

# STATE OF NEW YORK

9066

## IN SENATE

April 16, 2024

Introduced by Sen. COMRIE -- 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 and the administrative code of the city of New York, in relation to advance payment of the earned income credit

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

1 Section 1. The tax law is amended by adding a new section 679 to read  
2 as follows:

3 § 679. Advance payment of earned income credit. (a) General rule.  
4 Except as otherwise provided in this chapter, the commissioner shall  
5 provide for the pre-payment of the earned income credit to qualifying  
6 employees.

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

10 (1) certifies that the employee will be eligible to receive an earned  
11 income credit or an enhanced earned income credit provided by subsection  
12 (d) or (d-1) of section six hundred six of this article for the taxable  
13 year.

14 (2) certifies that the employee has one or more qualifying children  
15 for such taxable year.

16 (3) certifies that the employee does not have an earned income eligi-  
17 bility certificate in effect for the calendar year with respect to the  
18 payment of wages by another employer, and

19 (4) states whether or not the employee's spouse has an earned income  
20 eligibility certificate in effect.

21 For purposes of this section, a certificate shall be treated as being  
22 in effect with respect to a spouse if such a certificate will be in  
23 effect on the first status determination date following the date on  
24 which the employee furnishes the statement in question.

25 (c) Earned income advance amount. Four advanced payments shall be  
26 made to such qualifying employees. An estimated annual tax credit shall  
27 be determined by the commissioner in advance of the first payment, and  
28 shall be subject to adjustment due to changes in employment or family

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

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1 status over the course of the year. Prior to disbursement, the commis-  
2 sioner shall ensure that the qualifying employee's status has not  
3 changed. The first three advanced payments shall be made during the  
4 taxable year and shall be twenty percent of the anticipated credit. The  
5 fourth advanced payment shall be made after the tax year is over, and  
6 shall be adjusted to match the actual credit due. Such payments shall,  
7 to the extent practicable be made available via direct deposit and via  
8 electronic benefit transfer (EBT) card.

9 (d) Form and contents of certificate. Earned income eligibility  
10 certificates shall be in such form and contain such other information as  
11 the commissioner may by regulations prescribe.

12 (e) Notification. (1) The commissioner shall notify all taxpayers who  
13 have one or more qualifying children and who receive a refund of the  
14 credit under subsection (d) or (d-1) of section six hundred six of this  
15 article in writing of the availability of earned income advance amounts  
16 under this section. Such written or electronic notification shall  
17 include a clearly labeled section or withholding forms and a separate  
18 handout with information about the advanced payment of the earned income  
19 credit in the six most common languages spoken by individuals in this  
20 state.

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

25 (f) Coordination with advance payments of earned income credit.

26 (1) Recapture of excess advance payments. If any payment is made to  
27 the individual by the commissioner under this section during any calen-  
28 dar year, then the tax imposed by this chapter for the individual's last  
29 taxable year beginning in such calendar year shall be increased by the  
30 aggregate amount of such payments.

31 (2) Safe harbor against recapture of excess advance payments. If an  
32 individual establishes that they are requesting and receiving payments  
33 under this section in good-faith by establishing that they properly  
34 claimed payments under this section in the prior year and that they have  
35 not experienced a substantial change in circumstances such that they  
36 have a reasonable expectation of eligibility in the current year, then  
37 paragraph one of this subsection shall not apply.

38 (3) Reconciliation of payments advanced and credit allowed. Any  
39 increase in tax under this subsection shall not be treated as tax  
40 imposed by this chapter for purposes of determining the amount of any  
41 credit (other than the credit allowed by subsection (d) or (d-1) of  
42 section six hundred six of this article) allowable under this article.

43 § 2. The administrative code of the city of New York is amended by  
44 adding a new section 11-1763 to read as follows:

45 § 11-1763 Advance payment of earned income credit. (a) General rule.  
46 Except as otherwise provided in this chapter, the commissioner shall  
47 provide for the pre-payment of the earned income credit to qualifying  
48 employees.

49 (b) Earned income eligibility certificate. For purposes of this chap-  
50 ter, 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 by subdivi-  
54 sion (d) of section 11-1706 of this chapter for the taxable year,

55 (2) certifies that the employee has one or more qualifying children  
56 for such taxable year,

(3) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

(4) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) Earned income advance amount. Four advanced payments shall be made to such qualifying employees. 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. Prior to disbursement, the commissioner shall ensure that the qualifying employee's status has not changed. 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 tax year is over, 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.

(d) Form and contents of certificate. Earned income eligibility certificates shall be in such form and contain such other information as the commissioner may by regulations prescribe.

(e) Notification. (1) The commissioner shall notify all taxpayers who have one or more qualifying children and who receive a refund of the credit under subdivision (d) of section 11-1706 of this chapter in writing of the availability of earned income advance amounts under this section. Such written or electronic notification shall include a clearly labeled section or withholding forms and a separate handout with information about the advanced payment of the earned income credit in the six most common languages spoken by individuals in this state.

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

(f) Coordination with advance payments of earned income credit.

(1) Recapture of excess advance payments. If any payment is made to the individual by the commissioner under this section during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Safe harbor against recapture of excess advance payments. If an individual establishes that they are requesting and receiving payments under this section in good-faith by establishing that they properly claimed payments under this section 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 paragraph one of this subdivision shall not apply.

(3) Reconciliation of payments advanced and credit allowed. Any increase in tax under this subdivision shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subdivision (d) of section 11-1706 of this chapter) allowable under this chapter.

§ 3. This act shall take effect one year after it shall have become a law and shall apply to taxable years beginning on or after such date.

1 Effective immediately, the addition, amendment and/or repeal of any rule  
2 or regulation necessary for the implementation of this act on its effec-  
3 tive date are authorized to be made and completed on or before such  
4 effective date.