



Legislation Text

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Int. No. 942-A

By Council Members Berman and Stabile (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to the general corporation tax and the banking corporation tax, and to repeal subparagraphs 6-a and 13 through 15 of paragraph (b) of subdivision 8 of section 11-602, subparagraphs 2-a through 2-c of paragraph (f) of subdivision 8 of section 11-602, subdivisions 11 through 16 of section 11-602, subdivisions 1-a through 1-f of section 11-608, subdivision (a-2) of section 11-645 and paragraph 1-a of subdivision (b) of section 11-645 of the administrative code of the city of New York relating thereto.

Be it enacted by the Council as follows:

Section 1. Subdivision 3 of section 11-602 of the administrative code of the city of New York, as amended by chapter 241 of the laws of 1989, is amended to read as follows:

3. [(a)] “Subsidiary capital” means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this subchapter or subchapter three of this chapter, provided, however, that, in the discretion of the commissioner of finance, there shall be deducted from subsidiary capital any liabilities which are directly or indirectly attributable to subsidiary capital;

[(b) If, within eighteen months of a corporate acquisition wherein the taxpayer is the acquiring person, the taxpayer sells or otherwise disposes (including by redemption) of stock of a target corporation such that immediately prior to such disposition the taxpayer owned more than fifty percent, and immediately thereafter owned fifty percent or less of the number of shares of stock entitling the holder thereof to vote for the election of directors, then stock of the target corporation shall not constitute subsidiary capital of the taxpayer

for the entire taxable year in which such disposition occurs.

(c) If, within eighteen months of a corporate acquisition wherein the taxpayer is the acquiring corporation, the target corporation sells or otherwise disposes of an asset or assets (excluding cash and assets disposed of by such target corporation in the regular course of its business) held by the target corporation on the acquisition date such that immediately prior to such disposition such target corporation owns more than fifty percent of the total of such assets held by the target corporation on the acquisition date (by value, such value determined in the manner in which assets are valued pursuant to subdivision two of section 11-604 of this subchapter, whether or not the target corporation is subject to this subchapter) and immediately thereafter owns fifty percent or less, then for the period starting on the first day of the taxable year in which the disposition occurs and ending on the date eighteen months after the date of such disposition the stock of such target corporation shall not constitute subsidiary capital of the taxpayer.]

§ 2. Subdivision 5 of section 11-602 of the administrative code of the city of New York, as amended by chapter 241 of the laws of 1989, is amended to read as follows:

5. “Investment income” means [the sum of (a)] income, including capital gains in excess of capital losses, from investment capital [and (b) the amounts described in subparagraphs thirteen, fourteen and fifteen of paragraph (b) of subdivision eight of this section,] to the extent included in computing entire net income, less, [(c)] (a) in the discretion of the commissioner of finance, any deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, and [(d)] (b) such portion of any net operating loss deduction allowable in computing entire net income, as the investment income, before such deduction, bears to entire net income, before such deduction, provided, however, that in no case shall investment income exceed entire net income;

§ 3. Subparagraph 2 of paragraph (a) of subdivision 8 of section 11-602 of the administrative code of the city of New York, as amended by the chapter 241 of the laws of 1989, is amended to read as follows:

(2) fifty percent of dividends [(A)] other than from subsidiaries, [(B) other than amounts described in subparagraphs thirteen and fifteen of paragraph (b) of this subdivision, and (C) other than dividends from stock described in paragraphs (b) and (c) of subdivision three of this section,] except that entire net income shall include one hundred percent of dividends on shares of stock with respect to which a dividend deduction is disallowed by subsection (c) of section two hundred forty-six of the internal revenue code;

§ 4. Subparagraph 6-a of paragraph (b) of subdivision 8 of section 11-602 of the administrative code of the city of New York is REPEALED.

§ 5. Subparagraphs 13 through 15 of paragraph (b) of subdivision 8 of section 11-602 of the administrative code of the city of New York are REPEALED.

§ 6. Subparagraphs 2-a through 2-c of paragraph (f) of subdivision 8 of section 11-602 of the administrative code of the city of New York are REPEALED.

§ 7. Subdivisions 11 through 16 of section 11-602 of the administrative code of the city of New York are REPEALED.

§ 8. Subdivision 2 of section 11-605 of the administrative code of the city of New York is amended to read as follows:

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or another officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. In the case of an association, within the meaning of paragraph three of section (a) of section seventy-seven hundred one of the internal revenue code, a publicly-traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments, such certification shall be made by any person duly authorized so to act on behalf of such association, publicly-traded partnership or business. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is

authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the commissioner of finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this subchapter.

§ 9. Subdivision 3 of section 11-605 of the administrative code of the city of New York, as amended by chapter 525 of the laws of 1988, is amended to read as follows:

3. If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer, or of any shareholder of any taxpayer which has elected to be taxed under subchapter s of chapter one of the internal revenue code, as returned to the United States treasury department or the New York state [tax commission] commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state [tax commission] commissioner of taxation and finance or other competent authority, or where a renegotiation of a contract or subcontract with the United States or the state of New York results in a change in taxable income, alternative minimum taxable income or other basis of tax, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States or the state of New York, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, or such shareholder of a taxpayer, pursuant to subdivision (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subdivision (c) of said section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax, or the results of such renegotiation, or such computation, or recomputation, or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined report under this subchapter for such year) after such execution or the final determination of such change or correction or renegotiation, or such

computation, or recomputation, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended report with the commissioner of finance.

§ 10. Subdivision 1 of section 11-608 of the administrative code of the city of New York is amended to read as follows:

1. Every taxpayer subject to the tax imposed by section 11-603 of this subchapter shall pay with the report required to be filed for the preceding privilege period, if any, or with an application for extension of the time and filing such report, an amount equal to twenty-five per centum of the preceding year's tax[, computed without regard to the credit provided for in subdivision twelve of section 11-604 of this subchapter,] if such preceding year's tax exceeded one thousand dollars.

§ 11. Subdivisions 1-a through 1-f of section 11-608 of the administrative code of the city of New York are REPEALED.

§ 12. Paragraph (d) of subdivision 3 of section 11-674 of the administrative code of the city of New York is amended to read as follows:

(d) Deficiency attributable to [net operating loss] carryback. If a deficiency of tax under subchapter two of this chapter is attributable to the application to taxpayer of a net operating loss carryback or a capital loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

§ 13. Subdivision 5 of section 11-675 of the administrative code of the city of New York, as renumbered by chapter 241 of the laws of 1989, is amended to read as follows:

5. Tax reduced by carryback. If the amount of tax under subchapter two for any taxable years is

reduced by reason of a carryback of a net operating loss or a capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or capital loss arises. Such filing date shall be determined without regard to extensions of time to file.

§ 14. Subdivision 4 of section 11-678 of the administrative code of the city of New York is amended to read as follows:

4. Overpayment attributable to net operating loss carryback or capital loss carryback. A claim for credit or refund of so much of an overpayment under subchapter two of this chapter as is attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback shall be filed within three years from the time the return was due (including extensions thereof) for the taxable year of the loss, or within the period prescribed in subdivision two in respect of such taxable year, or within the period prescribed in subdivision three, where applicable, in respect to the taxable year to which the net operating loss or capital loss is carried back, whichever expires the latest. Where such claim for credit or refund is filed after the expiration of the period prescribed in subdivision one or in subdivision two where applicable, in respect to the taxable year to which the net operating loss or capital loss is carried back, the amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based.

§ 15. Subdivision 4 of section 11-679 of the administrative code of the city of New York is amended to read as follows:

4. Refund of tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by subchapter two of this chapter results from a carryback of a net operating loss or a net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision three of this section any overpayment described herein

shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term “loss year” means the taxable year in which such loss arises.

§ 16. Subdivision 2 of section 11-680 of the administrative code of the city of New York, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

2. Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section 11-672 of this subchapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner’s confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision seven of section 11-678 of this subchapter. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of: (a) a net operating loss carryback or a capital loss carryback, (b) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (c) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

§ 17. Paragraph (c) of subdivision 10 of section 11-683 of the administrative code of the city of New York is amended to read as follows:

(c) All taxes, additions to tax, penalties and interest which have become a lien under this subdivision shall[,] cease to be a lien after the expiration of [ten] twenty years from the date they became due and payable, [cease to be a lien] except that taxes, additions to tax, penalties and interest which have become a

lien under this subdivision (1) as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such taxes, additions to tax, penalties or interest and (2) as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such taxes, additions to tax, penalties or interest, as against such purchasers [of] or holders, shall cease to be a lien after the expiration of ten years from the date they become due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 18. Subdivision (a-2) of section 11-645 of the administrative code of the city of New York is REPEALED.

§ 19. Paragraph 1-a of subdivision (b) of section 11-645 of the administrative code of the city of New York is REPEALED.

§ 20. Subdivision (e) of section 11-646 of the administrative code of the city of New York, as amended by chapter 525 of the laws of 1988, is amended to read as follows:

(e) If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer as returned to the United States treasury department or the New York state [tax commission] commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state [tax commission] commissioner of taxation and finance or other competent authority, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, pursuant to subdivision (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subdivision (c) of said section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal

or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year) after such execution or the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year) thereafter an amended return with the commissioner of finance which shall contain such information as the commissioner shall require.

§ 21. This local law shall take effect immediately, except that sections one through seven of this local law shall take effect for taxable years beginning on or after January 1, 2000.