STATE OF NEW YORK

8395

IN SENATE

May 21, 2020

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law and the real property tax law, in relation to establishing the COVID-19 emergency property tax credit

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 606 of the tax law is amended by adding a new subsection (n-3) to read as follows:

(n-3) COVID-19 emergency property tax credit. 1. Legislative findings. The legislature finds that it is in the public interest to ensure that individuals and families are not rendered homeless or severely financially burdened because of an inability to pay the cost of property taxes due to loss of income due to COVID-19. The legislature further finds that the outbreak of COVID-19 has exacerbated the health risks associated with being homeless and that ensuring increased funding so that individuals and families do not lose their homes and become homeless is an essential part of the state's effort to mitigate the threat of COVID-19 to public health. The legislature further finds that providing funding for individuals and families to pay their property taxes that they would otherwise have difficulty paying will promote the stability and proper maintenance of the housing stock and assist communities in recovering from the adverse social and economic effects of the COVID-19 outbreak.

2. Definitions. For purposes of this subsection:

(A) "Adjusted annual income" shall mean income minus any deductions allowable at the discretion of the commissioner pursuant to this section and those deductions enumerated as follows:

(i) five thousand seven hundred sixty dollars for each dependent;

(ii) four thousand eight hundred dollars for an elderly household member and/or a household member with a disability;

(iii) the sum total of primary mortgage payments, not including escrow payments, paid by the taxpayer for the qualified property during the tax year;

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

LBD16441-02-0

(iv) any reasonable child care expenses necessary to enable a member of the household to be employed or to further his or her education;

(v) the sum total of unreimbursed medical expenses for each elderly household member and/or household member with a disability plus unreimbursed attendant care and/or medical apparatus expenses for each member of the household with a disability which are necessary for any member of the household, including the household member with a disability, to be employed greater than three percent of the annual income;

(vi) the sum total of unreimbursed testing and medical expenses for each individual or family member related to a confirmed or suspected case of COVID-19 greater than three percent of the annual income; and

(vii) child support payments paid by the taxpayer.

(B) "Child care expenses" shall mean expenses related to the care of children under the age of thirteen.

(C) "Dependent" shall mean any member of the family who is neither the head of household, nor the head of the household's spouse, and who is under the age of eighteen, a person with a disability, or a full-time student.

(D) "Disability" shall mean:

(i) the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months; or

(ii) in the case of an individual who has attained the age of fifty-five and is blind, the inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which they have previously engaged with some regularity and over a substantial period of time; or

(iii) a physical, mental, or emotional impairment which:

(1) is expected to be of long-continued and indefinite duration;

(2) substantially impedes his or her ability to live independently; and

(3) is of such a nature that such ability could be improved by more suitable housing conditions; or

(iv) a developmental disability that is a severe, chronic disability of an individual that:

(I) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(II) is manifested before the individual attains age twenty-two;

(III) is likely to continue indefinitely;

(IV) results in substantial functional limitations in three or more of the following areas of major life activity:

(AA) self-care;

(BB) receptive and expressive language;

(CC) learning;

(DD) mobility;

(EE) self-direction;

(FF) capacity for independent living;

(GG) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(E) "Elderly" shall mean sixty-two years of age or older.

(F) "Income" shall mean income from all sources of each member of the household, including all wages, tips, over-time, salary, recurring gifts, returns on investments, welfare assistance, social security payments, child support payments, unemployment benefits, and any other government benefit or cash grant. The term "income" shall not include: employment income from children under eighteen years of age, employment income from children eighteen years of age or older who are full-time students, foster care payments, sporadic gifts, groceries provided by persons not living in the household, supplemental nutrition assistance program (SNAP) (food stamp) benefits, earned income disregard (EID), or the earned income tax credit.

(G) "Qualified property" means residential real property owned by the taxpayer which is used exclusively for residential purposes; provided however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be ineligible for the credit established pursuant to this subsection.

(H) "Property taxes" shall mean taxes levied, or portion of those taxes levied, by or on behalf of any county, city, town, village, school district or special district on the qualified property which is attributable to the year two thousand twenty.

(I) "State of emergency" shall mean a 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 disaster emergency is in effect during the tax year two thousand twenty, should the governor extend it beyond September seventh, two thousand twenty.

3. Authority to implement COVID-19 emergency property tax credit. The commissioner, as soon as practicable and subject to the appropriation of funds, including federal funds, for this purpose, shall implement an emergency COVID-19 property tax program in the form of a credit for those eligible pursuant to paragraph four of this subsection. The department shall issue tax credits pursuant to this section, subject to appropriation of funds for this purpose. The commissioner may delegate administration of a portion of this program to the department of labor for those applying or receiving unemployment benefits. The commissioner may also delegate the administration of portions of this program to local taxing jurisdictions in accordance with the provisions of this section.

4. Eligibility. (A) An individual taxpayer, or taxpayers if filing joint returns, who meets the eligibility standards in this paragraph shall be allowed a credit against the taxes imposed by this article in the amount specified in paragraph seven of this subsection for the tax year two thousand twenty.

(B) To be eligible for the credit, the taxpayer, or taxpayers filing joint returns, on the personal income tax return filed for the year two thousand twenty, must have:

(i) been a resident of the state;

(ii) owned and primarily resided in qualified property within the state;

(iii) had property taxes levied against their qualified property for the year two thousand twenty in an amount which exceeded thirty percent of their adjusted annual income, as defined by this subsection, minus any savings attributable to an exemption on the qualified property pursuant to the real property tax law; and

(iv) either suffered a substantial loss of income as defined by the commissioner, was unemployed and filed for unemployment, or faces imminent loss of housing during the state of emergency or within ninety days after the state of emergency.

(C) In addition to the eligibility criteria above, the commissioner may promulgate limits on assets as part of any determination of eligibility for this program.

(D) An individual taxpayer, or taxpayers if filing joint returns, shall not be eligible for this credit if their annual income is in an amount equal to or greater than the taxpayers' taxable income for the year two thousand nineteen.

(E) Any ambiguity in eligibility criteria promulgated by the commissioner shall be resolved in favor of the applicant when determining eligibility.

5. Preference. The commissioner may establish preference in processing applications for this credit. Such preference may account for any or all of the following:

(A) The taxpayer's historical income level prior to the state of emergency as it relates to the area median income;

(B) The taxpayer's property tax burden;

(C) The percentage of the household income lost; or

(D) The taxpayer or household member's status as a victim of domestic violence.

6. Tax lien foreclosure. Notwithstanding any provision of law to the contrary, a tax lien foreclosure initiated pursuant to article eleven of the real property tax law which includes unpaid taxes that could be credited under this section cannot be commenced against a property owner who has applied for this credit unless or until a final determination of ineligibility. The action may proceed ninety days after the determination of ineligibility or after payment is released by the department to the taxing jurisdiction pursuant to subparagraph (C) of paragraph seven of this subsection.

7. Amount of credit. (A) For the two thousand twenty taxable year, the amount of the credit shall be equal to the property tax liability of the taxpayer, or taxpayers if filing jointly, which exceeds thirty percent of the taxpayer's income as defined by this subsection divided by twelve and multiplied as follows: if the state of emergency as defined by this subsection is repealed on or before September seventh, two thousand twenty multiplied by six; if the state of emergency as defined by this subsection is repealed on or before October seventh, two thousand twenty, but after September seventh, two thousand twenty, multiplied by seven; if the state of emergency as defined by this subsection is repealed on or before November seventh, two thousand twenty, but after October seventh, two thousand twenty, multiplied by eight; if the state of emergency as defined by this subsection is repealed on or before December seventh, two thousand twenty, but after November seventh, two thousand twenty, multiplied by nine; if the state of emergency as defined by this subsection is after December seventh, two thousand twenty, multiplied by ten.

(B) If the amount of the credit allowed under this subsection shall exceed the taxpayer's tax for the 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. The commissioner shall develop a process for taxpayers to apply for the credit upon filing their taxes for the year two thousand twenty. Upon receipt of the taxpayer's application, the commissioner shall determine the taxpayer's eligibility for this credit utilizing the information available to the commissioner on the taxpayer's personal income tax return filed for the taxable year two thousand twenty, and any additional information that the commissioner may require in order to make an eligibility determination. For those taxpayers whom the commissioner has determined eligible for this credit, the commissioner shall issue a refund payment in the amount specified in subparagraph (A) of this paragraph. A taxpayer that does not receive a refund payment but believes that he or she is eligible, or whom receives a refund payment that he or she believes is less than the amount that was due to him or her, may request payment of the claimed deficiency in a manner prescribed by the commissioner.

(C) Notwithstanding the subparagraphs (A) and (B) of this paragraph, for eligible taxpayers who have unpaid two thousand twenty property taxes levied against their qualified property, no credit shall be issued. Payment shall instead be made directly to a taxing jurisdiction certifying that the eligible taxpayer has unpaid tax liability for the year two thousand twenty on the qualified property. The commissioner shall have the authority to implement any policy or procedure necessary to determine whether the taxpayer has paid their property taxes due for the year two thousand twenty. The commissioner shall promulgate rules and regulations to determine priority for payment to a taxing jurisdiction when multiple claims are made for unpaid property taxes levied during the year two thousand twenty.

8. In the event that the state of emergency as defined by this subsection shall continue through any period of any taxable year after two thousand twenty, the COVID-19 emergency property tax credit shall be available to eligible taxpayers for qualified property to the same extent and in the same manner as provided in this subsection.

§ 2. The real property tax law is amended by adding a new section 1107 to read as follows:

§ 1107. COVID-19 emergency property tax credit. Notwithstanding anything to the contrary, no action shall be commenced pursuant to this section during the pendency of the state of emergency as defined in subparagraph (I) of paragraph two of subsection (n-3) of section six hundred six of the tax law. No action may subsequently be commenced which would otherwise conflict with paragraph six of subsection (n-3) of section six hundred six of the tax law.

§ 3. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 4. This act shall take effect immediately.