STATE OF NEW YORK

8115--B

IN SENATE

January 8, 2024

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the timing of annual tax elections

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

Section 1. Subsection (c) of section 861 of the tax law, as amended by section 2 of subpart C of part J of chapter 59 of the laws of 2023, is amended to read as follows:

(c) [~~The~~] **For taxable years beginning before January first, two thousand twenty-four, the** annual election must be made on or before the due date of the first estimated payment under section eight hundred sixty-four of this article and will take effect for the current taxable year**, and for taxable years beginning on or after January first, two thousand twenty-four, such election must be made by September fifteenth of the taxable year for which such election is being made**. Only one election may be made during each calendar year. An election made under this section is irrevocable after the due date.

§ 2. Subsection (b) of section 864 of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2021, paragraph 3 as amended by chapter 555 of the laws of 2022, is amended to read as follows:

(b) General. The estimated tax shall be paid as follows for an electing partnership and an electing S corporation:

(1) The estimated tax shall be paid in four [~~equal~~] installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth in the calendar year prior to the year in which the due date of the return required by this article falls.

(2) **Amount of required installment. (A)** The amount of any required installment shall be twenty-five percent of the required annual payment.

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

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(B) In the case of any required installment, if the electing partnership or the electing S corporation establishes that the annualized income installment determined under subparagraph (B) of paragraph four of subsection (c) of section six hundred eighty-five of this chapter is less than the amount determined under subparagraph (A) of this paragraph, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under this paragraph by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(3) [~~Notwithstanding paragraph four of subsection (c) of section six hundred eighty-five of this chapter, the~~] **The** required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing partnership or electing S corporation for the preceding taxable year.

(4) Without regard to paragraphs one and two of this subsection, if an election is made on or after March fifteenth and before June fifteenth of the taxable year for which such election is made, the electing partnership or electing S corporation is required to make an estimated tax payment with such election in an amount equal to the first required installment and if an election is made on or after June fifteenth and before September fifteenth of the taxable year for which such election is made, the electing partnership or electing S corporation is required to make an estimated tax payment with such election in an amount equal to the sum of the first and second required installments.

§ 3. Subsection (c) of section 868 of the tax law, as amended by section 7 of subpart C of part J of chapter 59 of the laws of 2023, is amended to read as follows:

(c) [~~The annual election to be taxed pursuant to this article must be made on or before the due date of the first estimated payment under section eight hundred sixty-four of this chapter and will take effect for the current taxable year.~~] Only one election to be taxed pursuant to this article may be made during each calendar year. An election made under this section is irrevocable after such due date. To the extent an election made under section eight hundred sixty-one of this chapter is revoked or otherwise invalidated an election made under this section is automatically invalidated.

§ 4. Subsection (b) of section 871 of the tax law, as added by section 1 of subpart B of part MM of chapter 59 of the laws of 2022, paragraph 3 as amended by chapter 555 of the laws of 2022, is amended to read as follows:

(b) General. Except as provided in subsection (c) of this section, the estimated tax shall be paid as follows for an electing city partnership and an electing city resident S corporation:

(1) The estimated tax shall be paid in four [~~equal~~] installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth in the calendar year prior to the year in which the due date of the return required by this article falls.

(2) **Amount of required installment. (A)** The amount of any required installment shall be twenty-five percent of the required annual payment.

(B) In the case of any required installment, if the electing city partnership or the electing city resident S corporation establishes that the annualized income installment determined under subparagraph (B) of paragraph four of subsection (c) of section six hundred eighty-five of

this chapter is less than the amount determined under subparagraph (A) of this paragraph, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under this paragraph by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(3) [~~Without regard to paragraph four of subsection (c) of section six hundred eighty-five of this chapter, the~~] The required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing city partnership or electing city resident S corporation for the preceding taxable year.

(4) Without regard to paragraphs one and two of this subsection, if an election is made on or after March fifteenth and before June fifteenth of the taxable year for which such election is made, the electing partnership or electing S corporation is required to make an estimated tax payment with such election in an amount equal to the first required installment, and if an election is made on or after June fifteenth and before September fifteenth of the taxable year for which such election is made, the electing partnership or electing S corporation is required to make an estimated tax payment with such election in an amount equal to the sum of the first and second required installments.

§ 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2024.