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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:

1 Section 1. Paragraph 3 of subsection (c) of section 658 of the tax
2 law, as amended by section 1 of part H-1 of chapter 57 of the laws of
3 2009, is amended to read as follows:
4 (3) Filing fees. (A) Every subchapter K limited liability company,
5 every limited liability company that is a disregarded entity for federal
6 income tax purposes, and every partnership which has any income derived
7 from New York sources, determined in accordance with the applicable
8 rules of section six hundred thirty-one of this article as in the case
9 of a nonresident individual, shall, within thirty days after the last
10 day of the taxable year, make a payment of a filing fee. SUCH DEADLINE
11 SHALL NOT APPLY TO FARMS OR COMMERCIAL HORSE BOARDING OPERATIONS, WHICH
12 SHALL, WITHIN ONE HUNDRED TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE
13 YEAR, MAKE PAYMENT OF A FILING FEE. The amount of the filing fee is the
14 amount set forth in subparagraph (B) of this paragraph. The minimum
15 filing fee is twenty-five dollars for taxable years beginning in two
16 thousand eight and thereafter. Limited liability companies that are
17 disregarded entities for federal income tax purposes must pay a filing
18 fee of twenty-five dollars for taxable years beginning on or after Janu-
19 ary first, two thousand eight.
20 (B) The filing fee will be based on the New York source gross income
21 of the limited liability company or partnership for the taxable year
22 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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1 limited liability company or partnership does not have any New York
 2 source gross income for the taxable year immediately preceding the taxa-
 3 ble year for which the fee is due, the limited liability company or
 4 partnership shall pay the minimum filing fee. Partnerships, other than
 5 limited liability partnerships under article eight-B of the partnership
 6 law and foreign limited liability partnerships, with less than one
 7 million dollars in New York source gross income are exempt from the
 8 filing fee. New York source gross income is the sum of the partners' or
 9 members' shares of federal gross income from the partnership or limited
 10 liability company derived from or connected with New York sources,
 11 determined in accordance with the provisions of section six hundred
 12 thirty-one of this article as if those provisions and any related
 13 provisions expressly referred to a computation of federal gross income
 14 from New York sources. For this purpose, federal gross income is
 15 computed without any allowance or deduction for cost of goods sold,
 16 EXCEPT THAT FOR COMPANIES ENGAGED PRIMARILY IN FARMING OR COMMERCIAL
 17 HORSE BOARDING, FEDERAL GROSS INCOME SHALL BE BASED UPON NET INCOME AS
 18 REPORTED FOR FEDERAL TAX PURPOSES.

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

22 If the New York source gross income is:	The fee is:
23 not more than \$100,000	\$25
24 more than \$100,000 but not over \$250,000	\$50
25 more than \$250,000 but not over \$500,000	\$175
26 more than \$500,000 but not over \$1,000,000	\$500
27 more than \$1,000,000 but not over \$5,000,000	\$1,500
28 more than \$5,000,000 but not over \$25,000,000	\$3,000
29 Over \$25,000,000	\$4,500

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

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

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

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

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

52 Otherwise the amount prescribed by this paragraph will be determined in
 53 accordance with the following table:
 54

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

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

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