

1418

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, GORDON, MILLMAN, EDDINGTON -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, HEASTIE, HYER-SPENCER, V. LOPEZ, PEOPLES, PHEFFER, TOWNS, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to benefits and eligibility under the real property tax circuit breaker credit

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

1 Section 1. Paragraphs 1, 3 and 7 of subsection (e) of section 606 of  
2 the tax law, as amended by chapter 28 of the laws of 1987, subparagraph  
3 (C) of paragraph 1 as amended by chapter 713 of the laws of 1996 and  
4 subparagraph (E) of paragraph 1 as amended by chapter 105 of the laws of  
5 2006, are amended to read as follows:  
6 (1) For purposes of this subsection:  
7 (A) "Qualified taxpayer" means a resident individual of the state who  
8 has occupied the same residence for six months or more of the taxable  
9 year, and is required or chooses to file a return under this article.  
10 (B) "Household" or "members of the household" means a qualified  
11 taxpayer and all other persons, not necessarily related, who have the  
12 same residence and share its furnishings, facilities and accommodations.  
13 Such terms shall not include a tenant, subtenant, roomer or boarder who  
14 is not related to the qualified taxpayer in any degree specified in  
15 paragraphs one through eight of subsection (a) of section one hundred  
16 fifty-two of the internal revenue code. Provided, however, no person may  
17 be a member of more than one household at one time.  
18 [(c)] (C) "Household gross income" means the aggregate adjusted gross  
19 income of all ADULT members of the household for the taxable year as  
20 reported for federal income tax purposes, or which would be reported as  
21 adjusted gross income if a federal income tax return were required to be  
22 filed, with the modifications in subsection (b) of section six hundred

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

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1 twelve OF THIS ARTICLE but without the modifications in subsection (c)  
2 of such section, plus any portion of the gain from the sale or exchange  
3 of property otherwise excluded from such amount; earned income from  
4 sources without the United States excludable from federal gross income  
5 by section nine hundred eleven of the internal revenue code; support  
6 money not included in adjusted gross income; nontaxable strike benefits;  
7 supplemental security income payments; the gross amount of any pension  
8 or annuity benefits to the extent not included in such adjusted gross  
9 income (including, but not limited to, railroad retirement benefits and  
10 all payments received under the federal social security act and veter-  
11 ans' disability pensions); nontaxable interest received from the state  
12 of New York, its agencies, instrumentalities, public corporations, or  
13 political subdivisions (including a public corporation created pursuant  
14 to agreement or compact with another state or Canada); workers' compen-  
15 sation; the gross amount of "loss-of-time" insurance; and the amount of  
16 cash public assistance and relief, other than medical assistance for the  
17 needy, paid to or for the benefit of the qualified taxpayer or members  
18 of his household. Household gross income shall not include surplus foods  
19 or other relief in kind or payments made to individuals because of their  
20 status as victims of Nazi persecution as defined in P.L. 103-286.  
21 Provided, further, household gross income shall only include all such  
22 income received by all members of the household while members of such  
23 household. PROVIDED, FURTHER, THAT HOUSEHOLD GROSS INCOME SHALL NOT  
24 INCLUDE INCOME OF HOUSEHOLD MEMBERS WHO ARE UNDER THE AGE OF EIGHTEEN,  
25 OR INCOME OF HOUSEHOLD MEMBERS UNDER THE AGE OF TWENTY-ONE IF SUCH INDI-  
26 VIDUALS ATTEND AN ACCREDITED COLLEGE OR UNIVERSITY AT LEAST PART-TIME.

27 (D) "Residence" means a dwelling in this state, whether owned or rent-  
28 ed, and so much of the land abutting it, not exceeding one acre, as is  
29 reasonably necessary for use of the dwelling as a home, and may consist  
30 of a part of a multi-dwelling or multi-purpose building including a  
31 cooperative or condominium, and rental units within a single dwelling.  
32 Residence includes a trailer or mobile home, used exclusively for resi-  
33 dential purposes and defined as real property pursuant to paragraph (g)  
34 of subdivision twelve of section one hundred two of the real property  
35 tax law.

36 (E) "Qualifying real property taxes" means all real property taxes,  
37 special ad valorem levies and special assessments, exclusive of penal-  
38 ties and interest, levied on the residence of a qualified taxpayer and  
39 paid during the taxable year [less the credit claimed under subsection  
40 (n-1) of this section]. In addition, for taxable years beginning after  
41 December thirty-first, nineteen hundred eighty-four, a qualified taxpay-  
42 er may elect to include any additional amount that would have been  
43 levied in the absence of an exemption from real property taxation pursu-  
44 ant to section four hundred sixty-seven of the real property tax law. If  
45 tenant-stockholders in a cooperative housing corporation have met the  
46 requirements of section two hundred sixteen of the internal revenue code  
47 by which they are allowed a deduction for real estate taxes, the amount  
48 of taxes so allowable, or which would be allowable if the taxpayer had  
49 filed returns on a cash basis, shall be qualifying real property taxes.  
50 If a residence is owned by two or more individuals as joint tenants or  
51 tenants in common, and one or more than one individual is not a member  
52 of the household, qualifying real property taxes is that part of such  
53 taxes on the residence which reflects the ownership percentage of the  
54 qualified taxpayer and members of his household. If a residence is an  
55 integral part of a larger unit, qualifying real property taxes shall be  
56 limited to that amount of such taxes paid as may be reasonably appor-

1 tioned to such residence. If a household owns and occupies two or more  
2 residences during different periods in the same taxable year, qualifying  
3 real property taxes shall be the sum of the prorated qualifying real  
4 property taxes attributable to the household during the periods such  
5 household occupies each of such residences. If the household owns and  
6 occupies a residence for part of the taxable year and rents a residence  
7 for part of the same taxable year, it may include both the proration of  
8 qualifying real property taxes on the residence owned and the real prop-  
9 erty tax equivalent with respect to the months the residence is rented.  
10 Provided, however, for purposes of the credit allowed under this  
11 subsection, qualifying real property taxes may be included by a quali-  
12 fied taxpayer only to the extent that such taxpayer or the spouse of  
13 such taxpayer occupying such residence for six months or more of the  
14 taxable year owns or has owned the residence and paid such taxes.

15 (F) "Real property tax equivalent" means twenty-five percent of the  
16 adjusted rent actually paid in the taxable year by a household solely  
17 for the right of occupancy of its New York residence for the taxable  
18 year. If (i) a residence is rented to two or more individuals as coten-  
19 ants, or such individuals share in the payment of a single rent for the  
20 right of occupancy of such residence, and (ii) each of such individuals  
21 is a member of a different household, one or more of which individuals  
22 shares such residence, real property tax equivalent is that portion of  
23 twenty-five percent of the adjusted rent paid in the taxable year which  
24 reflects that portion of the rent attributable to the qualified taxpayer  
25 and the members of his household.

26 (G) "Adjusted rent" means rental paid for the right of occupancy of a  
27 residence, excluding charges for heat, gas, electricity, furnishings and  
28 board. Where charges for heat, gas, electricity, furnishing or board are  
29 included in rental but where such charges and the amount thereof are not  
30 separately set forth in a written rental agreement, for purposes of  
31 determining adjusted rent the qualified taxpayer shall reduce rental  
32 paid as follows:

33 (i) For heat, or heat and gas, deduct fifteen percent of rental paid.

34 (ii) For heat, gas and electricity, deduct twenty percent of rental  
35 paid.

36 (iii) For heat, gas, electricity and furnishings, deduct twenty-five  
37 percent of rental paid.

38 (iv) For heat, gas, electricity, furnishings and board, deduct fifty  
39 percent of rental paid.

40 If the tax commission determines that the adjusted rent shown on the  
41 return is excessive, the tax commission may reduce such rent, for  
42 purposes of the computation of the credit, to an amount substantially  
43 equivalent to rent for a comparable accommodation.

44 (3) Determination of credit. (A) For qualified taxpayers who have  
45 attained the age of sixty-five years before the beginning of or during  
46 the taxable year the amount of the credit allowable under this  
47 subsection shall be fifty percent, or in the case of a qualified taxpay-  
48 er who has elected to include an additional amount pursuant to subpara-  
49 graph (E) of paragraph one of this subsection, twenty-five percent, of  
50 the excess of real property taxes or the excess of real property tax  
51 equivalent determined as follows:

52 Excess real property taxes are the  
53 excess of real property tax equiv-  
54 alent or the excess of qualifying  
55 real property taxes over the fol-

1	If household gross income for the	lowing percentage of household
2	taxable year is:	gross income:
3	-----	-----
4	\$3,000 or less	3 1/2
5	Over \$3,000 but not over \$5,000	4
6	Over \$5,000 but not over \$7,000	4 1/2
7	Over \$7,000 but not over \$9,000	5
8	Over \$9,000 but not over \$11,000	5 1/2
9	Over \$11,000 but not over \$14,000	6
10	Over \$14,000 [but not over \$18,000]	6 1/2

11 Notwithstanding the foregoing provisions, the maximum credit deter-  
 12 mined under this subparagraph may not exceed the amount determined in  
 13 accordance with the following table:

14	If household gross income for the	The maximum credit is:
15	taxable year is:	
16	-----	-----
17	\$1,000 or less	\$375
18	Over \$1,000 but not over \$2,000	\$358
19	Over \$2,000 but not over \$3,000	\$341
20	Over \$3,000 but not over \$4,000	\$324
21	Over \$4,000 but not over \$5,000	\$307
22	Over \$5,000 but not over \$6,000	\$290
23	Over \$6,000 but not over \$7,000	\$273
24	Over \$7,000 but not over \$8,000	\$256
25	Over \$8,000 but not over \$9,000	\$239
26	Over \$9,000 but not over \$10,000	\$222
27	Over \$10,000 but not over \$11,000	\$205
28	Over \$11,000 but not over \$12,000	\$188
29	Over \$12,000 but not over \$13,000	\$171
30	Over \$13,000 but not over \$14,000	\$154
31	Over \$14,000 but not over \$15,000	\$137
32	Over \$15,000 but not over \$16,000	\$120
33	Over \$16,000 but not over \$17,000	\$103
34	Over \$17,000 [but not over \$18,000]	\$ 86

35 (B) For all other qualified taxpayers the amount of the credit allow-  
 36 able under this subsection shall be fifty percent of excess real proper-  
 37 ty taxes or the excess of the real property tax equivalent determined as  
 38 follows:

39		Excess real property taxes are the
40		excess of real property tax equiv-
41		alent or the excess of qualifying
42		real property taxes over the fol-
43	If household gross income for the	lowing percentage of household
44	taxable year is:	gross income:
45	-----	-----
46	\$3,000 or less	3 1/2
47	Over \$3,000 but not over \$5,000	4
48	Over \$5,000 but not over \$7,000	4 1/2
49	Over \$7,000 but not over \$9,000	5
50	Over \$9,000 but not over \$11,000	5 1/2
51	Over \$11,000 but not over \$14,000	6
52	Over \$14,000 [but not over \$18,000]	6 1/2

1 Notwithstanding the foregoing provisions, the maximum credit deter-  
 2 mined under this subparagraph may not exceed the amount determined in  
 3 accordance with the following table:

4 If household gross income for the 5 taxable year is:	The maximum credit is:
6 -----	-----
7 \$1,000 or less	\$75
8 Over \$1,000 but not over \$2,000	\$73
9 Over \$2,000 but not over \$3,000	\$71
10 Over \$3,000 but not over \$4,000	\$69
11 Over \$4,000 but not over \$5,000	\$67
12 Over \$5,000 but not over \$6,000	\$65
13 Over \$6,000 but not over \$7,000	\$63
14 Over \$7,000 but not over \$8,000	\$61
15 Over \$8,000 but not over \$9,000	\$59
16 Over \$9,000 but not over \$10,000	\$57
17 Over \$10,000 but not over \$11,000	\$55
18 Over \$11,000 but not over \$12,000	\$53
19 Over \$12,000 but not over \$13,000	\$51
20 Over \$13,000 but not over \$14,000	\$49
21 Over \$14,000 but not over \$15,000	\$47
22 Over \$15,000 but not over \$16,000	\$45
23 Over \$16,000 but not over \$17,000	\$43
24 Over \$17,000 [but not over \$18,000]	\$41

25 (7) No credit shall be granted under this subsection:

26 (A) If household gross income for the taxable year exceeds [eighteen  
 27 thousand dollars] TWO HUNDRED PERCENT OF THE FEDERAL POVERTY LEVEL.

28 (B) To a property owner unless: (i) the property is used for residen-  
 29 tial purposes, (ii) not more than twenty percent of the rental income,  
 30 if any, from the property is from rental for nonresidential purposes and  
 31 (iii) the property is occupied as a residence in whole or in part by one  
 32 or more of the owners of the property.

33 (C) To a property owner who owns real property, the full value of  
 34 which exceeds [eighty-five] TWO HUNDRED thousand dollars.

35 (D) [To] (I) IN A CITY WITH A POPULATION OF TWO MILLION OR MORE, TO a  
 36 tenant if the adjusted rent for the residence exceeds [four] EIGHT  
 37 hundred [fifty] dollars per month on average; OR (II) IN ALL OTHER AREAS  
 38 OF THE STATE TO A TENANT IF THE ADJUSTED RENT FOR THE RESIDENCE EXCEEDS  
 39 SIX HUNDRED DOLLARS PER MONTH ON AVERAGE.

40 (E) To an individual with respect to whom a deduction under subsection  
 41 (c) of section one hundred fifty-one of the internal revenue code is  
 42 allowable to another taxpayer for the taxable year.

43 (F) With respect to a residence that is wholly exempted from real  
 44 property taxation.

45 (G) To an individual who is not a resident individual of the state for  
 46 the entire taxable year.

47 S 2. This act shall take effect immediately and shall apply to taxable  
 48 years beginning on and after January 1, 2009.