

S. 1174

A. 3331

2009-2010 Regular Sessions

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

January 27, 2009

IN SENATE -- Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. AMEDORE, TOBACCO, WALKER, McDO-
NOUGH -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to filing of amended personal income tax returns

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

1 Section 1. Legislative findings. The legislature finds that the
2 increasing complexity of income tax laws, particularly those affecting
3 income earned in one state by a taxpayer residing in another state, has
4 contributed to unfair and inequitable situations. Although a New York
5 taxpayer may offset taxes paid to another state against his or her state
6 income tax liability, delays in assessment and notification by the other
7 state may cause filing of an amended return to be barred by the statute
8 of limitations. As a result, the New York taxpayer is forced to pay the
9 same tax obligation twice, once to New York and again to the other
10 state. In an effort to provide an equitable remedy for affected taxpay-
11 ers, the legislature determines to treat changes to a taxpayer's obli-
12 gations to another state in the same fashion as changes made to a
13 taxpayer's federal obligations.

14 S 2. Section 659 of the tax law, as amended by chapter 577 of the laws
15 of 1997, is amended to read as follows:

16 S 659. Report of [federal] changes, corrections or disallowances.
17 (A) If the amount of a taxpayer's federal taxable income, federal items
18 of tax preference, total taxable amount or ordinary income portion of a
19 lump sum distribution or includible gain of a trust reported on his OR
20 HER federal income tax return for any taxable year, or the amount of a
21 taxpayer's earned income credit or credit for employment-related

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

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1 expenses set forth on such return, or the amount of any federal foreign
2 tax credit affecting the calculation of the credit for Canadian provin-
3 cial taxes under section six hundred twenty or six hundred twenty-A of
4 this article, or the amount of any claim of right adjustment, is changed
5 or corrected by the United States internal revenue service or other
6 competent authority or as the result of a renegotiation of a contract or
7 subcontract with the United States, or the amount an employer is
8 required to deduct and withhold from wages for federal income tax with-
9 holding purposes is changed or corrected by such service or authority or
10 if a taxpayer's claim for credit or refund of federal income tax is
11 disallowed in whole or in part, the taxpayer or employer shall report
12 such change or correction or disallowance within ninety days after the
13 final determination of such change, correction, renegotiation or disal-
14 lowance, or as otherwise required by the commissioner, and shall concede
15 the accuracy of such determination or state wherein it is erroneous.
16 The allowance of a tentative carryback adjustment based upon a net oper-
17 ating loss carryback pursuant to section sixty-four hundred eleven of
18 the internal revenue code shall be treated as a final determination for
19 purposes of this section. Any taxpayer filing an amended federal income
20 tax return and any employer filing an amended federal return of income
21 tax withheld shall also file within ninety days thereafter an amended
22 return under this article, and shall give such information as the
23 commissioner may require. The commissioner may by regulation prescribe
24 such exceptions to the requirements of this section as he or she deems
25 appropriate. For purposes of this section, (i) the term "taxpayer"
26 shall include a partnership having a resident partner or having any
27 income derived from New York sources, and a corporation with respect to
28 which the taxable year of such change, correction, disallowance or
29 amendment is a year with respect to which the election provided for in
30 subsection (a) of section six hundred sixty of this article is in
31 effect, and (ii) the term "federal income tax return" shall include the
32 returns of income required under sections six thousand thirty-one and
33 six thousand thirty-seven of the internal revenue code. In the case of
34 such a corporation, such report shall also include any change or
35 correction of the taxes described in paragraphs two and three of
36 subsection (f) of section thirteen hundred sixty-six of the internal
37 revenue code. Reports made under this section by a partnership or
38 corporation shall indicate the portion of the change in each item of
39 income, gain, loss or deduction (and, in the case of a corporation, of
40 each change in, or disallowance of a claim for credit or refund of, a
41 tax referred to in the preceding sentence) allocable to each partner or
42 shareholder and shall set forth such identifying information with
43 respect to such partner or shareholder as may be prescribed by the
44 commissioner.

45 (B) IF THE AMOUNT OF A TAXPAYER'S OBLIGATION TO ANOTHER STATE PURSUANT
46 TO THAT STATE'S INCOME TAX LAWS IS CHANGED OR CORRECTED BY A COMPETENT
47 AUTHORITY OF THAT STATE, THE RIGHTS AND RESPONSIBILITIES OF SUCH TAXPAY-
48 ER SHALL BE THE SAME AS IF THE CHANGE OR CORRECTION HAD BEEN MADE BY THE
49 UNITED STATES INTERNAL REVENUE SERVICE PURSUANT TO SUBSECTION (A) OF
50 THIS SECTION.

51 S 3. Subsection (c) of section 687 of the tax law, as amended by chap-
52 ter 61 of the laws of 1989, is amended to read as follows:

53 (c) Notice of [federal] change or correction.-- A claim for credit or
54 refund of any overpayment of tax attributable to a [federal] change or
55 correction required to be reported pursuant to section six hundred
56 fifty-nine OF THIS ARTICLE shall be filed by the taxpayer within two

1 years from the time the notice of such change or correction or such
2 amended return was required to be filed with the commissioner of taxa-
3 tion and finance. If the report or amended return required by section
4 six hundred fifty-nine OF THIS ARTICLE is not filed within the ninety
5 day period therein specified, no interest shall be payable on any claim
6 for credit or refund of the overpayment attributable to the [federal]
7 change or correction. The amount of such credit or refund shall not
8 exceed the amount of the reduction in tax attributable to such [federal]
9 change, correction or items amended on the taxpayer's amended [federal]
10 income tax return. This subsection shall not affect the time within
11 which or the amount for which a claim for credit or refund may be filed
12 apart from this subsection.

13 S 4. Transition provision. Notwithstanding the provisions of section
14 683 of the tax law, a taxpayer who filed an income tax return for the
15 tax years beginning January 1, 2000, January 1, 2001, January 1, 2002,
16 January 1, 2003, or January 1, 2004, may file an amended return to claim
17 a credit pursuant to section 620 of the tax law which was allowed during
18 such periods but not claimed by such taxpayer. Any such amended return
19 shall be filed within ninety days after the effective date of this act.

20 S 5. This act shall take effect immediately; provided that sections
21 two and three of this act shall apply to taxable years beginning on and
22 after January 1, 2010.