

3944

2011-2012 Regular Sessions

I N S E N A T E

March 10, 2011

Introduced by Sen. DeFRANCISCO -- (at request of the Department of Taxation and Finance) -- 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 reversing the crediting of a personal income tax or corporate franchise tax overpayment against estimated tax for the succeeding taxable year in certain circumstances

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

1 Section 1. Subsection (e) of section 686 of the tax law, as amended by  
2 chapter 65 of the laws of 1985, is amended to read as follows:  
3 (e) Credits against estimated tax.--The [tax commission] COMMISSIONER  
4 may prescribe regulations providing for the crediting against the esti-  
5 mated income tax for any taxable year of the amount determined to be an  
6 overpayment of the income tax for a preceding taxable year. If any over-  
7 payment of income tax is so claimed as a credit against estimated tax  
8 for the succeeding taxable year, such amount shall be considered as a  
9 payment of the income tax for the succeeding taxable year, and no claim  
10 for credit or refund of such overpayment shall be allowed for the taxa-  
11 ble year for which the overpayment arises, EXCEPT UPON REQUEST TO THE  
12 COMMISSIONER ON OR BEFORE THE LAST DAY PRESCRIBED FOR THE FILING OF THE  
13 RETURN FOR THE SUCCEEDING TAXABLE YEAR, DETERMINED WITH REGARD TO ANY  
14 EXTENSION OF TIME GRANTED. IF GOOD CAUSE IS SHOWN FOR REVERSING THE  
15 CREDIT, THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, CREDIT THE OVER-  
16 PAYMENT AGAINST A LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST.  
17 PROVIDED, THE PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF  
18 LIABILITY FOR ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTI-  
19 MATED TAX FOR THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMIS-  
20 SIONER TO GRANT OR DENY THE REQUEST IS FINAL AND NOT SUBJECT TO FURTHER  
21 ADMINISTRATIVE OR JUDICIAL REVIEW.

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

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1 S 2. Subsection (k) of section 687 of the tax law, as amended by chap-  
2 ter 1014 of the laws of 1968, is amended to read as follows:

3 (k) Cross reference.-- For provision barring refund of overpayment  
4 credited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN,  
5 see subsection (e) of section six hundred eighty-six.

6 S 3. Subsection (b) of section 1086 of the tax law, as added by chap-  
7 ter 188 of the laws of 1964, is amended to read as follows:

8 (b) Credits against estimated tax.---The [tax commission] COMMISSIONER  
9 may prescribe regulations providing for the crediting against the esti-  
10 mated tax under article nine-a[, nine-b or nine-c] for any taxable year  
11 of the amount determined to be an overpayment of tax under [any] such  
12 article for a preceding taxable year. If any overpayment of tax is so  
13 claimed as a credit against estimated tax for the succeeding taxable  
14 year, such amount shall be considered as a payment of the tax under  
15 article nine-a[, nine-b or nine-c] OF THIS CHAPTER for the succeeding  
16 taxable year (whether or not claimed as a credit in the declaration of  
17 estimated tax for such succeeding taxable year), and no claim for credit  
18 or refund of such overpayment shall be allowed for the taxable year for  
19 which the overpayment arises, EXCEPT UPON REQUEST TO THE COMMISSIONER ON  
20 OR BEFORE THE LAST DAY PRESCRIBED FOR THE FILING OF THE RETURN FOR THE  
21 SUCCEEDING TAXABLE YEAR, DETERMINED WITH REGARD TO ANY EXTENSION OF TIME  
22 GRANTED. IF GOOD CAUSE IS SHOWN FOR REVERSING THE CREDIT, THE COMMIS-  
23 SIONER MAY, IN HIS OR HER DISCRETION, CREDIT THE OVERPAYMENT AGAINST A  
24 LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST. PROVIDED, THE  
25 PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF LIABILITY FOR  
26 ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTIMATED TAX FOR  
27 THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMISSIONER TO GRANT  
28 OR DENY THE REQUEST IS FINAL AND NOT SUBJECT TO FURTHER ADMINISTRATIVE  
29 OR JUDICIAL REVIEW.

30 S 4. Subsection (j) of section 1087 of the tax law, as added by chap-  
31 ter 188 of the laws of 1964, is amended to read as follows:

32 (j) Cross reference.--For provision barring refund of overpayment  
33 credited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN,  
34 see subsection (b) of section one thousand eighty-six.

35 S 5. Subdivision (e) of section 11-1786 of the administrative code of  
36 the city of New York, as renumbered by chapter 639 of the laws of 1986,  
37 is amended to read as follows:

38 (e) Credits against estimated tax. The [tax commission] COMMISSIONER  
39 OF TAXATION AND FINANCE may prescribe regulations providing for the  
40 crediting against the estimated income tax for any taxable year of the  
41 amount determined to be an overpayment of the income tax for a preceding  
42 taxable year. If any overpayment of income tax is so claimed as a credit  
43 against estimated tax for the succeeding taxable year, such amount shall  
44 be considered as a payment of the income tax for the succeeding taxable  
45 year, and no claim for credit or refund of such overpayment shall be  
46 allowed for the taxable year for which the overpayment arises, EXCEPT  
47 UPON REQUEST TO THE COMMISSIONER OF TAXATION AND FINANCE ON OR BEFORE  
48 THE LAST DAY PRESCRIBED FOR THE FILING OF THE RETURN FOR THE SUCCEEDING  
49 TAXABLE YEAR, DETERMINED WITH REGARD TO ANY EXTENSION OF TIME GRANTED.  
50 IF GOOD CAUSE IS SHOWN FOR REVERSING THE CREDIT, THE COMMISSIONER OF  
51 TAXATION AND FINANCE MAY, IN HIS OR HER DISCRETION, CREDIT THE OVERPAY-  
52 MENT AGAINST A LIABILITY OR REFUND THE OVERPAYMENT WITHOUT INTEREST.  
53 PROVIDED, THE PERSON WHO MADE THE OVERPAYMENT WILL NOT BE RELIEVED OF  
54 LIABILITY FOR ANY PENALTY IMPOSED FOR A CONSEQUENT UNDERPAYMENT OF ESTI-  
55 MATED TAX FOR THE SUCCEEDING TAXABLE YEAR. THE DECISION OF THE COMMIS-

1 SIONER OF TAXATION AND FINANCE TO GRANT OR DENY THE REQUEST IS FINAL AND  
2 NOT SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

3 S 6. Subdivision (k) of section 11-1787 of the administrative code of  
4 the city of New York, as amended by chapter 639 of the laws of 1986, is  
5 amended to read as follows:

6 (k) Cross reference. For provision barring refund of overpayment cred-  
7 ited against tax of a succeeding year, EXCEPT FOR GOOD CAUSE SHOWN, see  
8 subdivision (e) of section 11-1786.

9 S 7. This act shall take effect immediately.