

2179--B

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sen. GOLDEN -- 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 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 (ww) to read as follows:
5 (WW) 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 SEVENTY-FIVE DOLLARS FOR THE TAXABLE YEAR THAT
9 ARE PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING SENIOR FAMILY
10 MEMBER. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION SHALL
11 EXCEED THE TAXPAYER'S TAX FOR SUCH TAXABLE YEAR, THE EXCESS SHALL BE
12 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
13 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI-
14 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. IF A
15 TAXPAYER IS NOT REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX
16 HUNDRED ONE OF THIS PART, A TAXPAYER MAY NEVERTHELESS RECEIVE AND THE
17 COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS
18 AN OVERPAYMENT THE FULL AMOUNT OF THE CREDIT OR CREDITS, WITHOUT INTER-
19 EST. NO CREDIT SHALL BE GRANTED UNDER THIS SUBSECTION IF THE TAXPAYER'S
20 NEW YORK ADJUSTED GROSS INCOME IS GREATER THAN FORTY-FIVE THOUSAND
21 DOLLARS FOR A SINGLE TAXPAYER OR SIXTY THOUSAND DOLLARS FOR MARRIED

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

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1 TAXPAYERS, OR IF THE TAXPAYER HAS CLAIMED THE CREDIT FOR CERTAIN HOUSE-
2 HOLD AND DEPENDENT CARE SERVICES AUTHORIZED IN THIS SECTION.

3 (2) AS USED IN THIS SUBSECTION:

4 (A) "TAXPAYER" IS A RESIDENT INDIVIDUAL OF THIS STATE, BUT THE TERM
5 DOES NOT INCLUDE A NONRESIDENT TAXPAYER OR A PART-YEAR RESIDENT TAXPAY-
6 ER.

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

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

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

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

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

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

7 (D) PERSON WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE. WHEN A RESIDENCE
8 SERVES AS THE PRIMARY RESIDENCE FOR BOTH A PERSON WHO IS SIXTY-FIVE
9 YEARS OF AGE OR OLDER ON THE DATE SPECIFIED IN PARAGRAPH (A) OF SUBDIVI-
10 SION FOUR OF THIS SECTION AND A RELATIVE WHO IS WITHIN THE THIRD DEGREE
11 OF CONSANGUINITY THAT IS THE OWNER OF SUCH RESIDENCE, A BASIC OR
12 ENHANCED EXEMPTION SHALL BE AVAILABLE FOR SUCH PROPERTY ON A PRO-RATED
13 BASIS IF SUCH PERSON WOULD OTHERWISE MEET THE ELIGIBILITY REQUIREMENTS
14 SET FORTH IN SUBDIVISIONS THREE OR FOUR OF THIS SECTION, EXCEPT FOR
15 OWNERSHIP REQUIREMENTS, AND WHERE, IN THE CASE OF AN ENHANCED EXEMPTION,
16 THE INCOME OF THE SENIOR AND THE SPOUSE OF THE SENIOR CONSIDERED SEPA-
17 Rately FROM THE REMAINDER OF THE HOUSEHOLD WOULD MEET THE INCOME
18 REQUIREMENTS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. SUCH BASIC
19 OR AN ENHANCED EXEMPTION SHALL BE PROVIDED ON A PRO-RATED BASIS TO THE
20 PROPERTY AS FOLLOWS: MULTIPLY THE EXEMPTION THAT WOULD BE GRANTED TO THE
21 PROPERTY AS A WHOLE IF THE PROPERTY WERE ELIGIBLE FOR THE BASIC OR THE
22 ENHANCED EXEMPTION, AS APPLICABLE, BY A FRACTION, THE NUMERATOR OF WHICH
23 IS THE SQUARE FOOTAGE OF THE ROOM OR ROOMS USED BY SUCH PERSON AND HIS
24 OR HER SPOUSE WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE EXCLUSIVELY FOR
25 LIVING SPACE, AND THE DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE
26 OF THE RESIDENCE. EXCEPT AS PROVIDED IN THIS PARAGRAPH, OR AS INCONSIST-
27 ENT WITH THE PURPOSES OF THIS PARAGRAPH, ALL OTHER REQUIREMENTS OF THIS
28 SECTION SHALL BE APPLICABLE TO SUCH PRO-RATED BASIC OR ENHANCED
29 EXEMPTION. THE EXEMPTION PROVIDED BY THIS PARAGRAPH SHALL BE IN ADDITION
30 TO ANY EXEMPTION PLACED ON THE PROPERTY PURSUANT TO SUBDIVISION THREE OR
31 FOUR OF THIS SECTION.

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