

5954

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

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

AN ACT to amend the tax law, in relation to limited liability company fees and business corporation franchise taxes for farms and commercial horse boarding operations

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

1 Section 1. Paragraph 3 of subsection (c) of section 658 of the tax  
2 law, as amended by section 1 of part AA-1 of chapter 57 of the laws of  
3 2008, is amended to read as follows:  
4 (3) Filing fees. (A) Every subchapter K limited liability company,  
5 every limited liability company that is a disregarded entity for federal  
6 income tax purposes, and every limited liability partnership under arti-  
7 cle eight-B of the partnership law and every foreign limited liability  
8 partnership, which has any income derived from New York sources, deter-  
9 mined in accordance with the applicable rules of section six hundred  
10 thirty-one of this article as in the case of a nonresident individual,  
11 shall, within thirty days after the last day of the taxable year, make a  
12 payment of a filing fee. SUCH DEADLINE SHALL NOT APPLY TO FARMS OR  
13 COMMERCIAL HORSE BOARDING OPERATIONS, WHICH SHALL, WITHIN ONE HUNDRED  
14 TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF A  
15 FILING FEE. The amount of the filing fee is the amount set forth in  
16 subparagraph (B) of this paragraph. The minimum filing fee is twenty-  
17 five dollars for taxable years beginning in two thousand eight and  
18 after. Limited liability companies that are disregarded [entitled] ENTI-  
19 TIES for federal income tax purposes must pay a filing fee of twenty-  
20 five dollars for taxable years beginning on or after January first, two  
21 thousand eight.  
22 (B) The filing fee will be based on the New York source gross income  
23 of the limited liability company or limited liability partnership for  
24 the taxable year immediately preceding the taxable year for which the

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

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1 fee is due. If the limited liability company or limited liability part-  
 2 nership does not have any New York source gross income for the taxable  
 3 year immediately preceding the taxable year for which the fee is due,  
 4 the limited liability company or limited liability partnership shall pay  
 5 the minimum filing fee. New York source gross income is the sum of the  
 6 partners' or members' shares of federal gross income from the limited  
 7 liability partnership or limited liability company derived from or  
 8 connected with New York sources, determined in accordance with the  
 9 provisions of section six hundred thirty-one of this article as if those  
 10 provisions and any related provisions expressly referred to a computa-  
 11 tion of federal gross income from New York sources. For this purpose,  
 12 federal gross income is computed without any allowance or deduction for  
 13 cost of goods sold, EXCEPT THAT FOR COMPANIES ENGAGED PRIMARILY IN FARM-  
 14 ING OR COMMERCIAL HORSE BOARDING, FEDERAL GROSS INCOME SHALL BE BASED  
 15 UPON NET INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

16 The amount of the filing fee for taxable years beginning on or after  
 17 January first, two thousand eight will be determined in accordance with  
 18 the following table:

19 If the New York source gross income is:	The fee is:
20 not more than \$100,000	\$25
21 more than \$100,000 but not over \$250,000	\$50
22 more than \$250,000 but not over \$500,000	\$175
23 more than \$500,000 but not over \$1,000,000	\$500
24 more than \$1,000,000 but not over \$5,000,000	\$1,500
25 more than \$5,000,000 but not over \$25,000,000	\$3,000
26 Over \$25,000,000	\$4,500

27 (C) No credits provided by this article may be taken against the fee  
 28 imposed by this paragraph.

29 (D) Where the filing fee is not timely paid, it shall be paid upon  
 30 notice and demand and shall be assessed, collected and paid in the same  
 31 manner as taxes, and for those purposes any reference in this article to  
 32 tax imposed by this article shall be deemed also to refer to this filing  
 33 fee.

34 S 2. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210  
 35 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the  
 36 laws of 2008, is amended to read as follows:

37 (4) Notwithstanding subparagraphs one and two of this paragraph, for  
 38 taxable years beginning on or after January first, two thousand eight,  
 39 the amount prescribed by this paragraph for New York S corporations will  
 40 be determined in accordance with the following table:

41 If New York receipts are:	The fixed dollar 42 minimum tax is:
43 not more than \$100,000	\$25
44 more than \$100,000 but not over \$250,000	\$50
45 more than \$250,000 but not over \$500,000	\$175
46 more than \$500,000 but not over \$1,000,000	\$300
47 more than \$1,000,000 but not over \$5,000,000	\$1,000
48 more than \$5,000,000 but not over \$25,000,000	\$3,000
49 Over \$25,000,000	\$4,500

50 Otherwise the amount prescribed by this paragraph will be determined in  
 51 accordance with the following table:

52 If New York receipts are:	The fixed dollar 53 minimum tax is:
54 not more than \$100,000	\$25
55 more than \$100,000 but not over \$250,000	\$75
56 more than \$250,000 but not over \$500,000	\$175

1	more than \$500,000 but not over \$1,000,000	\$500
2	more than \$1,000,000 but not over \$5,000,000	\$1,500
3	more than \$5,000,000 but not over \$25,000,000	\$3,500
4	Over \$25,000,000	\$5,000

5 For purposes of this paragraph, New York receipts are the receipts  
6 computed in accordance with subparagraph two of paragraph (a) of subdi-  
7 vision three of this section for the taxable year, EXCEPT THAT FOR  
8 CORPORATIONS ENGAGED PRIMARILY IN FARMING OR COMMERCIAL HORSE BOARDING,  
9 THE TERM NEW YORK RECEIPTS SHALL REFER TO NET FARM INCOME AS REPORTED  
10 FOR FEDERAL TAX PURPOSES.

11 S 3. This act shall take effect immediately and shall apply to taxable  
12 years beginning on or after January 1, 2009.