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

7377

I N S E N A T E

May 2, 2012

Introduced by Sen. PARKER -- 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 eliminating net operating loss carryback deductions; and to repeal certain provisions of the tax law relating thereto

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

Section 1. Section 659 of the tax law, as amended by chapter 577 of the laws of 1997, is amended to read as follows:

S 659. Report of federal changes, corrections or disallowances. If the amount of a taxpayer's federal taxable income, federal items of tax preference, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on his federal income tax return for any taxable year, or the amount of a taxpayer's earned income credit or credit for employment-related expenses set forth on such return, or the amount of any federal foreign tax credit affecting the calculation of the credit for Canadian provincial taxes under section six hundred twenty or six hundred twenty-A of this article, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. [The allowance of a tentative carryback adjustment based upon a net operating loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of

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

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this section.] Any taxpayer filing an amended federal income tax return and any employer filing an amended federal return of income tax withheld shall also file within ninety days thereafter an amended return under this article, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having a resident partner or having any income derived from New York sources, and a corporation with respect to which the taxable year of such change, correction, disallowance or amendment is a year with respect to which the election provided for in subsection (a) of section six hundred sixty of this article is in effect, and (ii) the term "federal income tax return" shall include the returns of income required under sections six thousand thirty-one and six thousand thirty-seven of the internal revenue code. In the case of such a corporation, such report shall also include any change or correction of the taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code. Reports made under this section by a partnership or corporation shall indicate the portion of the change in each item of income, gain, loss or deduction (and, in the case of a corporation, of each change in, or disallowance of a claim for credit or refund of, a tax referred to in the preceding sentence) allocable to each partner or shareholder and shall set forth such identifying information with respect to such partner or shareholder as may be prescribed by the commissioner.

S 2. Subsection (a) of section 1087 of the tax law, as amended by section 9 of part H of chapter 1 of the laws of 2003, is amended to read as follows:

(a) General.--Claim for credit or refund of an overpayment of tax under article nine or nine-A shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid or (iii) in the case of any overpayment arising from an erroneous denial by the department of environmental conservation of a certification of completion pursuant to section 27-1419 of the environmental conservation law, two years from the time a final determination to the effect that such denial was erroneous is made and is no longer subject to judicial review, whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. In the case of a claim for credit or refund filed within the period prescribed in paragraph (iii) of this subsection, the amount of the credit or refund may exceed the portion of the tax paid within the applicable period specified in the two immediately preceding sentences, but only to the extent of the amount of the overpayment attributable to the denial described in such paragraph (iii). Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result

of (i) [a net operating loss carryback or capital loss carryback, or (ii)] an increase or decrease in federal taxable income or federal tax, or [(iii)] (II) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three.

S 3. Subsection (b) of section 1089 of the tax law, as amended by chapter 55 of the laws of 1982, is amended to read as follows:

(b) Petition for redetermination of a deficiency.---Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section one thousand eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subsection (g) of section one thousand eighty-seven. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of (i) [a net operating loss carryback or capital loss carryback, (ii)] an increase or decrease in federal taxable income or federal tax, or [(iii)] (II) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three.

S 4. Subparagraph 3 of paragraph (a) and paragraph (d) of subdivision 8-b and paragraph (f) and subparagraph 3 of paragraph (g) of subdivision 9 of section 208 of the tax law are REPEALED.

S 4-a. Paragraph (e) of subdivision 13 of section 210 of the tax law is REPEALED.

S 5. Subdivision 3 of section 211 of the tax law is REPEALED.

S 6. Subdivision (e) of section 213-b of the tax law is REPEALED.

S 7. Paragraph 3 of subdivision (a) of section 292 of the tax law is REPEALED.

S 8. Paragraph 3 of subsection (a) of section 622 of the tax law is REPEALED.

S 9. Paragraph 4 of subsection (b) of section 631 of the tax law is REPEALED.

S 10. Subsection (b) of section 633 of the tax law is REPEALED.

S 11. Paragraph 3 of subsection (a) of section 636 of the tax law is REPEALED.

S 12. Paragraph 4 of subsection (c) of section 683 of the tax law is REPEALED.

S 13. Subsection (e) of section 684 of the tax law is REPEALED.

S 14. Subsection (d) of section 687 of the tax law is REPEALED.

S 15. Paragraph 4 of subsection (c) of section 1083 of the tax law is REPEALED.

S 16. Subsection (e) of section 1084 of the tax law is REPEALED.

S 17. Subsection (a) of section 1087 of the tax law is REPEALED.

S 18. Subsection (d) of section 1088 of the tax law is REPEALED.

S 19. Subsection (k-1) of section 1453 of the tax law is REPEALED.

S 20. Paragraph 4 of subdivision (b) of section 1503 of the tax law is REPEALED.

S 21. Paragraph 1 of subsection (e) of section 1515 of the tax law is REPEALED.

S 22. This act shall take effect on the one hundred eightieth day after it shall have become a law.