

# 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:

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

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

16 (43) (a) For taxable years commencing on or after January first, two  
17 thousand twenty-one, the department shall conduct an annual review to  
18 determine the disparity between federal income tax rates on ordinary  
19 income and federal income tax rates on capital gains, as well as the  
20 types of income taxed at capital gains rates, and shall publish its  
21 findings. For taxable years commencing on or after January first, two  
22 thousand twenty-two, there is imposed a surcharge on the share of a  
23 taxpayer's New York taxable income that is taxed at preferential federal  
24 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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1 federal ordinary income tax rate and the federal capital gains tax rate  
2 for such taxpayer, based on the brackets in section 1 of the internal  
3 revenue code. The surcharge shall be in addition to any other tax, fee  
4 or surcharge for which the taxpayer is liable.

5 (b) Each taxpayer subject to the surcharge pursuant to subparagraph  
6 (a) of this paragraph shall file a return with the department in such  
7 form and containing such information as the department may prescribe.  
8 Such return shall accurately set forth the amount of the net gain calcu-  
9 lated pursuant to subparagraph (a) of this paragraph for the preceding  
10 taxable year and the amount of the taxpayer's surcharge liability for  
11 such year. A person required to file a return shall, without assess-  
12 ment, notice or demand, pay any surcharge due thereon to the department  
13 on or before the date specified in state law, determined without regard  
14 to any extension of time for filing the return.

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

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

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

27 § 3. This act shall take effect immediately.