

STATE OF NEW YORK

5003--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. BARRETT, MAGNARELLI -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 2 of subdivision (a) of section 24 of the tax
2 law, as separately amended by sections 1 and 2 of part M of chapter 59
3 of the laws of 2020, is amended to read as follows:

4 (2) The amount of the credit shall be the product (or pro rata share
5 of the product, in the case of a member of a partnership) of [~~twenty-~~
6 ~~five~~] thirty percent, or thirty-five percent in the case of an eligible
7 relocated television series, and the qualified production costs paid or
8 incurred in the production of a qualified film, provided that: (i) the
9 qualified production costs (excluding post production costs) paid or
10 incurred which are attributable to the use of tangible property or the
11 performance of services at a qualified film production facility in the
12 production of such qualified film equal or exceed seventy-five percent
13 of the production costs (excluding post production costs) paid or
14 incurred which are attributable to the use of tangible property or the
15 performance of services at any film production facility within and with-
16 out the state in the production of such qualified film, and (ii) except
17 with respect to a qualified independent film production company or
18 pilot, at least ten percent of the total principal photography shooting
19 days spent in the production of such qualified film must be spent at a
20 qualified film production facility. However, if the qualified production
21 costs (excluding post production costs) which are attributable to the
22 use of tangible property or the performance of services at a qualified
23 film production facility in the production of such qualified film is
24 less than three million dollars, then the portion of the qualified

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

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1 production costs attributable to the use of tangible property or the
2 performance of services in the production of such qualified film outside
3 of a qualified film production facility shall be allowed only if the
4 shooting days spent in New York outside of a film production facility in
5 the production of such qualified film equal or exceed seventy-five
6 percent of the total shooting days spent within and without New York
7 outside of a film production facility in the production of such quali-
8 fied film. The credit shall be allowed for the taxable year in which the
9 production of such qualified film is completed. However, in the case of
10 a qualified film that receives funds from additional pool 2, no credit
11 shall be claimed before the later of (1) the taxable year the production
12 of the qualified film is complete, or (2) the ~~[first]~~ taxable year
13 ~~[beginning immediately after the]~~ that includes the last day of the
14 allocation year for which the film has been allocated credit by the
15 governor's office for motion picture and television development. If the
16 amount of the credit is at least one million dollars but less than five
17 million dollars, the credit shall be claimed over a two year period
18 beginning in the first taxable year in which the credit may be claimed
19 and in the next succeeding taxable year, with one-half of the amount of
20 credit allowed being claimed in each year. If the amount of the credit
21 is at least five million dollars, the credit shall be claimed over a
22 three year period beginning in the first taxable year in which the cred-
23 it may be claimed and in the next two succeeding taxable years, with
24 one-third of the amount of the credit allowed being claimed in each
25 year.

26 § 2. Paragraph 5 of subdivision (a) of section 24 of the tax law, as
27 amended by section 2 of part M of chapter 59 of the laws of 2022, is
28 amended to read as follows:

29 (5) For the period two thousand fifteen through two thousand ~~[twenty-~~
30 ~~nine]~~ thirty-four, in addition to the amount of credit established in
31 paragraph two of this subdivision, a taxpayer shall be allowed a credit
32 equal to the product (or pro rata share of the product, in the case of a
33 member of a partnership) of ten percent and the ~~[amount of wages or~~
34 ~~salaries paid to individuals directly employed (excluding those employed~~
35 ~~as writers, directors, music directors, producers and performers,~~
36 ~~including background actors with no scripted lines) by a qualified film~~
37 ~~production company or a qualified independent film production company~~
38 ~~for services performed by those individuals]~~ qualified production costs
39 paid or incurred in the production of the qualified film in one of the
40 counties specified in this paragraph in connection with a qualified film
41 with a minimum budget of five hundred thousand dollars. For purposes of
42 this additional credit, the ~~[services must be performed]~~ qualified
43 production costs paid or incurred must be in the production of a quali-
44 fied film in one or more of the following counties: Albany, Allegany,
45 Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton,
46 Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton,
47 Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madi-
48 son, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange,
49 Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady,
50 Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga,
51 Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates. ~~[The~~
52 ~~aggregate amount of tax credits allowed pursuant to the authority of~~
53 ~~this paragraph shall be five million dollars each year during the period~~
54 ~~two thousand fifteen through two thousand twenty-nine of the annual~~
55 ~~allocation made available to the program pursuant to paragraph four of~~
56 ~~subdivision (e) of this section. Such aggregate amount of credits shall~~

~~be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for under this paragraph in any year exceeds the aggregate amount of tax credits allowed for such year under this paragraph, such excess shall be treated as having been applied for on the first day of the next year. If the total amount of allocated tax credits applied for under this paragraph at the conclusion of any year is less than five million dollars, the remainder shall be treated as part of the annual allocation made available to the program pursuant to paragraph four of subdivision (c) of this section. However, in no event may the total of the credits allocated under this paragraph and the credits allocated under paragraph five of subdivision (a) of section thirty-one of this article exceed five million dollars in any year during the period two thousand fifteen through two thousand twenty nine]~~ The total amount of credit established pursuant to the authority of this paragraph and paragraph two of this subdivision shall not exceed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of forty percent and the qualified production costs paid or incurred in the production of the qualified film.

§ 2-a. Paragraph 1 of subdivision (b) of section 24 of the tax law, as amended by section 4 of part B of chapter 59 of the laws of 2013, is amended to read as follows:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film. The aggregate total eligible qualified production costs for producers, writers, directors, actors, and composers shall not exceed forty percent of the aggregate sum total of all other qualified production costs.

§ 3. Paragraph 2 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including ~~music directors~~ composers, producers and performers (other than background actors with no scripted lines) to the extent those wages or salaries or other compensation exceed five hundred thousand dollars per individual. "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

§ 4. Paragraph 8 of subdivision (b) of section 24 of the tax law, as added by section 2 of part B of chapter 59 of the laws of 2013, is amended to read as follows:

(8) "Relocated television production" shall mean, notwithstanding the limitations in subparagraph (i) of paragraph three of this subdivision, a television production that is a talk or variety program that filmed at least ~~[five]~~ two seasons outside the state prior to its first relocated season in New York, the episodes are filmed before a studio audience of

1 two hundred or more, and the relocated television production incurs (i)
2 at least thirty million dollars in annual production costs in the state,
3 or (ii) at least ten million dollars in capital expenditures at a quali-
4 fied production facility in the state.

5 § 5. Subdivision (b) of section 24 of the tax law is amended by adding
6 a new paragraph 9 to read as follows:

7 (9) "Eligible relocated television series" shall mean the first two
8 years of a regularly occurring production intended to run in its initial
9 broadcast, regardless of the medium or mode of its distribution, in a
10 series of narrative and/or thematically related episodes, each of which
11 has a running time of at least thirty minutes in length (inclusive of
12 commercial advertisement and interstitial programming, if any). For the
13 purposes of this definition only, a television series produced by and
14 for media services providers described as streaming services and/or
15 digital platforms (and excluding network/cable) shall mean a regularly
16 occurring production intended to run in its initial release in a series
17 of narrative and/or thematically related episodes, the aggregate length
18 of which is at least seventy-five minutes, although the episodes them-
19 selves may vary in duration from the thirty minutes specified for
20 network/cable production, which had filmed six episodes of the tele-
21 vision series outside the state immediately prior to relocating to the
22 state, where each episode of the television series had a minimum budget
23 of at least one million dollars.

24 § 6. Paragraph 4 of subdivision (e) of section 24 of the tax law, as
25 amended by section 3 of part M of chapter 59 of the laws of 2022, is
26 amended to read as follows:

27 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
28 subdivision (a) of this section shall be increased by an additional four
29 hundred twenty million dollars in each year starting in two thousand ten
30 through two thousand ~~[twenty-nine]~~ twenty-three and seven hundred
31 million dollars each year starting in two thousand twenty-four through
32 two thousand thirty-four, provided however, seven million dollars of the
33 annual allocation shall be available for the empire state film post
34 production credit pursuant to section thirty-one of this article in two
35 thousand thirteen and two thousand fourteen, twenty-five million dollars
36 of the annual allocation shall be available for the empire state film
37 post production credit pursuant to section thirty-one of this article in
38 each year starting in two thousand fifteen through two thousand ~~[twe-~~
39 ~~nty-nine and]~~ twenty-three, and forty-five million dollars of the annual
40 allocation shall be available for the empire state film post production
41 credit pursuant to section thirty-one of this article in each year
42 starting in two thousand twenty-four through two thousand thirty-four.
43 Provided further, five million dollars of the annual allocation shall be
44 made available for the television writers' and directors' fees and sala-
45 ries credit pursuant to section twenty-four-b of this article in each
46 year starting in two thousand twenty through two thousand ~~[twenty-nine]~~
47 thirty-four. This amount shall be allocated by the governor's office for
48 motion picture and television development among taxpayers in accordance
49 with subdivision (a) of this section. If the commissioner of economic
50 development determines that the aggregate amount of tax credits avail-
51 able from additional pool 2 for the empire state film production tax
52 credit have been previously allocated, and determines that the pending
53 applications from eligible applicants for the empire state film post
54 production tax credit pursuant to section thirty-one of this article is
55 insufficient to utilize the balance of unallocated empire state film
56 post production tax credits from such pool, the remainder, after such

pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision twenty of section two hundred ten-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision thirty-two of section two hundred ten-B and subsection (qq) of section six hundred six of this chapter. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

§ 7. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 4 of part M of chapter 59 of the laws of 2022, is amended to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand ~~[twenty-nine]~~ twenty-three and seven hundred million dollars in each year starting in two thousand twenty-four through two thousand thirty-four, provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen ~~[and]~~, twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand ~~[twenty-nine]~~ twenty-three, and forty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand twenty-four through two thousand thirty-four. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such

pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision twenty of section two hundred ten-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision thirty-two of section two hundred ten-B and subsection (qq) of section six hundred six of this chapter. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

§ 8. Paragraph 2 of subdivision (a) of section 31 of the tax law, as amended by section 5 of part M of chapter 59 of the laws of 2020, is amended to read as follows:

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of ~~[twenty-five]~~ thirty percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located within the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law or ~~[thirty]~~ thirty-five percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located elsewhere in the state.

§ 9. Paragraph 6 of subdivision (a) of section 31 of the tax law, as amended by section 6 of part M of chapter 59 of the laws of 2022, is amended to read as follows:

(6) For the period two thousand fifteen through two thousand ~~[twenty-nine]~~ thirty-four, in addition to the amount of credit established in paragraph two of this subdivision, a taxpayer shall be allowed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the ~~[amount of wages or salaries paid to individuals directly employed (excluding those employed as writers, directors, music directors, producers and performers, including background actors with no scripted lines) for services performed by those individuals]~~ qualified post production costs paid in the production of a qualified film with a minimum budget of five thousand dollars at a qualified post production facility located in one of the counties specified in this paragraph ~~[in connection with the post production work on a qualified film with a minimum budget of five hundred thousand dollars at a qualified post production facility in one~~

~~of the counties listed in this paragraph]. For purposes of this addi-~~
~~tional credit, [the services must be performed] the qualified post~~
~~production costs paid must be in the production of a qualified film in~~
one or more of the following counties: Albany, Allegany, Broome, Catta-
raugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cort-
land, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee,
Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison,
Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans,
Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie,
Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins,
Ulster, Warren, Washington, Wayne, Wyoming, or Yates. ~~[The aggregate~~
~~amount of tax credits allowed pursuant to the authority of this para-~~
~~graph shall be five million dollars each year during the period two~~
~~thousand fifteen through two thousand twenty-nine of the annual allo-~~
~~cation made available to the empire state film post production credit~~
~~pursuant to paragraph four of subdivision (e) of section twenty four of~~
~~this article. Such aggregate amount of credits shall be allocated by the~~
~~governor's office for motion picture and television development among~~
~~taxpayers in order of priority based upon the date of filing an applica-~~
~~tion for allocation of post production credit with such office. If the~~
~~total amount of allocated credits applied for under this paragraph in~~
~~any year exceeds the aggregate amount of tax credits allowed for such~~
~~year under this paragraph, such excess shall be treated as having been~~
~~applied for on the first day of the next year. If the total amount of~~
~~allocated tax credits applied for under this paragraph at the conclusion~~
~~of any year is less than five million dollars, the remainder shall be~~
~~treated as part of the annual allocation for two thousand seventeen made~~
~~available to the empire state film post production credit pursuant to~~
~~paragraph four of subdivision (e) of section twenty-four of this arti-~~
~~cle. However, in no event may the total of the credits allocated under~~
~~this paragraph and the credits allocated under paragraph five of subdi-~~
~~vision (a) of section twenty four of this article exceed five million~~
~~dollars in any year during the period two thousand fifteen through two~~
~~thousand twenty-nine.]~~

§ 10. This act shall take effect immediately for new initial applica-
tions received on or after such effective date; provided, however, that
the amendments to paragraph 4 of subdivision (e) of section 24 of the
tax law made by section six of this act shall take effect on the same
date and in the same manner as section 6 of chapter 683 of the laws of
2019, as amended, takes effect.