

735

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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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.

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

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1 (II) FOR THE PURPOSES OF THIS SUBSECTION, "OWNERSHIP INTEREST"  
2 INCLUDES THE FOLLOWING: A FEE SIMPLE INTEREST, A JOINT TENANCY, A TENAN-  
3 CY IN COMMON, A TENANCY BY THE ENTIRETY, THE INTEREST OF A  
4 TENANT-SHARE-HOLDER IN A COOPERATIVE, A LIFE ESTATE AND A LAND CONTRACT.  
5 INTERESTS WHICH DO NOT CONSTITUTE OWNERSHIP INTERESTS INCLUDE THE  
6 FOLLOWING: (A) REMAINDER INTERESTS, (B) A LEASE WITH OR WITHOUT AN  
7 OPTION TO PURCHASE, (C) A MERE EXPECTANCY TO INHERIT AN INTEREST IN A  
8 RESIDENCE, (D) THE INTEREST THAT A PURCHASER OF A RESIDENCE ACQUIRES ON  
9 THE EXECUTION OF A PURCHASE CONTRACT AND (E) AN INTEREST IN REAL ESTATE  
10 OTHER THAN A RESIDENCE.

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

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

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

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

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

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

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

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

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

55 (4) WITHIN SIXTY DAYS AFTER WITHDRAWAL OF MONEYS FROM A HOUSE PURCHASE  
56 ACCOUNT, AN INDIVIDUAL SHALL SUBMIT SATISFACTORY PROOF TO THE COMMIS-

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

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

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

31 (II) AN UNFORESEEABLE FINANCIAL EMERGENCY.

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

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

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

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

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