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

6587

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. BURLING, ERRIGO, FINCH, WALKER -- Multi-Sponsored by -- M. of A. KOLB -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing a subtraction from federal adjusted gross income for seventy-five percent of net investment income

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

Section 1. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 17 to read as follows:

(17) FOR ANY TAXABLE YEAR, THE AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF A TAXPAYER'S NET INVESTMENT INCOME. A TAXPAYER'S NET INVESTMENT INCOME SHALL BE CALCULATED PURSUANT TO THE FOLLOWING DEFINITIONS:

(A) FOR PURPOSES OF THIS CHAPTER, THE TERM "INVESTMENT ASSET" MEANS PROPERTY HELD BY THE TAXPAYER (WHETHER OR NOT CONNECTED WITH HIS OR HER TRADE OR BUSINESS), BUT DOES NOT INCLUDE:

(I) STOCK IN TRADE OF THE TAXPAYER OR OTHER PROPERTY OF A KIND WHICH WOULD PROPERLY BE INCLUDED IN THE INVENTORY OF THE TAXPAYER IF ON HAND AT THE CLOSE OF THE TAXABLE YEAR, OR PROPERTY HELD BY THE TAXPAYER PRIMARILY FOR SALE TO CUSTOMERS IN THE ORDINARY COURSE OF HIS OR HER TRADE OR BUSINESS;

(II) PROPERTY, USED IN HIS OR HER TRADE OR BUSINESS OF A CHARACTER WHICH IS SUBJECT TO THE ALLOWANCE FOR DEPRECIATION PROVIDED IN SECTION 167 OF THE INTERNAL REVENUE CODE, OR REAL PROPERTY USED IN HIS TRADE OR BUSINESS;

(III) A COPYRIGHT, A LITERARY, MUSICAL, OR ARTISTIC COMPOSITION, A LETTER OR MEMORANDUM, OR SIMILAR PROPERTY, HELD BY:

(1) A TAXPAYER WHOSE PERSONAL EFFORTS CREATED SUCH PROPERTY,

(2) IN THE CASE OF A LETTER, MEMORANDUM, OR SIMILAR PROPERTY, A TAXPAYER FOR WHOM SUCH PROPERTY WAS PREPARED OR PRODUCED,

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

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(3) A TAXPAYER IN WHOSE HANDS THE BASIS OF SUCH PROPERTY IS DETERMINED, FOR PURPOSES OF DETERMINING GAIN FROM A SALE OR EXCHANGE, IN WHOLE OR PART BY REFERENCE TO THE BASIS OF SUCH PROPERTY IN THE HANDS OF A TAXPAYER DESCRIBED IN SUBCLAUSE ONE OR TWO OF THIS CLAUSE; OR

(IV) ACCOUNTS OR NOTES RECEIVABLE ACQUIRED IN THE ORDINARY COURSE OF TRADE OR BUSINESS FOR SERVICES RENDERED OR FROM THE SALE OF PROPERTY DESCRIBED IN CLAUSE ONE OF THIS SUBPARAGRAPH.

(B) FOR PURPOSES OF THIS CHAPTER:

(I) SHORT-TERM INVESTMENT INCOME. THE TERM "SHORT-TERM INVESTMENT INCOME" MEANS GAIN FROM THE SALE OR EXCHANGE OF ANY INVESTMENT ASSET HELD FOR NOT MORE THAN ONE YEAR, IF AND TO THE EXTENT SUCH GAIN IS TAKEN INTO ACCOUNT IN COMPUTING TAXABLE INCOME.

(II) SHORT-TERM INVESTMENT LOSS. THE TERM "SHORT-TERM INVESTMENT LOSS" MEANS LOSS FROM THE SALE OR EXCHANGE OF AN INVESTMENT ASSET HELD FOR NOT MORE THAN ONE YEAR, IF AND TO THE EXTENT THAT SUCH LOSS IS TAKEN INTO ACCOUNT IN COMPUTING GROSS INCOME.

(III) LONG-TERM INVESTMENT INCOME. THE TERM "LONG-TERM INVESTMENT INCOME" MEANS GAIN FROM THE SALE OR EXCHANGE OF AN INVESTMENT ASSET HELD FOR MORE THAN ONE YEAR, IF AND TO THE EXTENT SUCH GAIN IS TAKEN INTO ACCOUNT IN COMPUTING GROSS INCOME.

(IV) LONG-TERM INVESTMENT LOSS. THE TERM "LONG-TERM INVESTMENT LOSS" MEANS LOSS FROM THE SALE OR EXCHANGE OF AN INVESTMENT ASSET HELD FOR MORE THAN ONE YEAR, IF AND TO THE EXTENT THAT SUCH LOSS IS TAKEN INTO ACCOUNT IN COMPUTING TAXABLE INCOME.

(V) NET SHORT-TERM INVESTMENT INCOME. THE TERM "NET SHORT-TERM INVESTMENT INCOME" MEANS THE EXCESS OF SHORT-TERM INVESTMENT INCOME FOR THE TAXABLE YEAR OVER THE SHORT-TERM INVESTMENT LOSSES FOR SUCH YEAR.

(VI) NET SHORT-TERM INVESTMENT LOSS. THE TERM "NET SHORT-TERM INVESTMENT LOSS" MEANS THE EXCESS OF SHORT-TERM INVESTMENT LOSSES FOR THE TAXABLE YEAR OVER THE SHORT-TERM INVESTMENT INCOME FOR SUCH YEAR.

(VII) NET LONG-TERM INVESTMENT INCOME. THE TERM "NET LONG-TERM INVESTMENT INCOME" MEANS THE EXCESS OF LONG-TERM INVESTMENT INCOME FOR THE TAXABLE YEAR OVER THE LONG-TERM INVESTMENT LOSSES FOR SUCH YEAR.

(VIII) NET LONG-TERM INVESTMENT LOSS. THE TERM "NET LONG-TERM INVESTMENT LOSS" MEANS THE EXCESS OF LONG-TERM INVESTMENT LOSSES FOR THE TAXABLE YEAR OVER THE LONG-TERM INVESTMENT INCOME FOR SUCH YEAR.

(IX) INVESTMENT NET INCOME. THE TERM "INVESTMENT NET INCOME" MEANS THE EXCESS OF THE GAINS FROM SALES OR EXCHANGES OF INVESTMENT ASSETS OVER THE LOSSES FROM SUCH SALES OR EXCHANGES.

(X) NET INVESTMENT LOSS. THE TERM "NET INVESTMENT LOSS" MEANS THE EXCESS OF THE LOSSES FROM SALES OR EXCHANGES OF INVESTMENT ASSETS OVER THE SUM ALLOWED UNDER SECTION 1211 OF THE INTERNAL REVENUE CODE. IN THE CASE OF A CORPORATION, FOR THE PURPOSE OF DETERMINING LOSSES UNDER THIS PARAGRAPH, AMOUNTS WHICH ARE SHORT-TERM INVESTMENT LOSSES UNDER SECTION 1212 OF THE INTERNAL REVENUE CODE SHALL BE EXCLUDED.

(XI) NET INVESTMENT INCOME. THE TERM "NET INVESTMENT INCOME" MEANS THE EXCESS OF THE NET LONG-TERM INVESTMENT INCOME FOR THE TAXABLE YEAR OVER THE NET SHORT-TERM INVESTMENT LOSS FOR SUCH YEAR.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.