

2432--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 15, 2013

Introduced by M. of A. ENGLEBRIGHT, MOYA -- read once and referred to the Committee on Ways and Means -- 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:

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

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

5 (WW) ELDER CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT
6 AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS PART EQUAL
7 TO TWENTY PERCENT OF QUALIFIED CARE EXPENSES IN AN AMOUNT EQUAL TO OR
8 LESS THAN TWO THOUSAND SEVENTY-FIVE DOLLARS FOR THE TAXABLE YEAR THAT
9 ARE PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING SENIOR FAMILY
10 MEMBER. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION SHALL
11 EXCEED THE TAXPAYER'S TAX FOR SUCH TAXABLE YEAR, THE EXCESS SHALL BE
12 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
13 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI-
14 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. IF A
15 TAXPAYER IS NOT REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX
16 HUNDRED ONE OF THIS PART, A TAXPAYER MAY NEVERTHELESS RECEIVE AND THE
17 COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS
18 AN OVERPAYMENT THE FULL AMOUNT OF THE CREDIT OR CREDITS, WITHOUT INTER-
19 EST. NO CREDIT SHALL BE GRANTED UNDER THIS SUBSECTION IF THE TAXPAYER'S
20 NEW YORK ADJUSTED GROSS INCOME IS GREATER THAN FORTY-FIVE THOUSAND
21 DOLLARS FOR A SINGLE TAXPAYER OR SIXTY THOUSAND DOLLARS FOR MARRIED
22 TAXPAYERS, OR IF THE TAXPAYER HAS CLAIMED THE CREDIT FOR CERTAIN HOUSE-
23 HOLD AND DEPENDENT CARE SERVICES AUTHORIZED IN THIS SECTION.

24 (2) AS USED IN THIS SUBSECTION:

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

LBD05880-08-3

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

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

15 (C) "QUALIFIED CARE EXPENSES" ARE PAYMENTS MADE BY THE TAXPAYER FOR
16 GOODS AND SERVICES NECESSARY TO ALLOW THE QUALIFYING SENIOR FAMILY
17 MEMBER TO BE MAINTAINED IN THE TAXPAYER'S RESIDENCE WHICH GOODS AND
18 SERVICES ARE: (I) PROVIDED TO OR FOR THE BENEFIT OF THE QUALIFYING
19 SENIOR FAMILY MEMBER OR TO ASSIST THE TAXPAYER IN CARING FOR THE QUALI-
20 FYING SENIOR FAMILY MEMBER; OR PROVIDED BY AN ORGANIZATION OR AN INDIV-
21 VIDUAL NOT RELATED TO THE TAXPAYER OR THE QUALIFYING SENIOR FAMILY
22 MEMBER; AND (II) NOT COMPENSATED FOR BY INSURANCE OR FEDERAL OR STATE
23 PROGRAMS. SUCH EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, HOME HEALTH
24 AGENCY SERVICES, ADULT DAY CARE, COMPANIONSHIP SERVICES, PERSONAL CARE
25 ATTENDANT SERVICES, HOMEMAKER SERVICES, RESPITE CARE, HEALTH CARE EQUIP-
26 MENT AND SUPPLIES, HOME MODIFICATION, OR ANY SERVICES NECESSARY TO
27 PROVIDE HELP IN TWO OR MORE ACTIVITIES IN DAILY LIVING, OR FOR THE
28 PROVISION OF ASSISTIVE DEVICES.

29 (3) WHEN TWO OR MORE MEMBERS OF A HOUSEHOLD MEET THE QUALIFICATIONS
30 FOR A CREDIT OR CREDITS PURSUANT TO THIS SUBSECTION, THE CREDIT OR CRED-
31 ITS SHALL BE EQUALLY DIVIDED BETWEEN OR AMONG SUCH INDIVIDUALS UNLESS
32 SUCH INDIVIDUALS FILE WITH THE COMMISSIONER A WRITTEN AGREEMENT SETTING
33 FORTH A DIFFERENT DIVISION. WHERE A JOINT INCOME TAX RETURN HAS BEEN
34 FILED PURSUANT TO THIS CHAPTER BY A TAXPAYER AND HIS OR HER SPOUSE (OR
35 WHERE BOTH SPOUSES ARE TAXPAYERS AND HAVE FILED SUCH JOINT RETURN), WHO
36 QUALIFY FOR SUCH CREDIT OR CREDITS, THE CREDIT OR CREDITS, OR THE
37 PORTION THEREOF IF DIVIDED, TO WHICH THE HUSBAND AND WIFE ARE ENTITLED
38 SHALL BE APPLIED AGAINST THE TAX OF BOTH SPOUSES AND ANY OVERPAYMENT
39 SHALL BE MADE TO BOTH SPOUSES. WHERE ANY RETURN REQUIRED TO BE FILED
40 PURSUANT TO THIS CHAPTER IS COMBINED WITH ANY RETURN OF TAX IMPOSED
41 PURSUANT TO THE AUTHORITY OF THIS CHAPTER OR ANY OTHER LAW IF SUCH TAX
42 IS ADMINISTERED BY THE COMMISSIONER, THE CREDIT OR CREDITS OR THE
43 PORTION THEREOF IF DIVIDED, ALLOWED TO THE TAXPAYER MAY BE APPLIED BY
44 THE COMMISSIONER TOWARD ANY LIABILITY FOR THE AFOREMENTIONED TAXES.

45 (4) NO CREDIT OR CREDITS OR PORTION THEREOF SHALL BE GRANTED UNDER
46 THIS SUBSECTION WITH RESPECT TO CARE PROVIDED IN A RESIDENCE THAT IS
47 WHOLLY EXEMPTED FROM REAL PROPERTY TAXATION OR TO AN INDIVIDUAL WHO IS
48 NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR. THE
49 RIGHT TO CLAIM A CREDIT OR CREDITS OR A PORTION THEREOF, WHERE SUCH
50 CREDIT OR CREDITS HAVE BEEN DIVIDED UNDER THIS SUBSECTION, SHALL BE
51 PERSONAL TO THE QUALIFIED TAXPAYER AND SHALL NOT SURVIVE HIS OR HER
52 DEATH, BUT SUCH RIGHT MAY BE EXERCISED ON BEHALF OF A CLAIMANT BY HIS OR
53 HER LEGAL GUARDIAN OR ATTORNEY IN FACT DURING HIS OR HER LIFETIME.

54 (5) THE COMMISSIONER MAY REQUIRE A TAXPAYER TO FURNISH AS SUPPORT OF
55 HIS OR HER CLAIM FOR CREDIT UNDER THIS SUBSECTION RECEIPTS FOR QUALIFIED

1 CARE EXPENSES OR OTHER SUCH PROOFS OF PAYMENT AS SHALL SATISFY THE
2 COMMISSIONER.

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

5 (D) PERSON WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE. WHEN A RESIDENCE
6 SERVES AS THE PRIMARY RESIDENCE FOR BOTH A PERSON WHO IS SIXTY-FIVE
7 YEARS OF AGE OR OLDER ON THE DATE SPECIFIED IN PARAGRAPH (A) OF SUBDIVI-
8 SION FOUR OF THIS SECTION AND A RELATIVE WHO IS WITHIN THE THIRD DEGREE
9 OF CONSANGUINITY THAT IS THE OWNER OF SUCH RESIDENCE, A BASIC OR
10 ENHANCED EXEMPTION SHALL BE AVAILABLE FOR SUCH PROPERTY ON A PRO-RATED
11 BASIS IF SUCH PERSON WOULD OTHERWISE MEET THE ELIGIBILITY REQUIREMENTS
12 SET FORTH IN SUBDIVISIONS THREE OR FOUR OF THIS SECTION, EXCEPT FOR
13 OWNERSHIP REQUIREMENTS, AND WHERE, IN THE CASE OF AN ENHANCED EXEMPTION,
14 THE INCOME OF THE SENIOR AND THE SPOUSE OF THE SENIOR CONSIDERED SEPA-
15 RATELY FROM THE REMAINDER OF THE HOUSEHOLD WOULD MEET THE INCOME
16 REQUIREMENTS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. SUCH BASIC
17 OR AN ENHANCED EXEMPTION SHALL BE PROVIDED ON A PRO-RATED BASIS TO THE
18 PROPERTY AS FOLLOWS: MULTIPLY THE EXEMPTION THAT WOULD BE GRANTED TO THE
19 PROPERTY AS A WHOLE IF THE PROPERTY WERE ELIGIBLE FOR THE BASIC OR THE
20 ENHANCED EXEMPTION, AS APPLICABLE, BY A FRACTION, THE NUMERATOR OF WHICH
21 IS THE SQUARE FOOTAGE OF THE ROOM OR ROOMS USED BY SUCH PERSON AND HIS
22 OR HER SPOUSE WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE EXCLUSIVELY FOR
23 LIVING SPACE, AND THE DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE
24 OF THE RESIDENCE. EXCEPT AS PROVIDED IN THIS PARAGRAPH, OR AS INCONSIST-
25 ENT WITH THE PURPOSES OF THIS PARAGRAPH, ALL OTHER REQUIREMENTS OF THIS
26 SECTION SHALL BE APPLICABLE TO SUCH PRO-RATED BASIC OR ENHANCED
27 EXEMPTION. THE EXEMPTION PROVIDED BY THIS PARAGRAPH SHALL BE IN ADDITION
28 TO ANY EXEMPTION PLACED ON THE PROPERTY PURSUANT TO SUBDIVISION THREE OR
29 FOUR OF THIS SECTION.

30 S 4. This act shall take effect on the first of January next succeed-
31 ing the date on which it shall have become a law.