STATE OF NEW YORK

9060

2009-2010 Regular Sessions

IN ASSEMBLY

June 23, 2009

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

AN ACT to amend the tax law, in relation to removing the cap on the aggregate amount of tax credits allowed pursuant to the empire state film production credit; and to amend chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, in relation to aggregate amounts of tax credits

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

Section 1. Subdivision (b) of section 24 of the tax law is amended by adding a new paragraph 7 to read as follows:

(7) "QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY" IS AN INDIVIDUAL, OR A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP, OR OTHER ENTITY THAT IS NOT PUBLICLY TRADED, AND PUBLICLY TRADED COMPANIES DO NOT OWN, DIRECTLY OR INDIRECTLY, MORE THAN FIVE PERCENT OF THE QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY AND THE ENTITY OR INDIVIDUAL IS PRINCIPALLY ENGAGED IN THE PRODUCTION OF A QUALIFIED FILM AND CONTROLS THE QUALIFIED FILM DURING PRODUCTION.

S 2. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 1 of part Y-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(2) (I) 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 thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the perform-

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

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ance of services at any film production facility within and without the state in the production of such qualified film. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(II) If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the taxable year in which the production of the qualified film is completed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the taxable year in which the production of the qualified film is completed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year. PROVIDED, HOWEVER, THAT THE LIMITATIONS ON CLAIMING IMPOSED BY THIS SUBPARAGRAPH SHALL NOT APPLY TO CREDITS CLAIMED PURSUANT TO SUBDIVISION (E) OF SECTION TWO OF PART Y-1 OF CHAPTER FIFTY-SEVEN OF THE LAWS OF TWO THOUSAND NINE.

S 3. Section 7 of part P of chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, is amended by adding a new subdivision (e) to read as follows:

(E) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED IN SUBDIVISION (A) OF THIS SECTION SHALL BE INCREASED BY $420 MILLION A YEAR IN EACH YEAR 2011, 2012, 2013, 2014 AND 2015. THIS ADDITIONAL AMOUNT SHALL BE ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT AMONG TAXPAYERS IN ACCORDANCE WITH SUBDIVISION (A) OF THIS SECTION BUT ONLY AFTER THE CREDITS IN SUBDIVISION (D) OF THIS SECTION HAVE BEEN ALLOCATED. A TAXPAYER ALLOCATED CREDITS FROM THE AMOUNTS AUTHORIZED UNDER THIS SUBDIVISION SHALL NOT CLAIM SUCH CREDITS AGAINST THE TAX UNDER ARTICLES NINE-A OR TWENTY-TWO OF THE TAX LAW BEFORE TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011, PROVIDED HOWEVER THAT NOTWITHSTANDING THE AMOUNT OF TAX CREDITS ALLOCATED, THE AGGREGATE AMOUNT OF SUCH TAX CREDITS PAID TO TAXPAYERS SHALL NOT EXCEED $420 MILLION IN ANY YEAR, WITH ANY AMOUNT OF CREDITS IN EXCESS OF SUCH $420 MILLION AMOUNT TO BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR AND THUS THE FIRST TO BE PAID. NOTWITHSTANDING THE FOREGOING, A TAXPAYER WHICH IS A QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY, AS DEFINED IN SECTION 24 OF THE TAX LAW, WHICH IS ALLOCATED CREDITS IN AN AMOUNT NOT EXCEEDING $3 MILLION PER QUALIFIED FILM FROM THE AMOUNTS AUTHORIZED UNDER THIS SUBDIVISION, MAY CLAIM SUCH CREDITS FOR THE TAXABLE YEAR IN WHICH THE PRODUCTION OF SUCH QUALIFIED FILM IS COMPLETED. THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT SHALL PROMULGATE REGULATIONS NOT LATER THAN OCTOBER 31, 2009, ESTABLISHING PROCEDURES FOR THE CLAIMING OF TAX CREDITS AS PROVIDED BY THIS SUBDIVISION.

S 4. This act shall take effect immediately; provided however that the amendments to section 24 of the tax law made by sections one and two of this act shall not affect the repeal of such section and shall be deemed repealed therewith; and provided further, that the amendments to section 7 of part P of chapter 60 of the laws of 2004 made by section three of this act shall not affect the repeal of such part and shall be deemed repealed therewith.