S T A T E O F N E W Y O R K

10096

I N A S S E M B L Y

March 4, 2010

Introduced by M. of A. FARRELL -- read once and referred to the Committee on Ways and Means

AN ACT 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:

Section 1. Paragraphs 1 and 2 of subsection (m) of section 1452 of the tax law, paragraph 1 as amended by chapter 636 of the laws of 2008 and paragraph 2 as added by section 4 of part H of chapter 60 of the laws of 2007, are amended to read as follows:

(1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand [eight] TEN and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand [eight] TEN, shall continue to be taxable under such article for all taxable years beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation or corporation that was in existence before January first, two thousand [eight] TEN and was subject to tax under this article for its last taxable year beginning before January first, two thousand [eight] TEN, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this article. Provided further, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

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

LBD16168-01-0

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand [eight] TEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand [eight] TEN if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [eight] TEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand [eight] TEN if such corporation would have been subject to tax under this article 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 subsection (n) of this section, [as added by a chapter of the laws of two thousand seven,] a corporation formed on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN in which 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 subsection (a) of this section or in subsection (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 subsection 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 article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this

article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. 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 [eight] TEN and before January first, two thousand [ten] 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 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the administrative code of the city of New York, as amended by chapter 201 of the laws of 2009, are amended to read as follows:

(1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand [eight] TEN and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [eight] TEN, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand [eight] TEN and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [eight] TEN, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand [eight] TEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [eight] TEN if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [eight] TEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, shall be considered for

purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [eight] 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 [eight] TEN and before January first, two thousand [ten] 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 [eight] TEN and before January first, two thousand [ten] ELEVEN in which 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 [eight] TEN and before January first, two thousand [ten] 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 section 5 of part H of chapter 60 of the laws of 2007, 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 [ten] 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 beginning after January first, two thousand and before January first, two thousand [ten] 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 [ten] 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 [ten] 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 [ten] 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 [ten] 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 section 7 of part H of chapter 60 of the laws of 2007, 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 [ten] 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 beginning after January first, two thousand and before January first, two thousand [ten] 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 city 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 city 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 [ten] 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 city 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 [ten] 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 [ten] 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 [ten] 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 5. This act shall take effect immediately.