

3802

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 28, 2009

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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 unre-married 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:

1     Section 1. Section 606 of the tax law is amended by adding a new  
2     subsection (qq) to read as follows:  
3     (QQ) REAL PROPERTY TAX CREDIT FOR VETERANS. (1) A TAXPAYER WHO IS AN  
4     HONORABLY DISCHARGED VETERAN OF THE SPANISH-AMERICAN WAR, THE MEXICAN  
5     BORDER PERIOD, WORLD WAR I, WORLD WAR II, THE HOSTILITIES WHICH  
6     COMMENCED JUNE TWENTY-SEVENTH, NINETEEN HUNDRED FIFTY TO THE  
7     THIRTY-FIRST OF JANUARY, NINETEEN HUNDRED FIFTY-FIVE, OR THE HOSTILITIES  
8     PARTICIPATED IN BY THE MILITARY FORCES OF THE UNITED STATES, FROM THE  
9     FIRST DAY OF JANUARY, NINETEEN HUNDRED SIXTY-THREE, TO THE SEVENTH OF  
10    MAY, NINETEEN HUNDRED SEVENTY-FIVE; OR THE UNREMARIED SURVIVING SPOUSE  
11    OF SUCH VETERAN SHALL BE ALLOWED A CREDIT OF FIFTEEN PERCENT OF REAL  
12    PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY NOT TO  
13    EXCEED TWO HUNDRED FIFTY DOLLARS AGAINST THE TAX IMPOSED BY THIS ARTI-  
14    CLE.  
15    (2) ANY SUCH TAXPAYER WHO SERVED IN A COMBAT THEATRE OR COMBAT ZONE OF  
16    OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN  
17    RIBBON OR SERVICE MEDAL, OR THE UNREMARIED SURVIVING SPOUSE OF SUCH  
18    VETERAN, SHALL BE ALLOWED AN ADDITIONAL CREDIT OF TEN PERCENT OF REAL  
19    PROPERTY TAXES PAID DURING THE TAXABLE YEAR TO A MUNICIPALITY, NOT TO  
20    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.

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(3) ANY SUCH TAXPAYER WHO SUSTAINED A ONE HUNDRED PERCENT SERVICE CONNECTED DISABILITY, OR THE UNREMARIED 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 UNREMARIED 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 UNREMARIED 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 UNREMARIED 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 UNREMARIED 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 PROPOR-TIONATE SHARE OF THE REAL PROPERTY TAXES PAID BY THE COOPERATIVE CORPO-RATION FOR PURPOSES OF CREDITS PERMITTED BY THIS SUBSECTION AS IF SUCH TAXPAYER HAD PAID REAL PROPERTY TAXES DIRECTLY TO THE TAXING MUNICI-PALITY.

(8) SUCH TAX CREDITS WILL BE GRANTED ON "QUALIFYING REAL PROPERTY". "QUALIFYING REAL PROPERTY" MEANS PROPERTY CONTAINING THREE OR LESS RESI-DENTIAL 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 UNREMARIED SURVIVING SPOUSE OF THE VETERAN, UNLESS THE VETERAN OR UNREMARIED SURVIVING SPOUSE IS ABSENT FROM THE PROPERTY DUE TO MEDICAL REASONS OR INSTITU-TIONALIZATION. IN THE EVENT THE VETERAN DIES AND THERE IS NO UNREMARIED 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 PROP-ERTY TAX LAW, FOR ANY REAL PROPERTY TAXABLE YEAR BETWEEN NINETEEN HUNDRED EIGHTY-ONE AND NINETEEN HUNDRED NINETY SHALL RECEIVE EITHER THE

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

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

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

17 (12) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TO IMPL-  
18 MENT THE PROVISIONS OF THIS SUBSECTION.

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

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

42 S 3. Section 51 of the general municipal law, as amended by chapter  
43 614 of the laws of 1981, is amended to read as follows:

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

1 corporation where the pro rata share of the assessment attributable to  
2 such shares shall amount to one thousand dollars (or by any number of  
3 such persons, jointly, the sum of whose pro rata shares shall amount to  
4 one thousand dollars) and where the cooperative housing corporation  
5 shall be liable to pay taxes on such assessment in the county, town,  
6 village or municipal corporation to prevent the waste or injury of whose  
7 property the action is brought, or who have been assessed or paid taxes  
8 therein upon any assessment of the above-named amount within one year  
9 previous to the commencement of any such action, or who has been so  
10 assessed but has not paid nor shall be liable to pay any or the full  
11 amount of taxes on such assessment because of a veteran's [exemption  
12 therefrom] CREDIT THERETO pursuant to SUBSECTION (QQ) OF section [four]  
13 SIX hundred [fifty-eight] SIX of the [real property] tax law, or who has  
14 been so assessed but has not paid nor shall be liable to pay any or the  
15 full amount of taxes on such assessment because of an exemption there-  
16 from granted to persons sixty-five years of age or over or their spouses  
17 pursuant to the real property tax law. Such person or corporation upon  
18 the commencement of such action, shall furnish a bond to the defendant  
19 therein, to be approved by a justice of the supreme court or the county  
20 judge of the county in which the action is brought, in such penalty as  
21 the justice or judge approving the same shall direct, but not less than  
22 two hundred and fifty dollars, and to be executed by any two of the  
23 plaintiffs, if there be more than one party plaintiff, providing said  
24 two parties plaintiff shall severally justify in the sum of five thou-  
25 sand dollars. Said bond shall be approved by said justice or judge and  
26 be conditioned to pay all costs that may be awarded the defendant in  
27 such action if the court shall finally determine the same in favor of  
28 the defendant. The court shall require, when the plaintiffs shall not  
29 justify as above mentioned, and in any case may require two more suffi-  
30 cient sureties to execute the bond above provided for. Such bond shall  
31 be filed in the office of the county clerk of the county in which the  
32 action is brought, and a copy shall be served with the summons in such  
33 action. If an injunction is obtained as herein provided for, the same  
34 bond may also provide for the payment of the damages arising therefrom  
35 to the party entitled to the money, the auditing, allowing or paying of  
36 which was enjoined, if the court shall finally determine that the plain-  
37 tiff is not entitled to such injunction. In case the waste or injury  
38 complained of consists in any board, officer or agent in any county,  
39 town, village or municipal corporation, by collusion or otherwise,  
40 contracting, auditing, allowing or paying, or conniving at the contract-  
41 ing, audit, allowance or payment of any fraudulent, illegal, unjust or  
42 inequitable claims, demands or expenses, or any item or part thereof  
43 against or by such county, town, village or municipal corporation, or by  
44 permitting a judgment to be recovered against such county, town, village  
45 or municipal corporation, or against himself in his official capacity,  
46 either by default or without the interposition and proper presentation  
47 of any existing legal or equitable defenses, or by any such officer or  
48 agent, retaining or failing to pay over to the proper authorities any  
49 funds or property of any county, town, village or municipal corporation,  
50 after he shall have ceased to be such officer or agent, the court may,  
51 in its discretion, prohibit the payment or collection of any such  
52 claims, demands, expenses or judgments, in whole or in part, and shall  
53 enforce the restitution and recovery thereof, if heretofore or hereafter  
54 paid, collected or retained by the person or party heretofore or here-  
55 after receiving or retaining the same, and also may, in its discretion,  
56 adjudge and declare the colluding or defaulting official personally

1 responsible therefor, and out of his property, and that of his bondsmen,  
2 if any, provide for the collection or repayment thereof, so as to indem-  
3 nify and save harmless the said county, town, village or municipal  
4 corporation from a part or the whole thereof; and in case of a judgment  
5 the court may in its discretion, vacate, set aside and open said judg-  
6 ment, with leave and direction for the defendant therein to interpose  
7 and enforce any existing legal or equitable defense therein, under the  
8 direction of such person as the court may, in its judgment or order,  
9 designate and appoint. All books of minutes, entry or account, and the  
10 books, bills, vouchers, checks, contracts or other papers connected with  
11 or used or filed in the office of, or with any officer, board or commis-  
12 sion acting for or on behalf of any county, town, village or municipal  
13 corporation in this state or any body corporate or other unit of local  
14 government in this state which possesses the power to levy taxes or  
15 benefit assessments upon real estate or to require the levy of such  
16 taxes or assessments or for which taxes or benefit assessments upon real  
17 estate may be required pursuant to law to be levied, including the Alba-  
18 ny port district commission, are hereby declared to be public records,  
19 and shall be open during all regular business hours, subject to reason-  
20 able regulations to be adopted by the applicable local legislative body,  
21 to the inspection of any taxpayer or registered voter, who may copy,  
22 photograph or make photocopies thereof on the premises where such  
23 records are regularly kept. This section shall not be so construed as to  
24 take away any right of action from any county, town, village or municip-  
25 al corporation, or from any public officer, but any right of action now  
26 existing, or which may hereafter exist in favor of any county, town,  
27 village or municipal corporation, or in favor of any officer thereof,  
28 may be enforced by action or otherwise by the persons hereinbefore  
29 authorized to prosecute and maintain actions; and whenever by the  
30 provisions of this section an action may be prosecuted or maintained  
31 against any officer or other person, his bondsmen, if any, may be joined  
32 in such action or proceeding and their liabilities as such enforced by  
33 the proper judgment or direction of the court; but any recovery under  
34 the provisions of this article shall be for the benefit of and shall be  
35 paid to the officer entitled by law to hold and disburse the public  
36 moneys of such county, town, village or municipal corporation, and  
37 shall, to the amount thereof, be credited the defendant in determining  
38 his liability in the action by the county, town, village or municipal  
39 corporation or public officer. The provisions of this article shall  
40 apply as well to those cases in which the body, board, officer, agent,  
41 commissioner or other person above named has not, as to those in which  
42 it or he has jurisdiction over the subject-matter of its action.

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

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

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

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

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

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

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

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

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