

STATE OF NEW YORK

7126

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the eligibility criteria for the digital gaming tax credit

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

1 Section 1. Subdivisions (b) and (c) of section 45 of the tax law, as
2 added by section 1 of part 00 of chapter 59 of the laws of 2022, is
3 amended to read as follows:

4 (b) Allocation of credit. The aggregate amount of tax credits allowed
5 under this section, subdivision fifty-five of section two hundred ten-B
6 and subsection (nnn) of section six hundred six of this chapter in any
7 taxable year shall be five million dollars. Such credit shall be allo-
8 cated by the department of economic development in order of priority
9 based upon the date of filing an application for allocation of digital
10 gaming media production credit with such office. An applicant shall
11 submit an annual application which shall include all qualified digital
12 gaming media productions for the taxable year along with an estimate of
13 the digital gaming media production costs. The application shall be
14 submitted no later than the end of the applicable taxable year. If the
15 total amount of allocated credits applied for in any particular year
16 exceeds the aggregate amount of tax credits allowed for such year under
17 this section, such excess shall be treated as having been applied for on
18 the first day of the subsequent taxable year.

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

20 (1) "Qualified digital gaming media production" means: (i) a website,
21 the digital media production costs of which are paid or incurred predo-
22 minately in connection with (A) video simulation, animation, text,
23 audio, graphics or similar gaming related property embodied in digital
24 format, and (B) interactive features of digital gaming (e.g., links,
25 message boards, communities or content manipulation); (ii) video or

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

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1 interactive games produced primarily for distribution over the internet,
2 wireless network or successors thereto; and (iii) animation, simulation
3 or embedded graphics digital gaming related software intended for
4 commercial distribution regardless of medium; provided, however, that
5 the qualified digital game development media productions described in
6 subparagraphs (i) through (iii) of this paragraph must have digital
7 media production costs equal to or in excess of [~~one hundred~~] **fifty**
8 thousand dollars per production. A qualified digital gaming media
9 production does not include a website, video, interactive game or soft-
10 ware that is used predominately for: electronic commerce (retail or
11 wholesale purposes other than the sale of video interactive games),
12 gambling (including activities regulated by a New York gaming agency),
13 or political advocacy purposes.

14 (2) "Digital gaming media production costs" means any costs for wages
15 or salaries paid to individuals, other than actors or writers, directly
16 employed for services performed by those individuals directly and
17 predominantly in the creation of a digital gaming media production or
18 productions. Up to one hundred thousand dollars in wages and salaries
19 paid to such employees, other than actors and writers, directly employed
20 shall be used in the calculation of this credit. Digital gaming media
21 production costs include but shall not be limited to payments for
22 services performed directly and predominantly in the development
23 (including concept creation), design, production (including concept
24 creation), design, production (including testing), editing (including
25 encoding) and compositing (including the integration of digital files
26 for interaction by end users) of digital gaming media. Digital gaming
27 media production costs shall not include expenses incurred for the
28 distribution, marketing, promotion, or advertising content generated by
29 end users, other costs not directly and predominantly related to the
30 creation, production or modification of digital gaming media or costs
31 used by the taxpayer as a basis of the calculation of any other tax
32 credit allowed under this chapter. In addition, salaries or other income
33 distribution related to the creation of digital gaming media for any
34 person who serves in the role of chief executive officer, chief finan-
35 cial officer, president, treasurer or similar position shall not be
36 included as digital gaming media production costs if the digital gaming
37 media production entity has more than ten employees. Salaries or other
38 income to a person serving in such a role for the digital gaming media
39 production entity shall also not be included if the person was employed
40 by a related person of the digital gaming media production entity within
41 sixty months of the date the digital gaming media production entity
42 applied for the tax credit certificate described in subdivision (d) of
43 this section. For purposes of the preceding sentence, a related person
44 shall have the same meaning as the term "related person" in section four
45 hundred sixty-five of the internal revenue code. Furthermore, any income
46 or other distribution to any individual including, but not limited to,
47 licensing or royalty fees, who holds an ownership interest in a digital
48 gaming media production entity, whether or not such individual is serv-
49 ing in the role of chief executive officer, chief financial officer,
50 president, treasurer or similar position for such an entity, shall not
51 be included as digital gaming media production costs. Up to four million
52 dollars in qualified digital gaming media production costs per
53 production shall be used in the calculation of this credit. Digital
54 gaming media production costs shall not include those costs used by the
55 taxpayer or another taxpayer as the basis calculation of any other tax
56 credit allowed under this chapter.

(3) "Qualified digital gaming media production costs" means digital gaming media production costs only to the extent such costs are attributable to the use of property or the performance of services by any persons within the state directly and predominantly in the creation, production or modification of digital gaming related media. [~~Such total production costs incurred and paid in this state shall be equal to or exceed seventy five percent of total cost of an eligible production incurred and paid within and without this state.~~]

(4) "Digital gaming media production entity" means a corporation, partnership, limited partnership or other entity or individual engaged in qualified digital game development media production.

§ 2. This act shall take effect immediately.