# STATE OF NEW YORK

4022--B

2023-2024 Regular Sessions

# IN ASSEMBLY

February 9, 2023

Introduced by M. of A. HEVESI, KELLES, CUNNINGHAM, BURDICK, AUBRY, SHIMSKY, SILLITTI, COLTON, RAGA, WALKER, FORREST, BORES, DAVILA, SIMON, OTIS -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to a New York state working families tax credit

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

Section 1. Subsection (d) of section 606 of the tax law is amended by adding a new paragraph 9 to read as follows:

**(9) Commencing in the taxable year next succeeding the effective date of subsection (c-2) of this section, the portion of the earned income credit attributable to qualifying children, as defined in paragraph one of subsection (c-2) of this section, shall be reduced over the course of four years as follows:**

**(A) In the first taxable year succeeding the effective date of subsection (c-2) of this section, the applicable percentage of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, as described in paragraph one of this subsection, shall be reduced to twenty-one;**

**(B) In the second taxable year succeeding the effective date of subsection (c-2) of this section, the applicable percentage of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, as described in paragraph one of this subsection, shall be reduced to fifteen;**

**(C) In the third taxable year succeeding the effective date of subsection (c-2) of this section, the applicable percentage of the**

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

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earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, as described in paragraph one of this subsection, shall be reduced to ten;

(D) In the fourth taxable year succeeding the effective date of subsection (c-2) of this section and each taxable year thereafter, the applicable percentage of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, as described in paragraph one of this subsection, shall be reduced to zero.

The reduction described in this paragraph shall apply only to the portion of a taxpayer's earned income credit that is attributable to qualifying children as defined in paragraph one of subsection (c-2) of this section. A taxpayer shall continue to be allowed the earned income credit for the portions of such credit attributable to another qualifying child, as defined in 26 USC §152(c), or qualifying relative, as defined in 26 USC §152(d), who do not meet the definition of qualifying child in paragraph one of subsection (c-2) of this section.

§ 2. Paragraph 1 of subsection (c-1) of section 606 of the tax law, as amended by section 1 of part HH of chapter 56 of the laws of 2023, is amended to read as follows:

(1) [A] For taxable years prior to the first of January next succeeding the effective date of subsection (c-2) of this section, a resident taxpayer shall be allowed a credit as provided herein equal to the greater of one hundred dollars times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under section twenty-four of the internal revenue code for the same taxable year for each qualifying child. Provided, however, in the case of a taxpayer whose federal adjusted gross income exceeds the applicable threshold amount set forth by section 24(b)(2) of the Internal Revenue Code, the credit shall only be equal to the applicable percentage of the child tax credit allowed the taxpayer under section 24 of the Internal Revenue Code for each qualifying child. For the purposes of this subsection, a qualifying child shall be a child who meets the definition of qualified child under section 24(c) of the internal revenue code. The applicable percentage shall be thirty-three percent. For purposes of this subsection, any reference to section 24 of the Internal Revenue Code shall be a reference to such section as it existed immediately prior to the enactment of Public Law 115-97.

§ 3. Section 606 of the tax law is amended by adding a new subsection (c-2) to read as follows:

(c-2) New York state working families tax credit. (1) Definitions. (A) "Adjusted for inflation" shall mean that the commissioner increases the dollar amount of a credit or adjusted gross income, as applicable, by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under 26 USC § 1 (f)(3), for the calendar year in which the taxable year being referenced begins.

(B) "Adjusted for all inflation since two thousand twenty-three" shall mean the commissioner increases the dollar amount of a credit or adjusted gross income, as applicable, by an amount equal to the sum of all cost-of-living adjustments calculated and published by the internal revenue service pursuant to 26 USC §1(f)(3) since calendar year two thousand twenty-three.

(C) "Qualifying child" or "qualifying children" shall mean as defined in 26 USC §24(c)(1) except that such term shall also include qualifying children who have not attained the age of eighteen.

(2) (A) For taxable years beginning on and after the first of January next succeeding the effective date of this subsection, a resident

taxpayer with a New York state adjusted gross income of less than twenty-five thousand dollars in the case of an individual who is not married; fifty thousand dollars in the case of a joint return; or twenty-five thousand dollars in the case of a married individual filing a separate return shall be allowed a credit equal to:

(i) In the first taxable year succeeding the effective date of this subsection, eight hundred dollars per qualifying child;

(ii) In the second taxable year succeeding the effective date of this subsection, one thousand one hundred dollars per qualifying child;

(iii) In the third taxable year succeeding the effective date of this subsection, one thousand three hundred and fifty dollars per qualifying child;

(iv) In the fourth taxable year succeeding the effective date of this subsection and each taxable year thereafter, one thousand six hundred dollars per qualifying child, provided, however, that the dollar amount herein prescribed shall be adjusted for all inflation since two thousand twenty-three in the fourth taxable year succeeding the effective date of this subsection and each taxable year thereafter.

(B) The amount of the credit per child shall be reduced by twenty dollars for each one thousand dollars by which the taxpayer's New York state adjusted gross income exceeds:

(i) In the first taxable year succeeding the effective date of this subsection, sixty-five thousand dollars in the case of an individual who is not married, one hundred thirty thousand dollars in the case of a joint return, or sixty-five thousand dollars in the case of a married individual filing a separate return;

(ii) In the second taxable year succeeding the effective date of this subsection, fifty-five thousand dollars in the case of an individual who is not married, one hundred ten thousand dollars in the case of a joint return, or fifty-five thousand dollars in the case of a married individual filing a separate return;

(iii) In the third taxable year succeeding the effective date of this subsection, forty-five thousand dollars in the case of an individual who is not married, ninety thousand dollars in the case of a joint return, or forty-five thousand dollars in the case of a married individual filing a separate return; and

(iv) In the fourth taxable year succeeding the effective date of this section and each taxable year thereafter, twenty-five thousand dollars in the case of an individual who is not married, fifty thousand dollars in the case of a joint return, or twenty-five thousand dollars in the case of a married individual filing a separate return, provided, however, that the dollar amount herein prescribed shall be adjusted for inflation in the fourth taxable year succeeding the effective date of this subsection and each taxable year thereafter.

(C) Provided, however, that the amount of the credit shall never be reduced below the following amounts:

(i) In the first taxable year next succeeding the effective date of this subsection, one hundred fifty dollars per qualifying child;

(ii) In the second taxable year succeeding the effective date of this subsection, two hundred fifty dollars per qualifying child;

(iii) In the third taxable year succeeding the effective date of this subsection, four hundred dollars per qualifying child;

(iv) In the fourth taxable year succeeding the effective date of this subsection, five hundred dollars per qualifying child; and

(v) In the fifth taxable year succeeding the effective date of this subsection and each taxable year thereafter, five hundred dollars per

qualifying child, provided, however, that the dollar amount herein prescribed shall be adjusted for inflation in the fifth taxable year succeeding the effective date of this subsection and each taxable year thereafter.

(D) Such resident taxpayer must provide the social security number or individual taxpayer identification number for each qualifying child in order to receive the credit described in this subsection.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(4) In the case of spouses who file a joint federal return, but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may be applied against the tax imposed on either or divided between them as they may elect.

(5) Commencing in the fourth taxable year succeeding the effective date of this subsection, the commissioner shall provide for the prepayment of the working families credit under this subsection to qualifying taxpayers. Four advanced payments shall be made to such qualifying taxpayers. An estimated annual tax credit shall be determined by the commissioner in advance of the first payment and shall be subject to adjustment due to changes in employment or family status over the course of the year. The first three advanced payments shall be made during the taxable year and shall be twenty percent of the anticipated credit. The fourth advanced payment shall be made after the end of the tax year and shall be adjusted to match the actual credit due. Such payments shall, to the extent practicable, be made available via direct deposit and via electronic benefit transfer (EBT) card. The commissioner shall provide information on the availability of advanced payments of the working families credit to tax preparers, accountants, and organizations that assist individuals in tax preparation. Such information shall be distributed to qualifying taxpayers. If a taxpayer establishes that they are requesting and receiving payments under this paragraph in good faith by establishing that they properly claimed payments under this subsection 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 they shall not be held responsible for an incorrect prepayment/refund amount.

(6) Notwithstanding any provision of law to the contrary, the refundable credit and its payment authorized under this subsection shall be treated in the same manner as the federal Earned Income Tax Credit and shall not be considered as assets, income, or resources to the same extent the credit and its payment would be disregarded pursuant to 26 U.S.C. § 6409 and the general welfare doctrine for purposes of determining eligibility for benefits or assistance, or the amount or extent of those benefits or assistance, under any state or local program, including benefits established under section ninety-five of the social services law.

§ 4. Section 616 of the tax law, as amended by chapter 28 of the laws of 1987, subsection (b) as amended by chapter 760 of the laws of 1992, is amended to read as follows:

§ 616. New York exemptions of a resident individual. (a) General. For taxable years beginning after nineteen hundred eighty-seven, a resident individual shall be allowed a New York exemption of one thousand dollars for each exemption for which [~~he is~~] they are entitled to a deduction

for the taxable year under section one hundred fifty-one(c) of the Internal Revenue Code; and for taxable years beginning in nineteen hundred eighty-seven, a resident individual other than a taxpayer whose federal exemption amount is zero shall be allowed a New York exemption of nine hundred dollars for each exemption for which [~~he is~~] they are entitled to a deduction for the taxable year for federal income tax purposes.

(b) [~~Husband and wife~~] Spouses. If the New York income taxes of [~~a husband and wife~~] spouses are required to be separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to the New York exemptions under subsection (a) of this section to which each would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

(c) Commencing in the taxable year next succeeding the effective date of subsection (c-2) of section six hundred six of this article, a resident individual shall not be allowed the exemption described in this section for any qualifying child as defined in paragraph one of subsection (c-2) of section six hundred six of this article. A resident individual shall continue to be allowed the exemption described in this section, however, for other qualifying dependents, as defined in 26 USC § 152(a), who do not meet the definition of qualifying child in paragraph one of subsection (c-2) of section six hundred six of this article.

§ 5. This act shall take effect immediately.