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

3802

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

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

AN ACT to amend the tax law, the real property tax law and the general municipal law, in relation to providing personal income tax credit for real property taxes paid by honorably discharged veterans or the unremarried surviving spouses of such veterans and to repeal sections 458 and 458-a of the real property tax law and sections 11-245.45, 11-245.5, 11-245.6 and 11-245.7 of the administrative code of the city of New York relating thereto

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 (qq) to read as follows:

(QQ) REAL PROPERTY TAX CREDIT FOR VETERANS. (1) A TAXPAYER WHO IS AN HONORABLY DISCHARGED VETERAN OF THE SPANISH-AMERICAN WAR, THE MEXICAN BORDER PERIOD, WORLD WAR I, WORLD WAR II, THE HOSTILITIES WHICH COMMENCED JUNE TWENTY-SEVENTH, NINETEEN HUNDRED FIFTY TO THE THIRTY-FIRST OF JANUARY, NINETEEN HUNDRED FIFTY-FIVE, OR THE HOSTILITIES PARTICIPATED IN BY THE MILITARY FORCES OF THE UNITED STATES, FROM THE FIRST DAY OF JANUARY, NINETEEN HUNDRED SIXTY-THREE, TO THE SEVENTH OF MAY, NINETEEN HUNDRED SEVENTY-FIVE; OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH VETERAN SHALL BE ALLOWED A CREDIT OF FIFTEEN PERCENT OF REAL PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) ANY SUCH TAXPAYER WHO SERVED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH VETERAN, SHALL BE ALLOWED AN ADDITIONAL CREDIT OF TEN PERCENT OF REAL PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY, NOT TO EXCEED TWO HUNDRED DOLLARS, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

LBD05880-01-9

(3) ANY SUCH TAXPAYER WHO SUSTAINED A ONE HUNDRED PERCENT SERVICE CONNECTED DISABILITY, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH TAXPAYER, SHALL BE ALLOWED A CREDIT OF SIXTY PERCENT OF REAL PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY, NOT TO EXCEED ONE THOUSAND DOLLARS, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(4) ANY SUCH TAXPAYER WHO SUSTAINED A SERVICE CONNECTED DISABILITY IN EXCESS OF FIFTY PERCENT BUT LESS THAN ONE HUNDRED PERCENT, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH TAXPAYER, SHALL BE ALLOWED A CREDIT OF FORTY-FIVE PERCENT OF REAL PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY, NOT TO EXCEED SEVEN HUNDRED FIFTY DOLLARS, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(5) ANY SUCH TAXPAYER WHO SUSTAINED A SERVICE CONNECTED DISABILITY OF LESS THAN FIFTY PERCENT, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH TAXPAYER, SHALL BE ALLOWED A CREDIT OF THIRTY PERCENT OF REAL PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY, NOT TO EXCEED FIVE HUNDRED DOLLARS, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(6) A TAXPAYER, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH TAXPAYER, DESCRIBED IN PARAGRAPHS ONE THROUGH FIVE, RESPECTIVELY, OF THIS SUBSECTION WHO RENTED REAL PROPERTY FOR PERSONAL RESIDENTIAL PURPOSES SHALL DETERMINE THE PERCENTAGE OF TOTAL RENTAL PAYMENTS ATTRIBUTABLE TO PAYMENT OF REAL PROPERTY TAXES IMPOSED UPON THE LESSOR AND TREAT SUCH PERCENTAGE OF PAYMENTS, FOR PURPOSES OF CREDITS PERMITTED BY THIS SUBSECTION, AS IF SUCH TAXPAYER HAD PAID REAL PROPERTY TAXES DIRECTLY TO THE TAXING MUNICIPALITY.

(7) A TAXPAYER, OR THE UNREMARRIED SURVIVING SPOUSE OF SUCH TAXPAYER, DESCRIBED IN PARAGRAPHS ONE THROUGH FIVE, RESPECTIVELY, OF THIS SUBSECTION WHO OWNS SHARES OF A RESIDENTIAL COOPERATIVE CORPORATION AND OCCUPIES AN APARTMENT AS HIS OR HER PRINCIPAL RESIDENCE PURSUANT TO PROPRIETARY LEASE FOR SAID APARTMENT, SHALL COMPUTE HIS OR HER PROPORTIONATE SHARE OF THE REAL PROPERTY TAXES PAID BY THE COOPERATIVE CORPORATION FOR PURPOSES OF CREDITS PERMITTED BY THIS SUBSECTION AS IF SUCH TAXPAYER HAD PAID REAL PROPERTY TAXES DIRECTLY TO THE TAXING MUNICIPALITY.

(8) SUCH TAX CREDITS WILL BE GRANTED ON "QUALIFYING REAL PROPERTY". "QUALIFYING REAL PROPERTY" MEANS PROPERTY CONTAINING THREE OR LESS RESIDENTIAL OR COMMERCIAL UNITS (BUT NOT LESS THAN ONE RESIDENTIAL UNIT) OWNED OR, IN THE CASE OF AN APARTMENT OR OTHER SUCH UNIT, RENTED BY A TAXPAYER DESCRIBED IN THIS SUBSECTION OR IN THE CASE OF A COOPERATIVE APARTMENT, OCCUPIED BY A TENANT-SHAREHOLDER OF A COOPERATIVE CORPORATION WHO IS A TAXPAYER DESCRIBED IN THIS SUBSECTION, WHICH IS USED WHOLLY OR PARTIALLY FOR RESIDENTIAL PURPOSES. SUCH PROPERTY, OR A UNIT THEREOF, MUST BE THE PRIMARY RESIDENCE OF THE VETERAN OR UNREMARRIED SURVIVING SPOUSE OF THE VETERAN, UNLESS THE VETERAN OR UNREMARRIED SURVIVING SPOUSE IS ABSENT FROM THE PROPERTY DUE TO MEDICAL REASONS OR INSTITUTIONALIZATION. IN THE EVENT THE VETERAN DIES AND THERE IS NO UNREMARRIED SURVIVING SPOUSE, "QUALIFYING REAL PROPERTY" SHALL MEAN PROPERTY CONTAINING THE PRIMARY RESIDENCE OWNED BY A QUALIFIED OWNER PRIOR TO DEATH, PROVIDED THAT THE TITLE TO THE PROPERTY BECOMES VESTED IN THE DEPENDENT FATHER OR MOTHER OR DEPENDENT CHILD OR CHILDREN UNDER TWENTY-ONE YEARS OF AGE OF A VETERAN BY VIRTUE OF DEVISE BY OR DESCENT FROM THE DECEASED QUALIFIED OWNER, PROVIDED THAT THE PROPERTY OR A UNIT THEREOF IS THE PRIMARY RESIDENCE OF ONE OR ALL OF THE DEVISEES.

(9) SUCH VETERANS WHO RECEIVED REAL PROPERTY TAX EXEMPTIONS PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED FIFTY-EIGHT OF THE REAL PROPERTY TAX LAW, FOR ANY REAL PROPERTY TAXABLE YEAR BETWEEN NINETEEN HUNDRED EIGHTY-ONE AND NINETEEN HUNDRED NINETY SHALL RECEIVE EITHER THE

CREDITS PROVIDED FOR IN THIS SUBSECTION OR A CREDIT IN THE AMOUNT OF REAL PROPERTY TAX SAVINGS IN THIS SUBSECTION, RESULTING FROM SUCH EXEMPTIONS FOR ANY ONE OF SUCH REAL PROPERTY TAXABLE YEARS, WHICHEVER IS GREATER.

(10) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBSECTION, SUCH VETERANS WHO HAVE RECEIVED ASSISTANCE FROM THE FEDERAL GOVERNMENT TOWARDS THE ACQUISITION OF A SUITABLE HOUSING UNIT WITH SPECIAL FIXTURES OR MOVABLE FACILITIES MADE NECESSARY BY THE NATURE OF THE VETERAN'S DISABILITY SHALL BE ENTITLED TO A CREDIT EQUAL TO ONE HUNDRED PERCENT OF THE REAL PROPERTY TAXES PAID ON THE VETERAN'S RESIDENCE OR THE RENT ATTRIBUTABLE TO REAL PROPERTY TAXES, INCLUDING SCHOOL TAXES AND SPECIAL ASSESSMENTS, DURING THE CALENDAR YEAR.

(11) CREDITS WHICH EXCEED THE AMOUNT OF TAX DUE SHALL BE REFUNDED TO THE TAXPAYER. THE COMMISSIONER SHALL PREPARE FORMS TO BE USED FOR SUCH REFUNDS BY TAXPAYERS NOT REQUIRED TO FILE RETURNS PURSUANT TO THIS ARTICLE.

(12) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.

S 2. Subdivision 1 of section 844 of the real property tax law, as amended by chapter 654 of the laws of 2004, is amended to read as follows:

1. In any county to which this title is applicable, county taxes shall be apportioned among the cities and towns within the county on the basis of the proportion of the total full valuation of taxable real property within the county which is located within each city and town. This total valuation shall be determined by dividing the taxable assessed value of taxable real property by the appropriate city or town equalization rate as certified by the state board pursuant to this title. For purposes of this section: (a) "taxable real property" excludes real property which, by statute, is wholly exempt from county taxation, (b) "taxable assessed value" is limited to the assessed value actually subject to county taxation except that it also includes the amount of assessed value partially exempt from county taxation pursuant to (i) sections [four hundred fifty-eight,] four hundred sixty and four hundred sixty-four of this chapter, and (ii) such other sections of law as the county legislature designates by resolution to be included in the total valuation. Where the state board furnishes the same state equalization or special equalization rate for two or more of the cities and towns in the county for use by that county in the apportionment of taxes, the state board shall concurrently therewith notify the county that county taxes may be apportioned in the manner provided by subdivision two of this section.

S 3. Section 51 of the general municipal law, as amended by chapter 614 of the laws of 1981, is amended to read as follows:

S 51. Prosecution of officers for illegal acts. All officers, agents, commissioners and other persons acting, or who have acted, for and on behalf of any county, town, village or municipal corporation in this state, and each and every one of them, may be prosecuted, and an action may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to restore and make good, any property, funds or estate of such county, town, village or municipal corporation by any person or corporation whose assessment, or by any number of persons or corporations, jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation or by any person who owns shares in a cooperative housing

corporation where the pro rata share of the assessment attributable to such shares shall amount to one thousand dollars (or by any number of such persons, jointly, the sum of whose pro rata shares shall amount to one thousand dollars) and where the cooperative housing corporation shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon any assessment of the above-named amount within one year previous to the commencement of any such action, or who has been so assessed but has not paid nor shall be liable to pay any or the full amount of taxes on such assessment because of a veteran's [exemption therefrom] CREDIT THERETO pursuant to SUBSECTION (QQ) OF section [four] SIX hundred [fifty-eight] SIX of the [real property] tax law, or who has been so assessed but has not paid nor shall be liable to pay any or the full amount of taxes on such assessment because of an exemption therefrom granted to persons sixty-five years of age or over or their spouses pursuant to the real property tax law. Such person or corporation upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the supreme court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than two hundred and fifty dollars, and to be executed by any two of the plaintiffs, if there be more than one party plaintiff, providing said two parties plaintiff shall severally justify in the sum of five thousand dollars. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of the defendant. The court shall require, when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such bond shall be filed in the office of the county clerk of the county in which the action is brought, and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, if the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consists in any board, officer or agent in any county, town, village or municipal corporation, by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, village or municipal corporation, or by permitting a judgment to be recovered against such county, town, village or municipal corporation, or against himself in his official capacity, either by default or without the interposition and proper presentation of any existing legal or equitable defenses, or by any such officer or agent, retaining or failing to pay over to the proper authorities any funds or property of any county, town, village or municipal corporation, after he shall have ceased to be such officer or agent, the court may, in its discretion, prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, and shall enforce the restitution and recovery thereof, if heretofore or hereafter paid, collected or retained by the person or party heretofore or hereafter receiving or retaining the same, and also may, in its discretion, adjudge and declare the colluding or defaulting official personally

responsible therefor, and out of his property, and that of his bondsmen, if any, provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, village or municipal corporation from a part or the whole thereof; and in case of a judgment the court may in its discretion, vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village or municipal corporation in this state or any body corporate or other unit of local government in this state which possesses the power to levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments or for which taxes or benefit assessments upon real estate may be required pursuant to law to be levied, including the Albany port district commission, are hereby declared to be public records, and shall be open during all regular business hours, subject to reasonable regulations to be adopted by the applicable local legislative body, to the inspection of any taxpayer or registered voter, who may copy, photograph or make photocopies thereof on the premises where such records are regularly kept. This section shall not be so construed as to take away any right of action from any county, town, village or municipal corporation, or from any public officer, but any right of action now existing, or which may hereafter exist in favor of any county, town, village or municipal corporation, or in favor of any officer thereof, may be enforced by action or otherwise by the persons hereinbefore authorized to prosecute and maintain actions; and whenever by the provisions of this section an action may be prosecuted or maintained against any officer or other person, his bondsmen, if any, may be joined in such action or proceeding and their liabilities as such enforced by the proper judgment or direction of the court; but any recovery under the provisions of this article shall be for the benefit of and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, village or municipal corporation, and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, village or municipal corporation or public officer. The provisions of this article shall apply as well to those cases in which the body, board, officer, agent, commissioner or other person above named has not, as to those in which it or he has jurisdiction over the subject-matter of its action.

S 4. Section 11-245.45 of the administrative code of the city of New York is REPEALED.

S 5. Sections 11-245.5, 11-245.6 and 11-245.7 of the administrative code of the city of New York are REPEALED.

S 6. Paragraph (f) of subdivision 2 of section 467-a of the real property tax law, as separately amended by chapters 461 and 473 of the laws of 2008, is amended to read as follows:

(f) For purposes of this subdivision, a property shall be deemed not to be receiving complete or partial real property tax exemption or tax abatement if the property is, or certain dwelling units therein are, receiving benefits pursuant to section four hundred, four hundred two, four hundred four, four hundred six, four hundred eight, four hundred ten, four hundred ten-a, four hundred twelve, four hundred twelve-a, four hundred sixteen, four hundred eighteen, four hundred twenty-a, four

hundred twenty-b, four hundred thirty-six, [four hundred fifty-eight, four hundred fifty-eight-a,] four hundred sixty-two, four hundred sixty-seven, four hundred sixty-seven-b, or four hundred ninety-nine-bbb, or four hundred ninety-nine-bbbb of this article, or if the property is receiving a tax abatement but not a tax exemption pursuant to section four hundred eighty-nine of this article.

S 7. Subdivision (f) of section 1801 of the real property tax law, as amended by chapter 191 of the laws of 2001, is amended to read as follows:

(f) "Base proportion" means either: (1) for a special assessing unit which is not a city, the proportion of the taxable assessed value of real property which each class constituted of the total taxable assessed value of all real property as entered on the final assessment roll completed and filed in calendar year nineteen hundred eighty-one of such special assessing unit or on the part of that assessment roll applicable to a portion of the special assessing unit, except that for town and county special districts not included within the definition of portion, the applicable roll shall be that which was completed and filed in calendar year two thousand one, or (2) for a special assessing unit which is a city, the proportion of the taxable assessed value of real property which each class constituted of the total taxable assessed value of all real property as entered on the final assessment roll completed and filed in calendar year nineteen hundred eighty-four, [and as adjusted to account for properties exempted under section four hundred fifty-eight of this chapter to the extent such properties are taxable for education purposes,] provided, however, that the taxable assessed value of real property subject to a transition assessment pursuant to subdivision three of section eighteen hundred five of this article shall be determined from the lesser of the transition assessment or actual assessment.

S 8. Sections 458 and 458-a of the real property tax law are REPEALED.

S 9. This act shall take effect immediately and shall apply to personal income taxable years beginning on and after January 1, 2010, provided, however, that section four of this act shall take effect January 1, 2010.