

2743

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sens. GOLDEN, DeFRANCISCO, LANZA -- 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 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. Subsection (j) of section 612 of the tax law is REPEALED  
2 and a new subsection (j) is added to read as follows:

3 (J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTI-  
4 TLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT  
5 NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH,  
6 MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR  
7 SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST  
8 THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH  
9 DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVID-  
10 UAL IS ALLOWED AN EXEMPTION UNDER SECTION SIX HUNDRED SIXTEEN OF THIS  
11 PART FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER  
12 THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT  
13 IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL  
14 FOR SUCH EDUCATION OF SUCH DEPENDENT.

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

19	LESS THAN \$115,000	\$2,500
20	115,000--119,999	2,150
21	120,000--124,999	1,800

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

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1	125,000--129,999	1,450
2	130,000--134,999	1,100
3	135,000--139,999	750
4	140,000--144,999	400
5	145,000--149,999	50
6	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:

11	LESS THAN \$115,000	\$5,000
12	115,000--119,999	4,300
13	120,000--124,999	3,600
14	125,000--129,999	2,900
15	130,000--134,999	2,200
16	135,000--139,999	1,500
17	140,000--144,999	800
18	145,000--149,999	100
19	150,000 AND OVER	0

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

24	LESS THAN \$115,000	\$7,500
25	115,000--119,999	6,450
26	120,000--124,999	5,400
27	125,000--129,999	4,350
28	130,000--134,999	3,300
29	135,000--139,999	2,250
30	140,000--144,999	1,200
31	145,000--149,999	150
32	150,000 AND OVER	0

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

37	LESS THAN \$115,000	\$10,000
38	115,000--119,999	8,750
39	120,000--124,999	7,500
40	125,000--129,999	6,250
41	130,000--134,999	5,000
42	135,000--139,999	3,750
43	140,000--144,999	2,500
44	145,000--149,999	1,250
45	150,000 AND OVER	0

(2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBSECTION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT ON HIS OR HER NEW YORK STATE INCOME TAX RETURN SHALL BE

1 ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS  
2 SUBSECTION.

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

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

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

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

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

32 S 2. Subdivision (j) of section 11-1712 of the administrative code of  
33 the city of New York is REPEALED and a new subdivision (j) is added to  
34 read as follows:

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

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

51	LESS THAN \$115,000	\$2,500
52	115,000--119,999	2,150
53	120,000--124,999	1,800
54	125,000--129,999	1,450
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(C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,  
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(2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBDIVISION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT ON HIS OR HER NEW YORK CITY INCOME TAX RETURN SHALL BE ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

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

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

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

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

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

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

30 S 3. This act shall take effect immediately and shall apply to taxable  
31 years beginning on or after January 1, 2009.