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

1463

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to establishing a first time home buyer income tax deduction for monies deposited into a house, townhouse, condominium or unit in a cooperative housing corporation purchase account and providing for penalties for unauthorized withdrawals from such an account

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

Section 1. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 17 to read as follows:

(17) THE AMOUNT THAT MAY BE SUBTRACTED FROM FEDERAL ADJUSTED GROSS INCOME PURSUANT TO SUBSECTION (W) OF THIS SECTION.

S 2. Section 612 of the tax law is amended by adding a new subsection (w) to read as follows:

(W) DEDUCTIONS FOR MONIES DEPOSITED INTO A HOUSE, TOWNHOUSE, CONDOMINIUM, OR UNIT IN A COOPERATIVE CORPORATION PURCHASE ACCOUNT. (1) AN INDIVIDUAL AS A FIRST TIME HOME BUYER SHALL BE ENTITLED TO DEDUCT ANNUALLY FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME THAT AMOUNT, NOT TO EXCEED FIVE THOUSAND DOLLARS, DEPOSITED INTO A HOUSE PURCHASE ACCOUNT. AN INDIVIDUAL AND HIS OR HER SPOUSE SHALL JOINTLY BE ENTITLED TO A MAXIMUM DEDUCTION OF TEN THOUSAND DOLLARS. THIS AMOUNT MAY BE DIVIDED IN ANY MANNER AS THE PARTIES DESIRE FOR INCOME TAX PURPOSES.

(2) (I) FOR THE PURPOSES OF THIS SUBSECTION, A "FIRST TIME HOME BUYER" SHALL MEAN AN INDIVIDUAL OR AN INDIVIDUAL AND HIS OR HER SPOUSE, NONE OF WHOM HAS OR HAD AN OWNERSHIP INTEREST IN A PRINCIPAL RESIDENCE AT ANY TIME. NO SUCH PERSONS SHALL OWN ANY OTHER HOME INCLUDING VACATION OR INVESTMENT RESIDENCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION.

(II) FOR THE PURPOSES OF THIS SUBSECTION, "OWNERSHIP INTEREST" INCLUDES THE FOLLOWING: A FEE SIMPLE INTEREST, A JOINT TENANCY, A TENAN-

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

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CY IN COMMON, A TENANCY BY THE ENTIRETY, THE INTEREST OF A TENANT-SHARE-HOLDER IN A COOPERATIVE, A LIFE ESTATE AND A LAND CONTRACT. INTERESTS WHICH DO NOT CONSTITUTE OWNERSHIP INTERESTS INCLUDE THE FOLLOWING: (A) REMAINDER INTERESTS, (B) A LEASE WITH OR WITHOUT AN OPTION TO PURCHASE, (C) A MERE EXPECTANCY TO INHERIT AN INTEREST IN A RESIDENCE, (D) THE INTEREST THAT A PURCHASER OF A RESIDENCE ACQUIRES ON THE EXECUTION OF A PURCHASE CONTRACT AND (E) AN INTEREST IN REAL ESTATE OTHER THAN A RESIDENCE.

(III) TO ESTABLISH THAT AN INDIVIDUAL IS A FIRST TIME HOME BUYER, THE INDIVIDUAL SHALL COMPLETE A FORM PROMULGATED BY THE DEPARTMENT CERTIFYING, UNDER THE PENALTIES OF PERJURY, THAT SUCH INDIVIDUAL IS A FIRST TIME HOME BUYER.

(IV) IN THE CASE OF AN INDIVIDUAL AND HIS OR HER SPOUSE, IF EITHER THE INDIVIDUAL OR HIS OR HER SPOUSE IS NOT A FIRST TIME HOME BUYER, NEITHER THE INDIVIDUAL OR SPOUSE SHALL BE CONSIDERED FIRST TIME HOME BUYERS.

(V) IF AN INDIVIDUAL'S ONLY POTENTIALLY DISQUALIFYING PRESENT OWNERSHIP INTEREST IS OWNERSHIP OF A MOBILE HOME THAT IS NOT PERMANENTLY ATTACHED TO THE LAND, THE INDIVIDUAL MAY BE CONSIDERED A FIRST TIME HOME BUYER AND MAY BE ELIGIBLE FOR A HOUSE PURCHASE ACCOUNT DEDUCTION. FOR THE PURPOSES OF THIS SUBPARAGRAPH A "MOBILE HOME" SHALL MEAN A STRUCTURE WHICH IS PERMANENTLY ATTACHED, BEING PERMANENTLY ANCHORED TO REAL PROPERTY AND HAS HAD WHEELS AND OTHER COMPONENTS USED IN TRANSPORTATION REMOVED. IF, DUE TO HIS OR HER OWNERSHIP OF A MOBILE HOME, THE INDIVIDUAL HAS CLAIMED A REAL ESTATE TAX OR HOME MORTGAGE DEDUCTION ON HIS OR HER INCOME TAX RETURNS, SUCH INDIVIDUAL SHALL NOT BE CONSIDERED A FIRST TIME HOME BUYER REGARDLESS OF WHETHER THE MOBILE HOME WAS PERMANENTLY ATTACHED TO THE LAND.

(VI) AN INDIVIDUAL MUST NOT INTEND TO USE ANY PORTION OF THE REAL PROPERTY PURCHASED USING THE HOUSE PURCHASE ACCOUNT FUNDS IN A TRADE OR BUSINESS, OR AS A VACATION HOME OR AS AN INVESTMENT, EXCEPT AS AN OWNER OCCUPIED MULTIPLE DWELLING WITH NO MORE THAN TWO RENTAL UNITS.

(3) FOR PURPOSES OF THIS SUBSECTION A "HOUSE PURCHASE ACCOUNT" SHALL MEAN AN ACCOUNT ORGANIZED OR CREATED IN THIS STATE FOR THE EXCLUSIVE BENEFIT OF AN INDIVIDUAL AND HIS OR HER SPOUSE WHO IS A FIRST TIME HOME, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION PURCHASER OR INDIVIDUAL WHO HAS CONTRACTED WITH A BUILDER FOR THE CONSTRUCTION OF A PRINCIPAL RESIDENCE. EVERY SUCH ACCOUNT SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

(I) THE ACCOUNT SHALL BE HELD IN A BANKING ORGANIZATION, AS DEFINED IN SECTION TWO OF THE BANKING LAW, NATIONAL BANKING ASSOCIATION, STATE CHARTERED CREDIT UNION, FEDERAL MUTUAL SAVINGS BANK, FEDERAL SAVINGS AND LOAN ASSOCIATION, OR FEDERAL CREDIT UNION AND SUCH ACCOUNT WAS ESTABLISHED PURSUANT TO THIS SUBSECTION.

(II) ANY AMOUNT IN THE ACCOUNT IS NONFORFEITABLE.

(III) THE FUNDS IN SUCH ACCOUNT SHALL NOT BE COMMINGLED WITH ANY OTHER MONIES OF THE INDIVIDUAL BY THE TRUSTEE.

(IV) MONIES WITHDRAWN FROM SUCH ACCOUNT AND INTEREST WHICH HAS ACCRUED SHALL NOT BE CONSIDERED AS INCOME TO THE INDIVIDUAL AND TAXED IF THE MONIES ARE APPLIED FOR THE PURCHASE OR CONSTRUCTION OF A HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION TO BE USED AS A PRIMARY RESIDENCE OF THE INDIVIDUAL FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER PURCHASE OR CONSTRUCTION.

(4) WITHIN SIXTY DAYS AFTER WITHDRAWAL OF MONEYS FROM A HOUSE PURCHASE ACCOUNT, AN INDIVIDUAL SHALL SUBMIT SATISFACTORY PROOF TO THE COMMISSIONER, UPON FORMS PROVIDED BY THE DEPARTMENT, THAT THE MONIES WITHDRAWN WERE USED FOR THE PURCHASE OR CONSTRUCTION OF A HOUSE, TOWNHOUSE, CONDO-

MINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION. IN THE EVENT THAT AN INDIVIDUAL WITHDRAWS ALL OR ANY PART OF THE MONIES FROM THE ACCOUNT AND DOES NOT EITHER APPLY THE MONIES TO THE PURCHASE OR CONSTRUCTION OF A HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION, OR FAILS TO SUBMIT TO THE COMMISSIONER THE PROOF AS REQUIRED PURSUANT TO THIS PARAGRAPH, SUCH INDIVIDUAL SHALL HAVE THE ENTIRE ACCOUNT TAXED, INCLUDING INTEREST WHICH HAS ACCRUED, AS THOUGH IT WAS INCOME IN THE YEARS THAT THE MONIES FROM THE ACCOUNT WERE WITHDRAWN. IN THE EVENT THAT AN INDIVIDUAL DOES NOT USE THE HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION AS A PRIMARY RESIDENCE FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER THE PURCHASE OR CONSTRUCTION SUCH INDIVIDUAL SHALL HAVE THE ENTIRE HOUSE PURCHASE ACCOUNT TAXED, INCLUDING INTEREST WHICH HAS ACCRUED, AS THOUGH IT WAS INCOME IN THE YEAR THAT THE MONIES FROM THE ACCOUNT WERE WITHDRAWN. FOR THE PURPOSES OF THIS PARAGRAPH, THE TWO YEAR PERIOD SHALL BEGIN TO RUN AT THE TIME TITLE TO THE HOUSE, TOWNHOUSE, CONDOMINIUM, OR UNIT IN A COOPERATIVE HOUSING CORPORATION PASSES TO THE INDIVIDUAL.

(5) THE COMMISSIONER SHALL ESTABLISH A PENALTY OF TEN PERCENT FOR THOSE HOUSE PURCHASE ACCOUNTS WHICH ARE TAXED IN ACCORDANCE WITH PARAGRAPH FOUR OF THIS SUBSECTION. THE PENALTY SHALL BE IN ADDITION TO THE TAX DUE FOR THOSE FUNDS INAPPROPRIATELY APPLIED. SUCH PENALTY SHALL BE WAIVED BY THE COMMISSIONER IF THE INDIVIDUAL CAN SHOW PROOF THAT THE REASON THE INDIVIDUAL DID NOT USE THE HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION AS A PRIMARY RESIDENCE FOR A PERIOD OF TWO YEARS OR MORE AFTER THE PURCHASE OR CONSTRUCTION, WAS DUE TO EITHER:

(I) AN EMPLOYMENT RELOCATION OUTSIDE THE STATE AND SUCH RELOCATION REQUIRED THE INDIVIDUAL TO BECOME A RESIDENT OF ANOTHER STATE; OR

(II) AN UNFORESEEABLE FINANCIAL EMERGENCY.

FOR PURPOSES OF THIS PARAGRAPH, AN "UNFORESEEABLE FINANCIAL EMERGENCY" SHALL MEAN A SEVERE FINANCIAL HARDSHIP TO THE INDIVIDUAL RESULTING FROM A SUDDEN AND UNEXPECTED ILLNESS OR ACCIDENT OF THE INDIVIDUAL OR OF A DEPENDENT. THE CIRCUMSTANCES THAT CONSTITUTE AN UNFORESEEABLE EMERGENCY WILL DEPEND UPON THE FACTS OF EACH CASE, HOWEVER, WITHDRAWAL OF HOUSE PURCHASE ACCOUNT FUNDS MAY NOT BE MADE, WITHOUT PENALTY, TO THE EXTENT THAT SUCH HARDSHIP IS OR MAY BE RELIEVED BY EITHER:

(A) REIMBURSEMENT OR COMPENSATION BY INSURANCE OR OTHERWISE; OR

(B) LIQUIDATION OF THE INDIVIDUAL'S ASSETS, TO THE EXTENT THE LIQUIDATION OF SUCH ASSETS WOULD NOT ITSELF CAUSE SEVERE FINANCIAL HARDSHIP.

(6) THE COMMISSIONER IS HEREBY DIRECTED TO PROMULGATE ALL RULES AND REGULATIONS, AFTER CONSULTATION WITH THE BANKING DEPARTMENT, NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION AND TO MAXIMIZE THE EFFECT OF THIS SUBSECTION. THE COMMISSIONER AND THE BANKING BOARD ARE HEREBY DIRECTED TO COOPERATE WITH EACH OTHER IN THE ESTABLISHMENT, SUPERVISION AND REGULATION OF THE INDIVIDUAL HOUSE PURCHASE ACCOUNTS AUTHORIZED TO BE CREATED IN THIS SUBSECTION.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to taxable years commencing on or after January first of the year next succeeding the year in which it shall have become a law; provided however, that paragraph 6 of subsection (w) of section 612 of the tax law, as added by section two of this act, shall take effect immediately.