



Summary of Tax Provisions in SFY 2010-11 Budget

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Summary of SFY 2010-11 Tax Provisions

Personal Income Tax

Limitation on Itemized Deductions

Part HH of Chapter 57 of the Laws of 2010 further limits the use of itemized deductions by taxpayers with New York Adjusted Gross Income (NYAGI) over \$10 million. New York already limits the availability of itemized deductions for certain high income taxpayers. Currently, the maximum percentage of disallowed deductions, except charitable contributions, equals 100 percent for all taxpayers with NYAGI above \$1 million. However, taxpayers with NYAGI above \$1 million may claim 50 percent of their federal deduction for charitable contributions. This provision further reduces the use of the itemized deduction for charitable contributions for taxpayers with NYAGI over \$10 million. These taxpayers may claim 25 percent of their federal deduction for charitable contributions. Because the New York City income tax conforms to the State tax base, these changes would also affect deductions for City tax purposes. The bill allows the City of New York to opt out of these limitations on charitable contributions. This part is effective for taxable years beginning on or after January 1, 2010 and ends after tax year 2012.

Clarify That Certain Income Constitutes New York Source Income of Nonresident S Corporation Shareholders

Part C of Chapter 57 and Part B of Chapter 312 of the Laws of 2010 ensures that nonresident shareholders of S corporations who make an election under §338(h)(10) or §453 of the Internal Revenue Code (IRC) are taxed in accordance with that election and the transaction is treated as producing New York source income. The provision also requires that income received by nonresidents from installment sale contracts entered into before a New York S corporation terminated its taxable status in New York be included as New York source income. The provisions regarding §338(h)(10) or §453 of the IRC apply to taxable years beginning on or after January 1, 2007 for which the statute of limitations for seeking a refund or assessing additional tax is still open. For cases involving failure to file or report federal changes, filing fraudulent returns to evade tax, or substantial underreporting of income, the provisions apply to all taxable

years as long as such statute of limitations remains open and subject to assessment. The provision regarding income received from installment sales contracts applies to taxable years beginning on or after January 1, 2010.

Limit New York City
Personal Income Tax
STAR Rate Reduction
Benefit to the First
\$500,000 of Taxable
Income

Part EE of Chapter 57 of the Laws of 2010 eliminates the STAR tax rate reduction for New York City income taxpayers with taxable incomes in excess of \$500,000. The base rate for these taxpayers is increased from 3.2 percent to 3.4 percent for tax years 2010 and after. The total tax rate for taxable incomes in excess of \$500,000 (including the base rate and additional 14 percent surcharge) is therefore increased from 3.648 percent to 3.876 percent. The Commissioner of Taxation and Finance (the Commissioner) is authorized to adjust the withholding tables to account for the rate change. Also, the estimated tax underpayment penalty is waived on additional amounts due prior to, or within 30 days of, the effective date of this provision provided that taxpayers remit these additional estimated taxes by their next quarterly due date. This part is effective immediately and applies to taxable years beginning after 2009.

Treat Compensation for
Past Services as Taxable
for Nonresidents

Part B of Chapter 57 of the Laws of 2010 makes termination pay, covenants not to compete, and any other employment-related compensation for past services received by nonresidents taxable if the taxpayer had New York employment nexus at the time of payment. Decisions rendered by the Tax Appeals Tribunal had held that these forms of income earned by nonresidents were not taxable, overruling previous Tax Department (the Department) guidance on this issue. This part is effective for taxable years beginning on or after January 1, 2010.

State and Local Sales Tax
Deduction Addback

Part CC of Chapter 57 of the Laws of 2010 provides for an addback of the federal itemized deduction for state and local sales taxes paid. Under current law, taxpayers who itemize deductions for federal tax purposes are allowed an option of deducting either their state and local income taxes or their state and local sales taxes. Under the New York income tax, taxpayers who itemized deductions and chose to deduct state and local income taxes for federal purposes, must add back, or negate, this deduction. However, taxpayers who chose to deduct state and local sales taxes for federal purposes have no such restriction and may claim those taxes as a state itemized deduction. This proposal would create a comparable addback for state and local sales taxes. This provision is effective for taxable years beginning on or after January 1, 2010.

Sales and Use Tax

Suspend the Clothing and Footwear Exemption

Part GG of Chapter 57 of the Laws of 2010 eliminates the exemption from State sales and use tax (sales tax) for clothing and footwear (clothing) priced under \$110 per item or pair for the period October 1, 2010 through March 31, 2011. The legislation also provides an exemption from State tax for clothing priced under \$55 per item or pair during the April 1, 2011 through March 31, 2012 period. On April 1, 2012, the pre-October 1, 2010 exemption for clothing priced under \$110 is reinstated.

Counties and cities with an exemption for clothing priced under \$110 currently in effect will continue to provide the exemption from their local taxes through March 1, 2011, as of which date a locality imposing sales tax may elect or repeal the exemption. For the April 1, 2011 through March 31, 2012 period, counties and cities may also elect to follow the State and exempt clothing priced under \$55. After March 31, 2012, localities may only offer the exemption at the \$110 threshold, and may elect or repeal the exemption by following existing procedures.

The legislation also provides that clothing priced under \$110 will be subject to the 3/8 percent sales tax imposed in the Metropolitan Commuter Transportation District (MCTD) for the October 1, 2010 through March 31, 2011 period. Additionally, clothing priced under \$55 will be exempt from the MCTD sales tax from April 1, 2011 through March 31, 2012. When the \$110 exemption resumes on April 1, 2012, clothing priced under such amount will be exempt from the MCTD sales tax only in localities in the MCTD that have elected to offer the clothing exemption.

From April 1, 2011 through March 31, 2012, the State will reimburse the Mass Transportation Operating Assistance Fund (MTOAF) for 100 percent of the revenue forgone due to the clothing exemption in localities in the MCTD that do not elect to exempt clothing. In localities in the MCTD that elect to offer the exemption, at either the \$55 or the \$110 threshold amounts, both the locality and the State will each reimburse the MTOAF for 50 percent of the forgone revenue. On April 1, 2012, the pre-October 1, 2010 MTOAF reimbursement scheme is reinstated, where, in the event that a locality in the MCTD elects to offer the clothing exemption, both the State and the locality equally share in the MTOAF reimbursement.

Impose Sales Tax on Charges by Hotel Room Remarketers

Part AA of Chapter 57 of the Laws of 2010 requires room remarketers to collect State and local sales tax on their charges to their customers. A “room remarketer” includes a person who reserves, arranges for, conveys, or furnishes occupancy to an occupant for rent in an amount determined by the room remarketer. Prior to this legislation, room remarketers (such as online travel companies) would rent rooms from a New York hotel operator at a discounted rate, pay sales tax on that discounted rate, and resell the room at a higher price without charging tax to the customer. Thus, no sales tax was collected on the room remarketer’s markup of the room. Part AA grants to room remarketers who are registered and collecting sales tax a refund or credit in the amount of tax they paid the hotel operator. The legislation also conforms New York City’s local Hotel Room Occupancy Tax to the changes made by this bill. This part is effective September 1, 2010.

Repeal Sales Tax Vendor Credit for Monthly Filers

Part X of Chapter 57 of the Laws of 2010 eliminates the sales tax vendor credit for vendors that file or are required to file monthly sales tax returns. Generally, vendors that are required to file monthly returns are retailers that sell or purchase more than \$300,000 in taxable goods and services during a quarter. This change takes effect June 1, 2010 and applies to tax returns beginning with those due on September 20, 2010.

Repeal Bad Debt Provisions for Private Label Credit Card Lenders

Part W of Chapter 57 of the Laws of 2010 repeals §1132(e-1) of the Tax Law that allows private label credit card lenders, as well as vendors who use private label credit card lenders to finance their credit card sales, to claim a sales tax credit or refund on accounts financed by or assigned to such a lender that are written or charged off as uncollectible. This change takes effect immediately and applies to credits or refunds taken on or after July 1, 2010.

Narrow Affiliate Nexus Provision

Part N of Chapter 57 of the Laws of 2010 amends legislation enacted with the SFY 2009-10 Budget that updated the definition of a sales tax vendor to include an “affiliate nexus” provision. Part N provides that the in-state activities of an affiliate in providing accounting or legal services or advice to a seller, or in directing the activities of a seller, including but not limited to, making decisions about strategic planning, marketing, inventory, staffing, distribution, or cash management, do not make the seller a vendor. This part is effective immediately and is deemed to have been in full force and effect on and after June 1, 2009.

Exempt Certain New York
City Livery Services

Part WW of Chapter 57 of the Laws of 2010 provides an exemption for certain livery services from the sales tax on transportation services. The provision exempts services provided by an “affiliated livery,” which is defined as a for-hire-vehicle other than a black car or limousine operating in and licensed by a city of one million or more (New York City). This provision is effective retroactively to June 1, 2009.

Business Taxes

Federal Conformity for Bad
Debt Deductions

Part Z of Chapter 57 of the Laws of 2010 amends the Bank Tax to conform to the federal bank bad debt deduction. Prior to Part Z, New York did not allow banks to use the federal bad debt deduction computation, instead providing a special bad debt deduction computation in Article 32. Banks were required to make modifications to federal taxable income in the computation of entire net income in order to reflect New York’s deductions. Part Z repeals these modifications. All banks will now include the bad debt deductions as computed under federal law in federal taxable income. The provisions of this part are effective immediately and apply to taxable years beginning on or after January 1, 2010.

Make the Combined
Reporting Requirements
for REITs and RICs
Permanent

Part MM of Chapter 57 of the Laws of 2010 makes the provisions enacted by Part FF-1 of Chapter 57 of the Laws of 2008 permanent. Generally, these provisions require all captive real estate investment trusts (REITs) and captive regulated investment companies (RICs) to file a combined return with the closest corporation that directly or indirectly owns or controls the captive. These provisions were scheduled to sunset for taxable years beginning on or after January 1, 2011. The provisions of this section are effective immediately.

Exemptions from Captive
REIT Definition

Part NN of Chapter 57 of the Laws of 2010 exempts certain corporations from the definition of a captive REIT. Exempted corporations include:

- any listed Australian property trust, or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust; or

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- any qualified foreign entity which satisfies the following criteria:
 1. at least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, cash and cash equivalents, and United States Government securities;
 2. the entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;
 3. the entity distributes at least eight-five percent of its taxable income to the holders of its shares or certificates of beneficial interest on an annual basis;
 4. not more than ten percent of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and
 5. the entity is organized in a country which has a tax treaty with the United States.

The provisions of this section are effective immediately.

Miscellaneous Taxes

Cigarette and Tobacco Product Tax Changes

Part D of Chapter 134 of the Laws of 2010 amends the Tax Law regarding several provisions addressing the sale of cigarettes and tobacco products in New York State.

- Provides for the implementation of a dual system to collect taxes on all cigarettes sold on an Indian reservation to non-Indians and non-members of an Indian nation or tribe, and also provide for an adequate quantity of tax-free cigarettes for the use or consumption of the nation or tribe or by its members. Under both of these systems, all packs of cigarettes sold by agents and wholesale dealers to Indian nations or tribes or reservation cigarette sellers located on an Indian reservation must bear a tax stamp. If an Indian nation or tribe enters into an agreement with New York State regarding the sale and distribution of cigarettes on its qualified reservation, the agreement will take precedence over the statutory provisions. This change is effective September 1, 2010.
- Increases the cigarette excise tax rate from \$2.75 to \$4.35 per package of 20 cigarettes. This change is effective July 1, 2010.

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- Increases the tax rate on tobacco products from 46 percent to 75 percent of the wholesale price. Products affected by this increase include chewing tobacco, roll-your-own tobacco and pipe tobacco. This change is effective August 1, 2010.
 - Increases the tax rate on snuff products from 96 cents to \$2 per ounce. This change is effective August 1, 2010.
 - Creates a new definition of little cigar and changes the tax rate on little cigars to the same rate as cigarettes. This change is effective August 1, 2010.
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Compliance

Information Reporting Required for Credit and Debit Card Payments

Part E of Chapter 57 of the Laws of 2010 requires payment settlement entities, third-party settlement organizations, electronic payment facilitators, or others deemed to be acting on behalf of payment settlement entities to annually report to the Department, by payee, the gross amount of settled payment card and third-party network transactions. The new law requires financial institutions and other major organizations that handle payment transactions to report annually the aggregate amount of payment card and third-party payments settled with New York payees, including firms with New York addresses and those registered as sales tax vendors.

Under IRC §6050W, the federal government will require payment settlement entities to file with the Internal Revenue Service (IRS) annual information returns reflecting the transactions of their payees. This bill enables the State to obtain this same information about those doing business in New York State by requiring these entities to file a duplicate information return with the State, including the same information reported to the IRS, within 30 days of the filing with the IRS. Under current federal law, the first such information returns are due to the IRS by January 31, 2012, covering payment information for calendar 2011. Therefore, the first annual return required under this law will be due to the Commissioner within 30 days of this 2012 date.

Repeated Failure to File	Part S, Subpart A, of Chapter 57 of the Laws of 2010 creates new class E felonies for repeatedly failing to file, with intention to evade tax for personal and corporate taxes. A person is guilty of repeated failure to file if they fail to file a return for three consecutive taxable years with the intent to evade taxes, provided the person had an unpaid liability for personal income taxes or an unpaid liability in excess of the threshold amount for corporate taxes for each of the three years. The legislation does, however, create the defense that the defendant had no unpaid tax liabilities for any of the three consecutive tax years. This part is effective immediately.
Compliance Technical Amendments	Part S, Subpart A, of Chapter 57 of the Laws of 2010 also makes various minor technical amendments to the 2009 compliance provisions relating to expedited hearings, conciliation proceedings, and tax fraud acts. This part is effective immediately.
Sales Tax Avoidance – Aircraft and Vessels	Part S, Subpart B, of Chapter 57 of the Laws of 2010 supplements legislation enacted with the SFY 2009-10 Budget to close loopholes with respect to purchases of aircraft and vessels. The legislation eliminates a scheme that exploits certain exclusions from the definition of “retail sale” that could be used to avoid payment of sales or use tax on aircraft and vessels. Prior to this legislation, an aircraft or vessel could have been purchased out-of-state and transferred to a New York entity in a manner that was excluded from the definition of a retail sale, thereby avoiding New York sales or use tax on the use of the property. This part is effective immediately.
Renew IDA Agent Reporting Requirement	Part S, Subpart C, of Chapter 57 of the Laws of 2010 renews the requirements of industrial development agencies (IDAs) to file a statement with the Department when appointing an agent or project operator. The legislation also extends the requirements to the Troy and Auburn industrial development authorities and clarifies that an agent of the Troy or Auburn IDAs must file annual statements with the Department. This part is effective immediately.

Tax Credits

Excelsior Jobs Program Act	Part MM of Chapter 59 of the Laws of 2010 creates the Excelsior Jobs Program (EJP) Act. The EJP replaces the Empire Zones Program as the primary economic development program in New York State. The new program is administered by Empire State Development (ESD) and offers four tax credits focused on certain strategic industries. ESD can issue up to \$50 million in new credit annually, with a fully effective annual total program cost of \$250 million. This part is effective July 1, 2010, and credit is first available for tax years beginning in 2011.
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Tax Credit Summary

1. Excelsior jobs tax credit

Each net new job qualifies for a refundable tax credit worth up to \$5,000. The value of the credit is computed on a marginal wages plus benefits basis as follows:

Wages plus Benefits Range	Credit Percentage
\$50,000 or less	5%
\$50,001 - \$75,000	4%
\$75,000+	1.33%
Credit is capped at \$5,000 per net new job; equates to a wages plus benefits base of \$187,782	

2. Excelsior investment tax credit (EJP-ITC)

The EJP-ITC is a refundable credit equal to two percent of the cost of qualified investments. Generally, qualified investments are depreciable property with a useful life of four or more years located in New York State and placed in service on or after the date ESD issues a certificate of eligibility to the taxpayer.

3. Excelsior research and development tax credit (EJP-R&D)

The refundable EJP-R&D credit equals 10 percent of the amount of a taxpayer's federal R&D credit pertaining to expenditures attributable to New York State. Eligible research and development expenditures are defined in IRC §41.

4. Excelsior real property tax credit (EJP-RPTC)

Certain participants in the EJP can earn a refundable, five-year RPTC. The credit equals 50 percent of the property taxes assessed and paid in the year immediately prior to a taxpayer's application to the EJP and declines by 10 percent each year. The credit is available to taxpayers located in areas formerly designated as Investment Zones under the Empire Zones Program or regionally significant projects.

Program Administration

The EJP is targeted towards firms engaged in biotechnology, pharmaceutical, high-tech, clean-tech, green-tech, financial services, agriculture, and manufacturing. To claim credits, taxpayers must first apply to and be approved by ESD. Program participants pledge to make a substantial commitment to growth and credit is only awarded upon a demonstration that the

commitment has been satisfied. ESD will calculate the amount of each credit annually and issue a certificate of tax credit to participants entitling them to the credits.

Three-quarters of the EJP’s total allocation is dedicated to firms increasing employment - the “job growth track.” One-quarter is reserved for firms with at least 50 full-time jobs that make new investments resulting in a 10:1 benefit-cost ratio, where the numerator is the sum of wages and benefits for net new jobs plus new investment and the denominator is the total tax benefits awarded - the “investment track.”

All companies seeking to participate in the EJP must meet some minimum employment threshold. There are three main employment standards:

1. Investment track firms must have 50 full-time job equivalents;
2. Employment growth track firms must meet new job creation standards that vary depending upon the type of industry/ activity (see chart below);
3. To be eligible for the RPTC, companies can meet either standard above but must be located in an Investment Zone. Alternatively, businesses that qualify for regionally significant project (RSP) status can be located anywhere but they must meet a higher job growth figure (see chart below). RSPs must also undertake significant capital investment, as determined by ESD.

Excelsior Jobs Program Employment Requirements			
Strategic Industry	Base Requirement for Jobs, ITC, & R&D Credits	Requirement for RPTC in Investment Zones	Requirement for RPTC as RSP
Manufacturing	25 net new jobs	25 net new jobs	50 net new jobs
Agriculture	10 net new jobs	10 net new jobs	20 net new jobs
Financial services - data center or customer back office operation	100 net new jobs	100 net new jobs	300 net new jobs
Scientific research & development	10 net new jobs	10 net new jobs	20 net new jobs

Excelsior Jobs Program Employment Requirements			
Strategic Industry	Base Requirement for Jobs, ITC, & R&D Credits	Requirement for RPTC in Investment Zones	Requirement for RPTC as RSP
Software development	10 net new jobs	10 net new jobs	NA
Back office operations or distribution centers	150 net new jobs	150 net new jobs	300 net new jobs
Investment growth track businesses	50 FTEs	50 FTEs	NA

Temporary Deferral of Certain Tax Credits

Part Y of Chapter 57 of the Laws of 2010 requires taxpayers to defer the use and refund of certain tax credits if they exceed \$2 million in aggregate. Taxpayers with \$2 million or less in credit are not impacted by this provision. This part is effective immediately and the deferral is required for tax years beginning on or after January 1, 2010 and before January 1, 2013. Credits subject to the deferral include:

- Investment tax credit & employment incentive credit
- Mortgage servicing tax credit
- Special additional mortgage recording tax credit
- Credit for fuel cell electric generating equipment expenditures
- Alternative fuels credit
- Green building credit
- Conservation easement tax credit
- Empire State commercial production credit
- Clean heating fuel credit
- Credit for companies who provide transportation to individuals with disabilities
- Power for Jobs credit
- Empire Zone (EZ) investment tax credit & employment incentive credit
- EZ wage tax credit
- EZ capital tax credit
- Qualified EZ Enterprise (QEZE) credit for real property taxes
- QEZE tax reduction credit
- Brownfield redevelopment credit
- Remediated brownfield credit for real property taxes
- Environmental remediation insurance credit
- Biofuel production credit
- Credit for employment of persons with disabilities

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- Credit for certain investments in certified capital companies (CAPCO credit)
 - Security training tax credit
 - Solar energy system equipment credit
 - Credit for rehabilitation of historic properties
 - Historic homeownership rehabilitation credit
 - Qualified emerging technology company (QETC) employment credit
 - QETC capital credit
 - QETC facilities, operations, & training credit
 - Credit for purchase of an automated external defibrillator
 - Low-income housing credit

Taxpayers will calculate the amount of each credit they would otherwise use and refund absent this provision. If the total for the specified credits sums to more than \$2 million, taxpayers must reduce each credit proportionally. To determine the amount of each credit allowed, taxpayers must multiply the credit by the following ratio:

$$\frac{\$2 \text{ million}}{\text{Total amount of credits subject to the deferral otherwise used and refunded}}$$

The excess over the allowed amount of each credit is the amount deferred. Only credit that would otherwise have been used or refunded is deferred; credits earned but not used or refunded because of statutory limitations or insufficient liability are subject to their normal rules. Credit amounts deferred are accumulated in one of two new credits - temporary deferral nonrefundable payout credit and temporary deferral refundable payout credit. The amounts of these credits will either remain the same or grow until tax year 2013.

Taxpayers can begin to use the nonrefundable payout credit on their 2013 tax returns. Any amounts not used can be carried forward indefinitely. Taxpayers can use and refund 50 percent of the refundable payout credit on their 2013 tax return. They can use and refund 75 percent of the remaining credit on their 2014 tax return, and the entire remainder on their 2015 tax return.

Finally, taxpayers are required to make any mandatory first installment or estimated tax payments due after August 11, 2010 as if the credit deferral were in effect for the periods upon which the payments are based.

Empire Zone (EZ)
Technical Amendments

Part R of Chapter 57 of the Laws of 2010 makes several amendments to the EZ Program:

Empire State Development (ESD) Review and Decertification

Chapter 57 of the Laws of 2009 required Empire State Development (ESD) to review all EZ certified businesses. Businesses receiving tax benefits in excess of wages, benefits, and investments, and businesses that used reincorporation strategies to manipulate eligibility tests and credit amounts were to be decertified. As the law was written, there was some ambiguity about the effective date of the decertification. Part R of Chapter 57 of the Laws of 2010 clarifies that decertifications resulting from ESD's review are in effect for tax years beginning on or after January 1, 2008.

Boundary Revisions and Regionally Significant Projects (RSPs)

Part R gives the Commissioner of ESD limited discretion to approve boundary revisions and RSPs after the date the EZ Program expires if a zone administrative board made an application or recommendation to ESD prior to such date. If the request is granted, the effective date of the revision or certification as an RSP can precede the Zones' expiration date.

Sales Tax Amendments

Chapter 57 of the Laws of 2009 converted the State and local QEZE sales and use tax exemption to a refund or credit of tax paid on qualifying property and services. Part R provides that localities that opted into the now-repealed sales and use tax exemption are deemed to have opted into the refund/credit. This part also contains amendments that clarify the eligibility of businesses to apply for and claim the QEZE sales tax benefit, effective as of April 1, 2009.

Empire Zone Public Report

Chapter 57 of the Laws of 2009 repealed the annual Qualified Empire Zone Enterprise (QEZE) report, which had a limited scope and restricted release, and replaced it with a more expansive report that will be fully available to the public. The new report will contain the name of every entity claiming EZ/QEZE credits and the corresponding amounts. Individual partners, shareholders, or members of flow-through entities will not be included. Part R of Chapter 57 of the Laws of 2010 advances the first due date of the new report from January 31, 2013 to June 30, 2011.

EZ Investment Tax Credit (ITC) and Employment Incentive Credit (EIC)

QEZE benefits are available to taxpayers for periods of 15 or 10 years, depending upon the date of first certification. The EZ wage tax credit is available for five years. However, the EZ-ITC has no duration, and an EZ-EIC is available for three years after the year an EZ-ITC is claimed.

Part R creates a period during which additional EZ-ITC and EZ-EIC can be earned, notwithstanding the expiration of the EZ Program. Qualified investment projects certified prior to the expiration of the EZ Program are deemed certified and can earn EZ-ITC for their next nine tax years. Other certified EZ businesses can earn EZ-ITC until April 1, 2014. The EZ-EIC is fully allowed for the three years following an EZ-ITC claim as well.

QEZE Real Property Tax Credit (RPTC) and Special Assessments

Uncertainty has arisen regarding the types of taxes and charges considered eligible real property taxes for purposes of the QEZE RPTC. Typically, the Department has followed IRC treatment, which generally disallows special assessments, i.e., taxes assessed against local benefit of a kind tending to increase the value of the property assessed. However, recent appeals have resulted in contradictory rulings on the Department's position.

Part R clarifies that real property taxes for purposes of the QEZE RPTC do not include charges for local benefits that inure to specific properties. This part codifies existing Department policy and as such applies to all open periods as well as future tax returns. However, the Department will allow maintenance and interest charges to qualify as real property taxes only for tax years prior to January 1, 2010.

EZ Capital Credit

Part R extends the EZ capital credit through March 31, 2014 for contributions certified by the Commissioner of ESD to community development projects in fulfillment of a pledge made to the project before the EZ Program expired.

Empire State Film
Production Tax Credit and
New Empire State Film
Post Production Credit

Part Q of Chapter 57 of the Laws of 2010 allocates an additional \$2.1 billion in film credit. The Governor's Office for Motion Picture and Television Development (MP/TV) will award \$420 million annually in 2010 through 2014. Taxpayers will claim their credits in the later of the tax year the production of the qualified film is completed or the tax year immediately following the allocation year from which the taxpayer was awarded credit.

Thirty-five million dollars of the total allocation, seven million dollars annually, is devoted to a new post production tax credit. Companies that are ineligible for the film credit may qualify for the post production credit. The credit equals 10 percent of qualified post production costs paid in the production of a qualified film at a qualified post production facility, generally a facility in New York State. To be eligible for the credit, the costs incurred at a qualified post production facility must equal or exceed 75 percent of the total post production costs at any post production facility. The credit is allowed for the taxable year in which the production of the qualified film is completed. Part C of Chapter 312 of the Laws of 2010 granted MP/TV authority to redirect post production credit funds to the film credit if there are insufficient claims for the post production credit and applications for the film production credit exceed the allotted total.

Part Q also makes a number of amendments to the film credit eligibility rules and credit administration:

Extend film credit to qualified independent film production companies

To qualify under this designation, a film production company must:

- Have a maximum budget of \$15 million;
- Control the film during production; and
- Not be a publicly-traded entity, or have no more than five percent beneficial ownership by a publicly-traded entity.

Additional shooting day test

A new eligibility test is added - at least 10 percent of total principal photography shooting days must be spent at a qualified film production facility. This test will not apply to independent film production companies or pilots.

Inclusion of promotional materials

Credit recipients are required to include a New York promotional video in each film distributed by DVD or other media to the

secondary market or to include in the end credits of each qualified film, “Filmed with the Support of the New York State Governor’s Office of Motion Picture and Television Development,” and an accompanying logo.

Require purchases from registered sales tax vendors

Credit applicants must certify that they will only purchase tangible property and services that are qualified production costs from a registered New York State sales tax vendor.

Qualified costs and post production cost restriction

Post production costs will qualify for credit only if 75 percent or more of the total post production costs are attributable to property or services in New York State.

Qualified film production facility criteria

The definition of a qualified film production facility is amended to add minimum square footage, heating and cooling, soundproofing, electrical service, and space requirements for facilities located in New York City. Part Q also excludes armories in New York City as qualified facilities unless MP/TV determines that no qualified facility was available at the time of shooting. The new restrictions do not apply if the facility or armory is being used by a qualified independent film production company.

Information exchange between MP/TV and the Department

Part Q allows for a waiver of taxpayer confidentiality rules to allow MP/TV and the Department to exchange information regarding the film credit. The waiver will allow the Department to discuss specific taxpayers/applicants by name and divulge information contained on credit forms. This disclosure will assist MP/TV in the administration of the credit.

Cap on Biofuel Production
Credit and Qualified
Emerging Technologies
Credit

Part A of Chapter 57 of the Laws of 2010 clarifies that credit cap for the biofuel production credit and the qualified emerging technology company (QETC) facilities, operations, and training credit is applied at the entity level in the case of partnerships, S corporations, and limited liability companies. The aggregate credit that flows through to all partners, shareholders, or members of each entity cannot exceed \$2.5 million for the biofuel credit and \$250,000 for the QETC credit. This part applies to taxable years beginning on or after January 1, 2010.

Low-Income Housing
Credit Increase

Part P of Chapter 57 of the Laws of 2010 increases the statewide aggregate credit limit for the low-income housing credit from \$24 million to \$28 million. The credit is awarded by the Division of Housing and Community Renewal (DHCR). This part is effective immediately.

STAR Provisions

Limit the Basic STAR
Exemption

Part FF of Chapter 57 of the Laws of 2010 limits the basic STAR real property tax exemption to homeowners with affiliated income no greater than \$500,000. Affiliated income means the federal adjusted gross income less IRA distributions of the combined income of all owners of the home that reside there. The Commissioner is authorized to verify the income eligibility for the basic STAR exemption. The Commissioner will develop procedures necessary to ascertain whether property owners satisfy the income eligibility requirements. Assessors will be notified of these findings in a report to be furnished to the assessors on or about the applicable taxable status date for the local jurisdiction. The assessors will then grant the basic STAR exemption to those properties where the owner's income was determined to be at or below the eligibility threshold, will deny the exemption to those above the threshold, and may solicit additional documentation from the owners in cases where the Commissioner was unable to make a determination. This provision becomes effective immediately upon enactment and applies beginning with the 2011-12 school year and each year thereafter.

Miscellaneous Provisions

Preserve the Existing
Unified Credit Allowed
Against the Estate Tax

Part T of Chapter 57 of the Laws of 2010 eliminates the reference to the unified credit in effect in the IRC on the decedent's date of death and fixes the credit at the amount that would be allowed if the federal unified credit did not exceed the tax due on an estate of \$1 million. This provision is necessary because if Congress does not timely extend the federal estate tax, there will be no federal unified credit in effect on dates of death after the January 1, 2010 expiration of the federal tax and, consequently, no unified credit for purposes of New York's estate tax. This provision preserves the New York unified credit for the estates of decedents dying on or after January 1, 2010.

<p>Improve the Administration of Electronic Filing and Electronic Payment Programs</p>	<p>Part G of Chapter 57 of the Laws of 2010 eliminates the taxpayer opt-out from e-filing as grounds for abatement of the penalty imposed on tax return preparers for failure to e-file tax returns and other tax documents when required to do so. The legislation also authorizes the Commissioner to establish correction periods for timely electronic filings and payments that are not accepted for processing. In addition, the legislation prohibits tax return preparers and software companies from charging separately for e-filing of New York tax documents. A penalty of \$500 is imposed for a first violation and increases to \$1,000 for each subsequent violation. The opt-out provision is effective for required e-filing of tax returns and other tax documents by tax return preparers on or after December 31, 2010, and the other provisions apply to electronic returns and payments made for tax years beginning after December 31, 2010.</p>
<p>Authorization for E-Filing of Real Property Transfer Forms</p>	<p>Part X of Chapter 56 of the Laws of 2010 promotes more efficient and cost-effective tax administration by authorizing electronic reporting of property assessment information and real property transfer forms. This provision is effective on January 1, 2011.</p>
<p>Amend Medallion Taxicab Owners Tax</p>	<p>Part V of Chapter 57 of the Laws of 2010 makes technical amendments to Article 29-A of the Tax Law to improve the administration of the taxicab per-ride fee in New York City. Specifically, the amendment shifts the liability for the tax from owners of New York City taxicabs to owners of New York City taxicab medallions. Also the bill adds language that makes any willful violation of Article 29-A a misdemeanor. It also requires that before renewing a license with the New York City taxicab commission the applicant must avow they have fully paid any tax due under article 29-A. The provision makes other minor technical corrections. These changes are effective beginning July 1, 2010.</p>
<p>Waste Tire Management Fee Extension</p>	<p>Part DD of Chapter 59 of the Laws of 2010 extends the sunset date for the State waste tire management and recycling fee to December 31, 2013. This fee, imposed on all new tires sold at retail in the State under §27-1913 of the Environmental Conservation law, was scheduled to expire on December 31, 2010.</p>

Repeal Procurement Fee	Part P of Chapter 56 of the Laws of 2010 repeals §163-c of the State Finance Law relating to imposition of a centralized procurement contract fee. Prior to enactment of this law, the procurement fee had been imposed on authorized users (e.g., government entities, municipalities, state agencies) of the Office of General Services' centralized contracts. The fee was one-half of one percent of the sales price and users were required to file a return and pay the fee quarterly with the Department. The repeal of this fee took effect immediately.
Medicaid Income Verification	Part B of Chapter 58 of the Laws of 2010 amends the Tax Law to formalize the agreement between the Department and the Department of Health in relation to the procedures used to facilitate the verification of income eligibility for subsidized health insurance coverage under the child health insurance plan of the Public Health Law and for the medical assistance and family health plus programs of the Social Services Law. This provision is effective immediately and shall be deemed to have been in full force and effect on and after April 1, 2010.
Real Estate Transfer Tax (RETT) Revenue Distribution	Section 2 of Chapter 99 of the Laws of 2010 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) 2010-2011, the amount of revenue to be deposited into the Fund decreases from \$199.3 million to \$119.1 million. This change also applies to subsequent State Fiscal Years and is effective immediately.
Authorized Uses for the Public Safety Communications Surcharge	Part B of Chapter 56 of the Laws of 2010 amends the authorized uses for monies received from the Public Safety Communications Surcharge. The legislation authorizes up to \$75 million of the monies received from the Public Safety Communications Surcharge to be used for grants or reimbursements to counties for the development of public safety communications systems or networks to support interoperable communications for first responders and now allows for monies to be used for services and expenses that support the operations of the Division of Homeland Security and Emergency Services. This part is effective July 1, 2010.

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Summary of Tax Provisions in SFY 2010-11 Budget

Chapter 57 of the Laws of 2010 (S.6610-C/A.9710-D)

Section(s)	Page(s)	Subject	Description	Effective Date
Part A	4-5	Cap on Biofuel Production Credit and Qualified Emerging Technology Company (QETC) Facilities, Operations, and Training (FOT) Credit	Clarifies that the credit cap for the biofuel production credit and the QETC FOT credit is applied at the entity level in the case of partnerships, S corporations, and limited liability companies.	Taxable years beginning on or after January 1, 2010
Part B	5	Treat Compensation for Past Services as Taxable for Non-Residents	Makes termination pay, covenants not to compete, and any other employment related compensation for past services of New York Source income and taxable to nonresidents.	Taxable years beginning on or after January 1, 2010
Part C ¹	5-7	New York Source Income of Non-Resident S Corporation Shareholders	Clarifies that nonresident shareholders of S corporations who make an election under §338(h)(10) or §453 of the IRC are taxed in accordance with that election and requires that income received by nonresidents from installment sale contracts entered into before a New York S corporation terminated its taxable status in New York be included as New York source income.	Provisions regarding §338(h)(10) or §453 of the IRC apply to tax years 2007 and after for which the statute of limitations for seeking a refund or assessing additional tax is still open and the provision regarding income received from installment sales contracts applies to taxable years beginning on or after January 1, 2010
Part E	7-8	Information Reporting Required for Credit and Debit Card Payments	Provides for credit/debit card information reporting. Mirrors federal requirements in IRC §6050W. Financial institutions would also file annual information returns with the state regarding amounts of credit/debit card settlements and third party network transactions.	Immediately, with the first information returns due on March 1, 2012
Part G	8-10	Improve the Administration of Electronic Filing and Electronic Payment Programs	Eliminates the taxpayer opt-out from e-filing as grounds for tax return preparer e-filing penalty abatement; authorizes the Commissioner to establish correction periods for rejected but timely electronic filings and payments; and prohibits tax return preparers and software companies from charging separately for New York e-filing (and imposes a \$500 penalty for the first violation and \$1,000 for each subsequent violation).	The opt-out provision is effective for required e-filing of tax returns and other documents by tax return preparers on or after December 31, 2010. The other provisions apply to electronic returns and payments made for tax years beginning after December 31, 2010.
Part N	15-16	Narrow Affiliate Nexus Provision	Provides that the in-state activities of an affiliate in providing accounting or legal services or advice to a seller, or in directing the activities of a seller do not make the seller a vendor.	June 1, 2009

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 57 of the Laws of 2010 (S.6610-C/A.9710-D)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part P	16	Low-Income Housing Credit Increase	Increases the statewide aggregate credit limit to \$28 million.	Immediately
Part Q ¹	16-22	Empire State Film Production Credit and New Empire State Film Post Production Credit	Allocates additional \$2.1 billion in film credit and earmarks \$35 million for new post production credit; makes several amendments regarding eligibility and administration.	Immediately
Part R	22-30	Empire Zones (EZ) Technical Amendments	Makes numerous technical amendments to the Empire Zones Program.	Various
Part S - Subpart A	31-32	Repeated Failure to File	Creates the new crime of repeated failure to file.	Immediately
Part S - Subpart A	32-33	Compliance Technical Amendments	Makes various technical amendments to the compliance provisions contained in the SFY 2009-10 budget.	Immediately
Part S - Subpart B	33-36	Sales Tax Avoidance— Aircraft and Vessels	Supplements legislation enacted with the SFY 2009-10 Budget to close loopholes with respect to purchases of aircraft and vessels by eliminating a scheme that exploits certain exclusions from the definition of “retail sale.”	Immediately
Part S – Subpart C	36-37	Renew IDA Agent Reporting Requirement	Renews the requirements of industrial development agencies (IDAs) to file a statement with the Department when appointing an agent or project operator.	Immediately
Part T	37-38	Preserve the Unified Credit Against the Estate Tax	Eliminates the reference to the unified credit in effect in the IRC on the decedent’s date of death and fixes the credit at the amount that would be allowed if the federal unified credit did not exceed the tax due on an estate of \$1 million.	Applies to estates of decedents dying on or after January 1, 2010
Part V	38-43	Amend Medallion Taxicab Owners Tax	Amends article 29-A by shifting the liability from owners of NYC taxicabs to owners of NYC taxicab medallions.	July 1, 2010
Part W	43	Repeal Sales Tax Bad Debt Provisions for Private Label Credit Card Lenders	Repeals sales tax bad debt provisions that allow a private label credit card lender to claim a credit/refund on accounts written off as uncollectible.	July 1, 2010
Part X	43	Repeal Sales Tax Vendor Credit for Monthly Filers	Eliminates the sales tax vendor credit for vendors that file or are required to file monthly sales tax returns.	June 1, 2010
¹ These provisions were amended by Chapter 312 of the Laws of 2010.				

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 57 of the Laws of 2010 (S.6610-C/A.9710-D)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part Y	43-48	Temporary Deferral of Certain Tax Credits	Requires certain credits in excess of \$2 million to be deferred until 1/1/13; creates 2 new deferral credits; amends estimated payment rules.	Immediately, applicable to taxable years beginning on or after January 1, 2010
Part Z	48-54	Federal Conformity for Bad Debt Deductions	Amends Article 32 of the Tax Law to conform to the federal bank bad debt deduction.	Taxable years beginning on or after January 1, 2010
Part AA	54-58	Impose Sales Tax on Charges by Hotel Room Remarketers	Requires room remarketers to collect State and local sales tax on their charges to their customers.	September 1, 2010
Part CC	58-59	State and Local Sales Tax Deduction Addback	Provides for an addback of the federal itemized deduction for state and local sales taxes paid.	Taxable years beginning on or after January 1, 2010
Part EE	59-75	Limit New York City Personal Income Tax STAR Rate Reduction Benefit to the First \$500,000 on Taxable Income	Eliminates the STAR tax rate reduction for New York City income taxpayers with taxable incomes in excess of \$500,000. The base rate for these taxpayers is increased from 3.2 percent to 3.4 percent. The total tax rate for table incomes in excess of \$500,000 (including the base rate and additional 14 percent surcharge) is increased from 3.648 percent to 3.876 percent.	Effective for taxable years beginning after 2009
Part FF	75-76	Limit the Basic STAR Exemption	Limits the basic STAR real property tax exemption to homeowners with affiliated income no greater than \$500,000.	Effective immediately upon enactment and applies beginning with the 2011-12 school year and each year thereafter.
Part GG	76-82	Suspend the Clothing and Footwear Exemption	Eliminates the exemption from State sales and use tax (sales tax) for clothing and footwear (clothing) priced under \$110 per item or pair for the period October 1, 2010 through March 31, 2011. The legislation also provides an exemption from State tax for clothing priced under \$55 per item or pair during the April 1, 2011 through March 31, 2012 period. On April 1, 2012, the pre-October 1, 2010 exemption for clothing priced under \$110 is reinstated.	October 1, 2010
Part HH	82-85	Limitation on Itemized Deductions	This provision further reduces the use of the itemized deduction for charitable contributions for taxpayers with NYAGI over \$10 million. These taxpayers may claim 25 percent of their federal deduction for charitable contributions.	Tax years beginning on or after January 1, 2010 and ends after tax year 2012

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 57 of the Laws of 2010 (S.6610-C/A.9710-D)				Chapter 57 of the Laws of 2010
Part MM	90	Combined Reporting Requirements for REITs and RICs	Makes captive REIT/RIC combined reporting requirements permanent.	Immediately
Part NN	90-91	Exemptions from Captive REIT Definition	Exempts certain corporations from the definition of a Captive REIT.	Immediately
Part WW	111-112	Exempt Certain New York City Livery Services	Amends the tax on transportation services to exclude certain liveries operating in New York City.	Immediately, and deemed to be in effect since June 1, 2009

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 56 of the Laws of 2010 (S.6606-B/A.9706-C)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part B	58-107	Public Safety Communications Surcharge	Amends the authorized uses for monies received from the Public Safety Communications Surcharge.	July 1, 2010
Part P	132	Repeal Procurement Fee	Repeals §163-c of the state finance law relating to imposition of a centralized procurement contract fee.	Immediately
Part X	168-171	Authorization for E-Filing of Real Property Transfer Forms	Promotes more efficient and cost-effective tax administration by authorizing electronic reporting of property assessment information and real property transfer forms.	January 1, 2011

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 58 of the Laws of 2010 (S.6608-B/A.9708-C)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part B	52-54	Medicaid Income Verification	Formalizes the agreement between the Department and the Department of Health in relation to the procedures used to facilitate the verification of income eligibility for Medicaid.	Immediately and shall be deemed to have been in full force and effect on and after April 1, 2010.

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 59 of the Laws of 2010 (S.6609-B/A9709-C)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part DD	36-40	Waste Tire Management fee extender	Extends sunset date to December 31, 2013.	Immediately
Part MM	61-72	Excelsior Jobs Program Act	Creates the Excelsior Jobs Program which offers 4 credits: jobs tax credit; investment tax credit; research and development tax credit; and real property tax credit.	July 1, 2010

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 99 of the Laws of 2010 (S.7988/A.11308)				
Section(s)	Page(s)	Subject	Description	Effective Date
2	9-10	Real Estate Transfer Tax (RETT) Revenue Distributon	Decreases RETT revenues to be deposited in the State's EPF from \$199.3 million in SFY 2009-10 to \$119.1 million in SFY 2010-2011 and thereafter.	Immediately

Summary of Tax Provisions in SFY 2010-11 Budget				
Chapter 134 of the Laws of 2010 (S.8285/A.11515)				
Section(s)	Page(s)	Subject	Description	Effective Date
Part D	8-16	Sale of Cigarettes to Indian Nations	Requires that all packs of cigarettes sold by cigarette stamping agents to Indian nations must bear a tax stamp. To receive tax exempt cigarettes for tribal member use, Indian nations may elect to participate in either a coupon system or a prior approval system.	September 1, 2010
		Cigarette Tax Rate Increase	Increases the cigarette tax rate from \$2.75 to \$4.35 per pack.	July 1, 2010
		Tobacco Products Tax Rate Increase	Increases the tobacco products rate (other than cigarettes, little cigars and snuff) from 46% to 75% of the wholesale price.	August 1, 2010
		Snuff Tax Rate Increase	Increases the rate on snuff product from 96 cents to \$2 per ounce.	August 1, 2010
		Tax Little Cigars at the Same Rate as Cigarettes	Changes the tax rate on little cigars from 46% of the wholesale price to \$4.35 per pack of 20 little cigars.	August 1, 2010

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