R-1 of Chapter 57 of the Laws of 2009 increases the additional State tax on passenger car rentals by 1 percentage point, from 5 percent to 6 percent. This part is effective June 1, 2009.

Prepaid Sales Tax on Cigarettes

Part M-1 of Chapter 57 of the Laws of 2009 increases the prepaid sales tax on cigarettes from 7 percent to 8 percent of the base retail price. Raising the rate from 7 percent to 8 percent will better reflect the combined State and local sales tax rates in effect in New York. The prepaid sales tax is paid by the stamping agent at the time the cigarette tax stamp is purchased and is indexed every September 1st to reflect changing cigarette prices. This part is effective June 1, 2009.

Business Taxes

Tax Treatment of Overcapitalized Captive Insurance Companies

Part E-1 of Chapter 57 of the Laws of 2009 makes changes to the tax treatment of captive insurance companies by providing special rules for overcapitalized captive insurance companies (“OCICs”).

An OCIC is defined as any entity that is treated as an association taxable as a corporation under the Internal Revenue Code (IRC) that meets all of the following conditions: (a) more than 50 percent of the voting stock of the corporation is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the IRC and not exempt from federal income tax; (b) it is licensed as a captive insurance company under the laws of this state or another jurisdiction; (c) its business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent and/or members of its affiliated group; and (d) 50 percent or less of its gross receipts for the taxable year consist of premiums.

The legislation requires an OCIC to file a combined report with the corporation that directly owns or controls over 50 percent of the voting stock of the captive if that corporation is either a corporate franchise taxpayer under Article 9-A, a bank franchise taxpayer under Article 32, or a corporation required to file a combined report under either Articles 9-A or 32. An OCIC, more than 50 percent of whose voting stock is not directly owned or controlled by a taxpayer or by a corporation required to file an Article 9-A or Article 32 combined report, is required to file a combined return with the closest controlling stockholder of the captive if the closest controlling stockholder is subject to tax under Articles 9-A or 32, or is required to file a combined return under those articles.

The closest controlling stockholder is the corporation that indirectly owns or controls over 50 percent of the voting stock of the OCIC and is the fewest tiers of corporations away from the captive. The legislation provides rules for the application to OCICs of the other combined reporting provisions of Article 9-A. In the case of an OCIC included in a combined report under Articles 9-A or 32, the entire net income of the captive is to be determined in the same manner as any other subsidiary. The legislation also provides that the Gramm-Leach-Bliley (GLBA) transitional provisions in Tax Law section 1452(m) do not apply to an OCIC. In addition, the definition of an insurance company subject to franchise tax under Article 33 is amended to exclude an OCIC.

This part is effective immediately and applies to taxable years beginning on or after January 1, 2009.

Change to the Tax
Classification of HMOs

Part B-1 of Chapter 57 of the Laws of 2009 changes how Health Maintenance Organizations (HMOs) are taxed. The legislation provides that HMOs will be subject to the franchise tax on insurance corporations under Article 33 of the Tax Law. HMOs will be subject to tax on the higher of two bases: a tax on premiums or a fixed dollar minimum tax of \$250. The premiums tax is imposed at a rate of 1.75 percent on accident or health premiums, and 2 percent on any other premiums. Previously, HMOs were subject to the corporate franchise tax under Article 9-A of the Tax Law and were not taxed on premiums. The legislation also provides that non-profit HMOs will remain exempt from tax and that taxable premiums will not include premiums that New York State is prohibited from taxing under Federal law. The part is effective immediately and applies to taxable years beginning on or after January 1, 2009.

Mandatory First Installment

Part G-1 of Chapter 57 of the Laws of 2009 increases the percentage that corporate taxpayers with a prior year tax liability over \$100,000 must use to calculate their mandatory first installment payment of franchise tax and the MTA surcharge. For these large taxpayers, the percentage is increased from 30 percent to 40 percent of the prior year's tax or surcharge. This increase is applicable to all taxpayers subject to tax under Articles 9-A and 32 of the Tax Law and non-life insurance companies subject to tax under Article 33. Under Article 9, the increase only applies to taxpayers subject to tax under Sections 184, 186-a, and 186-e of the Tax Law.

Taxpayers with a prior year tax between \$1,000 and \$100,000 will continue to use the 25 percent amount to calculate their mandatory first installment. The increase applies to taxable years beginning on or after January 1, 2010.

Telecommunications Study Part NN of Chapter 59 of the Laws of 2009 authorizes and directs the Department, in consultation with the Public Service Commission, to conduct a study of assessments, fees, tax rates, and associated policies of the state of New York relating to the telecommunications industry. The written study shall be presented to the Governor, the Temporary President of the Senate, the Speaker of the Assembly, the Minority Leader of the Senate, and the Minority Leader of the Assembly on or before October 1, 2009.

Replace County Law Wireless Surcharge with New Tax Law Section 186-f Part B of Chapter 56 of the Laws of 2009 moves the imposition of the surcharge on wireless communication from the County Law Section 309 to new Tax Law Section 186-f. The surcharge would now be called the Public Safety Communications Surcharge and wireless suppliers would be required to refer to the surcharge by name on bills provided to customers. Suppliers would only be allowed to receive their administrative allowances if they timely file the required return and timely remit payment of the surcharge.

Although the wireless communications supplier has no legal obligation to enforce the collection of the surcharge, they are required to collect and retain the name and address of wireless customers with a primary place of use in New York that refuse to pay the surcharge and the cumulative amount of surcharge remaining unpaid, and must provide this information to the Department. This part is effective September 1, 2009.

Miscellaneous Taxes

Alcoholic Beverage Tax Rate Increase on Beer and Wine Part X-1 of Chapter 57 of the Laws of 2009 increases the alcohol beverage tax rates for both beer and wine and imposes a floor tax on existing beer and wine inventories. The beer tax rate is increased from \$.11 per gallon to \$.14 per gallon. The wine rate is increased from \$.1893 per gallon to \$.30 per gallon. The new rates are effective on May 1, 2009. In order to subject beer and wine held in inventory on May 1, 2009 to the increased rates, a floor tax is imposed on all existing inventories held by retailers

and wholesalers as of May 1, 2009. The floor tax rate is the difference between the new rate and the previous rate. For beer the floor tax rate is \$.03 per gallon and for wine the floor tax rate is \$.1107 per gallon. Payment of the floor tax is due no later than July 20, 2009.

Tobacco Products
Increase

Part I-1 of Chapter 57 of the Laws of 2009 increases the tobacco products tax rate from 37 percent to 46 percent of the wholesale price. This new rate would apply to all tobacco products other than cigarettes and snuff. Products affected by the rate increase would include cigars, chewing tobacco, pipe and roll-your-own tobacco. The part is effective immediately.

Cigarette Registration Fee

Part C, Section 125, of Chapter 58 of the Laws of 2009 increases the annual application fees and related civil penalties for cigarette and tobacco product retail dealers and vending machine operators. The application fee for retail dealers will increase from \$100 to:

- \$1,000 for each retail location with annual gross sales of less than \$1 million;
- \$2,500 for each retail location with annual gross sales of at least \$1 million but less than \$10 million; and
- \$5,000 for each retail location with annual gross sales of at least \$10 million.

The application fee for owners or operators of vending machines that sell cigarettes or tobacco products will increase from \$25 to:

- \$250 for each vending machine with annual gross sales of less than \$100,000;
- \$625 for each vending machine with annual gross sales of at least \$100,000 but less than \$1 million; and
- \$1,250 for each vending machine with annual gross sales of at least \$1 million.

This part is effective September 1, 2009 for all applicants applying for a calendar year 2010 registration certificate or vending machine sticker.

Reauthorized Use of
Highway Use Tax (HUT)
Decals

Part K-1 of Chapter 57 of the Laws of 2009 reauthorizes the Commissioner to require HUT decals on the exterior of all vehicles subject to HUT as evidence that the carrier has a valid certificate of registration. The decals, if required by the Commissioner, would be issued to carriers at a fee of \$4 per vehicle.

HUT decals were historically used by the Department as an effective means of enforcing the State's highway use tax since the decals were readily recognizable to law enforcement personnel on the State's highways. In 2007, the State repealed the use of decals as a result of the enactment of Federal legislation prohibiting states from using decals as evidence of highway use tax compliance. In 2008, the Federal government repealed that prohibition. This legislation reauthorizes, but does not require, the use of these decals.

This part is effective immediately.

Increased HUT
Registration Fees

Part T-1 of Chapter 57 of the Laws of 2009 increases the renewal fees for HUT certificates of registration (C of R) to \$15 per vehicle. Under prior law, C of R fees for re-registration were \$4 per motor vehicle and \$2 per automotive trailer registered. The new re-registration fees will be applicable for the HUT re-registration scheduled for SFY 2009-10 and for any future re-registrations required by the Commissioner.

Pari-Mutuel Extender

Part L-1 of Chapter 57 of the Laws of 2009 extends for one year the lower pari-mutuel tax rates that were reauthorized by the Laws of 2008. In addition, it extends for one year the authorization for account wagering and rules governing wagering on simulcast out-of-state thoroughbred and harness races.

Compliance

Sales Tax
Record Keeping
Requirements and
Penalties

Part V-1, Subpart A, of Chapter 57 of the Laws of 2009 imposes additional record keeping requirements on certain sales tax vendors and imposes penalties for failure to keep adequate records. Any vendor who has elected to maintain any portion of their records in an electronic format will be required to provide those electronic records to Department staff upon request. The electronic records must be provided regardless of whether or not the vendor maintains and provides the records in a hard copy format. Failure to provide the record electronically will result in additional penalties not to exceed \$5,000 for each quarterly period the records should have been provided but were not.

In addition, a penalty of \$1,000 for the first quarter and \$5,000 for each additional quarter will be imposed for every quarter in which a vendor fails to maintain adequate records in any format. Furthermore, any vendor who fails to provide records in auditable form will be subject to a penalty not to exceed \$1000 for each quarterly period the records should have been provided.

This part has various effective dates.

Withholding Tax	<p>Part V-1, Subpart B, of Chapter 57 of the Laws of 2009 increases the penalty under Section 685(g) of the Tax Law for failure to collect and pay over tax by adding interest to the amount of tax evaded. This part applies to taxable years beginning on or after January 1, 2009.</p>
Expedited Hearings	<p>Part V-1, Subpart C, of Chapter 57 of the Laws of 2009 provides for an expedited hearing process in cases involving:</p> <ul style="list-style-type: none"> • the proposed cancellation, revocation, suspension, or denial of application for a license, permit, registration, or other credential issued by the Department, and • penalties for aiding or assisting in the filing of fraudulent documents. <p>This part is effective immediately and applies to notices issued on or after such date.</p>
Increased Interest Rate for Underpayment of Tax	<p>Part V-1, Subpart D, of Chapter 57 of the Laws of 2009 increases the interest rate paid by taxpayers on amounts of tax underreported or underpaid by one and one half percentage points. It also increases the minimum interest rate levied in certain taxes by one and one half percentage points (from 6 percent to 7.5 percent). This part is effective immediately.</p>
Modified Payment of Interest on Sales Tax Refunds	<p>Part V-1, Subpart D, of Chapter 57 of the Laws of 2009 also amends the sales tax law to change how interest is computed on amounts of tax credited or refunded. Taxpayers had generally received interest based on the date that the tax was originally paid. Under the new law, interest accrues from the date that the claim for the credit or refund is made. No interest is paid, however, if the Department processes the claim within 90 days. This change applies to credits and refunds claimed on or after June 1, 2009.</p>
Withholding Due Date	<p>Part V-1, Subpart E, of Chapter 57 of the Laws of 2009 accelerates the due date for the last quarterly withholding filing date from February 28th to January 31st. This would conform the due date for quarterly returns for the last quarter to the date for the returns for the other three calendar quarters. This part is effective immediately.</p>

Assistant District Attorney
Designation

Part V-1, Subpart F, of Chapter 57 of the Laws of 2009 amends section 702 of the County Law to allow District Attorneys to cross-designate Department attorneys as special assistant district attorneys in State tax enforcement cases without regard to the residency of the appointed attorney. This part is effective immediately.

Third-Party Information
Sharing for Sales Tax
Compliance

Part V-1, Subpart G, of Chapter 57 of the Laws of 2009 requires the following third-parties that transact business with sales tax vendors to file annual information returns with the Department:

- Alcoholic beverage wholesalers licensed by the State Liquor Authority, regarding their sales to bars, restaurants, grocery stores, liquor stores, etc;
- Franchisors, regarding yearly sales by their franchisees in state; and
- Auto insurers, regarding payments on behalf of their insured to motor vehicle repair shops.

The new law requires that the third parties report to the sales tax vendors that they have shared this information with the Tax Department. The law also provides penalties for noncompliance with these information reporting requirements. The first information return required under this law will be due September 20, 2009 and will cover the sales period March 1, 2009 through August 31, 2009.

Voluntary Disclosure
Program Technical
Amendment

Part V-1, Subpart H, of Chapter 57 of the Laws of 2009 clarifies that the Voluntary Disclosure and Compliance Program enacted in 2008 allows for the disclosure of return information to the Internal Revenue Service and other taxing authorities. This part is effective immediately.

Criminal Enforcement
Provisions

Part V-1, Subpart I, of Chapter 57 of the Laws of 2009 revises the current criminal tax law and creates a new crime, tax fraud, which replaces many of the criminal provisions in the former law. The new law defines the ways in which tax fraud can be committed and is applicable to all taxes administered by the Department. It also creates a new series of felony classifications for tax fraud that elevate the criminal tax penalties for tax evasion as the amount of tax fraud increases. The lowest level of tax crime, involving the willful commission of a tax fraud act is a class A misdemeanor (Tax Fraud in the 5th Degree). A tax fraud act that

results in the evasion of \$3,000 of owed taxes is a class E felony if the taxpayer acted with the intent to evade that tax. A tax fraud act that results in evasion exceeding \$10,000 is a class D felony; one resulting in evasion exceeding \$50,000 is a class C felony. The top offense, involving evasion of more than \$1,000,000, constitutes Tax Fraud in the 1st Degree, a class B felony.

In addition to creating these new criminal provisions, the new law (1) increases the monetary penalties that criminal courts can impose in tax cases to twice the amount of unpaid tax liability, (2) relaxes the venue provisions for tax crimes, (3) expands criminal penalties for refusing to comply with a Department subpoena, and (4) adds a criminal penalty for preparers who willfully fail to register or sign returns.

This part is effective immediately and applies to offenses committed on or after the effective date.

Civil Fraud Penalties

Part V-1, Subpart J, of Chapter 57 of the Laws of 2009 increases civil fraud penalties for failure to pay tax or pay over tax due to fraud to two times the amount of tax evaded for all tax types. Furthermore, it creates the following additional new penalties:

Crime	Penalty
Failure to file an informational return on or before the due date (Article 12A only)	1 st violation: \$1,500 2 nd and subsequent violation: \$3,000
Failure to file an informational return within sixty days of the due date (Article 12A only)	1 st violation: \$2,000 2 nd and subsequent violation: \$4,000
Failure to file a complete informational return (Article 12A only)	1 st violation: \$1,500 2 nd and subsequent violation: \$3,000
Making a statement on an informational return for which there was no reasonable basis when made (Article 12A only)	1 st violation: \$2,000 2 nd and subsequent violation: \$4,000
Submitting certain frivolous submissions (Article 22 only)	\$5,000
False or fraudulent document penalty (Articles 22, 9, 9-A, 32, 33, 28 and 29)	\$100/document or \$500/tax return
Paid tax preparers who aid or assist in the preparation of fraudulent returns, reports, statements, or other documents or who supply false information to the Department. (Articles 28 and 29)	\$5,000

This part is effective immediately.

Tax Credits

Empire Zones Reform

Empire Zones Reform

Part S-1 of Chapter 57 of the Laws of 2009 makes numerous changes to the Empire Zones Program that provides tax benefits under Article 22, Article 9-A, Article 32, Article 33, and select sections of Article 9. The changes fall into several categories:

Administration

- In 2009, Empire State Development (ESD) will conduct a performance review of all companies that have been certified for at least three years. Companies receiving tax benefits in excess of the amount of their wages, benefits, and investment, and firms certified prior to August 1, 2002 that used reincorporation strategies to manipulate eligibility for and calculation of tax benefits will be decertified.
- ESD will issue an Empire Zone Retention Certificate (EZRC) to all qualifying firms. Qualifying firms are existing certified businesses with less than three years in the Program and those with three or more years that pass the review. Businesses that do not qualify will be notified by mail with information on the appeals process.
- ESD will conduct its review based on business annual reports submitted by certified businesses during the 2001 to 2007 period.
- 2008 tax returns claiming EZ credits without the EZRC will not be accepted.
- Firms seeking certification by ESD after April 1, 2009 are required to meet a ratio comparing wages, benefits, and investments to EZ tax benefits. The general ratio is 20:1, although manufacturers are subject to a 10:1 ratio. ESD retains some discretion to certify companies not meeting the ratios.
- All previous criteria for certification and decertification remain.
- The EZ Program sunset date is accelerated from June 30, 2011 to June 30, 2010.

Tax Law Changes

Decertifications resulting from ESD's review will preclude taxpayers from claiming benefits starting with the 2008 tax year. This has several implications:

- Taxpayers that do not receive an EZRC will not be allowed to use carryforwards of EZ wage tax credit, investment tax credit, employment incentive credit, and capital credit.

-
- Taxpayers with an understatement of 2008 liability solely because they failed ESD's review and were denied the use of EZ credits will not be assessed an underpayment penalty.

For taxpayers that are granted a retention certificate by ESD:

- The period of time in which the Tax Department pays no interest on overpayment refunds is extended to 180 days after the filing of a 2008 tax return with an EZRC.
- Generally, when taxpayers have not received a refund within six months of timely filing a return, they may petition the Tax Department for the refund. The Executive Budget moved the start of the six month period from the date an original return was filed to the date a return was filed with an EZRC.

These two changes are intended to allow time for ESD's review, the issuance and dissemination of EZRCs, and, for taxpayers that already filed returns before receiving an EZRC, the filing and processing of a return accompanied by a retention certificate.

The budget also converted the Qualified Empire Zone Enterprise (QEZE) sales and use tax exemption to a refund or credit of tax paid on qualifying property and services (with local option).

Finally, Part S-1 made two prospective changes applicable to companies certified on or after April 1, 2009:

- The QEZE real property tax credit is reduced by 25 percent.
- The company is not eligible for the QEZE sales tax refund/credit unless the sale or use qualifies for a refund or credit of the county or city sales and use tax.

Annual Report

The annual QEZE report submitted to the Governor, the Temporary President of the Senate, the Speaker of the Assembly, and the Chairs of the Senate and Assembly fiscal committees is repealed, effective January 1, 2012. In its place, the Department will issue a more expansive report that will be fully available to the public. The new report will list the name of every business entity claiming EZ/QEZE credits (including the sales tax refund/credit) and the corresponding amounts of credit claimed.

Reporting will be limited to the entity earning the credit; individual taxpayers receiving credit because they are partners, members, or shareholders in a pass-through entity will not be listed in the report.

Empire State Film
Production Credit

Part Y-1 of Chapter 57 of the Laws of 2009 provides an additional authorization of \$350 million in Empire State film production credit for 2009. The credit, administered by the Governor's Office for Motion Picture and Television Development, can be claimed by personal income and corporate franchise taxpayers.

Also, effective for taxable years beginning on or after January 1, 2009, the utilization of the credit is spread across several years, depending on the size of the credit:

If the amount of the credit is:	it is claimed:
under \$1 million	in the taxable year in which the film is completed
at least \$1 million but less than \$5 million	over a two year period, with half claimed each year
at least \$5 million	over a three year period, with one-third claimed each year

Tax Credit Repeal

Part C-1 of Chapter 57 of the Laws of 2009 repeals two tax credits: the fuel cell electric generating equipment credit and the transportation improvement contribution credit. The two credits, prior to their repeal, were available to personal income and corporate taxpayers. Taxpayers will no longer be able to earn these tax credits for tax years beginning on or after January 1, 2009.

Low-Income Housing
Credit

Part J-1 of Chapter 57 of the Laws of 2009 increases the statewide aggregate credit limit for the low-income housing credit from \$20 million to \$24 million. The credit, awarded by the Division of Housing and Community Renewal, can be claimed by personal income, corporate franchise, bank, and insurance taxpayers.

In addition, to conform with a recent change to the Federal low-income housing credit, Part J-1 eliminates the security bond in lieu of recapture option. Previously, taxpayers disposing of an interest in a low-income housing building were not required to recapture the credit immediately. Instead, they could post a bond intended to satisfy any liability stemming from credit recapture in the event the building fell out of compliance as low-income housing in the future. As a result of Part J-1, taxpayers will no longer post a bond, but recapture is deferred if it is reasonably expected that the building will remain in compliance. Should the building cease to qualify, the period to issue a deficiency assessment arising from credit recapture is extended to three years beyond the date the taxpayer notified the Commissioner of DHCR that the building was no longer in compliance.

Miscellaneous Provisions

Registration of Certain Tax Return Preparers and Refund Anticipation Loan (RAL) Facilitators

Part VV of Chapter 59 of the Laws of 2009 requires the electronic registration with the Department of tax return preparers and facilitators of Refund Anticipation Loans (RALs) and refund anticipation checks. Tax return preparers are defined as individuals who, for compensation, prepare a substantial portion of New York tax returns or reports for filing with the Department. Excluded from the definition of tax return preparers are attorneys, public accountants, and certified public accountants (CPAs), who are registered with or licensed by the State, and employees preparing returns under the supervision of such attorneys, public accountants, and CPAs. Also excluded are volunteer tax preparers and certain employees of businesses or partnerships, and tax return preparation businesses providing only clerical or other comparable services.

Facilitators are defined as persons who individually in conjunction or cooperation with another person: (a) solicit the execution of, process, receive or accept an application or agreement for a RAL or refund anticipation check; (b) serve or collect upon a RAL or refund anticipation check; or (c) in any other manner facilitate the making of a RAL or refund anticipation check. This term excludes any employees of a facilitator who provide clerical or other comparable support services to a facilitator.

Upon registration, tax return preparers will receive a tax preparer registration certificate. They will also receive a unique identifying number provided by the Department that must be included, along with the tax return preparer's signature, on tax returns or reports that must be signed. Tax return preparers will be required to electronically re-register with the Department annually.

A commercial tax return preparer is a tax return preparer who (1) prepared 10 or more New York tax returns or reports in the preceding calendar year, and will prepare at least one New York tax return or report during the current calendar year; or (2) prepared fewer than 10 New York tax returns or reports in the preceding calendar year but will prepare 10 or more New York tax returns or reports for the current calendar year. In addition to

registering, commercial tax return preparers must electronically pay an annual fee of \$100 to the Department in order for their registration or re-registration to be complete.

Penalties are added for:

- tax return preparers or facilitators who fail to register or re-register;
- commercial tax return preparers who fail to pay the annual fee;
- tax return preparers who fail to sign a New York tax return or report when required, or a facilitator who fails to sign RAL or refund anticipation check facilitation documents;
- tax return preparers or facilitators who fail to include the unique identification number assigned by the Department on any New York tax return or report that requires the tax return preparer's signature, or on RAL or refund anticipation check facilitation documents; and
- tax return preparers, facilitators, or commercial tax return preparer businesses that employ as a tax return preparer an individual who is not registered with the Department.

The legislation also proscribes certain activities associated with the facilitation of RALs and refund anticipation checks and imposes penalties. If a tax return preparer is not registered, or if a commercial tax return preparer has not paid the annual fee, then the tax return preparer or commercial tax return preparer cannot represent his or her clients before the Department or the Division of Tax Appeals.

The legislation also requires the Commissioner of Taxation and Finance (the Commissioner) to create a Task Force to examine the need for additional oversight of tax return preparers. The Task Force would prepare a report making recommendations to the Commissioner and the Governor regarding the scope of the regulatory scheme and appropriate professional qualifications, including, but not limited to, minimum educational qualifications and continuing educational requirements for tax return preparers. The report would be due no later than March 31, 2012.

Additional Consumer
Protection and Disclosure
for RALs

Part VV of Chapter 59 of the Laws of 2009 amends the Consumer Bill of Rights regarding tax preparers (§372 of the General Business Law) to define RAL facilitators and certain terms related to RALs and refund anticipation checks. The legislation also directs the Department to coordinate its response to consumer tax preparer complaints with the State Consumer Protection Board and amends the mandatory written and oral disclosure to taxpayers that tax preparers facilitating RALs and refund anticipation checks must make to taxpayers before they enter into an agreement.

Bad Check Fee

Part VV of Chapter 59 of the Laws of 2009 imposes a \$50 fee when a check, money order, or electronic funds withdrawal is returned without payment for reasons other than an error by the Department or the originating depository financial institution. This part is effective for all authorized tax documents required to be filed for tax years beginning on or after January 1, 2009.

Eliminate the Middle Class
STAR Rebates

Part M of Chapter 57 of the Laws of 2009 repeals the Middle Class STAR rebates that were scheduled to be issued by the Department in the fall of 2009 and each year thereafter. The program provided rebate checks to homeowners who received either a Basic or Enhanced STAR exemption on their school tax bills. The rebate amount was determined by a formula based on the owner's income level. Property owners with income of \$250,000 or more were not eligible to receive a rebate. The bill does not affect property owners' Basic or Enhanced STAR exemption.

Part M also reduces, for New York City residents only, the City school tax credit. Beginning in tax year 2009, the credit is lowered from \$325 to \$125 for married couples, and from \$155 to \$62.50 for all other filing statuses. Under the old law, City residents with income of \$250,000 or more did not receive the credit, and that threshold would have been indexed for inflation starting in 2010.

Expanded Bottle Bill	Part SS of Chapter 59 of the Laws of 2009 amends the Environmental Conservation Law to require a five cent deposit to be initiated on water beverage containers (in addition to the soda and beer containers already subject to the deposit). Every quarter, each deposit initiator is required to remit to the Department 80 percent of its unclaimed deposits. This part has various effective dates.
Real Estate Transfer Tax (RETT) Revenue Distribution	Part T of Chapter 59 of the Laws of 2009 decreases the amount of real estate transfer tax revenue to be deposited in the State's Environmental Protection Fund. Beginning in State Fiscal Year (SFY) 2009-2010, the amount of revenue to be deposited into the Fund decreases from \$237 million to \$199.3 million. This change applies to four State Fiscal Years (i.e., through SFY 2012-2013) and is effective immediately.

Index of SFY 2009-10 Tax Provisions				
Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 57 of the Laws of 2009 (S.57-B/A.157-B)				
Section	Page(s)	Subject	Description	Effective Date
Part J	28-45	Creates the New York Higher Education Loan Program (NYHELP)	Interest paid on NYHELPS student loans are deductible for purposes of any income or franchise tax imposed by the State or its political subdivisions.	July 1, 2009
Part M	45-46	STAR Rebate Repeal	Repeals the Middle Class STAR Rebate program and reduces the New York City school tax credit.	For the rebate program commencing in 2009 and for TYBOA January 1, 2009
Part A-1	80-82	Amends the Definition of "Presence in New York" for Determining Residency	Redefines the term "presence" in New York when determining a taxpayer's New York residency status under the 548 day rule.	TYBOA January 1, 2009
Part B-1	82-85	Change to the Tax Classification of Health Maintenance Organizations (HMOs)	Reclassifies for-profit HMOs as insurance corporations taxable on premiums under Article 33.	TYBOA January 1, 2009
Part C-1	85-89	Tax Credit Repeal	Repeals fuel cell electric generating equipment credit and transportation improvement contribution credit.	TYBOA January 1, 2009
Part D-1	89-91	Reciprocal Offsets	Authorizes the Department to enter into a reciprocal offset agreement with the Federal government or another state.	Immediately
Part E-1	91-97	Tax Treatment of Overcapitalized Captive Insurance Companies	Requires an overcapitalized captive insurance company to file a combined return with its parent corporation or closest controlling stockholder under Article 9-A or 32.	TYBOA January 1, 2009
Part F-1	97-98	Nonresident Sales of Realty Interests	Includes the gain from the sale of interests in partnerships and other entities as New York source income to nonresidents to the extent that the gain is attributable to the entity's ownership of real property in New York.	Immediately and applies to sales or exchanges of entity interests occurring 30 or more days after enactment
Part G-1	98-100	Mandatory First Installment	Increases the mandatory first installment of estimated tax and estimated MTA surcharge for certain business taxpayers with a prior year tax over \$100,000.	TYBOA January 1, 2010

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 57 of the Laws of 2009 (S.57-B/A.157-B)				
Section	Page(s)	Subject	Description	Effective Date
Part H-1	100-101	Partnership Filing Fees	Extends the annual filing fee currently imposed on limited liability companies and limited partnerships to general partnerships based upon their New York source gross income.	TYBOA January 1, 2009
Part I-1	101-102	Increase Excise Tax on Tobacco Products	Increases the excise tax on tobacco products (other than cigarettes and snuff) from 37 percent to 46 percent of the wholesale price.	Immediately
Part J-1	102-103	Low-Income Housing Credit	Authorizes additional \$4 million in credit; eliminates bond in lieu of recapture option.	Immediately
Part K-1	103-104	Reauthorizes the Use of Highway Use Tax (HUT) Decals	Reauthorizes the Department to require HUT decals on exterior of all vehicles subject to HUT.	Immediately
Part L-1	105 -110	Pari-Mutuel Tax Extender	Extends for one year various expiring simulcast wagering provisions.	Immediately
Part M-1	110	Prepaid Sales Tax on Cigarettes	Increases the prepaid sales tax rate on cigarettes from 7 percent to 8 percent of the base retail price.	June 1, 2009
Part N-1	110-111	Commercial Aircraft and Nonresident Use Tax Exemption	Closes tax avoidance loopholes for certain aircraft, vessels, and motor vehicles.	June 1, 2009
Part P-1	118-119	Affiliate Nexus	Expands the definition of a sales tax vendor to include remote sellers with certain affiliated persons in New York State.	June 1, 2009
Part R-1	119	Special Tax on Passenger Car Rentals	Increases the additional State tax rate on passenger car rentals, by 1 percent, from 5 percent to 6 percent.	June 1, 2009

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 57 of the Laws of 2009 (S.57-B/A.157-B)				
Section	Page(s)	Subject	Description	Effective Date
Part S-1	120-143	Empire Zones Reform	<p>Requires ESD review and decertification of certain companies</p> <p>Makes Tax Law administrative changes to implement review/decertification process</p> <p>Converts QEZE Sales Tax exemption to a refund/credit</p> <p>Creates benefit/cost ratio as prerequisite to future ESD certification</p> <p>Advances sunset one year</p> <p>Reduces QEZE real property tax credit by 25 percent</p> <p>Sales tax local opt-in</p> <p>Mandates public EZ/QEZE report</p>	<p>Immediately</p> <p>TYBOA January 1, 2008</p> <p>The first day of the sales tax quarter commencing at least 60 days after the act becomes effective</p> <p>Immediately</p> <p>June 30, 2010</p> <p>Certifications on/after April 1, 2009</p> <p>Certifications on/after April 1, 2009</p> <p>January 31, 2013</p>
Part T-1	143-144	Increase HUT Renewal Fees	Increases the renewal fee for HUT certificates of registration from current law \$4 per vehicle to \$15 per vehicle.	Immediately
Part U-1	144-146	Sales Tax on Transportation Services	Imposes sales tax on certain transportation services including limousine, black car, and other motor vehicle services . It excludes taxi service, bus service, and any other scheduled public transportation.	June 1, 2009
Part V-1, Subpart A	147-148	Sales Tax Record Keeping and Penalties	Requires vendors who keep records electronically to make those records available upon request. Also imposes penalties for failing to comply with the request for electronic records and for failing to present records in an auditable form.	Immediately

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 57 of the Laws of 2009 (S.57-B/A.157-B)				
Section	Page(s)	Subject	Description	Effective Date
Part V-1, Subpart B	149	Withholding Tax	Increases the penalty for failure to collect and pay over tax under Tax Law Section 685(g).	TYBOA January 1, 2009
Part V-1, Subpart C	149-151	Expedited Hearings	Provides for an expedited hearing process in certain cases.	Immediately and will apply to notices issued on or after such date
Part V-1, Subpart D	151-162	Interest Rate for Underpayment of Tax	Increases the interest rates on underpayments of tax.	Immediately
Part V-1, Subpart D	151-162	Modified Payment of Interest on Sales Tax Refunds	Amends the sales tax law to change how interest is computed on amounts of tax credited or refunded.	Applies to claims for credit or refund made on or after June 1, 2009
Part V-1, Subpart E	162	Withholding Tax Return Filing Date	Changes the last quarterly withholding tax return filing date from February 28 th to January 31 st .	Immediately
Part V-1, Subpart F	162	Special Assistant District Attorneys	Allows Department attorneys to be appointed as special assistant district attorneys in State tax enforcement cases.	Immediately
Part V-1, Subpart G	163-165	Third-Party Information Sharing for Sales Tax Compliance	Requires certain third-parties that transact business with sales tax vendors to file annual information returns with the Department.	Immediately
Part V-1, Subpart H	165	Voluntary Disclosure and Compliance Program Technical Amendment	Clarifies that the Voluntary Disclosure and Compliance Program enacted in 2008 allows for the disclosure of return information to the Internal Revenue Service and other taxing authorities.	Immediately
Part V-1, Subpart I	165-188	Criminal Enforcement Provisions	Revises the current criminal tax law and creates a new crime, tax fraud, which replaces many of the criminal provisions in the former law. Additionally, this subpart increases the monetary penalties that criminal courts can impose in tax cases to twice the amount of unpaid tax liability. Lastly, this subpart relaxes the venue provisions for false offenses and adds criminal penalties for refusing to comply with a Department subpoena and for preparers who willfully fail to register or sign returns.	Immediately and applies to offenses committed on or after such date.
Part V-1, Subpart J	189-193	Civil Fraud Penalties	Creates civil penalties for various tax fraud acts.	Immediately

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 57 of the Laws of 2009 (S.57-B/A.157-B)				
Section	Page(s)	Subject	Description	Effective Date
Part W-1	193-196	Limit the Use of Itemized Deductions	Eliminates of the use of itemized deductions, except charitable contributions, by a taxpayer with NYAGI of more than \$1 million.	TYBOA January 1, 2009
Part X-1	196-197	Alcohol Beverage Tax (ABT) Rate Increase	Increases the ABT rate on beer and wine. The rate on beer will increase from \$.11 to \$.14 cents per gallon. The wine rate will increase from \$.1893 to \$.30 per gallon. The provision also includes a floor tax on beer and wine held in stock on May 1, 2009.	May 1, 2009
Part Y-1	197-198	Empire State Film Production Credit	Makes additional \$350 million authorization for 2009; requires credit utilization over multiple tax years, depending on size of credit.	TYBOA January 1, 2009
Part Z-1	198-208	Temporary New York State Income Tax Rate Increase	Imposes 7.85 percent and 8.97 percent income tax rates and brackets for tax years 2009 through 2011.	TYBOA January 1, 2009

TYBOA - Taxable years beginning on or after

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 56 of the Laws of 2009 (S.56-B/A.156-B)				
Section	Page(s)	Subject	Description	Effective Date
Part B	6-8	Public Safety Communications Surcharge	Moves the imposition of the surcharge on wireless communication from the County Law Section 309 to Tax Law Section 186-f.	September 1, 2009

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 58 of the Laws of 2009 (S.58-B/A.158-B)				
Section	Page(s)	Subject	Description	Effective Date
Part C, Section 125	98-100	Cigarette Registration Fee	Increases the annual registration fees paid by cigarette retailers and vending machine operators. The new rates would be graduated and based on annual gross sales.	September 1, 2009, for calendar year 2010 registrations

Summary of Tax Provisions in SFY 2009-10 Budget				
Chapter 59 of the Laws of 2009 (S.59-B/A.159-B)				
Section	Page(s)	Subject	Description	Effective Date
Part T	37-38	Reduces the amount of Real Estate Transfer Tax (RETT) revenue deposited into the Environmental Protection Fund	Decreases RETT revenues to be deposited in the State's EPF from \$237 million in SFY 2008-09 to \$199.3 million in SFY 2009-2010 through SFY 2012-2013.	Immediately
Part NN	54-59	Telecommunications Study	Directs the Department to conduct a study of assessments, fees, tax rates, and associated policies of the State of New York relating to the telecommunications industry.	The results of the study shall be set forth in a written report on or before October 1, 2009
Part SS	65-79	Expanded Bottle Bill	Expands beverage container deposit law to include water containers. Requires the Department to administer payments of certain unclaimed deposits to the State.	Various
Part VV	80	Imposes a bad check or failed electronic funds withdrawal fee	Creates a bad check or failed electronic funds withdrawal fee of \$50 that is imposed when a check, money order, or electronic funds withdrawal is returned without payment other than due to error.	Authorized tax documents required to be filed TYBOA January 1, 2009
Part VV	80-85	Requires registration of certain tax return preparers and refund anticipation loan (RAL) facilitators	Requires registration of certain tax return preparers and RAL facilitators. Commercial tax return preparers must pay an annual fee of \$100. Penalties are imposed for noncompliance.	Tax return preparers filing personal income tax returns on or after December 31, 2009 and on or after December 31, 2010 for all other preparers
Part VV	85-89	Additional consumer protection and disclosure for RALs	Amends the General Business Law to define a RAL facilitator and to provide enhanced consumer protection in the form of additional disclosures to consumers.	January 1, 2009

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

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