Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds revenue by $10 million annually beginning in FY 2018.

Effective Date:

This bill would take effect immediately.

**Part BB - Modernize sales tax collection to reflect the Internet economy**

Purpose:

This bill would amend the Tax Law to require marketplace providers to collect sales and use tax on taxable sales of tangible personal property that they facilitate.

Summary of Provisions and Statement in Support:

This bill would require marketplace providers to collect sales tax on taxable sales of tangible personal property that they facilitate.

The sales tax is a tax on the customer that is collected by the seller. It is well-established that the Department of Taxation and Finance ("Department") is also authorized to impose such tax collection responsibilities on parties that facilitate sales (e.g., auctioneers, consignment shops and stores with lease departments).

This bill improves on that concept by treating large marketplace providers that facilitate sales of tangible personal property as "persons required to collect tax" on such sales, thereby requiring them to perform all the duties of a vendor, including collecting the tax, filing a tax return, and remitting the tax collected. The bill defines a "marketplace provider" as a person who collects the purchase price, as well as provides the forum, physical or virtual, where the transaction occurs. The bill provides an exception for small marketplace providers that facilitate sales exclusively online by excluding such providers that facilitate less than $100 million in sales in a calendar year.

To minimize the number of persons who have tax collection responsibilities, the bill relieves sellers using marketplace providers of any such responsibilities, as long as the seller receives, in good faith, a certification from the marketplace provider on a form authorized by the Department that the marketplace provider is collecting the tax on the seller's transactions. In fact, a seller of tangible personal property that makes all of its sales through marketplace providers that certify they would collect the tax would have no New York sales tax collection and remittance responsibilities, and need only file annual information returns.

Shifting the tax collection responsibility to the marketplace provider would have many benefits. It would ease sales tax collection burdens for many small businesses in the

State, streamline the tax collection process, improve taxpayer compliance by reducing the number of persons who handle sales tax monies before they are remitted to the Department, and result in a level playing field for New York's "Main Street" retailers that compete with out-of-state sellers that do not collect tax on sales to New York customers made through marketplace providers.

The bill does not expand the rules concerning sales tax nexus.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would increase All Funds receipts by $68 million in FY 2018 and $136 million annually thereafter.

Effective Date:

This bill would take effect September 1, 2017 and applies to sales made or uses occurring after that date.

**Part CC - Close sales tax related entities loopholes**

Purpose:

This bill would amend the Tax Law to close the existing tax loopholes for transactions between related entities.

Summary of Provisions, and Statement in Support:

With certain exceptions, existing law allows a purchaser to buy tangible personal property or services intended for resale exempt from sales tax. However, certain related entities have exploited this exemption by purchasing high-dollar-value property exempt from sales tax and then leasing the property to a member or owner using long-term leases or lease payments that are a small fraction of the fair market value of the property.

This bill would amend the sales tax definition of "retail sale" to include any transfer of tangible personal property to certain entities when the property would be resold to related person or entities, including; (1) sales to single member LLCs or subsidiaries that are disregarded for federal income tax purposes, for resale to a member or owner; (2) sales to a partnership for resale to one or more partners; and (3) sales to a trustee for resale to a trust beneficiary. This change would remove the incentive to use or create those entities to avoid sales tax.

In addition, current law allows a person or entity that is not a resident of New York State to bring property or services into this state for use within the State without incurring use tax. However, this construct has led to situations where a resident person or entity