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

846

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. YOUNG, BONACIC, RANZENHOFER -- 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 limited liability company fees and business corporation franchise taxes for farms and commercial horse boarding operations

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

Section 1. Paragraph 3 of subsection (c) of section 658 of the tax law, as amended by section 1 of part H-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(3) Filing fees. (A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every partnership which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall, within thirty days after the last day of the taxable year, make a payment of a filing fee. SUCH DEADLINE SHALL NOT APPLY TO FARMS OR COMMERCIAL HORSE BOARDING OPERATIONS, WHICH SHALL, WITHIN ONE HUNDRED TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF A FILING FEE. The amount of the filing fee is the amount set forth in subparagraph (B) of this paragraph. The minimum filing fee is twenty-five dollars for taxable years beginning in two thousand eight and thereafter. Limited liability companies that are disregarded entities for federal income tax purposes must pay a filing fee of twenty-five dollars for taxable years beginning on or after January first, two thousand eight.

(B) The filing fee will be based on the New York source gross income of the limited liability company or partnership for the taxable year immediately preceding the taxable year for which the fee is due. If the

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

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limited liability company or partnership does not have any New York source gross income for the taxable year immediately preceding the taxable year for which the fee is due, the limited liability company or partnership shall pay the minimum filing fee. Partnerships, other than limited liability partnerships under article eight-B of the partnership law and foreign limited liability partnerships, with less than one million dollars in New York source gross income are exempt from the filing fee. New York source gross income is the sum of the partners' or members' shares of federal gross income from the partnership or limited liability company derived from or connected with New York sources, determined in accordance with the provisions of section six hundred thirty-one of this article as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For this purpose, federal gross income is computed without any allowance or deduction for cost of goods sold, EXCEPT THAT FOR COMPANIES ENGAGED PRIMARILY IN FARMING OR COMMERCIAL HORSE BOARDING, FEDERAL GROSS INCOME SHALL BE BASED UPON NET INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

The amount of the filing fee for taxable years beginning on or after January first, two thousand eight will be determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than $100,000	$25
more than $100,000 but not over $250,000	$50
more than $250,000 but not over $500,000	$175
more than $500,000 but not over $1,000,000	$500
more than $1,000,000 but not over $5,000,000	$1,500
more than $5,000,000 but not over $25,000,000	$3,000
Over $25,000,000	$4,500

(C) No credits provided by this article may be taken against the fee imposed by this paragraph.

(D) Where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and for those purposes any reference in this article to tax imposed by this article shall be deemed also to refer to this filing fee.

S 2. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4) Notwithstanding subparagraphs one and two of this paragraph, for taxable years beginning on or after January first, two thousand eight, the amount prescribed by this paragraph for New York S corporations will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than $100,000	$25
more than $100,000 but not over $250,000	$50
more than $250,000 but not over $500,000	$175
more than $500,000 but not over $1,000,000	$300
more than $1,000,000 but not over $5,000,000	$1,000
more than $5,000,000 but not over $25,000,000	$3,000
Over $25,000,000	$4,500

Otherwise the amount prescribed by this paragraph will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than $100,000	$25
more than $100,000 but not over $250,000	$75
more than $250,000 but not over $500,000	$175
more than $500,000 but not over $1,000,000	$500
more than $1,000,000 but not over $5,000,000	$1,500
more than $5,000,000 but not over $25,000,000	$3,500
Over $25,000,000	$5,000

For purposes of this paragraph, New York receipts are the receipts computed in accordance with subparagraph two of paragraph (a) of subdivision three of this section for the taxable year, EXCEPT THAT FOR CORPORATIONS ENGAGED PRIMARILY IN FARMING OR COMMERCIAL HORSE BOARDING, THE TERM NEW YORK RECEIPTS SHALL REFER TO NET FARM INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2011.