

STATE OF NEW YORK

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2025-2026 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. McDONALD, SEAWRIGHT, LUNSFORD, STIRPE, TAYLOR, BRABENEC, SLATER, BLUMENCRANZ, BRONSON, BICHOTTE HERMELYN, DAVILA, SIMPSON -- Multi-Sponsored by -- M. of A. LEVENBERG -- 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:

Section 1. Paragraph 1 of subdivision (a) and subdivision (b) and (c) of section 45 of the tax law, as added by section 1 of part 00 of chapter 59 of the laws of 2022, are amended to read as follows:

(1) A taxpayer which is a digital gaming media production entity engaged in qualified digital gaming media production, or who is a sole proprietor of or a member of a partnership, which is a digital gaming media production entity engaged in qualified digital gaming media production, and is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax to be computed as provided herein for taxable years beginning on or after January first, two thousand twenty-three and before January first, two thousand ~~twenty-eight~~ thirty-two.

(b) Allocation of credit. The aggregate amount of tax credits allowed under this section, subdivision fifty-five of section two hundred ten-B and subsection (nnn) of section six hundred six of this chapter in any taxable year shall be ~~five~~ one hundred million dollars. Such credit shall be allocated by the department of economic development in order of priority based upon the date of filing an application for allocation of digital gaming media production credit with such office. An applicant shall submit an annual application which shall include all qualified digital gaming media productions for the taxable year along with an estimate of the digital gaming media production costs. The application can be submitted no earlier than ninety days prior to the first day of

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

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1 the applicable taxable year. If the total amount of allocated credits
2 applied for in any particular year exceeds the aggregate amount of tax
3 credits allowed for such year under this section, such excess shall be
4 treated as having been applied for on the first day of the subsequent
5 taxable year.

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

7 (1) "Qualified digital gaming media production" means: (i) a website,
8 the digital media production costs of which are paid or incurred predomi-
9 nately in connection with (A) video simulation, animation, text,
10 audio, graphics or similar gaming related property embodied in digital
11 format, and (B) interactive features of digital gaming (e.g., links,
12 message boards, communities or content manipulation); (ii) video or
13 interactive games produced primarily for distribution over the internet,
14 wireless network or successors thereto; and (iii) animation, simulation
15 or embedded graphics digital gaming related software intended for
16 commercial distribution regardless of medium; provided, however, that
17 the qualified digital game development media productions described in
18 subparagraphs (i) through (iii) of this paragraph must have digital
19 media production costs equal to or in excess of ~~[one hundred]~~ fifty
20 thousand dollars per production. A qualified digital gaming media
21 production does not include a website, video, interactive game or soft-
22 ware that is used predominately for: electronic commerce (retail or
23 wholesale purposes other than the sale of video interactive games),
24 gambling (including activities regulated by a New York gaming agency),
25 or political advocacy purposes.

26 (2) "Digital gaming media production costs" means any costs for wages
27 ~~[or salaries]~~ paid to individuals, ~~[other than actors or writers,~~
28 directly employed for services performed by those individuals directly
29 ~~[and predominantly]~~ in the creation of a digital gaming media production
30 or productions. ~~[Up to one hundred thousand dollars in wages and sala-~~
31 ~~ries paid to such employees, other than actors and writers, directly~~
32 ~~employed shall be used in the calculation of this credit.]~~ Digital
33 gaming media production costs include but shall not be limited to
34 payments for services performed directly ~~[and predominantly]~~ in the
35 development (including concept creation), ~~[design,~~ production (includ-
36 ing concept creation), design, production (including testing), editing
37 (including encoding) and compositing (including the integration of
38 digital files for interaction by end users) of digital gaming media.
39 Digital gaming media production costs shall not include expenses
40 incurred for the distribution, marketing, promotion, or advertising
41 content generated by end users, other costs not directly ~~[and predomi-~~
42 ~~nantly]~~ related to the creation, production or modification of digital
43 gaming media or costs used by the taxpayer as a basis of the calculation
44 of any other tax credit allowed under this chapter. In addition, ~~[sala-~~
45 ~~ries or other income distribution]~~ wages related to the creation of
46 digital gaming media for any person who predominately serves in a corpo-
47 rate capacity in the role of chief executive officer, chief financial
48 officer, president, treasurer or similar corporate position and who is
49 not directly engaged in services related to the creation of a digital
50 gaming media production or productions shall not be included as digital
51 gaming media production costs if the digital gaming media production
52 entity has more than ten employees. ~~[Salaries or other income]~~ Wages
53 paid to a person serving in such a role for the digital gaming media
54 production entity shall also not be included if the person was employed
55 by a related person of the digital gaming media production entity within
56 sixty months of the date the digital gaming media production entity

1 applied for the tax credit certificate described in subdivision (d) of
2 this section. For purposes of the preceding sentence, a related person
3 shall have the same meaning as the term "related person" in section four
4 hundred sixty-five of the internal revenue code. ~~[Furthermore, any~~
5 ~~income or other distribution to any individual including, but not limit-~~
6 ~~ed to, licensing or royalty fees, who holds an ownership interest in a~~
7 ~~digital gaming media production entity, whether or not such individual~~
8 ~~is serving in the role of chief executive officer, chief financial offi-~~
9 ~~cer, president, treasurer or similar position for such an entity, shall~~
10 ~~not be included as digital gaming media production costs. Up to four~~
11 ~~million dollars in qualified digital gaming media production costs per~~
12 ~~production shall be used in the calculation of this credit.]~~ Digital
13 gaming media production costs shall not include those costs used by the
14 taxpayer or another taxpayer as the basis calculation of any other tax
15 credit allowed under this chapter.

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

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

27 § 2. Paragraph (a) of subdivision 55 of section 210-b of the tax law,
28 as added by section 2 of part 00 of chapter 59 of the laws of 2022, is
29 amended to read as follows:

30 (a) Allowance of credit. A taxpayer who is eligible pursuant to
31 section forty-five of this chapter shall be allowed a credit to be
32 computed as provided in such section forty-five against the tax imposed
33 by this article. ~~[Under no circumstances may a single taxpayer receive~~
34 ~~more than one million five hundred thousand dollars in tax credits per~~
35 ~~year.]~~

36 § 3. Paragraph 1 of subsection (nnn) of section 606 of the tax law, as
37 added by section 4 of part 00 of chapter 59 of the laws of 2022, is
38 amended to read as follows:

39 (1) Allowance of credit. A taxpayer who is eligible pursuant to
40 section forty-five of this chapter shall be allowed a credit to be
41 computed as provided in such section forty-five against the tax imposed
42 by this article. ~~[Under no circumstances may a single taxpayer receive~~
43 ~~more than one million five hundred thousand dollars in tax credits per~~
44 ~~year.]~~

45 § 4. This act shall take effect immediately and shall apply to taxable
46 years beginning on and after January 1, 2025 and before January 1, 2032.