

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:

1 Section 1. Paragraphs 1 and 2 of subsection (m) of section 1452 of the
2 tax law, paragraph 1 as amended by chapter 636 of the laws of 2008 and
3 paragraph 2 as added by section 4 of part H of chapter 60 of the laws of
4 2007, are amended to read as follows:
5 (1) Notwithstanding anything to the contrary contained in this section
6 other than subsection (n) of this section, a corporation that was in
7 existence before January first, two thousand [eight] TEN and was subject
8 to tax under article nine-A of this chapter for its last taxable year
9 beginning before January first, two thousand [eight] TEN, shall continue
10 to be taxable under such article for all taxable years beginning on or
11 after January first, two thousand [eight] TEN and before January first,
12 two thousand [ten] ELEVEN. The preceding sentence shall not apply to any
13 taxable year during which such corporation is a banking corporation
14 described in paragraphs one through eight of subsection (a) of this
15 section. Notwithstanding anything to the contrary contained in this
16 section other than subsection (n) of this section, a banking corporation
17 or corporation that was in existence before January first, two thousand
18 [eight] TEN and was subject to tax under this article for its last tax-
19 able year beginning before January first, two thousand [eight] TEN, shall
20 continue to be taxable under this article for all taxable years begin-
21 ning on or after January first, two thousand [eight] TEN and before
22 January first, two thousand [ten] ELEVEN or in which the corporation
23 satisfies the requirements for a corporation to elect to be taxable
24 under this article. Provided further, that nothing in this subsection
25 shall prohibit a corporation that elected pursuant to subsection (d) of
26 this section to be taxable under article nine-A of this chapter from
27 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

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

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

51 An election under this paragraph must be made by the taxpayer on or
52 before the due date for filing its return (determined with regard to
53 extensions of time for filing) for the applicable taxable year. The
54 election to be taxed under article nine-A of this chapter shall be made
55 by the taxpayer by filing the report required pursuant to section two
56 hundred eleven of this chapter and the election to be taxed under this

1 article shall be made by the taxpayer by filing the return required
2 pursuant to section fourteen hundred sixty-two of this article. Any
3 election made pursuant to this paragraph shall be irrevocable and shall
4 apply to each subsequent taxable year beginning on or after January
5 first, two thousand [eight] TEN and before January first, two thousand
6 [ten] ELEVEN, provided that the stock ownership and activities require-
7 ments described in subparagraph (i) of this paragraph are met or such
8 corporation described in subparagraph (ii) of this paragraph continues
9 as a financial subsidiary.

10 S 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
11 administrative code of the city of New York, as amended by chapter 201
12 of the laws of 2009, are amended to read as follows:

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

1 purposes of this paragraph to have been subject to tax under this
2 subchapter for its last taxable year beginning before January first, two
3 thousand [eight] TEN if such corporation would have been subject to tax
4 under this subchapter for such taxable year if it had been a taxpayer
5 during such taxable year.

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

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

44 S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
45 1462 of the tax law, as amended by section 5 of part H of chapter 60 of
46 the laws of 2007, is amended to read as follows:

47 (iv) (A) Notwithstanding any provision of this paragraph, any bank
48 holding company exercising its corporate franchise or doing business in
49 the state may make a return on a combined basis without seeking the
50 permission of the commissioner with any banking corporation exercising
51 its corporate franchise or doing business in the state in a corporate or
52 organized capacity sixty-five percent or more of whose voting stock is
53 owned or controlled, directly or indirectly, by such bank holding compa-
54 ny, for the first taxable year beginning on or after January first, two
55 thousand and before January first, two thousand [ten] ELEVEN during
56 which such bank holding company registers for the first time under the

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

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

47 S 4. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
48 11-646 of the administrative code of the city of New York, as amended by
49 section 7 of part H of chapter 60 of the laws of 2007, is amended to
50 read as follows:

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

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

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

51 S 5. This act shall take effect immediately.