LOCAL LAW NO. __ FOR 2023

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK AMENDING LOCAL LAW NO. 2 FOR 1975, AS AMENDED, THE ALBANY COUNTY SENIOR CITIZENS TAX EXEMPTION LAW

Introduced: 4/10/23
By McLaughlin, A. Joyce, Ward:

A Local Law amending Chapter 270 of the Code of the County of Albany to create an updated real property tax exemption for senior citizens pursuant to the New York State Real Property Tax Law.

BE IT ENACTED by the Legislature of the County of Albany as follows:

Section 1. Repealing prior local law.

This Local Law hereby amends the following sections of Article II: Senior Citizens Exemption as it is currently written: §270-18 to §270-27

Section 2. § 270-18 Title.

This article shall be known as the "Albany County Senior Citizen Tax Exemption Law."

Section 3. § 270-19 Exemption amount.

Beginning July 1, 2023, Persons sixty-five years of age or over. Pursuant to §467 of the Real Property Tax Law of the State of New York, there shall be an exemption from taxation for general county purposes on real property owned by one (1) or more persons, each of whom is sixty-five (65) years of age or over, or real property owned by <u>a married couple</u> [spouses] or by siblings, one (1) of whom is sixty-five (65) years of age or over, to the extent of the percentage of assessed valuation provided in the following schedule, determined by the maximum income eligibility level also provided in the following schedule:

ANNUAL INCOME	PERCENTAGE OF ASSESSED VALUATION EXEMPT FROM TAXATION
$50,000 or less	50
More than $50,000 but less than $51,000	45
$51,000 or more but less than $52,000	40
$52,000 or more but less than $53,000	35

$53,000 or more but less than $53,900	30
$53,900 or more but less than $54,800	25
$54,800 or more but less than $55,700	20
$55,700 or more but less than $56,600	15
$56,600 or more but less than $57,500	10
$57,500 or more but less than $58,400	5

For the purposes of this section, the term “sibling” shall include persons whose relationship as siblings has been established through either half blood, whole blood or adoption.

Section 4. § 270-20. Computation of exemption.

Any exemption provided by this local law shall be computed after all other partial exemptions allowed by law, excluding the school tax relief (STAR) exemption, have been subtracted from the total amount assessed.

Section 5. § 270-21. Cooperative Apartment ownership.

A. Title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is represented by their share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

B. That proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

Section 6. § 270-22 Conditions on grant of exemption
No exemption shall be granted:

A. If the income of the owner or the combined income of the owners of the property for the applicable income tax year [immediately preceding the date of making application for exemption] exceeds the maximum sum authorized by the provisions of Section 467 of the Real Property Tax Law. “Income tax year” shall [mean the twelve-month period for which the owner or owners filed a federal personal income tax return or, if no such return is filed, the] be the second most recent calendar year. Where title is vested in a married person [either spouse, their] the combined income may not exceed such sum, except where a spouse, or ex-spouse is absent from the property as provided in subparagraph (ii) of paragraph (d) of subdivision 3 of §467 of the Real Property Tax Law of the State of New York, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. [Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts, inheritances, payments made to individuals because of their status as victims of Nazi persecution, as defined in P.L. 103-286 or monies earned through employment in the federal foster grandparent program and any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance, if the governing board of a municipality, after a public hearing, adopts a local law, ordinance or resolution providing therefor. In addition, an exchange of an annuity for an annuity contract, which resulted in non-taxable gain, as determined in section one thousand thirty-five of the internal revenue code, shall be excluded from such income. Provided that such exclusion shall be based on satisfactory proof that such an exchange was solely an exchange of an annuity for an annuity contract that resulted in a non-taxable transfer determined by such section of the internal revenue code. Furthermore, such income shall not include the proceeds of a reverse mortgage, as authorized by section six-h of the banking law, and sections two hundred eighty and two hundred eighty-a of the real property law; provided, however, that monies used to repay a reverse mortgage may not be deducted from income, and provided additionally that any interest or dividends realized from the investment of reverse mortgage proceeds shall be considered income. The provisions of this paragraph notwithstanding, such income shall not include veterans disability compensation, as defined in Title 38 of the United States Code provided the governing board of such municipality, after public hearing, adopts a local law, ordinance or resolution providing therefor. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income.]

B. The term "income" as used herein shall mean the "adjusted gross income" for federal income tax purposes as reported on the applicant's federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions, plus any social security benefits not included in such federal adjusted gross income; provided that if no such return was filed for the applicable income tax year, the applicant's income shall be determined based on the amounts that would have so been reported if such a return had been filed; and provided further, that when determining income for purposes of this section, the following conditions shall be applicable:

1. distributions received from an individual retirement account or individual retirement annuity that were included in the applicant's federal adjusted gross income shall not be considered income;
2. the applicant's income shall be offset by all medical and prescription drug expenses actually paid that were not reimbursed or paid for by insurance;
3. any tax-exempt interest or dividends that were excluded from the applicant's federal adjusted gross income shall be considered income; and
    a. any losses that were applied to reduce the applicant's federal adjusted gross income shall be subject to the following limitations:
    b. the net amount of loss reported on federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule,
    c. the net amount of any other separate category of loss shall not exceed three thousand dollars, and
    d. the aggregate amount of all losses shall not exceed fifteen thousand dollars;

C. Unless the owner shall have held an exemption under this section for the owner's [their] previous residence or unless the title of the property shall have been vested in the owner or one (1) of the owners of the property for at least twelve (12) consecutive months prior to the date of making application for exemption, provided, however, that in the event of the death of a married person [either a spouse] in whose name title of the property shall have been vested at the time of death and then becomes vested solely in [the survivor] such person's surviving spouse by virtue of devise by or descent from the deceased spouse, the time of ownership of the property by the deceased spouse shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of twelve (12) consecutive months. In the event of a transfer by [one spouse to the other] a married person to such person's spouse of all or part of the title to the property, the time of ownership of the property by the transferor spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twelve (12) consecutive months. Where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. Where a residence is sold and replaced with another within one (1) year and both residences are within the state, the period of ownership of both properties shall be deemed consecutive for purposes of the exemption from taxation by a municipality within the state granting such exemption. Where the owner or owners transfer title to property which as of the date of transfer was exempt from taxation under the provisions of this section, the reacquisition of title by such owner or owners within nine (9) months of the date of transfer shall be deemed to satisfy the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve (12) consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which as of the date of such death was exempt from taxation under such provisions, becomes vested, by virtue of devise or descent from the deceased owner or owners, or by transfer by any other means within nine months after such death, solely in a person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve (12) consecutive months shall be deemed satisfied.

D. Unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this local law.

E. Unless the real property is the legal residence and is occupied, in whole or in part, by the owner or by all of the owners of the property; except where, (i) an owner is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section 2801 of the Public Health Law, provided that any income accruing to that person shall only be income only to the extent that it exceeds the amount paid by such owner, spouse, or co-owner for care in the facility and provided further, that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or (ii) the real property is owned by a [spouse and/or spouses, or an ex-spouse, and either] married person or a married couple, or by a formerly married person or a formerly married couple, and one spouse or ex-spouse is absent from the residence due to divorce, legal separation or abandonment and all other provisions of this local law are not provided that where an exemption was previously granted when both resided on the property, then the person remaining on the real property shall be sixty-two years of age or over.

Section 7. § 270-23 Application for exemption.

Application for such exemption must be made by the owner, or all of the owners of the property, on forms prescribed by the Commissioner of Taxation and Finance to be furnished by the appropriate local assessing unit, and shall furnish the information and be executed in the manner required or prescribed on such forms, and shall be filed in such Assessor's Office on or before the appropriate taxable status date. Notwithstanding any other provision of law, any person otherwise qualifying under this section shall not be denied the exemption under this section if [he] such person becomes sixty-five (65) years after the appropriate taxable status date and on or before December 31 of the same year.

Section 8. § 270-24 Notice of Exemption.

A. At least sixty (60) days prior to the appropriate taxable status date, the appropriate local assessing unit shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed on or before taxable status date and be approved in order for the exemption to be granted. The appropriate local assessing unit shall, within three (3) days of the completion and filing of the tentative assessment roll, notify by mail any applicant whose [has included with their] application includes at least one (1) self-addressed, prepaid envelope, of the approval or denial of the application; provided, however, that the appropriate local assessing unit shall, upon receipt and filing of the application, send by mail notification of receipt to any applicant who has included two (2) of such envelopes with the application. Where an applicant is entitled to a notice of denial pursuant to this subsection, such notice shall be on a form prescribed by the State Board and shall state the reasons for such denial and shall further state that the applicant may have such determination reviewed in the manner provided by law. Failure to mail any such application form or notices or failure of such person to receive any of the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

B. The appropriate local assessing units shall accept applications for the renewal of exemptions pursuant to this section after the taxable status date. In the event that the owner or all of the owners of property which has received an exemption pursuant to this section on the preceding assessment roll fail to file the application required pursuant to this section on or before taxable status date, such owner or owners may file the application, executed as if such application had been filed on or before the taxable status date, with the Assessor on or before the date for the hearing of complaints.

Section 9. § 270-25 Penalty for false statement; collection or erroneous exemption; payment of fines.

A. Any conviction of having made any willful false statement in the application for such exemption, shall be punishable by a fine of not more than one hundred dollars ($100) and shall disqualify the applicant or applicants from further exemption for a period of five (5) years.

B. Notwithstanding any inconsistent provisions of the New York State Real Property Tax Law, the collection of any amount of tax erroneously exempted due to an incorrect statement in an application for exemption shall be enforceable in the same manner provided for the collection of delinquent taxes pursuant to the provisions of Article 11 of the New York State Real Property Tax Law.

C. Any fine levied pursuant to [Section 8 (A)] Subsection A of this [sub]section shall be paid to the appropriate assessing authority.

Section 10. § 270-26 Limit on rescission of exemption for surviving spouses.

The real property tax exemption on real property owned by a married couple [spouses], one of whom is sixty-five (65) years of age or over, once granted, shall not be rescinded by the County of Albany solely because of the death of the older spouse so long as the surviving spouse is at least sixty-two (62) years of age.

Section 11. § 270-27 When effective, applicability.

This law shall take effect immediately and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on and after January 1, 2024.