

1594

2009-2010 Regular Sessions

I N   S E N A T E

February 3, 2009

---

Introduced by Sens. GOLDEN, ALESI, DeFRANCISCO, HANNON, O. JOHNSON, LANZA, MORAHAN, VOLKER -- 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 a credit against personal income taxes for certain tuition expenses; to amend the tax law and the administrative code of the city of New York, in relation to providing for a modification of elementary and secondary school tuition for personal income tax purposes; and repealing certain provisions of such laws relating thereto

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

1     Section 1. Section 606 of the tax law is amended by adding a new  
2     subsection (qq) to read as follows:  
3     (QQ) TUITION TAX CREDIT. (1) GENERAL. A RESIDENT TAXPAYER SHALL BE  
4     ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN THE AMOUNT  
5     OF TEN PERCENT OF THE EARNED INCOME CREDIT SUCH TAXPAYER IS ALLOWED  
6     UNDER SECTION THIRTY-TWO OF THE INTERNAL REVENUE CODE FOR THE SAME TAXA-  
7     BLE YEAR, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY  
8     OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT  
9     LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR, FOR THE EDUCATION OF  
10    SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED THAT SUCH  
11    CREDIT SHALL NOT EXCEED FIVE HUNDRED DOLLARS PER DEPENDENT CHILD AND  
12    PROVIDED FURTHER THAT SUCH TAXPAYER IS ALLOWED AN EXEMPTION UNDER  
13    SECTION SIX HUNDRED SIXTEEN OF THIS ARTICLE FOR SUCH DEPENDENT. THE  
14    CREDIT UNDER THIS SUBSECTION SHALL NOT EXCEED THE AMOUNT PAID FOR EACH  
15    SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR  
16    NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.  
17    (2) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBSECTION, SHALL MEAN  
18    THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE

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

LBD06321-01-9

1 ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTA-  
2 RY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

3 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
4 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
5 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
6 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF  
7 THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE  
8 VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252,  
9 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION  
10 UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)(3) OF THE  
11 INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO  
12 THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF  
13 NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR  
14 THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH  
15 RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE  
16 COMMISSIONER MAY REQUIRE.

17 (C) "PUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
18 ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT  
19 TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION  
20 THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY  
21 CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION  
22 LAW.

23 (D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBSECTION, SHALL MEAN THE  
24 MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

25 S 2. Subsection (j) of section 612 of the tax law is REPEALED and a  
26 new subsection (j) is added to read as follows:

27 (J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTI-  
28 TLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT  
29 NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH,  
30 MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR  
31 SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST  
32 THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH  
33 DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVID-  
34 UAL IS ALLOWED AN EXEMPTION UNDER SECTION SIX HUNDRED SIXTEEN OF THIS  
35 PART FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER  
36 THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT  
37 IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL  
38 FOR SUCH EDUCATION OF SUCH DEPENDENT.

39 (A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,

40 IF THE FEDERAL	THE AMOUNT
41 ADJUSTED GROSS	ALLOWABLE FOR EACH
42 INCOME IS:	DEPENDENT IS:

43 LESS THAN \$115,000	\$2,500
44 115,000--119,999	2,150
45 120,000--124,999	1,800
46 125,000--129,999	1,450
47 130,000--134,999	1,100
48 135,000--139,999	750
49 140,000--144,999	400
50 145,000--149,999	50
51 150,000 AND OVER	0

52 (B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,

53 IF THE FEDERAL	THE AMOUNT
54 ADJUSTED GROSS	ALLOWABLE FOR EACH
55 INCOME IS:	DEPENDENT IS:

1	LESS THAN \$115,000	\$5,000
2	115,000--119,999	4,300
3	120,000--124,999	3,600
4	125,000--129,999	2,900
5	130,000--134,999	2,200
6	135,000--139,999	1,500
7	140,000--144,999	800
8	145,000--149,999	100
9	150,000 AND OVER	0

10 (C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,  
 11 IF THE FEDERAL THE AMOUNT  
 12 ADJUSTED GROSS ALLOWABLE FOR EACH  
 13 INCOME IS: DEPENDENT IS:

14	LESS THAN \$115,000	\$7,500
15	115,000--119,999	6,450
16	120,000--124,999	5,400
17	125,000--129,999	4,350
18	130,000--134,999	3,300
19	135,000--139,999	2,250
20	140,000--144,999	1,200
21	145,000--149,999	150
22	150,000 AND OVER	0

23 (D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,  
 24 IF THE FEDERAL THE AMOUNT  
 25 ADJUSTED GROSS ALLOWABLE FOR EACH  
 26 INCOME IS: DEPENDENT IS:

27	LESS THAN \$115,000	\$10,000
28	115,000--119,999	8,750
29	120,000--124,999	7,500
30	125,000--129,999	6,250
31	130,000--134,999	5,000
32	135,000--139,999	3,750
33	140,000--144,999	2,500
34	145,000--149,999	1,250
35	150,000 AND OVER	0

36 (2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED  
 37 GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL  
 38 TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS,  
 39 FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS  
 40 SUBSECTION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE  
 41 SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE  
 42 TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR  
 43 THE DEPENDENT ON HIS OR HER NEW YORK STATE INCOME TAX RETURN SHALL BE  
 44 ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS  
 45 SUBSECTION.

46 (3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBSECTION, SHALL MEAN  
 47 THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE  
 48 ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTA-  
 49 RY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

50 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY  
 51 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
 52 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
 53 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF  
 54 THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE

VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C) (3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

(C) "PUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBSECTION, SHALL MEAN THE MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

(4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS SUBSECTION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE.

S 3. Subdivision (j) of section 11-1712 of the administrative code of the city of New York is REPEALED and a new subdivision (j) is added to read as follows:

(J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTITLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVIDUAL IS ALLOWED AN EXEMPTION UNDER SECTION 11-1716 OF THIS SUBCHAPTER FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.

(A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,  
IF THE FEDERAL THE AMOUNT  
ADJUSTED GROSS ALLOWABLE FOR EACH  
INCOME IS: DEPENDENT IS:

LESS THAN \$115,000	\$2,500
115,000--119,999	2,150
120,000--124,999	1,800
125,000--129,999	1,450
130,000--134,999	1,100
135,000--139,999	750
140,000--144,999	400
145,000--149,999	50
150,000 AND OVER	0

(B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,  
IF THE FEDERAL THE AMOUNT  
ADJUSTED GROSS ALLOWABLE FOR EACH  
INCOME IS: DEPENDENT IS:

LESS THAN \$115,000	\$5,000
115,000--119,999	4,300

1	120,000--124,999	3,600
2	125,000--129,999	2,900
3	130,000--134,999	2,200
4	135,000--139,999	1,500
5	140,000--144,999	800
6	145,000--149,999	100
7	150,000 AND OVER	0

8 (C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,  
 9 IF THE FEDERAL THE AMOUNT  
 10 ADJUSTED GROSS ALLOWABLE FOR EACH  
 11 INCOME IS: DEPENDENT IS:

12	LESS THAN \$115,000	\$7,500
13	115,000--119,999	6,450
14	120,000--124,999	5,400
15	125,000--129,999	4,350
16	130,000--134,999	3,300
17	135,000--139,999	2,250
18	140,000--144,999	1,200
19	145,000--149,999	150
20	150,000 AND OVER	0

21 (D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,  
 22 IF THE FEDERAL THE AMOUNT  
 23 ADJUSTED GROSS ALLOWABLE FOR EACH  
 24 INCOME IS: DEPENDENT IS:

25	LESS THAN \$115,000	\$10,000
26	115,000--119,999	8,750
27	120,000--124,999	7,500
28	125,000--129,999	6,250
29	130,000--134,999	5,000
30	135,000--139,999	3,750
31	140,000--144,999	2,500
32	145,000--149,999	1,250
33	150,000 AND OVER	0

34 (2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED  
 35 GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX  
 36 RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR  
 37 PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBDIVISION,  
 38 THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE  
 39 AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR.  
 40 THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT  
 41 ON HIS OR HER NEW YORK CITY INCOME TAX RETURN SHALL BE ALLOWED TO TAKE  
 42 THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

43 (3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBDIVISION, SHALL  
 44 MEAN THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER  
 45 FOR THE ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN  
 46 ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

47 (B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY  
 48 NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK,  
 49 OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN  
 50 ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR  
 51 OF THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF  
 52 TITLE VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78  
 53 STAT. 252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX  
 54 EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)

(3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

(C) "PUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBDIVISION, SHALL MEAN THE MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

(4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS SUBDIVISION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE.

S 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.