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I N   S E N A T E

February 26, 2010

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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.

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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.