

# STATE OF NEW YORK

10775

## IN ASSEMBLY

July 9, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fahy, McDonald, Hevesi, Jaffee, Barron, Gottfried, Englebright, Thiele, Mosley, Stern, Arroyo) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing for the advance payment of the earned income tax credit

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

1 Section 1. Paragraph 1 of subsection (d) of section 606 of the tax  
2 law, as amended by section 1 of part Q of chapter 63 of the laws of  
3 2000, is amended to read as follows:

4 (1) General. A taxpayer shall be allowed a credit as provided herein  
5 equal to (i) the applicable percentage of the earned income credit  
6 allowed under section thirty-two of the internal revenue code for the  
7 same taxable year, (ii) reduced by the credit permitted under subsection  
8 (b) of this section. Provided, however, for taxable years beginning in  
9 two thousand twenty and thereafter, for the purpose of determining the  
10 amount of tax credit under this paragraph, in calculating the earned  
11 income tax credit allowed under section thirty-two of the internal  
12 revenue code, the phaseout amount as referenced in section 32(b)(2)(A)  
13 of the internal revenue code shall be read as twenty four thousand nine  
14 hundred sixty dollars instead of eleven thousand six hundred ten dollars  
15 and such phaseout amount shall be subject to adjustments made in section  
16 thirty-two of the internal revenue code (the calendar year referenced in  
17 the cost of living adjustment in section 32(j)(1)(B) of the internal  
18 revenue code shall be applied as calendar year two thousand twenty with  
19 respect to the phaseout amounts), including an additional phaseout  
20 amount for a joint filer and inflation adjustment specified in such  
21 section of the internal revenue code for taxable years beginning in two  
22 thousand twenty and thereafter.

23 The applicable percentage shall be (i) seven and one-half percent for  
24 taxable years beginning in nineteen hundred ninety-four, (ii) ten  
25 percent for taxable years beginning in nineteen hundred ninety-five,  
26 (iii) twenty percent for taxable years beginning after nineteen hundred

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

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1 ninety-five and before two thousand, (iv) twenty-two and one-half  
2 percent for taxable years beginning in two thousand, (v) twenty-five  
3 percent for taxable years beginning in two thousand one, (vi) twenty-  
4 seven and one-half percent for taxable years beginning in two thousand  
5 two, ~~[and]~~ (vii) thirty percent for taxable years beginning in two thou-  
6 sand three, (viii) thirty-five percent for taxable years beginning in  
7 two thousand twenty, and (ix) forty percent for taxable years beginning  
8 in two thousand twenty-one and thereafter. For taxable years beginning  
9 in two thousand twenty and thereafter, in the case of an eligible indi-  
10 vidual with no qualifying children, the credit percentage shall be  
11 fifteen and three-tenths to determine the amount of the earned income  
12 tax credit referenced in section 32(b)(1) of the internal revenue code  
13 and the earned income amount and the phaseout amount of such individual  
14 shall be determined as if such earned income amount and phaseout amount  
15 as referenced in section 32(b)(2)(A) of the internal revenue code are  
16 equal to the amount allowed for an eligible individual with one qualify-  
17 ing child as such amounts are referenced in such paragraph. Provided  
18 further, for the purpose of this subsection, an eligible individual  
19 shall be an individual who has attained nineteen years of age as opposed  
20 to twenty-five years of age, irrespective of the eligibility referenced  
21 in section 32(c)(1)(A)(ii)(II) of the internal revenue code. Further-  
22 more, an individual otherwise eligible but for the requirement under  
23 section 32(m) of the internal revenue code shall be eligible for this  
24 credit. Provided, however, that if the reversion event, as defined in  
25 this paragraph, occurs, the applicable percentage shall be twenty  
26 percent for taxable years ending on or after the date on which the  
27 reversion event occurred. The reversion event shall be deemed to have  
28 occurred on the date on which federal action, including but not limited  
29 to, administrative, statutory or regulatory changes, materially reduces  
30 or eliminates New York state's allocation of the federal temporary  
31 assistance for needy families block grant, or materially reduces the  
32 ability of the state to spend federal temporary assistance for needy  
33 families block grant funds for the earned income credit or to apply  
34 state general fund spending on the earned income credit toward the  
35 temporary assistance for needy families block grant maintenance of  
36 effort requirement, and the commissioner of the office of temporary and  
37 disability assistance shall certify the date of such event to the  
38 commissioner of taxation and finance, the director of the division of  
39 the budget, the speaker of the assembly and the temporary president of  
40 the senate.

41 § 2. The tax law is amended by adding a new section 679 to read as  
42 follows:

43 § 679. Advance payment of earned income credit. (a) General rule.  
44 Except as otherwise provided in this chapter, the commissioner shall  
45 provide for the prepayment of the earned income credit to qualifying  
46 employees.

47 (b) Earned income eligibility certificate. For purposes of this arti-  
48 cle, an earned income eligibility certificate is a statement furnished  
49 by an employee to the commissioner which:

50 (1) certifies that the employee will be eligible to receive an earned  
51 income credit or an enhanced earned income credit provided pursuant to  
52 subsection (d) or (d-1) of section six hundred six of this article for  
53 the taxable year;

54 (2) certifies that the employee does not have an earned income eligi-  
55 bility certificate in effect for the taxable year with respect to the  
56 payment of wages by another employer; and

1     (3) states whether the employee's spouse has an earned income eligi-  
2 bility certificate in effect. For purposes of this section, a certifi-  
3 cate shall be treated as being in effect with respect to a spouse if  
4 such certificate will be in effect on the first status determination  
5 date following the date on which the other eligible spouse furnishes the  
6 statement in question.

7     (c) Earned income advance amount. Four advanced payments shall be made  
8 to such qualifying employees. An estimated annual tax credit shall be  
9 determined by the commissioner in advance of the first payment and shall  
10 be subject to adjustment due to changes in employment or family status  
11 over the course of the year. Prior to disbursement, the commissioner  
12 shall ensure that the qualifying employee's status has not changed. The  
13 first three advanced payments shall be made during the taxable year and  
14 shall be twenty percent of the anticipated credit. The fourth advanced  
15 payment shall be made after the tax year is over and shall be adjusted  
16 to match the actual credit due eligible. Such payments shall, to the  
17 extent practicable, be made available via direct deposit and via elec-  
18 tronic benefit transfer (EBT) card.

19     (d) Form and contents of certificate. Earned income eligibility  
20 certificates shall be in such form and contain such information as the  
21 commissioner may determine and prescribe.

22     (e) Notification. (1) The commissioner shall notify all taxpayers who  
23 have received a refund of the credit pursuant to subsection (d) or (d-1)  
24 of section six hundred six of this article based on the most recent tax  
25 return or record in writing of the availability of earned income advance  
26 amounts under this section. Such written or electronic notification  
27 shall include a clearly labeled section or withholding forms and a sepa-  
28 rate handout with information about the advanced payment of the earned  
29 income credit in the six most common languages spoken by individuals in  
30 this state.

31     (2) The commissioner shall provide information of the availability of  
32 earned income advance amounts under this section to tax preparers,  
33 accountants and organizations that assist individuals in tax prepara-  
34 tion. Such information shall be distributed to qualifying individuals.

35     (f) Coordination with advance payments of earned income credit. (1) If  
36 any payment is made to the individual by the department under this  
37 section during any calendar year, the tax imposed by this chapter for  
38 the individual's last taxable year beginning in such calendar year shall  
39 be increased by the aggregate amount of such payments.

40     (2) If an individual establishes that he or she is requesting and  
41 receiving payments under this section in good-faith by establishing that  
42 he or she properly claimed payments under this section in the prior year  
43 and that he or she has not experienced a substantial change in circum-  
44 stances such that he or she has a reasonable expectation of eligibility  
45 in the current year, then paragraph one of this subsection shall not  
46 apply.

47     (3) Any increase in tax under this subsection shall not be treated as  
48 tax imposed by this chapter for purposes of determining the amount of  
49 any credit, other than the credit allowed by subsection (d) or (d-1) of  
50 section six hundred six of this article, allowable under this article.

51     § 3. This act shall take effect immediately and shall apply to taxable  
52 years beginning on or after January 1, 2020.