

STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

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Introduced by Sens. GAUGHRAN, KAPLAN -- read twice and ordered printed,
and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law and the real property tax law, in relation
to establishing the COVID-19 emergency property tax credit

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

Section 1. Section 606 of the tax law is amended by adding a new subsection (n-3) to read as follows:

(n-3) COVID-19 emergency property tax credit. 1. Legislative findings. The legislature finds that it is in the public interest to ensure that individuals and families are not rendered homeless or severely financially burdened because of an inability to pay the cost of property taxes due to loss of income due to COVID-19. The legislature further finds that the outbreak of COVID-19 has exacerbated the health risks associated with being homeless and that ensuring increased funding so that individuals and families do not lose their homes and become homeless is an essential part of the state's effort to mitigate the threat of COVID-19 to public health. The legislature further finds that providing funding for individuals and families to pay their property taxes that they would otherwise have difficulty paying will promote the stability and proper maintenance of the housing stock and assist communities in recovering from the adverse social and economic effects of the COVID-19 outbreak.

2. Definitions. For purposes of this subsection:

(A) "Adjusted annual income" shall mean income minus any deductions allowable at the discretion of the commissioner pursuant to this section and those deductions enumerated as follows:

(i) five thousand seven hundred sixty dollars for each dependent;

(ii) four thousand eight hundred dollars for an elderly household member and/or a household member with a disability;

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

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1 (iii) the sum total of primary mortgage payments, not including escrow
2 payments, paid by the taxpayer for the qualified property during the tax
3 year;

4 (iv) any reasonable child care expenses necessary to enable a member
5 of the household to be employed or to further his or her education;

6 (v) the sum total of unreimbursed medical expenses for each elderly
7 household member and/or household member with a disability plus unreim-
8 bursed attendant care and/or medical apparatus expenses for each member
9 of the household with a disability which are necessary for any member of
10 the household, including the household member with a disability, to be
11 employed greater than three percent of the annual income;

12 (vi) the sum total of unreimbursed testing and medical expenses for
13 each individual or family member related to a confirmed or suspected
14 case of COVID-19 greater than three percent of the annual income; and

15 (vii) child support payments paid by the taxpayer.

16 (B) "Child care expenses" shall mean expenses related to the care of
17 children under the age of thirteen.

18 (C) "Dependent" shall mean any member of the family who is neither the
19 head of household, nor the head of the household's spouse, and who is
20 under the age of eighteen, a person with a disability, or a full-time
21 student.

22 (D) "Disability" shall mean:

23 (i) the inability to engage in any substantial gainful activity by
24 reason of any medically determinable physical or mental impairment which
25 can be expected to result in death or which has lasted or can be
26 expected to last for a continuous period of not less than twelve months;
27 or

28 (ii) in the case of an individual who has attained the age of fifty-
29 five and is blind, the inability by reason of such blindness to engage
30 in substantial gainful activity requiring skills or abilities comparable
31 to those of any gainful activity in which they have previously engaged
32 with some regularity and over a substantial period of time; or

33 (iii) a physical, mental, or emotional impairment which:

34 (1) is expected to be of long-continued and indefinite duration;

35 (2) substantially impedes his or her ability to live independently;
36 and

37 (3) is of such a nature that such ability could be improved by more
38 suitable housing conditions; or

39 (iv) a developmental disability that is a severe, chronic disability
40 of an individual that:

41 (I) is attributable to a mental or physical impairment or combination
42 of mental and physical impairments;

43 (II) is manifested before the individual attains age twenty-two;

44 (III) is likely to continue indefinitely;

45 (IV) results in substantial functional limitations in three or more of
46 the following areas of major life activity:

47 (AA) self-care;

48 (BB) receptive and expressive language;

49 (CC) learning;

50 (DD) mobility;

51 (EE) self-direction;

52 (FF) capacity for independent living;

53 (GG) economic self-sufficiency; and

54 (v) reflects the individual's need for a combination and sequence of
55 special, interdisciplinary, or generic services, individualized

1 supports, or other forms of assistance that are of lifelong or extended
2 duration and are individually planned and coordinated.

3 (E) "Elderly" shall mean sixty-two years of age or older.

4 (F) "Income" shall mean income from all sources of each member of the
5 household, including all wages, tips, over-time, salary, recurring
6 gifts, returns on investments, welfare assistance, social security
7 payments, child support payments, unemployment benefits, and any other
8 government benefit or cash grant. The term "income" shall not include:
9 employment income from children under eighteen years of age, employment
10 income from children eighteen years of age or older who are full-time
11 students, foster care payments, sporadic gifts, groceries provided by
12 persons not living in the household, supplemental nutrition assistance
13 program (SNAP) (food stamp) benefits, earned income disregard (EID), or
14 the earned income tax credit.

15 (G) "Qualified property" means residential real property owned by the
16 taxpayer which is used exclusively for residential purposes; provided
17 however, that in the event any portion of such property is not so used
18 exclusively for residential purposes but is used for other purposes,
19 such portion shall be ineligible for the credit established pursuant to
20 this subsection.

21 (H) "Property taxes" shall mean taxes levied, or portion of those
22 taxes levied, by or on behalf of any county, city, town, village, school
23 district or special district on the qualified property which is attrib-
24 utable to the year two thousand twenty-one.

25 (I) "State of emergency" shall mean the pendency of the COVID-19
26 crisis, which shall include the year two thousand twenty-one.

27 3. Authority to implement COVID-19 emergency property tax credit. The
28 commissioner, as soon as practicable and subject to the appropriation of
29 funds, including federal funds, for this purpose, shall implement an
30 emergency COVID-19 property tax program in the form of a credit for
31 those eligible pursuant to paragraph four of this subsection. The
32 department shall issue tax credits pursuant to this section, subject to
33 appropriation of funds for this purpose. The commissioner may delegate
34 administration of a portion of this program to the department of labor
35 for those applying or receiving unemployment benefits. The commissioner
36 may also delegate the administration of portions of this program to
37 local taxing jurisdictions in accordance with the provisions of this
38 section.

39 4. Eligibility. (A) An individual taxpayer, or taxpayers if filing
40 joint returns, who meets the eligibility standards in this paragraph
41 shall be allowed a credit against the taxes imposed by this article in
42 the amount specified in paragraph seven of this subsection for the tax
43 year two thousand twenty-one.

44 (B) To be eligible for the credit, the taxpayer, or taxpayers filing
45 joint returns, on the personal income tax return filed for the year two
46 thousand twenty-one, must have:

47 (i) been a resident of the state;

48 (ii) owned and primarily resided in qualified property within the
49 state;

50 (iii) had property taxes levied against their qualified property for
51 the year two thousand twenty-one in an amount which exceeded thirty
52 percent of their adjusted annual income, as defined by this subsection,
53 minus any savings attributable to an exemption on the qualified property
54 pursuant to the real property tax law; and

55 (iv) either suffered a substantial loss of income as defined by the
56 commissioner, was unemployed and filed for unemployment, or faces immi-

1 nent loss of housing during the state of emergency or within ninety days
2 after the state of emergency.

3 (C) In addition to the eligibility criteria above, the commissioner
4 may promulgate limits on assets as part of any determination of eligi-
5 bility for this program.

6 (D) An individual taxpayer, or taxpayers if filing joint returns,
7 shall not be eligible for this credit if their annual income is in an
8 amount equal to or greater than the taxpayers' taxable income for the
9 year two thousand nineteen.

10 (E) Any ambiguity in eligibility criteria promulgated by the commis-
11 sioner shall be resolved in favor of the applicant when determining
12 eligibility.

13 5. Preference. The commissioner may establish preference in processing
14 applications for this credit. Such preference may account for any or all
15 of the following:

16 (A) The taxpayer's historical income level prior to the state of emer-
17 gency as it relates to the area median income;

18 (B) The taxpayer's property tax burden;

19 (C) The percentage of the household income lost; or

20 (D) The taxpayer or household member's status as a victim of domestic
21 violence.

22 6. Tax lien foreclosure. Notwithstanding any provision of law to the
23 contrary, a tax lien foreclosure initiated pursuant to article eleven of
24 the real property tax law which includes unpaid taxes that could be
25 credited under this section cannot be commenced against a property owner
26 who has applied for this credit unless or until a final determination of
27 ineligibility. The action may proceed ninety days after the determi-
28 nation of ineligibility or after payment is released by the department
29 to the taxing jurisdiction pursuant to subparagraph (C) of paragraph
30 seven of this subsection.

31 7. Amount of credit. (A) For the two thousand twenty-one taxable year,
32 the amount of the credit shall be equal to the property tax liability of
33 the taxpayer, or taxpayers if filing jointly, which exceeds thirty
34 percent of the taxpayer's income as defined by this subsection.

35 (B) If the amount of the credit allowed under this subsection shall
36 exceed the taxpayer's tax for the taxable year, the excess shall be
37 treated as an overpayment of tax to be credited or refunded in accord-
38 ance with the provisions of section six hundred eighty-six of this arti-
39 cle, provided however, that no interest shall be paid thereon. The
40 commissioner shall develop a process for taxpayers to apply for the
41 credit upon filing their taxes for the year two thousand twenty-one.
42 Upon receipt of the taxpayer's application, the commissioner shall
43 determine the taxpayer's eligibility for this credit utilizing the
44 information available to the commissioner on the taxpayer's personal
45 income tax return filed for the taxable year two thousand twenty, and
46 any additional information that the commissioner may require in order to
47 make an eligibility determination. For those taxpayers whom the commis-
48 sioner has determined eligible for this credit, the commissioner shall
49 issue a refund payment in the amount specified in subparagraph (A) of
50 this paragraph. A taxpayer that does not receive a refund payment but
51 believes that he or she is eligible, or whom receives a refund payment
52 that he or she believes is less than the amount that was due to him or
53 her, may request payment of the claimed deficiency in a manner
54 prescribed by the commissioner.

55 (C) Notwithstanding the subparagraphs (A) and (B) of this paragraph,
56 for eligible taxpayers who have unpaid two thousand twenty-one property

1 taxes levied against their qualified property, no credit shall be
2 issued. Payment shall instead be made directly to a taxing jurisdiction
3 certifying that the eligible taxpayer has unpaid tax liability for the
4 year two thousand twenty-one on the qualified property. The commission-
5 er shall have the authority to implement any policy or procedure neces-
6 sary to determine whether the taxpayer has paid their property taxes due
7 for the year two thousand twenty-one. The commissioner shall promulgate
8 rules and regulations to determine priority for payment to a taxing
9 jurisdiction when multiple claims are made for unpaid property taxes
10 levied during the year two thousand twenty-one.

11 § 2. The real property tax law is amended by adding a new section 1107
12 to read as follows:

13 § 1107. COVID-19 emergency property tax credit. Notwithstanding
14 anything to the contrary, no action shall be commenced pursuant to this
15 section during the pendency of the state of emergency as defined in
16 subparagraph (I) of paragraph two of subsection (n-3) of section six
17 hundred six of the tax law. No action may subsequently be commenced
18 which would otherwise conflict with paragraph six of subsection (n-3) of
19 section six hundred six of the tax law.

20 § 3. Severability. If any clause, sentence, paragraph, section or part
21 of this act shall be adjudged by any court of competent jurisdiction to
22 be invalid and after exhaustion of all further judicial review, the
23 judgment shall not affect, impair or invalidate the remainder thereof,
24 but shall be confined in its operation to the clause, sentence, para-
25 graph, section or part of this act directly involved in the controversy
26 in which the judgment shall have been rendered.

27 § 4. This act shall take effect immediately.