

STATE OF NEW YORK

6615

2017-2018 Regular Sessions

IN SENATE

June 7, 2017

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the administrative code of the city of New York, in relation to the taxation of business corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 11-640 of the administrative code of the city of
2 New York is amended by adding a new subdivision (n) to read as follows:

3 (n) Transitional provisions relating to the enactment and implementa-
4 tion of the federal Gramm-Leach-Bliley act.

5 (1) Notwithstanding anything to the contrary contained in this section
6 other than subdivision (m) of this section, a corporation that was in
7 existence before January first, two thousand seventeen and was subject
8 to tax under subchapter two of this chapter for its last taxable year
9 beginning before January first, two thousand seventeen, shall continue
10 to be taxable under such subchapter for all taxable years beginning on
11 or after January first, two thousand seventeen and before January first,
12 two thousand twenty. The preceding sentence shall not apply to any taxa-
13 ble year during which such corporation is a banking corporation
14 described in paragraphs one through eight of subdivision (a) of this
15 section. Notwithstanding anything to the contrary contained in this
16 section other than subdivision (m) of this section, a banking corpo-
17 ration or corporation that was in existence before January first, two
18 thousand seventeen and was subject to tax under this subchapter for its
19 last taxable year beginning before January first, two thousand seven-
20 teen, shall continue to be taxable under this subchapter for all taxable
21 years beginning on or after January first, two thousand seventeen and
22 before January first, two thousand twenty only if the corporation is a
23 banking corporation as defined in subdivision (a) of this section or the
24 corporation satisfies the requirements for a corporation to elect to be
25 taxable under this subchapter. Provided further, that nothing in this

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

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1 subdivision shall prohibit a corporation that elected pursuant to subdivi-
2 vision (d) of this section to be taxable under subchapter two of this
3 chapter from revoking that election in accordance with subdivision (d)
4 of this section.

5 For purposes of this paragraph, a corporation shall be considered to
6 be subject to tax under subchapter two of this chapter for a taxable
7 year if such corporation was not a taxpayer but was properly included in
8 a combined report filed pursuant to subdivision four of section 11-605
9 of this chapter for such taxable year and a corporation shall be consid-
10 ered to be subject to tax under this subchapter for a taxable year if
11 such corporation was not a taxpayer but was properly included in a
12 combined report filed pursuant to subdivision (f) or (g) of section
13 11-646 of this part for such taxable year. A corporation that was in
14 existence before January first, two thousand seventeen but first becomes
15 a taxpayer in a taxable year beginning on or after January first, two
16 thousand seventeen and before January first, two thousand twenty, shall
17 be considered for purposes of this paragraph to have been subject to tax
18 under subchapter two of this chapter for its last taxable year beginning
19 before January first, two thousand seventeen if such corporation would
20 have been subject to tax under such subchapter for such taxable year if
21 it had been a taxpayer during such taxable year. A corporation that was
22 in existence before January first, two thousand seventeen but first
23 becomes a taxpayer in a taxable year beginning on or after January
24 first, two thousand seventeen and before January first, two thousand
25 twenty, shall be considered for purposes of this paragraph to have been
26 subject to tax under this subchapter for its last taxable year beginning
27 before January first, two thousand seventeen if such corporation would
28 have been subject to tax under this subchapter for such taxable year if
29 it had been a taxpayer during such taxable year.

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

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

1 by the taxpayer by filing the return required pursuant to subdivision
2 one of section 11-605 of this chapter and the election to be taxed under
3 this subchapter shall be made by the taxpayer by filing the return
4 required pursuant to subdivision (a) of section 11-646 of this part. Any
5 election made pursuant to this paragraph shall be irrevocable and shall
6 apply to each subsequent taxable year beginning on or after January
7 first, two thousand seventeen and before January first, two thousand
8 twenty, provided that the stock ownership and activities requirements
9 described in subparagraph (i) of this paragraph are met or such corpo-
10 ration described in subparagraph (ii) of this paragraph continues as a
11 financial subsidiary.

12 (3) For purposes of this subdivision, a financial subsidiary means a
13 corporation (i) sixty-five percent or more of whose voting stock is
14 owned or controlled, directly or indirectly by a banking corporation
15 described in paragraph one, two or three of subdivision (a) of this
16 section and (ii) is described in section 5136A(g) of the revised stat-
17 utes of the United States or section 46 of the federal deposit insurance
18 act. For purposes of this subchapter, the term "banking corporation"
19 shall include a corporation electing to be taxed under this subchapter
20 pursuant to paragraph two of this subdivision for so long as such
21 election shall be in effect.

22 § 2. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
23 11-646 of the administrative code of the city of New York, as amended by
24 section 111 of part A of chapter 59 of the laws of 2014, is amended to
25 read as follows:

26 (iv) (A) Notwithstanding any provision of this paragraph, any bank
27 holding company exercising its corporate franchise or doing business in
28 the city may make a return on a combined basis without seeking the
29 permission of the commissioner with any banking corporation exercising
30 its corporate franchise or doing business in the city in a corporate or
31 organized capacity sixty-five percent or more of whose voting stock is
32 owned or controlled, directly or indirectly, by such bank holding compa-
33 ny, for the first taxable year beginning on or after January first, two
34 thousand and before January first, two thousand ~~seventeen~~ twenty
35 during which such bank holding company registers for the first time
36 under the federal bank holding company act, as amended, and also elects
37 to be a financial holding company. In addition, for each subsequent
38 taxable year beginning after January first, two thousand and before
39 January first, two thousand ~~seventeen~~ twenty, any such bank holding
40 company may file on a combined basis without seeking the permission of
41 the commissioner with any banking corporation that is exercising its
42 corporate franchise or doing business in the city and sixty-five percent
43 or more of whose voting stock is owned or controlled, directly or indi-
44 rectly, by such bank holding company if either such banking corporation
45 is exercising its corporate franchise or doing business in the city in a
46 corporate or organized capacity for the first time during such subse-
47 quent taxable year, or sixty-five percent or more of the voting stock of
48 such banking corporation is owned or controlled, directly or indirectly,
49 by such bank holding company for the first time during such subsequent
50 taxable year. Provided however, for each subsequent taxable year begin-
51 ning after January first, two thousand and before January first, two
52 thousand ~~seventeen~~ twenty, a banking corporation described in either
53 of the two preceding sentences which filed on a combined basis with any
54 such bank holding company in a previous taxable year, must continue to
55 file on a combined basis with such bank holding company if such banking
56 corporation, during such subsequent taxable year, continues to exercise

1 its corporate franchise or do business in the city in a corporate or
2 organized capacity and sixty-five percent or more of such banking corpo-
3 ration's voting stock continues to be owned or controlled, directly or
4 indirectly, by such bank holding company, unless the permission of the
5 commissioner has been obtained to file on a separate basis for such
6 subsequent taxable year. Provided further, however, for each subsequent
7 taxable year beginning after January first, two thousand and before
8 January first, two thousand [~~seventeen~~] twenty, a banking corporation
9 described in either of the first two sentences of this clause which did
10 not file on a combined basis with any such bank holding company in a
11 previous taxable year, may not file on a combined basis with such bank
12 holding company during any such subsequent taxable year unless the
13 permission of the commissioner has been obtained to file on a combined
14 basis for such subsequent taxable year.

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

26 § 3. This act shall take effect immediately.