

# STATE OF NEW YORK

5864

2019-2020 Regular Sessions

## IN SENATE

May 15, 2019

Introduced by Sens. JACKSON, RAMOS, BAILEY, BENJAMIN, BIAGGI, GOUNARDES, KAPLAN, KENNEDY, MAY, MYRIE, PERSAUD, SALAZAR, SANDERS, SEPULVEDA -- 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, in relation to a television writers' and directors' fees and salaries 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 24-b to read  
2 as follows:

3 § 24-b. Television writers' and directors' fees and salaries credit.

4 (a)(1) A taxpayer which is a qualified film production company, or a  
5 qualified independent film production company, or which is a sole  
6 proprietor of or a member of a partnership which is a qualified film  
7 production company or a qualified independent film production company,  
8 and which is subject to tax under articles nine-A or twenty-two of this  
9 chapter, shall be allowed a credit against such tax, pursuant to the  
10 provisions referenced in subdivision (c) of this section, to be computed  
11 as hereinafter provided.

12 (2) The amount of the credit shall be the product (or pro rata share  
13 of the product, in the case of a member of a partnership) of thirty  
14 percent and the qualified television writers' and directors' fees and  
15 salaries costs paid or incurred in the production of a qualified film,  
16 provided that: (i) the credit amount shall not exceed fifty thousand  
17 dollars for qualified television writers' and directors' fees and sala-  
18 ries claimed for such expenses incurred for the employment of any one  
19 specific writer or director for the production of a single television  
20 pilot or a single episode of a television series, and (ii) the credit  
21 amount shall not exceed one hundred fifty thousand dollars for qualified  
22 television writers' and directors' fees and salaries claimed for such  
23 expenses incurred for the employment of any one specific writer or  
24 director. The credit shall be allowed for the taxable year in which the  
25 production of such qualified film is completed.

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

LBD10593-02-9

1 (3) No qualified television writers' and directors' fees and salaries  
2 used by a taxpayer either as the basis for the allowance of the credit  
3 provided for pursuant to this section or used in the calculation of the  
4 credit provided pursuant to this section shall be used by such taxpayer  
5 to claim any other credit allowed pursuant to this chapter.

6 (b) Definitions. As used in this section, the following terms shall  
7 have the following meanings:

8 (1) "Qualified film production company" is a corporation, partnership,  
9 limited partnership, or other entity or individual which or who is prin-  
10 cipally engaged in the production of a qualified film and controls the  
11 qualified film during production.

12 (2) "Qualified independent film production company" is a corporation,  
13 partnership, limited partnership, or other entity or individual, that or  
14 who (i) is principally engaged in the production of a qualified film  
15 with a maximum budget of fifteen million dollars, (ii) controls the  
16 qualified film during production, and (iii) either is not a publicly  
17 traded entity, or no more than five percent of the beneficial ownership  
18 of which is owned, directly or indirectly, by a publicly traded entity.

19 (3) "Qualified film" means a television film, television pilot and/or  
20 each episode of a television series, regardless of the medium by means  
21 of which the film, pilot or episode is created or conveyed.

22 (4) "Qualified television writers' and directors' fees and salaries"  
23 means: (i) salaries or fees paid to a writer or director who receives an  
24 on-air credit; (ii) for a non-credited writer, up to seventy-five thou-  
25 sand dollars in salaries or fees per series of episodes. Provided that  
26 in each case, such writer or director is a minority group member, as  
27 defined in subdivision eight of section three hundred ten of the execu-  
28 tive law, or a woman, and provided, further, that salaries or fees paid  
29 to any writer or director who is a profit participant in the qualified  
30 film shall not be eligible.

31 (5) "Writer" means a person who is: (i) engaged by a qualified film  
32 production company or a qualified independent film production company to  
33 write literary material (including making changes or revisions in liter-  
34 ary material), when the company has the right by contract to direct the  
35 performance of personal services in writing or preparing such material  
36 or in making revisions, modifications or changes therein; or (ii)  
37 engaged by the company and who performs services (at the company's  
38 direction or with its consent) in writing or preparing such literary  
39 material or making revisions, modifications, or changes in such materi-  
40 al; and (iii) who reports to work regularly in a writers room located in  
41 the state.

42 (6) "Literary material" shall be deemed to include stories, adapta-  
43 tions, treatments, original treatments, scenarios, continuities, tele-  
44 plays, screenplays, dialogue, scripts, sketches, plots, outlines, narra-  
45 tive synopses, routines, narrations, and formats.

46 (7) "Writers room" means a room or physical location where writers  
47 employed by a qualified film production company or qualified independent  
48 film production company write or revise literary materials utilized in a  
49 qualified film.

50 (8) "Director" means an individual employed or retained to direct the  
51 production, as the word "direct" is commonly used in the motion picture  
52 industry, and who would be classified as a director under the basic  
53 agreement in place between the Association of Motion Picture and Tele-  
54 vision Producers and the Director's Guild of America and who is a resi-  
55 dent of New York.

1 (9) "Profit participant" is an individual who has negotiated for a  
2 percentage of profits generated by a qualified film. Profit partic-  
3 ipation does not include monies contractually required by collectively  
4 bargained agreements for reuse of a qualified film on different plat-  
5 forms over time.

6 (c) Cross-references. For application of the credit provided for in  
7 this section, see the following provisions of this chapter:

8 (1) article 9-A: section 210-B: subdivision 53.

9 (2) article 22: section 606: subsection (v).

10 (d) Notwithstanding any provision of this chapter, (1) employees and  
11 officers of the department of economic development and the department  
12 shall be allowed and are directed to share and exchange information  
13 regarding the credits applied for, allowed, or claimed pursuant to this  
14 section and taxpayers who are applying for credits or who are claiming  
15 credits, including information contained in or derived from credit claim  
16 forms submitted to the department and applications for certification  
17 submitted to the department of economic development, and (2) the commis-  
18 sioner and the commissioner of the department of economic development  
19 may release the names and addresses of any taxpayer claiming this credit  
20 and the amount of the credit earned by the taxpayer. Provided, however,  
21 if a taxpayer claims this credit because it is a member of a limited  
22 liability company or a partner in a partnership, only the amount of  
23 credit earned by the entity and not the amount of credit claimed by the  
24 taxpayer may be released.

25 (e) Maximum amount of credits. (1) The aggregate amount of tax credits  
26 allowed under this section, subdivision fifty-four of section two  
27 hundred ten-B and subsection (v) of section six hundred six of this  
28 chapter in any calendar year shall be five million dollars. Such aggre-  
29 gate amount of credits shall be allocated by the department of economic  
30 development among taxpayers in order of priority based upon the date of  
31 filing an application for allocation of television writers' and direc-  
32 tors' fees and salaries credit with such department. If the total amount  
33 of allocated credits applied for in any particular year exceeds the  
34 aggregate amount of tax credits allowed for such year under this  
35 section, such excess shall be treated as having been applied for on the  
36 first day of the subsequent year.

37 (2) The commissioner of economic development, after consulting with  
38 the commissioner, shall promulgate regulations by October thirty-first,  
39 two thousand nineteen to establish procedures for the allocation of tax  
40 credits as required by subdivision (a) of this section. Such rules and  
41 regulations shall include provisions describing the application process,  
42 the due dates for such applications, the standards which shall be used  
43 to evaluate the applications, the documentation that will be provided to  
44 taxpayers to substantiate to the department the amount of tax credits  
45 allocated to such taxpayers, and such other provisions as deemed neces-  
46 sary and appropriate. Notwithstanding any other provisions to the  
47 contrary in the state administrative procedure act, such rules and regu-  
48 lations may be adopted on an emergency basis if necessary to meet such  
49 October thirty-first, two thousand nineteen deadline.

50 (f) The department of economic development shall submit to the gover-  
51 nor, the temporary president of the senate, and the speaker of the  
52 assembly, an annual report to be submitted on February first of each  
53 year evaluating the effectiveness of the television writers' and direc-  
54 tors' fees and salaries tax credit provided by this section in stimulat-  
55 ing the growth of diversity in the film industry in the state. Such  
56 report shall include, but need not be limited to, the number of quali-

1 fied film production companies and/or qualified independent film  
 2 production companies which received a television writers' and directors'  
 3 fees and salaries credit, the credit amounts claimed by each qualified  
 4 film production company and/or qualified independent film production  
 5 company, as well as the impact on employment and the economy of the  
 6 state. Such report shall be based on data available from the application  
 7 filed with the department of economic development for allocation of  
 8 television writers' and directors' fees and salaries credits. Notwith-  
 9 standing any provision of law to the contrary, the information contained  
 10 in the report shall be public information. The report may also include  
 11 any recommendations of changes in the calculation or administration of  
 12 the credit, and any other recommendation of the commissioner of the  
 13 department of economic development regarding continuing modification,  
 14 repeal of such act, and such other information regarding the act as the  
 15 commissioner of the department of economic development may feel useful  
 16 and appropriate.

17 § 2. Section 210-B of the tax law is amended by adding a new subdivi-  
 18 sion 54 to read as follows:

19 54. Television writers' and directors' fees and salaries credit. (a)  
 20 Allowance of credit. A taxpayer who is eligible pursuant to section  
 21 twenty-four-b of this chapter shall be allowed a credit to be computed  
 22 as provided in such section against the tax imposed by this article.

23 (b) Application of credit. The credit allowed under this subdivision  
 24 for any taxable year shall not reduce the tax due for such year to less  
 25 than the amount prescribed in paragraph (d) of subdivision one of  
 26 section two hundred ten of this article. Provided, however, that if the  
 27 amount of the credit allowable under this subdivision for any taxable  
 28 year reduces the tax to such amount or if the taxpayer otherwise pays  
 29 tax based on the fixed dollar minimum amount, the excess shall be treat-  
 30 ed as an overpayment of tax to be credited or refunded in accordance  
 31 with the provisions of section one thousand eighty-six of this chapter.  
 32 Provided, further, the provisions of subsection (c) of section one thou-  
 33 sand eighty-eight of this chapter notwithstanding, no interest shall be  
 34 paid thereon.

35 § 3. Section 606 of the tax law is amended by adding a new subsection  
 36 (v) to read as follows:

37 (v) Television writers' and directors' fees and salaries credit. (1)  
 38 Allowance of credit. A taxpayer who is eligible pursuant to section  
 39 twenty-four-b of this chapter shall be allowed a credit to be computed  
 40 as provided in such section against the tax imposed by this article.

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

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

<p>49 <u>(xlv) Television writers'</u>          50 <u>and directors' fees and salaries</u>          51 <u>credit under subsection (v)</u>          52          53</p>	<p><u>Amount of credit for the sum of</u>  <u>qualified television writers' and</u>  <u>directors' salaries credit</u>  <u>under subdivision fifty-four of</u>  <u>section two hundred ten-B</u></p>
---	--

1 § 5. This act shall take effect immediately, and shall apply to taxa-  
2 ble years beginning on or after January 1, 2020.