

3753--A

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

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 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 and was] subject to
7 tax under article nine-A of this chapter [for its last taxable year
8 beginning before January first, two thousand eleven], shall continue to
9 be taxable under such article [for all taxable years beginning on or
10 after January first, two thousand eleven and before January first, two
11 thousand thirteen]. The preceding sentence shall not apply to any taxa-
12 ble year during which such corporation is a banking corporation
13 described in paragraphs one through eight of subsection (a) of this
14 section. Notwithstanding anything to the contrary contained in this
15 section other than subsection (n) of this section, a banking corporation
16 [or corporation] that [was in existence before January first, two thou-
17 sand eleven and] was subject to tax under this article [for its last
18 taxable year beginning before January first, two thousand eleven], shall
19 continue to be taxable under this article [for all taxable years begin-
20 ning on or after January first, two thousand eleven and before January
21 first, two thousand thirteen or in which the corporation satisfies the

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

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1 requirements for a corporation to elect to be taxable under this arti-
2 cle]. Provided further, that nothing in this subsection shall prohibit a
3 corporation that elected pursuant to subsection (d) of this section to
4 be taxable under article nine-A of this chapter from revoking that
5 election in accordance with such subsection (d).

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

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

54 An election under this paragraph must be made by the taxpayer on or
55 before the due date for filing its return (determined with regard to
56 extensions of time for filing) for the applicable taxable year. The

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

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

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

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

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

32 An election under this paragraph must be made by the taxpayer on or
33 before the due date for filing its return (determined with regard to
34 extensions of time for filing) for the applicable taxable year. The
35 election to be taxed under subchapter two of this chapter shall be made
36 by the taxpayer by filing the return required pursuant to subdivision
37 one of section 11-605 of this chapter and the election to be taxed under
38 this subchapter shall be made by the taxpayer by filing the return
39 required pursuant to subdivision (a) of section 11-646 of this part. Any
40 election made pursuant to this paragraph shall be irrevocable and shall
41 apply to each subsequent taxable year [beginning on or after January
42 first, two thousand eleven and before January first, two thousand thir-
43 teen], provided that the stock ownership and activities requirements
44 described in subparagraph (i) of this paragraph are met or such corpo-
45 ration described in subparagraph (ii) of this paragraph continues as a
46 financial subsidiary.

47 S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
48 1462 of the tax law, as amended by section 6 of part J of chapter 61 of
49 the laws of 2011, is amended to read as follows:

50 (iv) (A) Notwithstanding any provision of this paragraph, any bank
51 holding company exercising its corporate franchise or doing business in
52 the state may make a return on a combined basis without seeking the
53 permission of the commissioner with any banking corporation exercising
54 its corporate franchise or doing business in the state in a corporate or
55 organized capacity sixty-five percent or more of whose voting stock is
56 owned or controlled, directly or indirectly, by such bank holding compa-

ny, for the first taxable year [beginning on or after January first, two thousand and before January first, two thousand thirteen] 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 [beginning after January first, two thousand and before January first, two thousand thirteen], 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 thirteen], 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 thirteen], 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 thirteen], 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 thirteen] 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 section 7 of part J of chapter 61 of the laws of 2011, 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

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

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

54 S 5. This act shall take effect immediately.