STATE OF NEW YORK

10396

IN ASSEMBLY

May 4, 2020

Introduced by M. of A. BARCLAY, FITZPATRICK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing the rental real estate income relief tax credit

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

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. Rental real estate income relief tax credit. (a) For the purposes of this subdivision, the following terms shall have the following meanings:

(1) "Residential tenant" shall have the same meaning as paragraph (a) of subdivision one of section two hundred thirty-five-f of the real property law, those who otherwise pay for the use and occupancy of a residential dwelling, or occupants as defined by paragraph (b) of subdivision one of section two hundred thirty-five-f of the real property law.

(2) "Commercial tenant" shall mean a person or entity lawfully occupying a covered property pursuant to a lease or other rental agreement.

(3) "Covered property" shall mean any building or portion of a building:

(i) that is lawfully used for buying, selling or otherwise providing goods or services, or for other lawful business, commercial or professional services, or manufacturing activities; and

(ii) for which a certificate of occupancy authorizing residential use of such building or such portion of a building has not been issued.

(4) "Small business" shall have the same meaning as section one hundred thirty-one of the economic development law.

(b) For taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one, a taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be equal to the loss of rental income related to the inability of residential tenants and small business commercial tenants to pay rent as a

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

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result of government ordered restrictions in response to the coronavirus disease two thousand nineteen (COVID-19). Such credit shall be granted to any taxpayer with income derived from the rental of a covered property who has seen a partial or total loss of such income.

(c) A taxpayer applying for such credit shall do so according to an application as established by the commissioner in consultation with the commissioner of the division of homes and community renewal. Provided, such application would include the requirement of the taxpayer to provide supporting documentation establishing the loss of rental income as prescribed by the commissioner, including, but not limited to, an enforceable residential tenant lease agreement or commercial tenant lease agreement.

(d) 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. 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, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(mmm) Rental real estate income relief tax credit. (a) For the purposes of this subsection, the following terms shall have the following meanings:

(1) "Residential tenant" shall have the same meaning as paragraph (a) of subdivision one of section two hundred thirty-five-f of the real property law, those who otherwise pay for the use and occupancy of a residential dwelling, or occupants as defined by paragraph (b) of subdivision one of section two hundred thirty-five-f of the real property law.

(2) "Commercial tenant" shall mean a person or entity lawfully occupying a covered property pursuant to a lease or other rental agreement.

(3) "Covered property" shall mean any building or portion of a building:

(i) that is lawfully used for buying, selling or otherwise providing goods or services, or for other lawful business, commercial or professional services, or manufacturing activities; and

(ii) for which a certificate of occupancy authorizing residential use of such building or such portion of a building has not been issued.

(4) "Small business" shall have the same meaning as section one hundred thirty-one of the economic development law.

(b) For taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one, a taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be equal to the loss of rental income related to the inability of residential tenants and small business commercial tenants to pay rent as a result of government ordered restrictions in response to the coronavirus disease two thousand nineteen (COVID-19). Such credit shall be granted to any taxpayer with income derived from the rental of a covered property who has seen a partial or total loss of such income.

(c) A taxpayer applying for such credit shall do so according to an application as established by the commissioner in consultation with the commissioner of the division of homes and community renewal. Provided, such application would include the requirement of the taxpayer to provide supporting documentation establishing the loss of rental income as prescribed by the commissioner, including, but not limited to, an enforceable residential tenant lease agreement or commercial tenant lease agreement.

(d) 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.

§ 3. This act shall take effect immediately.