

# STATE OF NEW YORK

6259--C

2019-2020 Regular Sessions

## IN SENATE

May 30, 2019

Introduced by Sens. BENJAMIN, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Budget and Revenue in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the administrative code of the city of New York, 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:

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

3 § 679. Advance payment of earned income credit. (a) General rule.  
4 Except as otherwise provided in this chapter, the commissioner shall  
5 provide for the pre-payment of the earned income credit to qualifying  
6 employees.

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

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

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

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

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

LBD13069-09-0

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

3 For purposes of this section, a certificate shall be treated as being  
4 in effect with respect to a spouse if such a certificate will be in  
5 effect on the first status determination date following the date on  
6 which the employee furnishes the statement in question.

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

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

22 (e) Notification. (1) The commissioner shall notify all taxpayers who  
23 have one or more qualifying children and who receive a refund of the  
24 credit under subsection (d) or (d-1) of section six hundred six of this  
25 article in writing of the availability of earned income advance amounts  
26 under this section. Such written or electronic notification shall  
27 include a clearly labeled section or withholding forms and a separate  
28 handout with information about the advanced payment of the earned income  
29 credit in the six most common languages spoken by individuals in this  
30 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.

36 (1) Recapture of excess advance payments. If any payment is made to  
37 the individual by the commissioner under this section during any calen-  
38 dar year, then the tax imposed by this chapter for the individual's last  
39 taxable year beginning in such calendar year shall be increased by the  
40 aggregate amount of such payments.

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

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

53 § 2. The administrative code of the city of New York is amended by  
54 adding a new section 11-1763 to read as follows:

55 § 11-1763 Advance payment of earned income credit. (a) General rule.  
56 Except as otherwise provided in this chapter, the commissioner shall

1 provide for the pre-payment of the earned income credit to qualifying  
2 employees.

3 (b) Earned income eligibility certificate. For purposes of this chap-  
4 ter, an earned income eligibility certificate is a statement furnished  
5 by an employee to the commissioner which:

6 (1) certifies that the employee will be eligible to receive an earned  
7 income credit or an enhanced earned income credit provided by subdivi-  
8 sion (d) of section 11-1706 of this chapter for the taxable year,

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

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

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

16 For purposes of this section, a certificate shall be treated as being  
17 in effect with respect to a spouse if such a certificate will be in  
18 effect on the first status determination date following the date on  
19 which the employee furnishes the statement in question.

20 (c) Earned income advance amount. Four advanced payments shall be  
21 made to such qualifying employees. An estimated annual tax credit shall  
22 be determined by the commissioner in advance of the first payment, and  
23 shall be subject to adjustment due to changes in employment or family  
24 status over the course of the year. Prior to disbursement, the commis-  
25 sioner shall ensure that the qualifying employee's status has not  
26 changed. The first three advanced payments shall be made during the  
27 taxable year and shall be twenty percent of the anticipated credit. The  
28 fourth advanced payment shall be made after the tax year is over, and  
29 shall be adjusted to match the actual credit due. Such payments shall,  
30 to the extent practicable be made available via direct deposit and via  
31 electronic benefit transfer (EBT) card.

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

35 (e) Notification. (1) The commissioner shall notify all taxpayers who  
36 have one or more qualifying children and who receive a refund of the  
37 credit under subdivision (d) of section 11-1706 of this chapter in writ-  
38 ing of the availability of earned income advance amounts under this  
39 section. Such written or electronic notification shall include a clearly  
40 labeled section or withholding forms and a separate handout with infor-  
41 mation about the advanced payment of the earned income credit in the six  
42 most common languages spoken by individuals in this state.

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

47 (f) Coordination with advance payments of earned income credit.

48 (1) Recapture of excess advance payments. If any payment is made to  
49 the individual by the commissioner under this section during any calen-  
50 dar year, then the tax imposed by this chapter for the individual's last  
51 taxable year beginning in such calendar year shall be increased by the  
52 aggregate amount of such payments.

53 (2) Safe harbor against recapture of excess advance payments. If an  
54 individual establishes that they are requesting and receiving payments  
55 under this section in good-faith by establishing that they properly  
56 claimed payments under this section in the prior year and that they have

1 not experienced a substantial change in circumstances such that they  
2 have a reasonable expectation of eligibility in the current year, then  
3 paragraph one of this subdivision shall not apply.

4 (3) Reconciliation of payments advanced and credit allowed. Any  
5 increase in tax under this subdivision shall not be treated as tax  
6 imposed by this chapter for purposes of determining the amount of any  
7 credit (other than the credit allowed by subdivision (d) of section  
8 11-1706 of this chapter) allowable under this chapter.

9 § 3. This act shall take effect one year after it shall have become a  
10 law and shall apply to taxable years beginning on or after such date.  
11 Effective immediately, the addition, amendment and/or repeal of any rule  
12 or regulation necessary for the implementation of this act on its effec-  
13 tive date are authorized to be made and completed on or before such  
14 effective date.