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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 16, 2011

Introduced by M. of A. KOLB, TEDISCO, BUTLER, OAKS, CORWIN, CASTELLI -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BOYLE, BURLING, CALHOUN, CONTE, CROUCH, DUPREY, FINCH, FITZPATRICK, GIGLIO, HAWLEY, HAYES, JORDAN, P. LOPEZ, McDONOUGH, McKEVITT, J. MILLER, MOLINARO, RABBITT, RAIA, REILICH, SALADINO, SAYWARD, SPANO, THIELE, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to eliminating the corporate franchise and personal income tax on manufacturers

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

Section 1. Section 208 of the tax law is amended by adding two new subdivisions 20 and 21 to read as follows:

20. "MANUFACTURER" SHALL MEAN A TAXPAYER WHICH DURING THE TAXABLE YEAR IS PRINCIPALLY ENGAGED IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING. MOREOVER, FOR PURPOSES OF COMPUTING THE CAPITAL BASE IN A COMBINED REPORT, THE GROUP SHALL BE CONSIDERED A "MANUFACTURER" FOR PURPOSES OF THIS ARTICLE ONLY IF THE COMBINED GROUP DURING THE TAXABLE YEAR IS PRINCIPALLY ENGAGED IN THE ACTIVITIES SET FORTH IN THIS SUBDIVISION, OR ANY COMBINATION THEREOF.

21. "PRINCIPALLY ENGAGED" SHALL INCLUDE A TAXPAYER OR A COMBINED GROUP IF, DURING THE TAXABLE YEAR, MORE THAN FIFTY PERCENT OF THE GROSS RECEIPTS OF THE TAXPAYER OR COMBINED GROUP, RESPECTIVELY, ARE DERIVED FROM RECEIPTS FROM THE SALE OF GOODS PRODUCED BY MANUFACTURING. IN COMPUTING A COMBINED GROUP'S GROSS RECEIPTS, INTERCORPORATE RECEIPTS SHALL BE ELIMINATED.

S 2. Section 209 of the tax law is amended by adding a new subdivision 11 to read as follows:

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

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11. FOR ANY TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, A TAXPAYER WHO IS A MANUFACTURER SHALL BE FULLY EXEMPT FROM ALL TAXES IMPOSED BY THIS ARTICLE.

S 3. Subsection (f) of section 601 of the tax law, as amended by chapter 248 of the laws of 1997, is amended to read as follows:

(f) Partners and partnerships. A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities. NOTWITHSTANDING THIS OR ANY OTHER SECTION OF THIS ARTICLE, A PERSON'S LIABILITY FOR TAX UNDER THIS SUBSECTION, IF SUCH PERSON'S PRIMARY ACTIVITY IS IN HIS OR HER ROLE AS A MANUFACTURER, SHALL BE ZERO FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN. FOR PURPOSES OF THIS SECTION A PERSON SHALL BE CLASSIFIED AS A MANUFACTURER IF, HE OR SHE IS PRINCIPALLY ENGAGED IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING. IN ADDITION, FOR PURPOSES OF COMPUTING THE CAPITAL BASE IN A COMBINED REPORT, THE GROUP SHALL BE CONSIDERED A MANUFACTURER FOR PURPOSES OF THIS ARTICLE, ONLY IF THE COMBINED GROUP DURING THE TAXABLE YEAR IS PRINCIPALLY ENGAGED IN THE ACTIVITIES SET FORTH IN THIS SUBSECTION, OR ANY COMBINATION THEREOF. FOR PURPOSES OF THIS SUBSECTION, A TAXPAYER IS "PRINCIPALLY ENGAGED" IN THE DESCRIBED ACTIVITY IF, DURING THE TAXABLE YEAR, MORE THAN FIFTY PERCENT OF THE GROSS RECEIPTS OF THE TAXPAYER ARE DERIVED FROM RECEIPTS FROM ACTIVITIES COVERED BY THIS SUBSECTION. As used in this article, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

S 4. Subsection (b) of section 602 of the tax law, as amended by chapter 333 of the laws of 1987, is amended to read as follows:

(b) The tax imposed by this section on New York minimum taxable income, as defined in section six hundred twenty-two or section six hundred thirty-six, as the case may be, shall be at the rate of six percent, EXCEPT FOR, IN THE CASE OF INCOME DERIVED FROM ACTIVITY OF A PERSON CLASSIFIED AS A MANUFACTURER UNDER SUBSECTION (F) OF SECTION SIX HUNDRED ONE OF THIS PART, THE TAX IMPOSED BY THIS SECTION ON NEW YORK MINIMUM TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, SHALL BE ZERO.

S 5. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2011; provided, however, that the commissioner of taxation and finance is authorized to promulgate any and all rules and regulations and take any other measures necessary for the timely implementation of this act on its effective date on or before such date.