

4202

2009-2010 Regular Sessions

I N S E N A T E

April 16, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

1 Section 1. Subparagraph (i) of paragraph 2 of subdivision (a) of
2 section 28 of the tax law, as amended by chapter 300 of the laws of
3 2007, is amended to read as follows:
4 (i) The state annually will disburse three million of the total seven
5 million in tax credits to all eligible production companies and the
6 amount of the credit shall be the product (or pro rata share of the
7 product, in the case of a member of a partnership) of twenty percent of
8 the qualified production costs paid or incurred in the production of a
9 qualified commercial, provided that the qualified production costs paid
10 or incurred are attributable to the use of tangible property or the
11 performance of services within the state in the production of such qual-
12 ified commercial. To be eligible for said credit the total qualified
13 production costs of a qualified production company must be greater in
14 the aggregate during the current calendar year than the average of the
15 three previous years for which the credit was applied. Provided, howev-
16 er, that until a qualified production company has established a three
17 year history, the credit will be based on either the previous year or
18 the average of the two previous years, whichever [is greater] PERIOD IS
19 LONGER FOR THE QUALIFIED PRODUCTION COMPANY SEEKING THE CREDIT. If the
20 qualified production company has never applied for the growth credit,
21 the previous [years] YEAR'S data will be used to create a benchmark. The
22 tax credit shall be applied only to the amount of the total qualified
23 production costs of the [current] TAXABLE calendar year that are greater
24 than the total amount of production costs of the [preceding calendar

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

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1 year] APPROPRIATE MEASUREMENT PERIOD AS DESCRIBED IN THIS SUBPARAGRAPH.
2 The tax credit must be distributed to eligible production companies on a
3 pro rata basis, provided, however, that no such qualified production
4 company shall receive more than three hundred thousand dollars annually
5 for such credit. The credit shall be allowed for the taxable year in
6 which the production of such qualified commercial is completed.

7 S 2. Paragraph 2 of subdivision (b) of section 28 of the tax law, as
8 amended by chapter 440 of the laws of 2006, is amended to read as
9 follows:

10 (2) "Production costs" means any costs for tangible property used and
11 services performed directly and predominantly in the production (includ-
12 ing pre-production and post-production) of a qualified commercial.
13 "Production costs" shall not include (i) costs for a story, script or
14 scenario to be used for a qualified commercial and (ii) wages or sala-
15 ries or other compensation for writers, directors, including music
16 directors, producers and performers (other than background actors with
17 no scripted lines who are employed by a qualified company and musi-
18 cians). "Production costs" generally include technical and crew
19 production costs, such as expenditures for commercial production facili-
20 ties and/or location costs, or any part thereof, film, audiotape, vide-
21 otape or digital medium, props, makeup, wardrobe, commercial processing,
22 camera, sound recording, scoring, set construction, lighting, shooting,
23 editing and meals. For purposes of this section, "post production costs"
24 include the production of original content for a qualified commercial
25 employing techniques traditionally used in post-production for visual
26 effects, graphic design, animation, and musical composition. HOWEVER,
27 WHERE THE COMMERCIAL CONSISTS IN ITS ENTIRETY OF TECHNIQUES SUCH AS
28 VISUAL EFFECTS, GRAPHIC DESIGN, OR ANIMATION, SUCH COSTS INCURRED IN THE
29 PRODUCTION OF THE COMMERCIAL, WHEN OCCURRING IN NEW YORK, SHALL BE
30 DEEMED QUALIFIED PRODUCTION COSTS FOR THE PURPOSES OF THIS SECTION.
31 Provided FURTHER, however, that "post production costs" shall not
32 include the editing of previously produced content for a qualified
33 commercial.

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