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

3491

2011-2012 Regular Sessions

I N S E N A T E

February 23, 2011

Introduced by Sen. DeFRANCISCO -- 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 the provision of certain financial services to debt evading foreign states

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

Section 1. The tax law is amended by adding a new article 15 to read as follows:

ARTICLE 15

TAX ON THE PROVISION OF CERTAIN FINANCIAL SERVICES TO DEBT EVADING FOREIGN STATES

SECTION 330. DEFINITIONS.
331. IMPOSITION OF TAX.
332. REPORTS AND ADDITIONAL MEASURES.

S 330. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

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

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

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

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

3. "FINANCIAL INSTITUTION" MEANS THE OFFICE OR BRANCH IN NEW YORK OF ANY BANK OR BANKING ORGANIZATION, WHETHER FOREIGN OR DOMESTIC, THAT IS

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

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REGULATED BY THE NEW YORK BANKING DEPARTMENT OR ANY AGENCY OR DEPARTMENT OF THE UNITED STATES, OR ANY TRUST COMPANY OR ANY OTHER PROVIDER OF PAYING AGENT SERVICES, FISCAL AGENT SERVICES, OR ANY OTHER SIMILAR SERVICES.

4. "PAYING AGENT AND FISCAL AGENT SERVICES" MEANS THE PAYMENT OR DISBURSEMENT IN NEW YORK BY A FINANCIAL INSTITUTION OF ALL OR ANY PORTION OF PRINCIPAL OR INTEREST ON A BOND, NOTE AND OTHER OBLIGATION ISSUED BY DEBT EVADING FOREIGN STATES.

5. "FOREIGN STATE" MEANS ANY GOVERNMENTAL UNIT OTHER THAN THE UNITED STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY OR INSULAR POSSESSION THEREOF, AND INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF A FOREIGN STATE.

6. (A) "DEBT EVADING FOREIGN STATE" MEANS ANY FOREIGN STATE THAT:

(I) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR FEDERAL COURT LOCATED IN NEW YORK, INCLUDING ANY FINAL JUDGMENT ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN NEW YORK, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEED ONE HUNDRED MILLION DOLLARS;

(II) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE DATE OF THE ENACTMENT OF THIS SUBDIVISION; AND

(III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

(1) FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION (UNLESS SUCH STATE IS ELIGIBLE FOR FINANCING FROM THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT); OR

(2) DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTITUTIONS ACT); OR

(3) DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE INTERNATIONAL MONETARY FUND.

(B) FOR PURPOSES OF THIS ARTICLE, REFERENCES TO A 'DEBT EVADING FOREIGN STATE' SHALL INCLUDE 'AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE' AND 'STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE,' AS DEFINED IN THIS SECTION.

7. "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" MEANS ANY CORPORATION OR ENTITY (OTHER THAN A NATURAL PERSON), A MAJORITY OF THE SHARES OR OTHER OWNERSHIP INTEREST OF WHICH IS HELD, EITHER DIRECTLY OR INDIRECTLY, BY A DEBT EVADING FOREIGN STATE OR BY AN AGENCY OR INSTRUMENTALITY OF A DEBT EVADING FOREIGN STATE.

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

S 331. IMPOSITION OF TAX. 1. THERE IS HEREBY IMPOSED AND SHALL BE PAID A TAX ON EACH PROVISION IN NEW YORK OF INITIAL PAYING AGENT SERVICES OR FISCAL AGENT SERVICES BY A FINANCIAL INSTITUTION TO A DEBT EVADING FOREIGN STATE.

2. THE TAX IMPOSED SHALL BE AT A RATE OF FOUR PERCENT OF THE GROSS AMOUNT DISBURSED BY THE FINANCIAL INSTITUTION IN RELATION TO AND AT THE TIME OF EACH PROVISION OF SUCH SERVICE.

3. THE ULTIMATE INCIDENCE OF AND LIABILITY FOR THE TAX SHALL BE UPON THE DEBT EVADING FOREIGN STATE ON BEHALF OF WHICH SUCH PAYING AGENT SERVICE OR FISCAL AGENT SERVICE IS PROVIDED. EACH FINANCIAL INSTITUTION THAT PROVIDES THE INITIAL PAYING AGENT OR FISCAL AGENT SERVICES IN NEW YORK WITH RESPECT TO ALL OR ANY PORTION OF AN INTEREST OR PRINCIPAL PAYMENT ON BEHALF OF A DEBT EVADING FOREIGN STATE SHALL BE RESPONSIBLE FOR THE COLLECTION OF THE TAX FROM SUCH DEBT EVADING FOREIGN STATE ALLO-

CABLE TO THE GROSS AMOUNT OF FUNDS IT DISBURSES AND FOR THE REMISSION OF THE TAX TO THE TAX COMMISSION. IN THE EVENT A FINANCIAL INSTITUTION DISBURSES ANY FUNDS IN RELATION TO THE PROVISION OF A PAYING AGENT SERVICE OR FISCAL AGENT SERVICE WITHOUT REMITTING THE TAX IMPOSED BY OR PURSUANT TO THIS ARTICLE TO THE TAX COMMISSION, SUCH FINANCIAL INSTITUTION SHALL BE LIABLE FOR THE FULL AMOUNT OF SUCH TAX IMPOSED WHICH SHALL BE IMMEDIATELY DUE AND PAYABLE TO THE TAX COMMISSION.

S 332. REPORTS AND ADDITIONAL MEASURES. 1. THE DEPARTMENT SHALL, ON A MONTHLY BASIS, REVIEW THE RECORDS OF UNSATISFIED JUDGMENTS ENTERED IN ALL FEDERAL AND STATE COURTS LOCATED IN THIS STATE TO IDENTIFY ALL DEBT EVADING FOREIGN STATES.

2. THE DEPARTMENT SHALL, ON A MONTHLY BASIS, POST TO ITS WEBSITE THE IDENTITIES OF ALL DEBT EVADING FOREIGN STATES OR OTHERWISE PUBLISH SUCH IDENTITIES IN ANY OTHER MANNER REASONABLY CALCULATED TO GIVE NOTICE TO FINANCIAL INSTITUTIONS IN NEW YORK. ANY FINANCIAL INSTITUTION SUBJECT TO THIS ARTICLE SHALL HAVE THE ABSOLUTE RIGHT TO RELY UPON THE LIST OF DEBT EVADING FOREIGN STATES POSTED OR PUBLISHED BY THE DEPARTMENT FOR THE PURPOSE OF COMPLYING WITH THIS ARTICLE.

3. THE DEPARTMENT SHALL REPORT TO THE OFFICE OF THE NEW YORK ATTORNEY GENERAL THE NAMES OF ANY FINANCIAL INSTITUTIONS THAT THE DEPARTMENT DETERMINES IS NOT COMPLYING WITH THIS ARTICLE.

4. THE DEPARTMENT AND THE ATTORNEY GENERAL MAY CONSIDER DOCUMENTS AND OTHER INFORMATION RECEIVED FROM THIRD PARTIES, FINANCIAL INSTITUTIONS AND DEBT EVADING FOREIGN STATES TO DETERMINE WHETHER A FOREIGN STATE IS A DEBT EVADING FOREIGN STATE.

5. AT SUCH TIME AS THE DEPARTMENT DETERMINES THAT A FOREIGN STATE NO LONGER QUALIFIES AS A DEBT EVADING FOREIGN STATE, IT SHALL REMOVE FROM ITS WEBSITE THE DESIGNATION OF THE FOREIGN STATE AS A DEBT EVADING FOREIGN STATE OR TAKE SUCH OTHER ACTION AS IS REASONABLY CALCULATED TO GIVE NOTICE TO FINANCIAL INSTITUTIONS IN NEW YORK THAT SUCH FOREIGN STATE IS NO LONGER DESIGNATED AS A DEBT EVADING FOREIGN STATE.

S 2. The tax law is amended by adding a new section 1816 to read as follows:

S 1816. ATTEMPT TO EVADE OR DEFEAT CERTAIN TAXES. ANY FINANCIAL INSTITUTION THAT WILLFULLY ATTEMPTS IN ANY MANNER TO EVADE OR DEFEAT ANY TAX IMPOSED BY OR PURSUANT TO ARTICLE FIFTEEN OF THIS CHAPTER OR THE PAYMENT THEREOF SHALL, IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, BE GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN TEN THOUSAND DOLLARS PER OCCURRENCE.

S 3. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to any disbursement of funds in connection with the provision of a paying agent service or fiscal agent service occurring on or after such effective date.