

# 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:

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

3 (n-3) COVID-19 emergency property tax credit. 1. Legislative findings.  
4 The legislature finds that it is in the public interest to ensure that  
5 individuals and families are not rendered homeless or severely finan-  
6 cially burdened because of an inability to pay the cost of property  
7 taxes due to loss of income due to COVID-19. The legislature further  
8 finds that the outbreak of COVID-19 has exacerbated the health risks  
9 associated with being homeless and that ensuring increased funding so  
10 that individuals and families do not lose their homes and become home-  
11 less is an essential part of the state's effort to mitigate the threat  
12 of COVID-19 to public health. The legislature further finds that provid-  
13 ing funding for individuals and families to pay their property taxes  
14 that they would otherwise have difficulty paying will promote the  
15 stability and proper maintenance of the housing stock and assist commu-  
16 nities in recovering from the adverse social and economic effects of the  
17 COVID-19 outbreak.

18 2. Definitions. For purposes of this subsection:

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

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

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

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

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

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

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

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

12 (vii) child support payments paid by the taxpayer.

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

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

19 (D) "Disability" shall mean:

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

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

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

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

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

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

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

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

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

41 (III) is likely to continue indefinitely;

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

44 (AA) self-care;

45 (BB) receptive and expressive language;

46 (CC) learning;

47 (DD) mobility;

48 (EE) self-direction;

49 (FF) capacity for independent living;

50 (GG) economic self-sufficiency; and

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

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

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

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

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

22 (I) "State of emergency" shall mean a disaster emergency for the  
23 entire state of New York declared in Executive Order two hundred two,  
24 beginning on March seventh, two thousand twenty and extending through  
25 September seventh, two thousand twenty, as well as any additional time  
26 during which such disaster emergency is in effect during the tax year  
27 two thousand twenty, should the governor extend it beyond September  
28 seventh, two thousand twenty.

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

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

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

49 (i) been a resident of the state;

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

52 (iii) had property taxes levied against their qualified property for  
53 the year two thousand twenty in an amount which exceeded thirty percent  
54 of their adjusted annual income, as defined by this subsection, minus  
55 any savings attributable to an exemption on the qualified property  
56 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

1 receipt of the taxpayer's application, the commissioner shall determine  
2 the taxpayer's eligibility for this credit utilizing the information  
3 available to the commissioner on the taxpayer's personal income tax  
4 return filed for the taxable year two thousand twenty, and any addi-  
5 tional information that the commissioner may require in order to make an  
6 eligibility determination. For those taxpayers whom the commissioner has  
7 determined eligible for this credit, the commissioner shall issue a  
8 refund payment in the amount specified in subparagraph (A) of this para-  
9 graph. A taxpayer that does not receive a refund payment but believes  
10 that he or she is eligible, or whom receives a refund payment that he or  
11 she believes is less than the amount that was due to him or her, may  
12 request payment of the claimed deficiency in a manner prescribed by the  
13 commissioner.

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

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

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

33 § 1107. COVID-19 emergency property tax credit. Notwithstanding  
34 anything to the contrary, no action shall be commenced pursuant to this  
35 section during the pendency of the state of emergency as defined in  
36 subparagraph (I) of paragraph two of subsection (n-3) of section six  
37 hundred six of the tax law. No action may subsequently be commenced  
38 which would otherwise conflict with paragraph six of subsection (n-3) of  
39 section six hundred six of the tax law.

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

47 § 4. This act shall take effect immediately.