

STATE OF NEW YORK

1203

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the public housing law and the tax law, in relation to enacting the COVID-19 housing tax credit act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "COVID-19 housing tax credit act".

3 § 2. The public housing law is amended by adding a new article 2-B to
4 read as follows:

ARTICLE 2-B

TAX CREDITS FOR RENTAL LOSSES DURING THE COVID-19 PANDEMIC

Section 26. Definitions.

8 27. Allowance of credit, application for credit, amount and
9 limitations.

10 28. Credit monitoring.

11 29. Regulations.

12 § 26. Definitions. As used in this article, the following terms shall
13 have the following definitions:

14 1. "Fair market rent" shall mean the fair market rent for each rental
15 area as promulgated annually by the United States department of housing
16 and urban development's office of policy development and research pursu-
17 ant to 42 USC 1437f, as amended from time to time.

18 2. "Lease" shall mean a written agreement between an owner and a
19 tenant for the leasing of a dwelling unit to the tenant. The lease
20 establishes the conditions for occupancy of the dwelling unit by an
21 individual or family.

22 3. "Owner" shall mean any private person or any entity, including a
23 cooperative, having the legal right to lease or sublease dwelling units.

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

LBD05009-01-1

1 4. "Tenant" means a person occupying or entitled to occupy a residen-
2 tial rental premises who is either a party to the lease or rental agree-
3 ment for such premises or is a statutory tenant pursuant to the emergen-
4 cy housing rent control law or the New York city rent and rehabilitation
5 law or article seven-C of the multiple dwelling law.

6 5. "Eligibility statement" means a statement issued by the commission-
7 er certifying that a building is an eligible building.

8 6. "Eligible building" means a building approved by the commissioner
9 as eligible to receive credits under this article.

10 7. "State of emergency" shall mean the state disaster emergency for
11 the entire state of New York declared in executive order two hundred
12 two, beginning on March seventh, two thousand twenty and extending
13 through September seventh, two thousand twenty, as well as any addi-
14 tional time during which such state disaster emergency is in effect,
15 should the governor extend it beyond September seventh, two thousand
16 twenty.

17 8. "Adjusted income" shall mean income minus any deductions allowable
18 at the discretion of the commissioner pursuant to this article. The
19 calculation of income performed at the time of application shall consid-
20 er only income that the household is currently receiving at such time
21 and any income recently terminated shall not be included. The calcu-
22 lation of income performed with respect to households receiving assist-
23 ance for arrearages shall consider only the income that the household
24 was receiving at the time such arrearages were incurred.

25 9. (a) "Family" shall mean a group of persons living in the same
26 household who:

27 (i) are related by birth, marriage or adoption. This group includes,
28 but is not limited to a family with or without children (a child who is
29 temporarily away from the home because of placement in foster care is
30 considered a member of the family), an elderly family, a near-elderly
31 family, a disabled family, a displaced family, or the remaining member
32 of a tenant family; or

33 (ii) are two or more individuals who are not related by blood,
34 marriage, adoption, or other operation of law, but who can demonstrate
35 that they have lived together previously and certify that each individ-
36 ual's income and other resources will be available to meet the needs of
37 the family.

38 (b) The commissioner shall have the discretion to determine if any
39 other group of persons qualifies as a family.

40 10. "Manufactured home" shall have the same meaning as defined in
41 section two hundred thirty-three of the real property law.

42 11. "Manufactured home tenant" shall have the same meaning as defined
43 in section two hundred thirty-three of the real property law.

44 § 27. Allowance of credit, application for credit, amount and limita-
45 tions. 1. Allowance of credit. A taxpayer subject to tax under article
46 nine-A, twenty-two, or thirty-three of the tax law which owns an inter-
47 est in one or more potential eligible buildings, or a transferee of such
48 a taxpayer as described in subdivision six of this section, shall be
49 allowed a credit against such tax for the amount of credit allocated by
50 the commissioner to each such potential eligible building. Except as
51 provided in subdivision two of this section, the credit amount so allo-
52 cated shall be allowed as a credit against the tax for the ten taxable
53 years in the credit period beginning in and after tax year two thousand
54 twenty-five.

55 2. Amount of credit. (a) Except as provided in subdivisions three and
56 four of this section, the amount of credit shall be the difference

1 between the cumulative amount of rents owed on a monthly basis pursuant
2 to the leases covering each occupied dwelling unit minus the tenant's
3 rental obligation, for those months during the state of emergency.
4 Credits shall be reduced by any amount of rent payments made by a tenant
5 above their rental obligation under this article.

6 (b) Notwithstanding paragraph (a) of this subdivision, if a lease has
7 as its rent an amount that exceeds two hundred fifty percent of fair
8 market rent for the rental area, the collectible rent for the dwelling
9 unit subject to the lease shall be deemed to be two hundred fifty
10 percent of the fair market rent for the rental area.

11 (c) (i) The commissioner shall receive applications for credit. The
12 application for credit by the owner or owners of the rental property
13 shall include the amount of the credit requested, which shall be based
14 upon the cumulative monthly rent owed by tenants pursuant to the leases
15 covering each occupied dwelling during each month of the state of emer-
16 gency, and the actual monthly rent collected during each respective
17 month of the state of emergency, to be allocated by the commissioner to
18 the potential eligible building. The application shall also include the
19 tenant's name and mailing address for each unit for which credit is
20 sought. The applicant has the burden of providing sufficient proof to
21 the commissioner for review and determination. The application shall
22 contain sufficient information to identify each such building and the
23 taxpayer or taxpayers with respect to each such building, and such other
24 information as the commissioner, in consultation with the commissioner
25 of taxation and finance, shall prescribe. The commissioner shall devel-
26 op procedures for verifying the tenant's income and determining the
27 tenant's rental obligation for the tax credit benefit period.

28 (ii) While the application is pending, the applicant may not commence
29 a proceeding to recover possession of the property for the non-payment
30 of rent which is the subject of the application.

31 (iii) Subject to the availability of credits, the amount of the credit
32 available to the potential eligible building shall be the actual differ-
33 ence between the monthly lease amounts for occupied units minus the
34 tenant's rental obligation and the actual amount of monthly rent
35 collected, as determined by the commissioner. Upon approval of the cred-
36 it to an owner, the owner shall release the occupants of the unit or
37 building from any liability for the non-payment of rent that is the
38 subject of the credit.

39 (iv) Owners shall not be eligible for credit (1) if such owner has
40 received property tax relief, rental voucher assistance, or any other
41 federal, state or locally funded benefit intended to pay, abate or
42 compensate the owner for eligible unpaid rent, (2) if the owner has
43 commenced a proceeding to recover possession of the property for the
44 non-payment of rent which is the subject of the application, or (3)
45 another owner, co-owner or applicant has applied for tax credits for the
46 unpaid rent of the same units.

47 3. Tenant rental obligation. (a) The monthly rental obligation of each
48 tenant for which credit is sought shall be thirty percent of the monthly
49 adjusted income of such tenant.

50 (b) If a tenant shares a dwelling or manufactured home with one or
51 more individuals who are not part of their family or household, the
52 monthly rental obligation of the tenant shall be calculated using the
53 portion of the tenant's rent for which they are responsible rather than
54 the entire rent for the shared dwelling unit or manufactured home.

1 (c) Each family shall identify the individuals to be included in the
2 family at the time of application, and shall update such information if
3 the family's composition changes.

4 4. Verification of income and assets. (a) The commissioner shall
5 establish procedures that are appropriate and necessary to assure that
6 data regarding income, and assets to the extent necessary to determine
7 eligibility, provided by tenants under this article is complete and
8 accurate. Acceptable methods of verification shall include, but are not
9 limited to, paycheck stubs, earning statements, tax records, W-2 forms,
10 written statements from a former or current employer, telephone or
11 in-person contact with a former or current employer, notarized state-
12 ments or affidavits signed by the applicant, or other methods approved
13 by the commissioner.

14 5. Statewide limitation. (a) The aggregate dollar amount of credit
15 which the commissioner may allocate to eligible buildings under this
16 article shall be one billion dollars.

17 (b) An eligible building shall be limited to a credit amount equal to
18 the difference between the cumulative monthly rent amount pursuant to
19 the leases in effect on March first, two thousand twenty minus the
20 tenant's rental obligation and the actual monthly rent amount collected
21 for the months during the state of emergency. The taxpayer shall prove,
22 to the satisfaction of the commissioner, the amount of rent due.

23 (c) The amount of the tax credit payment with respect to any dwelling
24 unit or manufactured home tenant shall be the difference between the
25 monthly contractual or statutory rent the owner is to receive for the
26 unit or home and thirty percent of the tenant's monthly adjusted income.

27 (d) Notwithstanding paragraph (b) of this subdivision, the maximum
28 monthly tax credit for each tenant shall be the difference between the
29 rental obligation established in this section and two hundred fifty
30 percent of the fair market rent for the rental area.

31 6. Building Prioritization. The commissioner shall prioritize applica-
32 tions for buildings based on the amount of credit requested in compar-
33 ison to the cumulative amount of rents owed on a monthly basis pursuant
34 to the leases covering all occupied dwelling units during the respective
35 months of the state of emergency. Buildings in which the amount of cred-
36 it requested exceeds seventy-five percent of the cumulative amount of
37 rents owed shall be highest priority, followed by buildings in which the
38 amount exceeds fifty percent but is below seventy-five percent, followed
39 by buildings in which the amount exceeds twenty-five percent but does
40 not exceed fifty percent, and then any other applications. The commis-
41 sioner shall also prioritize applications for buildings with low-income
42 housing regulatory agreements or where fifty percent of the units are at
43 or below the fair market rent.

44 7. Transfer of credit. (a) A taxpayer allowed a credit pursuant to
45 this article may transfer the credit, in whole or in part, to another
46 person or entity, who shall be referred to as the transferee. Transfer-
47 ees shall be entitled to apply transferred credit to a tax imposed under
48 article nine-A, twenty-two or thirty-three of the tax law, provided all
49 requirements for claiming the credit are met. A transferee may not
50 transfer any credit, or portion thereof, acquired by transfer.

51 (b) A taxpayer allowed a credit pursuant to this article must enter
52 into a transfer contract with the transferee. The transfer contract must
53 specify (i) the building address and any other location identification
54 information; (ii) the schedule of years for which the transfer credit
55 may be claimed and the amount of credit previously claimed; (iii) the

1 amount of consideration received by the taxpayer for the transfer cred-
2 it; and (iv) the amount of credit being transferred.

3 (c) No transfer shall be effective unless the taxpayer allowed a cred-
4 it pursuant to this article and seeking to transfer the credit files a
5 transfer statement with the commissioner prior to the transfer and the
6 commissioner approves such transfer. The transfer statement shall
7 provide the name and federal identification numbers of the filing
8 transferor and the taxpayer to whom the filing transferor transferred
9 the credit, and the amount of credit transferred to each such person or
10 entity. A copy of the transfer contract shall be attached to the trans-
11 fer statement. The statement shall also contain such other information
12 as the commissioner may require. After reviewing the transfer contract
13 and the transfer statement, the commissioner shall approve or deny the
14 transfer as provided in this subdivision. If the commissioner approves
15 the transfer, the commissioner shall issue an approval statement that
16 provides the name of the transferor and transferee, the amount of credit
17 being transferred and such other information as the commissioner and the
18 commissioner of taxation and finance deem necessary. A copy of the
19 commissioner's approval statement must be attached to the transferee's
20 tax return. If the commissioner denies the transfer, the commissioner
21 shall provide the taxpayer a written determination for such denial. The
22 commissioner, in consultation with the commissioner of taxation and
23 finance, may establish such other procedures and standards deemed neces-
24 sary for the transferability of the rental losses credit.

25 (d) The commissioner shall forward copies of all transfer statements
26 and attachments thereto and approval statements to the department of
27 taxation and finance within thirty days after the transfer is approved
28 by the commissioner.

29 § 28. Credit monitoring. The commissioner shall establish such proce-
30 dures deemed necessary for monitoring compliance of an eligible building
31 with the provisions of this article, and for notifying the commissioner
32 of taxation and finance of any such noncompliance.

33 § 29. Regulations. The commissioner shall promulgate any rules and
34 regulations necessary to administer the provisions of this article.

35 § 3. The tax law is amended by adding a new section 45 to read as
36 follows:

37 § 45. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer
38 subject to tax under article nine-A, twenty-two or thirty-three of this
39 chapter shall be allowed a credit against such tax, pursuant to the
40 provisions referenced in subdivision (b) of this section, with respect
41 to rental losses during the COVID-19 pandemic for which an eligibility
42 statement has been issued by the commissioner of the division of housing
43 and community renewal. The amount of such credit shall be the credit
44 amount allocated by such commissioner as provided in article two-B of
45 the public housing law. The credit amount shall be allowed for each of
46 the ten taxable years in the credit period beginning in and after tax
47 year two thousand twenty-five.

48 (b) Cross-references. For application of the credit provided for in
49 this section, see the following provisions of this chapter:

50 (1) Article 9-A: Section 210-B: subdivision 55,

51 (2) Article 22: Section 606: subsection (kkk),

52 (3) Article 33: Section 1511: subdivision (ee).

53 § 4. Section 210-B of the tax law is amended by adding a new subdivi-
54 sion 55 to read as follows:

55 55. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer
56 shall be allowed a credit against the tax imposed by this article with

1 respect to rental losses during the COVID-19 pandemic, computed as
 2 provided in section forty-five of this chapter.

3 (b) Application of credit. The credit allowed under this subdivision
 4 for any taxable year shall not reduce the tax due for such year to less
 5 than the fixed dollar minimum amount prescribed in paragraph (d) of
 6 subdivision one of section two hundred ten of this article. Provided,
 7 however, if the amount of credit allowed under this subdivision for any
 8 taxable year reduces the tax to such amount or if the taxpayer otherwise
 9 pays tax based on the fixed dollar minimum amount, any amount of credit
 10 thus not deductible in such taxable year shall be treated as an overpay-
 11 ment of tax to be credited or refunded in accordance with the provisions
 12 of section one thousand eighty-six of this chapter. Provided, further,
 13 the provisions of subsection (c) of section one thousand eighty-eight of
 14 this chapter notwithstanding, no interest shall be paid thereon.

15 § 5. Section 606 of the tax law is amended by adding a new subsection
 16 (kkk) to read as follows:

17 (kkk) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer
 18 shall be allowed a credit against the tax imposed by this article with
 19 respect to the rental losses during the COVID-19 pandemic, computed as
 20 provided in section forty-five of this chapter.

21 (2) Application of credit. If the amount of the credit allowed under
 22 this subsection for any taxable year shall exceed the taxpayer's tax for
 23 such year, the excess shall be treated as an overpayment of tax to be
 24 credited or refunded in accordance with the provisions of section six
 25 hundred eighty-six of this article, provided, however, that no interest
 26 shall be paid thereon.

27 § 6. Section 1511 of the tax law is amended by adding a new subdivi-
 28 sion (ee) to read as follows:

29 (ee) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer
 30 shall be allowed a credit against the tax imposed by this article with
 31 respect to rental losses during the COVID-19 pandemic, computed as
 32 provided in section forty-five of this chapter.

33 (2) Application of credit. The credit allowed under this subdivision
 34 for any taxable year shall not reduce the tax due for such year to less
 35 than the minimum tax fixed by paragraph four of subdivision (a) of
 36 section fifteen hundred two of this article or by section fifteen
 37 hundred two-a of this article, whichever is applicable. Provided,
 38 however, if the amount of credit allowed under this subdivision for any
 39 taxable year reduces the tax to such amount, then any amount of credit
 40 thus not deductible in such taxable year shall be treated as an overpay-
 41 ment of tax to be credited or refunded in accordance with the provisions
 42 of section ten hundred eighty-six of this chapter. Provided, further,
 43 the provisions of subsection (c) of section ten hundred eighty-eight of
 44 this chapter notwithstanding, no interest shall be paid thereon.

45 § 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 46 of the tax law is amended by adding a new clause (xlvi) to read as
 47 follows:

48 <u>(xlvi) COVID-19 housing tax</u>	<u>Amount of credit for the sum of</u>
49 <u>credit under subsection (kkk)</u>	<u>the COVID-19 housing tax</u>
50	<u>credit under subdivision fifty-five</u>
51	<u>of section two hundred ten-B</u>

52 § 8. This act shall take effect immediately; provided that sections
 53 two, three, four and five of this act shall apply to taxable years
 54 beginning on or after January 1, 2021.