

2166

2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

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:

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

3 (8) INCOME DOCUMENTATION. ANY TAXPAYER WHO RECEIVES MORE THAN FIFTY  
4 PERCENT OF HIS OR HER INCOME IN CASH WHO IS CLAIMING THE CREDIT UNDER  
5 THIS SUBSECTION MAY FOLLOW THE INCOME DOCUMENTATION STANDARDS SET FORTH  
6 IN SECTION SIX HUNDRED FIFTY-EIGHT-A OF THIS ARTICLE WHEN APPLICABLE.

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

9 (9) ANY TAXPAYER WHO RECEIVES MORE THAN FIFTY PERCENT OF HIS OR HER  
10 INCOME IN CASH WHO IS CLAIMING THE CREDIT UNDER THIS SUBSECTION MAY  
11 PROVE HIS OR HER INCOME BY FOLLOWING THE INCOME DOCUMENTATION STANDARDS  
12 SET FORTH IN SECTION SIX HUNDRED FIFTY-EIGHT-A OF THIS ARTICLE WHEN  
13 APPLICABLE.

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

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

21 (A) INCOME DOCUMENTATION STANDARDS FOR CASH EARNERS. IF THE TAXPAYER  
22 IS EMPLOYED IN ONE OR MORE OCCUPATIONS WHERE SUCH TAXPAYER RECEIVES MORE

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

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1 THAN FIFTY PERCENT OF HIS OR HER INCOME IN CASH, SUCH TAXPAYER MAY PROVE  
2 HIS OR HER INCOME BY PRODUCING ONE OF THE FOLLOWING VERIFICATIONS:

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

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

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

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

20 (I) THE AMOUNT OF MONEY EARNED;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (C) PRESUMPTION OF ACCURACY AND COMPLETENESS. (1) PROVIDED THAT THE  
2 MINIMUM STANDARDS SET FORTH IN THIS SECTION ARE MET, AND UNLESS THE  
3 DEPARTMENT HAS AFFIRMATIVE EVIDENCE TO DIRECTLY CONTRADICT THE TAXPAY-  
4 ER'S RETURN, THE DEPARTMENT SHALL PRESUME THE ACCURACY AND COMPLETENESS  
5 OF THE RECORD AND THE GOOD FAITH OF THE TAXPAYER.

6 (2) THE PARTICULAR FORMAT OF THE RECORD SHALL NOT BE USED AS EVIDENCE  
7 OF INSUFFICIENT RECORDKEEPING OR BAD FAITH ON THE PART OF THE TAXPAYER.

8 (3) A MID-YEAR CHANGE IN THE FORMAT OF RECORDKEEPING WITHIN A SINGLE  
9 LEDGER SHALL NOT BE CONSIDERED EVIDENCE OF INCOMPLETE RECORDKEEPING OR  
10 BAD FAITH IF SUCH CHANGE INDICATES AN ATTEMPT TO IMPROVE UPON RECORD-  
11 KEEPING.

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

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

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

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

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

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

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

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

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