

1818

2015-2016 Regular Sessions

I N   S E N A T E

January 15, 2015

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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.