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

4784

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to computing the combined allocation percentage of a group of corporations required or permitted to be included in a combined report where one or more of such members are mutual fund service providers

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

Section 1. Paragraph 3 of subsection (f) of section 1462 of the tax law, as amended by section 7 of part E-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(3) (i) In the case of a combined return, the tax shall be measured by the ALLOCATED combined entire net income, ALLOCATED combined alternative entire net income or ALLOCATED combined assets of all the corporations included in the return, including any captive REIT, captive RIC or over-capitalized captive insurance company. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and combined alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(ii) In the case of a captive REIT required under this subsection to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. In the case of

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

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a captive RIC required under this subsection to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC will be limited to the following percentages: (A) fifty percent for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine; (B) twenty-five percent for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven; and (C) zero percent for taxable years beginning on or after January first, two thousand eleven. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of such section fifteen hundred four.

(iii) In the case of an overcapitalized captive insurance company required under this subsection to be included in a combined return, entire net income must be computed as required by section fourteen hundred fifty-three of this article.

(IV) IF A BANKING CORPORATION DESCRIBED IN PARAGRAPH NINE OF SUBSECTION (A) OF SECTION FOURTEEN HUNDRED FIFTY-TWO OF THIS ARTICLE THAT SUBSTANTIALLY PROVIDES MANAGEMENT, ADMINISTRATIVE OR DISTRIBUTION SERVICES TO AN INVESTMENT COMPANY, AS SUCH TERMS ARE DEFINED IN SUBPARAGRAPH (G) OF PARAGRAPH TWO OF SUBSECTION (A) OF SECTION FOURTEEN HUNDRED FIFTY-FOUR OF THIS ARTICLE, IS REQUIRED OR PERMITTED TO BE INCLUDED IN A COMBINED RETURN WITH A BANKING CORPORATION OR A BANK HOLDING COMPANY THAT DOES NOT SUBSTANTIALLY PROVIDE MANAGEMENT, ADMINISTRATIVE OR DISTRIBUTION SERVICES TO AN INVESTMENT COMPANY, THE ALLOCATED COMBINED ENTIRE NET INCOME, ALLOCATED COMBINED ALTERNATIVE ENTIRE NET INCOME OR ALLOCATED COMBINED ASSETS IN THE COMBINED RETURN SHALL BE COMPUTED AS FOLLOWS:

(A) THE ENTIRE NET INCOME, ALTERNATIVE NET INCOME OR ASSETS OF ALL SUCH BANKING CORPORATIONS INCLUDED IN THE COMBINED RETURN THAT SUBSTANTIALLY PROVIDE MANAGEMENT, ADMINISTRATIVE OR DISTRIBUTION SERVICES TO AN INVESTMENT COMPANY SHALL BE COMBINED AND MULTIPLIED BY THE ALLOCATION PERCENTAGE FOR ALL SUCH BANKING CORPORATIONS COMPUTED BASED ON THE COMBINED FACTOR OR FACTORS WITH RESPECT TO ALL SUCH BANKING CORPORATIONS, AS DETERMINED PURSUANT TO PARAGRAPH ONE-A OF SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FOUR OF THIS ARTICLE;

(B) THE ENTIRE NET INCOME, ALTERNATIVE NET INCOME OR ASSETS OF ALL OTHER BANKING CORPORATIONS INCLUDED IN THE COMBINED RETURN SHALL BE COMBINED AND MULTIPLIED BY THE ALLOCATION PERCENTAGE FOR ALL SUCH BANKING CORPORATIONS COMPUTED BASED ON THE COMBINED FACTORS WITH RESPECT TO ALL SUCH BANKING CORPORATIONS, AS DETERMINED PURSUANT TO PARAGRAPH ONE OF SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FOUR OF THIS ARTICLE;

(C) THE PRODUCT OF EACH GROUP SO OBTAINED SHALL BE ADDED TOGETHER; AND

(D) FOR PURPOSES OF CLAUSES (A) AND (B) OF THIS SUBPARAGRAPH, IN COMPUTING EACH GROUPS COMBINED ENTIRE NET INCOME AND COMBINED ALTERNATIVE ENTIRE NET INCOME INTERCORPRATE DIVIDENDS AND ALL OTHER INTERCORPO-

RATE TRANSACTIONS BETWEEN THE TWO GROUPS SHALL BE ELIMINATED, AND IN COMPUTING COMBINED ASSETS OF EACH GROUP INTERCORPORATE STOCKHOLDINGS AND INTERCORPORATE BILLS, NOTES AND ACCOUNTS RECEIVABLE AND PAYABLE AND OTHER INTERCORPORATE INDEBTEDNESS BETWEEN THE TWO GROUPS SHALL BE ELIMINATED.

PROVIDED FURTHER, THAT IF THE ENTIRE NET INCOME OR ALTERNATIVE NET INCOME OF EITHER GROUP IS A LOSS, THE AMOUNT OF SUCH LOSS SHALL BE SUBTRACTED FROM THE OTHER GROUP'S ENTIRE NET INCOME OR ALTERNATIVE NET INCOME, RESPECTIVELY, BEFORE ALLOCATION.

S 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2006.