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I N S E N A T E

April 8, 2016

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to business income base and certain small business taxpayers

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

1 Section 1. Subparagraph (iv) of paragraph (a) of subdivision 1 of
2 section 210 of the tax law, as amended by section 12 of part A of chap-
3 ter 59 of the laws of 2014, is amended to read as follows:
4 (iv) (A) for taxable years beginning before January first, two thou-
5 sand sixteen, if the business income base is not more than two hundred
6 ninety thousand dollars the amount shall be six and one-half percent of
7 the business income base; if the business income base is more than two
8 hundred ninety thousand dollars but not over three hundred ninety thou-
9 sand dollars the amount shall be the sum of (1) eighteen thousand eight
10 hundred fifty dollars, (2) seven and one-tenth percent of the excess of
11 the business income base over two hundred ninety thousand dollars but
12 not over three hundred ninety thousand dollars and (3) four and thirty-
13 five hundredths percent of the excess of the business income base over
14 three hundred fifty thousand dollars but not over three hundred ninety
15 thousand dollars;
16 (B) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
17 SAND SEVENTEEN, IF THE BUSINESS INCOME BASE IS NOT MORE THAN FOUR
18 HUNDRED THOUSAND DOLLARS THE AMOUNT SHALL BE FOUR PERCENT OF THE BUSI-
19 NESS INCOME BASE; IF THE BUSINESS INCOME BASE IS MORE THAN FOUR HUNDRED
20 THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND DOLLARS THE AMOUNT
21 SHALL BE THE SUM OF (1) SIXTEEN THOUSAND DOLLARS, (2) SIX AND ONE-HALF
22 PERCENT OF THE EXCESS OF THE BUSINESS INCOME BASE OVER FOUR HUNDRED
23 THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND DOLLARS AND (3)
24 TWENTY PERCENT OF THE EXCESS OF THE BUSINESS INCOME BASE OVER FOUR
25 HUNDRED FIFTY THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND
26 DOLLARS;

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

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1 (C) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
2 SAND EIGHTEEN, IF THE BUSINESS INCOME BASE IS NOT MORE THAN FOUR HUNDRED
3 THOUSAND DOLLARS THE AMOUNT SHALL BE TWO AND ONE-HALF PERCENT OF THE
4 BUSINESS INCOME BASE; IF THE BUSINESS INCOME BASE IS MORE THAN FOUR
5 HUNDRED THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND DOLLARS THE
6 AMOUNT SHALL BE THE SUM OF (1) TEN THOUSAND DOLLARS, (2) SIX AND
7 ONE-HALF PERCENT OF THE EXCESS OF THE BUSINESS INCOME BASE OVER FOUR
8 HUNDRED THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND DOLLARS AND
9 (3) THIRTY-TWO PERCENT OF THE EXCESS OF THE BUSINESS INCOME BASE OVER
10 FOUR HUNDRED FIFTY THOUSAND DOLLARS BUT NOT OVER FIVE HUNDRED THOUSAND
11 DOLLARS.

12 S 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as
13 added by section 1 of part Y of chapter 59 of the laws of 2013, is
14 amended to read as follows:

15 (39) (A) In the case of a taxpayer who is a small business OR A
16 TAXPAYER WHO IS A MEMBER, PARTNER, OR SHAREHOLDER OF A LIMITED LIABILITY
17 COMPANY, PARTNERSHIP, OR NEW YORK S CORPORATION, RESPECTIVELY, THAT IS A
18 SMALL BUSINESS, who OR WHICH has business income [and/or farm income] as
19 defined in the laws of the United States, an amount equal to [three]
20 FIVE percent of the net items of income, gain, loss and deduction
21 attributable to such business [or farm] entering into federal adjusted
22 gross income, but not less than zero, for taxable years beginning after
23 two thousand [thirteen] SIXTEEN, an amount equal to [three and three-
24 quarters] TEN percent of the net items of income, gain, loss and
25 deduction attributable to such business [or farm] entering into federal
26 adjusted gross income, but not less than zero, for taxable years begin-
27 ning after two thousand [fourteen] SEVENTEEN, and an amount equal to
28 [five] FIFTEEN percent of the net items of income, gain, loss and
29 deduction attributable to such business [or farm] entering into federal
30 adjusted gross income, but not less than zero[, for taxable years begin-
31 ning after two thousand fifteen].

32 (B) IN THE CASE OF A TAXPAYER WHO IS A FARM BUSINESS OR A TAXPAYER WHO
33 IS A MEMBER, PARTNER, OR SHAREHOLDER OF A LIMITED LIABILITY COMPANY,
34 PARTNERSHIP, OR NEW YORK S CORPORATION, RESPECTIVELY, THAT IS A FARM
35 BUSINESS, WHO OR WHICH HAS FARM INCOME AS DEFINED BY THE LAWS OF THE
36 UNITED STATES, AN AMOUNT EQUAL TO TWENTY PERCENT OF THE NET ITEMS OF
37 INCOME, GAIN, LOSS AND DEDUCTION ATTRIBUTABLE TO SUCH FARM. THE TERM
38 FARM BUSINESS SHALL MEAN A FARM BUSINESS THAT HAS NET FARM INCOME OF
39 LESS THAN FIVE HUNDRED THOUSAND DOLLARS.

40 (C) (I) For the purposes of this paragraph, the term small business
41 shall mean: (I) a sole proprietor [or a farm business who employs one or
42 more persons during the taxable year and] who has net business income
43 [or net farm income] of less than [two hundred fifty] FIVE HUNDRED thou-
44 sand dollars; OR (II) A LIMITED LIABILITY COMPANY, PARTNERSHIP OR NEW
45 YORK S CORPORATION THAT DURING THE TAXABLE YEAR HAS NEW YORK GROSS BUSI-
46 NESS INCOME ATTRIBUTABLE TO A NON-FARM BUSINESS THAT IS GREATER THAN
47 ZERO BUT LESS THAN ONE MILLION FIVE HUNDRED THOUSAND DOLLARS OR NET FARM
48 INCOME ATTRIBUTABLE TO A FARM BUSINESS THAT IS GREATER THAN ZERO BUT
49 LESS THAN FIVE HUNDRED THOUSAND DOLLARS. (II) FOR PURPOSES OF THIS PARA-
50 GRAPH, THE TERM NEW YORK GROSS BUSINESS INCOME SHALL MEAN: (I) IN THE
51 CASE OF A LIMITED LIABILITY COMPANY OR A PARTNERSHIP, NEW YORK SOURCE
52 GROSS INCOME AS DEFINED IN SUBPARAGRAPH (B) OF PARAGRAPH THREE OF
53 SUBSECTION (C) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THIS ARTICLE, AND,
54 (II) IN THE CASE OF A NEW YORK S CORPORATION, NEW YORK RECEIPTS INCLUDED
55 IN THE NUMERATOR OF THE APPORTIONMENT FACTOR DETERMINED UNDER SECTION
56 TWO HUNDRED TEN-A OF THIS CHAPTER FOR THE TAXABLE YEAR.

(D) TO QUALIFY FOR THIS MODIFICATION IN RELATION TO A NON-FARM SMALL BUSINESS THAT IS A LIMITED LIABILITY COMPANY, PARTNERSHIP OR NEW YORK S CORPORATION, THE TAXPAYER'S INCOME ATTRIBUTABLE TO THE NET BUSINESS INCOME FROM ITS OWNERSHIP INTERESTS IN NON-FARM LIMITED LIABILITY COMPANIES, PARTNERSHIPS OR NEW YORK S CORPORATIONS MUST BE LESS THAN FIVE HUNDRED THOUSAND DOLLARS.

S 3. Paragraph 35 of subdivision (c) of section 11-1712 of the administrative code of the city of New York, as added by section 2 of part Y of chapter 59 of the laws of 2013, is amended to read as follows:

(35) (A) In the case of a taxpayer who is a small business OR A TAXPAYER WHO IS A MEMBER, PARTNER, OR SHAREHOLDER OF A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR NEW YORK S CORPORATION, RESPECTIVELY, THAT IS A SMALL BUSINESS, who OR WHICH has business income [and/or farm income] as defined in the laws of the United States, an amount equal to [three] FIFTEEN percent of the net items of income, gain, loss and deduction attributable to such business [or farm] entering into federal adjusted gross income, but not less than zero[, for taxable years beginning after two thousand thirteen, an amount equal to three and three-quarters percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero, for taxable years beginning after two thousand fourteen, and an amount equal to five percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero, for taxable years beginning after two thousand fifteen].

(B) IN THE CASE OF A TAXPAYER WHO IS A FARM BUSINESS OR A TAXPAYER WHO IS A MEMBER, PARTNER, OR SHAREHOLDER OF A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR NEW YORK S CORPORATION, RESPECTIVELY, THAT IS A FARM BUSINESS, WHO OR WHICH HAS FARM INCOME AS DEFINED BY THE LAWS OF THE UNITED STATES, AN AMOUNT EQUAL TO TWENTY PERCENT OF THE NET ITEMS OF INCOME, GAIN, LOSS AND DEDUCTION ATTRIBUTABLE TO SUCH FARM. THE TERM FARM BUSINESS SHALL MEAN A FARM BUSINESS THAT HAS NET FARM INCOME OF LESS THAN FIVE HUNDRED THOUSAND DOLLARS.

(C) (I) For the purposes of this paragraph, the term small business shall mean: (I) a sole proprietor [or a farm business who employs one or more persons during the taxable year and] who has net business income [or net farm income] of less than [two hundred fifty] FIVE HUNDRED thousand dollars; OR (II) A LIMITED LIABILITY COMPANY, PARTNERSHIP OR NEW YORK S CORPORATION THAT DURING THE TAXABLE YEAR HAS NEW YORK GROSS BUSINESS INCOME ATTRIBUTABLE TO A NON-FARM BUSINESS THAT IS GREATER THAN ZERO BUT LESS THAN ONE MILLION FIVE HUNDRED THOUSAND DOLLARS OR NET FARM INCOME ATTRIBUTABLE TO A FARM BUSINESS THAT IS GREATER THAN ZERO BUT LESS THAN FIVE HUNDRED THOUSAND DOLLARS. (II) FOR PURPOSES OF THIS PARAGRAPH, THE TERM NEW YORK GROSS BUSINESS INCOME SHALL MEAN: (I) IN THE CASE OF A LIMITED LIABILITY COMPANY OR A PARTNERSHIP, NEW YORK SOURCE GROSS INCOME AS DEFINED IN SUBPARAGRAPH (B) OF PARAGRAPH THREE OF SUBSECTION (C) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THE TAX LAW, AND, (II) IN THE CASE OF A NEW YORK S CORPORATION, NEW YORK RECEIPTS INCLUDED IN THE NUMERATOR OF THE APPORTIONMENT FACTOR DETERMINED UNDER SECTION TWO HUNDRED TEN-A OF THE TAX LAW FOR THE TAXABLE YEAR.

(D) TO QUALIFY FOR THIS MODIFICATION IN RELATION TO A NON-FARM SMALL BUSINESS THAT IS A LIMITED LIABILITY COMPANY, PARTNERSHIP OR NEW YORK S CORPORATION, THE TAXPAYER'S INCOME ATTRIBUTABLE TO THE NET BUSINESS INCOME FROM ITS OWNERSHIP INTERESTS IN NON-FARM LIMITED LIABILITY COMPANIES, PARTNERSHIPS OR NEW YORK S CORPORATIONS MUST BE LESS THAN FIVE HUNDRED THOUSAND DOLLARS.

1 S 4. This act shall take effect immediately and shall apply to taxable
2 years beginning on or after January 1, 2017.