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

S. 8465 A. 11678

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

August 3, 2010

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to repeal part KK of a chapter of the laws of 2010 amending the tax law relating to investment management services to a partnership or other entity, as proposed in legislative bill numbers S. 6610-C and A. 9710-D, relating thereto (Part A); to amend part C of a chapter of the laws of 2010 amending the tax law relating to clarifying that certain income constitutes New York source income of nonresident shareholders of an S corporation, as proposed in legislative bill numbers S.6610-C and A.9710-D, in relation to the effectiveness of certain portions thereof (Part B); and to amend chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, in relation to the empire state film production credit (Part C)

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2010-2011 state fiscal year. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

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

LBD12315-02-0

Section 1. Part KK of a chapter of the laws of 2010 amending the tax law relating to investment management services to a partnership or other entity, as proposed in legislative bill numbers S. 6610-C and A. 9710-D, is REPEALED.

S 2. This act shall take effect on the same date and in the same manner as part KK of a chapter of the laws of 2010 amending the tax law relating to investment management services to a partnership or other entity, as proposed in legislative bill numbers S. 6610-C and A. 9710-D, takes effect.

PART B

Section 1. Section 4 of part C of a chapter of the laws of 2010 amending the tax law relating to clarifying that certain income constitutes New York source income of nonresident shareholders of an S corporation, as proposed in legislative bill numbers S.6610-C and A.9710-D, is amended to read as follows:

S 4. This act shall take effect immediately; provided however, that section two of this act shall apply to [all tax years for which the statute of limitations for seeking a refund or assessing additional tax are still open,] TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2007 FOR WHICH THE STATUTE OF LIMITATIONS FOR SEEKING A REFUND OR ASSESSING ADDITIONAL TAX IS STILL OPEN, PROVIDED, HOWEVER, THAT IN CASES OF FAILURE TO FILE, FAILURE TO REPORT FEDERAL CHANGES, OR FILING A FALSE OR FRAUDULENT RETURN WITH INTENT TO EVADE TAX, AS SPECIFIED UNDER PARAGRAPH 1 OF SUBSECTION (C) OF SECTION 683 OF THE TAX LAW, OR IN CASES OF SUBSTANTIAL OMISSION OF INCOME UNDER SUBSECTION (D) OF SECTION 683 OF THE TAX LAW, IT SHALL APPLY TO ALL TAXABLE YEARS AS LONG AS SUCH STATUTE OF LIMITATIONS REMAIN OPEN AND ARE SUBJECT TO ASSESSMENT; and section three of this act shall apply to taxable years beginning on or after January 1, 2010.

S 2. This act shall take effect on the same date as part C of a chapter of the laws of 2010 amending the tax law relating to clarifying that certain income constitutes New York source income of nonresident shareholders of an S corporation, as proposed in legislative bill numbers S.6610-C and A.9710-D, takes effect.

PART C

Section 1. Subdivision (e) of section 7 of part P of chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, as added by section 2 of part Q of a chapter of the laws of 2010 amending chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, relating to the empire state film production credit, as proposed in legislative bill numbers S.6610-C and A.9710-D, is amended to read as follows:

(e) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional $420 million in 2010, $420 million in 2011, $420 million in 2012, $420 million in 2013 and $420 million in 2014 provided however, [up to] $7 million of the annual allocation shall be available for the empire state film post production credit pursuant to section 31 of the tax law. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. IF THE DIRECTOR OF THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT DETERMINES THAT THE

AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE FROM ADDITIONAL POOL 2 FOR THE EMPIRE STATE FILM PRODUCTION TAX CREDIT HAVE BEEN PREVIOUSLY ALLOCATED, AND DETERMINES THAT THE PENDING APPLICATIONS FROM ELIGIBLE APPLICANTS FOR THE POST PRODUCTION TAX CREDIT PURSUANT TO SECTION 31 OF THE TAX LAW IS INSUFFICIENT TO UTILIZE THE BALANCE OF UNALLOCATED POST PRODUCTION TAX CREDITS FROM SUCH POOL, THE REMAINDER, AFTER SUCH PENDING APPLICATIONS ARE CONSIDERED, SHALL BE MADE AVAILABLE FOR ALLOCATION IN THE EMPIRE STATE FILM TAX CREDIT PURSUANT TO SECTION 24, SUBDIVISION 36 OF SECTION 210 AND SUBSECTION (GG) OF SECTION 606 OF THE TAX LAW. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

S 2. This act shall take effect on the same date and in the same manner as section 2 of part Q of a chapter of the laws of 2010 amending chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, relating to the empire state film production credit, as proposed in legislative bill numbers S.6610-C and A.9710-D, takes effect.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through C of this act shall be as specifically set forth in the last section of such Parts.