STATE OF NEW YORK

3532

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. ZINERMAN, BURDICK -- read once and referred to the Committee on Ways and Means

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:

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

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

(b) Earned income eligibility certificate. For purposes of this article, an earned income eligibility certificate is a statement furnished by an employee to the commissioner which:

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

(2) certifies that the employee has one or more qualifying children 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.

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

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(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 subsection (d) or (d-1) of section six hundred six of this article 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 subsection shall not apply.

(3) Reconciliation of payments advanced and credit allowed. Any increase in tax under this subsection 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 subsection (d) or (d-1) of section six hundred six of this article) allowable under this article.

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

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

(b) Earned income eligibility certificate. For purposes of this chapter, an earned income eligibility certificate is a statement furnished by an employee to the commissioner which:

(1) certifies that the employee will be eligible to receive an earned income credit or an enhanced earned income credit provided by subdivision (d) of section 11-1706 of this chapter for the taxable year,

(2) certifies that the employee has one or more qualifying children 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. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.