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2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

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Introduced by Sens. GOLDEN, FUSCHILLO, LARKIN, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the real property tax law, in relation to establishing the Caregiver's Assistance Act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Caregiver's Assistance Act".
3 S 2. Section 606 of the tax law is amended by adding a new subsection
4 (ss) to read as follows:
5 (SS) ELDER CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT
6 AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS PART EQUAL
7 TO TWENTY PERCENT OF QUALIFIED CARE EXPENSES IN AN AMOUNT EQUAL TO OR
8 LESS THAN TWO THOUSAND FOUR HUNDRED DOLLARS FOR THE TAXABLE YEAR THAT
9 ARE PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING SENIOR FAMILY
10 MEMBER. A TAXPAYER WITH QUALIFIED CARE EXPENSES PURSUANT TO THE PRECED-
11 ING SENTENCE WHICH ARE EQUAL TO OR IN EXCESS OF TWO HUNDRED FORTY
12 DOLLARS FOR ANY TAXABLE YEAR SHALL RECEIVE AN ADDITIONAL SEVENTY-FIVE
13 DOLLAR CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF
14 THIS PART. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION
15 EXCEED THE TAX FOR SUCH TAXABLE YEAR, THE TAXPAYER MAY RECEIVE, AND THE
16 COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS
17 AN OVERPAYMENT, WITHOUT INTEREST, ANY EXCESS BETWEEN SUCH TAX AS SO
18 REDUCED AND THE AMOUNT OF THE CREDITOR CREDITS. IF A TAXPAYER IS NOT
19 REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX HUNDRED ONE OF THIS
20 PART, A TAXPAYER MAY NEVERTHELESS RECEIVE AND THE COMPTROLLER, SUBJECT
21 TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS AN OVERPAYMENT THE
22 FULL AMOUNT OF THE CREDIT OR CREDITS, WITHOUT INTEREST. NO CREDIT SHALL
23 BE GRANTED UNDER THIS SUBSECTION IF NEW YORK ADJUSTED GROSS INCOME IS

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

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1 GREATER THAN FORTY-FIVE THOUSAND DOLLARS FOR A SINGLE TAXPAYER OR SIXTY
2 THOUSAND DOLLARS FOR MARRIED TAXPAYERS, OR IF THE TAXPAYER HAS TAKEN THE
3 CREDIT FOR CERTAIN HOUSEHOLD AND DEPENDENT CARE SERVICES AUTHORIZED IN
4 THIS SECTION.

5 (2) AS USED IN THIS SUBSECTION:

6 (A) "TAXPAYER" IS A RESIDENT INDIVIDUAL OF THIS STATE WHO IS REQUIRED
7 OR CHOOSES TO FILE A RETURN UNDER THIS ARTICLE, BUT THE TERM DOES NOT
8 INCLUDE A NONRESIDENT TAXPAYER OR A PART-YEAR RESIDENT TAXPAYER.

9 (B) "QUALIFYING SENIOR FAMILY MEMBER" IS A RELATIVE OF THE TAXPAYER
10 WITHIN THE THIRD DEGREE OF CONSANGUINITY WHO RESIDES WITH THE TAXPAYER
11 AND WHO IS SIXTY YEARS OR OLDER AND WHOSE NEW YORK ADJUSTED GROSS INCOME
12 IS THIRTEEN THOUSAND DOLLARS OR LESS FOR A SINGLE FAMILY MEMBER OR TWEN-
13 TY THOUSAND OR LESS FOR MARRIED FAMILY MEMBERS. A QUALIFYING SENIOR
14 FAMILY MEMBER INCLUDES A PERSON WHO OTHERWISE MEETS THE QUALIFICATIONS
15 SPECIFIED IN THE PRECEDING SENTENCE BUT WHO OCCUPIES A SEPARATE ROOM OR
16 ROOMS IN OR AT THE RESIDENCE OF THE TAXPAYER, SUCH AS THOSE COMMONLY
17 REFERRED TO AS MOTHER-IN-LAW APARTMENTS, BUT SHALL NOT INCLUDE A TENANT,
18 SUBTENANT, ROOMER OR BOARDER WHO PAYS A LEASE OR RENTAL FEE TO THE
19 TAXPAYER FOR THE SPACE.

20 (C) "QUALIFIED CARE EXPENSES" ARE PAYMENTS MADE BY THE TAXPAYER FOR
21 GOODS AND SERVICES NECESSARY TO ALLOW THE QUALIFYING SENIOR FAMILY
22 MEMBER TO BE MAINTAINED IN THE TAXPAYER'S RESIDENCE WHICH GOODS AND
23 SERVICES ARE: (I) PROVIDED TO OR FOR THE BENEFIT OF THE QUALIFYING
24 SENIOR FAMILY MEMBER OR TO ASSIST THE TAXPAYER IN CARING FOR THE QUALI-
25 FYING SENIOR FAMILY MEMBER; OR PROVIDED BY AN ORGANIZATION OR AN INDIV-
26 IDUAL NOT RELATED TO THE TAXPAYER OR THE QUALIFYING SENIOR FAMILY
27 MEMBER; AND (II) NOT COMPENSATED FOR BY INSURANCE OR FEDERAL OR STATE
28 PROGRAMS. SUCH EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, HOME HEALTH
29 AGENCY SERVICES, ADULT DAY CARE, COMPANIONSHIP SERVICES, PERSONAL CARE
30 ATTENDANT SERVICES, HOMEMAKER SERVICES, RESPIRE CARE, HEALTH CARE EQUIP-
31 MENT AND SUPPLIES, HOME MODIFICATION, OR ANY SERVICES NECESSARY TO
32 PROVIDE HELP IN TWO OR MORE ACTIVITIES IN DAILY LIVING, OR FOR THE
33 PROVISION OF ASSISTIVE DEVICES.

34 (3) WHEN TWO OR MORE MEMBERS OF A HOUSEHOLD MEET THE QUALIFICATIONS
35 FOR A CREDIT OR CREDITS PURSUANT TO THIS SUBSECTION, THE CREDIT OR CRED-
36 ITS SHALL BE EQUALLY DIVIDED BETWEEN OR AMONG SUCH INDIVIDUALS UNLESS
37 SUCH INDIVIDUALS FILE WITH THE COMMISSIONER A WRITTEN AGREEMENT SETTING
38 FORTH A DIFFERENT DIVISION. WHERE A JOINT INCOME TAX RETURN HAS BEEN
39 FILED PURSUANT TO THIS CHAPTER BY A TAXPAYER AND HIS OR HER SPOUSE (OR
40 WHERE BOTH SPOUSES ARE TAXPAYERS AND HAVE FILED SUCH JOINT RETURN), WHO
41 QUALIFY FOR SUCH CREDIT OR CREDITS, THE CREDIT OR CREDITS, OR THE
42 PORTION THEREOF IF DIVIDED, TO WHICH THE HUSBAND AND WIFE ARE ENTITLED
43 SHALL BE APPLIED AGAINST THE TAX OF BOTH SPOUSES AND ANY OVERPAYMENT
44 SHALL BE MADE TO BOTH SPOUSES. WHERE ANY RETURN REQUIRED TO BE FILED
45 PURSUANT TO THIS CHAPTER IS COMBINED WITH ANY RETURN OF TAX IMPOSED
46 PURSUANT TO THE AUTHORITY OF THIS CHAPTER OR ANY OTHER LAW IF SUCH TAX
47 IS ADMINISTERED BY THE COMMISSIONER, THE CREDIT OR CREDITS OR THE
48 PORTION OF THEREOF IF DIVIDED, ALLOWED TO THE TAXPAYER MAY BE APPLIED BY
49 THE COMMISSIONER TOWARD ANY LIABILITY FOR THE AFOREMENTIONED TAXES.

50 (4) NO CREDIT OR CREDITS OR PORTION THEREOF SHALL BE GRANTED UNDER
51 THIS SUBSECTION WITH RESPECT TO CARE PROVIDED IN A RESIDENCE THAT IS
52 WHOLLY EXEMPTED FROM REAL PROPERTY TAXATION OR TO AN INDIVIDUAL WHO IS
53 NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR. THE
54 RIGHT TO CLAIM A CREDIT OR CREDITS OR A PORTION THEREOF, WHERE SUCH
55 CREDIT OR CREDITS HAVE BEEN DIVIDED UNDER THIS SUBSECTION, SHALL BE
56 PERSONAL TO THE QUALIFIED TAXPAYER AND SHALL NOT SURVIVE HIS OR HER

1 DEATH, BUT SUCH RIGHT MAY BE EXERCISED ON BEHALF OF A CLAIMANT BY HIS OR
2 HER LEGAL GUARDIAN OR ATTORNEY IN FACT DURING HIS OR HER LIFETIME.

3 (5) THE COMMISSIONER MAY REQUIRE A TAXPAYER TO FURNISH AS SUPPORT OF
4 HIS OR HER CLAIM FOR CREDIT UNDER THIS SUBSECTION RECEIPTS FOR QUALIFIED
5 CARE EXPENSES OR OTHER SUCH PROOFS OF PAYMENT AS SHALL SATISFY THE
6 COMMISSIONER.

7 S 3. Subdivision 4-a of section 425 of the real property tax law is
8 amended by adding a new paragraph (d) to read as follows:

9 (D) A BASIC OR AN ENHANCED EXEMPTION SHALL BE PROVIDED ON A PRO-RATED
10 BASIS TO PROPERTY WHERE A SENIOR CITIZEN RESIDING WITH A TAXPAYER WOULD
11 OTHERWISE MEET THE ELIGIBILITY REQUIREMENTS SET FORTH IN SUBDIVISIONS
12 THREE AND/OR FOUR OF THIS SECTION, EXCEPT FOR OWNERSHIP REQUIREMENTS,
13 AND WHERE, IN THE CASE OF AN ENHANCED EXEMPTION, THE INCOME OF THE
14 SENIOR AND THE SPOUSE OF THE SENIOR CONSIDERED SEPARATELY FROM THE
15 REMAINDER OF THE HOUSEHOLD WOULD MEET THE INCOME REQUIREMENTS SET FORTH
16 IN SUBDIVISION FOUR OF THIS SECTION. SUCH BASIC OR AN ENHANCED EXEMPTION
17 SHALL BE PROVIDED ON A PRO-RATED BASIS TO THE PROPERTY AS FOLLOWS:
18 MULTIPLY THE EXEMPTION THAT WOULD BE GRANTED TO THE PROPERTY AS A WHOLE
19 IF THE PROPERTY WERE ELIGIBLE FOR THE BASIC OR THE ENHANCED EXEMPTION,
20 AS APPLICABLE, BY A FRACTION, THE NUMERATOR OF WHICH IS THE SQUARE
21 FOOTAGE OF THE ROOM OR ROOMS USED BY SUCH SENIOR FAMILY MEMBER FOR
22 LIVING SPACE, AND THE DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE
23 OF THE RESIDENCE. EXCEPT AS PROVIDED IN THIS PARAGRAPH, OR AS INCONSIST-
24 ENT WITH THE PURPOSES OF THIS PARAGRAPH, ALL OTHER REQUIREMENTS OF THIS
25 SECTION SHALL BE APPLICABLE TO SUCH PRO-RATES BASIC OR ENHANCED
26 EXEMPTION.

27 S 4. This act shall take effect on the first of January next succeed-
28 ing the date on which it shall have become a law.