STATE OF NEW YORK

4744

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

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

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

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

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

(E) "Qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied on the residence of a qualified taxpayer and paid during the taxable year. A qualified taxpayer may elect to include any additional amount that would have been levied in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is owned by two or more individuals as joint tenants or tenants in common, and one or more than one individual is not a member of the household, qualifying real property taxes is that part of such taxes on the residence which reflects the ownership percentage of the qualified taxpayer and members of his or her household. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of such taxes paid as may be reasonably apportioned to such residence. If a household owns and occupies two or more residences during different periods in the same taxable year, qualifying real property

taxes shall be the sum of the prorated qualifying real property taxes attributable to the household during the periods such household occupies each of such residences. If the household owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, it may include the proration of qualifying real property taxes on the residence owned. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer, occupying such residence for one hundred eighty-three days or more of the taxable year, owns or has owned the residence and paid such taxes.

(F) "Real property tax equivalent" means fifteen and three-quarters percent of the adjusted rent actually paid in the taxable year by a household solely for the right of occupancy of its New York residence for the taxable year. If (i) a residence is rented to two or more individuals as cotenants, or such individuals share in the payment of a single rent for the right of occupancy of such residence, and (ii) each of such individuals is a member of a different household, one or more of which individuals shares such residence, real property tax equivalent is that portion of fifteen and three-quarters percent of the adjusted rent paid in the taxable year which reflects that portion of the rent attributable to the qualified taxpayer and the members of his or her household.

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

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

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

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

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

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

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

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

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the	The credit amount is the following percentage of excess property taxes:

	excess of qualifying real property taxes over the following percentage of household gross income:	
Less than $100,000	2	15
$100,000 to less than $150,000	2.5	10
$150,000 to less than $200,000	3	5

(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.

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

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

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

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

(12) Notwithstanding any other provision of this article, the credit allowed under this subsection shall be determined after the determi-

nation and application of any other credits permitted under the provisions of this article.

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

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