New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

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Income Tax
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Summary of Budget Bill
Personal Income Tax Changes Enacted in 2009

This memorandum contains brief summaries of personal income tax changes that were enacted as part of the 2009-2010 New York State budget (Chapter 57 and Chapter 59 of the Laws of 2009) that was signed into law on April 7, 2009.

This memorandum summarizes legislative changes in the following areas:

- Resident individual redefined for personal income tax purposes
- Fuel cell electric generating equipment credit and transportation improvement contribution credit
- Authorization for reciprocal agreements with the United States and other states for crediting certain payments against outstanding debts
- Amendment to the definition of New York source income of a nonresident individual
- Filing fees for partnerships
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- Empire Zone Program
- Limit on itemized deductions
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- Empire State film production credit
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- Middle Class STAR rebate program
- New York City school tax credit
- Deduction for certain student loan interest
- Consumer bill of rights regarding tax preparers
- Tax Preparer Registration Program

Resident individual redefined for personal income tax purposes

Section 605(b)(1)(A) of the Tax Law relating to the definition of a resident, nonresident, and part-year resident has been amended for purposes of determining if a taxpayer who is domiciled in New York State, but is out of the country for at least 450 days out of 548 consecutive days, is considered a New York State nonresident for personal income tax purposes. This rule is commonly referred to as *the 548-day rule*.

For tax years beginning on or after January 1, 2009, a taxpayer who is domiciled in New York State will not meet the conditions to be considered a nonresident for personal income tax purposes under the 548-day rule if the taxpayer's spouse (unless legally separated) and minor children are in New York State for more than 90 days of the 548-day period, **regardless of where the spouse and minor children spend their time in New York State**. Previously, a

taxpayer did not meet these conditions if the taxpayer's spouse or minor children spent more than 90 days of the 548-day period in New York State at a permanent place of abode maintained by the taxpayer.

The amendment does not change the other conditions considered when determining a taxpayer's resident status for income tax purposes. Therefore, for tax years beginning on or after January 1, 2009, a taxpayer is considered a New York State resident for income tax purposes if he or she meets either of the following conditions:

- The taxpayer's domicile is not New York State but the taxpayer maintains a permanent place of abode in New York State for more than 11 months of the year and spends 184 days or more in New York State during the tax year. However, if the taxpayer is a member of the armed forces and the taxpayer's domicile is not New York State, the taxpayer is not a resident under this definition.

- The taxpayer's domicile is New York State. However, even if a taxpayer's domicile is New York, the taxpayer is not a resident if the taxpayer meets all three of the conditions in either Group A or Group B as follows:

Group A

(1) the taxpayer did not maintain any permanent place of abode in New York State during the tax year; and

(2) the taxpayer maintained a permanent place of abode outside New York State during the entire tax year; and

(3) the taxpayer spent 30 days or less (a part of a day is a day for this purpose) in New York State during the tax year.

Group B

(1) the taxpayer was in a foreign country for at least 450 days during any period of 548 consecutive days; and

(2) the taxpayer spent 90 days or less (a part of a day is a day for this purpose) in New York State during this 548-day period, and the taxpayer's spouse (unless legally separated), and the taxpayer's minor children spent 90 days or less (a part of a day is a day for this purpose) in New York State during this 548-day period; and

(3) during the nonresident portion of the tax year in which the 548-day period begins, and during the nonresident portion of the year in which the 548-day period ends, the taxpayer was present in New York State for no more than the number of days which

bears the same ratio to 90 as the number of days in such portion of the tax year bears to 548.

For purposes of determining if a taxpayer is considered a New York City resident or Yonkers resident for personal income tax purposes, substitute *New York City* or *Yonkers* in place of *New York State* in the above paragraphs.

(Tax Law sections 605(b)(1)(A), 1305(a)(1), 1325(a)(1), 1340(c)(1)(f)(1), and section 11-705(b)(1)(A) of the Administrative Code of the City of New York)

Fuel cell electric generating equipment credit and transportation improvement contribution credit

The fuel cell electric generating equipment credit was allowed for the purchase and installation of fuel cell electric generating equipment used in New York State. The transportation improvement contribution credit was allowed for a certified contribution of at least $10 million to a qualified transportation improvement project in New York State.

Effective for tax years beginning on or after January 1, 2009, no new claims for these tax credits will be allowed. However, taxpayers who have any unused fuel cell electric generating equipment credit from a prior year in which the credit was allowed may continue to carry that credit forward to the following five years.

(Tax Law sections 606(g-2), 606(z), and 606(i))

Authorization for reciprocal agreements with the United States and other states for crediting certain payments against outstanding debts

Section 171-t has been added to the Tax Law to provide additional authority for the Tax Department to enter into a reciprocal offset agreement with the federal government or another state (claimant). Under the authority of the new section, the commissioner may enter into an agreement with a claimant under which New York State will agree to offset New York State tax overpayments and vendor payments owed to a person against debts (both tax debts and other debts) owed by that person to the claimant. The agreement must provide the claimant will do the same for debts owed to New York State; however, the federal government will not be required to offset tax overpayments owed by it except to the extent it agrees to do so. This type of agreement would be in addition to any current agreements under which tax overpayments to the federal government, other states, and New York State are credited against outstanding tax debts.

For purposes of section 171-t of the Tax Law, *vendor payment* means any payment, other than an overpayment, made by a state or the United States to any person, and includes but is not limited to any expense reimbursement to an employee of the state or the United States. *Vendor payment* does not include a person's salary, wages, or pension.

Additionally, section 171-p of the Tax Law has been amended to provide that any fees or charges imposed by the United States or any state, for sending a taxpayer's overpayment or vendor payment to the Tax Department to satisfy the taxpayer's debt owed to New York State, will be added to the taxpayer's debt. That is, the fee or charge will be paid by the taxpayer.

(Tax Law sections 171-n(1)(c), 171-p(2), and 171-t)

Amendment to the definition of New York source income of a nonresident individual

Section 631(b)(1)(A)(1) has been added to the Tax Law. This new section expands the definition of income, gain, loss, and deduction from New York sources to include certain gains or losses from a nonresident taxpayer's sale or exchange of an interest in an entity if 50% or more of the entity's assets consist of real property located in New York State. The sale or exchange of an interest in the following entities is covered by the new law: partnerships, limited liability companies (LLCs), S corporations, or non-publicly traded C corporations with 100 or fewer shareholders. This provision applies to any sale or exchange of an interest in an entity that occurs on or after May 7, 2009.

For more information, see TSB-M-09(5)I, *Amendment to the Definition of New York Source Income of a Nonresident Individual*.

(Tax Law section 631(b)(1)(A)(1))

Filing fees for partnerships

Section 658(c)(3) of the Tax Law relating to the filing fees applicable to certain entities has been amended. Under the new law, in addition to the filing fees applicable to limited liability partnerships (LLPs), limited liability companies (LLCs) treated as partnerships, and LLCs that are disregarded entities, a filing fee will now also apply to partnerships that are not LLCs or LLPs (regular partnerships). However, the filing fee for regular partnerships will apply only if the partnership's New York source gross income in the preceding year is $1,000,000 or more. The filing fee applies to tax years beginning on or after January 1, 2009, and is due within 30 days of the last day of the partnership's tax year.

The amendment to section 658(c)(3) of the Tax Law does not change the filing fee requirements or the fee calculation for LLPs and LLCs treated as partnerships, or the fee that applies to LLCs that are disregarded entities.

For more information see TSB-M-09(8)I, *Partnership Filing Fee*.

(Tax Law section 658(c)(3))

Low-income housing credit

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

The Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from $20 million to $24 million.

In addition, to conform with recent changes to the federal low-income housing credit, the security bond in lieu of recapture provision has been eliminated for New York State purposes. Taxpayers will no longer be required to post a bond upon disposition of an interest in a low-income housing building if it is reasonably expected that the building will continue to qualify as an eligible low-income building for the remaining compliance period for that building.

Lastly, if a building is disposed of and there is any reduction in the qualified basis of the building that results in an increase in tax for the current or subsequent tax years, the period to issue a deficiency assessment relating to a credit recapture is extended three years from the date the Commissioner of the New York State Division of Housing and Community Renewal is notified by the taxpayer that the building is no longer in compliance. For more information see the form and instructions for DTF-626, *Recapture of Low-Income Housing Credit*.

(Public Housing Law section 22(4) and Tax Law section 18)

Empire Zone Program

The Tax Law and the General Municipal Law were amended to provide changes to the Empire Zones Program. These changes affect taxpayers claiming Empire Zone (EZ) credits, including Qualified Empire Zone Enterprise (QEZE) credits under Tax Law Articles 9, 9-A, 22, 32, and 33 for tax years beginning on or after January 1, 2008. For more information regarding the changes to the Empire Zones Program, see TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zones Program*.

(Tax Law sections 14(a)(2), 14(h), 14(m), 15(b)(3), 17, 210.12-B(d-1), 210.12-C(c-1), 210.19(e-1), 210.20(b-1), 606(j)(4-a), 606(j-1)(3-a), 606(k)(5-a), 606(l)(1-a), 685(p-2), 688(h), 689(c)(4), 1085(k-2), 1088(h), 1089(c)(4), 1456(d)(2-a), 1456(e)(5-a), 1511(g)(5-a), and 1511(h)(2-a))

Limit on itemized deductions

Section 615(f)(3) has been added to the Tax Law. Effective for tax years beginning on or after January 1, 2009, this new section limits the New York itemized deduction allowed for an individual whose New York adjusted gross income exceeds one million dollars to 50% of the individual's federal itemized deduction for charitable contributions. No other federal itemized deductions of the individual will be allowed for New York purposes. (Also see *Penalty for underpayment of estimated tax revised* on page 8.)

(Tax Law sections 615(f)(3))

New York tax rates revised

Sections 601(a), 601(b), and 601(c) of the Tax Law relating to tax rates have been amended. For tax years beginning after 2008 and before 2012, the personal income tax rates are increased on certain taxable incomes. The increases were put into effect by creating two new tax brackets. The highest rate is now 8.97% for all taxpayers who have taxable incomes over $500,000. The second highest rate is 7.85% for taxpayers with taxable income as follows:

- more than $300,000 but not over $500,000, and married filing jointly or a qualifying widow(er);
- more than $250,000 but not over $500,000, and head of household; or
- more than $200,000 but not over $500,000, and single, married filing separately, or an estate or trust.

For tax years beginning after 2011, the tax rates revert to the rates in effect for tax years beginning after 2005 and before 2009 (i.e., the highest rate will be 6.85%). As a result of the amendments, the New York State personal income tax rates for years beginning after 2008 and before 2012 are as follows:

Married filing jointly and qualified widow(er)

If the New York taxable income is:	The tax is:
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000 but not over $300,000	$1,946 plus 6.85% of excess over $40,000
Over $300,000 but not over $500,000	$19,756 plus 7.85% of excess over $300,000
Over $500,000	$35,456 plus 8.97% in excess over $500,000

Head of household

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000 but not over $250,000	$1,492 plus 6.85% of excess over $30,000
Over $250,000 but not over $500,000	$16,562 plus 7.85% of excess over $250,000
Over $500,000	$36,187 plus 8.97% of excess over $500,000

Single, married filing separately, and estates and trusts

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000
Over $20,000 but not over $200,000	$973 plus 6.85% of excess over $20,000
Over $200,000 but not over $500,000	$13,303 plus 7.85% of excess over $200,000
Over $500,000	$36,853 plus 8.97% of excess over $500,000

(Tax Law sections 601(a), 601(b), and 601(c))

Tax benefit recapture

For tax years beginning on or after January 1, 2009, and before 2012, two additional levels of supplemental tax have been added to the tax table benefit recapture provisions. The two additional levels are intended to recapture the tax benefit a taxpayer receives from the tax rates that are below the highest rate in calculating taxes using the tax tables. These new temporary levels of supplemental taxes are imposed on:

- resident individuals, estates, and trusts that have New York adjusted gross incomes over $300,000 and with taxable incomes that are subject to the second highest rate of tax; and

- resident individuals, estates, and trusts that have New York adjusted gross income over $500,000.

(Tax Law section 601(d))

Penalty for underpayment of estimated tax revised

Section 685(c)(3)(B)(ii) of the Tax Law relating to estimated income tax penalties has been amended. This amendment revises the penalty for underpayment of estimated tax for tax year 2009 to take into account the limit on New York State itemized deductions (see page 6) and the increased personal income tax rates and tax benefit recapture for certain taxpayers for tax years 2009 through 2011 (see pages 6 and 7). To avoid a penalty for underpayment of estimated tax for tax year 2009, the total amount of a taxpayer's estimated tax and withholding tax payments must be:

- 90% of the tax shown on the taxpayer's return for tax year 2009, or

- 100% of the tax shown on the taxpayer's return for tax year 2008 (110% of that amount if you are not a farmer or a fisherman and your New York adjusted gross income shown on that return is more than $150,000 or, if married filing separately for 2009, more than $75,000). To qualify for this provision, the taxpayer must have filed a return for 2008, and it must have been for a full 12-month year.

Under the new law, in determining whether a taxpayer paid 100% (or 110%, if applicable) of the tax shown on the 2008 return, the taxpayer must recompute his or her 2008 tax using the 2009 tax rates and itemized deduction rules.

(Tax Law section 685(c)(3)(B)(ii))

Empire State film production credit

The statewide aggregate dollar amount of Empire State film production credit allowed has been increased by an additional $350 million for 2009. Also, the tax year in which the credit may be claimed has been changed for credits of $1 million or more, as follows:

- If the amount of the credit is at least $1 million but less than $5 million, the credit is claimed over a two-year period beginning with the tax year in which the production of the qualified film is completed and the next succeeding taxable year. One-half of the amount of the credit allowed is claimed in each year.

- If the amount of the credit is at least $5 million, the credit is claimed over a three-year period beginning with the tax year in which production of the qualified film is completed and the next two succeeding taxable years. One-third of the amount of the credit allowed is claimed in each year.

Credits of less than $1 million will continue to be claimed in the tax year in which the production of the qualified film is completed.

For more information about this credit, contact the New York State Governor's Office for Motion Picture and Television Development by e-mail at *nyfilm@empire.state.ny.us* or call (212) 803-2330.

These provisions apply to tax years beginning on or after January 1, 2009.

(Tax Law section 24(a)(2))

Tax compliance and enforcement

The Tax Law has been amended to enact a package of provisions that are intended to increase taxpayers' compliance with the Tax Law and to improve the Tax Department's ability to enforce the payment of all taxes that are due and owing.

The following is a brief summary of the items contained in the tax compliance and enforcement package that may apply to taxpayers subject to tax under Article 22 of the Tax Law (the personal income tax):

- **Withholding tax penalty and interest for responsible persons.** Section 685(g) of the Tax Law has been amended to increase the responsible-person penalty for willful failure to collect and pay over withholding taxes. The amount of penalty imposed under section 685(g) of the Tax Law will now include any interest due on the tax. The amount of interest is computed from the date the failure occurred to the date the penalty is paid. This provision applies to withholding periods beginning on or after January 1, 2009.

  (Tax Law section 685(g))

- **Change in wage reporting and annual withholding reconciliation due date.** For years 2009 and after, wage reporting information for the last calendar quarter of the year and the annual withholding tax reconciliation information must be filed no later than January 31 of the next year. Previously, wage reporting and annual withholding reconciliation information was allowed to be filed on or before February 28 of the next year.

  (Tax Law section 674(a)(4)(A))

- **Voluntary Disclosure and Compliance (VDC) program.** Section 1700(4) of the Tax Law has been amended to clarify that returns and reports filed by taxpayers who participate in the VDC program may be disclosed to the Secretary of the United States Treasury (which includes the Internal Revenue Service) or the proper officer of any state or city with which the Tax Department has an information exchange. The amendment applies to returns and reports filed under the VDC program on or after April 7, 2009. For more information, see TSB-M-09(6)I, (6)C, (5)M,(1)R, (5)S,

Voluntary Disclosure and Compliance Program Legislative Change Regarding the Disclosure of Information.

(Tax Law section 1700(4))

- **Bad check or failed electronic withdrawal fees.** The amendment authorizes the commissioner to impose a $50 fee when a check, money order, or electronic funds withdrawal, in payment of any amount due under a tax, fee, special assessment, or other imposition administered by the department, is returned without payment. If a payment is returned, the Tax Department will send a separate bill for $50 for each tax return or other tax document associated with the returned payment. In the case of electronic funds withdrawal, the $50 fee will not be imposed if the reason for the return is due to an error by the Tax Department or the originating depository financial institution. This authorization is effective for payments related to authorized tax documents required to be filed for tax years beginning on or after January 1, 2009.

  (Tax Law section 30)

- **Interest on underpayments.** The underpayment interest rate on unpaid income taxes (including New York City and Yonkers income taxes) and the estate and generation-skipping taxes is increased to the federal short-term rate plus 5.5%. In addition, the minimum underpayment interest rate for all taxes is increased to 7.5%. Also, if no underpayment interest rate is set for any calendar quarter, the rate will be 7.5% for that quarter. The increase in underpayment interest rates as described above, took effect on April 7, 2009, and applies to the interest chargeable or due on taxes or on any other amounts, or portion thereof, that remain or become due on and after that date.

  (Tax Law sections 171(26(a)), 684(a), 684(j), 685(c)(1), 697(j)(1), and 697(j)(2)(B); and sections 11-1784(a), 11-1784(j), and 11-1797(j) of the Administrative Code of the City of New York)

- **Criminal penalties.** The amendments created a new series of crimes under Article 37 of the Tax Law entitled "*Tax Fraud Acts*". These amendments related to tax fraud apply to all taxes administered by the Tax Department. Under the new law, anyone who engages in a tax fraud act would be committing a class A misdemeanor. If a person commits a tax fraud act with intent to defraud the state or a political subdivision or to evade tax, the person would be committing a class E, D, C, or B felony. The felony level would depend on the dollar amount of tax not paid. These new criminal penalty provisions apply to offenses committed on or after April 7, 2009.

  (Tax Law sections 1800(c), 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1831, 1832, and 1833)

- **Fraud penalties.** The Tax Law has been amended to increase the civil penalty for failure to pay tax due to fraud from 50% of the amount of tax due to two times the tax due. As a result of this change, the additional fraud penalty equal to 50% of the interest payable on the tax due has been eliminated. The new fraud penalty applies to returns and other documents filed or required to be filed and to actions taken and omissions occurring with regard to taxable years beginning on or after January 1, 2009. In addition, a penalty for submitting false or fraudulent documents has been added to the Tax Law. The penalty is $100 for each false or fraudulent document submitted with a return, with a total maximum penalty of $500 for each return submitted with the false or fraudulent documents. This penalty also applies to tax years beginning on or after January 1, 2009.

  (Tax Law sections 685(e), 685(cc), 1085(f) and 1085(u))

Additional information on all the amendments included in the compliance and enforcement legislation will be provided by the Tax Department in a future document.

Middle Class STAR rebate program

Sections 171-q and 178 of the Tax Law relating to the Middle Class STAR rebate program have been repealed. As a result, the Middle Class STAR rebate program has been eliminated. Therefore, the Tax Department will no longer issue Middle Class STAR rebate checks to property owners in the fall of each year. The repeal of sections 171-q and 178 of the Tax Law does not affect the Basic or Enhanced STAR exemption provided to property owners directly on their school tax bills.

(Tax Law sections 171-q and 178)

New York City school tax credit

Section 1310(e) of the Tax Law and section 11-1706(c) of the Administrative Code of the City of New York, relating to the New York City school tax credit, have been amended to decrease the amount of credit allowed. The credit amounts allowed for tax years beginning in 2009 and after are as follows:

- For married taxpayers filing joint returns and surviving spouses with incomes of $250,000 or less, the amount of the New York City school tax credit is $125.

- For unmarried individuals, heads of household, or married taxpayers filing separate returns with income of $250,000 or less, the amount of the New York City school tax credit is $62.50.

Taxpayers with incomes of more than $250,000 do not qualify for this credit. For each tax year beginning on or after January 1, 2010, the *more than $250,000* income limitation will be adjusted for inflation.

(Tax Law section 1310(e) and section 11-1706(c) of the Administrative Code of the City of New York)

Deduction for certain student loan interest

Article 14 of the Education Law has been amended to add new Part V, *The New York Higher Education Loan Program*. Section 694-a(3) of Part V provides that interest paid on an education loan made under this program will be allowed as a subtraction modification for purposes of computing an individual's New York adjusted gross income. This provision applies to interest paid on or after July 1, 2009.

(Education Law Article 14, Part V)

Consumer bill of rights regarding tax preparers

Section 371 and section 372 (*Consumer Bill of Rights Regarding Tax Preparers*) of Article 24-C of the General Business Law (GBL) have been amended to further increase consumer protection in the paid income tax preparer industry. The amendments also provide for additional requirements for all tax preparers with regard to refund anticipation loans and refund anticipation checks. Tax preparers must follow the amended requirements as related to the preparation of tax returns for tax year 2009 and after.

Definitions

The amendment to section 371 of the GBL adds definitions for facilitator and refund anticipation check and revises the definition of refund anticipation loans, as follows:

- *Facilitator* means a person who individually, or in conjunction or cooperation with another person, (1) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, (2) serves or collects upon a refund anticipation loan or refund anticipation check, or (3) in any other manner facilitates the making of a refund anticipation loan or refund anticipation check. The term *facilitator* does not mean the employees of a facilitator who provide only clerical or other comparable support services to the facilitator.

- *Refund anticipation check (RAC)* means a check, stored value card, or other payment mechanism representing the proceeds of a tax refund that was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credit(s) and for which a fee or other consideration has been paid for that mechanism.

• *Refund anticipation loan (RAL)* means a loan that is secured by the proceeds of an income tax refund or tax credit(s), or that the creditor arranges to be repaid directly or indirectly from those proceeds. A *refund anticipation loan* also includes any sale, assignment, or purchase of a tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the Internal Revenue Service or the department denies or reduces the amount of the tax refund.

Refund anticipation check (RAC) disclosure statements

Requirements concerning RAC disclosure statements have been added to section 372 of the GBL.

Before a taxpayer enters into an agreement for a RAC, the tax preparer facilitating the agreement must provide the following text in a disclosure statement to the taxpayer, in writing and in at least 14-point type:

You are not required to enter into this refund anticipation check agreement merely because you have received this information.

If you do take out this refund anticipation check, you will be responsible to pay $ (*insert amount*) in fees for the check to be issued by (*insert name of issuer of refund anticipation check*). You can avoid this fee and still receive your refund in the same amount of time by having your refund directly deposited into your own bank account. You can also wait for the federal or state refund to be mailed to you.

If you do enter into this refund anticipation check agreement, you can expect to receive your check by approximately two business of (*insert date*).

If you do not enter into this refund anticipation check agreement, you can still receive your tax refund quickly.

If you file your tax return electronically and receive your tax refund through the mail, you can expect to receive your refund within approximately two business days of (*insert date*). If you file your tax return electronically and have your tax refund directly deposited into a bank account, you can expect to receive your refund within approximately two days of (*insert date*).

A tax preparer is obligated to complete the required disclosure statement accurately with all relevant information for each taxpayer. The name and unique identification number of the tax return preparer (and facilitator, if different) assigned by the Tax Department under section 32 of the Tax Law must be included on the disclosure statement. The completed disclosure statement

must be signed by the taxpayer before he or she enters into a RAC agreement. In addition, the facilitator must tell the taxpayer (in the language primarily used for oral communication between the facilitator and the taxpayer) of the following:

(1) the amount of the RAC fee, and

(2) that the taxpayer can receive his or her refund in the same amount of time without a fee if the tax return is filed electronically and the taxpayer chooses direct deposit to his or her own personal bank account.

Requirements concerning the RAL disclosure statement

Certain requirements concerning the RAL disclosure statement have been amended or added under section 372 of the GBL.

Before a taxpayer enters into a RAL, the tax preparer facilitating the loan must provide the following text in a disclosure statement to the taxpayer (new text is underlined), in writing and in at least 14-point type:

You are not required to enter into this refund anticipation loan agreement merely because you have received this information.

If you do sign a contract for a refund anticipation loan, you will be taking out a loan. You will be responsible for repayment of the entire loan amount and all related costs and fees, regardless of how much money you actually receive in your tax refund. If your refund is delayed, you may have to pay additional costs.

If you do not take out this refund anticipation loan, you are eligible to receive a gross tax refund of approximately $ (*insert amount*).

If you do take out this refund anticipation loan, you will be responsible to pay $ (*insert amount*) in fees for the loan. After these fees are paid, you will receive approximately $ (*insert amount*) as your loan.

The estimated annual percentage rate of your refund anticipation loan is (*insert amount*)%. This is based on the actual amount of time you will be lent money through this refund anticipation loan.

If you do take out this refund anticipation loan, you can expect to receive your loan within approximately two business days of (*insert date*).

If you do not take out this refund anticipation loan, you can still receive your tax refund quickly. If you file your tax return electronically and receive your tax

refund through the mail, you can expect to receive your refund within two business days of (*insert date*). If you file your tax return electronically and have your refund directly deposited into a bank account, you can expect to receive your refund within approximately two business days of (*insert date*).

A tax preparer is obligated to complete the required disclosure statement accurately with all relevant information for each taxpayer. The name and unique identification number of the tax return preparer (and facilitator, if different) assigned by the Tax Department under section 32 of the Tax Law must be included on the disclosure statement. The completed disclosure statement must be signed by the taxpayer before he or she enters into a RAL. In addition, the facilitator must tell the taxpayer (in the language primarily used for oral communication between the facilitator and the taxpayer) of all of the following:

(1) The RAL is a loan that only lasts one to two weeks.

(2) If the taxpayer's tax refund is less than expected, the taxpayer is liable for the full amount of the loan and must repay any difference.

(3) If the taxpayer's refund is delayed for any reason, there may be additional costs, such as additional interest, that the taxpayer will have to pay.

(4) The amount of the RAL fee.

(5) The RAL interest rate.

For additional information, see Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*.

(General Business Law sections 371 and 372)

Tax Preparer Registration Program

Section 32 has been added to the Tax Law. Section 32 imposes an annual requirement on certain tax return preparers, facilitators of refund anticipation loans, and facilitators of refund anticipation checks to register with the Tax Department. A tax return preparer who meets the definition of a commercial tax return preparer will also be required to pay an annual registration fee of $100. In addition, the new law includes certain requirements and restrictions on tax return preparers and facilitators, with significant penalties for those who do not comply.

Tax return preparers who prepare personal income tax returns (including fiduciary returns) must register with the Tax Department before they prepare any personal income tax returns that will be filed on or after December 31, 2009. For this purpose, withholding tax

returns and partnership returns (including the IT-204-LL) are not considered personal income tax returns.

For additional information, see TSB-M-09(11)C,(9)I,(10)M,(3)MCT`MT,(4)R,(15)S, *Tax Preparer Registration Program*.

(Tax Law section 32)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.