STATE OF NEW YORK

8390

IN SENATE

May 21, 2020

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the public housing law and the tax law, in relation to enacting the COVID-19 housing tax credit 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 "COVID-19 housing tax credit act".

§ 2. The public housing law is amended by adding a new article 2-B to read as follows:

ARTICLE 2-B

TAX CREDITS FOR RENTAL LOSSES DURING THE COVID-19 PANDEMIC

Section 26. Definitions.
27. Allowance of credit, application for credit, amount and limitations.
28. Credit monitoring.
29. Regulations.

§ 26. Definitions. As used in this article, the following terms shall have the following definitions:

1. "Fair market rent" shall mean the fair market rent for each rental area as promulgated annually by the United States department of housing and urban development's office of policy development and research pursuant to 42 USC 1437f, as amended from time to time.

2. "Lease" shall mean a written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by an individual or family.

3. "Owner" shall mean any private person or any entity, including a cooperative, having the legal right to lease or sublease dwelling units.

4. "Tenant" means a person occupying or entitled to occupy a residential rental premises who is either a party to the lease or rental agreement for such premises or is a statutory tenant pursuant to the emergen-

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

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cy housing rent control law or the New York city rent and rehabilitation law or article seven-C of the multiple dwelling law.

5. "Eligibility statement" means a statement issued by the commissioner certifying that a building is an eligible building.

6. "Eligible building" means a building approved by the commissioner as eligible to receive credits under this article.

7. "State of emergency" shall mean the state disaster emergency for the entire state of New York declared in executive order two hundred two, beginning on March seventh, two thousand twenty and extending through September seventh, two thousand twenty, as well as any additional time during which such state disaster emergency is in effect, should the governor extend it beyond September seventh, two thousand twenty.

8. "Adjusted income" shall mean income minus any deductions allowable at the discretion of the commissioner pursuant to this article. The calculation of income performed at the time of application shall consider only income that the household is currently receiving at such time and any income recently terminated shall not be included. The calculation of income performed with respect to households receiving assistance for arrearages shall consider only the income that the household was receiving at the time such arrearages were incurred.

9. (a) "Family" shall mean a group of persons living in the same household who:

(i) are related by birth, marriage or adoption. This group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family; or

(ii) are two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who can demonstrate that they have lived together previously and certify that each individual's income and other resources will be available to meet the needs of the family.

(b) The commissioner shall have the discretion to determine if any other group of persons qualifies as a family.

10. "Manufactured home" shall have the same meaning as defined in section two hundred thirty-three of the real property law.

11. "Manufactured home tenant" shall have the same meaning as defined in section two hundred thirty-three of the real property law.

§ 27. Allowance of credit, application for credit, amount and limitations. 1. Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two, or thirty-three of the tax law which owns an interest in one or more potential eligible buildings, or a transferee of such a taxpayer as described in subdivision six of this section, shall be allowed a credit against such tax for the amount of credit allocated by the commissioner to each such potential eligible building. Except as provided in subdivision two of this section, the credit amount so allocated shall be allowed as a credit against the tax for the ten taxable years in the credit period beginning in and after tax year two thousand twenty-four.

2. Amount of credit. (a) Except as provided in subdivisions three and four of this section, the amount of credit shall be the difference between the cumulative amount of rents owed on a monthly basis pursuant to the leases covering each occupied dwelling unit minus the tenant's rental obligation, for those months during the state of emergency.

Credits shall be reduced by any amount of rent payments made by a tenant above their rental obligation under this article.

(b) Notwithstanding paragraph (a) of this subdivision, if a lease has as its rent an amount that exceeds two hundred fifty percent of fair market rent for the rental area, the collectible rent for the dwelling unit subject to the lease shall be deemed to be two hundred fifty percent of the fair market rent for the rental area.

(c) (i) The commissioner shall receive applications for credit. The application for credit by the owner or owners of the rental property shall include the amount of the credit requested, which shall be based upon the cumulative monthly rent owed by tenants pursuant to the leases covering each occupied dwelling during each month of the state of emergency, and the actual monthly rent collected during each respective month of the state of emergency, to be allocated by the commissioner to the potential eligible building. The application shall also include the tenant's name and mailing address for each unit for which credit is sought. The applicant has the burden of providing sufficient proof to the commissioner for review and determination. The application shall contain sufficient information to identify each such building and the taxpayer or taxpayers with respect to each such building, and such other information as the commissioner, in consultation with the commissioner of taxation and finance, shall prescribe. The commissioner shall develop procedures for verifying the tenant's income and determining the tenant's rental obligation for the tax credit benefit period.

(ii) While the application is pending, the applicant may not commence a proceeding to recover possession of the property for the non-payment of rent which is the subject of the application.

(iii) Subject to the availability of credits, the amount of the credit available to the potential eligible building shall be the actual difference between the monthly lease amounts for occupied units minus the tenant's rental obligation and the actual amount of monthly rent collected, as determined by the commissioner. Upon approval of the credit to an owner, the owner shall release the occupants of the unit or building from any liability for the non-payment of rent that is the subject of the credit.

(iv) Owners shall not be eligible for credit (1) if such owner has received property tax relief, rental voucher assistance, or any other federal, state or locally funded benefit intended to pay, abate or compensate the owner for eligible unpaid rent, (2) if the owner has commenced a proceeding to recover possession of the property for the non-payment of rent which is the subject of the application, or (3) another owner, co-owner or applicant has applied for tax credits for the unpaid rent of the same units.

3. Tenant rental obligation. (a) The monthly rental obligation of each tenant for which credit is sought shall be thirty percent of the monthly adjusted income of such tenant.

(b) If a tenant shares a dwelling or manufactured home with one or more individuals who are not part of their family or household, the monthly rental obligation of the tenant shall be calculated using the portion of the tenant's rent for which they are responsible rather than the entire rent for the shared dwelling unit or manufactured home.

(c) Each family shall identify the individuals to be included in the family at the time of application, and shall update such information if the family's composition changes.

4. Verification of income and assets. (a) The commissioner shall establish procedures that are appropriate and necessary to assure that

data regarding income, and assets to the extent necessary to determine eligibility, provided by tenants under this article is complete and accurate. Acceptable methods of verification shall include, but are not limited to, paycheck stubs, earning statements, tax records, W-2 forms, written statements from a former or current employer, telephone or in-person contact with a former or current employer, notarized statements or affidavits signed by the applicant, or other methods approved by the commissioner.

5. Statewide limitation. (a) The aggregate dollar amount of credit which the commissioner may allocate to eligible buildings under this article shall be one billion dollars.

(b) An eligible building shall be limited to a credit amount equal to the difference between the cumulative monthly rent amount pursuant to the leases in effect on March first, two thousand twenty minus the tenant's rental obligation and the actual monthly rent amount collected for the months during the state of emergency. The taxpayer shall prove, to the satisfaction of the commissioner, the amount of rent due.

(c) The amount of the tax credit payment with respect to any dwelling unit or manufactured home tenant shall be the difference between the monthly contractual or statutory rent the owner is to receive for the unit or home and thirty percent of the tenant's monthly adjusted income.

(d) Notwithstanding paragraph (b) of this subdivision, the maximum monthly tax credit for each tenant shall be the difference between the rental obligation established in this section and two hundred fifty percent of the fair market rent for the rental area.

6. Building Prioritization. The commissioner shall prioritize applications for buildings based on the amount of credit requested in comparison to the cumulative amount of rents owed on a monthly basis pursuant to the leases covering all occupied dwelling units during the respective months of the state of emergency. Buildings in which the amount of credit requested exceeds seventy-five percent of the cumulative amount of rents owed shall be highest priority, followed by buildings in which the amount exceeds fifty percent but is below seventy-five percent, followed by buildings in which the amount exceeds twenty-five percent but does not exceed fifty percent, and then any other applications. The commissioner shall also prioritize applications for buildings with low-income housing regulatory agreements or where fifty percent of the units are at or below the fair market rent.

7. Transfer of credit. (a) A taxpayer allowed a credit pursuant to this article may transfer the credit, in whole or in part, to another person or entity, who shall be referred to as the transferee. Transferees shall be entitled to apply transferred credit to a tax imposed under article nine-A, twenty-two or thirty-three of the tax law, provided all requirements for claiming the credit are met. A transferee may not transfer any credit, or portion thereof, acquired by transfer.

(b) A taxpayer allowed a credit pursuant to this article must enter into a transfer contract with the transferee. The transfer contract must specify (i) the building address and any other location identification information; (ii) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed; (iii) the amount of consideration received by the taxpayer for the transfer credit; and (iv) the amount of credit being transferred.

(c) No transfer shall be effective unless the taxpayer allowed a credit pursuant to this article and seeking to transfer the credit files a transfer statement with the commissioner prior to the transfer and the commissioner approves such transfer. The transfer statement shall

provide the name and federal identification numbers of the filing transferor and the taxpayer to whom the filing transferor transferred the credit, and the amount of credit transferred to each such person or entity. A copy of the transfer contract shall be attached to the transfer statement. The statement shall also contain such other information as the commissioner may require. After reviewing the transfer contract and the transfer statement, the commissioner shall approve or deny the transfer as provided in this subdivision. If the commissioner approves the transfer, the commissioner shall issue an approval statement that provides the name of the transferor and transferee, the amount of credit being transferred and such other information as the commissioner and the commissioner of taxation and finance deem necessary. A copy of the commissioner's approval statement must be attached to the transferee's tax return. If the commissioner denies the transfer, the commissioner shall provide the taxpayer a written determination for such denial. The commissioner, in consultation with the commissioner of taxation and finance, may establish such other procedures and standards deemed necessary for the transferability of the rental losses credit.

(d) The commissioner shall forward copies of all transfer statements and attachments thereto and approval statements to the department of taxation and finance within thirty days after the transfer is approved by the commissioner.

§ 28. Credit monitoring. The commissioner shall establish such procedures deemed necessary for monitoring compliance of an eligible building with the provisions of this article, and for notifying the commissioner of taxation and finance of any such noncompliance.

§ 29. Regulations. The commissioner shall promulgate any rules and regulations necessary to administer the provisions of this article.

§ 3. The tax law is amended by adding a new section 45 to read as follows:

§ 45. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (b) of this section, with respect to rental losses during the COVID-19 pandemic for which an eligibility statement has been issued by the commissioner of the division of housing and community renewal. The amount of such credit shall be the credit amount allocated by such commissioner as provided in article two-B of the public housing law. The credit amount shall be allowed for each of the ten taxable years in the credit period beginning in and after tax year two thousand twenty-four.

(b) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9-A: Section 210-B: subdivision 55,

(2) Article 22: Section 606: subsection (kkk),

(3) Article 33: Section 1511: subdivision (ee).

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article with respect to rental losses during the COVID-19 pandemic, computed as provided in section forty-five of this chapter.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided,

however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, further, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 5. Section 606 of the tax law is amended by adding a new subsection (kkk) to read as follows:

(kkk) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article with respect to the rental losses during the COVID-19 pandemic, computed as provided in section forty-five of this chapter.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such 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.

§ 6. Section 1511 of the tax law is amended by adding a new subdivision (ee) to read as follows:

(ee) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article with respect to rental losses during the COVID-19 pandemic, computed as provided in section forty-five of this chapter.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, further, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xlvi) to read as follows:

(xlvi) COVID-19 housing tax credit under subsection (kkk)	Amount of credit for the sum of the COVID-19 housing tax credit under subdivision fifty-five of section two hundred ten-B

§ 8. This act shall take effect immediately; provided that sections two, three, four and five of this act shall apply to taxable years beginning on or after January 1, 2020.