STATE OF NEW YORK

3152

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. KIM, GOTTFRIED, O'DONNELL, COLTON, GLICK, WALKER, REYES, BARRON, EPSTEIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the taxation of investment income

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

Section 1. Legislative intent. The legislature finds that the state of New York taxes income derived from capital gains at the same rate as income derived from labor and, like most other states, does not offer preferential tax rates for income derived from capital gains, as compared to the tax rates for income derived from labor. Whereas the federal government currently taxes long term capital gains at a rate that is substantially lower than the rate of taxation that applies to income from labor. The people of the state of New York wish to correct for the imbalance of taxation rates on long term capital gains and labor at the federal level unless and until the federal government equalizes these rates. It is the intent of the legislature that this act amends New York's tax law to provide needed revenue through the taxation of investment income from wealthy individuals.

§ 2. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 43 to read as follows:

(43) (a) For taxable years commencing on or after January first, two thousand twenty-one, the department shall conduct an annual review to determine the disparity between federal income tax rates on ordinary income and federal income tax rates on capital gains, as well as the types of income taxed at capital gains rates, and shall publish its findings. For taxable years commencing on or after January first, two thousand twenty-two, there is imposed a surcharge on the share of a taxpayer's New York taxable income that is taxed at preferential federal capital gains rates in an amount equal to the difference between the

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

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federal ordinary income tax rate and the federal capital gains tax rate for such taxpayer, based on the brackets in section 1 of the internal revenue code. The surcharge shall be in addition to any other tax, fee or surcharge for which the taxpayer is liable.

(b) Each taxpayer subject to the surcharge pursuant to subparagraph (a) of this paragraph shall file a return with the department in such form and containing such information as the department may prescribe. Such return shall accurately set forth the amount of the net gain calculated pursuant to subparagraph (a) of this paragraph for the preceding taxable year and the amount of the taxpayer's surcharge liability for such year. A person required to file a return shall, without assessment, notice or demand, pay any surcharge due thereon to the department on or before the date specified in state law, determined without regard to any extension of time for filing the return.

(c) If any person fails to pay the amount of the surcharge reported due on a return within the time specified, there shall be imposed a penalty equal to twenty percent of such amount due and unpaid. Such amount shall bear interest at the rate of two percent per month or fraction thereof, from the due date of such surcharge until the date of payment.

(d) The department may adopt rules and regulations to implement the provisions of this section.

(e) At the close of each fiscal year the comptroller is authorized to record as revenue for such fiscal year the amount of the surcharge imposed under the provisions of this paragraph that is received by the department.

§ 3. This act shall take effect immediately.