STATE OF NEW YORK

6902

2021-2022 Regular Sessions

IN SENATE

May 20, 2021

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, the tax law and the state finance law, in relation to enacting the "excelsior opportunity accounts act"

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

Section 1. Short title. This act shall be known and may be cited as the "excelsior opportunity accounts act".

§ 2. The banking law is amended by adding a new article 17 to read as follows:

ARTICLE 17

EXCELSIOR OPPORTUNITY ACCOUNTS ACT

Section 9100. Short title.
9101. Definitions.
9102. Excelsior opportunity fund established.
9103. EO accounts.
9104. Assignment, alienation, and treatment of deceased account holders.
9105. Annual contribution certification.
9106. Rules governing EO accounts relating to investment, accounting, and reporting.
9107. Excelsior opportunity fund board.
9108. Accounts disregarded in determining eligibility for state benefits.
9109. Reports.
9110. Tax treatment.

§ 9100. Short title. This article shall be known and may be cited as the "excelsior opportunity accounts act".

§ 9101. Definitions. As used in this article, unless the context otherwise requires, the following words and terms shall have the meaning ascribed to them:

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

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1. "Fund" means the excelsior opportunity fund established pursuant to section nine thousand one hundred two of this article.

2. "EO account" means an excelsior opportunity account established under section nine thousand one hundred three of this article.

3. "Superintendent" means the superintendent of the department of financial services.

4. "Department" means the department of financial services.

5. "Board" means the excelsior opportunity fund board established pursuant to section nine thousand one hundred six of this article.

6. "Executive director" means the executive director appointed pursuant to section nine thousand one hundred six of this article.

7. "Stock transfer tax fund" means the fund established under section ninety-two-b of the state finance law.

8. "Eligible-individual" means any individual who:

(a) was born after December thirty-first, two thousand twenty-three;

(b) has a valid social security number;

(c) is under eighteen years of age;

(d) primarily resides in New York state; and

(e) has household income not exceeding seven hundred percent of the federal poverty line for a family of four, as defined under section 36B(d) of the internal revenue code of nineteen eighty-six, as amended. In determining household income under this section, "household income" means the adjusted gross income for federal income tax purposes reported on the latest available federal or state income tax return filed by each member of household, provided that for married couples filing individually, household income shall include the combined adjusted gross income reported for both such individual returns.

§ 9102. Excelsior opportunity fund established. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "excelsior opportunity fund".

2. Monies of the fund. The fund shall consist of the sum of all amounts paid into the fund under this article, increased by the total net earnings from investments of sums held in the fund or reduced by the total net losses from investments of sums held in the fund, and reduced by the total amount of payments made from the fund, including payments for administrative expenses.

3. Use of the fund. (a) The sums in the fund are appropriated and shall remain available without fiscal year limitation:

(i) to make contributions to EO accounts pursuant to section nine thousand one hundred three of this article;

(ii) to make investments pursuant to section nine thousand one hundred six of this article;

(iii) to make distributions in accordance with this article;

(iv) to pay the administrative expenses of carrying out this title; and

(v) to purchase insurance as provided in section nine thousand one hundred six of this article.

(b) The monies of the fund shall not be appropriated or used for any purpose other than the purposes specified in this article.

4. Transfers to the fund. The superintendent shall make transfers from the stock transfer tax fund to the excelsior opportunity fund as follows: (a) Upon receipt of a certification under paragraph (a) of subdivision six of section nine thousand one hundred three of this article, the superintendent shall make an initial contribution of one thousand dollars to such individual's EO account.

(b) For each subsequent year following an initial contribution made pursuant to paragraph (a) of this subdivision, and for each account certified under paragraph (b) of subdivision five of section nine thousand one hundred three of this article, the annual contribution amount shall be five hundred dollars until the individual attains age eighteen or is otherwise determined to be ineligible.

§ 9103. EO accounts. 1. Establishment. The executive director shall establish within the fund an "excelsior opportunity account" or "EO account" for each eligible-individual certified under subdivision five of this section. Each such account shall be identified with its account holder by means of a unique personal identifier currently recognized by the internal revenue service and shall remain in the excelsior opportunity fund.

2. Account balance. The balance in an account holder's EO account at any time is the excess of the sum of:

(a) all deposits made into the fund and credited to such account under subdivision three of this section; and

(b) the total amount of allocations and reductions made to the account pursuant to subdivision four of this section; less

(c) amounts paid out of the account or otherwise distributed with respect to such individual pursuant to this article.

3. Crediting of contributions. Pursuant to regulations prescribed by the executive director, the executive director shall credit to each EO account the amounts paid into the excelsior opportunity fund under section nine thousand one hundred two of this article which are attributable to the holder of such account.

4. Allocation of earnings and losses. The executive director shall allocate to each EO account an amount equal to the net earnings and net losses from each investment of sums in which are attributable, on a pro rata basis, to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings, as determined by the executive director.

5. Certification of account holders. (a) Automatic certification for certain individuals. For each child born in this state on and after January first, two thousand twenty-three, the department of health, or in the case of a child born in the city of New York, the New York city department of health and mental hygiene, shall transmit a copy of such child's certificate of birth to the superintendent, the social security number issued to such child, and the name, address and social security number of each parent or guardian of such child. The superintendent shall thereafter certify such child as an eligible-individual.

(b) Certification of other individuals. In the case of an individual who is not certified under paragraph (a) of this subdivision, the parent or guardian of such individual may request the establishment of an EO account under subdivision one of this section by application to the executive director. If the executive director determines that the individual on whose behalf the application is made is an eligible-individual, the executive director shall certify the eligibility of such individual and shall establish an EO account for such individual, provided that the initial contribution and each annual contribution to such account shall be five hundred dollars.

6. Restrictions on distributions. No amount may be distributed from an EO account before the account holder's eighteenth birthday, regardless of whether such individual no longer resides in the state or is otherwise ineligible for annual contributions under this article.

§ 9104. Assignment, alienation, and treatment of deceased account holders. 1. Assignment and alienation. An individual account holder may not assign, alienate or otherwise dispose of any portion of or interest in such individual's EO account to another individual. The executive director shall promulgate rules and regulations by which an individual may voluntarily abandon an EO account.

2. Accounts of deceased individuals. In the case of a deceased account holder of an EO account which has an account balance greater than zero, upon receipt of notification of such individual's death, the executive director shall close such account and shall transfer the balance of the account to the EO account of such account holder's surviving spouse or, if there is no such account of a surviving spouse, to the duly appointed legal representative of the estate of the deceased account holder, or if there is no such representative, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased account holder.

§ 9105. Annual contribution certification. The executive director shall establish and implement a process for parents or guardians of account holders to annually certify their eligibility to receive an annual contribution pursuant to paragraph (b) of subdivision four of section nine thousand one hundred two of this article. The form shall be made available to each parent or guardian of an account holder by mail and electronic means, and shall be conspicuously posted and made accessible on the department's website.

§ 9106. Rules governing EO accounts relating to investment, accounting, and reporting. 1. Investment program. The superintendent shall establish an investment program, and the board shall invest monies of the fund in debt obligations of the United States government with a term of thirty years in accordance therewith. The investment program shall authorize the board to purchase insurance on investments made under this section.

2. Accounting. The executive director shall create and establish procedures for accounting consistent with the governmental accounting standards board.

3. Confidentiality and disclosure. Except as otherwise authorized, the board, the executive director, and any employee of the board shall not disclose information with respect to the fund or any account maintained therein. The executive director may, subject to the rules and regulations promulgated for such purpose, disclose such information with respect to an individual EO account to such person or persons as the account holder or parent or guardian of the account holder may designate in a request for or consent to such disclosure, or to such other person as the account holder or his or her designee may request, to the extent necessary to comply with a request for information or assistance made by such account holder or designee.

§ 9107. Excelsior opportunity fund board. 1. The excelsior opportunity fund board is hereby established within the department. The board shall work in collaboration with the superintendent and the executive director to implement and administer the provisions of this article.

2. The board shall consist of seven voting members, to be appointed as follows: three members shall be appointed by the governor, two members shall be appointed by the temporary president of the senate, and two members shall be appointed by the speaker of the assembly. Membership of the board shall, to the greatest extent practicable, consist of members representing the various geographic regions of the state and shall be balanced and diverse in its composition. Members shall have expertise in

economics, investing, child development, family economics, governmental accounting, and/or such other qualifications that the appointing authorities deem necessary.

3. The chairperson of the board and the vice chairperson shall be elected from among the members of the board by a majority of the members of such board. The vice chairperson shall represent the board in the absence of the chairperson at all official board functions.

4. The board shall meet as frequently as its business may require. All meetings of the board shall be conducted in accordance with the provisions of article seven of the public officers law.

5. The board shall assist in the development of the investment program and shall provide oversight and advice regarding the administration of the fund and EO accounts.

6. The board shall develop an educational initiative that provides information and instruction on financial literacy, recommended uses of the distribution, and best practices for wealth generation upon distribution of an EO account.

§ 9108. Accounts disregarded in determining eligibility for state benefits. Amounts in an EO account shall not be considered in determining an individual's or household's eligibility for, or the amount of, any benefit or service, paid for in whole or in part with state funds, including but not limited to any public assistance or financial assistance program under the social services law, any student financial aid program and any other public benefit or assistance program.

§ 9109. Reports. 1. Reports to the legislature. The executive director, in consultation with the superintendent, shall annually transmit a written report to the board no later than January first of each year. The board shall thereafter submit such report, together with any findings and recommendations thereon to the legislature. Such report shall include a detailed description of the status and operation of the fund, the management of EO accounts; a detailed accounting of the administrative expenses incurred in carrying out the provisions of this article, including the ratio of such administrative expenses to the balance of the fund and the methodology adopted by the executive director for allocating such expenses among existing EO accounts.

2. Reports to account holders. The board shall prescribe regulations under which each individual for whom an EO account is maintained shall be furnished with an annual statement relating to such account, which shall include but not be limited to:

(a) a statement of the balance of individual's EO account;

(b) a projection of the account's growth by the time the individual attains the age of eighteen; and

(c) such other information as the superintendent and board deem relevant.

§ 9110. Tax treatment. The excelsior opportunity fund and EO accounts shall be exempt from taxation.

§ 2. Subdivision 1 of section 280-a of the tax law, as amended by chapter 578 of the laws of 1981, is amended to read as follows:

1. Except as otherwise provided in subdivision fifteen of this section, where a tax shall have been paid under this article a portion of the amount paid shall be allowed as a rebate and such portion shall be paid to the taxpayer but only to the extent that moneys are available for the payment of such rebates in the stock transfer incentive fund established pursuant to section ninety-two-i of the state finance law. The portion of the amount of tax paid which is to be allowed as a rebate shall be thirty percent of the tax incurred and paid on transactions

subject to the stock transfer tax occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and sixty percent of the tax incurred and paid on such transactions occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one and all of the amount of tax incurred and paid shall be allowed as a rebate on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred eighty-one **and on or before September thirtieth, two thousand twenty-three, and fifty percent of the amount of tax incurred and paid shall be allowed as a rebate on transactions subject to the stock transfer tax occurring on and after October first, two thousand twenty-three**.

§ 3. Section 92-b of the state finance law, as added by chapter 91 of the laws of 1965 and as renumbered and subdivision 5 as added by chapter 3 of the laws of 1966, subdivision 3 as amended by chapter 878 of the laws of 1977, subdivision 4 as amended by chapter 724 of the laws of 1979 and subdivision 7 as added by section 10 of part SS1 of chapter 57 of the laws of 2008, is amended to read as follows:

§ 92-b. Stock transfer tax fund. 1. There is hereby established in the custody of the commissioner of taxation and finance a special fund, to be known as the stock transfer tax fund.

2. Such fund shall consist of the revenues derived from the stock transfer tax imposed by article twelve of the tax law and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for **the** reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, [~~nineteen hundred seventy-seven shall be appropriated to (i) the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund and (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of this chapter and, after deducting the amount such commissioner shall determine to be necessary for reasonable costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund, to the stock transfer incentive fund created pursuant to section ninety-two-i of this chapter to enable rebates to be made from such fund under the provisions of section two hundred eighty-a of the tax law and (iii) to the extent such moneys are not required by such fund, as certified by the commissioner of taxation and finance, the balance shall be appropriated to the city of New York, for the support of local government~~] **two thousand twenty-three, the balance shall be deposited into the account for the excelsior opportunity fund established pursuant to article seventeen of the banking law**.

4. [~~After the deduction of such costs of the state tax commission in administering, collecting and distributing such tax, the balances in the stock transfer tax fund so appropriated shall be distributed and paid on the last business day of September, December, March and June into the special account established for the municipal assistance corporation for~~

~~the city of New York in the municipal assistance tax fund established pursuant to subdivision one of section ninety-two-d of this chapter, unless and to the extent the balances in such fund on each such payment day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d in which case the balance not so required, if any, after the deduction of such costs of the state tax commission in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund shall be distributed and paid to the stock transfer incentive fund in the custody of the commissioner of taxation and finance established pursuant to section ninety-two-i of this chapter and unless and to the extent that the balances in the stock transfer tax fund on each such payment day are not required by the stock transfer incentive fund as provided in such section ninety-two-i of this chapter in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund or paid by the commissioner of taxation and finance to such other account or fund as may be designated in writing by such chief fiscal officer at least ten business days prior to such last day and on each such day, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall any amount (other than the amount to be deducted for administering, collecting and distributing such tax) be distributed or paid from the stock transfer tax fund to any person other than the municipal assistance corporation for the city of New York unless and until the aggregate of all payments certified to the comptroller as required by such corporation in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such tax and such agreements shall be executory only to the extent of the balances available to the state in such fund. If the balances in such fund are not required by such corporation pursuant to the provisions of this subdivision, on each such last business day of September, December, March and June, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund during such quarterly period and he shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. To the extent such moneys are not required by such corporation, as provided in subdivision seven of section ninety-two-d of this chapter, no amount thereof (other than such amount to be deducted for administering, collecting and distributing such tax and such costs in administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law from the stock transfer incentive fund) shall be distributed or paid from the stock transfer tax fund other than to such stock transfer incentive fund in the custody of the commissioner of taxation and finance unless and until the aggregate of all payments certified to the comptroller by such commissioner pursu-~~

~~ant to the provisions of such incentive fund as necessary to provide payments on account of rebates authorized pursuant to section two hundred eighty-a of the tax law which remain unappropriated or unpaid to such fund shall have been appropriated to such fund and shall have been paid in full provided, however, that no person, including any taxpayer under article twelve of the tax law or any member or dealer referred to in subdivisions two-a and six of section two hundred eighty-a of such law, shall have any lien on this fund or the stock transfer incentive fund.~~

~~5. In no fiscal year shall the total amount paid from the fund exceed the total collections during such fiscal year from the stock transfer tax pursuant to the provisions of article twelve of the tax law and as deposited to the credit of the stock transfer tax fund.~~

~~6.~~] All payments from the stock transfer tax fund shall be made on the audit and warrant of the comptroller on vouchers approved by the commissioner of taxation and finance.

[~~7. When all the notes and bonds of the municipal assistance corporation for the city of New York have been fully paid and discharged, together with interest thereon and interest on unpaid installments of interest, and the chairman of the corporation makes the final certification required by subdivision seven of section ninety-two-d of this article, the comptroller must notify the commissioner of taxation and finance that all remaining funds held in the stock transfer tax fund must be released to the stock transfer incentive fund. From that time forward, all funds previously deposited in the stock transfer tax fund pursuant to subdivision two of this section will be deposited directly into the stock transfer incentive fund pursuant to all the rules, regulations or instructions that the commissioner may prescribe, after deducting the amount the commissioner determines to be necessary for reasonable costs of the department in administering, collecting and distributing the tax imposed by article twelve of the tax law. Notwithstanding any other provisions of this article, to the extent those moneys are not required by the stock transfer incentive fund for the purpose of administering and making distributions in accordance with the provisions of section two hundred eighty-a of the tax law, as certified by the commissioner of taxation and finance, the balance will be appropriated to the city of New York for the support of local government.~~]

§ 3. Paragraph (c) of subdivision 1 of section 93-b of the state finance law, as added by section 1 of part H of chapter 60 of the laws of 2015, is amended to read as follows:

(c) Sources of funds. The sources of funds shall consist of all moneys collected therefor, or moneys credited, appropriated or transferred thereto from any other fund or source pursuant to law or any other moneys made available for the purposes of the fund**, including but not limited to funds transferred from the stock transfer tax fund pursuant to subdivision three of section ninety-two-b of this article**. Any interest received by the comptroller on moneys on deposit shall be retained and become part of the fund, unless otherwise directed by law.

§ 4. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 45 to read as follows:

(45) For taxable years beginning on and after two thousand twenty-three, the amount of any contribution to or distribution from an excelsior opportunity account pursuant to article seventeen of the banking law, to the extent includible in federal adjusted gross income.

§ 5. This act shall take effect immediately.