

5674

2009-2010 Regular Sessions

I N S E N A T E

May 27, 2009

Introduced by Sen. SCHNEIDERMAN -- 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 and part P of chapter 60 of the laws of 2004
amending the tax law relating to providing tax credits for certain
costs incurred in film and television productions, in relation to the
allocation of such credit against taxes for certain film production
costs issued by a city having a population of one million or more

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

1 Section 1. Subdivision (b) of section 1201-a of the tax law, as
2 amended by section 5 of part Y of chapter 62 of the laws of 2006, is
3 amended to read as follows:
4 (b) Empire state film production credit. Any city in this state having
5 a population of one million or more, acting through its local legisla-
6 tive body, is hereby authorized to adopt and amend local laws to allow a
7 credit against the general corporation tax and the unincorporated busi-
8 ness tax imposed pursuant to the authority of chapter seven hundred
9 seventy-two of the laws of nineteen hundred sixty-six which shall be
10 substantially identical to the credit allowed under section twenty-four
11 of this chapter, except that:
12 (A) (I) the percentage of qualified production costs used to calculate
13 such credit shall be [five] FOUR percent,
14 (II) FOR A TELEVISION SERIES WITH RESPECT TO WHICH A CREDIT HAS BEEN
15 ALLOWED (1) IN THREE TAXABLE YEARS, THE AMOUNT OF THE CREDIT SHALL BE
16 THREE PERCENT, (2) IN FOUR TAXABLE YEARS, THE AMOUNT OF THE CREDIT SHALL
17 BE TWO PERCENT, AND
18 (III) NO CREDIT SHALL BE ALLOWED WITH RESPECT TO A TELEVISION SERIES
19 FOR WHICH A CREDIT HAS BEEN ALLOWED IN FIVE TAXABLE YEARS;
20 (B) SUCH CREDIT SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS
21 PER QUALIFIED FILM OR EPISODE OF A QUALIFIED TELEVISION SERIES WITH

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

LBD14022-01-9

1 RESPECT TO QUALIFIED PRODUCTION COSTS; PROVIDED, HOWEVER, THAT IF THE
2 QUALIFIED POST PRODUCTION COSTS PAID OR INCURRED WHICH ARE ATTRIBUTABLE
3 TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES AT A FILM
4 POST PRODUCTION FACILITY WITHIN THE CITY OF NEW YORK IN THE PRODUCTION
5 OF SUCH QUALIFIED FILM EQUAL OR EXCEED SEVENTY-FIVE PERCENT OF ALL THE
6 POST PRODUCTION COSTS PAID OR INCURRED WHICH ARE ATTRIBUTABLE TO THE USE
7 OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES AT ANY FILM POST
8 PRODUCTION FACILITY WITHIN AND WITHOUT THE CITY IN THE PRODUCTION OF
9 SUCH QUALIFIED FILM, THEN THE AGGREGATE ANNUAL MAXIMUM ALLOWED CREDIT
10 SHALL BE THREE HUNDRED THOUSAND DOLLARS,

11 [(B)] (C) whenever such section twenty-four references the state, such
12 words shall be read as referencing the city,

13 [(C)] (D) such credit shall be allowed only to a taxpayer which is a
14 qualified film production company, [and];

15 [(D)] (E) the effective date of such credit shall be July first, two
16 thousand six. Such credit shall be applied in a manner consistent with
17 the credit allowed under subdivision thirty-six of section two hundred
18 ten of this chapter except as may be necessary to take into account
19 differences between the general corporation tax and the unincorporated
20 business tax, AND

21 (F) FOR PURPOSES OF THIS SUBDIVISION, "TELEVISION SERIES" OR "EPISODIC
22 TELEVISION SERIES" MEANS A RECURRING PRODUCTION INTENDED IN ITS INITIAL
23 RUN FOR BROADCAST ON TELEVISION, WHETHER FREE OR THROUGH
24 SUBSCRIPTION-BASED SERVICE, THAT HAS A RUNNING TIME OF AT LEAST THIRTY
25 MINUTES IN LENGTH, INCLUSIVE OF COMMERCIAL ADVERTISEMENT AND INTERSTI-
26 TIAL PROGRAMMING.

27 S 2. Subdivision (b) of section 7 of part P of chapter 60 of the laws
28 of 2004, amending the tax law relating to providing tax credits for
29 certain costs incurred in film and television productions, as amended by
30 section 2 of part Y of chapter 62 of the laws of 2006, is amended to
31 read as follows:

32 (b) The aggregate amount of tax credits allowed pursuant to the
33 authority of subdivision (b) of section 1201-a of the tax law in any
34 calendar year shall be \$12.5 million in 2004 and 2005 and \$30 million in
35 2006 through 2011. Such aggregate amount of credits shall be allocated
36 by the mayor's office of film, [theater] THEATRE and broadcasting among
37 taxpayers in order of priority based upon the date of filing an applica-
38 tion for allocation of film production credit with such office. If the
39 total amount of allocated credits applied for in any particular year
40 exceeds the aggregate amount of tax credits allowed for such year under
41 this section, such excess shall be treated as having been applied for on
42 the first day of the subsequent year. IF THE AGGREGATE AMOUNT OF TAX
43 CREDITS AVAILABLE IN ANY GIVEN YEAR REMAINS UNALLOCATED IN SUCH YEAR,
44 SUCH CREDITS SHALL BE AVAILABLE FOR ALLOCATION IN A SUBSEQUENT YEAR.

45 S 3. Section 7 of part P of chapter 60 of the laws of 2004, amending
46 the tax law relating to providing tax credits for certain costs incurred
47 in film and television productions, is amended by adding two new subdi-
48 visions (e) and (f) to read as follows:

49 (E) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY, TAX CREDITS ALLO-
50 CATED IN 2009 SHALL NOT EXCEED \$24 MILLION. IF THE TOTAL AMOUNT OF ALLO-
51 CATED CREDITS APPLIED FOR IN 2009 REACHES \$24 MILLION, ADDITIONAL APPLI-
52 CATIONS SHALL NOT BE ACCEPTED UNTIL ON OR AFTER JANUARY 1, 2010.

53 (F) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (B) OF THIS SECTION
54 AND ANY OTHER PROVISIONS TO THE CONTRARY, AN ADDITIONAL AGGREGATE ANNUAL
55 AMOUNT OF \$24 MILLION SHALL BE ALLOWED IN 2010 AND 2011. THE ADDITIONAL
56 AGGREGATE ANNUAL AMOUNTS FOR 2010 AND 2011 SHALL BE ALLOCATED IN \$12

1 MILLION INCREMENTS FROM JANUARY FIRST THROUGH JUNE THIRTIETH AND FROM
2 JULY FIRST THROUGH DECEMBER THIRTY-FIRST FOR EACH OF SUCH YEARS. IF THE
3 TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY OF SUCH SIX MONTH
4 PERIODS REACHES THE ALLOWED ADDITIONAL AGGREGATE AMOUNT OF \$12 MILLION,
5 ADDITIONAL APPLICATIONS SHALL NOT BE ACCEPTED UNTIL THE FIRST DAY OF THE
6 NEXT SIX MONTH PERIOD WHICH HAS TAX CREDITS AVAILABLE FOR ALLOCATION.

7 S 4. This act shall take effect immediately and shall apply to taxable
8 years beginning on or after January 1, 2009; provided further that this
9 act shall apply to applications filed on or after January 1, 2009;
10 provided, however, that the amendments to subdivision (b) of section
11 1201-a of the tax law made by section one of this act and to subdivision
12 (b) of section 7 of part P of chapter 60 of the laws of 2004 providing
13 tax credits for certain costs incurred in film and television
14 productions made by sections two and three of this act, shall not affect
15 the expiration and repeal of such provisions and shall expire and be
16 deemed repealed therewith.