STATE OF NEW YORK

5573--A

2023-2024 Regular Sessions

IN SENATE

March 8, 2023

Introduced by Sens. GOUNARDES, MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Paragraph 1 of subsection (d) of section 606 of the tax law, as amended by section 1 of part Q of chapter 63 of the laws of 2000, is amended and a new paragraph 9 is added to read as follows:

(1) General. A taxpayer shall be allowed a credit as provided herein equal to (i) the applicable percentage of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, (ii) reduced by the credit permitted under subsection (b) of this section. **Provided, however, for taxable years beginning in two thousand twenty-five and thereafter, for the purpose of determining the amount of tax credit under this paragraph, in calculating the earned income tax credit allowed under section thirty-two of the internal revenue code, the phaseout amount as referenced in section 32(b)(2)(A) of the internal revenue code shall be read as twenty-four thousand nine hundred sixty dollars instead of eleven thousand six hundred ten dollars and such phaseout amount shall be subject to adjustments made in section thirty-two of the internal revenue code (the calendar year referenced in the cost of living adjustment in section 32(j)(1)(B) of the internal revenue code shall be applied as calendar year two thousand twenty-five with respect to the phaseout amounts), including an additional phaseout amount for a joint filer and inflation adjustment specified in such section of the internal revenue code for taxable years beginning in two thousand twenty-five and thereafter.**

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

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The applicable percentage shall be (i) seven and one-half percent for taxable years beginning in nineteen hundred ninety-four, (ii) ten percent for taxable years beginning in nineteen hundred ninety-five, (iii) twenty percent for taxable years beginning after nineteen hundred ninety-five and before two thousand, (iv) twenty-two and one-half percent for taxable years beginning in two thousand, (v) twenty-five percent for taxable years beginning in two thousand one, (vi) twenty-seven and one-half percent for taxable years beginning in two thousand two, [~~and~~] (vii) thirty percent for taxable years beginning in two thousand three**, (viii) thirty-five percent for taxable years beginning in two thousand twenty-five, and (ix) forty percent for taxable years beginning in two thousand twenty-six** and thereafter. **For taxable years beginning in two thousand twenty-five and thereafter, in the case of an eligible individual with no qualifying children, the credit percentage shall be fifteen and three-tenths to determine the amount of the earned income tax credit referenced in section 32(b)(1) of the internal revenue code and the earned income amount and the phaseout amount of such individual shall be determined as if such earned income amount and phaseout amount as referenced in section 32(b)(2)(A) of the internal revenue code are equal to the amount allowed for an eligible individual with one qualifying child as such amounts are referenced in such paragraph. Provided further, for the purpose of this subsection, an eligible individual shall be an individual who has attained nineteen years of age as opposed to twenty-five years of age, irrespective of the eligibility referenced in section 32(c)(1)(A)(ii)(II) of the internal revenue code. Furthermore, an individual otherwise eligible but for the requirement under section 32(m) of the internal revenue code shall be eligible for this credit.** Provided, however, that if the reversion event, as defined in this paragraph, occurs, the applicable percentage shall be twenty percent for taxable years ending on or after the date on which the reversion event occurred. The reversion event shall be deemed to have occurred on the date on which federal action, including but not limited to, administrative, statutory or regulatory changes, materially reduces or eliminates New York state's allocation of the federal temporary assistance for needy families block grant, or materially reduces the ability of the state to spend federal temporary assistance for needy families block grant funds for the earned income credit or to apply state general fund spending on the earned income credit toward the temporary assistance for needy families block grant maintenance of effort requirement, and the commissioner of the office of temporary and disability assistance shall certify the date of such event to the commissioner of taxation and finance, the director of the division of the budget, the speaker of the assembly and the temporary president of the senate.

(9) Individuals over age sixty-five. Notwithstanding the provisions of section 32(c)(1)(A)(ii)(III) of the internal revenue code, an individual who is otherwise eligible to receive the earned income credit under this subsection shall not be deemed ineligible due solely to the fact that such individual has attained the age of sixty-five.

§ 2. 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 prepayment 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 pursuant to subsection (d) or (d-1) of section six hundred six of this article for the taxable year;

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

(3) states whether 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 certificate will be in effect on the first status determination date following the date on which the other eligible spouse 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 eligible. 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 information as the commissioner may determine and prescribe.

(e) Notification. (1) The commissioner shall notify all taxpayers who have received a refund of the credit pursuant to subsection (d) or (d-1) of section six hundred six of this article based on the most recent tax return or record 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 on 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) If any payment is made to the individual by the department under this section during any calendar year, 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) 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 has 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) 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.

§ 3. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2025.