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

11479--A

I N A S S E M B L Y

June 16, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. O'Donnell) -- read once and referred to the Committee on Ways and Means -- 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 allowing recognition of marriages performed outside New York state

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2 of the tax law is amended by adding two new subdivisions 12 and 13 to read as follows:

12. AS USED IN THIS CHAPTER, A "STATE RECOGNIZED MARRIAGE" SHALL MEAN A MARRIAGE RECOGNIZED BY NEW YORK STATE LAW, INCLUDING A MARRIAGE OUTSIDE THE STATE RECOGNIZED UNDER PRINCIPLES OF COMITY.

13. AS USED IN THIS CHAPTER, "MARRIED," "SPOUSE," "HUSBAND," "WIFE," "WIDOW," AND OTHER SIMILAR TERMS ENCOMPASS ANY INDIVIDUALS IN A STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH MARRIAGE UNDER THE LAWS OF THE UNITED STATES.

S 2. The tax law is amended by adding a new section 31 to read as follows:

S 31. TREATMENT OF INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE. (A) FOR PURPOSES OF THIS CHAPTER, INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED, AND THEIR STATUS AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS CHAPTER SHALL BE THAT OF SIMILARLY-SITUATED INDIVIDUALS IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

(B) TAX LIABILITY UNDER ARTICLES TWENTY-TWO, TWENTY-SIX, TWENTY-SIX-B, THIRTY, THIRTY-A, AND THIRTY-B OF THIS CHAPTER SHALL BE COMPUTED FOR ANY STATE RECOGNIZED MARRIAGE IN THE SAME WAY LIABILITY WOULD BE COMPUTED IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW.

S 3. Subsection (b) of section 607 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

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

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(b) Marital or other status. An individual's marital or other status under section six hundred one, subsection (b) of section six hundred six and section six hundred fourteen shall be the same as his OR HER marital or other status for purposes of establishing the applicable federal income tax rates; PROVIDED HOWEVER, THAT INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED AND AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM USED IN THIS ARTICLE TO INDICATE MARITAL STATUS TO THE SAME EXTENT AND IN THE SAME WAY AS ARE INDIVIDUALS IN ANY OTHER LEGALLY PERFORMED MARRIAGE. IN APPLYING RELEVANT PROVISIONS OF THE LAWS OF THE UNITED STATES TO THIS ARTICLE, THE TERMS "MARRIED," "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS ARTICLE SHALL INCLUDE ANY STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 4. Subsection (b) of section 651 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INDIVIDUAL IN A STATE RECOGNIZED MARRIAGE NOT RECOGNIZED BY FEDERAL LAW SHALL FILE A STATE RETURN USING THE SAME FILING STATUS THAT WOULD HAVE BEEN AVAILABLE HAD SUCH MARRIAGE BEEN RECOGNIZED BY FEDERAL LAW.

S 5. Subsection (a) of section 951 of the tax law, as amended by section 1 of part A of chapter 407 of the laws of 1999, is amended to read as follows:

(a) Dates. For purposes of this article, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight, and, unless specifically provided otherwise in this article, any reference to December thirty-first, nineteen hundred seventy-six or January first, nineteen hundred seventy-seven contained in the provisions of such code which are applicable to the determination of the tax imposed by this article shall be read as a reference to June thirtieth, nineteen hundred seventy-eight or July first, nineteen hundred seventy-eight, respectively. Notwithstanding the foregoing, the unified credit against the estate tax provided in section two thousand ten of the internal revenue code shall, for purposes of this article, be the amount allowed by such section under the applicable federal law in effect on the decedent's date of death. Provided, however, the amount of such credit allowable for purposes of this article shall not exceed the amount allowable as if the federal unified credit did not exceed the tax due under section two thousand one of the internal revenue code on a federal taxable estate of one million dollars. PROVIDED, FURTHER, ANY ELECTION TO TAKE A QUALIFIED TERMINABLE INTEREST PROPERTY DEDUCTION MADE ON THE RETURN FILED UNDER THIS ARTICLE SHALL BE TREATED AS IF THE ELECTION HAD BEEN MADE ON THE FEDERAL ESTATE TAX RETURN.

S 6. Section 1-112 of the administrative code of the city of New York is amended by adding a new subdivision 22 to read as follows:

22. FOR PURPOSES OF CHAPTER SEVENTEEN OF TITLE ELEVEN OF THIS CODE, "MARRIED," "SPOUSE," "HUSBAND," "WIFE," "WIDOW," AND OTHER SIMILAR TERMS ENCOMPASS ANY STATE RECOGNIZED MARRIAGE NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 7. Subdivision (b) of section 11-1707 of the administrative code of the city of New York, as amended by chapter 333 of the laws of 1987, is amended to read as follows:

(b) Marital or other status. An individual's marital or other status under section 11-1701 and section 11-1714 shall be the same as his OR HER marital or other status for purposes of establishing the applicable

federal income tax rates; PROVIDED HOWEVER, THAT INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED AND AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS CHAPTER TO THE SAME EXTENT AND IN THE SAME WAY AS IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW. IN APPLYING RELEVANT PROVISIONS OF THE LAWS OF THE UNITED STATES TO THIS CHAPTER, THE TERMS "MARRIED," "HUSBAND," "WIFE," "SPOUSE," "WIDOW" AND OTHER SIMILAR TERMS INDICATING MARITAL STATUS AS USED IN THIS CHAPTER SHALL INCLUDE INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 8. This act shall take effect immediately; provided however, that sections three, four, six and seven of this act shall apply to taxable years beginning on or after January 1, 2010.