S T A T E O F N E W Y O R K

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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:

Section 1. Paragraphs 1, 3 and 7 of subsection (e) of section 606 of the tax law, as amended by chapter 28 of the laws of 1987, subparagraph (C) of paragraph 1 as amended by chapter 713 of the laws of 1996 and subparagraph (E) of paragraph 1 as amended by chapter 105 of the laws of 2006, are amended to read as follows:

(1) For purposes of this subsection:

(A) "Qualified taxpayer" means a resident individual of the state who has occupied the same residence for six months or more of the taxable year, and is required or chooses to file a return under this article.

(B) "Household" or "members of the household" means a qualified taxpayer and all other persons, not necessarily related, who have the same residence and share its furnishings, facilities and accommodations. Such terms shall not include a tenant, subtenant, roomer or boarder who is not related to the qualified taxpayer in any degree specified in paragraphs one through eight of subsection (a) of section one hundred fifty-two of the internal revenue code. Provided, however, no person may be a member of more than one household at one time.

[(c)] (C) "Household gross income" means the aggregate adjusted gross income of all ADULT members of the household for the taxable year as reported for federal income tax purposes, or which would be reported as adjusted gross income if a federal income tax return were required to be 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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twelve OF THIS ARTICLE but without the modifications in subsection (c) of such section, plus any portion of the gain from the sale or exchange of property otherwise excluded from such amount; earned income from sources without the United States excludable from federal gross income by section nine hundred eleven of the internal revenue code; support money not included in adjusted gross income; nontaxable strike benefits; supplemental security income payments; the gross amount of any pension or annuity benefits to the extent not included in such adjusted gross income (including, but not limited to, railroad retirement benefits and all payments received under the federal social security act and veterans' disability pensions); nontaxable interest received from the state of New York, its agencies, instrumentalities, public corporations, or political subdivisions (including a public corporation created pursuant to agreement or compact with another state or Canada); workers' compensation; the gross amount of "loss-of-time" insurance; and the amount of cash public assistance and relief, other than medical assistance for the needy, paid to or for the benefit of the qualified taxpayer or members of his household. Household gross income shall not include surplus foods or other relief in kind or payments made to individuals because of their status as victims of Nazi persecution as defined in P.L. 103-286. Provided, further, household gross income shall only include all such income received by all members of the household while members of such household. PROVIDED, FURTHER, THAT HOUSEHOLD GROSS INCOME SHALL NOT INCLUDE INCOME OF HOUSEHOLD MEMBERS WHO ARE UNDER THE AGE OF EIGHTEEN, OR INCOME OF HOUSEHOLD MEMBERS UNDER THE AGE OF TWENTY-ONE IF SUCH INDIVIDUALS ATTEND AN ACCREDITED COLLEGE OR UNIVERSITY AT LEAST PART-TIME.

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

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

tioned to such residence. If a household owns and occupies two or more residences during different periods in the same taxable year, qualifying real property taxes shall be the sum of the prorated qualifying real property taxes attributable to the household during the periods such household occupies each of such residences. If the household owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, it may include both the proration of qualifying real property taxes on the residence owned and the real property tax equivalent with respect to the months the residence is rented. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupying such residence for six months or more of the taxable year owns or has owned the residence and paid such taxes.

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

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

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

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

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

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

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

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

Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the fol-

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

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
$1,000 or less	$375
Over $1,000 but not over $2,000	$358
Over $2,000 but not over $3,000	$341
Over $3,000 but not over $4,000	$324
Over $4,000 but not over $5,000	$307
Over $5,000 but not over $6,000	$290
Over $6,000 but not over $7,000	$273
Over $7,000 but not over $8,000	$256
Over $8,000 but not over $9,000	$239
Over $9,000 but not over $10,000	$222
Over $10,000 but not over $11,000	$205
Over $11,000 but not over $12,000	$188
Over $12,000 but not over $13,000	$171
Over $13,000 but not over $14,000	$154
Over $14,000 but not over $15,000	$137
Over $15,000 but not over $16,000	$120
Over $16,000 but not over $17,000	$103
Over $17,000 [but not over $18,000]	$ 86

(B) For all other qualified taxpayers the amount of the credit allowable under this subsection shall be fifty percent of excess real property taxes or the excess of the real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
$3,000 or less	3 1/2
Over $3,000 but not over $5,000	4
Over $5,000 but not over $7,000	4 1/2
Over $7,000 but not over $9,000	5
Over $9,000 but not over $11,000	5 1/2
Over $11,000 but not over $14,000	6
Over $14,000 [but not over $18,000]	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

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

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

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

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

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

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

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

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

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

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