

5334

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the
Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to allowing a
real property tax freeze for property owned by certain persons over 65
years of age

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

1 Section 1. The real property tax law is amended by adding a new
2 section 467-g to read as follows:
3 S 467-G. REAL PROPERTY TAX FREEZE FOR CERTAIN PERSONS OVER SIXTY-FIVE
4 YEARS OF AGE. 1. REAL PROPERTY OWNED BY ONE OR MORE PERSONS, EACH OF
5 WHOM IS SIXTY-FIVE YEARS OF AGE OR OVER, OR REAL PROPERTY OWNED BY
6 HUSBAND AND WIFE, ONE OF WHOM IS SIXTY-FIVE YEARS OF AGE OR OVER, MAY BE
7 SUBJECT TO A TAXATION FREEZE PROVIDED THE GOVERNING BOARD OF ANY MUNICI-
8 PAL CORPORATION IN WHICH THE REAL PROPERTY IS LOCATED AFTER PUBLIC
9 HEARING, ADOPTS A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING THAT REAL
10 PROPERTY TAXES FOR SUCH PROPERTY BE FROZEN AT THE AMOUNTS PAYABLE AT THE
11 TIME SUCH APPLICATION FOR FREEZE IS MADE.
12 2. NO FREEZE SHALL BE GRANTED:
13 (A) IF THE INCOME OF THE OWNER OR THE COMBINED INCOME OF THE OWNERS OF
14 THE PROPERTY FOR THE INCOME TAX YEAR IMMEDIATELY PRECEDING THE DATE OF
15 MAKING APPLICATION FOR THE FREEZE EXCEEDS THE SUM OF THIRTY-TWO THOUSAND
16 DOLLARS. INCOME TAX YEAR SHALL MEAN THE TWELVE MONTH PERIOD FOR WHICH
17 THE OWNER OR OWNERS FILED A FEDERAL PERSONAL INCOME TAX RETURN, OR IF NO
18 SUCH RETURN IS FILED, THE CALENDAR YEAR. WHERE TITLE IS VESTED IN EITHER
19 THE HUSBAND OR THE WIFE, THEIR COMBINED INCOME MAY NOT EXCEED SUCH SUM.
20 SUCH INCOME SHALL INCLUDE SOCIAL SECURITY AND RETIREMENT BENEFITS,
21 INTEREST, DIVIDENDS, TOTAL GAIN FROM THE SALE OR EXCHANGE OF A CAPITAL
22 ASSET WHICH MAY BE OFFSET BY A LOSS FROM THE SALE OR EXCHANGE OF A CAPI-
23 TAL ASSET IN THE SAME INCOME TAX YEAR, NET RENTAL INCOME, SALARY OR
24 EARNINGS, AND NET INCOME FROM SELF-EMPLOYMENT, BUT SHALL NOT INCLUDE A

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

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1 RETURN OF CAPITAL, GIFTS OR INHERITANCES. IN COMPUTING NET RENTAL INCOME
2 AND NET INCOME FROM SELF-EMPLOYMENT NO DEPRECIATION DEDUCTION SHALL BE
3 ALLOWED FOR THE EXHAUSTION, WEAR AND TEAR OF REAL OR PERSONAL PROPERTY
4 HELD FOR THE PRODUCTION OF INCOME;

5 (B) UNLESS THE TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED IN THE
6 OWNER OR ONE OF THE OWNERS OF THE PROPERTY FOR AT LEAST TWENTY-FOUR
7 CONSECUTIVE MONTHS PRIOR TO THE DATE OF MAKING APPLICATION FOR A FREEZE,
8 PROVIDED, HOWEVER, THAT IN THE EVENT OF THE DEATH OF EITHER A HUSBAND OR
9 WIFE IN WHOSE NAME TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED AT THE
10 TIME OF DEATH AND THEN BECOMES VESTED SOLELY IN THE SURVIVOR BY VIRTUE
11 OF DEVISE BY OR DESCENT FROM THE DECEASED HUSBAND OR WIFE, THE TIME OF
12 OWNERSHIP OF THE PROPERTY BY THE DECEASED HUSBAND OR WIFE SHALL BE
13 DEEMED ALSO A TIME OF OWNERSHIP BY THE SURVIVOR AND SUCH OWNERSHIP SHALL
14 BE DEEMED CONTINUOUS FOR THE PURPOSES OF COMPUTING SUCH PERIOD OF TWEN-
15 TY-FOUR CONSECUTIVE MONTHS. IN THE EVENT OF A TRANSFER BY EITHER A
16 HUSBAND OR WIFE TO THE OTHER SPOUSE OF ALL OR PART OF THE TITLE TO THE
17 PROPERTY, THE TIME OF OWNERSHIP OF THE PROPERTY BY THE TRANSFEROR SPOUSE
18 SHALL BE DEEMED ALSO A TIME OF OWNERSHIP BY THE TRANSFEREE SPOUSE AND
19 SUCH OWNERSHIP SHALL BE DEEMED CONTINUOUS FOR THE PURPOSES OF COMPUTING
20 SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS. WHERE PROPERTY OF THE
21 OWNER OR OWNERS HAS BEEN ACQUIRED TO REPLACE PROPERTY FORMERLY OWNED BY
22 SUCH OWNER OR OWNERS AND TAKEN BY EMINENT DOMAIN OR OTHER INVOLUNTARY
23 PROCEEDING, EXCEPT A TAX SALE, THE PERIOD OF OWNERSHIP OF THE FORMER
24 PROPERTY SHALL BE COMBINED WITH THE PERIOD OF OWNERSHIP OF THE PROPERTY
25 FOR WHICH APPLICATION IS MADE FOR A FREEZE AND SUCH PERIODS OF OWNERSHIP
26 SHALL BE DEEMED TO BE CONSECUTIVE FOR PURPOSES OF THIS SECTION. WHERE A
27 RESIDENCE IS SOLD AND REPLACED WITH ANOTHER WITHIN ONE YEAR AND BOTH
28 RESIDENCES ARE WITHIN THE STATE, THE PERIOD OF OWNERSHIP OF BOTH PROPER-
29 TIES SHALL BE DEEMED CONSECUTIVE FOR PURPOSES OF A FREEZE FROM TAXATION
30 BY A MUNICIPALITY WITHIN THE STATE GRANTING SUCH FREEZE. WHERE THE
31 OWNER OR OWNERS TRANSFER TITLE TO PROPERTY WHICH AS OF THE DATE OF
32 TRANSFER WAS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF THIS SECTION,
33 THE REACQUISITION OF TITLE BY SUCH OWNER OR OWNERS WITHIN NINE MONTHS OF
34 THE DATE OF TRANSFER SHALL BE DEEMED TO SATISFY THE REQUIREMENT OF THIS
35 PARAGRAPH THAT THE TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED IN THE
36 OWNER OR ONE OF THE OWNERS FOR SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE
37 MONTHS. WHERE, UPON OR SUBSEQUENT TO THE DEATH OF AN OWNER OR OWNERS,
38 TITLE TO PROPERTY WHICH AS OF THE DATE OF SUCH DEATH WAS EXEMPT FROM
39 TAXATION UNDER SUCH PROVISIONS, BECOMES VESTED, BY VIRTUE OF DEVISE OR
40 DESCENT FROM THE DECEASED OWNER OR OWNERS, OR BY TRANSFER BY ANY OTHER
41 MEANS WITHIN NINE MONTHS AFTER SUCH DEATH, SOLELY IN A PERSON OR PERSONS
42 WHO, AT THE TIME OF SUCH DEATH, MAINTAINED SUCH PROPERTY AS A PRIMARY
43 RESIDENCE, THE REQUIREMENT OF THIS PARAGRAPH THAT THE TITLE OF THE PROP-
44 erty SHALL HAVE BEEN VESTED IN THE OWNER OR ONE OF THE OWNERS FOR SUCH
45 PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS SHALL BE DEEMED SATISFIED;

46 (C) UNLESS THE PROPERTY IS USED EXCLUSIVELY FOR RESIDENTIAL PURPOSES,
47 PROVIDED, HOWEVER, THAT IN THE EVENT ANY PORTION OF SUCH PROPERTY IS NOT
48 SO USED EXCLUSIVELY FOR RESIDENTIAL PURPOSES BUT IS USED FOR OTHER
49 PURPOSES, SUCH PORTION SHALL BE SUBJECT TO TAXATION AND THE REMAINING
50 PORTION ONLY SHALL BE ENTITLED TO A FREEZE PROVIDED BY THIS SECTION;

51 (D) UNLESS THE REAL PROPERTY IS THE LEGAL RESIDENCE OF AND IS OCCUPIED
52 IN WHOLE OR IN PART BY THE OWNER OR BY ALL OF THE OWNERS OF THE PROPER-
53 TY, PROVIDED THAT AN OWNER WHO IS ABSENT WHILE RECEIVING HEALTH-RELATED
54 CARE AS AN INPATIENT OF A RESIDENTIAL HEALTH CARE FACILITY, AS DEFINED
55 IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, SHALL BE
56 DEEMED TO REMAIN A LEGAL RESIDENT AND AN OCCUPANT OF THE PROPERTY WHILE

1 SO CONFINED AND INCOME ACCRUING TO THAT PERSON SHALL BE INCOME ONLY TO
2 THE EXTENT THAT IT EXCEEDS THE AMOUNT PAID BY SUCH OWNER, SPOUSE, OR
3 CO-OWNER FOR CARE IN THE FACILITY; AND PROVIDED FURTHER, THAT DURING
4 SUCH CONFINEMENT SUCH PROPERTY IS NOT OCCUPIED BY OTHER THAN THE SPOUSE
5 OR CO-OWNER OF SUCH OWNER.

6 3. EACH GOVERNING BOARD OF ANY MUNICIPAL CORPORATION SHALL NOTIFY, OR
7 CAUSE TO BE NOTIFIED, EACH PERSON OWNING RESIDENTIAL REAL PROPERTY IN
8 SUCH MUNICIPAL CORPORATION OF THE PROVISIONS OF THIS SECTION. THE
9 PROVISIONS OF THIS SUBDIVISION MAY BE MET BY A NOTICE OR LEGEND SENT ON
10 OR WITH EACH TAX BILL TO SUCH PERSONS READING "YOU MAY BE ELIGIBLE FOR A
11 SENIOR CITIZEN TAX FREEZE. SENIOR CITIZENS HAVE UNTIL MONTH.....,
12 DAY....., YEAR....., TO APPLY FOR SUCH FREEZE. FOR INFORMATION
13 PLEASE CALL OR WRITE," FOLLOWED BY THE NAME, TELEPHONE NUMBER
14 AND/OR ADDRESS OF A PERSON OR DEPARTMENT SELECTED BY THE COUNTY TO
15 EXPLAIN THE PROVISIONS OF THIS SECTION. FAILURE TO NOTIFY, OR CAUSE TO
16 BE NOTIFIED ANY PERSON WHO IS IN FACT, ELIGIBLE TO RECEIVE A FREEZE
17 PROVIDED BY THIS SECTION OR THE FAILURE OF SUCH PERSON TO RECEIVE THE
18 SAME SHALL NOT PREVENT THE LEVY, COLLECTION AND ENFORCEMENT OF THE
19 PAYMENT OF THE TAXES ON PROPERTY OWNED BY SUCH PERSON.

20 4. APPLICATION FOR SUCH FREEZE MUST BE MADE BY THE OWNER, OR ALL OF
21 THE OWNERS OF THE PROPERTY, ON FORMS PRESCRIBED BY THE STATE BOARD TO BE
22 FURNISHED BY THE APPROPRIATE ASSESSING AUTHORITY AND SHALL FURNISH THE
23 INFORMATION AND BE EXECUTED IN THE MANNER REQUIRED OR PRESCRIBED IN SUCH
24 FORMS, AND SHALL BE FILED IN SUCH ASSESSOR'S OFFICE ON OR BEFORE THE
25 APPROPRIATE TAXABLE STATUS DATE.

26 5. AT LEAST SIXTY DAYS PRIOR TO THE APPROPRIATE TAXABLE STATUS DATE,
27 THE ASSESSING AUTHORITY SHALL MAIL TO EACH PERSON WHO WAS GRANTED A
28 FREEZE PURSUANT TO THIS SECTION ON THE LATEST COMPLETED ASSESSMENT ROLL
29 AN APPLICATION FORM AND A NOTICE THAT SUCH APPLICATION MUST BE FILED ON
30 OR BEFORE THE TAXABLE STATUS DATE AND BE APPROVED IN ORDER FOR THE
31 FREEZE TO BE GRANTED. THE ASSESSING AUTHORITY SHALL, WITHIN THREE DAYS
32 OF THE COMPLETION AND FILING OF THE TENTATIVE ASSESSMENT ROLL, NOTIFY BY
33 MAIL ANY APPLICANT WHO HAS INCLUDED WITH HIS APPLICATION AT LEAST ONE
34 SELF-ADDRESSED, PRE-PAID ENVELOPE, OF THE APPROVAL OR DENIAL OF THE
35 APPLICATION; PROVIDED, HOWEVER, THAT THE ASSESSING AUTHORITY SHALL, UPON
36 THE RECEIPT AND FILING OF THE APPLICATION, SEND BY MAIL NOTIFICATION OF
37 RECEIPT TO ANY APPLICANT WHO HAS INCLUDED TWO OF SUCH ENVELOPES WITH THE
38 APPLICATION. WHERE AN APPLICANT IS ENTITLED TO A NOTICE OF DENIAL
39 PURSUANT TO THIS SUBDIVISION, SUCH NOTICE SHALL BE ON A FORM PRESCRIBED
40 BY THE STATE BOARD AND SHALL STATE THE REASONS FOR SUCH DENIAL AND SHALL
41 FURTHER STATE THAT THE APPLICANT MAY HAVE SUCH DETERMINATION REVIEWED IN
42 THE MANNER PROVIDED BY LAW. FAILURE TO MAIL ANY SUCH APPLICATION FORM
43 OR NOTICES OR THE FAILURE OF SUCH PERSON TO RECEIVE ANY OF THE SAME
44 SHALL NOT PREVENT THE LEVY, COLLECTION AND ENFORCEMENT OF THE PAYMENT OF
45 THE TAXES ON PROPERTY OWNED BY SUCH PERSON.

46 6. ANY CONVICTION OF HAVING MADE ANY WILFUL FALSE STATEMENT IN THE
47 APPLICATION FOR SUCH FREEZE, SHALL BE PUNISHABLE BY A FINE OF NOT MORE
48 THAN ONE HUNDRED DOLLARS AND SHALL DISQUALIFY THE APPLICANT OR APPLI-
49 CANTS FROM FURTHER FREEZES FOR A PERIOD OF FIVE YEARS.

50 7. NO MUNICIPALITY SHALL ADOPT A LOCAL LAW, ORDINANCE OR RESOLUTION
51 PURSUANT TO THIS SECTION IF SUCH MUNICIPALITY HAS IN EFFECT A LOCAL LAW,
52 ORDINANCE OR RESOLUTION PERMITTING A REAL PROPERTY TAX EXEMPTION PURSU-
53 ANT TO SECTION FOUR HUNDRED SIXTY-SEVEN OF THIS ARTICLE.

54 S 2. Section 467 of the real property tax law is amended by adding a
55 new subdivision 11 to read as follows:

1 11. NO MUNICIPALITY SHALL ADOPT A LOCAL LAW, ORDINANCE OR RESOLUTION
2 PURSUANT TO THIS SECTION IF SUCH MUNICIPALITY HAS IN EFFECT A LOCAL LAW,
3 ORDINANCE OR RESOLUTION PERMITTING A REAL PROPERTY TAX FREEZE PURSUANT
4 TO SECTION FOUR HUNDRED SIXTY-SEVEN-G OF THIS ARTICLE.

5 S 3. This act shall take effect on the first of February next succeed-
6 ing the date on which it shall have become a law and shall apply to
7 assessment rolls prepared on the basis of taxable status dates occurring
8 on or after such date.