

STATE OF NEW YORK

3034

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to the taxable status date

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

1 Section 1. Paragraph (a) of subdivision 3 of section 467 of the real
2 property tax law, as separately amended by chapters 131 and 279 of the
3 laws of 2017, is amended to read as follows:

4 (a) if the income of the owner or the combined income of the owners of
5 the property for the income tax year immediately preceding the date of
6 making application for exemption exceeds the sum of three thousand
7 dollars, or such other sum not less than three thousand dollars nor more
8 than twenty-six thousand dollars beginning July first, two thousand six,
9 twenty-seven thousand dollars beginning July first, two thousand seven,
10 twenty-eight thousand dollars beginning July first, two thousand eight,
11 twenty-nine thousand dollars beginning July first, two thousand nine,
12 and in a city with a population of one million or more fifty thousand
13 dollars beginning July first, two thousand seventeen, as may be provided
14 by the local law, ordinance or resolution adopted pursuant to this
15 section. [~~Income tax year shall mean the twelve month period for which
16 the owner or owners filed a federal personal income tax return, or if no
17 such return is filed, the calendar year.~~] Where the taxable status date
18 is on or before April fourteenth, income tax year shall mean the twelve-
19 month period for which the owner or owners filed a federal personal
20 income tax return for the year before the income tax year immediately
21 preceding the date of application and where the taxable status date is
22 on or after April fifteenth, income tax year shall mean the twelve-month
23 period for which the owner or owners filed a federal personal income tax
24 return for the income tax year immediately preceding the date of appli-
25 cation. Where title is vested in either the husband or the wife, their

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

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1 combined income may not exceed such sum, except where the husband or
2 wife, or ex-husband or ex-wife is absent from the property as provided
3 in subparagraph (ii) of paragraph (d) of this subdivision, then only the
4 income of the spouse or ex-spouse residing on the property shall be
5 considered and may not exceed such sum. Such income shall include social
6 security and retirement benefits, interest, dividends, total gain from
7 the sale or exchange of a capital asset which may be offset by a loss
8 from the sale or exchange of a capital asset in the same income tax
9 year, net rental income, salary or earnings, and net income from self-
10 employment, but shall not include a return of capital, gifts, inheri-
11 tances, payments made to individuals because of their status as victims
12 of Nazi persecution, as defined in P.L. 103-286 or monies earned through
13 employment in the federal foster grandparent program and any such income
14 shall be offset by all medical and prescription drug expenses actually
15 paid which were not reimbursed or paid for by insurance, if the govern-
16 ing board of a municipality, after a public hearing, adopts a local law,
17 ordinance or resolution providing therefor. In addition, an exchange of
18 an annuity for an annuity contract, which resulted in non-taxable gain,
19 as determined in section one thousand thirty-five of the internal reven-
20 ue code, shall be excluded from such income. Provided that such exclu-
21 sion shall be based on satisfactory proof that such an exchange was
22 solely an exchange of an annuity for an annuity contract that resulted
23 in a non-taxable transfer determined by such section of the internal
24 revenue code. Furthermore, such income shall not include the proceeds of
25 a reverse mortgage, as authorized by section six-h of the banking law,
26 and sections two hundred eighty and two hundred eighty-a of the real
27 property law; provided, however, that monies used to repay a reverse
28 mortgage may not be deducted from income, and provided additionally that
29 any interest or dividends realized from the investment of reverse mort-
30 gage proceeds shall be considered income. The provisions of this para-
31 graph notwithstanding, such income shall not include veterans disability
32 compensation, as defined in Title 38 of the United States Code provided
33 the governing board of such municipality, after public hearing, adopts a
34 local law, ordinance or resolution providing therefor. In computing net
35 rental income and net income from self-employment no depreciation
36 deduction shall be allowed for the exhaustion, wear and tear of real or
37 personal property held for the production of income;

38 § 2. This act shall take effect immediately.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A3034

SPONSOR: McDonald

TITLE OF BILL:

An act to amend the real property tax law, in relation to the taxable status date

SUMMARY OF SPECIFIC PROVISIONS:

Section one amends Real Property Tax Law section 467 (3)(a) to clarify the meaning of "income tax year" to be the twelve-month period for which the applicant filed a federal personal income tax return for the year for the income tax year immediately preceding the application.

Section two establishes an immediate effective date.

JUSTIFICATION:

This bill provides a technical correction to the Real Property Tax law regarding the New York Senior Citizen Program Exemption process. The legislation does not change the program but clarifies the process for participants.

When the program was first enacted, the date for applying for this benefit, known in the law as the "taxable status date", was May 1st. Real Property Tax Law 467(3)(a) requires that with the application the senior provide a copy of their income tax year immediately preceding the application. In other words, an application submitted for the 2019 assessment roll would require a copy of the applicant's 2018 income tax record. When the taxable status date was previously May 1, this posed no problem since tax returns were due by April 15. However, in 1986 the legislature changed the taxable status date for most of New York State from May 1 to March 1. No change was made to 467(3)(a). 467(3)(a) defines income tax year as "...Income tax year shall mean the twelve-month period for which the owner or owners filed a federal personal income tax return..." This creates confusion since an applicant cannot use the previous year tax return because it is not legally considered legally filed until April 15 (even if a return is filed earlier).

This legislation seeks to clarify the law and to cover any future changes in the taxable status date. If the taxable status is changed in the future to be on or after April 15, and applicant can use the previous tax year return.

The 1997 Department of Taxation of Opinion of Counsel (10-47) touches on this issue and the opinion states that "What seems to us that the most reasonable interpretation of this statutory language is that an applicant should provide a copy of his or her income tax return for the "immediately preceding year" if it is available when the application is filed. If that return is not yet available, the applicant should be permitted to provide the return for the year before the "immediately

preceding year." In other words, if a senior citizen applies for the senior citizens exemption for 1998 and the applicant's 1997 income tax return is available at that time, a copy should be furnished with the application. If not, the applicant's eligibility should be based upon his or her 1996 income, and a copy of the 1996 tax return, assuming one was filed, should be accepted as proof of such income."

PRIOR LEGISLATIVE HISTORY:

2019-2020: A.8850

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.