STATE OF NEW YORK

9112

IN ASSEMBLY

January 21, 2020

Introduced by M. of A. PHEFFER AMATO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to a tax on gross income upon every corporation which derives income from the data individuals of this state share with such corporations; and to amend the state finance law, in relation to establishing the New York data fund

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

Section 1. Section 209 of the tax law is amended by adding a new subdivision 13 to read as follows:

13. Notwithstanding any other provision of this chapter, or of any other law, a tax equal to five percent tax on the gross income is hereby imposed upon every corporation which derives income from the data individuals of this state share with such corporations.

§ 2. The state finance law is amended by adding a new section 99-hh to read as follows:

§ 99-hh. Data fund. 1. A special fund to be known as the "New York data fund" is hereby established in the custody of the state comptroller and the commissioner of taxation and finance.

2. The fund shall consist of all monies transferred to such fund pursuant to law, all monies required by any provision of law to be paid into or credited to the fund, all moneys derived by subdivision thirteen of section two hundred nine of the tax law and any interest earnings which may accrue from the investment of monies in the fund. Such fund shall be divided into an earnings reserve account and a dividend fund. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. For the purposes of this section:

(a) "Board" means the board of trustees of the New York data fund board.

(b) "Fund" means the New York data fund.

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

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4. There is established the New York data fund board. The purpose of the board is to manage and invest the assets of the data fund and other funds designated by law pursuant to this section.

5. (a) The board consists of six members appointed by the governor. Two of the members shall be commissioners of departments of state government, one of whom shall be the commissioner of taxation and finance. The remaining four members shall be appointed as follows: one by the temporary president of the senate; one by the minority leader of the senate; one by the speaker of the assembly; and one by the minority leader of the assembly. Such members may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of either the United States or of this state.

(b) The four public members of the board must have recognized competence and wide experience in finance, investments, or other business management-related fields.

(c) The board shall annually elect a chairman from among its members.

(d) The public members of the board shall be appointed for terms of four years, and they may be reappointed. The terms of the public members shall be staggered so that no more than one term of a public member expires each year.

(i) A vacancy on the board shall be promptly filled by appointment by the governor, subject to approval by the senate. An appointee to a vacancy shall hold office for the balance of the term for which the appointee's predecessor on the board was appointed.

(ii) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

(e) Four members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board. Action may be taken only upon affirmative vote of a majority of the full membership of the board.

(f) Public members of the board receive an honorarium of four hundred dollars for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or at a public meeting as a representative of the board. Members of the board are entitled to per diem and travel allowances as provided by law for members of state boards and commissions.

(g) If a member of the board or an employee of the corporation acquires, owns, or controls an interest, direct or indirect, in an entity or project in which fund assets are invested, the member shall immediately disclose the interest to the board. The disclosure is a matter of public record and shall be included in the minutes of the board meeting next following the disclosure.

(h) On or before the first of January each year, the commissioner of taxation and finance shall provide a written report to the temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate committee on codes, chair of the assembly codes committee, the state comptroller and the public. Such report shall include how the monies of the fund were utilized during the preceding calendar year, and shall include, but not be limited to:

(i) the amount of money dispersed from the fund and the award process used for such disbursements; and

(ii) the amount awarded to each taxpayer.

6. (a) The board shall adopt rules and regulations specifically designating the types of income-producing investments eligible for investment of fund assets. When adopting rules and regulations authorized by this section or managing and investing fund assets, the prudent-investor rule shall be applied by the board. The prudent-investor rule as applied to investment activity of the fund means that the board shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the designation and management of large investments entrusted to it, not in regard to speculation, but in regard to the permanent disposition of funds, considering preservation of the purchasing power of the fund over time while maximizing the expected total return from both income and the appreciation of capital.

(b) The board may not borrow money or guarantee from principal of the fund the obligations of others, except as provided in this subdivision. With respect to investments of the fund, the board may, either directly or through an entity in which the investment is made, borrow money if the borrowing is nonrecourse to the board and the fund.

(c) The board shall maintain a reasonable diversification among investments unless, under the circumstances, it is clearly prudent not to do so. The board shall invest the assets of the fund in in-state investments to the extent that in-state investments are available and if the in-state investments:

(i) have a risk level and expected return comparable to alternate investment opportunities; and

(ii) are eligible for investment of fund assets.

(d) The board may enter into and enforce all contracts necessary, convenient, or desirable for managing the fund's assets and corporate operations, including contracts for future delivery to implement asset allocation strategies or to hedge an existing equivalent ownership position in an investment.

7. Net income of the fund includes income of this fund. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals twenty-one percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in this fund.

8. (a) The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the board into the account as soon as it is received. Money in the account shall be invested in investments authorized under subdivision six of this section.

(b) At the end of each fiscal year, the board shall transfer from the earnings reserve account to the dividend fund established under this section, fifty percent of the income available for distribution.

(c) After the transfer under paragraph (b) of this subdivision, the board shall transfer from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on principal of the fund during that fiscal year. The board shall calculate the amount to transfer to the principal under this subdivision by:

(i) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;

(ii) computing the percentage change between the first and second calendar year average; and

(iii) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended.

9. The board shall determine and distribute such amounts to each taxpayer of the state.

10. The resources of the board or the fund may not be used to finance or influence political activities.

11. Monies of the fund, when allocated, shall be available to the department of taxation and finance for distribution to taxpayers of the state.

12. Monies shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by board, in conjunction with the commissioner of taxation and finance.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.