S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to clarifying the recordkeeping requirements for the earned income tax credit and the enhanced earned income tax credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subsection (d) of section 606 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) RECORDKEEPING. IN ADDITION TO ANY OTHER REQUIREMENT SET FORTH IN THIS CHAPTER, ANY TAXPAYER PAID PRINCIPALLY IN CASH WHO IS CLAIMING THE EARNED INCOME TAX CREDIT PURSUANT TO THIS SUBSECTION SHALL COMPLY WITH THE RECORDKEEPING REQUIREMENTS SET FORTH IN SECTION SIX HUNDRED FIFTY-EIGHT-A OF THIS ARTICLE WHEN APPLICABLE.

S 2. Subsection (d-1) of section 606 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) IN ADDITION TO ANY OTHER REQUIREMENT SET FORTH IN THIS CHAPTER, ANY TAXPAYER WHO IS CLAIMING THE ENHANCED EARNED INCOME TAX CREDIT PURSUANT TO THIS SUBSECTION SHALL COMPLY WITH THE RECORDKEEPING REQUIREMENTS SET FORTH IN SECTION SIX HUNDRED FIFTY-EIGHT-A OF THIS ARTICLE WHEN APPLICABLE.

S 3. The tax law is amended by adding a new section 658-a to read as follows:

S 658-A. INCOME DOCUMENTATION CONCERNING THE EARNED INCOME TAX CREDIT. IN CONJUNCTION WITH THE REQUIREMENTS SET FORTH IN THIS CHAPTER, THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY TAXPAYER CLAIMING THE EARNED INCOME TAX CREDIT AS SET FORTH IN SUBSECTION (D) OF SECTION SIX HUNDRED SIX OF THIS ARTICLE:

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

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(A) INCOME DOCUMENTATION STANDARDS FOR CASH EARNERS. IF THE TAXPAYER IS EMPLOYED IN ONE OR MORE JOBS WHERE SUCH TAXPAYER IS PAID PRINCIPALLY IN CASH, SUCH TAXPAYER MAY PROVE HIS OR HER INCOME BY PRODUCING ONE OF THE FOLLOWING VERIFICATIONS:

(1) "PERMANENT BOOKS OR RECORDS" ARE PAPER OR ELECTRONIC DOCUMENTS THAT REFLECT THE AMOUNT AND SOURCE OF ALL INCOME EARNED FROM PAID EMPLOYMENT.

(2) EXAMPLES OF "PERMANENT BOOKS OR RECORDS" INCLUDE BUT ARE NOT LIMITED TO:

(A) STATEMENTS FROM FINANCIAL INSTITUTIONS REFLECTING DEPOSITS OF MONEY EARNED;

(B) ELECTRONIC LEDGERS OR SPREADSHEETS; OR

(C) HANDWRITTEN ACCOUNTS MAINTAINED IN A BOUND LEDGER.

(3) A DIFFERENT LEDGER SHOULD BE MAINTAINED FOR EACH TAX YEAR'S CASH EARNINGS RECORDS, AND EACH RECORD SHALL BE MAINTAINED FOR AT LEAST THREE YEARS AFTER THE TAX YEAR FOR WHICH IT WAS SUBMITTED.

(B) ENTRY REQUIREMENTS FOR HANDWRITTEN LEDGERS. (1) SUCH RECORD SHALL INCLUDE, IN CHRONOLOGICAL ORDER, AN ENTRY FOR EACH TRANSACTION FOR WHICH SUCH TAXPAYER EARNS MONEY WITH INFORMATION THAT INCLUDES, BUT IS NOT LIMITED TO:

(A) THE AMOUNT OF MONEY EARNED;

(B) THE APPROXIMATE TIME AND DATE ON WHICH THE MONEY WAS EARNED OR RECEIVED;

(C) THE PORTION OF THE MONEY RECEIVED, IF ANY, THAT WENT TO THE TAXPAYER'S EMPLOYER;

(D) A BRIEF DESCRIPTION OR LIST OF THE TASK OR TASKS PERFORMED FOR THE MONEY EARNED.

(2) SUCH RECORD MAY INCLUDE ENTRIES FOR WORK-RELATED EXPENSES AND EACH SUCH ENTRY MAY INCLUDE, BUT NOT BE LIMITED TO THE:

(A) AMOUNT OF THE WORK-RELATED EXPENSE;

(B) APPROXIMATE TIME AND DATE THE WORK-RELATED EXPENSE WAS INCURRED;

(C) NATURE OF THE WORK-RELATED EXPENSE; AND

(D) DATE ON WHICH THE ENTRY WAS MADE.

(3) AN ENTRY FOR ANY TRANSACTION SHALL BE MADE AS SOON AS POSSIBLE AFTER THE TRANSACTION OCCURRED; PROVIDED, HOWEVER, THAT A CORRECTION TO AN ENTRY SHALL NOT BE INVALID IF IT IS MADE MORE THAN THIRTY DAYS AFTER THE TRANSACTION FOR WHICH SUCH ENTRY WAS MADE.

(C) ADDITIONAL ACCEPTABLE INCOME VERIFICATION DOCUMENTS. (1) IN THE ABSENCE OF PERMANENT BOOKS OR RECORDS, A TAX FILER MAY VERIFY INCOME BY PRODUCING TWO OR MORE OF THE FOLLOWING:

(A) A SWORN AFFIDAVIT, SIGNED BY THE FILER, STATING: POSITION OR TITLE, NUMBER OF WEEKS WORKED, NUMBER OF HOURS WORKED PER WEEK, THE WAGES EARNED AND A BRIEF DESCRIPTION OF WORK PERFORMED. A SEPARATE NOTARIZED AFFIDAVIT SHOULD BE COMPLETED FOR EACH JOB;

(B) RECEIPTS FROM WORK SUPPLIES, INCLUDING BUT NOT LIMITED TO: UNIFORMS AND MATERIALS NEEDED TO COMPLETE A SPECIFIC JOB;

(C) RECEIPTS FROM LICENSING OR CERTIFICATION FEES, MEMBERSHIP DUES, OR OTHER PROFESSIONAL DUES;

(D) RECEIPTS FROM WORK-RELATED EXPENSES, INCLUDING BUT NOT LIMITED TO, TRANSPORTATION COSTS AND CHILD CARE;

(E) SIGNED LETTER FROM EMPLOYER STATING WAGES PAID;

(F) INCOME AND EXPENSES WORKSHEET COMPLETED WITH A CERTIFIED TAX PROFESSIONAL;

(G) RECEIPTS FROM A CHECK CASHER REFLECTING REGULAR RECEIPT OF WAGES;

(H) PHOTOCOPIES OF CHECKS, OR PAY ENVELOPS, GIVEN TO THE TAXPAYER AS PAYMENT FOR GOODS OR SERVICES.

(D) ERRORS OR OMISSIONS. A DE MINIMIS NUMBER OF OMISSIONS OR FAILURES TO CORRECT ENTRIES SHALL NOT BE SUFFICIENT IN AND OF ITSELF TO RENDER A TAXPAYER'S RECORDS INADEQUATE TO VALIDATE THAT TAXPAYER'S INCOME FOR THE RELEVANT TAX YEAR.

(E) PRESUMPTION OF ACCURACY AND COMPLETENESS. (1) SO LONG AS THE MINIMUM REQUIREMENTS SET FORTH IN THIS SECTION ARE MET, AND UNLESS THE DEPARTMENT HAS AFFIRMATIVE EVIDENCE TO DIRECTLY CONTRADICT THE TAXPAYER'S RETURN, THE DEPARTMENT SHALL PRESUME THE ACCURACY AND COMPLETENESS OF THE RECORD AND THE GOOD FAITH OF THE TAXPAYER.

(2) PROVIDED THE MINIMUM REQUIREMENTS SET FORTH IN THIS SECTION ARE MET, THE PARTICULAR FORMAT OF THE RECORD SHALL NOT BE USED AS EVIDENCE OF INSUFFICIENT RECORDKEEPING OR BAD FAITH ON THE PART OF THE TAXPAYER.

(3) PROVIDED THE MINIMUM REQUIREMENTS SET FORTH IN THIS SECTION ARE MET, A MID-YEAR CHANGE IN THE FORMAT OF RECORDKEEPING WITHIN A SINGLE LEDGER SHALL NOT BE CONSIDERED EVIDENCE OF INCOMPLETE RECORDKEEPING OR BAD FAITH IF SUCH CHANGE INDICATES AN ATTEMPT TO IMPROVE UPON RECORDKEEPING.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the commissioner of taxation and finance is authorized to make any addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date on or before such date.