STATE OF NEW YORK

4016

2019-2020 Regular Sessions

IN SENATE

February 25, 2019

Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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

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

Section 1. The tax law is amended by adding a new section 679 to read as follows:

§ 679. Advance payment of earned income credit. (a) General rule. Except as otherwise provided in this chapter, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

(b) Earned income eligibility certificate. For purposes of this article, an earned income eligibility certificate is a statement furnished by an employee to the employer which:

(1) certifies that the employee will be eligible to receive an earned income credit or an enhanced earned income credit provided by subsection (d) or (d-1) of section six hundred six of this article for the taxable year,

(2) certifies that the employee has one or more qualifying children for such taxable year,

(3) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

(4) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in

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

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effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) Earned income advance amount. (1) In general, for purposes of this section, the term "earned income advance amount" means, with respect to any payroll period, the amount determined:

(A) on the basis of the employee's wages from the employer for such period, and

(B) in accordance with tables prescribed by the commissioner.

In the case of an employee who is a member of the Armed Forces of the United States, the earned income advance amount shall be determined by taking into account such employee's earned income as determined for purposes of subsection (d) of section six hundred six of this article.

(2) Advance amount tables. The tables referred to in subparagraph (B) of paragraph one of this subsection:

(A) shall be similar in form to the tables prescribed under section 3402 of the Internal Revenue Code and, to the maximum extent feasible, shall be coordinated with such tables, and

(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by subsection (d) or (d-1) of section six hundred six of this article as if it were a credit:

(i) of not more than sixty percent of the credit percentage in effect under section 32(b)(1) of the Internal Revenue Code for an eligible individual with one qualifying child and with earned income not in excess of the earned income amount in effect under section 32(b)(2) of the Internal Revenue Code for such an eligible individual, which

(ii) phases out at sixty percent of the phaseout percentage in effect under section 32(b)(1) of the Internal Revenue Code for such an eligible individual between the phaseout amount in effect under section 32(b)(2) of the Internal Revenue Code for such an eligible individual and the amount of earned income at which the credit under section 32(a) of the Internal Revenue Code phases out for such an eligible individual, or

(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit as if it were a credit determined under subparagraph (B) of this paragraph by substituting one-half of the amounts of earned income described in such subparagraph for such amounts.

(d) Payments to be treated as payments of withholding. (1) In general, for purposes of this article, payments made by an employer under subsection (a) of this section to his or her employees for any payroll period:

(A) shall not be treated as the payment of compensation, and

(B) shall be treated as made out of amounts required to be deducted and withheld for the payroll period under part five of this article, as if the employer had paid to the commissioner, on the day on which the wages are paid to the employees, an amount equal to such payments.

(2) Advance payments exceed taxes due. In the case of any employer, if for any payroll period the aggregate amount of earned income advance payments exceeds the sum of the amounts referred to in subparagraph (B) of paragraph one of this subsection, each such advance payment shall be reduced by an amount which bears the same ratio to such excess as such advance payment bears to the aggregate amount of all such advance payments.

(3) Employer may make full advance payments. The commissioner shall prescribe regulations under which an employer may elect (in lieu of any application of paragraph two of this subsection):

(A) to pay in full all earned income advance amounts, and

(B) to have additional amounts paid by reason of this paragraph treated as the advance payment of taxes imposed by this title.

(4) Failure to make advance payments. For purposes of this article (including penalties), failure to make any advance payment under this section at the time provided therefor shall be treated as the failure at such time to deduct and withhold under this article an amount equal to the amount of such advance payment.

(e) Furnishing and taking effect of certificates. For purposes of this section:

(1) When certificate takes effect.

(A) First certificate furnished. An earned income eligibility certificate furnished the employer in cases in which no previous such certificate had been in effect for the calendar year shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished (or if later, the first day of the calendar year for which furnished).

(B) Later certificate. An earned income eligibility certificate furnished the employer in cases in which a previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least thirty days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January first, May first, July first, and October first of each year.

(2) Period during which certificate remains in effect. An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) Change of status.

(A) Requirement to revoke or furnish new certificate. If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of:

(i) making the employee ineligible for the credit provided by subsection (d) or (d-1) of section six hundred six of this article for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee, the employee shall, within ten days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by subparagraph (B) of paragraph one of this subsection for a later certificate and shall be made in such form as the commissioner shall by regulations prescribe.

(B) Certificate no longer in effect. If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) Form and contents of certificate. Earned income eligibility certificates shall be in such form and contain such other information as the commissioner may by regulations prescribe.

(5) Taxable year defined. The term "taxable year" means the last taxable year of the employee beginning in the calendar year in which the wages are paid.

(f) Notification. The commissioner shall take such steps as may be appropriate to ensure that taxpayers who have one or more qualifying children and who receive a refund of the credit under subsection (d) or (d-1) of section six hundred six of this article are aware of the availability of earned income advance amounts under this section.

(g) Coordination with advance payments of earned income credit.

(1) Recapture of excess advance payments. If any payment is made to the individual by an employer under this section during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Safe harbor against recapture of excess advance payments. If an individual establishes that they are requesting and receiving payments under this section in good-faith by establishing that they properly claimed payments under this section in the prior year and that they have not experienced a substantial change in circumstances such that they have a reasonable expectation of eligibility in the current year, then paragraph one of this subsection shall not apply.

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

§ 2. This act shall take effect immediately and shall apply to taxable years beginning January 1, 2020.