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

8018

2009-2010 Regular Sessions

I N A S S E M B L Y

May 1, 2009

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

AN ACT to amend the tax law, in relation to the commercial production credit

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

Section 1. Subparagraph (i) of paragraph 2 of subdivision (a) of section 28 of the tax law, as amended by chapter 300 of the laws of 2007, is amended to read as follows:

(i) The state annually will disburse three million of the total seven million in tax credits to all eligible production 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 production costs paid or incurred in the production of a qualified commercial, provided that the qualified 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 commercial. To be eligible for said credit the total qualified production costs of a qualified production 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 production 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] PERIOD IS LONGER FOR THE QUALIFIED PRODUCTION COMPANY SEEKING THE CREDIT. If the qualified production company has never applied for the growth credit, the previous [years] YEAR'S data will be used to create a benchmark. The tax credit shall be applied only to the amount of the total qualified production costs of the [current] TAXABLE calendar year that are greater than the total amount of production costs of the [preceding calendar year] APPROPRIATE MEASUREMENT PERIOD AS DESCRIBED IN THIS SUBPARAGRAPH.

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

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The tax credit must be distributed to eligible production companies on a pro rata basis, provided, however, that no such qualified production company shall receive more than three hundred thousand dollars annually for such credit. The credit shall be allowed for the taxable year in which the production of such qualified commercial is completed.

S 2. Paragraph 2 of subdivision (b) of section 28 of the tax law, as amended by chapter 440 of the laws of 2006, 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 commercial. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified commercial and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines who are employed by a qualified company and musicians). "Production costs" generally include technical and crew production costs, such as expenditures for commercial production facilities and/or location costs, or any part thereof, film, audiotape, videotape or digital medium, props, makeup, wardrobe, commercial processing, camera, sound recording, scoring, set construction, lighting, shooting, editing and meals. For purposes of this section, "post production costs" include the production of original content for a qualified commercial employing techniques traditionally used in post-production for visual effects, graphic design, animation, and musical composition. HOWEVER, WHERE THE COMMERCIAL CONSISTS IN ITS ENTIRETY OF TECHNIQUES SUCH AS VISUAL EFFECTS, GRAPHIC DESIGN, OR ANIMATION, SUCH COSTS INCURRED IN THE PRODUCTION OF THE COMMERCIAL, WHEN OCCURRING IN NEW YORK, SHALL BE DEEMED QUALIFIED PRODUCTION COSTS FOR THE PURPOSES OF THIS SECTION. Provided FURTHER, however, that "post production costs" shall not include the editing of previously produced content for a qualified commercial.

S 3. This act shall take effect immediately, provided, however, that the amendments to section 28 of the tax law made by sections one and two of this act shall not affect the expiration of such section and shall be deemed to expire therewith.