

7244

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 26, 2009

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Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to a credit against personal income taxes for certain tuition expenses; to amend the tax law and the administrative code of the city of New York, in relation to providing for a modification of elementary and secondary school tuition for personal income tax purposes; and repealing certain provisions of such laws relating thereto

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

1     Section 1. Section 606 of the tax law is amended by adding a new  
2     subsection (qq) to read as follows:  
3     (QQ) TUITION TAX CREDIT. (1) GENERAL. A RESIDENT TAXPAYER SHALL BE  
4     ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN THE AMOUNT  
5     OF TEN PERCENT OF THE EARNED INCOME CREDIT SUCH TAXPAYER IS ALLOWED  
6     UNDER SECTION THIRTY-TWO OF THE INTERNAL REVENUE CODE FOR THE SAME TAXA-  
7     BLE YEAR, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY  
8     OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT  
9     LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR, FOR THE EDUCATION OF  
10    SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED THAT SUCH  
11    CREDIT SHALL NOT EXCEED FIVE HUNDRED DOLLARS PER DEPENDENT CHILD AND  
12    PROVIDED FURTHER THAT SUCH TAXPAYER IS ALLOWED AN EXEMPTION UNDER  
13    SECTION SIX HUNDRED SIXTEEN OF THIS ARTICLE FOR SUCH DEPENDENT. THE  
14    CREDIT UNDER THIS SUBSECTION SHALL NOT EXCEED THE AMOUNT PAID FOR EACH  
15    SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR  
16    NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.  
17    (2) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBSECTION, SHALL MEAN  
18    THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE  
19    ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTA-  
20    RY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

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

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1 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
2 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
3 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
4 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF  
5 THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE  
6 VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252,  
7 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION  
8 UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)(3) OF THE  
9 INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO  
10 THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF  
11 NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR  
12 THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH  
13 RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE  
14 COMMISSIONER MAY REQUIRE.

15 (C) "PUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
16 ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT  
17 TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION  
18 THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY  
19 CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION  
20 LAW.

21 (D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBSECTION, SHALL MEAN THE  
22 MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

23 S 2. Subsection (j) of section 612 of the tax law is REPEALED and a  
24 new subsection (j) is added to read as follows:

25 (J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTI-  
26 TLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT  
27 NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH,  
28 MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR  
29 SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST  
30 THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH  
31 DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVID-  
32 UAL IS ALLOWED AN EXEMPTION UNDER SECTION SIX HUNDRED SIXTEEN OF THIS  
33 PART FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER  
34 THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT  
35 IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL  
36 FOR SUCH EDUCATION OF SUCH DEPENDENT.

37 (A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,  
38 IF THE FEDERAL THE AMOUNT  
39 ADJUSTED GROSS ALLOWABLE FOR EACH  
40 INCOME IS: DEPENDENT IS:

41	LESS THAN \$115,000	\$2,500
42	115,000--119,999	2,150
43	120,000--124,999	1,800
44	125,000--129,999	1,450
45	130,000--134,999	1,100
46	135,000--139,999	750
47	140,000--144,999	400
48	145,000--149,999	50
49	150,000 AND OVER	0

50 (B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,  
51 IF THE FEDERAL THE AMOUNT  
52 ADJUSTED GROSS ALLOWABLE FOR EACH  
53 INCOME IS: DEPENDENT IS:

54	LESS THAN \$115,000	\$5,000
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1	115,000--119,999	4,300
2	120,000--124,999	3,600
3	125,000--129,999	2,900
4	130,000--134,999	2,200
5	135,000--139,999	1,500
6	140,000--144,999	800
7	145,000--149,999	100
8	150,000 AND OVER	0

9 (C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,  
 10 IF THE FEDERAL THE AMOUNT  
 11 ADJUSTED GROSS ALLOWABLE FOR EACH  
 12 INCOME IS: DEPENDENT IS:

13	LESS THAN \$115,000	\$7,500
14	115,000--119,999	6,450
15	120,000--124,999	5,400
16	125,000--129,999	4,350
17	130,000--134,999	3,300
18	135,000--139,999	2,250
19	140,000--144,999	1,200
20	145,000--149,999	150
21	150,000 AND OVER	0

22 (D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,  
 23 IF THE FEDERAL THE AMOUNT  
 24 ADJUSTED GROSS ALLOWABLE FOR EACH  
 25 INCOME IS: DEPENDENT IS:

26	LESS THAN \$115,000	\$10,000
27	115,000--119,999	8,750
28	120,000--124,999	7,500
29	125,000--129,999	6,250
30	130,000--134,999	5,000
31	135,000--139,999	3,750
32	140,000--144,999	2,500
33	145,000--149,999	1,250
34	150,000 AND OVER	0

35 (2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED  
 36 GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL  
 37 TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS,  
 38 FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS  
 39 SUBSECTION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE  
 40 SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE  
 41 TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR  
 42 THE DEPENDENT ON HIS OR HER NEW YORK STATE INCOME TAX RETURN SHALL BE  
 43 ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS  
 44 SUBSECTION.

45 (3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBSECTION, SHALL MEAN  
 46 THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE  
 47 ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTA-  
 48 RY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

49 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
 50 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
 51 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
 52 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF  
 53 THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE  
 54 VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT.

252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C) (3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

(C) "PUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBSECTION, SHALL MEAN THE MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

(4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS SUBSECTION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE.

S 3. Subdivision (j) of section 11-1712 of the administrative code of the city of New York is REPEALED and a new subdivision (j) is added to read as follows:

(J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTITLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVIDUAL IS ALLOWED AN EXEMPTION UNDER SECTION 11-1716 OF THIS SUBCHAPTER FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.

(A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,  
IF THE FEDERAL THE AMOUNT  
ADJUSTED GROSS ALLOWABLE FOR EACH  
INCOME IS: DEPENDENT IS:

LESS THAN \$115,000	\$2,500
115,000--119,999	2,150
120,000--124,999	1,800
125,000--129,999	1,450
130,000--134,999	1,100
135,000--139,999	750
140,000--144,999	400
145,000--149,999	50
150,000 AND OVER	0

(B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,  
IF THE FEDERAL THE AMOUNT  
ADJUSTED GROSS ALLOWABLE FOR EACH  
INCOME IS: DEPENDENT IS:

LESS THAN \$115,000	\$5,000
115,000--119,999	4,300
120,000--124,999	3,600

1	125,000--129,999	2,900
2	130,000--134,999	2,200
3	135,000--139,999	1,500
4	140,000--144,999	800
5	145,000--149,999	100
6	150,000 AND OVER	0

7 (C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,  
 8 IF THE FEDERAL THE AMOUNT  
 9 ADJUSTED GROSS ALLOWABLE FOR EACH  
 10 INCOME IS: DEPENDENT IS:

11	LESS THAN \$115,000	\$7,500
12	115,000--119,999	6,450
13	120,000--124,999	5,400
14	125,000--129,999	4,350
15	130,000--134,999	3,300
16	135,000--139,999	2,250
17	140,000--144,999	1,200
18	145,000--149,999	150
19	150,000 AND OVER	0

20 (D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,  
 21 IF THE FEDERAL THE AMOUNT  
 22 ADJUSTED GROSS ALLOWABLE FOR EACH  
 23 INCOME IS: DEPENDENT IS:

24	LESS THAN \$115,000	\$10,000
25	115,000--119,999	8,750
26	120,000--124,999	7,500
27	125,000--129,999	6,250
28	130,000--134,999	5,000
29	135,000--139,999	3,750
30	140,000--144,999	2,500
31	145,000--149,999	1,250
32	150,000 AND OVER	0

33 (2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED  
 34 GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX  
 35 RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR  
 36 PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBDIVISION,  
 37 THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE  
 38 AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR.  
 39 THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT  
 40 ON HIS OR HER NEW YORK CITY INCOME TAX RETURN SHALL BE ALLOWED TO TAKE  
 41 THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

42 (3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBDIVISION, SHALL  
 43 MEAN THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER  
 44 FOR THE ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN  
 45 ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

46 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY  
 47 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
 48 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
 49 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR  
 50 OF THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF  
 51 TITLE VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78  
 52 STAT. 252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX  
 53 EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)  
 54 (3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL

1 FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED  
2 LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARA-  
3 GRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER  
4 ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH  
5 CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

6 (C) "PUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY  
7 ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT  
8 TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION  
9 THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY  
10 CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION  
11 LAW.

12 (D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBDIVISION, SHALL MEAN THE  
13 MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

14 (4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS  
15 SUBDIVISION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER  
16 MAY REQUIRE.

17 S 4. This act shall take effect immediately and shall apply to taxable  
18 years beginning on or after January 1, 2009.