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

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I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. KOLB, TEDISCO, O'MARA, OAKS, REILICH, BACALLES, CORWIN -- Multi-Sponsored by -- M. of A. ALFANO, AMEDORE, BALL, BARCLAY, BARRA, BURLING, BUTLER, CONTE, CROUCH, DUPREY, ERRIGO, FINCH, HAWLEY, P. LOPEZ, MILLER, MOLINARO, QUINN, RAIA, SALADINO, SAYWARD, SCOZZAFAVA, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to net income base

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

Section 1. The opening paragraph and subparagraphs (iv) and (vi) of paragraph (a) of subdivision 1 of section 210 of the tax law, as amended by section 2 of part N of chapter 60 of the laws of 2007, are amended to read as follows:

Entire net income base. For taxable years beginning before July first, nineteen hundred ninety-nine, the amount prescribed by this paragraph shall be computed at the rate of nine percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, nineteen hundred ninety-nine and before July first, two thousand, the amount prescribed by this paragraph shall be computed at the rate of eight and one-half percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, the amount prescribed by this paragraph shall be computed at the rate of eight percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, two thousand one and before January first, two thousand seven, the amount prescribed by this paragraph shall be computed at the rate of seven and one-half percent of the taxpayer's entire net income base. For taxable years beginning [on or] after January first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND TEN, the amount prescribed by this paragraph shall be computed at the rate of seven and one-tenth percent of the taxpayer's entire net income base. FOR TAXABLE YEARS BEGINNING

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

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ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE RATE OF SIX AND EIGHTY-FIVE ONE HUNDREDTH PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME BASE. The taxpayer's entire net income base shall mean the portion of the taxpayer's entire net income allocated within the state as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph.

(iv) for taxable years beginning [on or] after January first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND TEN, if the entire net income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the entire net income base; if the entire net income base is more than two hundred ninety thousand dollars but not over three hundred ninety thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-tenth percent of the excess of the entire net income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) four and thirty-five hundredths percent of the excess of the entire net income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, IF THE ENTIRE NET INCOME IS NOT OVER THREE HUNDRED NINETY THOUSAND DOLLARS THE AMOUNT SHALL BE SIX PERCENT OF THE ENTIRE NET INCOME BASE;

(vi) for taxable years beginning [on or] after January thirty-first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND TEN, the amount prescribed by this paragraph for a taxpayer which is a qualified New York manufacturer, shall be computed at the rate of six and one-half (6.5) percent of the taxpayer's entire net income base. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE RATE OF SIX PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME BASE. The term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer which has property in New York which is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision twelve of this section and either (I) the adjusted basis of such property for federal income tax purposes at the close of the taxable year is at least one million

dollars or (II) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer which is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph (c).

S 2. This act shall take effect immediately.