

STATE OF NEW YORK

4065

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred 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 Assem-
bly, do enact as follows:

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

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

ARTICLE 17

EXCELSIOR OPPORTUNITY ACCOUNTS ACT

5 Section 9100. Short title.

6 9101. Definitions.

7 9102. Excelsior opportunity fund established.

8 9103. EO accounts.

9 9104. Assignment, alienation, and treatment of deceased account
10 holders.

11 9105. Annual contribution certification.

12 9106. Rules governing EO accounts relating to investment,
13 accounting, and reporting.

14 9107. Excelsior opportunity fund board.

15 9108. Accounts disregarded in determining eligibility for state
16 benefits.

17 9109. Reports.

18 9110. Tax treatment.

19 § 9100. Short title. This article shall be known and may be cited as
20 the "excelsior opportunity accounts act".

21 § 9101. Definitions. As used in this article, unless the context
22 otherwise requires, the following words and terms shall have the meaning
23 ascribed to them:
24
25

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

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

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

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

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

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

10 6. "Executive director" means the executive director appointed pursu-
11 ant to section nine thousand one hundred six of this article.

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

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

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

16 (b) has a valid social security number;

17 (c) is under eighteen years of age;

18 (d) primarily resides in New York state; and

19 (e) has household income not exceeding seven hundred percent of the
20 federal poverty line for a family of four, as defined under section
21 36B(d) of the internal revenue code of nineteen eighty-six, as amended.

22 In determining household income under this section, "household income"
23 means the adjusted gross income for federal income tax purposes reported
24 on the latest available federal or state income tax return filed by each
25 member of household, provided that for married couples filing individ-
26 ually, household income shall include the combined adjusted gross income
27 reported for both such individual returns.

28 § 9102. Excelsior opportunity fund established. 1. There is hereby
29 established in the joint custody of the state comptroller and the
30 commissioner of taxation and finance a special fund to be known as the
31 "excelsior opportunity fund".

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

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

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

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

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

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

46 and

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

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

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

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

7 § 9103. EO accounts. 1. Establishment. The executive director shall
8 establish within the fund an "excelsior opportunity account" or "EO
9 account" for each eligible-individual certified under subdivision five
10 of this section. Each such account shall be identified with its account
11 holder by means of a unique personal identifier currently recognized by
12 the internal revenue service and shall remain in the excelsior opportu-
13 nity fund.

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

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

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

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

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

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

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

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

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

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

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

17 § 9105. Annual contribution certification. The executive director
18 shall establish and implement a process for parents or guardians of
19 account holders to annually certify their eligibility to receive an
20 annual contribution pursuant to paragraph (b) of subdivision four of
21 section nine thousand one hundred two of this article. The form shall be
22 made available to each parent or guardian of an account holder by mail
23 and electronic means, and shall be conspicuously posted and made acces-
24 sible on the department's website.

25 § 9106. Rules governing EO accounts relating to investment, account-
26 ing, and reporting. 1. Investment program. The superintendent shall
27 establish an investment program, and the board shall invest monies of
28 the fund in debt obligations of the United States government with a term
29 of thirty years in accordance therewith. The investment program shall
30 authorize the board to purchase insurance on investments made under this
31 section.

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

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

46 § 9107. Excelsior opportunity fund board. 1. The excelsior opportunity
47 fund board is hereby established within the department. The board shall
48 work in collaboration with the superintendent and the executive director
49 to implement and administer the provisions of this article.

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

1 economics, investing, child development, family economics, governmental
2 accounting, and/or such other qualifications that the appointing author-
3 ities deem necessary.

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

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

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

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

18 § 9108. Accounts disregarded in determining eligibility for state
19 benefits. Amounts in an EO account shall not be considered in determin-
20 ing an individual's or household's eligibility for, or the amount of,
21 any benefit or service, paid for in whole or in part with state funds,
22 including but not limited to any public assistance or financial assist-
23 ance program under the social services law, any student financial aid
24 program and any other public benefit or assistance program.

25 § 9109. Reports. 1. Reports to the legislature. The executive direc-
26 tor, in consultation with the superintendent, shall annually transmit a
27 written report to the board no later than January first of each year.
28 The board shall thereafter submit such report, together with any find-
29 ings and recommendations thereon to the legislature. Such report shall
30 include a detailed description of the status and operation of the fund,
31 the management of EO accounts; a detailed accounting of the administra-
32 tive expenses incurred in carrying out the provisions of this article,
33 including the ratio of such administrative expenses to the balance of
34 the fund and the methodology adopted by the executive director for allo-
35 cating such expenses among existing EO accounts.

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

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

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

43 (c) such other information as the superintendent and board deem rele-
44 vant.

45 § 9110. Tax treatment. The excelsior opportunity fund and EO accounts
46 shall be exempt from taxation.

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

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

1 subject to the stock transfer tax occurring on and after October first,
2 nineteen hundred seventy-nine and on or before September thirtieth,
3 nineteen hundred eighty and sixty percent of the tax incurred and paid
4 on such transactions occurring on and after October first, nineteen
5 hundred eighty and on or before September thirtieth, nineteen hundred
6 eighty-one and all of the amount of tax incurred and paid shall be
7 allowed as a rebate on transactions subject to the stock transfer tax
8 occurring on and after October first, nineteen hundred eighty-one and on
9 or before September thirtieth, two thousand twenty-five, and fifty
10 percent of the amount of tax incurred and paid shall be allowed as a
11 rebate on transactions subject to the stock transfer tax occurring on
12 and after October first, two thousand twenty-five.

13 § 3. Section 92-b of the state finance law, as added by chapter 91 of
14 the laws of 1965 and as renumbered and subdivision 5 as added by chapter
15 3 of the laws of 1966, subdivision 3 as amended by chapter 878 of the
16 laws of 1977, subdivision 4 as amended by chapter 724 of the laws of
17 1979 and subdivision 7 as added by section 10 of part SS1 of chapter 57
18 of the laws of 2008, is amended to read as follows:

19 § 92-b. Stock transfer tax fund. 1. There is hereby established in the
20 custody of the commissioner of taxation and finance a special fund, to
21 be known as the stock transfer tax fund.

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

26 3. The moneys received from such tax and other sources in such fund,
27 after deducting the amount the commissioner of taxation and finance
28 shall determine to be necessary for the reasonable costs of the state
29 tax commission in administering, collecting and distributing such tax,
30 commencing with the fiscal year ending March thirty-first, [~~nineteen~~
31 ~~hundred seventy seven, shall be appropriated to (i) the municipal~~
32 ~~assistance corporation for the city of New York created pursuant to~~
33 ~~title three of article ten of the public authorities law in order to~~
34 ~~enable such corporation to fulfill the terms of any agreements made with~~
35 ~~the holders of its notes and bonds and to carry out its corporate~~
36 ~~purposes including the maintenance of the capital reserve fund and (ii)~~
37 ~~to the extent such moneys are not required by such corporation as~~
38 ~~provided in subdivision seven of section ninety two d of this chapter~~
39 ~~and, after deducting the amount such commissioner shall determine to be~~
40 ~~necessary for reasonable costs of the state tax commission in adminis-~~
41 ~~tering and making distributions in accordance with the provisions of~~
42 ~~section two hundred eighty a of the tax law from the stock transfer~~
43 ~~incentive fund, to the stock transfer incentive fund created pursuant to~~
44 ~~section ninety two i of this chapter to enable rebates to be made from~~
45 ~~such fund under the provisions of section two hundred eighty a of the~~
46 ~~tax law and (iii) to the extent such moneys are not required by such~~
47 ~~fund, as certified by the commissioner of taxation and finance, the~~
48 ~~balance shall be appropriated to the city of New York, for the support~~
49 ~~of local government] two thousand twenty-five, the balance shall be
50 deposited into the account for the excelsior opportunity fund estab-
51 lished pursuant to article seventeen of the banking law.~~

52 4. [~~After the deduction of such costs of the state tax commission in~~
53 ~~administering, collecting and distributing such tax, the balances in the~~
54 ~~stock transfer tax fund so appropriated shall be distributed and paid on~~
55 ~~the last business day of September, December, March and June into the~~
56 ~~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 47 to read as follows:

(47) For taxable years beginning on and after two thousand twenty-five, 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.