

STATE OF NEW YORK

7863--A

2017-2018 Regular Sessions

IN ASSEMBLY

May 17, 2017

Introduced by M. of A. FARRELL -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, in relation to the taxation of business corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 11-640 of the administrative code of the city of
2 New York is amended by adding a new subdivision (n) to read as follows:

3 (n) Transitional provisions relating to the enactment and implementa-
4 tion of the federal Gramm-Leach-Bliley act.

5 (1) Notwithstanding anything to the contrary contained in this section
6 other than subdivision (m) of this section, a corporation that was in
7 existence before January first, two thousand seventeen and was subject
8 to tax under subchapter two of this chapter for its last taxable year
9 beginning before January first, two thousand seventeen, shall continue
10 to be taxable under such subchapter for all taxable years beginning on
11 or after January first, two thousand seventeen and before January first,
12 two thousand twenty. The preceding sentence shall not apply to any taxa-
13 ble year during which such corporation is a banking corporation
14 described in paragraphs one through eight of subdivision (a) of this
15 section. Notwithstanding anything to the contrary contained in this
16 section other than subdivision (m) of this section, a banking corpo-
17 ration or corporation that was in existence before January first, two
18 thousand seventeen and was subject to tax under this subchapter for its
19 last taxable year beginning before January first, two thousand seven-
20 teen, shall continue to be taxable under this subchapter for all taxable
21 years beginning on or after January first, two thousand seventeen and
22 before January first, two thousand twenty only if the corporation is a
23 banking corporation as defined in subdivision (a) of this section or the
24 corporation satisfies the requirements for a corporation to elect to be

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

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1 taxable under this subchapter. Provided further, that nothing in this
2 subdivision shall prohibit a corporation that elected pursuant to subdivi-
3 vision (d) of this section to be taxable under subchapter two of this
4 chapter from revoking that election in accordance with subdivision (d)
5 of this section.

6 For purposes of this paragraph, a corporation shall be considered to
7 be subject to tax under subchapter two of this chapter for a taxable
8 year if such corporation was not a taxpayer but was properly included in
9 a combined report filed pursuant to subdivision four of section 11-605
10 of this chapter for such taxable year and a corporation shall be consid-
11 ered to be subject to tax under this subchapter for a taxable year if
12 such corporation was not a taxpayer but was properly included in a
13 combined report filed pursuant to subdivision (f) or (g) of section
14 11-646 of this part for such taxable year. A corporation that was in
15 existence before January first, two thousand seventeen but first becomes
16 a taxpayer in a taxable year beginning on or after January first, two
17 thousand seventeen and before January first, two thousand twenty, shall
18 be considered for purposes of this paragraph to have been subject to tax
19 under subchapter two of this chapter for its last taxable year beginning
20 before January first, two thousand seventeen if such corporation would
21 have been subject to tax under such subchapter for such taxable year if
22 it had been a taxpayer during such taxable year. A corporation that was
23 in existence before January first, two thousand seventeen but first
24 becomes a taxpayer in a taxable year beginning on or after January
25 first, two thousand seventeen and before January first, two thousand
26 twenty, shall be considered for purposes of this paragraph to have been
27 subject to tax under this subchapter for its last taxable year beginning
28 before January first, two thousand seventeen if such corporation would
29 have been subject to tax under this subchapter for such taxable year if
30 it had been a taxpayer during such taxable year.

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

54 An election under this paragraph must be made by the taxpayer on or
55 before the due date for filing its return (determined with regard to
56 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 seventeen and before January first, two thousand twenty, 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.

(3) For purposes of this subdivision, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

§ 2. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 11-646 of the administrative code of the city of New York, as amended by section 111 of part A of chapter 59 of the laws of 2014, 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 city 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 city in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand ~~seventeen~~ twenty during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand ~~seventeen~~ twenty, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the city and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the city in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand ~~seventeen~~ twenty, a banking corporation described in either of the two preceding sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking

1 corporation, during such subsequent taxable year, continues to exercise
2 its corporate franchise or do business in the city in a corporate or
3 organized capacity and sixty-five percent or more of such banking corpo-
4 ration's voting stock continues to be owned or controlled, directly or
5 indirectly, by such bank holding company, unless the permission of the
6 commissioner has been obtained to file on a separate basis for such
7 subsequent taxable year. Provided further, however, for each subsequent
8 taxable year beginning after January first, two thousand and before
9 January first, two thousand [~~seventeen~~] twenty, a banking corporation
10 described in either of the first two sentences of this clause which did
11 not file on a combined basis with any such bank holding company in a
12 previous taxable year, may not file on a combined basis with such bank
13 holding company during any such subsequent taxable year unless the
14 permission of the commissioner has been obtained to file on a combined
15 basis for such subsequent taxable year.

16 (B) Notwithstanding any provision of this paragraph other than clause
17 (A) of this subparagraph, the commissioner may not require a bank hold-
18 ing company which, during a taxable year beginning on or after January
19 first, two thousand and before January first, two thousand [~~seventeen~~]
20 twenty, registers for the first time during such taxable year under the
21 federal bank holding company act, as amended, and also elects to be a
22 financial holding company, to make a return on a combined basis for any
23 taxable year beginning on or after January first, two thousand and
24 before January first, two thousand [~~seventeen~~] twenty with a banking
25 corporation sixty-five percent or more of whose voting stock is owned or
26 controlled, directly or indirectly, by such bank holding company.

27 § 3. This act shall take effect immediately.