

STATE OF NEW YORK

9649

IN ASSEMBLY

January 31, 2020

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

AN ACT to amend the tax law, in relation to creating an enhanced real property tax circuit breaker 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 (e-2) to read as follows:

(e-2) Enhanced real property tax circuit breaker credit. (1) For purposes of this subsection:

(A) "Qualified taxpayer" means a resident individual of the state, who (i) is a resident of a city with a population over one million, (ii) has occupied the same residence for six months or more of the taxable year, and (iii) is required or chooses to file a return under this article.

(B) "Household" or "members of the household" means a qualified taxpayer and all other persons, not necessarily related, who have the same residence and share its furnishings, facilities and accommodations. Such terms shall not include a tenant, subtenant, roomer or boarder who is not related to the qualified taxpayer in any degree specified in subparagraphs (A) through (G) of paragraph two of subsection (d) of section one hundred fifty-two of the internal revenue code. Provided, however, no person may be a member of more than one household at one time.

(C) "Household gross income" means the aggregate adjusted gross income of all members of the household for the taxable year as reported for federal income tax purposes, or which would be reported as adjusted gross income if a federal income tax return were required to be filed, with the modifications in subsection (b) of section six hundred twelve of this article but without the modifications in subsection (c) of such section, plus any portion of the gain from the sale or exchange of property otherwise excluded from such amount; earned income from sources without the United States excludable from federal gross income by section nine hundred eleven of the internal revenue code; support money not included in adjusted gross income; nontaxable strike benefits;

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

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1 supplemental security income payments; the gross amount of any pension
2 or annuity benefits to the extent not included in such adjusted gross
3 income (including, but not limited to, railroad retirement benefits and
4 all payments received under the federal social security act and veter-
5 ans' disability pensions); nontaxable interest received from the state
6 of New York, its agencies, instrumentalities, public corporations, or
7 political subdivisions (including a public corporation created pursuant
8 to agreement or compact with another state or Canada); workers' compen-
9 sation; the gross amount of "loss-of-time" insurance; and the amount of
10 cash public assistance and relief, other than medical assistance for the
11 needy, paid to or for the benefit of the qualified taxpayer or members
12 of his or her household. Household gross income shall not include
13 surplus foods or other relief in kind or payments made to individuals
14 because of their status as victims of Nazi persecution as defined in
15 P.L. 103-286. Provided, further, household gross income shall only
16 include all such income received by all members of the household while
17 members of such household. In computing household gross income, the net
18 amount of loss reported on Federal Schedule C, D, E, or F shall not
19 exceed three thousand dollars per schedule. In addition, the net amount
20 of any other separate category of loss shall not exceed three thousand
21 dollars. The aggregate amount of all losses included in computing house-
22 hold gross income shall not exceed fifteen thousand dollars.

23 (D) "Residence" means a dwelling in this state, in a city with a popu-
24 lation of over one million, owned or rented by the taxpayer, and so much
25 of the land abutting it, not exceeding one acre, as is reasonably neces-
26 sary for use of the dwelling as a home, and may consist of a part of a
27 multi-dwelling or multi-purpose building including a cooperative or
28 condominium, and rental units within a single dwelling. Residence
29 includes a trailer or mobile home, used exclusively for residential
30 purposes and defined as real property pursuant to paragraph (g) of
31 subdivision twelve of section one hundred two of the real property tax
32 law.

33 (E) "Qualifying real property taxes" means all real property taxes,
34 special ad valorem levies and special assessments, exclusive of penal-
35 ties and interest, levied on the residence of a qualified taxpayer and
36 paid during the taxable year. A qualified taxpayer may elect to include
37 any additional amount that would have been levied in the absence of an
38 exemption from real property taxation pursuant to section four hundred
39 sixty-seven of the real property tax law. If tenant-stockholders in a
40 cooperative housing corporation have met the requirements of section two
41 hundred sixteen of the internal revenue code by which they are allowed a
42 deduction for real estate taxes, the amount of taxes so allowable, or
43 which would be allowable if the taxpayer had filed returns on a cash
44 basis, shall be qualifying real property taxes. If a residence is owned
45 by two or more individuals as joint tenants or tenants in common, and
46 one or more than one individual is not a member of the household, quali-
47 fying real property taxes is that part of such taxes on the residence
48 which reflects the ownership percentage of the qualified taxpayer and
49 members of his or her household. If a residence is an integral part of a
50 larger unit, qualifying real property taxes shall be limited to that
51 amount of such taxes paid as may be reasonably apportioned to such resi-
52 dence. If a household owns and occupies two or more residences during
53 different periods in the same taxable year, qualifying real property
54 taxes shall be the sum of the prorated qualifying real property taxes
55 attributable to the household during the periods such household occupies
56 each of such residences. If the household owns and occupies a residence

1 for part of the taxable year and rents a residence for part of the same
2 taxable year, it may include the proration of qualifying real property
3 taxes on the residence owned. Provided, however, for purposes of the
4 credit allowed under this subsection, qualifying real property taxes may
5 be included by a qualified taxpayer only to the extent that such taxpay-
6 er or the spouse of such taxpayer, occupying such residence for one
7 hundred eighty-three days or more of the taxable year, owns or has owned
8 the residence and paid such taxes.

9 (F) "Real property tax equivalent" means fifteen and three-quarters
10 percent of the adjusted rent actually paid in the taxable year by a
11 household solely for the right of occupancy of its New York residence
12 for the taxable year. If (i) a residence is rented to two or more indi-
13 viduals as cotenants, or such individuals share in the payment of a
14 single rent for the right of occupancy of such residence, and (ii) each
15 of such individuals is a member of a different household, one or more of
16 which individuals shares such residence, real property tax equivalent is
17 that portion of fifteen and three-quarters percent of the adjusted rent
18 paid in the taxable year which reflects that portion of the rent attrib-
19 utable to the qualified taxpayer and the members of his or her house-
20 hold.

21 (G) "Adjusted rent" means rental paid for the right of occupancy of a
22 residence, excluding charges for heat, gas, electricity, furnishings and
23 board. Where charges for heat, gas, electricity, furnishings or board
24 are included in rental but where such charges and the amount thereof are
25 not separately set forth in a written rental agreement, for purposes of
26 determining adjusted rent the qualified taxpayer shall reduce rental
27 paid as follows:

28 (i) For heat, or heat and gas, deduct six percent of rental paid.

29 (ii) For heat, gas and electricity, deduct eight percent of rental
30 paid.

31 (iii) For heat, gas, electricity and furnishings, deduct ten percent
32 of rental paid.

33 (iv) For heat, gas, electricity, furnishings and board, deduct twenty
34 percent of rental paid.

35 If the commissioner determines that the adjusted rent shown on the
36 return is excessive, the commissioner may reduce such rent, for purposes
37 of the computation of the credit, to an amount substantially equivalent
38 to rent for a comparable accommodation.

39 (2) A qualified taxpayer shall be allowed a credit as provided in
40 paragraph three of this subsection against the taxes imposed by this
41 article reduced by the credits permitted by this article. If the credit
42 exceeds the tax as so reduced for such year under this article, the
43 excess shall be treated as an overpayment, to be credited or refunded,
44 without interest. If a qualified taxpayer is not required to file a
45 return pursuant to section six hundred fifty-one of this article, a
46 qualified taxpayer may nevertheless receive the full amount of the cred-
47 it to be credited or repaid as an overpayment, without interest.

48 (3) Determination of credit. The amount of the credit allowable under
49 this subsection shall be determined as follows:

| | | |
|-------------------------------------|-----------------------------|-----------------------------|
| 50 <u>If household gross income</u> | <u>Excess real property</u> | <u>The credit amount is</u> |
| 51 <u>for the taxable year is:</u> | <u>taxes are the excess</u> | <u>the following</u> |
| 52 | <u>of real property tax</u> | <u>percentage of excess</u> |
| 53 | <u>equivalent or the</u> | <u>property taxes:</u> |
| 54 | <u>excess of qualifying</u> | |
| 55 | <u>real property taxes</u> | |
| 56 | <u>over the following</u> | |

| | <u>percentage of</u> <u>household gross</u> <u>income:</u> | |
|---|--|-----------|
| <u>Less than \$100,000</u> | <u>2</u> | <u>15</u> |
| <u>\$100,000 to less than</u> <u>\$150,000</u> | <u>2.5</u> | <u>10</u> |
| <u>\$150,000 to less than</u> <u>\$200,000</u> | <u>3</u> | <u>5</u> |

(4) If a qualified taxpayer occupies a residence for a period of less than twelve months during the taxable year or occupies two or more residences during different periods in such taxable year, the credit allowed pursuant to this subsection shall be computed in such manner as the commissioner may, by regulation, prescribe in order to properly reflect the credit or portion thereof attributable to such residence or residences and such period or periods.

(5) The commissioner may prescribe that the credit under this subsection shall be determined in whole or in part by the use of tables prescribed by such commissioner. Such tables shall set forth the credit to the nearest dollar.

(6) Only one credit per household and per qualified taxpayer shall be allowed per taxable year under this subsection. When two or more members of a household are able to meet the qualifications for a qualified taxpayer, the credit shall be equally divided between or among such individuals unless such individuals file with the commissioner a written agreement among such individuals setting forth a different division.

(A) Provided, however, where a joint income tax return has been filed pursuant to the provisions of section six hundred fifty-one of this article by a qualified taxpayer and his or her spouse (or where both spouses are qualified taxpayers and have filed such joint return), the credit, or the portion of the credit if divided, to which the spouses are entitled shall be applied against the tax of both spouses and any overpayment shall be made to both spouses.

(B) Where any return required to be filed pursuant to the provisions of section six hundred fifty-one of this article 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 the portion of the credit if divided, allowed to the qualified taxpayer may be applied by the commissioner toward any liability for the aforementioned taxes.

(7) No credit shall be granted under this subsection:

(A) If household gross income for the taxable year equals or exceeds two hundred thousand dollars.

(B) To a property owner unless: (i) the property is used for residential purposes, (ii) not more than twenty percent of the rental income, if any, from the property is from rental for nonresidential purposes and (iii) the property is occupied as a residence in whole or in part by one or more of the owners of the property.

(C) To an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(D) With respect to a residence that is wholly exempted from real property taxation.

(E) To an individual who is not a resident individual of a city, within the state, with a population over one million, for the entire taxable year.

1 (8) The right to claim a credit or the portion of a credit, where such
2 credit has been divided under this subsection, shall be personal to the
3 qualified taxpayer and shall not survive his or her death, but such
4 right may be exercised on behalf of a claimant by his or her legal guar-
5 dian or attorney in fact during his or her lifetime.

6 (9) Returns. If a qualified taxpayer is not required to file a return
7 pursuant to section six hundred fifty-one of this article, a claim for a
8 credit may be taken on a return filed with the commissioner within three
9 years from the time it would have been required that a return be filed
10 pursuant to such section had the qualified taxpayer had a taxable year
11 ending on December thirty-first. Returns under this paragraph shall be
12 in such form as shall be prescribed by the commissioner, which shall
13 make available such forms and instructions for filing such returns.

14 (10) Proof of claim. The commissioner may require a qualified taxpayer
15 to furnish the following information in support of his claim for credit
16 under this subsection: household gross income, real property taxes
17 levied or that would have been levied in the absence of an exemption
18 from real property tax pursuant to section four hundred sixty-seven of
19 the real property tax law, the names of members of the household and
20 other qualifying taxpayers occupying the same residence and their iden-
21 tifying numbers including social security numbers, household gross
22 income, size and nature of property claimed as residence and all other
23 information which may be required by the commissioner to determine the
24 credit.

25 (11) Administration. The provisions of this article, including the
26 provisions of sections six hundred fifty-three, six hundred fifty-eight,
27 and six hundred fifty-nine of this article and the provisions of part
28 six of this article relating to procedure and administration, including
29 the judicial review of the decisions of the commissioner, except so much
30 of section six hundred eighty-seven of this article which permits a
31 claim for credit or refund to be filed after the period provided for in
32 paragraph nine of this subsection and except sections six hundred
33 fifty-seven, six hundred eighty-eight and six hundred ninety-six of this
34 article, shall apply to the provisions of this subsection in the same
35 manner and with the same force and effect as if the language of those
36 provisions had been incorporated in full into this subsection and had
37 expressly referred to the credit allowed or returns filed under this
38 subsection, except to the extent that any such provision is either
39 inconsistent with a provision of this subsection or is not relevant to
40 this subsection. As used in such sections and such part, the term
41 "taxpayer" shall include a qualified taxpayer under this subsection and,
42 notwithstanding the provisions of subsection (e) of section six hundred
43 ninety-seven of this article, where a qualified taxpayer has protested
44 the denial of a claim for credit under this subsection and the time to
45 file a petition for redetermination of a deficiency or for refund has
46 not expired, he shall, subject to such conditions as may be set by the
47 commissioner, receive such information (A) which is contained in any
48 return filed under this article by a member of his or her household for
49 the taxable year for which the credit is claimed, and (B) which the
50 commissioner finds is relevant and material to the issue of whether such
51 claim was properly denied.

52 (12) Notwithstanding any other provision of this article, the credit
53 allowed under this subsection shall be determined after the determi-
54 nation and application of any other credits permitted under the
55 provisions of this article.

1 (13) The commissioner shall prepare a written report after December
2 thirty-first of each calendar year, which shall contain statistical
3 information regarding the credits granted on or before such dates under
4 this subsection during such calendar year. Copies of the report shall be
5 submitted by the commissioner to the governor, the temporary president
6 of the senate, the speaker of the assembly, the chairman of the senate
7 finance committee and the chairman of the assembly ways and means
8 committee within forty-five days of December thirty-first. Such report
9 shall contain, but need not be limited to, the number of credits and the
10 average amount of such credits allowed; and of those, the number of
11 credits and the average amount of such credits allowed to qualified
12 taxpayers in each county; and of those, the number of credits and the
13 average amount of such credits allowed to qualified taxpayers whose
14 household gross income falls within each of the household gross income
15 ranges set forth in paragraph three of this subsection.

16 § 2. This act shall take effect immediately and shall apply to taxable
17 years beginning on or after the first of January next succeeding the
18 date on which it shall have become a law.