

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:

1 Section 1. Subsection (c) of section 612 of the tax law is amended by
2 adding a new paragraph 17 to read as follows:
3 (17) THE AMOUNT THAT MAY BE SUBTRACTED FROM FEDERAL ADJUSTED GROSS
4 INCOME PURSUANT TO SUBSECTION (W) OF THIS SECTION.
5 S 2. Section 612 of the tax law is amended by adding a new subsection
6 (w) to read as follows:
7 (W) DEDUCTIONS FOR MONIES DEPOSITED INTO A HOUSE, TOWNHOUSE, CONDOMIN-
8 IUM, OR UNIT IN A COOPERATIVE CORPORATION PURCHASE ACCOUNT. (1) AN
9 INDIVIDUAL AS A FIRST TIME HOME BUYER SHALL BE ENTITLED TO DEDUCT ANNU-
10 ALLY FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME THAT AMOUNT, NOT TO
11 EXCEED FIVE THOUSAND DOLLARS, DEPOSITED INTO A HOUSE PURCHASE ACCOUNT.
12 AN INDIVIDUAL AND HIS OR HER SPOUSE SHALL JOINTLY BE ENTITLED TO A MAXI-
13 MUM DEDUCTION OF TEN THOUSAND DOLLARS. THIS AMOUNT MAY BE DIVIDED IN ANY
14 MANNER AS THE PARTIES DESIRE FOR INCOME TAX PURPOSES.
15 (2) (I) FOR THE PURPOSES OF THIS SUBSECTION, A "FIRST TIME HOME BUYER"
16 SHALL MEAN AN INDIVIDUAL OR AN INDIVIDUAL AND HIS OR HER SPOUSE, NONE OF
17 WHOM HAS OR HAD AN OWNERSHIP INTEREST IN A PRINCIPAL RESIDENCE AT ANY
18 TIME. NO SUCH PERSONS SHALL OWN ANY OTHER HOME INCLUDING VACATION OR
19 INVESTMENT RESIDENCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION.
20 (II) FOR THE PURPOSES OF THIS SUBSECTION, "OWNERSHIP INTEREST"
21 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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1 CY IN COMMON, A TENANCY BY THE ENTIRETY, THE INTEREST OF A
2 TENANT-SHARE-HOLDER IN A COOPERATIVE, A LIFE ESTATE AND A LAND CONTRACT.
3 INTERESTS WHICH DO NOT CONSTITUTE OWNERSHIP INTERESTS INCLUDE THE
4 FOLLOWING: (A) REMAINDER INTERESTS, (B) A LEASE WITH OR WITHOUT AN
5 OPTION TO PURCHASE, (C) A MERE EXPECTANCY TO INHERIT AN INTEREST IN A
6 RESIDENCE, (D) THE INTEREST THAT A PURCHASER OF A RESIDENCE ACQUIRES ON
7 THE EXECUTION OF A PURCHASE CONTRACT AND (E) AN INTEREST IN REAL ESTATE
8 OTHER THAN A RESIDENCE.

9 (III) TO ESTABLISH THAT AN INDIVIDUAL IS A FIRST TIME HOME BUYER, THE
10 INDIVIDUAL SHALL COMPLETE A FORM PROMULGATED BY THE DEPARTMENT CERTIFY-
11 ING, UNDER THE PENALTIES OF PERJURY, THAT SUCH INDIVIDUAL IS A FIRST
12 TIME HOME BUYER.

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

16 (V) IF AN INDIVIDUAL'S ONLY POTENTIALLY DISQUALIFYING PRESENT OWNER-
17 SHIP INTEREST IS OWNERSHIP OF A MOBILE HOME THAT IS NOT PERMANENTLY
18 ATTACHED TO THE LAND, THE INDIVIDUAL MAY BE CONSIDERED A FIRST TIME HOME
19 BUYER AND MAY BE ELIGIBLE FOR A HOUSE PURCHASE ACCOUNT DEDUCTION. FOR
20 THE PURPOSES OF THIS SUBPARAGRAPH A "MOBILE HOME" SHALL MEAN A STRUCTURE
21 WHICH IS PERMANENTLY ATTACHED, BEING PERMANENTLY ANCHORED TO REAL PROP-
22 ERTY AND HAS HAD WHEELS AND OTHER COMPONENTS USED IN TRANSPORTATION
23 REMOVED. IF, DUE TO HIS OR HER OWNERSHIP OF A MOBILE HOME, THE INDIVID-
24 UAL HAS CLAIMED A REAL ESTATE TAX OR HOME MORTGAGE DEDUCTION ON HIS OR
25 HER INCOME TAX RETURNS, SUCH INDIVIDUAL SHALL NOT BE CONSIDERED A FIRST
26 TIME HOME BUYER REGARDLESS OF WHETHER THE MOBILE HOME WAS PERMANENTLY
27 ATTACHED TO THE LAND.

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

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

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

44 (II) ANY AMOUNT IN THE ACCOUNT IS NONFORFEITABLE.

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

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

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

1 MINIMUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION. IN THE EVENT THAT
2 AN INDIVIDUAL WITHDRAWS ALL OR ANY PART OF THE MONIES FROM THE ACCOUNT
3 AND DOES NOT EITHER APPLY THE MONIES TO THE PURCHASE OR CONSTRUCTION OF
4 A HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPO-
5 RATION, OR FAILS TO SUBMIT TO THE COMMISSIONER THE PROOF AS REQUIRED
6 PURSUANT TO THIS PARAGRAPH, SUCH INDIVIDUAL SHALL HAVE THE ENTIRE
7 ACCOUNT TAXED, INCLUDING INTEREST WHICH HAS ACCRUED, AS THOUGH IT WAS
8 INCOME IN THE YEARS THAT THE MONIES FROM THE ACCOUNT WERE WITHDRAWN. IN
9 THE EVENT THAT AN INDIVIDUAL DOES NOT USE THE HOUSE, TOWNHOUSE, CONDO-
10 MINIMUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION AS A PRIMARY RESI-
11 DENCE FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER THE PURCHASE OR
12 CONSTRUCTION SUCH INDIVIDUAL SHALL HAVE THE ENTIRE HOUSE PURCHASE
13 ACCOUNT TAXED, INCLUDING INTEREST WHICH HAS ACCRUED, AS THOUGH IT WAS
14 INCOME IN THE YEAR THAT THE MONIES FROM THE ACCOUNT WERE WITHDRAWN. FOR
15 THE PURPOSES OF THIS PARAGRAPH, THE TWO YEAR PERIOD SHALL BEGIN TO RUN
16 AT THE TIME TITLE TO THE HOUSE, TOWNHOUSE, CONDOMINIUM, OR UNIT IN A
17 COOPERATIVE HOUSING CORPORATION PASSES TO THE INDIVIDUAL.

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

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

29 (II) AN UNFORESEEABLE FINANCIAL EMERGENCY.

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

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

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

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

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