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2013-2014 Regular Sessions

I N   A S S E M B L Y

January 17, 2013

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Introduced by M. of A. WRIGHT, MILLMAN -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, HEASTIE, V. LOPEZ, PEOPLES-STOKES, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to benefits and eligibility under the real property tax circuit breaker credit

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

1     Section 1. Paragraphs 1, 3 and 7 of subsection (e) of section 606 of  
2     the tax law, as amended by chapter 28 of the laws of 1987, subparagraph  
3     (c) of paragraph 1 as amended by chapter 713 of the laws of 1996 and  
4     subparagraph (E) of paragraph 1 as amended by chapter 105 of the laws of  
5     2006, are amended to read as follows:  
6     (1) For purposes of this subsection:  
7     (A) "Qualified taxpayer" means a resident individual of the state who  
8     has occupied the same residence for six months or more of the taxable  
9     year, and is required or chooses to file a return under this article.  
10    (B) "Household" or "members of the household" means a qualified  
11    taxpayer and all other persons, not necessarily related, who have the  
12    same residence and share its furnishings, facilities and accommodations.  
13    Such terms shall not include a tenant, subtenant, roomer or boarder who  
14    is not related to the qualified taxpayer in any degree specified in  
15    paragraphs one through eight of subsection (a) of section one hundred  
16    fifty-two of the internal revenue code. Provided, however, no person may  
17    be a member of more than one household at one time.  
18    [(c)] (C) "Household gross income" means the aggregate adjusted gross  
19    income of all ADULT members of the household for the taxable year as  
20    reported for federal income tax purposes, or which would be reported as  
21    adjusted gross income if a federal income tax return were required to be  
22    filed, with the modifications in subsection (b) of section six hundred  
23    twelve OF THIS ARTICLE but without the modifications in subsection (c)  
24    of such section, plus any portion of the gain from the sale or exchange

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

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1 of property otherwise excluded from such amount; earned income from  
2 sources without the United States excludable from federal gross income  
3 by section nine hundred eleven of the internal revenue code; support  
4 money not included in adjusted gross income; nontaxable strike benefits;  
5 supplemental security income payments; the gross amount of any pension  
6 or annuity benefits to the extent not included in such adjusted gross  
7 income (including, but not limited to, railroad retirement benefits and  
8 all payments received under the federal social security act and veter-  
9 ans' disability pensions); nontaxable interest received from the state  
10 of New York, its agencies, instrumentalities, public corporations, or  
11 political subdivisions (including a public corporation created pursuant  
12 to agreement or compact with another state or Canada); workers' compen-  
13 sation; the gross amount of "loss-of-time" insurance; and the amount of  
14 cash public assistance and relief, other than medical assistance for the  
15 needy, paid to or for the benefit of the qualified taxpayer or members  
16 of his household. Household gross income shall not include surplus foods  
17 or other relief in kind or payments made to individuals because of their  
18 status as victims of Nazi persecution as defined in P.L. 103-286.  
19 Provided, further, household gross income shall only include all such  
20 income received by all members of the household while members of such  
21 household. PROVIDED, FURTHER, THAT HOUSEHOLD GROSS INCOME SHALL NOT  
22 INCLUDE INCOME OF HOUSEHOLD MEMBERS WHO ARE UNDER THE AGE OF EIGHTEEN,  
23 OR INCOME OF HOUSEHOLD MEMBERS UNDER THE AGE OF TWENTY-ONE IF SUCH INDI-  
24 VIDUALS ATTEND AN ACCREDITED COLLEGE OR UNIVERSITY AT LEAST PART-TIME.

25 (D) "Residence" means a dwelling in this state, whether owned or rent-  
26 ed, and so much of the land abutting it, not exceeding one acre, as is  
27 reasonably necessary for use of the dwelling as a home, and may consist  
28 of a part of a multi-dwelling or multi-purpose building including a  
29 cooperative or condominium, and rental units within a single dwelling.  
30 Residence includes a trailer or mobile home, used exclusively for resi-  
31 dential purposes and defined as real property pursuant to paragraph (g)  
32 of subdivision twelve of section one hundred two of the real property  
33 tax law.

34 (E) "Qualifying real property taxes" means all real property taxes,  
35 special ad valorem levies and special assessments, exclusive of penal-  
36 ties and interest, levied on the residence of a qualified taxpayer and  
37 paid during the taxable year [less the credit claimed under subsection  
38 (n-1) of this section]. In addition, for taxable years beginning after  
39 December thirty-first, nineteen hundred eighty-four, a qualified taxpay-  
40 er may elect to include any additional amount that would have been  
41 levied in the absence of an exemption from real property taxation pursu-  
42 ant to section four hundred sixty-seven of the real property tax law. If  
43 tenant-stockholders in a cooperative housing corporation have met the  
44 requirements of section two hundred sixteen of the internal revenue code  
45 by which they are allowed a deduction for real estate taxes, the amount  
46 of taxes so allowable, or which would be allowable if the taxpayer had  
47 filed returns on a cash basis, shall be qualifying real property taxes.  
48 If a residence is owned by two or more individuals as joint tenants or  
49 tenants in common, and one or more than one individual is not a member  
50 of the household, qualifying real property taxes is that part of such  
51 taxes on the residence which reflects the ownership percentage of the  
52 qualified taxpayer and members of his household. If a residence is an  
53 integral part of a larger unit, qualifying real property taxes shall be  
54 limited to that amount of such taxes paid as may be reasonably appor-  
55 tioned to such residence. If a household owns and occupies two or more  
56 residences during different periods in the same taxable year, qualifying

1 real property taxes shall be the sum of the prorated qualifying real  
2 property taxes attributable to the household during the periods such  
3 household occupies each of such residences. If the household owns and  
4 occupies a residence for part of the taxable year and rents a residence  
5 for part of the same taxable year, it may include both the proration of  
6 qualifying real property taxes on the residence owned and the real prop-  
7 erty tax equivalent with respect to the months the residence is rented.  
8 Provided, however, for purposes of the credit allowed under this  
9 subsection, qualifying real property taxes may be included by a quali-  
10 fied taxpayer only to the extent that such taxpayer or the spouse of  
11 such taxpayer occupying such residence for six months or more of the  
12 taxable year owns or has owned the residence and paid such taxes.

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

24 (G) "Adjusted rent" means rental paid for the right of occupancy of a  
25 residence, excluding charges for heat, gas, electricity, furnishings and  
26 board. Where charges for heat, gas, electricity, furnishing or board are  
27 included in rental but where such charges and the amount thereof are not  
28 separately set forth in a written rental agreement, for purposes of  
29 determining adjusted rent the qualified taxpayer shall reduce rental  
30 paid as follows:

31 (i) For heat, or heat and gas, deduct fifteen percent of rental paid.

32 (ii) For heat, gas and electricity, deduct twenty percent of rental  
33 paid.

34 (iii) For heat, gas, electricity and furnishings, deduct twenty-five  
35 percent of rental paid.

36 (iv) For heat, gas, electricity, furnishings and board, deduct fifty  
37 percent of rental paid.

38 If the tax commission determines that the adjusted rent shown on the  
39 return is excessive, the tax commission may reduce such rent, for  
40 purposes of the computation of the credit, to an amount substantially  
41 equivalent to rent for a comparable accommodation.

42 (3) Determination of credit. (A) For qualified taxpayers who have  
43 attained the age of sixty-five years before the beginning of or during  
44 the taxable year the amount of the credit allowable under this  
45 subsection shall be fifty percent, or in the case of a qualified taxpay-  
46 er who has elected to include an additional amount pursuant to subpara-  
47 graph (E) of paragraph one of this subsection, twenty-five percent, of  
48 the excess of real property taxes or the excess of real property tax  
49 equivalent determined as follows:

50	Excess real property taxes are the
51	excess of real property tax equiv-
52	alent or the excess of qualifying
53	real property taxes over the fol-
54	lowing percentage of household
55	gross income:
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If household gross income for the  
taxable year is:

1	-----	-----
2	\$3,000 or less	3 1/2
3	Over \$3,000 but not over \$5,000	4
4	Over \$5,000 but not over \$7,000	4 1/2
5	Over \$7,000 but not over \$9,000	5
6	Over \$9,000 but not over \$11,000	5 1/2
7	Over \$11,000 but not over \$14,000	6
8	Over \$14,000 [but not over \$18,000]	6 1/2

9 Notwithstanding the foregoing provisions, the maximum credit deter-  
 10 mined under this subparagraph may not exceed the amount determined in  
 11 accordance with the following table:

12	If household gross income for the	
13	taxable year is:	The maximum credit is:
14	-----	-----
15	\$1,000 or less	\$375
16	Over \$1,000 but not over \$2,000	\$358
17	Over \$2,000 but not over \$3,000	\$341
18	Over \$3,000 but not over \$4,000	\$324
19	Over \$4,000 but not over \$5,000	\$307
20	Over \$5,000 but not over \$6,000	\$290
21	Over \$6,000 but not over \$7,000	\$273
22	Over \$7,000 but not over \$8,000	\$256
23	Over \$8,000 but not over \$9,000	\$239
24	Over \$9,000 but not over \$10,000	\$222
25	Over \$10,000 but not over \$11,000	\$205
26	Over \$11,000 but not over \$12,000	\$188
27	Over \$12,000 but not over \$13,000	\$171
28	Over \$13,000 but not over \$14,000	\$154
29	Over \$14,000 but not over \$15,000	\$137
30	Over \$15,000 but not over \$16,000	\$120
31	Over \$16,000 but not over \$17,000	\$103
32	Over \$17,000 [but not over \$18,000]	\$ 86

33 (B) For all other qualified taxpayers the amount of the credit allow-  
 34 able under this subsection shall be fifty percent of excess real proper-  
 35 ty taxes or the excess of the real property tax equivalent determined as  
 36 follows:

37		Excess real property taxes are the
38		excess of real property tax equiv-
39		alent or the excess of qualifying
40		real property taxes over the fol-
41	If household gross income for the	lowing percentage of household
42	taxable year is:	gross income:
43	-----	-----
44	\$3,000 or less	3 1/2
45	Over \$3,000 but not over \$5,000	4
46	Over \$5,000 but not over \$7,000	4 1/2
47	Over \$7,000 but not over \$9,000	5
48	Over \$9,000 but not over \$11,000	5 1/2
49	Over \$11,000 but not over \$14,000	6
50	Over \$14,000 [but not over \$18,000]	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 or less	\$75
Over \$1,000 but not over \$2,000	\$73
Over \$2,000 but not over \$3,000	\$71
Over \$3,000 but not over \$4,000	\$69
Over \$4,000 but not over \$5,000	\$67
Over \$5,000 but not over \$6,000	\$65
Over \$6,000 but not over \$7,000	\$63
Over \$7,000 but not over \$8,000	\$61
Over \$8,000 but not over \$9,000	\$59
Over \$9,000 but not over \$10,000	\$57
Over \$10,000 but not over \$11,000	\$55
Over \$11,000 but not over \$12,000	\$53
Over \$12,000 but not over \$13,000	\$51
Over \$13,000 but not over \$14,000	\$49
Over \$14,000 but not over \$15,000	\$47
Over \$15,000 but not over \$16,000	\$45
Over \$16,000 but not over \$17,000	\$43
Over \$17,000 [but not over \$18,000]	\$41

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

(A) If household gross income for the taxable year exceeds [eighteen thousand dollars] TWO HUNDRED PERCENT OF THE FEDERAL POVERTY LEVEL.

(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, the full value of which exceeds [eighty-five] TWO HUNDRED thousand dollars.

(D) [To] (I) IN A CITY WITH A POPULATION OF TWO MILLION OR MORE, TO a tenant if the adjusted rent for the residence exceeds [four] EIGHT hundred [fifty] dollars per month on average; OR (II) IN ALL OTHER AREAS OF THE STATE TO A TENANT IF THE ADJUSTED RENT FOR THE RESIDENCE EXCEEDS SIX HUNDRED 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.

S 2. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2013.