

3753

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sens. GRIFFO, FARLEY -- read twice and ordered printed,
and when printed to be committed to the Committee on Banks

AN ACT to amend the tax law and the administrative code of the city of
New York, in relation to making transitional provisions relating to
the federal Gramm-Leach-Bliley act permanent

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs 1 and 2 of subsection (m) of section 1452 of
2 the tax law, as amended by chapter 24 of the laws of 2010, are amended
3 to read as follows:
4 (1) Notwithstanding anything to the contrary contained in this section
5 other than subsection (n) of this section, a corporation [that was in
6 existence before January first, two thousand ten and was] subject to tax
7 under article nine-A of this chapter [for its last taxable year begin-
8 ning before January first, two thousand ten], shall continue to be taxa-
9 ble under such article [for all taxable years beginning on or after
10 January first, two thousand ten and before January first, two thousand
11 eleven]. The preceding sentence shall not apply to any taxable year
12 during which such corporation is a banking corporation described in
13 paragraphs one through eight of subsection (a) of this section. Notwith-
14 standing anything to the contrary contained in this section other than
15 subsection (n) of this section, a banking corporation [or corporation]
16 that [was in existence before January first, two thousand ten and] was
17 subject to tax under this article [for its last taxable year beginning
18 before January first, two thousand ten], shall continue to be taxable
19 under this article [for all taxable years beginning on or after January
20 first, two thousand ten and before January first, two thousand eleven or
21 in which the corporation satisfies the requirements for a corporation to
22 elect to be taxable under this article]. Provided further, that nothing
23 in this subsection shall prohibit a corporation that elected pursuant to
24 subsection (d) of this section to be taxable under article nine-A of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 this chapter from revoking that election in accordance with such
2 subsection (d).

3 For purposes of this paragraph, a corporation shall be considered to
4 be subject to tax under article nine-A of this chapter for a taxable
5 year if such corporation was not a taxpayer but was properly included in
6 a combined report filed pursuant to section two hundred eleven of this
7 chapter for such taxable year and a corporation shall be considered to
8 be subject to tax under this article for a taxable year if such corpo-
9 ration was not a taxpayer but was properly included in a combined return
10 filed pursuant to subsection (f) or (g) of section fourteen hundred
11 sixty-two of this article for such taxable year. A corporation [that was
12 in existence before January first, two thousand ten but first becomes a
13 taxpayer in a taxable year beginning on or after January first, two
14 thousand ten and before January first, two thousand eleven,] shall be
15 considered for purposes of this paragraph to have been subject to tax
16 under article nine-A of this chapter for its last taxable year [begin-
17 ning before January first, two thousand ten] if such corporation would
18 have been subject to tax under such article for such taxable year if it
19 had been a taxpayer during such taxable year. A corporation [that was in
20 existence before January first, two thousand ten but first becomes a
21 taxpayer in a taxable year beginning on or after January first, two
22 thousand ten and before January first, two thousand eleven,] shall be
23 considered, for purposes of this paragraph, to have been subject to tax
24 under this article [for its last taxable year beginning before January
25 first, two thousand ten] if such corporation would have been subject to
26 tax under this article for such taxable year if it had been a taxpayer
27 during such taxable year.

28 (2) Notwithstanding anything to the contrary contained in this section
29 other than subsection (n) of this section, a corporation [formed on or
30 after January first, two thousand ten and before January first, two
31 thousand eleven] may elect to be subject to tax under this article or
32 under article nine-A of this chapter [for its first taxable year begin-
33 ning on or after January first, two thousand ten and before January
34 first, two thousand eleven in which] IF either (i) sixty-five percent or
35 more of its voting stock is owned or controlled, directly or indirectly
36 by a financial holding company, provided the corporation whose voting
37 stock is so owned or controlled is principally engaged in activities
38 that are described in section 4(k)(4) or 4(k)(5) of the federal bank
39 holding company act of nineteen hundred fifty-six, as amended and the
40 regulations promulgated pursuant to the authority of such section, or
41 (ii) it is a financial subsidiary. An election under this paragraph may
42 not be made by a corporation described in paragraphs one through eight
43 of subsection (a) of this section or in subsection (e) of this section.
44 In addition, an election under this paragraph may not be made by a
45 corporation that is a party to a reorganization, as defined in
46 subsection (a) of section 368 of the internal revenue code of 1986, as
47 amended, of a corporation described in paragraph one of this subsection
48 if both corporations were sixty-five percent or more owned or
49 controlled, directly or indirectly, by the same interests at the time of
50 the reorganization.

51 An election under this paragraph must be made by the taxpayer on or
52 before the due date for filing its return (determined with regard to
53 extensions of time for filing) for the applicable taxable year. The
54 election to be taxed under article nine-A of this chapter shall be made
55 by the taxpayer by filing the report required pursuant to section two
56 hundred eleven of this chapter and the election to be taxed under this

1 article shall be made by the taxpayer by filing the return required
2 pursuant to section fourteen hundred sixty-two of this article. Any
3 election made pursuant to this paragraph shall be irrevocable and shall
4 apply to each subsequent taxable year [beginning on or after January
5 first, two thousand ten and before January first, two thousand eleven],
6 provided that the stock ownership and activities requirements described
7 in subparagraph (i) of this paragraph are met or such corporation
8 described in subparagraph (ii) of this paragraph continues as a finan-
9 cial subsidiary.

10 S 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
11 administrative code of the city of New York, as amended by chapter 24 of
12 the laws of 2010, are amended to read as follows:

13 (1) Notwithstanding anything to the contrary contained in this section
14 other than subdivision (m) of this section, a corporation [that was in
15 existence before January first, two thousand ten and was] subject to tax
16 under subchapter two of this chapter [for its last taxable year begin-
17 ning before January first, two thousand ten,] shall continue to be taxa-
18 ble under such subchapter for all taxable years [beginning on or after
19 January first, two thousand ten and before January first, two thousand
20 eleven]. The preceding sentence shall not apply to any taxable year
21 during which such corporation is a banking corporation described in
22 paragraphs one through eight of subdivision (a) of this section.
23 Notwithstanding anything to the contrary contained in this section other
24 than subdivision (m) of this section, a banking corporation [or corpo-
25 ration that was in existence before January first, two thousand ten and
26 was subject to tax under this subchapter for its last taxable year
27 beginning before January first, two thousand ten,] shall continue to be
28 taxable under this subchapter for all taxable years [beginning on or
29 after January first, two thousand ten and before January first, two
30 thousand eleven or] in which the corporation satisfies the requirements
31 for a corporation to elect to be taxable under this subchapter. Provided
32 further, that nothing in this subdivision shall prohibit a corporation
33 that elected pursuant to subdivision (d) of this section to be taxable
34 under subchapter two of this chapter from revoking that election in
35 accordance with subdivision (d) of this section. For purposes of this
36 paragraph, a corporation shall be considered to be subject to tax under
37 subchapter two of this chapter for a taxable year if such corporation
38 was not a taxpayer but was properly included in a combined report filed
39 pursuant to subdivision four of section 11-605 of this chapter for such
40 taxable year and a corporation shall be considered to be subject to tax
41 under this subchapter for a taxable year if such corporation was not a
42 taxpayer but was properly included in a combined report filed pursuant
43 to subdivision (f) or (g) of section 11-646 of this part for such taxa-
44 ble year. A corporation [that was in existence before January first, two
45 thousand ten but first becomes a taxpayer in a taxable year beginning on
46 or after January first, two thousand ten and before January first, two
47 thousand eleven,] shall be considered for purposes of this paragraph to
48 have been subject to tax under subchapter two of this chapter for its
49 last taxable year [beginning before January first, two thousand ten] if
50 such corporation would have been subject to tax under such subchapter
51 for such taxable year if it had been a taxpayer during such taxable
52 year. A corporation [that was in existence before January first, two
53 thousand ten but first becomes a taxpayer in a taxable year beginning on
54 or after January first, two thousand ten and before January first, two
55 thousand eleven,] shall be considered for purposes of this paragraph to
56 have been subject to tax under this subchapter for its last taxable year

[beginning before January first, two thousand ten] if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation [formed on or after January first, two thousand ten and before January first, two thousand eleven] may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year [beginning on or after January first, two thousand ten and before January first, two thousand eleven in which] IF either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year [beginning on or after January first, two thousand ten and before January first, two thousand eleven], provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the state may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the state in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year [beginning on or after January first, two thousand and before January first, two thousand eleven] during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year [begin-

ning after January first, two thousand and before January first, two thousand eleven], any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the state and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the state in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year [beginning after January first, two thousand and before January first, two thousand eleven], a banking corporation described in either of the two preceding sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during such subsequent taxable year, continues to exercise its corporate franchise or do business in the state in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year [beginning after January first, two thousand and before January first, two thousand eleven], a banking corporation described in either of the first two sentences of this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

(B) Notwithstanding any provision of this paragraph other than clause (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year [beginning on or after January first, two thousand and before January first, two thousand eleven], registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year [beginning on or after January first, two thousand and before January first, two thousand eleven] with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

S 4. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 11-646 of the administrative code of the city of New York, as amended by chapter 24 of the laws of 2010, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the city may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the city in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year [beginning on or after January first, two thousand and before January first, two thousand eleven] during which

1 such bank holding company registers for the first time under the federal
2 bank holding company act, as amended, and also elects to be a financial
3 holding company. In addition, for each subsequent taxable year [begin-
4 ning after January first, two thousand and before January first, two
5 thousand eleven], any such bank holding company may file on a combined
6 basis without seeking the permission of the commissioner with any bank-
7 ing corporation that is exercising its corporate franchise or doing
8 business in the city and sixty-five percent or more of whose voting
9 stock is owned or controlled, directly or indirectly, by such bank hold-
10 ing company if either such banking corporation is exercising its corpo-
11 rate franchise or doing business in the city in a corporate or organized
12 capacity for the first time during such subsequent taxable year, or
13 sixty-five percent or more of the voting stock of such banking corpo-
14 ration is owned or controlled, directly or indirectly, by such bank
15 holding company for the first time during such subsequent taxable year.
16 Provided however, for each subsequent taxable year [beginning after
17 January first, two thousand and before January first, two thousand elev-
18 en], a banking corporation described in either of the two preceding
19 sentences which filed on a combined basis with any such bank holding
20 company in a previous taxable year, must continue to file on a combined
21 basis with such bank holding company if such banking corporation, during
22 such subsequent taxable year, continues to exercise its corporate fran-
23 chise or do business in the city in a corporate or organized capacity
24 and sixty-five percent or more of such banking corporation's voting
25 stock continues to be owned or controlled, directly or indirectly, by
26 such bank holding company, unless the permission of the commissioner has
27 been obtained to file on a separate basis for such subsequent taxable
28 year. Provided further, however, for each subsequent taxable year
29 [beginning after January first, two thousand and before January first,
30 two thousand eleven], a banking corporation described in either of the
31 first two sentences of this clause which did not file on a combined
32 basis with any such bank holding company in a previous taxable year, may
33 not file on a combined basis with such bank holding company during any
34 such subsequent taxable year unless the permission of the commissioner
35 has been obtained to file on a combined basis for such subsequent taxa-
36 ble year.

37 (B) Notwithstanding any provision of this paragraph other than clause
38 (A) of this subparagraph, the commissioner may not require a bank hold-
39 ing company which, during a taxable year [beginning on or after January
40 first, two thousand and before January first, two thousand eleven],
41 registers for the first time during such taxable year under the federal
42 bank holding company act, as amended, and also elects to be a financial
43 holding company, to make a return on a combined basis for any taxable
44 year [beginning on or after January first, two thousand and before Janu-
45 ary first, two thousand eleven] with a banking corporation sixty-five
46 percent or more of whose voting stock is owned or controlled, directly
47 or indirectly, by such bank holding company.

48 S 5. This act shall take effect immediately.