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

S. 1174 A. 3331

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 27, 2009

IN SENATE -- Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. AMEDORE, TOBACCO, WALKER, McDONOUGH -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to filing of amended personal income tax returns

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

Section 1. Legislative findings. The legislature finds that the increasing complexity of income tax laws, particularly those affecting income earned in one state by a taxpayer residing in another state, has contributed to unfair and inequitable situations. Although a New York taxpayer may offset taxes paid to another state against his or her state income tax liability, delays in assessment and notification by the other state may cause filing of an amended return to be barred by the statute of limitations. As a result, the New York taxpayer is forced to pay the same tax obligation twice, once to New York and again to the other state. In an effort to provide an equitable remedy for affected taxpayers, the legislature determines to treat changes to a taxpayer's obligations to another state in the same fashion as changes made to a taxpayer's federal obligations.

S 2. Section 659 of the tax law, as amended by chapter 577 of the laws of 1997, is amended to read as follows:

S 659. Report of [federal] changes, corrections or disallowances. (A) If the amount of a taxpayer's federal taxable income, federal items of tax preference, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on his OR HER federal income tax return for any taxable year, or the amount of a taxpayer's earned income credit or credit for employment-related

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

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expenses set forth on such return, or the amount of any federal foreign tax credit affecting the calculation of the credit for Canadian provincial taxes under section six hundred twenty or six hundred twenty-A of this article, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this section. Any taxpayer filing an amended federal income tax return and any employer filing an amended federal return of income tax withheld shall also file within ninety days thereafter an amended return under this article, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having a resident partner or having any income derived from New York sources, and a corporation with respect to which the taxable year of such change, correction, disallowance or amendment is a year with respect to which the election provided for in subsection (a) of section six hundred sixty of this article is in effect, and (ii) the term "federal income tax return" shall include the returns of income required under sections six thousand thirty-one and six thousand thirty-seven of the internal revenue code. In the case of such a corporation, such report shall also include any change or correction of the taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code. Reports made under this section by a partnership or corporation shall indicate the portion of the change in each item of income, gain, loss or deduction (and, in the case of a corporation, of each change in, or disallowance of a claim for credit or refund of, a tax referred to in the preceding sentence) allocable to each partner or shareholder and shall set forth such identifying information with respect to such partner or shareholder as may be prescribed by the commissioner.

(B) IF THE AMOUNT OF A TAXPAYER'S OBLIGATION TO ANOTHER STATE PURSUANT TO THAT STATE'S INCOME TAX LAWS IS CHANGED OR CORRECTED BY A COMPETENT AUTHORITY OF THAT STATE, THE RIGHTS AND RESPONSIBILITIES OF SUCH TAXPAYER SHALL BE THE SAME AS IF THE CHANGE OR CORRECTION HAD BEEN MADE BY THE UNITED STATES INTERNAL REVENUE SERVICE PURSUANT TO SUBSECTION (A) OF THIS SECTION.

S 3. Subsection (c) of section 687 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(c) Notice of [federal] change or correction.-- A claim for credit or refund of any overpayment of tax attributable to a [federal] change or correction required to be reported pursuant to section six hundred fifty-nine OF THIS ARTICLE shall be filed by the taxpayer within two

years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section six hundred fifty-nine OF THIS ARTICLE is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the [federal] change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such [federal] change, correction or items amended on the taxpayer's amended [federal] income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

S 4. Transition provision. Notwithstanding the provisions of section 683 of the tax law, a taxpayer who filed an income tax return for the tax years beginning January 1, 2000, January 1, 2001, January 1, 2002, January 1, 2003, or January 1, 2004, may file an amended return to claim a credit pursuant to section 620 of the tax law which was allowed during such periods but not claimed by such taxpayer. Any such amended return shall be filed within ninety days after the effective date of this act.

S 5. This act shall take effect immediately; provided that sections two and three of this act shall apply to taxable years beginning on and after January 1, 2010.