

3753--B

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 section 4 of part J of chapter 61 of the laws
3 of 2011, are amended 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 [eleven] TWELVE and was
7 subject to tax under article nine-A of this chapter for its last taxable
8 year beginning before January first, two thousand [eleven] TWELVE, shall
9 continue to be taxable under such article for all taxable years begin-
10 ning on or after January first, two thousand [eleven] TWELVE and before
11 January first, two thousand [thirteen] FOURTEEN. The preceding sentence
12 shall not apply to any taxable year during which such corporation is a
13 banking corporation described in paragraphs one through eight of
14 subsection (a) of this section. Notwithstanding anything to the contrary
15 contained in this section other than subsection (n) of this section, a
16 banking corporation [or corporation] that was in existence before Janu-
17 ary first, two thousand [eleven] TWELVE and was subject to tax under
18 this article for its last taxable year beginning before January first,

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

LBD09960-05-2

1 two thousand [eleven] TWELVE, shall continue to be taxable under this
2 article for all taxable years beginning on or after January first, two
3 thousand [eleven] TWELVE and before January first, two thousand [thir-
4 teen] FOURTEEN or in which the corporation satisfies the requirements
5 for a corporation to elect to be taxable under this article. Provided
6 further, that nothing in this subsection shall prohibit a corporation
7 that elected pursuant to subsection (d) of this section to be taxable
8 under article nine-A of this chapter from revoking that election in
9 accordance with such subsection (d).

10 For purposes of this paragraph, a corporation shall be considered to
11 be subject to tax under article nine-A of this chapter for a taxable
12 year if such corporation was not a taxpayer but was properly included in
13 a combined report filed pursuant to section two hundred eleven of this
14 chapter for such taxable year and a corporation shall be considered to
15 be subject to tax under this article for a taxable year if such corpo-
16 ration was not a taxpayer but was properly included in a combined return
17 filed pursuant to subsection (f) or (g) of section fourteen hundred
18 sixty-two of this article for such taxable year. A corporation that was
19 in existence before January first, two thousand [eleven] TWELVE but
20 first becomes a taxpayer in a taxable year beginning on or after January
21 first, two thousand [eleven] TWELVE and before January first, two thou-
22 sand [thirteen] FOURTEEN, shall be considered for purposes of this para-
23 graph to have been subject to tax under article nine-A of this chapter
24 for its last taxable year beginning before January first, two thousand
25 [eleven] TWELVE if such corporation would have been subject to tax under
26 such article for such taxable year if it had been a taxpayer during such
27 taxable year. A corporation that was in existence before January first,
28 two thousand [eleven] TWELVE but first becomes a taxpayer in a taxable
29 year beginning on or after January first, two thousand [eleven] TWELVE
30 and before January first, two thousand [thirteen] FOURTEEN, shall be
31 considered for purposes of this paragraph, to have been subject to tax
32 under this article for its last taxable year beginning before January
33 first, two thousand [eleven] TWELVE if such corporation would have been
34 subject to tax under this article for such taxable year if it had been a
35 taxpayer during such taxable year.

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

1 percent or more owned or controlled, directly or indirectly, by the same
2 interests at the time of the reorganization.

3 An election under this paragraph must be made by the taxpayer on or
4 before the due date for filing its return (determined with regard to
5 extensions of time for filing) for the applicable taxable year. The
6 election to be taxed under article nine-A of this chapter shall be made
7 by the taxpayer by filing the report required pursuant to section two
8 hundred eleven of this chapter and the election to be taxed under this
9 article shall be made by the taxpayer by filing the return required
10 pursuant to section fourteen hundred sixty-two of this article. Any
11 election made pursuant to this paragraph shall be irrevocable and shall
12 apply to each subsequent taxable year beginning on or after January
13 first, two thousand [eleven] TWELVE and before January first, two thou-
14 sand [thirteen] FOURTEEN, provided that the stock ownership and activ-
15 ities requirements described in subparagraph (i) of this paragraph are
16 met or such corporation described in subparagraph (ii) of this paragraph
17 continues as a financial subsidiary.

18 S 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
19 administrative code of the city of New York, as amended by section 5 of
20 part J of chapter 61 of the laws of 2011, are amended to read as
21 follows:

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

1 thousand [eleven] TWELVE and before January first, two thousand [thir-
2 teen] FOURTEEN, shall be considered for purposes of this paragraph to
3 have been subject to tax under subchapter two of this chapter for its
4 last taxable year beginning before January first, two thousand [eleven]
5 TWELVE if such corporation would have been subject to tax under such
6 subchapter for such taxable year if it had been a taxpayer during such
7 taxable year. A corporation that was in existence before January first,
8 two thousand [eleven] TWELVE but first becomes a taxpayer in a taxable
9 year beginning on or after January first, two thousand [eleven] TWELVE
10 and before January first, two thousand [thirteen] FOURTEEN, shall be
11 considered for purposes of this paragraph to have been subject to tax
12 under this subchapter for its last taxable year beginning before January
13 first, two thousand [eleven] TWELVE if such corporation would have been
14 subject to tax under this subchapter for such taxable year if it had
15 been a taxpayer during such taxable year.

16 (2) Notwithstanding anything to the contrary contained in this section
17 other than subdivision (m) of this section, a corporation formed on or
18 after January first, two thousand [eleven] TWELVE and before January
19 first, two thousand [thirteen] FOURTEEN may elect to be subject to tax
20 under this subchapter or under subchapter two of this chapter for its
21 first taxable year beginning on or after January first, two thousand
22 [eleven] TWELVE and before January first, two thousand [thirteen] FOUR-
23 TEEN in which either (i) sixty-five percent or more of its voting stock
24 is owned or controlled, directly or indirectly by a financial holding
25 company, provided the corporation whose voting stock is so owned or
26 controlled is principally engaged in activities that are described in
27 section 4(k)(4) or 4(k)(5) of the federal bank holding company act of
28 nineteen hundred fifty-six, as amended and the regulations promulgated
29 pursuant to the authority of such section or (ii) it is a financial
30 subsidiary. An election under this paragraph may not be made by a corpo-
31 ration described in paragraphs one through eight of subdivision (a) of
32 this section or in subdivision (e) of this section. In addition, an
33 election under this paragraph may not be made by a corporation that is a
34 party to a reorganization, as defined in subsection (a) of section 368
35 of the internal revenue code of 1986, as amended, of a corporation
36 described in paragraph one of this subdivision if both corporations were
37 sixty-five percent or more owned or controlled, directly or indirectly
38 by the same interests at the time of the reorganization.

39 An election under this paragraph must be made by the taxpayer on or
40 before the due date for filing its return (determined with regard to
41 extensions of time for filing) for the applicable taxable year. The
42 election to be taxed under subchapter two of this chapter shall be made
43 by the taxpayer by filing the return required pursuant to subdivision
44 one of section 11-605 of this chapter and the election to be taxed under
45 this subchapter shall be made by the taxpayer by filing the return
46 required pursuant to subdivision (a) of section 11-646 of this part. Any
47 election made pursuant to this paragraph shall be irrevocable and shall
48 apply to each subsequent taxable year beginning on or after January
49 first, two thousand [eleven] TWELVE and before January first, two thou-
50 sand [thirteen] FOURTEEN, provided that the stock ownership and activ-
51 ities requirements described in subparagraph (i) of this paragraph are
52 met or such corporation described in subparagraph (ii) of this paragraph
53 continues as a financial subsidiary.

54 S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
55 1462 of the tax law, as amended by section 6 of part J of chapter 61 of
56 the laws of 2011, is amended to read as follows:

1 (iv) (A) Notwithstanding any provision of this paragraph, any bank
2 holding company exercising its corporate franchise or doing business in
3 the state may make a return on a combined basis without seeking the
4 permission of the commissioner with any banking corporation exercising
5 its corporate franchise or doing business in the state in a corporate or
6 organized capacity sixty-five percent or more of whose voting stock is
7 owned or controlled, directly or indirectly, by such bank holding compa-
8 ny, for the first taxable year beginning on or after January first, two
9 thousand and before January first, two thousand [thirteen] FOURTEEN
10 during which such bank holding company registers for the first time
11 under the federal bank holding company act, as amended, and also elects
12 to be a financial holding company. In addition, for each subsequent
13 taxable year beginning after January first, two thousand and before
14 January first, two thousand [thirteen] FOURTEEN, any such bank holding
15 company may file on a combined basis without seeking the permission of
16 the commissioner with any banking corporation that is exercising its
17 corporate franchise or doing business in the state and sixty-five
18 percent or more of whose voting stock is owned or controlled, directly
19 or indirectly, by such bank holding company if either such banking
20 corporation is exercising its corporate franchise or doing business in
21 the state in a corporate or organized capacity for the first time during
22 such subsequent taxable year, or sixty-five percent or more of the
23 voting stock of such banking corporation is owned or controlled, direct-
24 ly or indirectly, by such bank holding company for the first time during
25 such subsequent taxable year. Provided however, for each subsequent
26 taxable year beginning after January first, two thousand and before
27 January first, two thousand [thirteen] FOURTEEN, a banking corporation
28 described in either of the two preceding sentences which filed on a
29 combined basis with any such bank holding company in a previous taxable
30 year, must continue to file on a combined basis with such bank holding
31 company if such banking corporation, during such subsequent taxable
32 year, continues to exercise its corporate franchise or do business in
33 the state in a corporate or organized capacity and sixty-five percent or
34 more of such banking corporation's voting stock continues to be owned or
35 controlled, directly or indirectly, by such bank holding company, unless
36 the permission of the commissioner has been obtained to file on a sepa-
37 rate basis for such subsequent taxable year. Provided further, however,
38 for each subsequent taxable year beginning after January first, two
39 thousand and before January first, two thousand [thirteen] FOURTEEN, a
40 banking corporation described in either of the first two sentences of
41 this clause which did not file on a combined basis with any such bank
42 holding company in a previous taxable year, may not file on a combined
43 basis with such bank holding company during any such subsequent taxable
44 year unless the permission of the commissioner has been obtained to file
45 on a combined basis for such subsequent taxable year.

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

1 S 4. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
2 11-646 of the administrative code of the city of New York, as amended by
3 section 7 of part J of chapter 61 of the laws of 2011, is amended to
4 read as follows:

5 (iv) (A) Notwithstanding any provision of this paragraph, any bank
6 holding company exercising its corporate franchise or doing business in
7 the city may make a return on a combined basis without seeking the
8 permission of the commissioner with any banking corporation exercising
9 its corporate franchise or doing business in the city in a corporate or
10 organized capacity sixty-five percent or more of whose voting stock is
11 owned or controlled, directly or indirectly, by such bank holding compa-
12 ny, for the first taxable year beginning on or after January first, two
13 thousand and before January first, two thousand [thirteen] FOURTEEN
14 during which such bank holding company registers for the first time
15 under the federal bank holding company act, as amended, and also elects
16 to be a financial holding company. In addition, for each subsequent
17 taxable year beginning after January first, two thousand and before
18 January first, two thousand [thirteen] FOURTEEN, any such bank holding
19 company may file on a combined basis without seeking the permission of
20 the commissioner with any banking corporation that is exercising its
21 corporate franchise or doing business in the city and sixty-five percent
22 or more of whose voting stock is owned or controlled, directly or indi-
23 rectly, by such bank holding company if either such banking corporation
24 is exercising its corporate franchise or doing business in the city in a
25 corporate or organized capacity for the first time during such subse-
26 quent taxable year, or sixty-five percent or more of the voting stock of
27 such banking corporation is owned or controlled, directly or indirectly,
28 by such bank holding company for the first time during such subsequent
29 taxable year. Provided however, for each subsequent taxable year begin-
30 ning after January first, two thousand and before January first, two
31 thousand [thirteen] FOURTEEN, a banking corporation described in either
32 of the two preceding sentences which filed on a combined basis with any
33 such bank holding company in a previous taxable year, must continue to
34 file on a combined basis with such bank holding company if such banking
35 corporation, during such subsequent taxable year, continues to exercise
36 its corporate franchise or do business in the city in a corporate or
37 organized capacity and sixty-five percent or more of such banking corpo-
38 ration's voting stock continues to be owned or controlled, directly or
39 indirectly, by such bank holding company, unless the permission of the
40 commissioner has been obtained to file on a separate basis for such
41 subsequent taxable year. Provided further, however, for each subsequent
42 taxable year beginning after January first, two thousand and before
43 January first, two thousand [thirteen] FOURTEEN, a banking corporation
44 described in either of the first two sentences of this clause which did
45 not file on a combined basis with any such bank holding company in a
46 previous taxable year, may not file on a combined basis with such bank
47 holding company during any such subsequent taxable year unless the
48 permission of the commissioner has been obtained to file on a combined
49 basis for such subsequent taxable year.

50 (B) Notwithstanding any provision of this paragraph other than clause
51 (A) of this subparagraph, the commissioner may not require a bank hold-
52 ing company which, during a taxable year beginning on or after January
53 first, two thousand and before January first, two thousand [thirteen]
54 FOURTEEN, registers for the first time during such taxable year under
55 the federal bank holding company act, as amended, and also elects to be
56 a financial holding company, to make a return on a combined basis for

1 any taxable year beginning on or after January first, two thousand and
2 before January first, two thousand [thirteen] FOURTEEN with a banking
3 corporation sixty-five percent or more of whose voting stock is owned or
4 controlled, directly or indirectly, by such bank holding company.
5 S 5. This act shall take effect immediately.