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

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2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. GOLDEN -- 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 empire state commercial production tax credit; and to amend section 8 of part V of chapter 62 of the laws of 2006 amending the tax law relating to the empire state commercial production tax credit

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

Section 1. Paragraph 2 of subdivision (a) of section 28 of the tax law, as amended by chapter 300 of the laws of 2007, subparagraph (i) as amended by chapter 448 of the laws of 2009, is amended to read as follows:

(2) The state has annually [seven] TEN million dollars in total tax credits to disburse to all eligible commercial production companies. The seven million dollars in total tax credits shall be allocated according to subparagraphs (i), (ii) [and], (iii) AND (IV) of this paragraph:

(i) The state annually will disburse [three] FOUR AND ONE-HALF million of the total [seven] TEN million in tax credits to all eligible production companies and 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 twenty percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater in the aggregate during the current calendar year than the average of the three previous years for which the credit was applied. Provided, however, that until a qualified production company has established a three year history, the credit will be based on

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

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either the previous year or the average of the two previous years, whichever period is longer for the qualified production company seeking the credit. If the qualified production company has never applied for the growth credit, the previous year's data will be used to create a benchmark. The tax credit shall be applied only to the amount of the total qualified production costs of the current calendar year that are greater than the total amount of production costs of the appropriate measurement period as described in this subparagraph. The tax credit must be distributed to eligible production companies on a pro rata basis, provided, however, that no such qualified production company shall receive more than three hundred thousand dollars annually for such credit. The credit shall be allowed for the taxable year in which the production of such qualified commercial is completed.

(ii) The state annually will disburse [three] FOUR AND ONE-HALF million of the total [seven] TEN million in tax credits to all eligible production companies who film or record qualified commercials within the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law. 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 five percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater than five hundred thousand dollars in the aggregate during the calendar year. Such credit will be applied to qualified production costs exceeding five hundred thousand dollars in a calendar year.

(iii) The state annually will disburse one million of the total [seven] TEN million in tax credits to all eligible production companies who film or record a qualified commercial outside of the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law. 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 five percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater than two hundred thousand dollars in the aggregate during the calendar year. Such credit will be applied to qualified production costs exceeding two hundred thousand dollars in a calendar year.

(IV) PROVIDED, HOWEVER, IF THERE IS ANY MONEY REMAINING FOR THE ANNUAL TAX CREDIT DISBURSEMENT AS DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, SUCH MONEY SHALL BE DISBURSED TO ALL ELIGIBLE PRODUCTION COMPANIES SATISFYING THE CRITERIA SET FORTH IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH ON A PRO RATA BASIS.

S 2. Section 8 of part V of chapter 62 of the laws of 2006 amending the tax law relating to the empire state commercial production tax credit, as amended by chapter 440 of the laws of 2006, subdivision (d) as amended by chapter 300 of the laws of 2007, is amended to read as follows:

S 8. Maximum amount of credits. (a) The aggregate amount of tax credits allowed under subparagraph (i) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be $[3] 4.5 million. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers on a pro rata basis. Such office shall establish by rules and regulations a date certain on which the taxpayers eligible for such pro rata allocation shall be determined.

(b) The aggregate amount of tax credits allowed under subparagraph (ii) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be $[3] 4.5 million. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers on a pro rata basis. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(c) The aggregate amount of tax credits allowed under subparagraph (iii) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be $1 million. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers on a pro rata basis. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(d) The aggregate amount of tax credits allowed pursuant to the authority of subdivision (c) of section 1201-a of the tax law in any calendar year shall be $[3] 4.5 million for 2007 through 2011 allocated equally to the credit substantially identical to credits allowed under subparagraphs (i) and (ii) of paragraph 2 of section 28 of the tax law. Such aggregate amount of credits shall be allocated by the mayor's office of film, theater and broadcasting among taxpayers on a pro rata basis. Such credits shall be allocated in amounts to be determined by the city via local law and such credits shall be substantially identical to credits allowed under subparagraphs (i) and (ii) of paragraph 2 of subdivision (a) of section 28 of the tax law. Provided however nothing herein shall preclude the city via local law from allocating its entire annual amount of credits to one category of credits allowed under subparagraph (i) or (ii) of paragraph 2 of subdivision (a) of section 28 of the tax law.

(e) The New York state commissioner of economic development, after consulting with the New York state commissioner of taxation and finance, the New York city commissioner of finance and the mayor's office of film, theater and broadcasting shall promulgate regulations by October 31, 2006 to establish procedures for the allocation of tax credits as required by subdivisions (a), (b) and (c) of this section. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate to the New York state department of taxation and finance or the New York city department of finance the amount of tax credits allocated to such taxpayers, and such other provisions as are deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act or the city administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such October 31, 2006 deadline.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2011; provided, however, that the amendments to paragraph 2 of subdivision (a) of section 28 of the tax law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.