

3750

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 chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to amend the tax law and the administrative code of the city of New York, in relation to extending transitional 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. Section 51 of chapter 298 of the laws of 1985, amending the
2 tax law relating to the franchise tax on banking corporations imposed by
3 the tax law, authorized to be imposed by any city having a population of
4 one million or more by chapter 772 of the laws of 1966 and imposed by
5 the administrative code of the city of New York and relating to other
6 provisions of the tax law, chapter 883 of the laws of 1975 and the
7 administrative code of the city of New York which relates to such fran-
8 chise tax, as amended by chapter 67 of the laws of 2010, is amended to
9 read as follows:
10 S 51. This act shall take effect immediately and shall apply to taxa-
11 ble years beginning on or after January 1, 1985[, except that:

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

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(a) sections one through eight shall not apply to taxable years beginning on or after January 1, 2011;

(b) sections nine, twelve, the amendment made to paragraph 9 of subsection (a) of section 1452 of the tax law by section thirteen, sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three, twenty-seven, thirty and thirty-two, the amendment made to paragraph 9 of subdivision (a) of section 11-640 of the administrative code of the city of New York by section thirty-three, sections thirty-five, thirty-six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011.

(c) sections twenty-one, twenty-two, twenty-four, forty-one and forty-two shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such sections which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011;

(d) the amendment to the section heading and the opening paragraph of section 11-643.3 of the administrative code of the city of New York made by section forty-three shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011 with respect to those provisions of such section 11-643.3 which relate to the basic tax measured by entire net income; and

(e) section twenty-eight, and the addition of new section 11-643.5 of the administrative code of the city of New York made by section forty-four shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such sections which relate to the alternative minimum taxes measured by assets, issued capital stock and one hundred twenty-five dollars shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011].

S 2. Subdivisions (d) and (f) of section 110 of chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, as amended by chapter 67 of the laws of 2010, are amended to read as follows:

(d) The provisions of section sixty-seven of this act except insofar as it amends paragraph 10 of subsection (b) of section 1453 of the tax law, seventy-one and seventy-four shall apply to taxable years beginning after December 31, 1986[, provided, however, that new paragraphs 11 and 12 of subsection (b) of section 1453 of the tax law as added by section sixty-seven of this act, the amendments made by section seventy-one of this act, and new subsection (i) of section 1453 of the tax law as added by section seventy-four of this act shall not apply to taxable years beginning on or after January 1, 2011];

(f) The provisions of section one hundred four of this act shall apply to taxable years beginning after December 31, 1986[, and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such section which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011].

1 S 3. Subdivisions (c) and (d) of section 68 of chapter 525 of the
2 laws of 1988, amending the tax law and the administrative code of the
3 city of New York relating to the imposition of taxes in the city of New
4 York, as amended by chapter 67 of the laws of 2010, are amended to read
5 as follows:

6 (c) The provisions of sections one, thirty-one, thirty-two, thirty-
7 three, thirty-six, thirty-seven, forty through forty-five, forty-seven
8 and forty-eight of this act shall apply to taxable years beginning after
9 December 31, 1986[, provided, however, that the amendments made by
10 sections thirty-six and forty-one of this act, and new subdivision (i)
11 of section 11-641 of the administrative code of the city of New York as
12 added by section forty-four of this act shall not apply to taxable years
13 beginning on or after January 1, 2011];

14 (d) The provisions of section forty-six of this act shall apply to
15 taxable years beginning after December 31, 1986[, and shall not apply to
16 corporations other than savings banks and savings and loan associations
17 for taxable years beginning on or after January 1, 2011, provided,
18 however, that the provisions of such section which relate to the alter-
19 native minimum tax measured by taxable assets shall continue to apply to
20 all taxpayers for taxable years beginning on or after January 1, 2011];

21 S 4. Paragraphs 1 and 2 of subsection (m) of section 1452 of the tax
22 law, as amended by chapter 24 of the laws of 2010, are amended to read
23 as follows:

24 (1) Notwithstanding anything to the contrary contained in this section
25 other than subsection (n) of this section, a corporation that was in
26 existence before January first, two thousand [ten] ELEVEN and was
27 subject to tax under article nine-A of this chapter for its last taxable
28 year beginning before January first, two thousand [ten] ELEVEN, shall
29 continue to be taxable under such article for all taxable years begin-
30 ning on or after January first, two thousand [ten] ELEVEN and before
31 January first, two thousand [eleven] THIRTEEN. The preceding sentence
32 shall not apply to any taxable year during which such corporation is a
33 banking corporation described in paragraphs one through eight of
34 subsection (a) of this section. Notwithstanding anything to the contrary
35 contained in this section other than subsection (n) of this section, a
36 banking corporation or corporation that was in existence before January
37 first, two thousand [ten] ELEVEN and was subject to tax under this arti-
38 cle for its last taxable year beginning before January first, two thou-
39 sand [ten] ELEVEN, shall continue to be taxable under this article for
40 all taxable years beginning on or after January first, two thousand
41 [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or
42 in which the corporation satisfies the requirements for a corporation to
43 elect to be taxable under this article. Provided further, that nothing
44 in this subsection shall prohibit a corporation that elected pursuant to
45 subsection (d) of this section to be taxable under article nine-A of
46 this chapter from revoking that election in accordance with such
47 subsection (d).

48 For purposes of this paragraph, a corporation shall be considered to
49 be subject to tax under article nine-A of this chapter for a taxable
50 year if such corporation was not a taxpayer but was properly included in
51 a combined report filed pursuant to section two hundred eleven of this
52 chapter for such taxable year and a corporation shall be considered to
53 be subject to tax under this article for a taxable year if such corpo-
54 ration was not a taxpayer but was properly included in a combined return
55 filed pursuant to subsection (f) or (g) of section fourteen hundred
56 sixty-two of this article for such taxable year. A corporation that was

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

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

41 An election under this paragraph must be made by the taxpayer on or
42 before the due date for filing its return (determined with regard to
43 extensions of time for filing) for the applicable taxable year. The
44 election to be taxed under article nine-A of this chapter shall be made
45 by the taxpayer by filing the report required pursuant to section two
46 hundred eleven of this chapter and the election to be taxed under this
47 article shall be made by the taxpayer by filing the return required
48 pursuant to section fourteen hundred sixty-two of this article. Any
49 election made pursuant to this paragraph shall be irrevocable and shall
50 apply to each subsequent taxable year beginning on or after January
51 first, two thousand [ten] ELEVEN and before January first, two thousand
52 [eleven] THIRTEEN, provided that the stock ownership and activities
53 requirements described in subparagraph (i) of this paragraph are met or
54 such corporation described in subparagraph (ii) of this paragraph
55 continues as a financial subsidiary.

1 S 5. Paragraphs 1 and 2 of subdivision (1) of section 11-640 of the
2 administrative code of the city of New York, as amended by chapter 24 of
3 the laws of 2010, are amended to read as follows:

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

54 (2) Notwithstanding anything to the contrary contained in this section
55 other than subdivision (m) of this section, a corporation formed on or
56 after January first, two thousand [ten] ELEVEN and before January first,

1 two thousand [eleven] THIRTEEN may elect to be subject to tax under this
2 subchapter or under subchapter two of this chapter for its first taxable
3 year beginning on or after January first, two thousand [ten] ELEVEN and
4 before January first, two thousand [eleven] THIRTEEN in which either (i)
5 sixty-five percent or more of its voting stock is owned or controlled,
6 directly or indirectly by a financial holding company, provided the
7 corporation whose voting stock is so owned or controlled is principally
8 engaged in activities that are described in section 4(k)(4) or 4(k)(5)
9 of the federal bank holding company act of nineteen hundred fifty-six,
10 as amended and the regulations promulgated pursuant to the authority of
11 such section or (ii) it is a financial subsidiary. An election under
12 this paragraph may not be made by a corporation described in paragraphs
13 one through eight of subdivision (a) of this section or in subdivision
14 (e) of this section. In addition, an election under this paragraph may
15 not be made by a corporation that is a party to a reorganization, as
16 defined in subsection (a) of section 368 of the internal revenue code of
17 1986, as amended, of a corporation described in paragraph one of this
18 subdivision if both corporations were sixty-five percent or more owned
19 or controlled, directly or indirectly by the same interests at the time
20 of the reorganization.

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

36 S 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
37 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is
38 amended to read as follows:

39 (iv) (A) Notwithstanding any provision of this paragraph, any bank
40 holding company exercising its corporate franchise or doing business in
41 the state may make a return on a combined basis without seeking the
42 permission of the commissioner with any banking corporation exercising
43 its corporate franchise or doing business in the state in a corporate or
44 organized capacity sixty-five percent or more of whose voting stock is
45 owned or controlled, directly or indirectly, by such bank holding compa-
46 ny, for the first taxable year beginning on or after January first, two
47 thousand and before January first, two thousand [eleven] THIRTEEN during
48 which such bank holding company registers for the first time under the
49 federal bank holding company act, as amended, and also elects to be a
50 financial holding company. In addition, for each subsequent taxable year
51 beginning after January first, two thousand and before January first,
52 two thousand [eleven] THIRTEEN, any such bank holding company may file
53 on a combined basis without seeking the permission of the commissioner
54 with any banking corporation that is exercising its corporate franchise
55 or doing business in the state and sixty-five percent or more of whose
56 voting stock is owned or controlled, directly or indirectly, by such

1 bank holding company if either such banking corporation is exercising
2 its corporate franchise or doing business in the state in a corporate or
3 organized capacity for the first time during such subsequent taxable
4 year, or sixty-five percent or more of the voting stock of such banking
5 corporation is owned or controlled, directly or indirectly, by such bank
6 holding company for the first time during such subsequent taxable year.
7 Provided however, for each subsequent taxable year beginning after Janu-
8 ary first, two thousand and before January first, two thousand [eleven]
9 THIRTEEN, a banking corporation described in either of the two preceding
10 sentences which filed on a combined basis with any such bank holding
11 company in a previous taxable year, must continue to file on a combined
12 basis with such bank holding company if such banking corporation, during
13 such subsequent taxable year, continues to exercise its corporate fran-
14 chise or do business in the state in a corporate or organized capacity
15 and sixty-five percent or more of such banking corporation's voting
16 stock continues to be owned or controlled, directly or indirectly, by
17 such bank holding company, unless the permission of the commissioner has
18 been obtained to file on a separate basis for such subsequent taxable
19 year. Provided further, however, for each subsequent taxable year begin-
20 ning after January first, two thousand and before January first, two
21 thousand [eleven] THIRTEEN, a banking corporation described in either of
22 the first two sentences of this clause which did not file on a combined
23 basis with any such bank holding company in a previous taxable year, may
24 not file on a combined basis with such bank holding company during any
25 such subsequent taxable year unless the permission of the commissioner
26 has been obtained to file on a combined basis for such subsequent taxa-
27 ble year.

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

39 S 7. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
40 11-646 of the administrative code of the city of New York, as amended by
41 chapter 24 of the laws of 2010, is amended to read as follows:

42 (iv) (A) Notwithstanding any provision of this paragraph, any bank
43 holding company exercising its corporate franchise or doing business in
44 the city may make a return on a combined basis without seeking the
45 permission of the commissioner with any banking corporation exercising
46 its corporate franchise or doing business in the city in a corporate or
47 organized capacity sixty-five percent or more of whose voting stock is
48 owned or controlled, directly or indirectly, by such bank holding compa-
49 ny, for the first taxable year beginning on or after January first, two
50 thousand and before January first, two thousand [eleven] THIRTEEN during
51 which such bank holding company registers for the first time under the
52 federal bank holding company act, as amended, and also elects to be a
53 financial holding company. In addition, for each subsequent taxable year
54 beginning after January first, two thousand and before January first,
55 two thousand [eleven] THIRTEEN, any such bank holding company may file
56 on a combined basis without seeking the permission of the commissioner

1 with any banking corporation that is exercising its corporate franchise
2 or doing business in the city and sixty-five percent or more of whose
3 voting stock is owned or controlled, directly or indirectly, by such
4 bank holding company if either such banking corporation is exercising
5 its corporate franchise or doing business in the city in a corporate or
6 organized capacity for the first time during such subsequent taxable
7 year, or sixty-five percent or more of the voting stock of such banking
8 corporation is owned or controlled, directly or indirectly, by such bank
9 holding company for the first time during such subsequent taxable year.
10 Provided however, for each subsequent taxable year beginning after Janu-
11 ary first, two thousand and before January first, two thousand [eleven]
12 THIRTEEN, a banking corporation described in either of the two preceding
13 sentences which filed on a combined basis with any such bank holding
14 company in a previous taxable year, must continue to file on a combined
15 basis with such bank holding company if such banking corporation, during
16 such subsequent taxable year, continues to exercise its corporate fran-
17 chise or do business in the city in a corporate or organized capacity
18 and sixty-five percent or more of such banking corporation's voting
19 stock continues to be owned or controlled, directly or indirectly, by
20 such bank holding company, unless the permission of the commissioner has
21 been obtained to file on a separate basis for such subsequent taxable
22 year. Provided further, however, for each subsequent taxable year begin-
23 ning after January first, two thousand and before January first, two
24 thousand [eleven] THIRTEEN, a banking corporation described in either of
25 the first two sentences of this clause which did not file on a combined
26 basis with any such bank holding company in a previous taxable year, may
27 not file on a combined basis with such bank holding company during any
28 such subsequent taxable year unless the permission of the commissioner
29 has been obtained to file on a combined basis for such subsequent taxa-
30 ble year.

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

42 S 8. This act shall take effect immediately.