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

7338

2013-2014 Regular Sessions

I N A S S E M B L Y

May 10, 2013

Introduced by M. of A. ENGLEBRIGHT, BRENNAN -- (at request of the Department of Law) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to executive compensation oversight; and to amend the estates, powers and trusts law, in relation to trust governance

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

Section 1. Subparagraph 6 of paragraph (a) of section 102 of the not-for-profit corporation law is amended, and five new subparagraphs 19, 20, 21, 22 and 23, are added to read as follows:

(6) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors" OR ANY OTHER BODY CONSTITUTING A "GOVERNING BOARD" AS DEFINED IN THIS SECTION.

(19) AN "AFFILIATE" OF A CORPORATION MEANS ANY ENTITY CONTROLLED BY, IN CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH CORPORATION.

(20) "INDEPENDENT DIRECTOR" MEANS A DIRECTOR WHO: (I) IS NOT, AND HAS NOT BEEN WITHIN THE LAST THREE YEARS, AN EMPLOYEE OF THE CORPORATION OR AN AFFILIATE OF THE CORPORATION, AND DOES NOT HAVE A RELATIVE WHO IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, A KEY EMPLOYEE OF THE CORPORATION OR AN AFFILIATE OF THE CORPORATION; (II) HAS NOT RECEIVED, AND DOES NOT HAVE A RELATIVE WHO HAS RECEIVED, IN ANY OF THE LAST THREE FISCAL YEARS, MORE THAN TEN THOUSAND DOLLARS IN DIRECT COMPENSATION FROM THE CORPORATION OR AN AFFILIATE OF THE CORPORATION (OTHER THAN REIMBURSEMENT FOR EXPENSES REASONABLY INCURRED AS A DIRECTOR OR REASONABLE COMPENSATION FOR SERVICE AS A DIRECTOR AS PERMITTED BY PARAGRAPH (A) OF SECTION 202 (GENERAL AND SPECIAL POWERS)); AND (III) IS NOT A CURRENT EMPLOYEE OF OR HAVE A SUBSTANTIAL FINANCIAL INTEREST IN, AND DOES NOT HAVE A RELATIVE WHO IS A CURRENT OFFICER OF OR HAS A SUBSTANTIAL FINANCIAL INTEREST IN, ANY ENTITY THAT HAS MADE PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE

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

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CORPORATION OR AN AFFILIATE OF THE CORPORATION FOR PROPERTY OR SERVICES IN AN AMOUNT WHICH, IN ANY OF THE LAST THREE FISCAL YEARS, EXCEEDS THE LESSER OF TWENTY-FIVE THOUSAND DOLLARS OR TWO PERCENT OF SUCH ENTITY'S CONSOLIDATED GROSS REVENUES. FOR PURPOSES OF THIS SUBPARAGRAPH, "PAYMENT" DOES NOT INCLUDE CHARITABLE CONTRIBUTIONS.

(21) "RELATIVE" OF AN INDIVIDUAL MEANS THE (I) SPOUSE, DOMESTIC PARTNER AS DEFINED BY SECTION TWENTY-EIGHT HUNDRED FIVE-Q OF THE PUBLIC HEALTH LAW, CHILD, GRANDCHILD, BROTHER OR SISTER (WHETHER BY THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL; AND (II) THE SPOUSE OR DOMESTIC PARTNER OF A CHILD, GRANDCHILD, BROTHER OR SISTER (WHETHER BY THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL.

(22) "KEY EMPLOYEE" MEANS ANY PERSON WHO IS IN A POSITION TO EXERCISE SUBSTANTIAL INFLUENCE OVER THE AFFAIRS OF THE CORPORATION, AS REFERENCED IN 26 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S 53.4958-3(C) AND (D), OR SUCCEEDING PROVISIONS.

(23) "TOTAL COMPENSATION" MEANS: (I) ANY COMPENSATION, WHETHER PAID OR ACCRUED, BY OR ON BEHALF OF THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION FOR SERVICES RENDERED TO, ON BEHALF OF, OR AT THE REQUEST OF THE CORPORATION, INCLUDING BUT NOT LIMITED TO SALARY, BONUS, AND DEFERRED COMPENSATION; AND (II) ANY BENEFIT HAVING MONETARY VALUE PROVIDED BY OR ON BEHALF OF THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION, INCLUDING BUT NOT LIMITED TO HOUSING ALLOWANCES, LIVING EXPENSES, PERQUISITES, FRINGE BENEFITS, EMPLOYER CONTRIBUTIONS TO DEFINED CONTRIBUTION RETIREMENT PLANS AND OTHER RETIREMENT BENEFITS.

S 2. The not-for-profit corporation law is amended by adding a new section 712-a to read as follows:

S 712-A. EXECUTIVE COMPENSATION OVERSIGHT.

(A) NO CORPORATION SHALL PAY TOTAL COMPENSATION TO ANY EMPLOYEE IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE CORPORATION.

(B) THE BOARD OR A DESIGNATED COMPENSATION COMMITTEE OF THE BOARD COMPRISED SOLELY OF INDEPENDENT DIRECTORS OF ANY CORPORATION THAT IS REQUIRED TO REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW SHALL REVIEW AND APPROVE THE TOTAL COMPENSATION PAID TO THE PRINCIPAL EXECUTIVE OFFICER OF THE CORPORATION, AND DETERMINE THAT SUCH COMPENSATION IS NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE CORPORATION.

(C) IF, IN THE PRIOR FISCAL YEAR, ANY CORPORATION THAT IS REQUIRED TO REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW HAD, OR IN THE CURRENT FISCAL YEAR REASONABLY EXPECTS TO HAVE, ANNUAL REVENUES IN EXCESS OF TWO MILLION DOLLARS, THE BOARD OR DESIGNATED COMPENSATION COMMITTEE OF THE BOARD COMPRISED SOLELY OF INDEPENDENT DIRECTORS SHALL, IN ADDITION TO THOSE DUTIES SET FORTH IN PARAGRAPH (B) OF THIS SECTION:

(1) REVIEW THE TOTAL COMPENSATION PAID TO THE CORPORATION'S TOP FIVE HIGHEST COMPENSATED EMPLOYEES WHO ARE OFFICERS OR KEY EMPLOYEES AND WHOSE COMPENSATION EXCEEDS ONE HUNDRED FIFTY THOUSAND DOLLARS, OR SUCH GREATER AMOUNT AS THE ATTORNEY GENERAL MAY SET BY REGULATION;

(2) DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY SUCH EMPLOYEE IS NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE CORPORATION. IN MAKING THIS DETERMINATION, THE BOARD, OR COMPENSATION COMMITTEE, SHALL AT A MINIMUM CONSIDER THE FOLLOWING FACTORS: (I) THE TOTAL COMPENSATION PROVIDED TO THE EMPLOYEE BY THE CORPORATION AND ALL AFFILIATES OF THE CORPORATION; (II) RELEVANT DATA ON THE TOTAL COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMILAR POSITIONS AT CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE, AND SCOPE;

(III) THE EMPLOYEE'S QUALIFICATIONS AND PERFORMANCE; AND (IV) THE OVERALL FINANCIAL CONDITION OF THE CORPORATION;

(3) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE BASIS FOR SUCH DETERMINATION; AND

(4) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION PAID TO EACH SUCH EMPLOYEE.

(D) ANY REVIEW AND APPROVAL REQUIRED BY PARAGRAPHS (B) AND (C) OF THIS SECTION SHALL OCCUR WHENEVER THE TERM OF EMPLOYMENT, IF ANY, OF THE EMPLOYEE IS RENEWED OR EXTENDED, AND WHENEVER SUCH COMPENSATION IS MATERIALLY CHANGED. IF A CORPORATION CONTROLS ONE OR MORE CORPORATIONS, THE BOARD OR COMPENSATION COMMITTEE OF THE CONTROLLING CORPORATION MAY CONDUCT SUCH REVIEW AND APPROVAL ON BEHALF OF ANY CONTROLLED CORPORATION.

(E) IF THE BOARD OR COMPENSATION COMMITTEE RETAINS A COMPENSATION CONSULTANT TO ASSIST IN THE PERFORMANCE OF ITS RESPONSIBILITIES, SUCH CONSULTANT SHALL REPORT DIRECTLY TO THE BOARD OR COMPENSATION COMMITTEE. THE BOARD OR COMPENSATION COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR THE APPOINTMENT, COMPENSATION AND OVERSIGHT OF THE WORK OF SUCH CONSULTANT, AND SHALL APPROVE THE COMPENSATION PEER GROUP THAT THE COMPENSATION CONSULTANT RECOMMENDS BE USED TO DEVELOP COMPARABLE DATA.

(1) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE BOARD OR COMPENSATION COMMITTEE SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND QUALIFIED TO RENDER ADVICE CONCERNING COMPENSATION; PROVIDED THAT NO CONSULTANT MAY BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM THAT EMPLOYS SUCH CONSULTANT HAS (A) RECEIVED DIRECTLY OR INDIRECTLY ANY PAYMENT, FEE OR OTHER COMPENSATION FROM THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE AMOUNTS PAID FOR COMPENSATION CONSULTING SERVICES, OR (B) ANY BUSINESS OR PERSONAL RELATIONSHIP WITH THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION, OR ANY OF THEIR OFFICERS, DIRECTORS, TRUSTEES, OR EMPLOYEES, THAT MAY INTERFERE WITH THE ABILITY OF THE CONSULTANT TO PROVIDE OBJECTIVE ADVICE TO THE BOARD OR COMPENSATION COMMITTEE.

(2) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE BOARD OR COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH ANY RECOMMENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT; OR AFFECT THE ABILITY OR OBLIGATION OF MEMBERS OF THE BOARD OR COMPENSATION COMMITTEE TO EXERCISE THEIR OWN JUDGMENT IN FULFILLMENT OF THEIR DUTIES TO THE CORPORATION, INCLUDING THOSE DUTIES PRESCRIBED BY SECTION 717 (DUTY OF DIRECTORS AND OFFICERS).

(F) ONLY INDEPENDENT DIRECTORS MAY PARTICIPATE IN DELIBERATIONS OR VOTING RELATING TO MATTERS SET FORTH IN THIS SECTION.

S 3. The estates, powers and trusts law is amended by adding a new section 8-1.9 to read as follows:

S 8-1.9 TRUST GOVERNANCE

(A) FOR PURPOSES OF THIS SECTION:

(1) A "TRUST" MEANS A TRUST CREATED SOLELY FOR CHARITABLE PURPOSES, OR A TRUST THAT CONTINUES SOLELY FOR SUCH PURPOSES AFTER ALL NON-CHARITABLE INTERESTS HAVE TERMINATED.

(2) "CHARITABLE PURPOSE" MEANS ANY RELIGIOUS, CHARITABLE, EDUCATIONAL OR BENEVOLENT PURPOSE.

(3) "KEY EMPLOYEE" MEANS ANY PERSON WHO HAS RESPONSIBILITIES, POWERS OR INFLUENCE OVER THE TRUST SIMILAR TO THOSE OF AN OFFICER OF A NOT-FOR-PROFIT CORPORATION, OR IS OTHERWISE IN A POSITION TO EXERCISE SUBSTANTIAL INFLUENCE OVER THE AFFAIRS OF THE TRUST, AS REFERENCED IN 26 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S53.4958-3(C) AND (D), OR SUCCEEDING PROVISIONS.

(4) AN "AFFILIATE" OF A TRUST MEANS ANY ENTITY CONTROLLED BY, IN CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH TRUST.

(5) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO: (I) IS NOT, AND HAS NOT BEEN WITHIN THE LAST THREE YEARS, AN EMPLOYEE OF THE TRUST OR AN AFFILIATE OF THE TRUST, AND DOES NOT HAVE A RELATIVE WHO IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, A KEY EMPLOYEE OF THE TRUST OR AN AFFILIATE OF THE TRUST; (II) HAS NOT RECEIVED, AND DOES NOT HAVE A RELATIVE WHO HAS RECEIVED, IN ANY OF THE LAST THREE FISCAL YEARS, MORE THAN TEN THOUSAND DOLLARS IN DIRECT COMPENSATION FROM THE TRUST OR AN AFFILIATE OF THE TRUST (OTHER THAN REIMBURSEMENT FOR EXPENSES OR THE PAYMENT OF TRUSTEE COMMISSIONS AS PERMITTED BY LAW AND THE GOVERNING INSTRUMENT); AND (III) IS NOT A CURRENT EMPLOYEE OF OR HAVE A SUBSTANTIAL FINANCIAL INTEREST IN, AND DOES NOT HAVE A RELATIVE WHO IS A CURRENT OFFICER OF OR HAVE A SUBSTANTIAL FINANCIAL INTEREST IN, ANY ENTITY THAT HAS MADE PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE TRUST OR AN AFFILIATE OF THE TRUST FOR PROPERTY OR SERVICES IN AN AMOUNT WHICH, IN ANY OF THE LAST THREE FISCAL YEARS, EXCEEDS THE LESSER OF TWENTY-FIVE THOUSAND DOLLARS OR TWO PERCENT OF SUCH ENTITY'S CONSOLIDATED GROSS REVENUES. FOR PURPOSES OF THIS SUBPARAGRAPH, "PAYMENT" DOES NOT INCLUDE CHARITABLE CONTRIBUTIONS.

(B)(1) FOR PURPOSES OF THIS PARAGRAPH, "TOTAL COMPENSATION" MEANS: (A) ANY COMPENSATION, WHETHER PAID OR ACCRUED, BY OR ON BEHALF OF THE TRUST OR ANY AFFILIATE OF THE TRUST FOR SERVICES RENDERED TO, ON BEHALF OF, OR AT THE REQUEST OF THE TRUST OR AN AFFILIATE OF THE TRUST, INCLUDING BUT NOT LIMITED TO SALARY, BONUS, AND DEFERRED COMPENSATION; AND (B) ANY BENEFIT HAVING MONETARY VALUE PROVIDED BY OR ON BEHALF OF THE TRUST OR ANY AFFILIATE OF THE TRUST, INCLUDING BUT NOT LIMITED TO HOUSING OR VEHICLE ALLOWANCES, LIVING EXPENSES, PERQUISITES, FRINGE BENEFITS, EMPLOYER CONTRIBUTIONS TO DEFINED CONTRIBUTION RETIREMENT PLANS AND OTHER RETIREMENT BENEFITS.

(2) NO TRUST SHALL PAY TOTAL COMPENSATION TO ANY EMPLOYEE IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE TRUST.

(3) THE TRUSTEES OR A DESIGNATED COMPENSATION COMMITTEE CONSISTING OF ONE OR MORE INDEPENDENT TRUSTEES OF ANY TRUST THAT IS REQUIRED TO REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW SHALL REVIEW AND APPROVE THE TOTAL COMPENSATION PAID TO THE PRINCIPAL EXECUTIVE OFFICER OF THE TRUST, AND DETERMINE THAT SUCH COMPENSATION IS NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE TRUST.

(4) IF, IN THE PRIOR FISCAL YEAR, ANY TRUST THAT IS REQUIRED TO REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW HAD, OR IN THE CURRENT FISCAL YEAR REASONABLY EXPECTS TO HAVE, ANNUAL REVENUES IN EXCESS OF TWO MILLION DOLLARS, THE TRUSTEES OR DESIGNATED COMPENSATION COMMITTEE CONSISTING OF ONE OR MORE INDEPENDENT TRUSTEES SHALL, IN ADDITION TO THOSE DUTIES SET FORTH IN SUBPARAGRAPH THREE OF THIS PARAGRAPH:

(A) REVIEW THE TOTAL COMPENSATION PAID TO THE TRUST'S TOP FIVE HIGHEST COMPENSATED EMPLOYEES WHO ARE OFFICERS OR KEY EMPLOYEES AND WHOSE COMPENSATION EXCEEDS ONE HUNDRED FIFTY THOUSAND DOLLARS, OR SUCH GREATER AMOUNT AS THE ATTORNEY GENERAL MAY SET BY REGULATION;

(B) DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY SUCH EMPLOYEE IS NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE TRUST. IN MAKING THIS DETERMINATION, THE TRUSTEES OR COMPENSATION COMMITTEE SHALL AT A MINIMUM CONSIDER THE FOLLOWING FACTORS: (I) THE TOTAL COMPENSATION PROVIDED TO THE EMPLOYEE BY THE

TRUST AND ALL AFFILIATES OF THE TRUST; (II) RELEVANT DATA ON THE TOTAL COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMILAR POSITIONS AT TRUSTS OR CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE AND SCOPE; (III) THE EMPLOYEE'S QUALIFICATIONS AND PERFORMANCE; AND (IV) THE OVERALL FINANCIAL CONDITION OF THE TRUST;

(C) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE BASIS FOR SUCH DETERMINATION; AND

(D) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION PAID TO EACH SUCH EMPLOYEE.

(5) ANY REVIEW AND APPROVAL REQUIRED BY SUBPARAGRAPHS THREE AND FOUR OF THIS PARAGRAPH SHALL OCCUR WHENEVER THE TERM OF EMPLOYMENT, IF ANY, OF THE EMPLOYEE IS RENEWED OR EXTENDED, AND WHENEVER SUCH COMPENSATION IS MATERIALLY CHANGED. IF A TRUST IS UNDER THE CONTROL OF ANOTHER TRUST OR A CORPORATION, THE TRUSTEES OR COMPENSATION COMMITTEE OF THE CONTROLLING TRUST, OR THE BOARD OR DESIGNATED COMPENSATION COMMITTEE OF THE BOARD OF THE CONTROLLING CORPORATION, MAY PERFORM THE DUTIES REQUIRED BY THIS PARAGRAPH.

(6) IF A COMPENSATION CONSULTANT IS RETAINED BY THE TRUSTEES OR COMPENSATION COMMITTEE TO ASSIST IN THE PERFORMANCE OF THEIR RESPONSIBILITIES, SUCH CONSULTANT SHALL REPORT DIRECTLY TO THE TRUSTEES OR COMPENSATION COMMITTEE. THE TRUSTEES OR COMPENSATION COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR THE APPOINTMENT, COMPENSATION AND OVERSIGHT OF THE WORK OF SUCH CONSULTANT, AND SHALL APPROVE THE COMPENSATION PEER GROUP THAT THE COMPENSATION CONSULTANT RECOMMENDS BE USED TO DEVELOP COMPARABLE DATA.

(A) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE TRUSTEES OR COMPENSATION COMMITTEE SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND QUALIFIED TO RENDER ADVICE CONCERNING COMPENSATION; PROVIDED THAT NO CONSULTANT MAY BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM THAT EMPLOYS SUCH CONSULTANT HAS (I) RECEIVED DIRECTLY OR INDIRECTLY ANY PAYMENT, FEE OR OTHER COMPENSATION FROM THE TRUST OR ANY AFFILIATE OF THE TRUST WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE AMOUNTS PAID FOR COMPENSATION CONSULTING SERVICES, OR (II) ANY BUSINESS OR PERSONAL RELATIONSHIP WITH THE TRUST OR ANY AFFILIATE OF THE TRUST, OR ANY OF THEIR OFFICERS, DIRECTORS, TRUSTEES OR EMPLOYEES, THAT MAY INTERFERE WITH THE ABILITY OF THE CONSULTANT TO PROVIDE OBJECTIVE ADVICE TO THE TRUSTEES OR COMPENSATION COMMITTEE.

(B) NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE TRUSTEES OR COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH ANY RECOMMENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT; OR AFFECT THE ABILITY OR OBLIGATION OF THE TRUSTEES TO EXERCISE THEIR OWN JUDGMENT IN FULFILLMENT OF THEIR DUTIES TO THE TRUST AND ITS BENEFICIARIES.

(7) ONLY INDEPENDENT TRUSTEES MAY PARTICIPATE IN DELIBERATIONS OR VOTING RELATING TO MATTERS SET FORTH IN THIS SECTION.

S 4. This act shall take effect January 1, 2014, provided that section two of this act and paragraph (b) of section 8-1.9 of the estates, powers and trusts law as added by section three of this act shall not be applicable until January 1, 2015 for any corporation or trust that had annual revenues of less than 10,000,000 dollars in the last fiscal year ending prior to January 1, 2014.