

# STATE OF NEW YORK

4715

2025-2026 Regular Sessions

## IN SENATE

February 12, 2025

Introduced by Sen. FAHY -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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, are  
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 can be  
14 submitted no earlier than ninety days prior to the first day of the  
15 applicable taxable year. If the total amount of allocated credits  
16 applied for in any particular year exceeds the aggregate amount of tax  
17 credits allowed for such year under this section, such excess shall be  
18 treated as having been applied for on the first day of the subsequent  
19 taxable year.

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

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

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

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

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

1 ~~production shall be used in the calculation of this credit.]~~ Digital  
2 gaming media production costs shall not include those costs used by the  
3 taxpayer or another taxpayer as the basis calculation of any other tax  
4 credit allowed under this chapter.

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

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

16 § 2. This act shall take effect immediately and shall apply to taxable  
17 years beginning on and after January 1, 2025 and before January 1, 2029.