

3561

2013-2014 Regular Sessions

I N S E N A T E

February 5, 2013

Introduced by Sens. GRIFFO, FARLEY -- 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 and the administrative code of the city of
New York, in relation to the effectiveness of certain provisions
relating to the federal Gramm-Leach-Bliley act

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

1 Section 1. Paragraphs 1 and 2 of subsection (m) of section 1452 of
2 the tax law, as amended by section 1 of part R of chapter 59 of the laws
3 of 2012, are amended to read as follows:
4 (1) Notwithstanding anything to the contrary contained in this section
5 other than subsection (n) of this section, a corporation that was in
6 existence before January first, two thousand [twelve] THIRTEEN and was
7 subject to tax under article nine-A of this chapter for its last taxable
8 year beginning before January first, two thousand [twelve] THIRTEEN,
9 shall continue to be taxable under such article for all taxable years
10 beginning on or after January first, two thousand [twelve] THIRTEEN and
11 before January first, two thousand [fifteen] SIXTEEN. The preceding
12 sentence shall not apply to any taxable year during which such corpo-
13 ration is a banking corporation described in paragraphs one through
14 eight of subsection (a) of this section. Notwithstanding anything to
15 the contrary contained in this section other than subsection (n) of this
16 section, a banking corporation [or corporation] that was in existence
17 before January first, two thousand [twelve] THIRTEEN and was subject to
18 tax under this article for its last taxable year beginning before Janu-
19 ary first, two thousand [twelve] THIRTEEN, shall continue to be taxable
20 under this article for all taxable years beginning on or after January
21 first, two thousand [twelve] THIRTEEN and before January first, two
22 thousand [fifteen] SIXTEEN only if the corporation is a banking corpo-
23 ration as defined in subsection (a) of this section or the corporation
24 satisfies the requirements for a corporation to elect to be taxable
25 under this article. Provided further, that nothing in this subsection
26 shall prohibit a corporation that elected pursuant to subsection (d) of

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

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1 this section to be taxable under article nine-A of this chapter from
2 revoking that election in accordance with such subsection (d).

3 For purposes of this paragraph, a corporation shall be considered to
4 be subject to tax under article nine-A of this chapter for a taxable
5 year if such corporation was not a taxpayer but was properly included in
6 a combined report filed pursuant to section two hundred eleven of this
7 chapter for such taxable year and a corporation shall be considered to
8 be subject to tax under this article for a taxable year if such corpo-
9 ration was not a taxpayer but was properly included in a combined return
10 filed pursuant to subsection (f) or (g) of section fourteen hundred
11 sixty-two of this article for such taxable year. A corporation that was
12 in existence before January first, two thousand [twelve] THIRTEEN but
13 first becomes a taxpayer in a taxable year beginning on or after January
14 first, two thousand [twelve] THIRTEEN and before January first, two
15 thousand [fifteen] SIXTEEN, shall be considered for purposes of this
16 paragraph to have been subject to tax under article nine-A of this chap-
17 ter for its last taxable year beginning before January first, two thou-
18 sand [twelve] THIRTEEN if such corporation would have been subject to
19 tax under such article for such taxable year if it had been a taxpayer
20 during such taxable year. A corporation that was in existence before
21 January first, two thousand [twelve] THIRTEEN but first becomes a
22 taxpayer in a taxable year beginning on or after January first, two
23 thousand [twelve] THIRTEEN and before January first, two thousand
24 [fifteen] SIXTEEN, shall be considered for purposes of this paragraph to
25 have been subject to tax under this article for its last taxable year
26 beginning before January first, two thousand [twelve] THIRTEEN if such
27 corporation would have been subject to tax under this article for such
28 taxable year if it had been a taxpayer during such taxable year.

29 (2) Notwithstanding anything to the contrary contained in this section
30 other than subsection (n) of this section, a corporation formed on or
31 after January first, two thousand [twelve] THIRTEEN and before January
32 first, two thousand [fifteen] SIXTEEN may elect to be subject to tax
33 under this article or under article nine-A of this chapter for its first
34 taxable year beginning on or after January first, two thousand [twelve]
35 THIRTEEN and before January first, two thousand [fifteen] SIXTEEN in
36 which either (i) sixty-five percent or more of its voting stock is owned
37 or controlled, directly or indirectly by a financial holding company,
38 provided the corporation whose voting stock is so owned or controlled is
39 principally engaged in activities that are described in section 4(k)(4)
40 or 4(k)(5) of the federal bank holding company act of nineteen hundred
41 fifty-six, as amended and the regulations promulgated pursuant to the
42 authority of such section, or (ii) it is a financial subsidiary. An
43 election under this paragraph may not be made by a corporation described
44 in paragraphs one through eight of subsection (a) of this section or in
45 subsection (e) of this section. In addition, an election under this
46 paragraph may not be made by a corporation that is a party to a reorgan-
47 ization, as defined in subsection (a) of section 368 of the internal
48 revenue code of 1986, as amended, of a corporation described in para-
49 graph one of this subsection if both corporations were sixty-five
50 percent or more owned or controlled, directly or indirectly, by the same
51 interests at the time of the reorganization.

52 An election under this paragraph must be made by the taxpayer on or
53 before the due date for filing its return (determined with regard to
54 extensions of time for filing) for the applicable taxable year. The
55 election to be taxed under article nine-A of this chapter shall be made
56 by the taxpayer by filing the report required pursuant to section two

1 hundred eleven of this chapter and the election to be taxed under this
2 article shall be made by the taxpayer by filing the return required
3 pursuant to section fourteen hundred sixty-two of this article. Any
4 election made pursuant to this paragraph shall be irrevocable and shall
5 apply to each subsequent taxable year beginning on or after January
6 first, two thousand [twelve] THIRTEEN and before January first, two
7 thousand [fifteen] SIXTEEN, provided that the stock ownership and activ-
8 ities requirements described in subparagraph (i) of this paragraph are
9 met or such corporation described in subparagraph (ii) of this paragraph
10 continues as a financial subsidiary.

11 S 2. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
12 administrative code of the city of New York, as amended by section 3 of
13 part R of chapter 59 of the laws of 2012, are amended to read as
14 follows:

15 (1) Notwithstanding anything to the contrary contained in this section
16 other than subdivision (m) of this section, a corporation that was in
17 existence before January first, two thousand [twelve] THIRTEEN and was
18 subject to tax under subchapter two of this chapter for its last taxable
19 year beginning before January first, two thousand [twelve] THIRTEEN,
20 shall continue to be taxable under such subchapter for all taxable years
21 beginning on or after January first, two thousand [twelve] THIRTEEN and
22 before January first, two thousand [fifteen] SIXTEEN. The preceding
23 sentence shall not apply to any taxable year during which such corpo-
24 ration is a banking corporation described in paragraphs one through
25 eight of subdivision (a) of this section. Notwithstanding anything to
26 the contrary contained in this section other than subdivision (m) of
27 this section, a banking corporation or corporation that was in existence
28 before January first, two thousand [twelve] THIRTEEN and was subject to
29 tax under this subchapter for its last taxable year beginning before
30 January first, two thousand [twelve] THIRTEEN, shall continue to be
31 taxable under this subchapter for all taxable years beginning on or
32 after January first, two thousand [twelve] THIRTEEN and before January
33 first, two thousand [fifteen] SIXTEEN only if the corporation is a bank-
34 ing corporation as defined in subdivision (a) of this section or the
35 corporation satisfies the requirements for a corporation to elect to be
36 taxable under this subchapter. Provided further, that nothing in this
37 subdivision shall prohibit a corporation that elected pursuant to subdivi-
38 sion (d) of this section to be taxable under subchapter two of this
39 chapter from revoking that election in accordance with subdivision (d)
40 of this section. For purposes of this paragraph, a corporation shall be
41 considered to be subject to tax under subchapter two of this chapter for
42 a taxable year if such corporation was not a taxpayer but was properly
43 included in a combined report filed pursuant to subdivision four of
44 section 11-605 of this chapter for such taxable year and a corporation
45 shall be considered to be subject to tax under this subchapter for a
46 taxable year if such corporation was not a taxpayer but was properly
47 included in a combined report filed pursuant to subdivision (f) or (g)
48 of section 11-646 of this part for such taxable year. A corporation that
49 was in existence before January first, two thousand [twelve] THIRTEEN
50 but first becomes a taxpayer in a taxable year beginning on or after
51 January first, two thousand [twelve] THIRTEEN and before January first,
52 two thousand [fifteen] SIXTEEN, shall be considered for purposes of this
53 paragraph to have been subject to tax under subchapter two of this chap-
54 ter for its last taxable year beginning before January first, two thou-
55 sand [twelve] THIRTEEN if such corporation would have been subject to
56 tax under such subchapter for such taxable year if it had been a taxpay-

er during such taxable year. A corporation that was in existence before January first, two thousand [twelve] THIRTEEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [twelve] THIRTEEN and before January first, two thousand [fifteen] SIXTEEN, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [twelve] THIRTEEN if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand [twelve] THIRTEEN and before January first, two thousand [fifteen] SIXTEEN may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand [twelve] THIRTEEN and before January first, two thousand [fifteen] SIXTEEN in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand [twelve] THIRTEEN and before January first, two thousand [fifteen] SIXTEEN, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

S 3. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 1462 of the tax law, as amended by section 2 of part R of chapter 59 of the laws of 2012, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the state may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the state in a corporate or organized capacity sixty-five percent or more of whose voting stock is

1 owned or controlled, directly or indirectly, by such bank holding compa-
2 ny, for the first taxable year beginning on or after January first, two
3 thousand and before January first, two thousand [fifteen] SIXTEEN during
4 which such bank holding company registers for the first time under the
5 federal bank holding company act, as amended, and also elects to be a
6 financial holding company. In addition, for each subsequent taxable year
7 beginning after January first, two thousand and before January first,
8 two thousand [fifteen] SIXTEEN, any such bank holding company may file
9 on a combined basis without seeking the permission of the commissioner
10 with any banking corporation that is exercising its corporate franchise
11 or doing business in the state and sixty-five percent or more of whose
12 voting stock is owned or controlled, directly or indirectly, by such
13 bank holding company if either such banking corporation is exercising
14 its corporate franchise or doing business in the state in a corporate or
15 organized capacity for the first time during such subsequent taxable
16 year, or sixty-five percent or more of the voting stock of such banking
17 corporation is owned or controlled, directly or indirectly, by such bank
18 holding company for the first time during such subsequent taxable year.
19 Provided however, for each subsequent taxable year beginning after Janu-
20 ary first, two thousand and before January first, two thousand [fifteen]
21 SIXTEEN, a banking corporation described in either of the two preceding
22 sentences which filed on a combined basis with any such bank holding
23 company in a previous taxable year, must continue to file on a combined
24 basis with such bank holding company if such banking corporation, during
25 such subsequent taxable year, continues to exercise its corporate fran-
26 chise or do business in the state in a corporate or organized capacity
27 and sixty-five percent or more of such banking corporation's voting
28 stock continues to be owned or controlled, directly or indirectly, by
29 such bank holding company, unless the permission of the commissioner has
30 been obtained to file on a separate basis for such subsequent taxable
31 year. Provided further, however, for each subsequent taxable year begin-
32 ning after January first, two thousand and before January first, two
33 thousand [fifteen] SIXTEEN, a banking corporation described in either of
34 the first two sentences of this clause which did not file on a combined
35 basis with any such bank holding company in a previous taxable year, may
36 not file on a combined basis with such bank holding company during any
37 such subsequent taxable year unless the permission of the commissioner
38 has been obtained to file on a combined basis for such subsequent taxa-
39 ble year.

40 (B) Notwithstanding any provision of this paragraph other than clause
41 (A) of this subparagraph, the commissioner may not require a bank hold-
42 ing company which, during a taxable year beginning on or after January
43 first, two thousand and before January first, two thousand [fifteen]
44 SIXTEEN, registers for the first time during such taxable year under the
45 federal bank holding company act, as amended, and also elects to be a
46 financial holding company, to make a return on a combined basis for any
47 taxable year beginning on or after January first, two thousand and
48 before January first, two thousand [fifteen] SIXTEEN with a banking
49 corporation sixty-five percent or more of whose voting stock is owned or
50 controlled, directly or indirectly, by such bank holding company.

51 S 4. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
52 11-646 of the administrative code of the city of New York, as amended by
53 section 4 of part R of chapter 59 of the laws of 2012, is amended to
54 read as follows:

55 (iv) (A) Notwithstanding any provision of this paragraph, any bank
56 holding company exercising its corporate franchise or doing business in

1 the city may make a return on a combined basis without seeking the
2 permission of the commissioner with any banking corporation exercising
3 its corporate franchise or doing business in the city in a corporate or
4 organized capacity sixty-five percent or more of whose voting stock is
5 owned or controlled, directly or indirectly, by such bank holding compa-
6 ny, for the first taxable year beginning on or after January first, two
7 thousand and before January first, two thousand [fifteen] SIXTEEN during
8 which such bank holding company registers for the first time under the
9 federal bank holding company act, as amended, and also elects to be a
10 financial holding company. In addition, for each subsequent taxable year
11 beginning after January first, two thousand and before January first,
12 two thousand [fifteen] SIXTEEN, any such bank holding company may file
13 on a combined basis without seeking the permission of the commissioner
14 with any banking corporation that is exercising its corporate franchise
15 or doing business in the city and sixty-five percent or more of whose
16 voting stock is owned or controlled, directly or indirectly, by such
17 bank holding company if either such banking corporation is exercising
18 its corporate franchise or doing business in the city in a corporate or
19 organized capacity for the first time during such subsequent taxable
20 year, or sixty-five percent or more of the voting stock of such banking
21 corporation is owned or controlled, directly or indirectly, by such bank
22 holding company for the first time during such subsequent taxable year.
23 Provided however, for each subsequent taxable year beginning after Janu-
24 ary first, two thousand and before January first, two thousand [fifteen]
25 SIXTEEN, a banking corporation described in either of the two preceding
26 sentences which filed on a combined basis with any such bank holding
27 company in a previous taxable year, must continue to file on a combined
28 basis with such bank holding company if such banking corporation, during
29 such subsequent taxable year, continues to exercise its corporate fran-
30 chise or do business in the city in a corporate or organized capacity
31 and sixty-five percent or more of such banking corporation's voting
32 stock continues to be owned or controlled, directly or indirectly, by
33 such bank holding company, unless the permission of the commissioner has
34 been obtained to file on a separate basis for such subsequent taxable
35 year. Provided further, however, for each subsequent taxable year begin-
36 ning after January first, two thousand and before January first, two
37 thousand [fifteen] SIXTEEN, a banking corporation described in either of
38 the first two sentences of this clause which did not file on a combined
39 basis with any such bank holding company in a previous taxable year, may
40 not file on a combined basis with such bank holding company during any
41 such subsequent taxable year unless the permission of the commissioner
42 has been obtained to file on a combined basis for such subsequent taxa-
43 ble year.

44 (B) Notwithstanding any provision of this paragraph other than clause
45 (A) of this subparagraph, the commissioner may not require a bank hold-
46 ing company which, during a taxable year beginning on or after January
47 first, two thousand and before January first, two thousand [fifteen]
48 SIXTEEN, registers for the first time during such taxable year under the
49 federal bank holding company act, as amended, and also elects to be a
50 financial holding company, to make a return on a combined basis for any
51 taxable year beginning on or after January first, two thousand and
52 before January first, two thousand [fifteen] SIXTEEN with a banking
53 corporation sixty-five percent or more of whose voting stock is owned or
54 controlled, directly or indirectly, by such bank holding company.

55 S 5. This act shall take effect immediately.