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

S. 3324--A A. 5352--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

February 16, 2011

IN SENATE -- Introduced by Sens. LAVALLE, JOHNSON, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the real property tax circuit breaker credit

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

Section 1. Subsection (e) of section 606 of the tax law, as amended by chapter 28 of the laws of 1987, subparagraph (C) of paragraph 1 as amended by chapter 713 of the laws of 1996, subparagraph (E) of paragraph 1 as amended by chapter 105 of the laws of 2006, and paragraph 14 as amended by chapter 23 of the laws of 1990, is amended to read as follows:

(e) Real property tax circuit breaker credit. (1) For purposes of this subsection:

(A) "Qualified taxpayer" means a resident individual of the state who has occupied the same residence for six months or more of the taxable year, and is required or chooses to file a return under this article.

(B) "Household" or "members of the household" means a qualified taxpayer and all other persons, not necessarily related, who have the same residence and share its furnishings, facilities and accommodations. Such terms shall not include a tenant, subtenant, roomer or boarder who

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

LBD06603-02-2

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.

[(c)] (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 as adjusted gross income if a federal income tax return were required to be filed, with the modifications in subsection (b) of section six hundred twelve but without the modifications in subsection (c) of such section, plus any portion of 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); nontaxable 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) "Residence" means a dwelling in this state, whether owned or rented, and so much of the land abutting it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building including a cooperative or condominium, and rental units within a single dwelling. Residence includes a trailer or mobile home, used exclusively for residential purposes and defined as real property pursuant to paragraph (g) of subdivision twelve of section one hundred two of the real property tax law.

(E) "Qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied on the residence of a qualified taxpayer and paid during the taxable year less the credit claimed under THE FORMER subsection (n-1) of this section. In addition, for taxable years beginning after December thirty-first, nineteen hundred eighty-four, a qualified taxpayer may elect to include any additional amount that would have been levied in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is owned by two or more individuals as

joint tenants or tenants in common, and one or more than one individual is not a member of the household, qualifying real property taxes is that part of such taxes on the residence which reflects the ownership percentage of the qualified taxpayer and members of his household. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of such taxes paid as may be reasonably apportioned to such residence. If a household owns and occupies two or more residences during different periods in the same taxable year, qualifying real property taxes shall be the sum of the prorated qualifying real property taxes attributable to the household during the periods such household occupies each of such residences. If the household owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, it may include both the proration of qualifying real property taxes on the residence owned and the real property tax equivalent with respect to the months the residence is rented. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupying such residence for six months or more of the taxable year owns or has owned the residence and paid such taxes.

(F) "Real property tax equivalent" means twenty-five percent of the adjusted rent actually paid in the taxable year by a household solely for the right of occupancy of its New York residence for the taxable year. If (i) a residence is rented to two or more individuals as cotenants, or such individuals share in the payment of a single rent for the right of occupancy of such residence, and (ii) each of such individuals is a member of a different household, one or more of which individuals shares such residence, real property tax equivalent is that portion of twenty-five percent of the adjusted rent paid in the taxable year which reflects that portion of the rent attributable to the qualified taxpayer and the members of his household.

(G) "Adjusted rent" means rental paid for the right of occupancy of a residence, excluding charges for heat, gas, electricity, furnishings and board. Where charges for heat, gas, electricity, furnishing 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 and 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 [tax commission] COMMISSIONER determines that the adjusted rent shown on the return is excessive, the [tax commission] 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) A qualified taxpayer shall be allowed a credit as provided in paragraph three hereof against the taxes imposed by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced for such year under this article the qualified taxpayer may receive, and the comptroller, subject to a certificate of the [state tax commission] COMMISSIONER, shall pay as an overpayment, without

interest, any excess between such tax as so reduced and the amount of the credit. If a qualified taxpayer is not required to file a return pursuant to section six hundred fifty-one, a qualified taxpayer may nevertheless receive and the comptroller, subject to a certificate of the [state tax commission] COMMISSIONER, shall pay as an overpayment the full amount of the credit, without interest.

(3) Determination of credit. (A) For qualified taxpayers who have attained the age of sixty-five years OR A PERMANENT AND TOTAL DISABILITY AS DEFINED IN SECTION TWENTY-TWO OF THE INTERNAL REVENUE CODE before the beginning of or during the taxable year the amount of the credit allowable under this subsection shall be fifty percent, or in the case of a qualified taxpayer who has elected to include an additional amount pursuant to subparagraph (E) of paragraph one of this subsection, twenty-five percent, of the excess of real property taxes or the excess of real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
[$3,000] $6,000 or less	3 1/2
Over [$3,000] $6,000 but not over [$5,000] $10,000	4
Over [$5,000] $10,000 but not over [$7,000] $14,000	4 1/2
Over [$7,000] $14,000 but not over [$9,000] $18,000	5
Over [$9,000] $18,000 but not over [$11,000] $22,000	5 1/2
Over [$11,000] $22,000 but not over [$14,000] $28,000	6
Over [$14,000] $28,000 but not over [$18,000] $36,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
[$1,000] $2,000 or less	[$375] $463
Over [$1,000] $2,000 but not over [$2,000] $4,000	[$358] $442
Over [$2,000] $4,000 but not over [$3,000] $6,000	[$341] $421
Over [$3,000] $6,000 but not over [$4,000] $8,000	[$324] $400
Over [$4,000] $8,000 but not over [$5,000] $10,000	[$307] $379
Over [$5,000] $10,000 but not over [$6,000] $12,000	[$290] $358
Over [$6,000] $12,000 but	

not over [$7,000] $14,000	[$273] $337
Over [$7,000] $14,000 but not over [$8,000] $16,000	[$256] $316
Over [$8,000] $16,000 but not over [$9,000] $18,000	[$239] $295
Over [$9,000] $18,000 but not over [$10,000] $20,000	[$222] $274
Over [$10,000] $20,000 but not over [$11,000] $22,000	[$205] $253
Over [$11,000] $22,000 but not over [$12,000] $24,000	[$188] $232
Over [$12,000] $24,000 but not over [$13,000] $26,000	[$171] $211
Over [$13,000] $26,000 but not over [$14,000] $28,000	[$154] $190
Over [$14,000] $28,000 but not over [$15,000] $30,000	[$137] $169
Over [$15,000] $30,000 but not over [$16,000] $32,000	[$120] $148
Over [$16,000] $32,000 but not over [$17,000] $34,000	[$103] $127
Over [$17,000] $34,000 but not over [$18,000] $36,000	[$86] $106

(B) For all other qualified taxpayers the amount of the credit allowable under this subsection shall be fifty percent of excess real property taxes or the excess of the real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
[$3,000] $6,000 or less	3 1/2
Over [$3,000] $6,000 but not over [$5,000] $10,000	4
Over [$5,000] $10,000 but not over [$7,000] $14,000	4 1/2
Over [$7,000] $14,000 but not over [$9,000] $18,000	5
Over [$9,000] $18,000 but not over [$11,000] $22,000	5 1/2
Over [$11,000] $22,000 but not over [$14,000] $28,000	6
Over [$14,000] $28,000 but not over [$18,000] $36,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
[$1,000] $2,000 or less	[$75] $163

Over [$1,000] $2,000 but not over [$2,000] $4,000	[$73] $158
Over [$2,000] $4,000 but not over [$3,000] $6,000	[$71] $154
Over [$3,000] $6,000 but not over [$4,000] $8,000	[$69] $149
Over [$4,000] $8,000 but not over [$5,000] $10,000	[$67] $145
Over [$5,000] $10,000 but not over [$6,000] $12,000	[$65] $140
Over [$6,000] $12,000 but not over [$7,000] $14,000	[$63] $136
Over [$7,000] $14,000 but not over [$8,000] $16,000	[$61] $132
Over [$8,000] $16,000 but not over [$9,000] $18,000	[$59] $128
Over [$9,000] $18,000 but not over [$10,000] $20,000	[$57] $123
Over [$10,000] $20,000 but not over [$11,000] $22,000	[$55] $119
Over [$11,000] $22,000 but not over [$12,000] $24,000	[$53] $115
Over [$12,000] $24,000 but not over [$13,000] $26,000	[$51] $110
Over [$13,000] $26,000 but not over [$14,000] $28,000	[$49] $106
Over [$14,000] $28,000 but not over [$15,000] $30,000	[$47] $102
Over [$15,000] $30,000 but not over [$16,000] $32,000	[$45] $97
Over [$16,000] $32,000 but not over [$17,000] $34,000	[$43] $93
Over [$17,000] $34,000 but not over [$18,000] $36,000	[$41] $89

(4) If a qualified taxpayer occupies a residence for a period of less than twelve months during the taxable year or occupies two or more residences during different periods in such taxable year, the credit allowed pursuant to this subsection shall be computed in such manner as the [tax commission] COMMISSIONER may, by regulation, prescribe in order to properly reflect the credit or portion thereof attributable to such residence or residences and such period or periods.

(5) The [tax commission] COMMISSIONER may prescribe that the credit under this subsection shall be determined in whole or in part by the use of tables prescribed by such [commission] COMMISSIONER. Such tables shall set forth the credit to the nearest dollar.

(6) 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 [tax commission] COMMISSIONER a written agreement among such individuals setting forth a different division. Where two or more members of a household are able to meet the qualifications of a qualified taxpayer and one of them is sixty-five years of age or more OR HAS A PERMANENT AND TOTAL DISABILITY, the credit which may be taken shall be the credit applicable to individuals who have attained the age of sixty-five years.

(A) Provided, however, where a joint income tax return has been filed pursuant to the provisions of section six hundred fifty-one 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 six hundred fifty-one 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 [tax commission] COMMISSIONER, the credit or the portion of the credit if divided, allowed to the qualified taxpayer may be applied by the [tax commission] COMMISSIONER toward any liability for the aforementioned taxes.

(7) No credit shall be granted under this subsection:

(A) If household gross income for the taxable year exceeds [eighteen] THIRTY-SIX thousand dollars.

(B) To a property owner unless: (i) the property is used for residential purposes, (ii) not more than twenty percent of the rental income, if any, from the property is from rental for nonresidential purposes and (iii) the property is occupied as a residence in whole or in part by one or more of the owners of the property.

(C) To a property owner who owns real property FOR OVER TWO YEARS, the full value of which exceeds [eighty-five thousand dollars] THE MEDIAN FULL VALUE OF RESIDENTIAL REAL PROPERTY SALES WITHIN THE COUNTY WHERE IT IS LOCATED, AS DETERMINED BY THE STATE BOARD OF REAL PROPERTY SERVICES, OR THE MEDIAN FULL VALUE OF RESIDENTIAL REAL PROPERTY IN THE STATE, AS DETERMINED BY THE STATE BOARD OF REAL PROPERTY SERVICES, WHICHEVER IS LESS.

(D) To a tenant if the adjusted rent for the residence exceeds [four] EIGHT hundred [fifty] dollars per month on average.

(E) 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.

(F) With respect to a residence that is wholly exempted from real property taxation.

(G) To an individual who is not a resident individual of the state for the entire taxable year.

(H) WHERE A HOUSEHOLD OR QUALIFIED TAXPAYER HAS CLAIMED AN EARNED INCOME TAX CREDIT PURSUANT TO THIS SECTION.

(I) TO AN INDIVIDUAL WHOSE HOUSEHOLD GROSS INCOME IS MORE THAN EIGHTY PERCENT OF THE STATE MEDIAN FAMILY INCOME.

(8) 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 OR HER death, but such right may be exercised on behalf of a claimant by his OR HER legal guardian or attorney in fact during his OR HER lifetime.

(9) Returns. If a qualified taxpayer is not required to file a return pursuant to section six hundred fifty-one, a claim for a credit may be taken on a return filed with the [tax commission] COMMISSIONER within three years from the time it would have been required that a return be filed pursuant to such section had the qualified taxpayer had a taxable year ending on December thirty-first. Returns under this paragraph shall be in such form as shall be prescribed by the [tax commission] COMMISSIONER, which shall make available such forms and instructions for filing such returns.

(10) Proof of claim. The [tax commission] COMMISSIONER may require a qualified taxpayer to furnish the following information in support of his claim for credit under this subsection: household gross income, rent paid, name and address of owner or managing agent of the property rented, real property taxes levied or that would have been levied in the absence of an exemption from real property tax pursuant to section four hundred sixty-seven of the real property tax law, the names of members of the household and other qualifying taxpayers occupying the same 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 [tax commission] COMMISSIONER to determine the credit.

(11) Administration. The provisions of this article, including the provisions of section six hundred fifty-three, six hundred fifty-eight, and six hundred fifty-nine and the provisions of part six of this article relating to procedure and administration, including the judicial review of the decisions of the [tax commission] COMMISSIONER, except so much of section six hundred eighty-seven which permits a claim for credit or refund to be filed after the period provided for in paragraph nine of this subsection and except sections six hundred fifty-seven, six hundred eighty-eight and six hundred ninety-six, shall apply to the provisions of this subsection in the same manner and with the same force and effect as if the language of those provisions had been incorporated in full into this subsection and had expressly referred to the credit allowed or returns filed under this subsection, except to the extent that any such provision is either inconsistent with a provision of this subsection or is not relevant to this subsection. As used in such sections and such part, the term "taxpayer" shall include a qualified taxpayer under this subsection and, notwithstanding the provisions of subsection (e) of section six hundred ninety-seven, where a qualified taxpayer has protested the denial of a claim for credit under this subsection and the time to file a petition for redetermination of a deficiency or for refund has not expired, he OR SHE shall, subject to such conditions as may be set by the [tax commission] COMMISSIONER, receive such information (A) which is contained in any return filed under this article by a member of his OR HER household for the taxable year for which the credit is claimed, and (B) which the [tax commission] COMMISSIONER finds is relevant and material to the issue of whether such claim was properly denied. The [tax commission] COMMISSIONER shall have the authority to promulgate such rules and regulations as may be necessary for the processing, determination and granting of credits and refunds under this subsection.

(13) 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 article.

(14) The commissioner [of taxation and finance] shall prepare a preliminary written report after July thirty-first and a final written report after December thirty-first of each calendar year, which shall contain statistical information regarding the credits granted on or before such dates under this subsection during such calendar year. Copies of these reports shall be submitted by such commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee within sixty days of July thirty-first with respect to the preliminary report, and within forty-five

days of December thirty-first with respect to the final report. Such reports shall contain, but need not be limited to, the number of credits and the average amount of such credits allowed; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers in each county; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers whose household gross income falls within each of the household gross income ranges set forth in paragraph three of this subsection; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers whose credit amount falls within credit amount ranges set forth in twenty-five dollar increments.

S 2. Paragraph 3 of subsection (e) of section 606 of the tax law, as amended by section one of this act, is amended to read as follows:

(3) Determination of credit. (A) For qualified taxpayers who have attained the age of sixty-five years or a permanent and total disability as defined in section twenty-two of the internal revenue code before the beginning of or during the taxable year the amount of the credit allowable under this subsection shall be fifty percent, or in the case of a qualified taxpayer who has elected to include an additional amount pursuant to subparagraph (E) of paragraph one of this subsection, twenty-five percent, of the excess of real property taxes or the excess of real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
$6,000 or less	3 1/2
Over $6,000 but not over $10,000	4
Over $10,000 but not over $14,000	4 1/2
Over $14,000 but not over $18,000	5
Over $18,000 but not over $22,000	5 1/2
Over $22,000 but not over $28,000	6
Over $28,000 but not over $36,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
$2,000 or less	[$463] $550
Over $2,000 but not over $4,000	[$442] $525
Over $4,000 but not over $6,000	[$421] $500
Over $6,000 but	

not over $8,000	[$400] $475
Over $8,000 but not over $10,000	[$379] $450
Over $10,000 but not over $12,000	[$358] $425
Over $12,000 but not over $14,000	[$337] $400
Over $14,000 but not over $16,000	[$316] $375
Over $16,000 but not over $18,000	[$295] $350
Over $18,000 but not over $20,000	[$274] $325
Over $20,000 but not over $22,000	[$253] $300
Over $22,000 but not over $24,000	[$232] $275
Over $24,000 but not over $26,000	[$211] $250
Over $26,000 but not over $28,000	[$190] $225
Over $28,000 but not over $30,000	[$169] $200
Over $30,000 but not over $32,000	[$148] $175
Over $32,000 but not over $34,000	[$127] $150
Over $34,000 but not over $36,000	[$106] $125

(B) For all other qualified taxpayers the amount of the credit allowable under this subsection shall be fifty percent of excess real property taxes or the excess of the real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
$6,000 or less	3 1/2
Over $6,000 but not over $10,000	4
Over $10,000 but not over $14,000	4 1/2
Over $14,000 but not over $18,000	5
Over $18,000 but not over $22,000	5 1/2
Over $22,000 but not over $28,000	6
Over $28,000 but not over $36,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this subparagraph may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
$2,000 or less	[$163] $250
Over $2,000 but not over $4,000	[$158] $243
Over $4,000 but not over $6,000	[$154] $237
Over $6,000 but not over $8,000	[$149] $230
Over $8,000 but not over $10,000	[$145] $223
Over $10,000 but not over $12,000	[$140] $217
Over $12,000 but not over $14,000	[$136] $210
Over $14,000 but not over $16,000	[$132] $203
Over $16,000 but not over $18,000	[$128] $197
Over $18,000 but not over $20,000	[$123] $190
Over $20,000 but not over $22,000	[$119] $183
Over $22,000 but not over $24,000	[$115] $177
Over $24,000 but not over $26,000	[$110] $170
Over $26,000 but not over $28,000	[$106] $163
Over $28,000 but not over $30,000	[$102] $157
Over $30,000 but not over $32,000	[$97] $150
Over $32,000 but not over $34,000	[$93] $143
Over $34,000 but not over $36,000	[$89] $137

S 3. This act shall take effect immediately; provided, however, that section two of this act shall take effect January 1, 2013.