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I N S E N A T E

May 7, 2010

Introduced by Sen. FOLEY -- 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, in relation to debt evading foreign states

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

1 Section 1. The tax law is amended by adding a new article 12-B to read
2 as follows:

3 ARTICLE 12-B

4 DEBT EVADING FOREIGN STATES

5 SECTION 289-G. DEFINITIONS.

6 289-H. IMPOSITION OF TAX.

7 289-I. REPORTS AND ADDITIONAL MEASURES.

8 S 289-G. DEFINITIONS. AS USED IN THIS ARTICLE:

9 1. "AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE" MEANS ANY ENTITY:

10 (A) WHICH IS A SEPARATE LEGAL PERSON, CORPORATE OR OTHERWISE;

11 (B) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL
12 SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP
13 INTEREST IS OWNED BY A FOREIGN STATE OR POLITICAL SUBDIVISION THEREOF;
14 AND

15 (C) WHICH IS NEITHER A CITIZEN OF A STATE OF THE UNITED STATES, NOR
16 CREATED UNDER THE LAWS OF ANY THIRD COUNTRY.

17 2. "FINAL JUDGMENT" MEANS ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO
18 BE APPEALED TO ANY COURT.

19 3. "FINANCIAL INSTITUTION" MEANS THE FEDERAL RESERVE BANK OF NEW YORK,
20 AND THE OFFICE OR BRANCH IN NEW YORK OF ANY BANK, WHETHER FOREIGN OR
21 DOMESTIC, THAT IS REGULATED BY THE NEW YORK BANKING DEPARTMENT OR ANY
22 AGENCY OR DEPARTMENT OF THE UNITED STATES.

23 4. "FINANCIAL TRANSACTION" MEANS A TRANSACTION WITH A FINANCIAL INSTI-
24 TUTION CONSISTING OF AN OVERNIGHT REPURCHASE AGREEMENT OR A FOREIGN
25 EXCHANGE TRANSACTION.

26 5. "FOREIGN STATE" MEANS ANY GOVERNMENTAL UNIT OTHER THAN THE UNITED
27 STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY, OR INSULAR

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

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1 POSSESSION THEREOF, AND INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF
2 A FOREIGN STATE.

3 6. "DEBT EVADING FOREIGN STATE" MEANS ANY FOREIGN STATE THAT:

4 (A) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR
5 FEDERAL COURT LOCATED IN NEW YORK, INCLUDING ANY FINAL JUDGEMENT
6 ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN NEW
7 YORK, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEEDS ONE HUNDRED
8 MILLION DOLLARS;

9 (B) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE
10 THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS
11 OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE EFFECTIVE
12 DATE OF THIS ARTICLE; AND

13 (C) IS NOT A FOREIGN STATE ELIGIBLE FOR:

14 (I) FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION
15 (UNLESS SUCH STATE IS ELIGIBLE FOR FINANCING FROM THE INTERNATIONAL BANK
16 FOR RECONSTRUCTION AND DEVELOPMENT);

17 (II) DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN
18 SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTI-
19 TUTIONS ACT); OR

20 (III) DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE
21 INTERNATIONAL MONETARY FUND.

22 FOR PURPOSES OF THIS ARTICLE, REFERENCES TO A DEBT EVADING FOREIGN
23 STATE SHALL INCLUDE AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE AND
24 STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE, AS DEFINED IN
25 THIS SUBDIVISION.

26 7. "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" MEANS ANY
27 CORPORATION OR ENTITY, OTHER THAN A NATURAL PERSON:

28 (A) THAT IS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A
29 DEBT EVADING FOREIGN STATE; OR

30 (B) A MAJORITY OF THE SHARES OR OTHER OWNERSHIP INTEREST OF WHICH IS
31 HELD, EITHER DIRECTLY OR INDIRECTLY, BY A DEBT EVADING FOREIGN STATE OR
32 BY AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT EVAD-
33 ING FOREIGN STATE.

34 8. "STATE" MEANS EACH OF THE SEVERAL STATES, THE DISTRICT OF COLUMBIA,
35 AND ANY COMMONWEALTH, TERRITORY, OR POSSESSION OF THE UNITED STATES.

36 S 289-H. IMPOSITION OF TAX. 1. THERE IS HEREBY IMPOSED AND SHALL
37 IMMEDIATELY ACCRUE AND BE COLLECTED A TAX, AS HEREIN PROVIDED, ON ALL
38 FINANCIAL TRANSACTIONS MADE BY A DEBT EVADING FOREIGN STATE THROUGH THE
39 AUSPICES OF, OR WITH DEPOSITS HELD BY ANY FINANCIAL INSTITUTION.

40 2. WITH RESPECT TO A FINANCIAL TRANSACTION INVOLVING AN OVERNIGHT
41 REPURCHASE AGREEMENT, THE TAX SHALL BE IMPOSED AT THE RATE OF FIFTY
42 PERCENT OF ANY INTEREST OR OTHER GAIN, HOWEVER DENOMINATED, CREDITED BY
43 A FINANCIAL INSTITUTION TO A DEBT EVADING FOREIGN STATE, FOR EACH AND
44 EVERY FINANCIAL TRANSACTION.

45 3. WITH RESPECT TO A FINANCIAL TRANSACTION INVOLVING A FOREIGN
46 EXCHANGE TRANSACTION, THE TAX SHALL BE IMPOSED AT THE RATE OF ONE
47 PERCENT OF THE ENTIRE AMOUNT REMITTED OR CREDITED BY A FINANCIAL INSTI-
48 TUTION TO A DEBT EVADING FOREIGN STATE, FOR EACH AND EVERY FINANCIAL
49 TRANSACTION.

50 4. THE TAX OWED SHALL BE IMPOSED UPON, AND BE A PERSONAL LIABILITY OF,
51 THE DEBT EVADING FOREIGN STATE. IT SHALL BE THE DUTY OF THE FINANCIAL
52 INSTITUTION WITH OR THROUGH WHICH THE DEBT EVADING FOREIGN STATE ENGAGES
53 IN A FINANCIAL TRANSACTION TO:

54 (A) WITHHOLD SUCH TAX FROM AMOUNTS OTHERWISE DUE AND PAYABLE BY THE
55 FINANCIAL INSTITUTION TO THE DEBT EVADING FOREIGN STATE FOR EACH SUCH
56 FINANCIAL TRANSACTION; AND

1 (B) REPORT TO THE DEPARTMENT ON THE FIRST DAY OF EACH MONTH THE AMOUNT
2 OF TAXES SO WITHHELD WITH RESPECT TO FINANCIAL TRANSACTIONS THAT TOOK
3 PLACE IN THE PREVIOUS MONTH ON A FORM TO BE PROVIDED BY THE DEPARTMENT,
4 AND SIMULTANEOUSLY REMIT TO THE DEPARTMENT THE ENTIRE AMOUNT OF TAX
5 WITHHELD TOGETHER WITH SUCH REPORT.

6 S 289-I. REPORTS AND ADDITIONAL MEASURES. 1. THE DEPARTMENT SHALL, ON
7 A MONTHLY BASIS, REVIEW THE RECORDS OF UNSATISFIED JUDGMENTS ENTERED IN
8 ALL FEDERAL AND STATE COURTS LOCATED IN THIS STATE TO IDENTIFY ALL DEBT
9 EVADING FOREIGN STATES.

10 2. THE DEPARTMENT SHALL, ON A MONTHLY BASIS, PUBLISH THE IDENTITIES IN
11 ANY MANNER REASONABLY CALCULATED TO GIVE NOTICE TO FINANCIAL INSTI-
12 TUTIONS IN NEW YORK.

13 3. THE DEPARTMENT SHALL REPORT TO THE OFFICE OF THE ATTORNEY GENERAL
14 THE NAMES OF ANY FINANCIAL INSTITUTIONS THAT THE DEPARTMENT DETERMINES
15 ARE NOT COMPLYING WITH THIS ARTICLE. THE ATTORNEY GENERAL SHALL TAKE ALL
16 APPROPRIATE INVESTIGATIVE AND ENFORCEMENT ACTIONS NECESSARY TO CAUSE
17 FINANCIAL INSTITUTIONS TO COMPLY WITH THIS ARTICLE.

18 4. ANY FINANCIAL INSTITUTION THAT THE ATTORNEY GENERAL HAS DETERMINED
19 TO HAVE WILLFULLY FAILED TO COMPLY WITH THIS ARTICLE SHALL BE FINED TEN
20 THOUSAND DOLLARS FOR EACH OCCURRENCE.

21 5. THE DEPARTMENT AND THE ATTORNEY GENERAL MAY CONSIDER DOCUMENTS AND
22 OTHER INFORMATION RECEIVED FROM THIRD PARTIES, FINANCIAL INSTITUTIONS
23 AND DEBT EVADING FOREIGN STATES.

24 6. AT SUCH TIME AS THE DEPARTMENT DETERMINES THAT A DEBT EVADING
25 FOREIGN STATE NO LONGER QUALIFIES AS A DEBT EVADING FOREIGN STATE, IT
26 SHALL REMOVE THE FOREIGN STATE FROM ITS PUBLISHED LIST OF DEBT EVADING
27 FOREIGN STATES.

28 S 2. This act shall take effect immediately.