

4943

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the tax law, in relation to an empire state film post production tax credit and to amend the state finance law, in relation to establishing the New York state post production internship education and development program fund; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The tax law is amended by adding a new section 30 to read
2 as follows:

3 S 30. EMPIRE STATE FILM POST PRODUCTION CREDIT. (A) ALLOWANCE OF CRED-
4 IT. (1) A TAXPAYER WHICH IS A FILM PRODUCTION COMPANY OR A QUALIFIED
5 FILM PRODUCTION COMPANY, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE
6 NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST
7 SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (C) OF
8 THIS SECTION TO BE COMPUTED AS PROVIDED IN THIS SUBDIVISION.

9 (2) (I) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA
10 SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF TEN
11 PERCENT AND THE QUALIFIED POST PRODUCTION COSTS PAID IN THE PRODUCTION
12 OF A QUALIFIED FILM AT A QUALIFIED POST PRODUCTION FACILITY.

13 (II) IF A TAXPAYER IS ELIGIBLE FOR THE FILM PRODUCTION CREDIT PURSUANT
14 TO SECTION TWENTY-FOUR OF THIS ARTICLE, AND THE POST PRODUCTION COSTS
15 OTHERWISE MEET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH,
16 THE AMOUNT OF THE POST PRODUCTION CREDIT ALLOWED SUCH TAXPAYER SHALL BE
17 ENHANCED BY AN ADDITIONAL FIVE PERCENT WITH RESPECT TO SUCH QUALIFIED
18 POST PRODUCTION COSTS.

19 (3) A TAXPAYER SHALL NOT BE ELIGIBLE FOR THE CREDIT ESTABLISHED BY
20 THIS SECTION UNLESS THE QUALIFIED POST PRODUCTION COSTS AT A QUALIFIED
21 POST PRODUCTION FACILITY MEET OR EXCEED SEVENTY-FIVE PERCENT OF THE

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

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1 TOTAL POST PRODUCTION COSTS PAID OR INCURRED IN THE POST PRODUCTION OF
2 THE QUALIFIED FILM AT ANY POST PRODUCTION FACILITY. THE CREDIT SHALL BE
3 ALLOWED FOR THE TAXABLE YEAR IN WHICH THE PRODUCTION OF SUCH QUALIFIED
4 FILM IS COMPLETED.

5 (4) NO QUALIFIED POST PRODUCTION COSTS USED BY A TAXPAYER EITHER AS
6 THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS
7 SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED FOR UNDER THIS
8 SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED
9 PURSUANT TO THIS CHAPTER.

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

12 (1) "QUALIFIED FILM PRODUCTION COMPANY" AND "QUALIFIED FILM" SHALL
13 HAVE THE SAME MEANING AS ARE ASCRIBED TO SUCH TERMS BY SECTION
14 TWENTY-FOUR OF THIS ARTICLE.

15 (2) "FILM PRODUCTION COMPANY" IS A CORPORATION, PARTNERSHIP, LIMITED
16 PARTNERSHIP, OR OTHER ENTITY OR INDIVIDUAL WHICH OR WHO IS PRINCIPALLY
17 ENGAGED IN THE PRODUCTION OF A QUALIFIED FILM AND CONTROLS THE QUALIFIED
18 FILM DURING PRODUCTION.

19 (3) "POST PRODUCTION COSTS" MEANS PRODUCTION OF ORIGINAL CONTENT FOR A
20 QUALIFIED FILM EMPLOYING TRADITIONAL, EMERGING AND NEW WORKFLOW TECH-
21 NIQUES USED IN POST-PRODUCTION FOR PICTURE, SOUND AND MUSIC EDITORIAL,
22 RERECORDING AND MIXING, VISUAL EFFECTS, GRAPHIC DESIGN, ORIGINAL SCOR-
23 ING, ANIMATION, AND MUSICAL COMPOSITION; BUT SHALL NOT INCLUDE THE
24 EDITING OF PREVIOUSLY PRODUCED CONTENT FOR A QUALIFIED FILM.

25 (4) "POST PRODUCTION FACILITY" MEANS A BUILDING AND/OR COMPLEX OF
26 BUILDINGS AND THEIR IMPROVEMENTS ON WHICH FILM ARE INTENDED TO BE POST
27 PRODUCED.

28 (5) "QUALIFIED POST PRODUCTION FACILITY" MEANS A POST PRODUCTION
29 FACILITY LOCATED IN THE STATE, ENGAGED IN FINISHING A QUALIFIED FILM.

30 (C) WITHHOLDING OF PORTION OF CREDIT. NOTWITHSTANDING ANY OTHER
31 PROVISION OF LAW TO THE CONTRARY, THE AMOUNT SHALL WITHHOLD FROM ANY
32 CREDIT ALLOWED A TAXPAYER PURSUANT TO THIS SECTION, AN AMOUNT EQUAL TO
33 SEVEN PERCENT OF SUCH CREDIT CLAIMED BY THE TAXPAYER. ALL MONIES WITH-
34 HELD PURSUANT TO THIS SUBDIVISION SHALL BE CREDITED AND PAID INTO THE
35 NEW YORK STATE POST PRODUCTION INTERNSHIP EDUCATION AND DEVELOPMENT
36 PROGRAM FUND ESTABLISHED BY SECTION NINETY-ONE-H OF THE STATE FINANCE
37 LAW.

38 (D) LIMITATION ON CREDIT. (1) THE AGGREGATE AMOUNT OF TAX CREDITS
39 AUTHORIZED PURSUANT TO THIS SECTION SHALL NOT EXCEED SEVEN MILLION
40 DOLLARS IN EACH OF TWO THOUSAND NINE, TWO THOUSAND TEN AND TWO THOUSAND
41 ELEVEN TAXABLE YEARS.

42 (2) THE AGGREGATE AMOUNT OF TAX CREDITS EACH TAXABLE YEAR SHALL BE
43 ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION
44 DEVELOPMENT AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF
45 FILING AN APPLICATION WITH SUCH OFFICE FOR ALLOCATION OF A FILM POST
46 PRODUCTION CREDIT. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR
47 DURING ANY TAXABLE YEAR EXCEEDS THE AGGREGATE AMOUNT THEREOF AUTHORIZED
48 BY PARAGRAPH ONE OF THIS SUBDIVISION, SUCH EXCESS SHALL BE DEEMED TO
49 HAVE BEEN APPLIED FOR ON THE FIRST DAY OF THE IMMEDIATELY SUBSEQUENT
50 TAXABLE YEAR.

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

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

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

55 S 2. Section 210 of the tax law is amended by adding a new subdivision
56 41 to read as follows:

1 41. EMPIRE STATE FILM POST PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT.
 2 A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION THIRTY OF THIS CHAPTER
 3 SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION
 4 THIRTY AGAINST THE TAX IMPOSED BY THIS ARTICLE.

5 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
 6 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
 7 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
 8 SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE
 9 UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
 10 AMOUNT, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT
 11 OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF
 12 SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE
 13 PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF
 14 THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE
 15 BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY
 16 BE A CARRY OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE
 17 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF
 18 THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE
 19 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
 20 ANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS
 21 CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION
 22 ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST
 23 SHALL BE PAID THEREON.

24 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 25 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of
 26 the laws of 2008, is amended to read as follows:

27 (B) shall be treated as the owner of a new business with respect to
 28 such share if the corporation qualifies as a new business pursuant to
 29 paragraph (j) of subdivision twelve of section two hundred ten of this
 30 chapter.

31 The corporation's credit base under
 32 section two hundred ten or section
 33 With respect to the following fourteen hundred fifty-six of this
 34 credit under this section: chapter is:

35 Investment tax credit Investment credit base
 36 under subsection (a) or qualified
 37 rehabilitation
 38 expenditures under
 39 subdivision twelve of
 40 section two hundred ten

41 Empire zone Cost or other basis
 42 investment tax credit under subdivision
 43 under subsection (j) twelve-B
 44 of section two hundred
 45 ten

46 Empire zone Eligible wages under
 47 wage tax credit subdivision nineteen of
 48 under subsection (k) section two hundred ten
 49 or subsection (e) of
 50 section fourteen hundred
 51 fifty-six

1	Empire zone	Qualified investments
2	capital tax credit	and contributions under
3	under subsection (l)	subdivision twenty of
4		section two hundred ten
5		or subsection (d) of
6		section fourteen hundred
7		fifty-six
8	Agricultural property tax	Allowable school
9	credit under subsection (n)	district property taxes under
10		subdivision twenty-two of
11		section two hundred ten
12	Credit for employment	Qualified first-year wages or
13	of persons with dis-	qualified second-year wages
14	abilities under	under subdivision
15	subsection (o)	twenty-three of section
16		two hundred ten
17		or subsection (f)
18		of section fourteen
19		hundred fifty-six
20	Employment incentive	Applicable investment credit
21	credit under subsec-	base under subdivision
22	tion (a-1)	twelve-D of section two
23		hundred ten
24	Empire zone	Applicable investment
25	employment	credit under sub-
26	incentive credit under	division twelve-C
27	subsection (j-1)	of section two hundred ten
28	Alternative fuels credit	Cost under subdivision
29	under subsection (p)	twenty-four of section two
30		hundred ten
31	Qualified emerging	Applicable credit base
32	technology company	under subdivision twelve-E
33	employment credit	of section two hundred ten
34	under subsection (q)	
35	Qualified emerging	Qualified investments under
36	technology company	subdivision twelve-F of
37	capital tax credit	section two hundred ten
38	under subsection (r)	
39	Credit for purchase of an	Cost of an automated
40	automated external defibrillator	external defibrillator under
41	under subsection (s)	subdivision twenty-five of
42		section two hundred ten
43		or subsection (j) of section
44		fourteen hundred fifty-six
45	Low-income housing	Credit amount under
46	credit under subsection (x)	subdivision thirty
47		of section two hundred ten or

1		subsection (l) of section
2		fourteen hundred fifty-six
3	Credit for transportation	Amount of credit under sub-
4	improvement contributions	division thirty-two of section
5	under subsection (z)	two hundred ten or subsection
6		(n) of section fourteen
7		hundred fifty-six
8	QEZE credit for real property	Amount of credit under
9	taxes under subsection (bb)	subdivision twenty-seven of
10		section two hundred ten or
11		subsection (o) of section
12		fourteen hundred fifty-six
13	QEZE tax reduction credit	Amount of benefit period
14	under subsection (cc)	factor, employment increase factor
15		and zone allocation
16		factor (without regard
17		to pro ration) under
18		subdivision twenty-eight of
19		section two hundred ten or
20		subsection (p) of section
21		fourteen hundred fifty-six
22		and amount of tax factor
23		as determined under
24		subdivision (f) of section sixteen
25	Green building credit	Amount of green building credit
26	under subsection (y)	under subdivision thirty-one
27		of section two hundred ten
28		or subsection (m) of section
29		fourteen hundred fifty-six
30	Credit for long-term	Qualified costs under
31	care insurance premiums	subdivision twenty-five-a of
32	under subsection (aa)	section two hundred ten
33		or subsection (k) of section
34		fourteen hundred fifty-six
35	Brownfield redevelopment	Amount of credit
36	credit under subsection	under subdivision
37	(dd)	thirty-three of section
38		two hundred ten
39		or subsection (q) of
40		section fourteen hundred
41		fifty-six
42	Remediated brownfield	Amount of credit under
43	credit for real property	subdivision thirty-four
44	taxes for qualified	of section two hundred
45	sites under subsection	ten or subsection (r) of
46	(ee)	section fourteen hundred
47		fifty-six

1	Environmental	Amount of credit under
2	remediation	subdivision thirty-five of
3	insurance credit under	section two hundred
4	subsection (ff)	ten or subsection
5		(s) of section
6		fourteen hundred
7		fifty-six
8	Empire state film production	Amount of credit for qualified
9	credit under subsection (gg)	production costs in production
10		of a qualified film under
11		subdivision thirty-six of
12		section two hundred ten
13	Qualified emerging	Qualifying expenditures and
14	technology company facilities,	development activities under
15	operations and training credit	subdivision twelve-G of section
16	under subsection (nn)	two hundred ten
17	Security training tax	Amount of credit
18	credit under	under subdivision thirty-seven
19	subsection (ii)	of section two hundred ten or
20		under subsection (t) of
21		section fourteen hundred fifty-six
22	Credit for qualified fuel	Amount of credit under
23	cell electric generating equipment	subdivision thirty-seven
24	expenditures under subsection (g-2)	of section two hundred ten
25		or subsection (t) of
26		section fourteen hundred
27		fifty-six
28	Empire state commercial production	Amount of credit for qualified
29	credit under subsection (jj)	production costs in production
30		of a qualified commercial under
31		subdivision thirty-eight of sec-
32		tion two hundred ten
33	Biofuel production	Amount of credit
34	tax credit under	under subdivision
35	subsection (jj)	thirty-eight of
36		section two hundred ten
37	Clean heating fuel credit	Amount of credit under
38	under subsection (mm)	subdivision thirty-nine of
39		section two hundred ten
40	Credit for rehabilitation	Amount of credit under
41	of historic properties	subdivision forty of
42	under subsection (oo)	[subsection] SECTION
43		two hundred ten
44	Credit for companies who	Amount of credit under
45	provide transportation	subdivision forty of
46	to individuals	section two hundred ten

1 with disabilities
2 under subsection (oo)

3	EMPIRE STATE FILM	AMOUNT OF CREDIT FOR
4	POST PRODUCTION	QUALIFIED POST PRODUCTION
5	CREDIT UNDER	COSTS OF A QUALIFIED FILM
6	SUBSECTION (QQ)	UNDER SUBDIVISION FORTY-ONE OF
7		SECTION TWO HUNDRED TEN

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

10 (QQ) EMPIRE STATE FILM POST PRODUCTION CREDIT. (1) ALLOWANCE OF CRED-
11 IT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION THIRTY OF THIS CHAP-
12 TER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION
13 THIRTY AGAINST THE TAX IMPOSED BY THIS ARTICLE.

14 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER
15 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH
16 YEAR, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF
17 TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF
18 SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE
19 PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF
20 THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE
21 BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY
22 BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE
23 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF
24 THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE
25 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
26 ANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS
27 CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION
28 ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST
29 SHALL BE PAID THEREON.

30 S 5. The state finance law is amended by adding a new section 91-h to
31 read as follows:

32 S 91-H. NEW YORK STATE POST PRODUCTION INTERNSHIP EDUCATION AND DEVEL-
33 OPMENT PROGRAM FUND. 1. THERE IS HEREBY ESTABLISHED, IN THE JOINT CUSTO-
34 DY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A
35 SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE POST PRODUCTION INTERN-
36 SHIP EDUCATION AND DEVELOPMENT PROGRAM FUND".

37 2. SUCH FUND SHALL CONSIST OF ALL REVENUE CREDITED THERETO PURSUANT TO
38 SUBDIVISION (C) OF SECTION THIRTY OF THE TAX LAW, AND ALL OTHER MONEYS
39 APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR
40 SOURCE PURSUANT TO LAW. NOTHING IN THIS SECTION SHALL BE DEEMED TO
41 PREVENT THE STATE FROM RECEIVING GRANTS, GIFTS OR BEQUESTS FOR THE
42 PURPOSES OF THE FUND AS DEFINED IN THIS SECTION AND DEPOSITING THEM INTO
43 THE FUND ACCORDING TO LAW.

44 3. THE MONIES IN THE FUND, UPON APPROPRIATION SHALL ONLY BE EXPENDED
45 FOR THE PAYMENT OF TUITION ON BEHALF OF QUALIFIED INTERNS PARTICIPATING
46 IN POST PRODUCTION INTERNSHIPS WITH POST PRODUCTION COMPANIES. MONIES
47 SHALL BE PAYABLE FROM THE FUND FOR SUCH PURPOSE ON THE AUDIT AND WARRANT
48 OF THE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE COMMISSION-
49 ER OF EDUCATION.

50 4. FOR THE PURPOSES FOR THIS SECTION, "POST PRODUCTION INTERNSHIP"
51 MEANS AN INTERNSHIP IN A QUALIFIED POST PRODUCTION FACILITY, AS DEFINED
52 IN SECTION THIRTY OF THE TAX LAW THAT HAS BEEN APPROVED BY THE CHANCEL-
53 LOR OF THE STATE UNIVERSITY OF NEW YORK, THE BOARD OF TRUSTEES OF THE
54 CITY UNIVERSITY OF NEW YORK, OR THE CHIEF ADMINISTRATIVE OFFICER OF ANY
55 PRIVATE COLLEGE OR UNIVERSITY FOR THE PURPOSE OF PROVIDING PRODUCTION

1 EXPERIENCE AND SKILL DEVELOPMENT. NO SUCH INTERNSHIP SHALL BE ELIGIBLE
2 FOR TUITION COST REIMBURSEMENT UNLESS IT GRANTS ACADEMIC CREDIT TO
3 PARTICIPATING STUDENTS.

4 S 6. This act shall take effect immediately and shall apply to taxable
5 years beginning on or after January 1, 2010; provided, however that the
6 empire state film production credit under subsection (gg), the empire
7 state commercial production credit under subsection (jj) and the credit
8 for companies who provide transportation to individuals with disabili-
9 ties under subsection (oo) of section 606 of the tax law contained in
10 section three of this act shall expire on the same date as provided in
11 section 9 of part P of chapter 60 of the laws of 2004, as amended,
12 section 10 of part V of chapter 62 of the laws of 2006, as amended and
13 section 5 of chapter 522 of the laws of 2006, as amended, respectively;
14 and provided further that the provisions of this act shall expire and be
15 deemed repealed on the same date as section 9 of part P of chapter 60 of
16 the laws of 2004, as amended.