STATE OF NEW YORK

9433

IN ASSEMBLY

March 7, 2022

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

AN ACT to amend the tax law, in relation to pass-through entity tax for electing resident and standard S corporations

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

Section 1. Subsection (d) of section 860 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, is amended and two new subsections (j) and (k) are added to read as follows:

(d) Electing S corporation. Electing S corporation means any eligible S corporation that made a valid, timely election pursuant to section eight hundred sixty-one of this article **that is either an electing resident S corporation or electing standard S corporation**.

(j) Electing resident S corporation. An electing resident S corporation is an electing S corporation that certifies at the time of its election that all of its shareholders are residents of New York for purposes of article twenty-two of this chapter.

(k) Electing standard S corporation. An electing standard S corporation is an electing S corporation that is not an electing resident S corporation.

§ 2. Paragraph 2 of subsection (h) of section 860 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, is amended and a new paragraph 3 is added to read as follows:

(2) In the case of an electing **standard** S corporation, the sum of [~~(i)~~] all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they would be included under paragraph two of subsection (a) of section six hundred thirty-two of this chapter in the taxable income of a shareholder subject to tax under article twenty-two of this chapter.

(3) In the case of an electing resident S corporation, the sum of all items of income, gain, loss, or deduction to the extent they are included in the taxable income of a shareholder subject to tax under article twenty-two of this chapter.

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

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§ 3. Subsection (c) of section 861 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, is amended and a new subsection (d) is added to read as follows:

(c) The annual election must be made by the due date of the first estimated payment under section eight hundred sixty-four of this [~~chapter~~] **article** and will take effect for the current taxable year. Only one election may be made during each calendar year. An election made under this section is irrevocable **as of the due date**.

(d) (1) An electing S corporation must certify at the time of its election that all shareholders are residents of New York for purposes of article twenty-two of this chapter to be considered an electing resident S corporation.

(2) If an electing S corporation does not make a certification under paragraph one of this subsection at the time of its election, the electing S corporation is automatically treated as an electing standard S corporation.

(3) If an electing S corporation makes a certification under paragraph one of this subsection to be an electing resident S corporation, this certification is irrevocable as of the due date of the election.

§ 4. Subsection (h) of section 865 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, is amended to read as follows:

(h) Information provided to shareholders. Each electing S corporation subject to tax under this article shall report to each shareholder its:

(1) direct share of the pass-through entity tax imposed on the electing S corporation; [~~and~~]

(2) **the electing S corporation's status as an electing resident S corporation or electing standard S corporation; and**

(3) any other information as required by the commissioner.

§ 5. Paragraph 3 of subsection (b) of section 612 of the tax law is amended by adding a new subparagraph (C) to read as follows:

(C) Pass-through entity tax deduction. (i) In the case of a partner, member or shareholder of an electing partnership or electing S corporation, the term "income taxes" in subparagraph (A) of this paragraph shall not include the taxes imposed under article twenty-four-A of this chapter to the extent such taxes are added to federal adjusted gross income under subparagraph (A) of paragraph forty-three of this subsection.

(ii) In the case of a partner, member or shareholder of a partnership or S corporation, the term "income taxes" in subparagraph (A) of this paragraph shall not include pass-through entity taxes substantially similar to the tax imposed pursuant to article twenty-four-A of this chapter imposed by another state of the United States, a political subdivision of such state, or the District of Columbia upon income both derived therefrom and subject to tax under this article to the extent such taxes are added to federal adjusted gross income under subparagraph (B) of paragraph forty-three of this subsection.

§ 6. (a) Notwithstanding section 861 of the tax law as added by section 1 of part C of chapter 59 of the laws of 2021 and amended by section three of this act, the certification to be taxed as an electing resident S corporation for the taxable year 2022, must be made by March 15, 2023 in a manner prescribed by the commissioner.

(b) Further for the taxable year 2022, notwithstanding section 864 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, an electing resident S corporation shall be required to make estimated tax payments on March fifteenth and June fifteenth represent-

ing twenty-five percent of the required annual payment as if such electing resident S corporation was an electing standard S corporation. However, all electing resident S corporations shall be required as of September 15, 2022 to have paid seventy-five percent of the required annual payment.

§ 7. This act shall take effect immediately and shall apply to all taxable years beginning on or after January 1, 2022.