

# STATE OF NEW YORK

4022--C

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, REYES, CRUZ, SEAWRIGHT, CARROLL, SHRESTHA, KIM, BICHOTTE HERMELYN, EPSTEIN, TAPIA, LUNSFORD, GONZALEZ-ROJAS, K. BROWN, ALVAREZ, O'DONNELL, TAYLOR, DE LOS SANTOS, DARLING, SIMONE, ARDILA, L. ROSENTHAL, BENDETT, LEVENBERG, GALLAHAN, MAMDANI, SEPTIMO, MITAYNES, STECK, BENEDETTO, ROZIC, GIBBS, JACOBSON -- 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 -- again reported from said committee with amendments, 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:

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

3 (9) Commencing in the taxable year next succeeding the effective date  
4 of subsection (c-2) of this section, the earned income credit for  
5 taxpayers with qualifying children through age seventeen, as defined in  
6 paragraph one of subsection (c-2) of this section, shall be reduced over  
7 the course of four years as follows:

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

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

LBD02008-15-4

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

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

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

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

22 Taxpayers with both qualifying children through age seventeen as  
23 defined in paragraph one of subsection (c-2) of this section and another  
24 qualifying child, as defined in 26 USC §152(c), and/or a qualifying  
25 relative, as defined in 26 USC §152(d), shall not be subject to the  
26 reduction of the earned income tax credit provided in subparagraphs (A)  
27 through (D) of this paragraph and shall continue to receive the full  
28 applicable percentage of the earned income credit allowed under section  
29 thirty-two of the internal revenue code for the same taxable year, as  
30 described in paragraph one of this subsection, until the fifth taxable  
31 year succeeding the effective date of subsection (c-2) of this section  
32 and each taxable year thereafter, at which point such taxpayer shall  
33 receive such full applicable percentage only for a qualifying child, as  
34 defined in 26 USC §152(c), and/or qualifying relative, as defined in 26  
35 USC §152(d), who does not meet the definition of qualifying child  
36 through age seventeen in paragraph one of subsection (c-2) of this  
37 section.

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

41 (1) [A] For taxable years prior to the first of January next succeed-  
42 ing the effective date of subsection (c-2) of this section, a resident  
43 taxpayer shall be allowed a credit as provided herein equal to the  
44 greater of one hundred dollars times the number of qualifying children  
45 of the taxpayer or the applicable percentage of the child tax credit  
46 allowed the taxpayer under section twenty-four of the internal revenue  
47 code for the same taxable year for each qualifying child. Provided,  
48 however, in the case of a taxpayer whose federal adjusted gross income  
49 exceeds the applicable threshold amount set forth by section 24(b)(2) of  
50 the Internal Revenue Code, the credit shall only be equal to the appli-  
51 cable percentage of the child tax credit allowed the taxpayer under  
52 section 24 of the Internal Revenue Code for each qualifying child. For  
53 the purposes of this subsection, a qualifying child shall be a child who  
54 meets the definition of qualified child under section 24(c) of the  
55 internal revenue code. The applicable percentage shall be thirty-three  
56 percent. For purposes of this subsection, any reference to section 24 of

1 the Internal Revenue Code shall be a reference to such section as it  
2 existed immediately prior to the enactment of Public Law 115-97.

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

5 (c-2) New York state working families tax credit. (1) Definitions.  
6 (A) "Adjusted for all inflation since two thousand twenty-three" shall  
7 mean the commissioner increases the dollar amount of a credit or  
8 adjusted gross income, as applicable, by an amount equal to the sum of  
9 all cost-of-living adjustments calculated and published by the internal  
10 revenue service pursuant to 26 USC §1(f)(3) since calendar year two  
11 thousand twenty-three.

12 (B) "Qualifying child" or "qualifying children" shall mean as defined  
13 in 26 USC §24(c)(1).

14 (C) "Qualifying child through age seventeen" or "qualifying children  
15 through age 17" shall mean as defined in 26 USC §24(c)(1) except that  
16 such term shall also include qualifying children who have not attained  
17 the age of eighteen.

18 (2) (A) For taxable years beginning on and after the first of January  
19 next succeeding the effective date of this subsection, a resident  
20 taxpayer shall be allowed a credit equal to:

21 (i) In the first taxable year succeeding the effective date of this  
22 subsection, five hundred and fifty dollars per qualifying child;

23 (ii) In the second taxable year succeeding the effective date of this  
24 subsection, eight hundred dollars per qualifying child, provided, howev-  
25 er, that the dollar amount herein prescribed shall be adjusted for all  
26 inflation since two thousand twenty-three;

27 (iii) In the third taxable year succeeding the effective date of this  
28 subsection, one thousand dollars per qualifying child, provided, howev-  
29 er, that the dollar amount herein prescribed shall be adjusted for all  
30 inflation since two thousand twenty-three;

31 (iv) In the fourth taxable year succeeding the effective date of this  
32 subsection, one thousand two hundred dollars per qualifying child  
33 through age seventeen, provided, however, that the dollar amount herein  
34 prescribed shall be adjusted for all inflation since two thousand twen-  
35 ty-three;

36 (v) In the fifth taxable year succeeding the effective date of this  
37 subsection and each taxable year thereafter, one thousand six hundred  
38 dollars per qualifying child through age seventeen, provided, however,  
39 that the dollar amount herein prescribed shall be adjusted for all  
40 inflation since two thousand twenty-three in the fifth taxable year  
41 succeeding the effective date of this subsection and each taxable year  
42 thereafter.

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

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

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

1 (iii) In the third taxable year succeeding the effective date of this  
2 subsection, fifty-five thousand dollars in the case of an individual who  
3 is not married, one hundred ten thousand dollars in the case of a joint  
4 return, or fifty-five thousand dollars in the case of a married individ-  
5 ual filing a separate return;

6 (iv) In the fourth taxable year succeeding the effective date of this  
7 subsection, forty-five thousand dollars in the case of an individual who  
8 is not married, ninety thousand dollars in the case of a joint return,  
9 or forty-five thousand dollars in the case of a married individual  
10 filing a separate return; and

11 (v) In the fifth taxable year succeeding the effective date of this  
12 subsection and each taxable year thereafter, twenty-five thousand  
13 dollars in the case of an individual who is not married, fifty thousand  
14 dollars in the case of a joint return, or twenty-five thousand dollars  
15 in the case of a married individual filing a separate return, provided,  
16 however, that the dollar amount herein prescribed shall be adjusted  
17 for all inflation since two thousand twenty-three in the fifth taxable  
18 year succeeding the effective date of this subsection and each taxa-  
19 ble year thereafter.

20 (C) Provided further, that the amount of the credit shall never be  
21 reduced below one hundred dollars per qualifying child in the second and  
22 third taxable years succeeding the effective date of this subsection. In  
23 the fourth taxable year succeeding the effective date of this subsection  
24 and each taxable year thereafter, the credit shall never be reduced  
25 below one hundred dollars per qualifying child through age seventeen.

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

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

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

38 (5) Commencing in the fourth taxable year succeeding the effective  
39 date of this subsection, the commissioner shall provide for the prepay-  
40 ment of the working families credit under this subsection to qualifying  
41 taxpayers. Four advanced payments shall be made to such qualifying  
42 taxpayers. An estimated annual tax credit shall be determined by the  
43 commissioner in advance of the first payment and shall be subject to  
44 adjustment due to changes in employment or family status over the course  
45 of the year. The first three advanced payments shall be made during the  
46 taxable year and shall be twenty percent of the anticipated credit. The  
47 fourth advanced payment shall be made after the end of the tax year and  
48 shall be adjusted to match the actual credit due. Such payments shall,  
49 to the extent practicable, be made available via direct deposit and via  
50 electronic benefit transfer (EBT) card. The commissioner shall provide  
51 information on the availability of advanced payments of the working  
52 families credit to tax preparers, accountants, and organizations that  
53 assist individuals in tax preparation. Such information shall be  
54 distributed to qualifying taxpayers. If a taxpayer establishes that they  
55 are requesting and receiving payments under this paragraph in good faith  
56 by establishing that they properly claimed payments under this

1 subsection in the prior year and that they have not experienced a  
2 substantial change in circumstances such that they have a reasonable  
3 expectation of eligibility in the current year, then they shall not be  
4 held responsible for an incorrect prepayment/refund amount.

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

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

18 § 616. New York exemptions of a resident individual. (a) General. For  
19 taxable years beginning after nineteen hundred eighty-seven, a resident  
20 individual shall be allowed a New York exemption of one thousand dollars  
21 for each exemption for which [~~he is~~] they are entitled to a deduction  
22 for the taxable year under section one hundred fifty-one(c) of the  
23 Internal Revenue Code; and for taxable years beginning in nineteen  
24 hundred eighty-seven, a resident individual other than a taxpayer whose  
25 federal exemption amount is zero shall be allowed a New York exemption  
26 of nine hundred dollars for each exemption for which [~~he is~~] they are  
27 entitled to a deduction for the taxable year for federal income tax  
28 purposes.

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

36 (c) Commencing in the second taxable year succeeding the effective  
37 date of subsection (c-2) of section six hundred six of this article, a  
38 resident individual shall not be allowed the exemption described in this  
39 section for any qualifying child as defined in subparagraph (B) of para-  
40 graph one of subsection (c-2) of section six hundred six of this arti-  
41 cle. Commencing in the fourth taxable year succeeding the effective  
42 date of subsection (c-2) of section six hundred six of this article, a  
43 resident individual shall not be allowed the exemption described in this  
44 section for any qualifying child through age seventeen as defined in  
45 subparagraph (C) of paragraph one of subsection (c-2) of section six  
46 hundred six of this article. In all years on or after the effective date  
47 of subsection (c-2) of section six hundred six of this article, however,  
48 a resident individual shall continue to be allowed the exemption  
49 described in this section for other qualifying dependents, as defined in  
50 26 USC § 152(a), who do not meet the definition of qualifying child in  
51 subparagraph (B) of paragraph one of subsection (c-2) of section six  
52 hundred six of this article and qualifying child through age seventeen  
53 as defined in subparagraph (C) of paragraph one of subsection (c-2) of  
54 section six hundred six of this article.

55 § 5. This act shall take effect immediately.