

1818

2015-2016 Regular Sessions

I N S E N A T E

January 15, 2015

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:

1 Section 1. Section 659 of the tax law, as amended by section 8 of part
2 J of chapter 59 of the laws of 2014, is amended to read as follows:
3 S 659. Report of federal changes, corrections or disallowances. If the
4 amount of a taxpayer's federal taxable income, total taxable amount or
5 ordinary income portion of a lump sum distribution or includible gain of
6 a trust reported on his federal income tax return for any taxable year,
7 or the amount of a taxpayer's earned income credit or credit for employ-
8 ment-related expenses set forth on such return, or the amount of any
9 federal foreign tax credit affecting the calculation of the credit for
10 Canadian provincial taxes under section six hundred twenty or six
11 hundred twenty-A of this article, or the amount of any claim of right
12 adjustment, is changed or corrected by the United States internal reven-
13 ue service or other competent authority or as the result of a renegoti-
14 ation of a contract or subcontract with the United States, or the amount
15 an employer is required to deduct and withhold from wages for federal
16 income tax withholding purposes is changed or corrected by such service
17 or authority or if a taxpayer's claim for credit or refund of federal
18 income tax is disallowed in whole or in part, the taxpayer or employer
19 shall report such change or correction or disallowance within ninety
20 days after the final determination of such change, correction, renegoti-
21 ation or disallowance, or as otherwise required by the commissioner, and
22 shall concede the accuracy of such determination or state wherein it is
23 erroneous. [The allowance of a tentative carryback adjustment based upon

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

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1 a net operating loss carryback pursuant to section sixty-four hundred
2 eleven of the internal revenue code shall be treated as a final determi-
3 nation for purposes of this section.] Any taxpayer filing an amended
4 federal income tax return and any employer filing an amended federal
5 return of income tax withheld shall also file within ninety days there-
6 after an amended return under this article, and shall give such informa-
7 tion as the commissioner may require. The commissioner may by regulation
8 prescribe such exceptions to the requirements of this section as he or
9 she deems appropriate. For purposes of this section, (i) the term
10 "taxpayer" shall include a partnership having a resident partner or
11 having any income derived from New York sources, and a corporation with
12 respect to which the taxable year of such change, correction, disallow-
13 ance or amendment is a year with respect to which the election provided
14 for in subsection (a) of section six hundred sixty of this article is in
15 effect, and (ii) the term "federal income tax return" shall include the
16 returns of income required under sections six thousand thirty-one and
17 six thousand thirty-seven of the internal revenue code. In the case of
18 such a corporation, such report shall also include any change or
19 correction of the taxes described in paragraphs two and three of
20 subsection (f) of section thirteen hundred sixty-six of the internal
21 revenue code. Reports made under this section by a partnership or corpo-
22 ration shall indicate the portion of the change in each item of income,
23 gain, loss or deduction (and, in the case of a corporation, of each
24 change in, or disallowance of a claim for credit or refund of, a tax
25 referred to in the preceding sentence) allocable to each partner or
26 shareholder and shall set forth such identifying information with
27 respect to such partner or shareholder as may be prescribed by the
28 commissioner.

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

32 (a) General.--Claim for credit or refund of an overpayment of tax
33 under article nine or nine-A shall be filed by the taxpayer within (i)
34 three years from the time the return was filed, (ii) two years from the
35 time the tax was paid or (iii) in the case of any overpayment arising
36 from an erroneous denial by the department of environmental conservation
37 of a certification of completion pursuant to section 27-1419 of the
38 environmental conservation law, two years from the time a final determi-
39 nation to the effect that such denial was erroneous is made and is no
40 longer subject to judicial review, whichever of such periods expires the
41 latest, or if no return was filed, within two years from the time the
42 tax was paid. If the claim is filed within the three year period, the
43 amount of the credit or refund shall not exceed the portion of the tax
44 paid within the three years immediately preceding the filing of the
45 claim plus the period of any extension of time for filing the return. If
46 the claim is not filed within the three year period, but is filed within
47 the two year period, the amount of the credit or refund shall not exceed
48 the portion of the tax paid during the two years immediately preceding
49 the filing of the claim. In the case of a claim for credit or refund
50 filed within the period prescribed in paragraph (iii) of this
51 subsection, the amount of the credit or refund may exceed the portion of
52 the tax paid within the applicable period specified in the two imme-
53 diately preceding sentences, but only to the extent of the amount of the
54 overpayment attributable to the denial described in such paragraph
55 (iii). Except as otherwise provided in this section, if no claim is
56 filed, the amount of a credit or refund shall not exceed the amount

1 which would be allowable if a claim had been filed on the date the cred-
2 it or refund is allowed. For special restriction in a proceeding on a
3 claim for refund of tax paid pursuant to an assessment made as a result
4 of (i) [a net operating loss carryback or capital loss carryback, or
5 (ii)] an increase or decrease in federal taxable income or federal tax,
6 or [(iii)] (II) a federal change or correction or renegotiation, or
7 computation or recomputation of tax, which is treated in the same manner
8 as if it were a deficiency for federal income tax purposes, see para-
9 graph [(7)] SEVEN of subsection (c) of section one thousand eighty-
10 three.

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

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

29 S 4. Subparagraph 3 of paragraph (a) and paragraph (d) of subdivision
30 8-b and paragraph (f) and subparagraph 3 of paragraph (g) of subdivision
31 9 of section 208 of the tax law are REPEALED.

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

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

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

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

38 S 8. Paragraph 4 of subsection (b) of section 631 of the tax law is
39 REPEALED.

40 S 9. Subsection (b) of section 633 of the tax law is REPEALED.

41 S 10. Paragraph 4 of subsection (c) of section 683 of the tax law is
42 REPEALED.

43 S 11. Subsection (e) of section 684 of the tax law is REPEALED.

44 S 12. Subsection (d) of section 687 of the tax law is REPEALED.

45 S 13. Paragraph 4 of subsection (c) of section 1083 of the tax law is
46 REPEALED.

47 S 14. Subsection (e) of section 1084 of the tax law is REPEALED.

48 S 15. Subsection (d) of section 1088 of the tax law is REPEALED.

49 S 16. Subsection (k-1) of section 1453 of the tax law is REPEALED.

50 S 17. Paragraph 4 of subdivision (b) of section 1503 of the tax law is
51 REPEALED.

52 S 18. Paragraph 1 of subdivision (e) of section 1515 of the tax law is
53 REPEALED.

54 S 19. This act shall take effect on the one hundred eightieth day
55 after it shall have become a law.