

# STATE OF NEW YORK

4022--B

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 -- 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

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 portion of the earned income  
5 credit attributable to qualifying children, as defined in paragraph one  
6 of subsection (c-2) of this section, shall be reduced over the course of  
7 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-one;

13 (B) In the second taxable year succeeding the effective date of  
14 subsection (c-2) of this section, the applicable percentage of the  
15 earned income credit allowed under section thirty-two of the internal  
16 revenue code for the same taxable year, as described in paragraph one of  
17 this subsection, shall be reduced to fifteen;

18 (C) In the third taxable year succeeding the effective date of  
19 subsection (c-2) of this section, the applicable percentage of the

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

LBD02008-07-4

1 earned income credit allowed under section thirty-two of the internal  
2 revenue code for the same taxable year, as described in paragraph one of  
3 this subsection, shall be reduced to ten;

4 (D) In the fourth taxable year succeeding the effective date of  
5 subsection (c-2) of this section and each taxable year thereafter, the  
6 applicable percentage of the earned income credit allowed under section  
7 thirty-two of the internal revenue code for the same taxable year, as  
8 described in paragraph one of this subsection, shall be reduced to zero.

9 The reduction described in this paragraph shall apply only to the  
10 portion of a taxpayer's earned income credit that is attributable to  
11 qualifying children as defined in paragraph one of subsection (c-2) of  
12 this section. A taxpayer shall continue to be allowed the earned income  
13 credit for the portions of such credit attributable to another qualify-  
14 ing child, as defined in 26 USC §152(c), or qualifying relative, as  
15 defined in 26 USC §152(d), who do not meet the definition of qualifying  
16 child in paragraph one of subsection (c-2) of this section.

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

20 (1) [A] For taxable years prior to the first of January next succeed-  
21 ing the effective date of subsection (c-2) of this section, a resident  
22 taxpayer shall be allowed a credit as provided herein equal to the  
23 greater of one hundred dollars times the number of qualifying children  
24 of the taxpayer or the applicable percentage of the child tax credit  
25 allowed the taxpayer under section twenty-four of the internal revenue  
26 code for the same taxable year for each qualifying child. Provided,  
27 however, in the case of a taxpayer whose federal adjusted gross income  
28 exceeds the applicable threshold amount set forth by section 24(b)(2) of  
29 the Internal Revenue Code, the credit shall only be equal to the appli-  
30 cable percentage of the child tax credit allowed the taxpayer under  
31 section 24 of the Internal Revenue Code for each qualifying child. For  
32 the purposes of this subsection, a qualifying child shall be a child who  
33 meets the definition of qualified child under section 24(c) of the  
34 internal revenue code. The applicable percentage shall be thirty-three  
35 percent. For purposes of this subsection, any reference to section 24 of  
36 the Internal Revenue Code shall be a reference to such section as it  
37 existed immediately prior to the enactment of Public Law 115-97.

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

40 (c-2) New York state working families tax credit. (1) Definitions.  
41 (A) "Adjusted for inflation" shall mean that the commissioner increases  
42 the dollar amount of a credit or adjusted gross income, as applicable,  
43 by an amount equal to such dollar amount multiplied by the cost-of-liv-  
44 ing adjustment determined under 26 USC § 1 (f)(3), for the calendar year  
45 in which the taxable year being referenced begins.

46 (B) "Adjusted for all inflation since two thousand twenty-three" shall  
47 mean the commissioner increases the dollar amount of a credit or  
48 adjusted gross income, as applicable, by an amount equal to the sum of  
49 all cost-of-living adjustments calculated and published by the internal  
50 revenue service pursuant to 26 USC §1(f)(3) since calendar year two  
51 thousand twenty-three.

52 (C) "Qualifying child" or "qualifying children" shall mean as defined  
53 in 26 USC §24(c)(1) except that such term shall also include qualifying  
54 children who have not attained the age of eighteen.

55 (2) (A) For taxable years beginning on and after the first of January  
56 next succeeding the effective date of this subsection, a resident

1 taxpayer with a New York state adjusted gross income of less than twenty-  
2 ty-five thousand dollars in the case of an individual who is not  
3 married; fifty thousand dollars in the case of a joint return; or twenty-  
4 ty-five thousand dollars in the case of a married individual filing a  
5 separate return shall be allowed a credit equal to:

6 (i) In the first taxable year succeeding the effective date of this  
7 subsection, eight hundred dollars per qualifying child;

8 (ii) In the second taxable year succeeding the effective date of this  
9 subsection, one thousand one hundred dollars per qualifying child;

10 (iii) In the third taxable year succeeding the effective date of this  
11 subsection, one thousand three hundred and fifty dollars per qualifying  
12 child;

13 (iv) In the fourth taxable year succeeding the effective date of this  
14 subsection and each taxable year thereafter, one thousand six hundred  
15 dollars per qualifying child, provided, however, that the dollar amount  
16 herein prescribed shall be adjusted for all inflation since two thousand  
17 twenty-three in the fourth taxable year succeeding the effective date of  
18 this subsection and each taxable year thereafter.

19 (B) The amount of the credit per child shall be reduced by twenty  
20 dollars for each one thousand dollars by which the taxpayer's New York  
21 state adjusted gross income exceeds:

22 (i) In the first taxable year succeeding the effective date of this  
23 subsection, sixty-five thousand dollars in the case of an individual who  
24 is not married, one hundred thirty thousand dollars in the case of a  
25 joint return, or sixty-five thousand dollars in the case of a married  
26 individual filing a separate return;

27 (ii) In the second taxable year succeeding the effective date of this  
28 subsection, fifty-five thousand dollars in the case of an individual who  
29 is not married, one hundred ten thousand dollars in the case of a joint  
30 return, or fifty-five thousand dollars in the case of a married individ-  
31 ual filing a separate return;

32 (iii) In the third taxable year succeeding the effective date of this  
33 subsection, forty-five thousand dollars in the case of an individual who  
34 is not married, ninety thousand dollars in the case of a joint return,  
35 or forty-five thousand dollars in the case of a married individual  
36 filing a separate return; and

37 (iv) In the fourth taxable year succeeding the effective date of this  
38 section and each taxable year thereafter, twenty-five thousand dollars  
39 in the case of an individual who is not married, fifty thousand dollars  
40 in the case of a joint return, or twenty-five thousand dollars in the  
41 case of a married individual filing a separate return, provided, howev-  
42 er, that the dollar amount herein prescribed shall be adjusted for  
43 inflation in the fourth taxable year succeeding the effective date of  
44 this subsection and each taxable year thereafter.

45 (C) Provided, however, that the amount of the credit shall never be  
46 reduced below the following amounts:

47 (i) In the first taxable year next succeeding the effective date of  
48 this subsection, one hundred fifty dollars per qualifying child;

49 (ii) In the second taxable year succeeding the effective date of this  
50 subsection, two hundred fifty dollars per qualifying child;

51 (iii) In the third taxable year succeeding the effective date of this  
52 subsection, four hundred dollars per qualifying child;

53 (iv) In the fourth taxable year succeeding the effective date of this  
54 subsection, five hundred dollars per qualifying child; and

55 (v) In the fifth taxable year succeeding the effective date of this  
56 subsection and each taxable year thereafter, five hundred dollars per

1 qualifying child, provided, however, that the dollar amount herein  
2 prescribed shall be adjusted for inflation in the fifth taxable year  
3 succeeding the effective date of this subsection and each taxable year  
4 thereafter.

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

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

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

17 (5) Commencing in the fourth taxable year succeeding the effective  
18 date of this subsection, the commissioner shall provide for the prepay-  
19 ment of the working families credit under this subsection to qualifying  
20 taxpayers. Four advanced payments shall be made to such qualifying  
21 taxpayers. An estimated annual tax credit shall be determined by the  
22 commissioner in advance of the first payment and shall be subject to  
23 adjustment due to changes in employment or family status over the course  
24 of the year. The first three advanced payments shall be made during the  
25 taxable year and shall be twenty percent of the anticipated credit. The  
26 fourth advanced payment shall be made after the end of the tax year and  
27 shall be adjusted to match the actual credit due. Such payments shall,  
28 to the extent practicable, be made available via direct deposit and via  
29 electronic benefit transfer (EBT) card. The commissioner shall provide  
30 information on the availability of advanced payments of the working  
31 families credit to tax preparers, accountants, and organizations that  
32 assist individuals in tax preparation. Such information shall be  
33 distributed to qualifying taxpayers. If a taxpayer establishes that they  
34 are requesting and receiving payments under this paragraph in good faith  
35 by establishing that they properly claimed payments under this  
36 subsection in the prior year and that they have not experienced a  
37 substantial change in circumstances such that they have a reasonable  
38 expectation of eligibility in the current year, then they shall not be  
39 held responsible for an incorrect prepayment/refund amount.

40 (6) Notwithstanding any provision of law to the contrary, the refunda-  
41 ble credit and its payment authorized under this subsection shall be  
42 treated in the same manner as the federal Earned Income Tax Credit and  
43 shall not be considered as assets, income, or resources to the same  
44 extent the credit and its payment would be disregarded pursuant to 26  
45 U.S.C. § 6409 and the general welfare doctrine for purposes of determin-  
46 ing eligibility for benefits or assistance, or the amount or extent of  
47 those benefits or assistance, under any state or local program, includ-  
48 ing benefits established under section ninety-five of the social  
49 services law.

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

53 § 616. New York exemptions of a resident individual. (a) General. For  
54 taxable years beginning after nineteen hundred eighty-seven, a resident  
55 individual shall be allowed a New York exemption of one thousand dollars  
56 for each exemption for which ~~he is~~ they are entitled to a deduction

1 for the taxable year under section one hundred fifty-one(c) of the  
2 Internal Revenue Code; and for taxable years beginning in nineteen  
3 hundred eighty-seven, a resident individual other than a taxpayer whose  
4 federal exemption amount is zero shall be allowed a New York exemption  
5 of nine hundred dollars for each exemption for which [~~he is~~] they are  
6 entitled to a deduction for the taxable year for federal income tax  
7 purposes.

8 (b) [~~husband and wife~~] Spouses. If the New York income taxes of [~~a~~  
9 ~~husband and wife~~] spouses are required to be separately determined but  
10 their federal income tax is determined on a joint return, each of them  
11 shall be separately entitled to the New York exemptions under subsection  
12 (a) of this section to which each would be separately entitled for the  
13 taxable year if their federal income taxes had been determined on sepa-  
14 rate returns.

15 (c) Commencing in the taxable year next succeeding the effective date  
16 of subsection (c-2) of section six hundred six of this article, a resi-  
17 dent individual shall not be allowed the exemption described in this  
18 section for any qualifying child as defined in paragraph one of  
19 subsection (c-2) of section six hundred six of this article. A resident  
20 individual shall continue to be allowed the exemption described in this  
21 section, however, for other qualifying dependents, as defined in 26 USC  
22 § 152(a), who do not meet the definition of qualifying child in para-  
23 graph one of subsection (c-2) of section six hundred six of this arti-  
24 cle.

25 § 5. This act shall take effect immediately.