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

5749

2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

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 establishing an income tax credit for qualified elementary education, secondary education and home instruction expenses

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) CREDIT FOR QUALIFIED ELEMENTARY EDUCATION, SECONDARY EDUCATION, AND HOME INSTRUCTION EXPENSES. (1) FOR PURPOSES OF THIS SUBSECTION:

(A) "ELIGIBLE DEPENDENT" SHALL MEAN ANY INDIVIDUAL WHO IS A DEPENDENT OF THE TAXPAYER WITH RESPECT TO WHOM AN EXEMPTION IS ALLOWED UNDER SECTION ONE HUNDRED FIFTY-TWO OF THE INTERNAL REVENUE CODE.

(B) "QUALIFIED ELEMENTARY AND SECONDARY EDUCATIONAL INSTITUTIONS" SHALL MEAN:

(I) ANY ELEMENTARY OR SECONDARY SCHOOL OF A PUBLIC SCHOOL DISTRICT LOCATED IN THIS STATE HOWEVER CREATED; AND

(II) ANY NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THIS STATE WHICH (I) PROVIDES INSTRUCTION IN ACCORDANCE WITH SECTION THIRTY-TWO HUNDRED FOUR OF THE EDUCATION LAW, (II) IS ENTITLED TO TOTAL EXEMPTION FROM FEDERAL TAXATION UNDER SECTION FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)(3) OF THE FEDERAL INTERNAL REVENUE CODE, (III) HAS NOT BEEN FOUND IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 USC SECTION 2000 (D), AS IT MAY BE AMENDED FROM TIME TO TIME. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE DEPARTMENT BY FEBRUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NON-PUBLIC SCHOOLS WHICH COMPLY WITH ITEM (I) OF THIS CLAUSE FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NON-PUBLIC SCHOOLS SHOULD COME WITHIN SUCH ITEM (I) AS THE DEPARTMENT MAY REQUIRE.

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

LBD08952-01-9

(C) "QUALIFIED TAXPAYER" SHALL MEAN A RESIDENT INDIVIDUAL OF THE STATE, WHOSE ADJUSTED GROSS INCOME DOES NOT EXCEED THOSE LIMITS SET FORTH IN PARAGRAPH TWO OF THIS SUBSECTION FOR THE TAXABLE YEAR AND WHO IS REQUIRED OR CHOOSES TO FILE A RETURN UNDER THIS ARTICLE OR, IN THE CASE OF A HUSBAND AND WIFE WHO FILE A JOINT RETURN OR WHO FILE A JOINT FEDERAL RETURN BUT MUST DETERMINE THEIR NEW YORK TAXES SEPARATELY, THEIR COMBINED ADJUSTED GROSS INCOME SHALL NOT EXCEED THOSE LIMITS SET FORTH IN PARAGRAPH TWO OF THIS SUBSECTION FOR THE TAXABLE YEAR AND HAS QUALIFIED EDUCATION EXPENSES FOR THE TAXABLE YEAR.

(D) "HOME INSTRUCTION" SHALL MEAN INSTRUCTION PROVIDED BY A PARENT OR LEGAL GUARDIAN IN A SETTING OTHER THAN A PUBLIC SCHOOL THAT IS SUBSTANTIALLY EQUIVALENT TO THE INSTRUCTION GIVEN TO MINORS OF LIKE AGE AND ATTAINMENTS AT THE PUBLIC SCHOOLS OF THE CITY OR DISTRICT WHERE THE MINOR RESIDES SO AS TO COMPLY WITH SUBDIVISION TWO OF SECTION THIRTY-TWO HUNDRED FOUR OF THE EDUCATION LAW.

(E) "FEES AND TUITION" SHALL MEAN FEES OR TUITION FOR INSTRUCTION FOR ELIGIBLE DEPENDENTS FIRST ENROLLED IN KINDERGARTEN BEGINNING IN THE TWO THOUSAND EIGHT -- TWO THOUSAND NINE SCHOOL YEAR AND FOR INSTRUCTION IN THE SUCCESSIVE GRADES THEREAFTER.

(F) "QUALIFIED EDUCATION EXPENSES" SHALL MEAN:

(I) FEES OR TUITION FOR INSTRUCTION, INCLUDING TUTORING, ACADEMIC ENRICHMENT OR ACADEMIC SUMMER CAMPS IN GRADE OR AGE APPROPRIATE CURRICULA THAT SUPPLEMENT CURRICULA AND INSTRUCTION AVAILABLE DURING THE REGULAR SCHOOL YEAR, THAT ASSISTS A DEPENDENT TO IMPROVE KNOWLEDGE OF CORE CURRICULUM AREAS OR TO EXPAND KNOWLEDGE AND SKILLS;

(II) EXPENSES FOR TEXTBOOKS, INCLUDING BOOKS AND OTHER INSTRUCTIONAL MATERIALS AND EQUIPMENT USED IN QUALIFIED ELEMENTARY AND SECONDARY INSTITUTIONS AND HOME INSTRUCTION. "TEXTBOOKS" DOES NOT INCLUDE BOOKS OR MATERIALS FOR EXTRACURRICULAR ACTIVITIES INCLUDING SPORTING EVENTS, MUSICAL OR DRAMATIC EVENTS, SPEECH ACTIVITIES, DRIVER'S EDUCATION, OR SIMILAR PROGRAMS;

(III) EDUCATIONAL SOFTWARE THAT ASSISTS A DEPENDENT TO IMPROVE KNOWLEDGE OF CORE CURRICULUM AREAS OR TO EXPAND KNOWLEDGE AND SKILLS PURCHASED FOR USE IN THE TAXPAYER'S HOME AND NOT USED IN A TRADE OR BUSINESS REGARDLESS OF WHETHER SUCH SOFTWARE IS REQUIRED BY THE DEPENDENT'S QUALIFIED ELEMENTARY OR SECONDARY INSTITUTION OR COURSE OF HOME INSTRUCTION; AND

(IV) EXPENSES FOR SPECIAL EDUCATION EVALUATION SERVICES AND PROGRAMS.

(2) A QUALIFIED TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR QUALIFIED EDUCATIONAL EXPENSES OF DEPENDENTS ATTENDING QUALIFIED ELEMENTARY AND SECONDARY EDUCATIONAL INSTITUTIONS OR RECEIVING HOME INSTRUCTION, PROVIDED, HOWEVER, THAT THE AMOUNT OF SUCH CREDIT SHALL NOT EXCEED THE TAX IMPOSED BY SECTION SIX HUNDRED ONE OF THIS PART, FOR THE TAXABLE YEAR. IF THE CREDIT EXCEEDS THE TAX AS SO REDUCED, THE TAXPAYER MAY RECEIVE, AND THE COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY TO THE TAXPAYER AS AN OVERPAYMENT, WITHOUT INTEREST, THE AMOUNT OF SUCH EXCESS. FOR EACH ELIGIBLE DEPENDENT ATTENDING GRADES KINDERGARTEN THROUGH TWELVE AT A QUALIFIED ELEMENTARY OR SECONDARY EDUCATIONAL INSTITUTION OR RECEIVING HOME INSTRUCTION WHO INCURS QUALIFIED EDUCATIONAL EXPENSES PURSUANT TO THIS SUBSECTION, THE MAXIMUM CREDIT SHALL NOT EXCEED THE AMOUNT DETERMINED IN ACCORDANCE WITH THE FOLLOWING TABLES:

(A) FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2009:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:

NOT OVER $39,999	$3,500
OVER $40,000 BUT NOT OVER $59,999	$3,200
OVER $60,000 BUT NOT OVER $79,999	$2,900
OVER $80,000 BUT NOT OVER $99,999	$2,600

(B) IN ADDITION TO THE MAXIMUM CREDIT PROVIDED FOR IN SUBPARAGRAPH (A), FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2010:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:
OVER $100,000 BUT NOT OVER $109,999	$2,300

(C) IN ADDITION TO THE MAXIMUM CREDIT PROVIDED FOR IN SUBPARAGRAPHS (A) AND (B), FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2011:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:
OVER $110,000 BUT NOT OVER $119,999	$2,000

(D) IN ADDITION TO THE MAXIMUM CREDIT PROVIDED FOR IN SUBPARAGRAPHS (A), (B) AND (C) FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2012:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:
OVER $120,000 BUT NOT OVER $129,999	$1,700

(E) IN ADDITION TO THE MAXIMUM CREDIT PROVIDED FOR IN SUBPARAGRAPHS (A), (B), (C) AND (D) FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2013:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:
OVER $130,000 BUT NOT OVER $139,999	$1,400

(F) IN ADDITION TO THE MAXIMUM CREDIT PROVIDED FOR IN SUBPARAGRAPHS (A), (B), (C), (D) AND (E) FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY 1, 2014:

IF ADJUSTED GROSS INCOME IS:	THE MAXIMUM CREDIT PER DEPENDENT SHALL BE:
OVER $140,000 BUT NOT OVER $149,999	$1,100

(3) SUCH CREDIT SHALL BE CLEARLY SPECIFIED AND A LINE ENTITLED "QUALIFIED EDUCATION EXPENSE CREDIT" SHALL BE PROVIDED ON RETURNS REQUIRED PURSUANT TO SECTION SIX HUNDRED FIFTY-ONE OF THIS ARTICLE.

(4) IF A TAXPAYER'S DEPENDENT CHANGES HIS OR HER STATUS DURING A TAXABLE YEAR, SO AS TO BE AN ELIGIBLE DEPENDENT FOR LESS THAN THE FULL TAXA-

BLE YEAR, OR ATTENDS AN INSTITUTION OTHER THAN A QUALIFIED ELEMENTARY OR SECONDARY EDUCATIONAL INSTITUTION OR DOES NOT RECEIVE HOME INSTRUCTION FOR SOME PORTION OF SUCH TAXABLE YEAR, THEN THE CREDIT ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE COMPUTED IN SUCH MANNER AS THE DEPARTMENT MAY, BY REGULATION, PRESCRIBE IN ORDER TO PROPERLY REFLECT THE CREDIT OR PORTION THEREOF ATTRIBUTABLE TO SUCH TAXABLE YEAR.

S 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.