S T A T E O F N E W Y O R K

4309--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. CANESTRARI -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing an empire state digital media production credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 31 to read as follows:

S 31. EMPIRE STATE DIGITAL MEDIA PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. (1) A TAXPAYER WHICH IS A QUALIFIED DIGITAL MEDIA PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIETOR OF A QUALIFIED DIGITAL MEDIA PRODUCTION COMPANY OR WHICH IS A MEMBER OF A PARTNERSHIP THAT IS A QUALIFIED DIGITAL MEDIA PRODUCTION COMPANY, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (C) OF THIS SECTION, TO BE COMPUTED AS PROVIDED IN THIS SECTION.

(2) THE STATE HAS ANNUALLY SEVEN MILLION DOLLARS IN TOTAL TAX CREDITS TO DISBURSE TO ALL QUALIFIED DIGITAL MEDIA COMPANIES. THE SEVEN MILLION DOLLARS IN TOTAL TAX CREDITS SHALL BE ALLOCATED ACCORDING TO SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH:

(I) THE STATE ANNUALLY WILL DISBURSE FOUR MILLION DOLLARS OF THE TOTAL SEVEN MILLION DOLLARS IN TAX CREDITS TO ALL QUALIFIED DIGITAL MEDIA COMPANIES AND 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 PERCENT OF THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF THE QUALIFIED DIGITAL MEDIA CONTENT, PROVIDED THAT THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE

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

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PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED DIGITAL MEDIA CONTENT. TO BE ELIGIBLE FOR SUCH CREDIT, THE TOTAL QUALIFIED DIGITAL MEDIA PRODUCTION COSTS OF A QUALIFIED DIGITAL MEDIA COMPANY MUST BE GREATER IN THE AGGREGATE DURING THE CURRENT CALENDAR YEAR THAN THE AVERAGE OF THE THREE PREVIOUS YEARS FOR WHICH THE CREDIT WAS APPLIED. PROVIDED, HOWEVER, THAT UNTIL A QUALIFIED DIGITAL MEDIA COMPANY HAS ESTABLISHED A THREE YEAR HISTORY, THE CREDIT WILL BE BASED ON EITHER THE PREVIOUS YEAR OR THE AVERAGE OF THE TWO PREVIOUS YEARS, WHICHEVER IS GREATER. IF THE QUALIFIED DIGITAL MEDIA COMPANY HAS NEVER APPLIED FOR THE GROWTH CREDIT, THE PREVIOUS YEAR'S DATA WILL BE USED TO CREATE A BENCHMARK. THE TAX CREDIT SHALL BE APPLIED ONLY TO THE AMOUNT OF THE TOTAL QUALIFIED DIGITAL MEDIA PRODUCTION COSTS OF THE CURRENT CALENDAR YEAR THAT ARE GREATER THAN THE TOTAL AMOUNT OF QUALIFIED DIGITAL MEDIA PRODUCTION COSTS OF THE PRECEDING CALENDAR YEAR. THE TAX CREDIT MUST BE DISTRIBUTED TO QUALIFIED DIGITAL MEDIA COMPANIES ON A PRO RATA BASIS. THE CREDIT SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH THE PRODUCTION OF SUCH QUALIFIED DIGITAL MEDIA CONTENT IS COMPLETED.

(II) THE STATE ANNUALLY WILL DISBURSE ONE AND ONE-HALF MILLION DOLLARS OF THE TOTAL SEVEN MILLION DOLLARS IN TAX CREDITS TO ALL QUALIFIED DIGITAL MEDIA COMPANIES WHO PRODUCE QUALIFIED DIGITAL MEDIA CONTENT WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW. 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 PERCENT OF THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF THE DIGITAL MEDIA CONTENT, PROVIDED THAT THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED DIGITAL MEDIA CONTENT. TO BE ELIGIBLE FOR SUCH CREDIT, THE TOTAL QUALIFIED DIGITAL MEDIA PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST BE GREATER THAN FIFTY THOUSAND DOLLARS IN THE AGGREGATE DURING THE CALENDAR YEAR. SUCH CREDIT WILL BE APPLIED TO QUALIFIED DIGITAL MEDIA PRODUCTION COSTS EXCEEDING FIFTY THOUSAND DOLLARS IN A CALENDAR YEAR.

(III) THE STATE ANNUALLY WILL DISBURSE TWO AND ONE-HALF MILLION DOLLARS OF THE TOTAL SEVEN MILLION DOLLARS IN TAX CREDITS TO ALL QUALIFIED DIGITAL MEDIA COMPANIES WHO PRODUCE QUALIFIED DIGITAL MEDIA CONTENT OUTSIDE OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW. 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 PERCENT OF THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF THE QUALIFIED DIGITAL MEDIA CONTENT, PROVIDED THAT THE QUALIFIED DIGITAL MEDIA PRODUCTION COSTS PAID OR INCURRED ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED DIGITAL MEDIA CONTENT. TO BE ELIGIBLE FOR SUCH CREDIT, THE TOTAL QUALIFIED DIGITAL MEDIA PRODUCTION COSTS OF A QUALIFIED DIGITAL MEDIA COMPANY MUST BE GREATER THAN ONE HUNDRED THOUSAND DOLLARS IN THE AGGREGATE DURING THE CALENDAR YEAR. SUCH CREDIT WILL BE APPLIED TO QUALIFIED DIGITAL MEDIA PRODUCTION COSTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS IN A CALENDAR YEAR.

(3) NO QUALIFIED DIGITAL MEDIA PRODUCTION COSTS USED BY A TAXPAYER EITHER AS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED FOR UNDER

THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS CHAPTER.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "QUALIFIED DIGITAL MEDIA PRODUCTION COSTS" MEANS DIGITAL MEDIA PRODUCTION COSTS ONLY TO THE EXTENT SUCH COSTS ARE ATTRIBUTABLE TO THE USE OF PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE DIRECTLY AND PREDOMINANTLY IN THE PRODUCTION (INCLUDING PRE-PRODUCTION AND POST-PRODUCTION) OF QUALIFIED DIGITAL MEDIA CONTENT.

(2) "DIGITAL MEDIA 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 QUALIFIED DIGITAL MEDIA CONTENT, INCLUDING, BUT NOT LIMITED TO, THE COST OF COMPUTER SOFTWARE AND HARDWARE, DATA PROCESSING, VISUALIZATION TECHNOLOGIES, SOUND SYNCHRONIZATION, EDITING, AND THE RENTAL OF FACILITIES AND EQUIPMENT. "DIGITAL MEDIA PRODUCTION COSTS" SHALL NOT INCLUDE (I) COSTS INCURRED IN MARKETING, PROMOTION OR ADVERTISING DIGITAL MEDIA OR OTHER COSTS NOT DIRECTLY RELATED TO THE PRODUCTION OF DIGITAL MEDIA CONTENT, AND (II) COSTS RELATED TO THE ACQUISITION OR LICENSING OF DIGITAL MEDIA CONTENT BY THE TAXPAYER FOR DISTRIBUTION OR INCORPORATION INTO THE TAXPAYER'S DIGITAL MEDIA CONTENT.

(3) "QUALIFIED DIGITAL MEDIA CONTENT" MEANS ANY DATA OR INFORMATION THAT IS PRODUCED IN DIGITAL FORM, INCLUDING DATA OR INFORMATION CREATED IN ANALOG FORM BUT REFORMATTED IN DIGITAL FORM, TEXT, GRAPHICS, PHOTOGRAPHS, ANIMATION, SOUND AND VIDEO CONTENT. "QUALIFIED DIGITAL MEDIA CONTENT" DOES NOT MEAN CONTENT OFFERINGS GENERATED BY THE END USER (INCLUDING POSTINGS ON ELECTRONIC BULLETIN BOARDS AND CHAT ROOMS); CONTENT OFFERINGS COMPRISED PRIMARILY OF LOCAL NEWS, EVENTS, WEATHER OR LOCAL MARKET REPORTS; PUBLIC SERVICE CONTENT; ELECTRONIC COMMERCE PLATFORMS (SUCH AS RETAIL AND WHOLESALE WEBSITES); WEBSITES OR CONTENT OFFERINGS THAT CONTAIN OBSCENE MATERIAL; WEBSITES OR CONTENT THAT ARE PRODUCED OR MAINTAINED PRIMARILY FOR PRIVATE, INDUSTRIAL, CORPORATE OR INSTITUTIONAL PURPOSES; OR DIGITAL MEDIA CONTENT ACQUIRED OR LICENSED BY THE TAXPAYER FOR DISTRIBUTION OR INCORPORATION INTO THE TAXPAYER'S DIGITAL MEDIA CONTENT.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 41.

(2) ARTICLE 22: SECTION 606: SUBSECTION (QQ).

S 2. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. EMPIRE STATE DIGITAL MEDIA PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS ELIGIBLE PURSUANT TO THE PROVISIONS OF SECTION THIRTY-ONE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION THIRTY-ONE OF THIS CHAPTER AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE

BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxi) to read as follows:

(XXXI) EMPIRE STATE DIGITAL MEDIA PRODUCTION CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT FOR QUALIFIED PRODUCTION COSTS IN PRODUCTION OF QUALIFIED DIGITAL MEDIA CONTENT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) EMPIRE STATE DIGITAL MEDIA PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS ELIGIBLE PURSUANT TO SECTION THIRTY-ONE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION THIRTY-ONE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. THE BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 5. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2010 with respect to qualified digital media production costs paid or incurred on or after such date, regardless of whether the production of the qualified digital media content commenced before such date.