

3473--A

2013-2014 Regular Sessions

I N   S E N A T E

February 4, 2013

---

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the imposition of the personal income tax upon foreign partnerships

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

1     Section 1. Subsection (f) of section 601 of the tax law, as amended by  
2     chapter 248 of the laws of 1997, is amended to read as follows:  
3     (f) Partners and partnerships. (1) A partnership as such shall not be  
4     subject to tax under this article. Persons carrying on business as part-  
5     ners shall be liable for tax under this article only in their separate  
6     or individual capacities. As used in this article, the term "partner-  
7     ship" shall include, unless a different meaning is clearly required, a  
8     subchapter K limited liability company. The term "subchapter K limited  
9     liability company" shall mean a limited liability company classified as  
10    a partnership for federal income tax purposes. The term "limited liabil-  
11    ity company" means a domestic limited liability company or a foreign  
12    limited liability company, as defined in section one hundred two of the  
13    limited liability company law, a limited liability investment company  
14    formed pursuant to section five hundred seven of the banking law, or a  
15    limited liability trust company formed pursuant to section one hundred  
16    two-a of the banking law.  
17    (2) A FOREIGN PARTNERSHIP SHALL NOT BE DEEMED TO HAVE NEXUS IN THIS  
18    STATE, AND THE NON-RESIDENT PARTNERS OF SUCH FOREIGN PARTNERSHIP SHALL  
19    NOT BE DEEMED TO HAVE NEW YORK-SOURCE INCOME, BY REASON OF SUCH FOREIGN  
20    PARTNERSHIP USING FULFILLMENT SERVICES OF A PERSON OR ENTITY AND OWNING  
21    PROPERTY STORED ON THE PREMISES OF SUCH PERSON OR ENTITY IN CONJUNCTION

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

LBD08544-02-4

1 WITH SUCH SERVICES. THE TERM "FULFILLMENT SERVICES" SHALL MEAN ANY OF  
2 THE FOLLOWING SERVICES PERFORMED BY AN ENTITY ON ITS PREMISES ON BEHALF  
3 OF A PURCHASER: (I) THE ACCEPTANCE OF ORDERS ELECTRONICALLY OR BY MAIL,  
4 TELEPHONE, TELEFAX OR INTERNET; (II) RESPONSES TO CONSUMER CORRESPOND-  
5 ENCE OR INQUIRIES ELECTRONICALLY OR BY MAIL, TELEPHONE, TELEFAX OR  
6 INTERNET; (III) BILLING AND COLLECTION ACTIVITIES; OR (IV) THE SHIPMENT  
7 OF ORDERS FROM AN INVENTORY OF PRODUCTS OFFERED FOR SALE BY THE PURCHAS-  
8 ER.

9 S 2. This act shall take effect immediately and shall apply to taxable  
10 years beginning on or after January 1, 2015.

FISCAL NOTE.-- Pursuant to Legislative Law, Section 50:

This bill would provide that foreign partnerships and non-resident partners of foreign partnerships will not have nexus with the State because they use fulfillment services of an entity or person in the State and own property stored on the premises of such person or entity.

We estimate that this bill would result in an annual revenue loss of \$10 million beginning in SFY 2016-17.

This estimate, dated January 30, 2014 and intended only for use during the 2014 legislative session, was prepared by Scott Palladino, Assistant Deputy Commissioner, Department of Taxation and Finance.