

6944

I N S E N A T E

February 26, 2010

Introduced by Sen. C. JOHNSON -- 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 and the administrative code of the city of
New York, in relation to extending transitional provisions relating to
the federal Gramm-Leach-Bliley act

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

1 Section 1. Paragraphs 1 and 2 of subsection (m) of section 1452 of the
2 tax law, paragraph 1 as amended by chapter 636 of the laws of 2008 and
3 paragraph 2 as added by section 4 of part H of chapter 60 of the laws of
4 2007, are amended to read as follows:
5 (1) Notwithstanding anything to the contrary contained in this section
6 other than subsection (n) of this section, a corporation that was in
7 existence before January first, two thousand [eight] TEN and was subject
8 to tax under article nine-A of this chapter for its last taxable year
9 beginning before January first, two thousand [eight] TEN, shall continue
10 to be taxable under such article for all taxable years beginning on or
11 after January first, two thousand [eight] TEN and before January first,
12 two thousand [ten] ELEVEN. The preceding sentence shall not apply to any
13 taxable year during which such corporation is a banking corporation
14 described in paragraphs one through eight of subsection (a) of this
15 section. Notwithstanding anything to the contrary contained in this
16 section other than subsection (n) of this section, a banking corporation
17 or corporation that was in existence before January first, two thousand
18 [eight] TEN and was subject to tax under this article for its last taxa-
19 ble year beginning before January first, two thousand [eight] TEN, shall
20 continue to be taxable under this article for all taxable years begin-
21 ning on or after January first, two thousand [eight] TEN and before
22 January first, two thousand [ten] ELEVEN or in which the corporation
23 satisfies the requirements for a corporation to elect to be taxable
24 under this article. Provided further, that nothing in this subsection
25 shall prohibit a corporation that elected pursuant to subsection (d) of

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

LBD16168-01-0

1 this section to be taxable under article nine-A of this chapter from
2 revoking that election in accordance with such subsection (d).

3 For purposes of this paragraph, a corporation shall be considered to
4 be subject to tax under article nine-A of this chapter for a taxable
5 year if such corporation was not a taxpayer but was properly included in
6 a combined report filed pursuant to section two hundred eleven of this
7 chapter for such taxable year and a corporation shall be considered to
8 be subject to tax under this article for a taxable year if such corpo-
9 ration was not a taxpayer but was properly included in a combined return
10 filed pursuant to subsection (f) or (g) of section fourteen hundred
11 sixty-two of this article for such taxable year. A corporation that was
12 in existence before January first, two thousand [eight] TEN but first
13 becomes a taxpayer in a taxable year beginning on or after January
14 first, two thousand [eight] TEN and before January first, two thousand
15 [ten] ELEVEN, shall be considered for purposes of this paragraph to have
16 been subject to tax under article nine-A of this chapter for its last
17 taxable year beginning before January first, two thousand [eight] TEN if
18 such corporation would have been subject to tax under such article for
19 such taxable year if it had been a taxpayer during such taxable year. A
20 corporation that was in existence before January first, two thousand
21 [eight] TEN but first becomes a taxpayer in a taxable year beginning on
22 or after January first, two thousand [eight] TEN and before January
23 first, two thousand [ten] ELEVEN, shall be considered for purposes of
24 this paragraph to have been subject to tax under this article for its
25 last taxable year beginning before January first, two thousand [eight]
26 TEN if such corporation would have been subject to tax under this arti-
27 cle for such taxable year if it had been a taxpayer during such taxable
28 year.

29 (2) Notwithstanding anything to the contrary contained in this section
30 other than subsection (n) of this section, [as added by a chapter of the
31 laws of two thousand seven,] a corporation formed on or after January
32 first, two thousand [eight] TEN and before January first, two thousand
33 [ten] ELEVEN may elect to be subject to tax under this article or under
34 article nine-A of this chapter for its first taxable year beginning on
35 or after January first, two thousand [eight] TEN and before January
36 first, two thousand [ten] ELEVEN in which either (i) sixty-five percent
37 or more of its voting stock is owned or controlled, directly or indi-
38 rectly by a financial holding company, provided the corporation whose
39 voting stock is so owned or controlled is principally engaged in activ-
40 ities that are described in section 4(k)(4) or 4(k)(5) of the federal
41 bank holding company act of nineteen hundred fifty-six, as amended and
42 the regulations promulgated pursuant to the authority of such section,
43 or (ii) it is a financial subsidiary. An election under this paragraph
44 may not be made by a corporation described in paragraphs one through
45 eight of subsection (a) of this section or in subsection (e) of this
46 section. In addition, an election under this paragraph may not be made
47 by a corporation that is a party to a reorganization, as defined in
48 subsection (a) of section 368 of the internal revenue code of 1986, as
49 amended, of a corporation described in paragraph one of this subsection
50 if both corporations were sixty-five percent or more owned or
51 controlled, directly or indirectly, by the same interests at the time of
52 the reorganization.

53 An election under this paragraph must be made by the taxpayer on or
54 before the due date for filing its return (determined with regard to
55 extensions of time for filing) for the applicable taxable year. The
56 election to be taxed under article nine-A of this chapter shall be made

1 by the taxpayer by filing the report required pursuant to section two
2 hundred eleven of this chapter and the election to be taxed under this
3 article shall be made by the taxpayer by filing the return required
4 pursuant to section fourteen hundred sixty-two of this article. Any
5 election made pursuant to this paragraph shall be irrevocable and shall
6 apply to each subsequent taxable year beginning on or after January
7 first, two thousand [eight] TEN and before January first, two thousand
8 [ten] ELEVEN, provided that the stock ownership and activities require-
9 ments described in subparagraph (i) of this paragraph are met or such
10 corporation described in subparagraph (ii) of this paragraph continues
11 as a financial subsidiary.

12 S 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
13 administrative code of the city of New York, as amended by chapter 201
14 of the laws of 2009, are amended to read as follows:

15 (1) Notwithstanding anything to the contrary contained in this section
16 other than subdivision (m) of this section, a corporation that was in
17 existence before January first, two thousand [eight] TEN and was subject
18 to tax under subchapter two of this chapter for its last taxable year
19 beginning before January first, two thousand [eight] TEN, shall continue
20 to be taxable under such subchapter for all taxable years beginning on
21 or after January first, two thousand [eight] TEN and before January
22 first, two thousand [ten] ELEVEN. The preceding sentence shall not
23 apply to any taxable year during which such corporation is a banking
24 corporation described in paragraphs one through eight of subdivision (a)
25 of this section. Notwithstanding anything to the contrary contained in
26 this section other than subdivision (m) of this section, a banking
27 corporation or corporation that was in existence before January first,
28 two thousand [eight] TEN and was subject to tax under this subchapter
29 for its last taxable year beginning before January first, two thousand
30 [eight] TEN, shall continue to be taxable under this subchapter for all
31 taxable years beginning on or after January first, two thousand [eight]
32 TEN and before January first, two thousand [ten] ELEVEN or in which the
33 corporation satisfies the requirements for a corporation to elect to be
34 taxable under this subchapter. Provided further, that nothing in this
35 subdivision shall prohibit a corporation that elected pursuant to subdi-
36 vision (d) of this section to be taxable under subchapter two of this
37 chapter from revoking that election in accordance with subdivision (d)
38 of this section. For purposes of this paragraph, a corporation shall be
39 considered to be subject to tax under subchapter two of this chapter for
40 a taxable year if such corporation was not a taxpayer but was properly
41 included in a combined report filed pursuant to subdivision four of
42 section 11-605 of this chapter for such taxable year and a corporation
43 shall be considered to be subject to tax under this subchapter for a
44 taxable year if such corporation was not a taxpayer but was properly
45 included in a combined report filed pursuant to subdivision (f) or (g)
46 of section 11-646 of this part for such taxable year. A corporation that
47 was in existence before January first, two thousand [eight] TEN but
48 first becomes a taxpayer in a taxable year beginning on or after January
49 first, two thousand [eight] TEN and before January first, two thousand
50 [ten] ELEVEN, shall be considered for purposes of this paragraph to have
51 been subject to tax under subchapter two of this chapter for its last
52 taxable year beginning before January first, two thousand [eight] TEN if
53 such corporation would have been subject to tax under such subchapter
54 for such taxable year if it had been a taxpayer during such taxable
55 year. A corporation that was in existence before January first, two
56 thousand [eight] TEN but first becomes a taxpayer in a taxable year

beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [eight] TEN if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand [eight] TEN and before January first, two thousand [ten] ELEVEN, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 1462 of the tax law, as amended by section 5 of part H of chapter 60 of the laws of 2007, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the state may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the state in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two

1 thousand and before January first, two thousand [ten] ELEVEN during
2 which such bank holding company registers for the first time under the
3 federal bank holding company act, as amended, and also elects to be a
4 financial holding company. In addition, for each subsequent taxable year
5 beginning after January first, two thousand and before January first,
6 two thousand [ten] ELEVEN, any such bank holding company may file on a
7 combined basis without seeking the permission of the commissioner with
8 any banking corporation that is exercising its corporate franchise or
9 doing business in the state and sixty-five percent or more of whose
10 voting stock is owned or controlled, directly or indirectly, by such
11 bank holding company if either such banking corporation is exercising
12 its corporate franchise or doing business in the state in a corporate or
13 organized capacity for the first time during such subsequent taxable
14 year, or sixty-five percent or more of the voting stock of such banking
15 corporation is owned or controlled, directly or indirectly, by such bank
16 holding company for the first time during such subsequent taxable year.
17 Provided however, for each subsequent taxable year beginning after Janu-
18 ary first, two thousand and before January first, two thousand [ten]
19 ELEVEN, a banking corporation described in either of the two preceding
20 sentences which filed on a combined basis with any such bank holding
21 company in a previous taxable year, must continue to file on a combined
22 basis with such bank holding company if such banking corporation, during
23 such subsequent taxable year, continues to exercise its corporate fran-
24 chise or do business in the state in a corporate or organized capacity
25 and sixty-five percent or more of such banking corporation's voting
26 stock continues to be owned or controlled, directly or indirectly, by
27 such bank holding company, unless the permission of the commissioner has
28 been obtained to file on a separate basis for such subsequent taxable
29 year. Provided further, however, for each subsequent taxable year begin-
30 ning after January first, two thousand and before January first, two
31 thousand [ten] ELEVEN, a banking corporation described in either of the
32 first two sentences of this clause which did not file on a combined
33 basis with any such bank holding company in a previous taxable year, may
34 not file on a combined basis with such bank holding company during any
35 such subsequent taxable year unless the permission of the commissioner
36 has been obtained to file on a combined basis for such subsequent taxa-
37 ble year.

38 (B) Notwithstanding any provision of this paragraph other than clause
39 (A) of this subparagraph, the commissioner may not require a bank hold-
40 ing company which, during a taxable year beginning on or after January
41 first, two thousand and before January first, two thousand [ten] ELEVEN,
42 registers for the first time during such taxable year under the federal
43 bank holding company act, as amended, and also elects to be a financial
44 holding company, to make a return on a combined basis for any taxable
45 year beginning on or after January first, two thousand and before Janu-
46 ary first, two thousand [ten] ELEVEN with a banking corporation sixty-
47 five percent or more of whose voting stock is owned or controlled,
48 directly or indirectly, by such bank holding company.

49 S 4. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
50 11-646 of the administrative code of the city of New York, as amended by
51 section 7 of part H of chapter 60 of the laws of 2007, is amended to
52 read as follows:

53 (iv) (A) Notwithstanding any provision of this paragraph, any bank
54 holding company exercising its corporate franchise or doing business in
55 the city may make a return on a combined basis without seeking the
56 permission of the commissioner with any banking corporation exercising

1 its corporate franchise or doing business in the city in a corporate or
2 organized capacity sixty-five percent or more of whose voting stock is
3 owned or controlled, directly or indirectly, by such bank holding compa-
4 ny, for the first taxable year beginning on or after January first, two
5 thousand and before January first, two thousand [ten] ELEVEN during
6 which such bank holding company registers for the first time under the
7 federal bank holding company act, as amended, and also elects to be a
8 financial holding company. In addition, for each subsequent taxable year
9 beginning after January first, two thousand and before January first,
10 two thousand [ten] ELEVEN, any such bank holding company may file on a
11 combined basis without seeking the permission of the commissioner with
12 any banking corporation that is exercising its corporate franchise or
13 doing business in the city and sixty-five percent or more of whose
14 voting stock is owned or controlled, directly or indirectly, by such
15 bank holding company if either such banking corporation is exercising
16 its corporate franchise or doing business in the city in a corporate or
17 organized capacity for the first time during such subsequent taxable
18 year, or sixty-five percent or more of the voting stock of such banking
19 corporation is owned or controlled, directly or indirectly, by such bank
20 holding company for the first time during such subsequent taxable year.
21 Provided however, for each subsequent taxable year beginning after Janu-
22 ary first, two thousand and before January first, two thousand [ten]
23 ELEVEN, a banking corporation described in either of the two preceding
24 sentences which filed on a combined basis with any such bank holding
25 company in a previous taxable year, must continue to file on a combined
26 basis with such bank holding company if such banking corporation, during
27 such subsequent taxable year, continues to exercise its corporate fran-
28 chise or do business in the city in a corporate or organized capacity
29 and sixty-five percent or more of such banking corporation's voting
30 stock continues to be owned or controlled, directly or indirectly, by
31 such bank holding company, unless the permission of the commissioner has
32 been obtained to file on a separate basis for such subsequent taxable
33 year. Provided further, however, for each subsequent taxable year begin-
34 ning after January first, two thousand and before January first, two
35 thousand [ten] ELEVEN, a banking corporation described in either of the
36 first two sentences of this clause which did not file on a combined
37 basis with any such bank holding company in a previous taxable year, may
38 not file on a combined basis with such bank holding company during any
39 such subsequent taxable year unless the permission of the commissioner
40 has been obtained to file on a combined basis for such subsequent taxa-
41 ble year.

42 (B) Notwithstanding any provision of this paragraph other than clause
43 (A) of this subparagraph, the commissioner may not require a bank hold-
44 ing company which, during a taxable year beginning on or after January
45 first, two thousand and before January first, two thousand [ten] ELEVEN,
46 registers for the first time during such taxable year under the federal
47 bank holding company act, as amended, and also elects to be a financial
48 holding company, to make a return on a combined basis for any taxable
49 year beginning on or after January first, two thousand and before Janu-
50 ary first, two thousand [ten] ELEVEN with a banking corporation sixty-
51 five percent or more of whose voting stock is owned or controlled,
52 directly or indirectly, by such bank holding company.

53 S 5. This act shall take effect immediately.