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

2179--C

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

AN ACT to amend the tax law and the real property tax law, in relation to establishing the "caregiver's assistance act"

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

Section 1. Short title. This act shall be known and may be cited as the "caregiver's assistance act".

S 2. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(CCC) ELDER CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS PART IN AN AMOUNT EQUAL TO TWENTY PERCENT OF QUALIFIED CARE EXPENSES PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING SENIOR FAMILY MEMBER OR FOUR HUNDRED FIFTEEN DOLLARS, WHICHEVER IS LESS. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH TAXABLE YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. NO CREDIT SHALL BE GRANTED UNDER THIS SUBSECTION IF (I) THE TAXPAYER'S NEW YORK ADJUSTED GROSS INCOME IS GREATER THAN FORTY-FIVE THOUSAND DOLLARS FOR A SINGLE TAXPAYER OR SIXTY THOUSAND DOLLARS FOR MARRIED TAXPAYERS, OR (II) IF THE TAXPAYER HAS

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

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CLAIMED THE CREDIT FOR CERTAIN HOUSEHOLD AND DEPENDENT CARE SERVICES AUTHORIZED IN THIS SECTION.

(2) AS USED IN THIS SUBSECTION:

(A) "TAXPAYER" IS A RESIDENT INDIVIDUAL OF THIS STATE, BUT THE TERM DOES NOT INCLUDE A NONRESIDENT TAXPAYER OR A PART-YEAR RESIDENT TAXPAYER.

(B) "QUALIFYING SENIOR FAMILY MEMBER" IS A RELATIVE OF THE TAXPAYER WITHIN THE THIRD DEGREE OF CONSANGUINITY WHO RESIDES WITH THE TAXPAYER AND WHO IS SIXTY YEARS OR OLDER AND WHOSE NEW YORK ADJUSTED GROSS INCOME IS THIRTEEN THOUSAND DOLLARS OR LESS FOR A SINGLE FAMILY MEMBER OR TWENTY THOUSAND OR LESS FOR MARRIED FAMILY MEMBERS. A QUALIFYING SENIOR FAMILY MEMBER INCLUDES A PERSON WHO OTHERWISE MEETS THE QUALIFICATIONS SPECIFIED IN THE PRECEDING SENTENCE BUT WHO OCCUPIES A SEPARATE ROOM OR ROOMS IN OR AT THE RESIDENCE OF THE TAXPAYER, SUCH AS THOSE COMMONLY REFERRED TO AS MOTHER-IN-LAW APARTMENTS, BUT SHALL NOT INCLUDE A TENANT, SUBTENANT, ROOMER OR BOARDER WHO PAYS A LEASE OR RENTAL FEE TO THE TAXPAYER FOR THE SPACE.

(C) "QUALIFIED CARE EXPENSES" ARE PAYMENTS MADE BY THE TAXPAYER FOR GOODS AND SERVICES NECESSARY TO ALLOW THE QUALIFYING SENIOR FAMILY MEMBER TO BE MAINTAINED IN THE TAXPAYER'S RESIDENCE WHICH GOODS AND SERVICES ARE: (I) PROVIDED TO OR FOR THE BENEFIT OF THE QUALIFYING SENIOR FAMILY MEMBER OR TO ASSIST THE TAXPAYER IN CARING FOR THE QUALIFYING SENIOR FAMILY MEMBER; OR PROVIDED BY AN ORGANIZATION OR AN INDIVIDUAL NOT RELATED TO THE TAXPAYER OR THE QUALIFYING SENIOR FAMILY MEMBER; AND (II) NOT COMPENSATED FOR BY INSURANCE OR FEDERAL OR STATE PROGRAMS. SUCH EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, HOME HEALTH AGENCY SERVICES, ADULT DAY CARE, COMPANIONSHIP SERVICES, PERSONAL CARE ATTENDANT SERVICES, HOMEMAKER SERVICES, RESPITE CARE, HEALTH CARE EQUIPMENT AND SUPPLIES, HOME MODIFICATION, OR ANY SERVICES NECESSARY TO PROVIDE HELP IN TWO OR MORE ACTIVITIES IN DAILY LIVING, OR FOR THE PROVISION OF ASSISTIVE DEVICES.

(3) WHEN TWO OR MORE MEMBERS OF A HOUSEHOLD MEET THE QUALIFICATIONS FOR A CREDIT OR CREDITS PURSUANT TO THIS SUBSECTION, THE CREDIT OR CREDITS SHALL BE EQUALLY DIVIDED BETWEEN OR AMONG SUCH INDIVIDUALS UNLESS SUCH INDIVIDUALS FILE WITH THE COMMISSIONER A WRITTEN AGREEMENT SETTING FORTH A DIFFERENT DIVISION. WHERE A JOINT INCOME TAX RETURN HAS BEEN FILED PURSUANT TO THIS CHAPTER BY A TAXPAYER AND HIS OR HER SPOUSE (OR WHERE BOTH SPOUSES ARE TAXPAYERS AND HAVE FILED SUCH JOINT RETURN), WHO QUALIFY FOR SUCH CREDIT OR CREDITS, THE CREDIT OR CREDITS, OR THE PORTION THEREOF 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. WHERE ANY RETURN REQUIRED TO BE FILED PURSUANT TO THIS CHAPTER 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 COMMISSIONER, THE CREDIT OR CREDITS OR THE PORTION THEREOF IF DIVIDED, ALLOWED TO THE TAXPAYER MAY BE APPLIED BY THE COMMISSIONER TOWARD ANY LIABILITY FOR THE AFOREMENTIONED TAXES.

(4) NO CREDIT OR CREDITS OR PORTION THEREOF SHALL BE GRANTED UNDER THIS SUBSECTION WITH RESPECT TO CARE PROVIDED IN A RESIDENCE THAT IS WHOLLY EXEMPTED FROM REAL PROPERTY TAXATION OR TO AN INDIVIDUAL WHO IS NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR. THE RIGHT TO CLAIM A CREDIT OR CREDITS OR A PORTION THEREOF, WHERE SUCH CREDIT OR CREDITS HAVE 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.

(5) THE COMMISSIONER MAY REQUIRE A TAXPAYER TO FURNISH AS SUPPORT OF HIS OR HER CLAIM FOR CREDIT UNDER THIS SUBSECTION RECEIPTS FOR QUALIFIED CARE EXPENSES OR OTHER SUCH PROOFS OF PAYMENT AS SHALL SATISFY THE COMMISSIONER.

S 3. Subdivision 4-a of section 425 of the real property tax law is amended by adding a new paragraph (d) to read as follows:

(D) PERSON WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE. WHEN A RESIDENCE SERVES AS THE PRIMARY RESIDENCE FOR BOTH A PERSON WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER ON THE DATE SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION AND A RELATIVE WHO IS WITHIN THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY THAT IS THE OWNER OF SUCH RESIDENCE, A BASIC OR ENHANCED EXEMPTION SHALL BE AVAILABLE FOR SUCH PROPERTY ON A PRO-RATED BASIS IF SUCH PERSON WOULD OTHERWISE MEET THE ELIGIBILITY REQUIREMENTS SET FORTH IN SUBDIVISION THREE OR FOUR OF THIS SECTION, EXCEPT FOR OWNERSHIP REQUIREMENTS, AND WHERE, IN THE CASE OF AN ENHANCED EXEMPTION, THE INCOME OF THE PERSON WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER AND HIS OR HER SPOUSE CONSIDERED SEPARATELY FROM THE REMAINDER OF THE HOUSEHOLD WOULD MEET THE INCOME REQUIREMENTS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. SUCH BASIC OR ENHANCED EXEMPTION SHALL BE PROVIDED ON A PRO-RATED BASIS TO THE PROPERTY AS FOLLOWS: MULTIPLY THE EXEMPTION THAT WOULD BE GRANTED TO THE PROPERTY AS A WHOLE IF THE PROPERTY WERE ELIGIBLE FOR THE BASIC OR THE ENHANCED EXEMPTION, AS APPLICABLE, BY A FRACTION, THE NUMERATOR OF WHICH IS THE SQUARE FOOTAGE OF THE ROOM OR ROOMS USED BY SUCH PERSON WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER AND HIS OR HER SPOUSE EXCLUSIVELY FOR LIVING SPACE, AND THE DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE OF THE RESIDENCE. EXCEPT AS PROVIDED IN THIS PARAGRAPH, OR AS INCONSISTENT WITH THE PURPOSES OF THIS PARAGRAPH, ALL OTHER REQUIREMENTS OF THIS SECTION SHALL BE APPLICABLE TO SUCH PRO-RATED BASIC OR ENHANCED EXEMPTION. THE EXEMPTION PROVIDED BY THIS PARAGRAPH SHALL BE IN ADDITION TO ANY EXEMPTION PLACED ON THE PROPERTY PURSUANT TO SUBDIVISION THREE OR FOUR OF THIS SECTION.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.