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

5843

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. ROSENTHAL, BOYLAND, BROOK-KRASNY, ESPAILLAT, GREENE, V. LOPEZ, ORTIZ, WRIGHT -- Multi-Sponsored by -- M. of A. ABBATE, BENEDETTO, BING, BRENNAN, COLTON, COOK, DIAZ, GLICK, GORDON, HIKIND, JACOBS, KELLNER, MAISEL, MARKEY, MAYERSOHN, MILLMAN, NOLAN, O'DONNELL, PHEFFER, POWELL, TITONE, TOWNS, WEINSTEIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the provision of a credit against state personal income tax for tax relief for certain school taxpayer renters

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

Section 1. Section 1310 of the tax law is amended by adding a new subsection (g) to read as follows:

(G) STATE SCHOOL TAX REDUCTION CREDIT FOR CERTAIN LOW INCOME RENTERS. (1) FOR PURPOSES OF THIS SUBSECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "QUALIFIED TAXPAYER" MEANS A RESIDENT INDIVIDUAL OF THE STATE WHO HAS OCCUPIED THE SAME QUALIFIED RESIDENCE FOR SIX MONTHS OR MORE OF THE TAXABLE YEAR WITH HIS OR HER CHILD OR CHILDREN AT LEAST ONE OF WHOM IS UNDER THE AGE OF EIGHTEEN, WHO IS REQUIRED OR CHOOSES TO FILE A RETURN UNDER THIS ARTICLE AND WHOSE HOUSEHOLD GROSS INCOME DOES NOT EXCEED SIXTY THOUSAND DOLLARS FOR THE YEAR IN WHICH THE CREDIT IS CLAIMED.

(B) "HOUSEHOLD" OR "MEMBERS OF THE HOUSEHOLD" MEANS A QUALIFIED TAXPAYER AND ALL OTHER PERSONS, NOT NECESSARILY RELATED, WHO HAVE THE SAME QUALIFIED RESIDENCE AND SHARE ITS FURNISHINGS, FACILITIES AND ACCOMMODATIONS. SUCH TERMS SHALL NOT INCLUDE A TENANT, SUBTENANT, ROOMER OR BOARDER WHO IS NOT RELATED TO THE QUALIFIED TAXPAYER IN ANY DEGREE SPECIFIED IN PARAGRAPHS ONE THROUGH EIGHT OF SUBSECTION (A) OF SECTION ONE HUNDRED FIFTY-TWO OF THE INTERNAL REVENUE CODE. PROVIDED, HOWEVER, NO PERSON MAY BE A MEMBER OF MORE THAN ONE HOUSEHOLD AT ONE TIME.

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

LBD05670-01-9

(C) "HOUSEHOLD GROSS INCOME" MEANS THE AGGREGATE ADJUSTED GROSS INCOME OF ALL MEMBERS OF THE HOUSEHOLD FOR THE TAXABLE YEAR AS REPORTED FOR FEDERAL INCOME TAX PURPOSES, OR WHICH WOULD BE REPORTED FOR FEDERAL INCOME TAX PURPOSES IF A FEDERAL INCOME TAX RETURN WERE REQUIRED TO BE FILED, WITH THE MODIFICATIONS IN SUBSECTION (B) OF SECTION SIX HUNDRED TWELVE OF THIS CHAPTER, BUT WITHOUT THE MODIFICATIONS IN SUBSECTION (C) OF SUCH SECTION, PLUS ANY PORTION FROM THE GAIN FROM THE SALE OR EXCHANGE OF PROPERTY OTHERWISE EXCLUDED FROM SUCH AMOUNT, EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES EXCLUDABLE FROM FEDERAL GROSS INCOME BY SECTION NINE HUNDRED ELEVEN OF THE INTERNAL REVENUE CODE; SUPPORT MONEY NOT INCLUDED IN ADJUSTED GROSS INCOME; NONTAXABLE STRIKE BENEFITS; SUPPLEMENTAL SECURITY INCOME PAYMENTS; THE GROSS AMOUNT OF ANY PENSION OR ANNUITY BENEFITS TO THE EXTENT NOT INCLUDED IN SUCH ADJUSTED GROSS INCOME (INCLUDING BUT NOT LIMITED TO RAILROAD RETIREMENT BENEFITS AND ALL PAYMENTS RECEIVED UNDER THE FEDERAL SOCIAL SECURITY ACT AND VETERANS DISABILITY PENSIONS); NON-TAXABLE INTEREST RECEIVED FROM THE STATE OF NEW YORK, ITS AGENCIES, INSTRUMENTALITIES, PUBLIC CORPORATIONS OR POLITICAL SUBDIVISIONS (INCLUDING A PUBLIC CORPORATION CREATED PURSUANT TO AGREEMENT OR COMPACT WITH ANOTHER STATE OR CANADA); WORKERS' COMPENSATION; THE GROSS AMOUNT OF "LOSS OF TIME" INSURANCE; AND THE AMOUNT OF CASH PUBLIC ASSISTANCE AND RELIEF, OTHER THAN MEDICAL ASSISTANCE FOR THE NEEDY, PAID TO OR FOR THE BENEFIT OF THE QUALIFIED TAXPAYER OR MEMBERS OF HIS HOUSEHOLD. HOUSEHOLD GROSS INCOME SHALL NOT INCLUDE SURPLUS FOODS OR OTHER RELIEF IN KIND OR PAYMENTS MADE TO INDIVIDUALS BECAUSE OF THEIR STATUS AS VICTIMS OF NAZI PERSECUTION, AS DEFINED IN P.L. 103-286. PROVIDED, FURTHER, HOUSEHOLD GROSS INCOME SHALL ONLY INCLUDE ALL SUCH INCOME RECEIVED BY ALL MEMBERS OF THE HOUSEHOLD WHILE MEMBERS OF SUCH HOUSEHOLD.

(D) "QUALIFIED RESIDENCE" MEANS A RESIDENTIAL RENTAL UNIT.

(E) "ADJUSTED RENT" MEANS ANNUAL RENTAL PAID FOR THE RIGHT OF OCCUPANCY OF A QUALIFIED RESIDENCE, EXCLUDING CHARGES FOR HEAT, GAS, ELECTRICITY, FURNISHINGS AND BOARD. WHERE CHARGES FOR HEAT, GAS, ELECTRICITY, FURNISHINGS OR BOARD ARE INCLUDED IN RENTAL BUT WHERE SUCH CHARGES AND THE AMOUNT THEREOF ARE NOT SEPARATELY SET FORTH IN A WRITTEN RENTAL AGREEMENT, FOR PURPOSES OF DETERMINING ADJUSTED RENT THE QUALIFIED TAXPAYER SHALL REDUCE RENTAL PAID AS FOLLOWS:

(I) FOR HEAT, OR HEAT AND GAS, DEDUCT FIFTEEN PERCENT OF RENTAL PAID;

(II) FOR HEAT, GAS OR ELECTRICITY, DEDUCT TWENTY PERCENT OF RENTAL PAID;

(III) FOR HEAT, GAS, ELECTRICITY AND FURNISHINGS, DEDUCT TWENTY-FIVE PERCENT OF RENTAL PAID;

(IV) FOR HEAT, GAS, ELECTRICITY, FURNISHINGS AND BOARD, DEDUCT FIFTY PERCENT OF RENTAL PAID.

IF THE DEPARTMENT OF TAXATION AND FINANCE DETERMINES THAT THE ADJUSTED RENT SHOWN ON THE RETURN IS EXCESSIVE, THE COMMISSIONER MAY REDUCE SUCH RENT, FOR PURPOSES OF THE COMPUTATION OF THE CREDIT, TO AN AMOUNT SUBSTANTIALLY EQUIVALENT TO RENT FOR A COMPARABLE ACCOMMODATION.

(2) FOR TAXABLE YEARS BEGINNING AFTER TWO THOUSAND EIGHT, A QUALIFIED TAXPAYER SHALL BE ALLOWED AN ADDITIONAL STATE SCHOOL TAX REDUCTION CREDIT AGAINST THE TAXES AUTHORIZED BY THIS ARTICLE REDUCED BY THE CREDITS PERMITTED BY THIS ARTICLE. IF THE CREDIT EXCEEDS THE TAX AS SO REDUCED, THE TAXPAYER MAY RECEIVE, AND THE COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE TAX COMMISSION, SHALL PAY AS AN OVERPAYMENT, WITHOUT INTEREST, THE AMOUNT OF SUCH EXCESS.

(3) FOR QUALIFIED TAXPAYERS THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION SHALL BE THREE PERCENT OF THE ADJUSTED RENT PAID FOR SUCH QUALIFIED RESIDENCE.

(4) IF A QUALIFIED TAXPAYER OCCUPIES A QUALIFIED RESIDENCE FOR A PERIOD OF LESS THAN TWELVE MONTHS DURING THE TAXABLE YEAR OR OCCUPIES TWO OR MORE QUALIFIED RESIDENCES DURING DIFFERENT PERIODS IN SUCH TAXABLE YEAR, THE CREDIT ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE COMPUTED IN SUCH MANNER AS THE DEPARTMENT OF TAXATION AND FINANCE MAY, BY REGULATION PRESCRIBE, IN ORDER TO PROPERLY REFLECT THE CREDIT OR PORTION THEREOF ATTRIBUTABLE TO SUCH QUALIFIED RESIDENCE OR RESIDENCES AND SUCH PERIOD OR PERIODS.

(5) ONLY ONE CREDIT PER HOUSEHOLD AND PER QUALIFIED TAXPAYER SHALL BE ALLOWED PER TAXABLE YEAR UNDER THIS SUBSECTION. WHEN TWO OR MORE MEMBERS OF A HOUSEHOLD ARE ABLE TO MEET THE QUALIFICATIONS FOR A QUALIFIED TAXPAYER, THE CREDIT SHALL BE EQUALLY DIVIDED BETWEEN OR AMONG SUCH INDIVIDUALS UNLESS SUCH INDIVIDUALS FILE WITH THE DEPARTMENT OF TAXATION AND FINANCE A WRITTEN AGREEMENT AMONG SUCH INDIVIDUALS SETTING FORTH A DIFFERENT DIVISION.

(A) PROVIDED, HOWEVER, WHERE A JOINT INCOME TAX RETURN HAS BEEN FILED PURSUANT TO THE PROVISIONS OF SECTION THIRTEEN HUNDRED SIX OF THIS ARTICLE BY A QUALIFIED TAXPAYER AND HIS OR HER SPOUSE (OR WHERE BOTH SPOUSES ARE QUALIFIED TAXPAYERS AND HAVE FILED SUCH JOINT RETURN), THE CREDIT, OR THE PORTION OF THE CREDIT IF DIVIDED, TO WHICH THE HUSBAND AND WIFE ARE ENTITLED SHALL BE APPLIED AGAINST THE TAX OF BOTH SPOUSES AND ANY OVERPAYMENT SHALL BE MADE TO BOTH SPOUSES.

(B) WHERE ANY RETURN REQUIRED TO BE FILED PURSUANT TO THE PROVISIONS OF SECTION THIRTEEN HUNDRED SIX OF THIS ARTICLE IS COMBINED WITH ANY RETURN OF TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS CHAPTER OR ANY OTHER LAW IF SUCH TAX IS ADMINISTERED BY THE DEPARTMENT OF TAXATION AND FINANCE, THE CREDIT OR THE PORTION OF THE CREDIT IF DIVIDED, ALLOWED TO THE QUALIFIED TAXPAYER MAY BE APPLIED BY THE DEPARTMENT TOWARD ANY LIABILITY FOR THE AFOREMENTIONED TAXES.

(6) NO CREDIT SHALL BE GRANTED UNDER THIS SUBSECTION:

(A) IF HOUSEHOLD GROSS INCOME FOR THE TAXABLE YEAR EXCEEDS SIXTY THOUSAND DOLLARS;

(B) TO AN INDIVIDUAL WITH RESPECT TO WHOM A DEDUCTION UNDER SUBSECTION (C) OF SECTION ONE HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE IS ALLOWABLE TO ANOTHER TAXPAYER FOR THE TAXABLE YEAR; OR

(C) TO AN INDIVIDUAL WHO IS NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR.

(7) THE RIGHT TO CLAIM A CREDIT OR THE PORTION OF A CREDIT, WHERE SUCH CREDIT HAS BEEN DIVIDED UNDER THIS SUBSECTION, SHALL BE PERSONAL TO THE QUALIFIED TAXPAYER AND SHALL NOT SURVIVE HIS DEATH, BUT SUCH RIGHT MAY BE EXERCISED ON BEHALF OF A CLAIMANT BY HIS LEGAL GUARDIAN OR ATTORNEY IN FACT DURING HIS LIFETIME.

(8) RETURNS UNDER THIS SECTION SHALL BE IN SUCH FORM AS SHALL BE PRESCRIBED BY THE DEPARTMENT OF TAXATION AND FINANCE, WHICH SHALL MAKE AVAILABLE SUCH FORMS AND INSTRUCTION FOR FILING SUCH RETURNS.

(9) THE DEPARTMENT MAY REQUIRE A QUALIFIED TAXPAYER TO FURNISH THE FOLLOWING INFORMATION IN SUPPORT OF HIS CLAIM FOR CREDIT UNDER THE SUBSECTION: HOUSEHOLD GROSS INCOME, RENT PAID, NAME AND ADDRESS OF OWNER OR MANAGING AGENT OF THE PROPERTY RENTED, THE NAMES OF MEMBERS OF THE HOUSEHOLD AND OTHER QUALIFYING TAXPAYERS OCCUPYING THE RESIDENCE AND THEIR IDENTIFYING NUMBERS INCLUDING SOCIAL SECURITY NUMBERS, HOUSEHOLD GROSS INCOME, SIZE AND NATURE OF PROPERTY CLAIMED AS RESIDENCE AND ALL

OTHER INFORMATION WHICH MAY BE REQUIRED BY THE DEPARTMENT TO DETERMINE THE CREDIT.

(10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE CREDIT ALLOWED UNDER THIS SUBSECTION SHALL BE DETERMINED AFTER THE DETERMINATION AND APPLICATION OF ANY OTHER CREDITS PERMITTED UNDER THE PROVISIONS OF THIS SECTION.

S 2. This act shall take effect immediately.