STATE OF NEW YORK

5701

2021-2022 Regular Sessions

IN ASSEMBLY

February 24, 2021

Introduced by M. of A. DINOWITZ, SEAWRIGHT, GLICK, CAHILL, GOTTFRIED, CRUZ, EPSTEIN, REYES, THIELE, HEVESI, O'DONNELL, PAULIN, L. ROSENTHAL, SIMON, STECK, ABINANTI, SOLAGES, KIM, DARLING, FAHY, PERRY, FERNANDEZ, ENGLEBRIGHT -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to investment income

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

Section 1. This act shall be known and may be cited as the "opportunity zone tax break elimination act".

§ 2. Paragraph (a) of subdivision 6 of section 208 of the tax law, as amended by section 5 of part T of chapter 59 of the laws of 2015, is amended to read as follows:

(a) (i) The term "investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, **(A)** in the discretion of the commissioner, any interest deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, **(B) any capital gains deferred or excluded under 26 U.S.C. §1400-z-2,** provided, however, that in no case shall investment income exceed entire net income. (ii) If the amount of interest deductions subtracted under subparagraph (i) of this paragraph exceeds investment income, the excess of such amount over investment income must be added back to entire net income. (iii) If the taxpayer's investment income determined without regard to the interest deductions subtracted under subparagraph (i) of this paragraph comprises more than eight percent of the taxpayer's entire net income, investment income determined without regard to such interest deductions cannot exceed eight percent of the taxpayer's entire net income.

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

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§ 3. Paragraph (a) of subdivision 5 of section 11-652 of the administrative code of the city of New York, as added by section 1 of part D of chapter 60 of the laws of 2015, is amended to read as follows:

(a) (i) The term "investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, **(A)** in the discretion of the commissioner of finance, any interest deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, **(B) any capital gains deferred or excluded under 26 U.S.C §1400-z-2,** provided, however, that in no case shall investment income exceed entire net income.

(ii) If the amount of interest deductions subtracted under subparagraph (i) of this paragraph exceeds investment income, the excess of such amount over investment income must be added back to entire net income.

(iii) If the taxpayer's investment income determined without regard to the interest deductions subtracted under subparagraph (i) of this paragraph comprises more than eight percent of the taxpayer's entire net income, investment income determined without regard to such interest deductions cannot exceed eight percent of the taxpayer's entire net income.

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2021.