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

3886

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. C. JOHNSON, DIAZ, DILAN, 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 and the administrative code of the city of New York, in relation to reversing the crediting of a personal income tax or corporate franchise tax overpayment against estimated tax for the succeeding taxable year in certain circumstances

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

Section 1. Subsection (e) of section 686 of the tax law, as amended by chapter 65 of the laws of 1985, is amended to read as follows:

(e) Credits against estimated tax.--The [tax commission] COMMISSIONER may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, EXCEPT UPON REQUEST TO THE COMMISSIONER ON OR BEFORE THE LAST DAY PRESCRIBED FOR THE FILING OF THE RETURN FOR THE SUCCEEDING TAXABLE YEAR, DETERMINED WITH REGARD TO ANY EXTENSION OF TIME GRANTED. IF GOOD CAUSE IS SHOWN FOR REVERSING THE CREDIT, THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, CREDIT THE OVERPAYMENT AGAINST A LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST. PROVIDED, THE PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF LIABILITY FOR ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTIMATED TAX FOR THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMISSIONER TO GRANT OR DENY THE REQUEST IS FINAL AND NOT SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

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

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S 2. Subsection (k) of section 687 of the tax law, as amended by chapter 1014 of the laws of 1968, is amended to read as follows:

(k) Cross reference. -- For provision barring refund of overpayment credited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN, see subsection (e) of section six hundred eighty-six.

S 3. Subsection (b) of section 1086 of the tax law, as added by chapter 188 of the laws of 1964, is amended to read as follows:

(b) Credits against estimated tax.---The [tax commission] COMMISSIONER may prescribe regulations providing for the crediting against the estimated tax under article nine-a[, nine-b or nine-c] for any taxable year of the amount determined to be an overpayment of tax under [any] such article for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax under article nine-a[, nine-b or nine-c] for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, EXCEPT UPON REQUEST TO THE COMMISSIONER ON OR BEFORE THE LAST DAY PRESCRIBED FOR THE FILING OF THE RETURN FOR THE SUCCEEDING TAXABLE YEAR, DETERMINED WITH REGARD TO ANY EXTENSION OF TIME GRANTED. IF GOOD CAUSE IS SHOWN FOR REVERSING THE CREDIT, THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, CREDIT THE OVERPAYMENT AGAINST A LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST. PROVIDED, THE PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF LIABILITY FOR ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTIMATED TAX FOR THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMISSIONER TO GRANT OR DENY THE REQUEST IS FINAL AND NOT SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

S 4. Subsection (j) of section 1087 of the tax law, as added by chapter 188 of the laws of 1964, is amended to read as follows:

(j) Cross reference.--For provision barring refund of overpayment credited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN, see subsection (b) of section one thousand eighty-six.

S 5. Subdivision (e) of section 11-1786 of the administrative code of the city of New York, such section as renumbered by chapter 639 of the laws of 1986, is amended to read as follows:

(e) Credits against estimated tax. The [tax commission] COMMISSIONER OF TAXATION AND FINANCE may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, EXCEPT UPON REQUEST TO THE COMMISSIONER OF TAXATION AND FINANCE ON OR BEFORE THE LAST DAY PRESCRIBED FOR THE FILING OF THE RETURN FOR THE SUCCEEDING TAXABLE YEAR, DETERMINED WITH REGARD TO ANY EXTENSION OF TIME GRANTED. IF GOOD CAUSE IS SHOWN FOR REVERSING THE CREDIT, THE COMMISSIONER OF TAXATION AND FINANCE MAY, IN HIS OR HER DISCRETION, CREDIT THE OVERPAYMENT AGAINST A LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST. PROVIDED, THE PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF LIABILITY FOR ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTIMATED TAX FOR THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMIS-

SIONER OF TAXATION AND FINANCE TO GRANT OR DENY THE REQUEST IS FINAL AND NOT SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

S 6. Subdivision (k) of section 11-1787 of the administrative code of the city of New York, as amended by chapter 639 of the laws of 1986, is amended to read as follows:

(k) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN, see subdivision (e) of section 11-1786.

S 7. This act shall take effect immediately.