STATE OF NEW YORK

5215

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

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

AN ACT to amend the tax law, in relation to the imposition of tax on certain financial transactions

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

Section 1. The tax law is amended by adding a new article 15 to read as follows:

ARTICLE 15
TAX ON FINANCIAL TRANSACTIONS

Section 340. Definitions.
341. Imposition of tax.
342. Exceptions.
343. Liability for tax.
344. Administration and regulation.
345. Interest and civil penalties.
346. Criminal penalties.

§ 340. Definitions. 1. Specified base amount. For purposes of this article, the term "specified base amount" means:

(a) except as provided in paragraph (b) of this subdivision, the fair market value of the security (determined as of the time of the covered transaction); and

(b) in the case of any payment described in subparagraph four, five, or six of paragraph (a) of subdivision three of this section, the amount of such payment.

2. Covered transaction. For purposes of this section, the term "covered transaction" means:

(a) except as provided in paragraph (b) of this subdivision, any purchase if:

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

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(1) such purchase occurs or is cleared on a qualified board or exchange located in the state, or is executed by a broker in the state; or

(2) the purchaser or seller is a New York state resident or business with a taxable presence in the state; and

(b) any transaction with respect to a security described in subparagraph four, five, or six of paragraph (a) of subdivision three of this section, if:

(1) such security is traded or cleared on a qualified board or exchange located in the state, or is executed by a broker in the state; or

(2) any party with rights under such security is a New York state resident or business with a taxable presence in the state.

3. Security and other definitions. For purposes of this section:

(a) The term "security" means:

(1) any share of stock in a corporation;

(2) any partnership or beneficial ownership interest in a partnership or trust;

(3) any note, bond, debenture, or other evidence of indebtedness, other than a state or local bond the interest of which is excluded from gross income under section 103(a) of the internal revenue code;

(4) any evidence of an interest in, or a derivative financial instrument with respect to, any security or securities described in subparagraph one, two, or three of this paragraph;

(5) any derivative financial instrument with respect to any currency or commodity including notional principal contracts; and

(6) any other derivative financial instrument any payment with respect to which is calculated by reference to any specified index.

(b) The term "derivative financial instrument" includes any option, forward contract, futures contract, notional principal contract, or any similar financial instrument.

(c) The term "specified index" means any one or more of any combination of:

(1) a fixed rate, price, or amount; or

(2) a variable rate, price, or amount, which is based on any current objectively determinable information which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

(d) (1) An exchange shall be treated as the sale of the property transferred and a purchase of the property received by each party to the exchange.

(2) In the case of a distribution treated as an exchange for stock under section 302 or 331 of the internal revenue code, the corporation making such distribution shall be treated as having purchased such stock for purposes of this section.

(e) The term "qualified board or exchange" has the meaning given such term by section 1256(g)(7) of the internal revenue code.

(f) The term "broker" has the meaning given such term by section 6045(c)(1) of the internal revenue code.

§ 341. Imposition of tax. 1. There is hereby imposed a tax on each covered transaction with respect to any security.

2. The tax imposed under subdivision one of this section with respect to any covered transaction shall be the applicable percentage of the specified base amount with respect to such covered transaction.

The applicable percentage shall be:

(a) one-half of one percent in the case of a security described in subparagraph one or two of paragraph (a) of subdivision three of section three hundred forty of this article;

(b) one-tenth of one percent in the case of a security described in paragraph (a) of subdivision three of section three hundred forty of this article; and

(c) five thousandths of one percent in the case of a security described in subparagraph four, five, or six of paragraph (a) of subdivision three of section three hundred forty of this article.

3. Except as otherwise provided by the commissioner, any payment with respect to a security described in subparagraph four, five, or six of paragraph (a) of subdivision three of section three hundred forty of this article shall be treated as a separate transaction for purposes of this section, including:

(a) any net initial payment, net final or terminating payment, or net periodical payment with respect to a notional principal contract (or similar financial instrument);

(b) any payment with respect to any forward contract (or similar financial instrument); and

(c) any premium paid with respect to any option (or similar financial instrument).

§ 342. Exceptions. 1. No tax shall be imposed under this article on any covered transaction with respect to the initial issuance of any security described in subparagraph one, two, or three of paragraph (a) of subdivision three of section three hundred forty of this article.

2. A note, bond, debenture, or other evidence of indebtedness which:

(a) is traded on a trading facility located in the United States; and

(b) has a fixed maturity of not more than sixty days, shall not be treated as described in subparagraph three of paragraph (a) of subdivision three of section three hundred forty of this article.

(c) No tax shall be imposed under this article on any covered transaction with respect to which gain or loss is not recognized by reason of section 1058 of the internal revenue code.

§ 343. Liability for tax. 1. The tax imposed by this article shall be paid by:

(a) in the case of a transaction which occurs or is cleared on a facility located in the state, such facility; and

(b) in the case of a purchase not described in paragraph (a) of this subdivision which is executed by a broker in the state, the broker.

2. In the case of any transaction to which subdivision one of this section does not apply, the tax imposed by this article shall be paid by:

(a) in the case of a transaction described in paragraph (a) of subdivision two of section three hundred forty of this article:

(1) the purchaser if the purchaser is a New York state resident or business with a taxable presence in New York; or

(2) the seller if the purchaser is not a New York state resident or business with a taxable presence in New York; and

(b) in the case of a transaction described in paragraph (b) of subdivision two of section three hundred forty of this article:

(1) the payor if the payor is a New York state resident or business with a taxable presence in New York; or

(2) the payee if the payor is not a New York state resident or business with a taxable presence in New York.

§ 344. Administration and regulation. 1. The party liable for the tax imposed pursuant to this article shall file a return, in the form and

manner and containing such information, as shall be prescribed by the commissioner.

2. The commissioner shall:

(a) provide guidance regarding such information reporting and other relevant matters concerning covered transactions as the commissioner deems appropriate; and

(b) prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this article and otherwise carry out its purposes.

§ 345. Interest and civil penalties. Any person failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of twenty percent of the amount of tax due plus an interest penalty of two percent of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due, such interest penalty shall not exceed twenty-five per centum in the aggregate. If the commissioner determines that such failure or delay was due to reasonable cause and not due to willful neglect, the commissioner may remit, abate or waive all of such penalty and such interest penalty.

§ 346. Criminal penalties. The criminal penalties in sections eighteen hundred one, eighteen hundred two, eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred six, eighteen hundred seven and eighteen hundred seventeen of this chapter shall apply to this article with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately.