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

5559

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I N A S S E M B L Y

February 23, 2011

Introduced by M. of A. ENGLEBRIGHT, O'DONNELL, ZEBROWSKI, HOOPER, BING, JAFFEE, PAULIN, COLTON, TITONE, KELLNER, ROSENTHAL, CAHILL, MAGNARELLI, LENTOL, PEOPLES-STOKES, GALEF, MARKEY, DenDEKKER -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, GLICK, LANCMAN, LUPARDO, McENENY, MILLMAN, PHEFFER, SWEENEY -- read once and referred to the Committee on Ways and Means

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:

Section 1. The tax law is amended by adding a new section 28-a to read as follows:

S 28-A. EMPIRE STATE FILM POST PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. (1) A TAXPAYER WHICH IS A FILM PRODUCTION COMPANY OR A QUALIFIED FILM PRODUCTION COMPANY, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (C) OF THIS SECTION TO BE COMPUTED AS PROVIDED IN THIS SUBDIVISION.

(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 TEN PERCENT AND THE QUALIFIED POST PRODUCTION COSTS PAID IN THE PRODUCTION OF A QUALIFIED FILM AT A QUALIFIED POST PRODUCTION FACILITY.

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

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

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(3) A TAXPAYER SHALL NOT BE ELIGIBLE FOR THE CREDIT ESTABLISHED BY THIS SECTION UNLESS THE QUALIFIED POST PRODUCTION COSTS AT A QUALIFIED POST PRODUCTION FACILITY MEET OR EXCEED SEVENTY-FIVE PERCENT OF THE TOTAL POST PRODUCTION COSTS PAID OR INCURRED IN THE POST PRODUCTION OF THE QUALIFIED FILM AT ANY POST PRODUCTION FACILITY. THE CREDIT SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH THE PRODUCTION OF SUCH QUALIFIED FILM IS COMPLETED.

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

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

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

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

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

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

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

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

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

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

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

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 43.

(2) ARTICLE 22: SECTION 606: SUBSECTION (SS).

S 2. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. EMPIRE STATE FILM POST PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION TWENTY-EIGHT-A OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION TWENTY-EIGHT-A AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE A CARRY OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxii) to read as follows:

(XXXII) EMPIRE STATE FILM POST PRODUCTION CREDIT UNDER SUBSECTION (SS)	AMOUNT OF CREDIT FOR QUALIFIED POST PRODUCTION COSTS OF A QUALIFIED FILM UNDER SUBDIVISION FORTY-THREE OF SECTION TWO HUNDRED TEN

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

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

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION

ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

S 91-H. NEW YORK STATE POST PRODUCTION INTERNSHIP EDUCATION AND DEVELOPMENT PROGRAM FUND. 1. THERE IS HEREBY ESTABLISHED, IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE POST PRODUCTION INTERNSHIP EDUCATION AND DEVELOPMENT PROGRAM FUND".

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

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

4. FOR THE PURPOSES FOR THIS SECTION, "POST PRODUCTION INTERNSHIP" MEANS AN INTERNSHIP IN A QUALIFIED POST PRODUCTION FACILITY, AS DEFINED IN SECTION TWENTY-EIGHT-A OF THE TAX LAW THAT HAS BEEN APPROVED BY THE CHANCELLOR OF THE STATE UNIVERSITY OF NEW YORK, THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY OF NEW YORK, OR THE CHIEF ADMINISTRATIVE OFFICER OF ANY PRIVATE COLLEGE OR UNIVERSITY FOR THE PURPOSE OF PROVIDING PRODUCTION EXPERIENCE AND SKILL DEVELOPMENT. NO SUCH INTERNSHIP SHALL BE ELIGIBLE FOR TUITION COST REIMBURSEMENT UNLESS IT GRANTS ACADEMIC CREDIT TO PARTICIPATING STUDENTS.

S 6. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2012.