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

3889

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. C. JOHNSON, DIAZ, ONORATO, SAVINO -- (at request of the Department of Taxation and Finance) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to permitting the commissioner of taxation and finance to seek judicial review of decisions of the tax appeals tribunal

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

Section 1. Section 2016 of the tax law, as amended by chapter 401 of the laws of 1987, is amended to read as follows:

S 2016. Judicial review. A decision of the tax appeals tribunal, which is not subject to any further administrative review, shall finally and irrevocably decide all the issues which were raised in proceedings before the division of tax appeals upon which such decision is based unless, within four months after notice of such decision is served by the tax appeals tribunal upon every party to the proceeding before such tribunal by certified mail or personal service, the petitioner who commenced the proceeding [petitions] OR THE COMMISSIONER, OR BOTH, PETITION for judicial review in the manner provided by article seventy-eight of the civil practice law and rules, except as otherwise provided in this [section] CHAPTER. Such service by certified mail shall be complete upon deposit of such notice, enclosed in a post-paid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States postal service. [The] WHERE THE petitioner WHO COMMENCED THE PROCEEDING BEFORE THE DIVISION OF TAX APPEALS FILES A PETITION FOR JUDICIAL REVIEW, THE PETITION shall designate the tax appeals tribunal and the commissioner [of taxation and finance] as respondents in the proceeding for judicial review. WHERE THE COMMISSIONER FILES A PETITION FOR JUDICIAL REVIEW, THE PETITION SHALL DESIGNATE THE TAX APPEALS TRIBUNAL AND THE PETITIONER WHO COMMENCED THE

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

LBD09490-01-9

PROCEEDING BEFORE THE DIVISION OF TAX APPEALS AS RESPONDENTS IN THE PROCEEDING FOR JUDICIAL REVIEW. The tax appeals tribunal shall not participate in proceedings for judicial review of its decisions and such proceedings for judicial review shall be commenced in the appellate division of the supreme court, third department. In all other respects the provisions and standards of article seventy-eight of the civil practice law and rules shall apply. The record to be reviewed in such proceedings for judicial review shall include the determination of the administrative law judge, the decision of the tax appeals tribunal, the stenographic transcript of the hearing before the administrative law judge, the transcript of any oral proceedings before the tax appeals tribunal and any exhibit or document submitted into evidence at any proceeding in the division of tax appeals upon which such decision is based.

S 2. This act shall take effect immediately.