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

1985--A

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 -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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) INCOME DOCUMENTATION. ANY TAXPAYER WHO RECEIVES MORE THAN FIFTY PERCENT OF HIS OR HER INCOME IN CASH WHO IS CLAIMING THE CREDIT UNDER THIS SUBSECTION MAY FOLLOW THE INCOME DOCUMENTATION STANDARDS 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) ANY TAXPAYER WHO RECEIVES MORE THAN FIFTY PERCENT OF HIS OR HER INCOME IN CASH WHO IS CLAIMING THE CREDIT UNDER THIS SUBSECTION MAY PROVE HIS OR HER INCOME BY FOLLOWING THE INCOME DOCUMENTATION STANDARDS 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 CREDIT. IN CONJUNCTION WITH THE REQUIREMENTS SET FORTH IN THIS CHAPTER, THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY TAXPAYER CLAIMING THE

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

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EARNED INCOME CREDIT AS SET FORTH IN SUBSECTION (D) OF SECTION SIX HUNDRED SIX OF THIS ARTICLE.

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

(1) PERMANENT BOOKS, ACCOUNTS OR RECORDS KEPT IN A MANNER CONSISTENT WITH THE RECORDKEEPING PRACTICES OF THE INDUSTRY IN WHICH THE TAXPAYER WORKS. FOR THE PURPOSES OF THIS SECTION, "PERMANENT BOOKS, ACCOUNTS OR RECORDS" SHALL MEAN PAPER OR ELECTRONIC DOCUMENTS THAT REFLECT THE AMOUNT AND SOURCE OF ALL INCOME EARNED FROM PAID EMPLOYMENT.

(A) EXAMPLES OF PERMANENT BOOKS, ACCOUNTS OR RECORDS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO (I) BANK STATEMENTS FROM FINANCIAL INSTITUTIONS, (II) ELECTRONIC LEDGERS OR SPREADSHEETS THAT DOCUMENT THE DATE OF EACH ENTRY, OR (III) HANDWRITTEN ACCOUNTS MAINTAINED IN A BOUND LEDGER.

(B) A DIFFERENT LEDGER SHALL 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.

(C) ENTRY REQUIREMENTS FOR HANDWRITTEN LEDGERS. (I) A HANDWRITTEN LEDGER DOCUMENTING THE TAXPAYER'S INCOME SHALL LIST, IN CHRONOLOGICAL ORDER, AN ENTRY FOR EACH TRANSACTION FOR WHICH SUCH TAXPAYER EARNS MONEY WITH INFORMATION THAT INCLUDES, BUT IS NOT LIMITED TO:

(I) THE AMOUNT OF MONEY EARNED;

(II) THE APPROXIMATE TIME AND DATE ON WHICH THE MONEY WAS EARNED; AND

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

(II) SUCH RECORD MAY INCLUDE ENTRIES FOR WORK-RELATED EXPENSES AND EACH SUCH ENTRY SHALL INCLUDE, BUT IS NOT LIMITED TO:

(I) THE AMOUNT OF THE WORK-RELATED EXPENSE;

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

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

(IV) THE DATE ON WHICH THE ENTRY WAS MADE.

(III) AN ENTRY FOR ANY TRANSACTION SHALL BE MADE AS SOON AS POSSIBLE AFTER THE TRANSACTION OCCURRED.

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

(A) A SIGNED LETTER FROM THE TAXPAYER'S EMPLOYER STATING WAGES PAID;

(B) STATEMENTS FROM A FINANCIAL INSTITUTION THAT DEMONSTRATE REGULAR DEPOSITS OF EARNINGS;

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

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

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

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

(G) AN INCOME AND EXPENSES WORKSHEET COMPLETED WITH A CERTIFIED TAX PROFESSIONAL.

(B) ERRORS OR OMISSIONS. OMISSIONS OR FAILURES TO CORRECT ENTRIES SHALL NOT BE SUFFICIENT IN AND OF THEMSELVES TO RENDER A TAXPAYER'S RECORDS AS INADEQUATE TO VALIDATE SUCH TAXPAYER'S INCOME FOR THE RELEVANT TAX YEAR.

(C) PRESUMPTION OF ACCURACY AND COMPLETENESS. (1) PROVIDED THAT THE MINIMUM STANDARDS 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) 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) 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.

(D) REPORT. (1) ON OR BEFORE JUNE THIRTIETH NEXT SUCCEEDING THE DATE ON WHICH THIS SECTION SHALL HAVE BECOME A LAW, AND ANNUALLY THEREAFTER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT REGARDING TAXPAYERS WHO CLAIM THE EARNED INCOME CREDIT AS SET FORTH IN SUBSECTION (D) OF SECTION SIX HUNDRED SIX OF THIS ARTICLE AND WHO ARE PAID PRINCIPALLY IN CASH.

(2) THE REPORT MUST CONTAIN THE FOLLOWING INFORMATION ABOUT THE EARNED INCOME CREDIT CLAIMED UNDER THIS ARTICLE DURING THE PREVIOUS CALENDAR YEAR:

(A) THE NUMBER OF CASH EARNERS CLAIMING THE CREDIT;

(B) THE NUMBER OF CASH EARNERS CLAIMING THE CREDIT WHO ARE SENT DESK AUDIT INQUIRY LETTERS;

(C) THE NUMBER OF RESPONSES TO THE AUDIT INQUIRY LETTERS THAT THE DEPARTMENT RECEIVES;

(D) THE NUMBER OF CASH EARNERS CLAIMING THE CREDIT WHO ARE AUDITED AND RECEIVE THE CREDIT AS A RESULT; AND

(E) THE NUMBER OF CASH EARNERS CLAIMING THE CREDIT WHO ARE AUDITED AND ARE DENIED THE CREDIT AS A RESULT.

(3) THE CREDIT REPORT MAY ALSO CONTAIN ANY OTHER INFORMATION THAT THE COMMISSIONER DEEMS TO BE USEFUL IN EVALUATING THE USE OF THE CREDIT BY CASH EARNERS. THE INFORMATION INCLUDED IN THE CREDIT REPORT WILL BE BASED ON THE INFORMATION FILED WITH THE DEPARTMENT DURING THE PREVIOUS CALENDAR YEAR, TO THE EXTENT THAT IT IS PRACTICABLE TO USE THAT INFORMATION.

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.