

# STATE OF NEW YORK

5577

2023-2024 Regular Sessions

## IN ASSEMBLY

March 16, 2023

Introduced by M. of A. FAHY, HEVESI, THIELE, STERN, SIMON, DICKENS, JACKSON, BURDICK, LUNSFORD, DINOWITZ, LUPARDO, BRONSON, GALLAGHER, GONZALEZ-ROJAS, FORREST, CRUZ, WALLACE, CLARK, SILLITTI, MEEKS, GLICK, RAMOS, DARLING, MITAYNES, JEAN-PIERRE, KELLES, RIVERA -- read once and referred to the Committee on Ways and Means

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 and a new paragraph 9 is added 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-four 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-four  
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-four and thereafter.

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

LBD09953-03-3

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

45 (9) Adults over age sixty-five. Notwithstanding the provisions of  
46 section thirty-two of the internal revenue code, an individual who is  
47 otherwise eligible to receive the earned income credit under this  
48 subsection shall not be deemed ineligible to receive such credit due  
49 solely to the fact that such individual is age sixty-five or older.

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

52 § 679. Advance payment of earned income credit. (a) General rule.  
53 Except as otherwise provided in this chapter, the commissioner shall  
54 provide for the prepayment of the earned income credit to qualifying  
55 employees.

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

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

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

11 (3) states whether the employee's spouse has an earned income eligi-  
12 bility certificate in effect. For purposes of this section, a certif-  
13 icate shall be treated as being in effect with respect to a spouse if  
14 such certificate will be in effect on the first status determination  
15 date following the date on which the other eligible spouse furnishes the  
16 statement in question.

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

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

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

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

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

50 (2) If an individual establishes that he or she is requesting and  
51 receiving payments under this section in good faith by establishing that  
52 he or she properly claimed payments under this section in the prior year  
53 and that he or she has not experienced a substantial change in circum-  
54 stances such that he or she has a reasonable expectation of eligibility  
55 in the current year, then paragraph one of this subsection shall not  
56 apply.

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

5 § 3. This act shall take effect immediately and shall apply to taxable  
6 years beginning on or after January 1, 2024.