

1658

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 11, 2011

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

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

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

3                                     ARTICLE 15  
4     TAX ON THE PROVISION OF CERTAIN FINANCIAL SERVICES TO DEBT EVADING  
5                                     FOREIGN STATES

6     SECTION 330. DEFINITIONS.

7             331. IMPOSITION OF TAX.

8             332. REPORTS AND ADDITIONAL MEASURES.

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

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

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

13         (B) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL  
14 SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP  
15 INTEREST IS OWNED BY A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVI-  
16 SION THEREOF, AND

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

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

21     3. "FINANCIAL INSTITUTION" MEANS THE OFFICE OR BRANCH IN NEW YORK OF  
22 ANY BANK OR BANKING ORGANIZATION, WHETHER FOREIGN OR DOMESTIC, THAT IS  
23 REGULATED BY THE NEW YORK BANKING DEPARTMENT OR ANY AGENCY OR DEPARTMENT

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

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1 OF THE UNITED STATES, OR ANY TRUST COMPANY OR ANY OTHER PROVIDER OF  
2 PAYING AGENT SERVICES, FISCAL AGENT SERVICES, OR ANY OTHER SIMILAR  
3 SERVICES.

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

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

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

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

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

22 (III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

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

26 (2) DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN  
27 SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTI-  
28 TUTIONS ACT); OR

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

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

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

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

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

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

49 3. THE ULTIMATE INCIDENCE OF AND LIABILITY FOR THE TAX SHALL BE UPON  
50 THE DEBT EVADING FOREIGN STATE ON BEHALF OF WHICH SUCH PAYING AGENT  
51 SERVICE OR FISCAL AGENT SERVICE IS PROVIDED. EACH FINANCIAL INSTITUTION  
52 THAT PROVIDES THE INITIAL PAYING AGENT OR FISCAL AGENT SERVICES IN NEW  
53 YORK WITH RESPECT TO ALL OR ANY PORTION OF AN INTEREST OR PRINCIPAL  
54 PAYMENT ON BEHALF OF A DEBT EVADING FOREIGN STATE SHALL BE RESPONSIBLE  
55 FOR THE COLLECTION OF THE TAX FROM SUCH DEBT EVADING FOREIGN STATE ALLO-  
56 CABLE TO THE GROSS AMOUNT OF FUNDS IT DISBURSES AND FOR THE REMISSION OF

1 THE TAX TO THE TAX COMMISSION. IN THE EVENT A FINANCIAL INSTITUTION  
2 DISBURSES ANY FUNDS IN RELATION TO THE PROVISION OF A PAYING AGENT  
3 SERVICE OR FISCAL AGENT SERVICE WITHOUT REMITTING THE TAX IMPOSED BY OR  
4 PURSUANT TO THIS ARTICLE TO THE TAX COMMISSION, SUCH FINANCIAL INSTITU-  
5 TION SHALL BE LIABLE FOR THE FULL AMOUNT OF SUCH TAX IMPOSED WHICH SHALL  
6 BE IMMEDIATELY DUE AND PAYABLE TO THE TAX COMMISSION.

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

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

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

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

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

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

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

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