

# STATE OF NEW YORK

537

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAPLAN -- 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 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-one and thereafter, for the purpose of determining  
10 the 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-one  
19 with 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-one 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 3. This act shall take effect immediately and shall apply to taxable  
55 years beginning on or after January 1, 2021.