

STATE OF NEW YORK

5887

2017-2018 Regular Sessions

IN SENATE

May 4, 2017

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the economic development law, in relation to the creation of the empire state digital gaming media production credit; and providing for the repeal of certain provisions upon expiration thereof

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 44 to read
2 as follows:

3 § 44. Empire state digital gaming media production credit. (a) Allow-
4 ance of credit. (1) A taxpayer which is a digital gaming media
5 production entity engaged in qualified digital gaming media production,
6 or who is a sole proprietor of or a member of a partnership, which is a
7 digital gaming media production entity engaged in qualified digital
8 gaming media production, and is subject to tax under article nine-A or
9 twenty-two of this chapter, shall be allowed a credit against such tax
10 to be computed as provided herein.

11 (2) The amount of the credit shall be the product (or pro rata share
12 of the product, in the case of a member of a partnership or limited
13 liability company) of twenty-five percent and the eligible production
14 costs of one or more qualified digital gaming media productions.

15 (3) Eligible digital gaming media production costs for a qualified
16 digital gaming media production incurred and paid in this state but
17 outside such metropolitan commuter transportation district shall be
18 eligible for a credit of ten percent of such eligible production costs
19 in addition to the credit specified in paragraph two of this subdivi-
20 sion.

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

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1 (4) Eligible production costs shall not include those costs used by
2 the taxpayer or another taxpayer as the basis calculation of any other
3 tax credit allowed under this chapter or allowed in any other state.

4 (b) Allocation of credit. The aggregate amount of tax credits allowed
5 under this section, subdivision fifty-three of section two hundred ten-B
6 and subsection (iii) of section six hundred six of this chapter in any
7 taxable year shall be fifty million dollars. The aggregate amount of
8 credits for any taxable year must be distributed on a regional basis as
9 follows: fifty percent of the aggregate amount of credits shall be
10 available for qualified digital gaming media productions that incur at
11 least sixty percent of eligible production costs for a qualified digital
12 gaming media production in region one; twenty percent of the aggregate
13 amount of credits shall be available for qualified digital gaming media
14 productions that incur at least sixty percent of eligible production
15 costs for a qualified digital gaming media production in region two; and
16 thirty percent of the aggregate amount of credits shall be available for
17 qualified digital gaming media productions that incur at least sixty
18 percent of eligible production costs for a qualified digital gaming
19 media production in region three. If such regional distribution is not
20 fully allocated in any taxable year, the remainder of such credits shall
21 be available for allocation to any region in the subsequent tax year.
22 For the purposes of this section region one shall contain the city of
23 New York; region two shall contain the counties of Westchester, Rock-
24 land, Nassau and Suffolk; and region three shall contain any county not
25 contained in regions one and two. Such credit shall be allocated by the
26 empire state development corporation among taxpayers in order of priori-
27 ty based upon the date of filing an application for allocation of
28 digital gaming media production credit with such office. If the total
29 amount of allocated credits applied for in any particular year exceeds
30 the aggregate amount of tax credits allowed for such year under this
31 section, such excess shall be treated as having been applied for on the
32 first day of the subsequent taxable year.

33 (c) Definitions. As used in this section:

34 (1) "Qualified digital gaming media production" means: (i) a website,
35 the digital media production costs of which are paid or incurred predo-
36 minately in connection with (A) video simulation, animation, text,
37 audio, graphics or similar gaming related property embodied in digital
38 format, and (B) interactive features of digital gaming (e.g., links,
39 message boards, communities or content manipulation); (ii) video or
40 interactive games produced primarily for distribution over the internet,
41 wireless network or successors thereto; (iii) animation, simulation or
42 embedded graphics digital gaming related software intended for commer-
43 cial distribution regardless of medium; and (iv) a digital gaming media
44 production in which qualified digital gaming media production costs
45 equal to or are in excess of seven thousand five hundred dollars if
46 incurred and paid in this state in twelve months preceding the date on
47 which the credit is claimed. Provided, however, if such a production
48 costs are incurred and paid outside the metropolitan commuter transpor-
49 tation district in this state, such production costs shall be equal to
50 or in excess of three thousand seven hundred fifty dollars to be a qual-
51 ified digital gaming media production for purposes of this paragraph. A
52 qualified digital gaming media production does not include a website,
53 video, interactive game or software that is used predominately for:
54 electronic commerce (retail or wholesale purposes other than the sale of
55 video or interactive games), gambling (including activities regulated by
56 a New York gaming agency), exclusive local consumption for entities not

1 accessible by the general public including industrial or other private
2 purposes, and political advocacy purposes.

3 (2) "Digital gaming media production costs" means any costs for prop-
4 erty used and wages or salaries paid to individuals directly employed
5 for services performed by those individuals directly and predominantly
6 in the creation of a digital gaming media production or productions.
7 Digital gaming media production costs include but shall not be limited
8 to to payments for property used and services performed directly and
9 predominantly in the development (including concept creation), design,
10 production (including concept creation), design, production (including
11 testing), editing (including encoding) and compositing (including the
12 integration of digital files for interaction by end users) of digital
13 gaming media. Digital gaming media production costs shall not include
14 expenses incurred for the distribution, marketing, promotion, or adver-
15 tising content generated by end-users or other costs not directly and
16 predominantly related to the creation, production or modification of
17 digital gaming media. In addition, salaries or other income distribution
18 related to the creation of digital gaming media for any person who
19 serves in the role of chief executive officer, chief financial officer,
20 president, treasurer or similar position shall not be included as
21 digital gaming media production costs. Furthermore, any income or other
22 distribution to any individual who holds an ownership interest in a
23 digital gaming media production entity shall not be included as digital
24 gaming media production costs.

25 (3) "Qualified digital gaming media production costs" means digital
26 gaming media production costs only to the extent such costs are attrib-
27 utable to the use of property or the performance of services by any
28 persons within the state directly and predominantly in the creation,
29 production or modification of digital gaming related media. Such total
30 production costs incurred and paid in this state shall be equal to or
31 exceed seventy-five percent of total cost of an eligible production
32 incurred and paid within and without this state.

33 (d) Cross-references. For application of the credit provided for in
34 this section, see the following provisions of this chapter:

35 (1) Article nine-A: section two hundred ten-B, subdivision fifty-
36 three.

37 (2) Article twenty-two: section six hundred six, subsection (i), para-
38 graph one, subparagraph (B), clause (xliv).

39 (3) Article twenty-two: section six hundred six, subsection (iii).

40 § 2. Section 210-B of the tax law is amended by adding a new subdivi-
41 sion 53 to read as follows:

42 53. Empire state digital gaming media production credit. (a) Allowance
43 of credit. A taxpayer who is eligible pursuant to section forty-four of
44 this chapter shall be allowed a credit to be computed as provided in
45 such section forty-four against the tax imposed by this article.

46 (b) Application of credit. The credit allowed under this subdivision
47 for any taxable year shall not reduce the tax due for such year to less
48 than the amount prescribed in paragraph (d) of subdivision one of
49 section two hundred ten of this article. Provided, however, that if the
50 amount of the credit allowable under this subdivision for any taxable
51 year reduces the tax to such amount, the excess shall be treated as an
52 overpayment of tax to be credited or refunded in accordance with the
53 provisions of section one thousand eighty-six of this chapter, provided,
54 however, no interest shall be paid thereon.

§ 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xliv) to read as follows:

<u>(xliv) Empire state digital gaming media production credit under subsection (iii)</u>	<u>Amount of credit under subdivision fifty-three of section two hundred ten-B</u>
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§ 4. Section 606 of the tax law is amended by adding a new subsection (iii) to read as follows:

(iii) Empire state digital gaming media production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-four of this chapter shall be allowed a credit to be computed as provided in such section forty-four against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

§ 5. The state commissioner of economic development, after consulting with the state commissioner of taxation and finance, shall promulgate regulations by December 31, 2017 to establish procedures for the allocation of tax credits as required by subdivision (a) of section 44 of the tax law. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers substantiate to the New York state department of taxation and finance the amount of tax credits allocated to such taxpayers, under what conditions all or a portion of this tax credit may be revoked, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such December 31, 2017 deadline.

§ 6. Subdivision 23 of section 352 of the economic development law, as amended by section 1 of part K of chapter 59 of the laws of 2017, is amended to read as follows:

23. "Software development" means the creation of coded computer instructions ~~[or production or post production of video games, as defined in subdivision one-a of section six hundred eleven of the general business law, other than those embedded and used exclusively in advertising, promotional websites or microsites,]~~ and [also] includes new media as defined by the commissioner in regulations.

§ 7. The economic development law is amended by adding a new section 242 to read as follows:

§ 242. Reports on the digital gaming industries in New York. 1. The empire state development corporation shall file a report on a biannual basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The report shall be filed no later than thirty days before the mid-point and the end of the state fiscal year. The first report shall cover the calendar half year that begins on January first, two thousand nineteen. Each report must contain the following information for the covered calendar half year:

1 (a) the total dollar amount of credits allocated pursuant to section
2 forty-four of the tax law during the half year, broken down by month;

3 (b) the number of digital gaming projects, which have been allocated
4 tax credits of less than one million dollars per project, and the total
5 dollar amount of credits allocated to those projects distributed by
6 region pursuant to subdivision (b) of section forty-four of the tax law;

7 (c) the number of digital gaming projects, which have been allocated
8 tax credits of more than one million dollars, and the total dollar
9 amount of credits allocated to those projects distributed by region
10 pursuant to subdivision (b) of section forty-four of the tax law;

11 (d) a list of each eligible digital gaming project, which has been
12 allocated a tax credit enumerated by region pursuant to subdivision (b)
13 of section forty-four of the tax law, and for each of those projects,
14 (i) the estimated number of employees associated with the project, (ii)
15 the estimated qualifying costs for the projects, (iii) the estimated
16 total costs of the project, (iv) the credit eligible employee hours for
17 each project, and (v) total wages for such credit eligible employee
18 hours for each project; and

19 (e) (i) the name of each taxpayer allocated a tax credit for each
20 project and the county of residence or incorporation of such taxpayer
21 or, if the taxpayer does not reside or is not incorporated in New York,
22 the state of residence or incorporation; however, if the taxpayer claims
23 a tax credit because the taxpayer is a member of a limited liability
24 company, a partner in a partnership or a shareholder in a subchapter S
25 corporation, the name of each limited liability company, partnership or
26 subchapter S corporation earning any of those tax credits must be
27 included in the report instead of information about the taxpayer claim-
28 ing the tax credit, (ii) the amount of tax credit allocated to each
29 taxpayer; provided however, if the taxpayer claims a tax credit because
30 the taxpayer is a member of a limited liability company, a partner in a
31 partnership or a shareholder in a subchapter S corporation, the amount
32 of tax credit earned by each entity must be included in the report
33 instead of information about the taxpayer claiming the tax credit, and
34 (iii) information identifying the project associated with each taxpayer
35 for which a tax credit was claimed under section forty-four of the tax
36 law.

37 2. The empire state development corporation shall file a report on a
38 triennial basis with the director of the division of the budget and the
39 chairpersons of the assembly ways and means committee and senate finance
40 committee. The first report shall be filed no later than March first,
41 two thousand twenty-one. The report must be prepared by an independent
42 third party auditor and include: (a) information regarding the empire
43 state digital gaming production credit program including the efficiency
44 of operations, reliability of financial reporting, compliance with laws
45 and regulations and distribution of assets and funds; (b) an economic
46 impact study prepared by an independent third party of the program with
47 special emphasis on the regional impact by region and the total dollar
48 amount of credits allocated to those projects distributed by region
49 pursuant to subdivision (b) of section forty-four of the tax law; and
50 (c) any other information or statistical information that the commis-
51 sioner of economic development deems to be useful in analyzing the
52 effects of the programs.

53 § 8. This act shall take effect immediately and shall apply to taxable
54 years beginning on January 1, 2018 and before January 1, 2024; provided
55 that sections one through four of this act shall expire and be deemed
56 repealed December 31, 2022.