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

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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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The real property tax law is amended by adding a new section 467-g to read as follows:

S 467-G. REAL PROPERTY TAX FREEZE FOR CERTAIN PERSONS OVER SIXTY-FIVE YEARS OF AGE. 1. REAL PROPERTY OWNED BY ONE OR MORE PERSONS, EACH OF WHOM IS SIXTY-FIVE YEARS OF AGE OR OVER, OR REAL PROPERTY OWNED BY HUSBAND AND WIFE, ONE OF WHOM IS SIXTY-FIVE YEARS OF AGE OR OVER, MAY BE SUBJECT TO A TAXATION FREEZE PROVIDED THE GOVERNING BOARD OF ANY MUNICIPAL CORPORATION IN WHICH THE REAL PROPERTY IS LOCATED AFTER PUBLIC HEARING, ADOPTS A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING THAT REAL PROPERTY TAXES FOR SUCH PROPERTY BE FROZEN AT THE AMOUNTS PAYABLE AT THE TIME SUCH APPLICATION FOR FREEZE IS MADE.

2. NO FREEZE SHALL BE GRANTED:

(A) IF THE INCOME OF THE OWNER OR THE COMBINED INCOME OF THE OWNERS OF THE PROPERTY FOR THE INCOME TAX YEAR IMMEDIATELY PRECEDING THE DATE OF MAKING APPLICATION FOR THE FREEZE EXCEEDS THE SUM OF THIRTY-TWO THOUSAND DOLLARS. INCOME TAX YEAR SHALL MEAN THE TWELVE MONTH PERIOD FOR WHICH THE OWNER OR OWNERS FILED A FEDERAL PERSONAL INCOME TAX RETURN, OR IF NO SUCH RETURN IS FILED, THE CALENDAR YEAR. WHERE TITLE IS VESTED IN EITHER THE HUSBAND OR THE WIFE, THEIR COMBINED INCOME MAY NOT EXCEED SUCH SUM. SUCH INCOME SHALL INCLUDE SOCIAL SECURITY AND RETIREMENT BENEFITS, INTEREST, DIVIDENDS, TOTAL GAIN FROM THE SALE OR EXCHANGE OF A CAPITAL ASSET WHICH MAY BE OFFSET BY A LOSS FROM THE SALE OR EXCHANGE OF A CAPITAL ASSET IN THE SAME INCOME TAX YEAR, NET RENTAL INCOME, SALARY OR 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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RETURN OF CAPITAL, GIFTS OR INHERITANCES. IN COMPUTING NET RENTAL INCOME AND NET INCOME FROM SELF-EMPLOYMENT NO DEPRECIATION DEDUCTION SHALL BE ALLOWED FOR THE EXHAUSTION, WEAR AND TEAR OF REAL OR PERSONAL PROPERTY HELD FOR THE PRODUCTION OF INCOME;

(B) UNLESS THE TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED IN THE OWNER OR ONE OF THE OWNERS OF THE PROPERTY FOR AT LEAST TWENTY-FOUR CONSECUTIVE MONTHS PRIOR TO THE DATE OF MAKING APPLICATION FOR A FREEZE, PROVIDED, HOWEVER, THAT IN THE EVENT OF THE DEATH OF EITHER A HUSBAND OR WIFE IN WHOSE NAME TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED AT THE TIME OF DEATH AND THEN BECOMES VESTED SOLELY IN THE SURVIVOR BY VIRTUE OF DEVISE BY OR DESCENT FROM THE DECEASED HUSBAND OR WIFE, THE TIME OF OWNERSHIP OF THE PROPERTY BY THE DECEASED HUSBAND OR WIFE SHALL BE DEEMED ALSO A TIME OF OWNERSHIP BY THE SURVIVOR AND SUCH OWNERSHIP SHALL BE DEEMED CONTINUOUS FOR THE PURPOSES OF COMPUTING SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS. IN THE EVENT OF A TRANSFER BY EITHER A HUSBAND OR WIFE TO THE OTHER SPOUSE OF ALL OR PART OF THE TITLE TO THE PROPERTY, THE TIME OF OWNERSHIP OF THE PROPERTY BY THE TRANSFEROR SPOUSE SHALL BE DEEMED ALSO A TIME OF OWNERSHIP BY THE TRANSFEREE SPOUSE AND SUCH OWNERSHIP SHALL BE DEEMED CONTINUOUS FOR THE PURPOSES OF COMPUTING SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS. WHERE PROPERTY OF THE OWNER OR OWNERS HAS BEEN ACQUIRED TO REPLACE PROPERTY FORMERLY OWNED BY SUCH OWNER OR OWNERS AND TAKEN BY EMINENT DOMAIN OR OTHER INVOLUNTARY PROCEEDING, EXCEPT A TAX SALE, THE PERIOD OF OWNERSHIP OF THE FORMER PROPERTY SHALL BE COMBINED WITH THE PERIOD OF OWNERSHIP OF THE PROPERTY FOR WHICH APPLICATION IS MADE FOR A FREEZE AND SUCH PERIODS OF OWNERSHIP SHALL BE DEEMED TO BE CONSECUTIVE FOR PURPOSES OF THIS SECTION. WHERE A RESIDENCE IS SOLD AND REPLACED WITH ANOTHER WITHIN ONE YEAR AND BOTH RESIDENCES ARE WITHIN THE STATE, THE PERIOD OF OWNERSHIP OF BOTH PROPERTIES SHALL BE DEEMED CONSECUTIVE FOR PURPOSES OF A FREEZE FROM TAXATION BY A MUNICIPALITY WITHIN THE STATE GRANTING SUCH FREEZE. WHERE THE OWNER OR OWNERS TRANSFER TITLE TO PROPERTY WHICH AS OF THE DATE OF TRANSFER WAS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF THIS SECTION, THE REACQUISITION OF TITLE BY SUCH OWNER OR OWNERS WITHIN NINE MONTHS OF THE DATE OF TRANSFER SHALL BE DEEMED TO SATISFY THE REQUIREMENT OF THIS PARAGRAPH THAT THE TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED IN THE OWNER OR ONE OF THE OWNERS FOR SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS. WHERE, UPON OR SUBSEQUENT TO THE DEATH OF AN OWNER OR OWNERS, TITLE TO PROPERTY WHICH AS OF THE DATE OF SUCH DEATH WAS EXEMPT FROM TAXATION UNDER SUCH PROVISIONS, BECOMES VESTED, BY VIRTUE OF DEVISE OR DESCENT FROM THE DECEASED OWNER OR OWNERS, OR BY TRANSFER BY ANY OTHER MEANS WITHIN NINE MONTHS AFTER SUCH DEATH, SOLELY IN A PERSON OR PERSONS WHO, AT THE TIME OF SUCH DEATH, MAINTAINED SUCH PROPERTY AS A PRIMARY RESIDENCE, THE REQUIREMENT OF THIS PARAGRAPH THAT THE TITLE OF THE PROPERTY SHALL HAVE BEEN VESTED IN THE OWNER OR ONE OF THE OWNERS FOR SUCH PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS SHALL BE DEEMED SATISFIED;

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

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

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

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

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

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

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

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

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

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

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