

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

7244--A

I N S E N A T E

May 2, 2012

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the allocation of credit for the empire state film production credit; and to repeal section 7 of part P of chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, relating thereto

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

1 Section 1. Section 7 of part P of chapter 60 of the laws of 2004,
2 amending the tax law relating to the empire state film production cred-
3 it, is REPEALED.
4 S 2. Section 24 of the tax law is amended by adding a new subdivision
5 (e) to read as follows:
6 (E) ALLOCATION OF CREDIT. (1) THE AGGREGATE AMOUNT OF TAX CREDITS
7 ALLOWED UNDER THIS SECTION, SUBDIVISION THIRTY-SIX OF SECTION TWO
8 HUNDRED TEN AND SUBSECTION (GG) OF SECTION SIX HUNDRED SIX OF THIS CHAP-
9 TER IN ANY CALENDAR YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS IN TWO
10 THOUSAND FOUR AND TWO THOUSAND FIVE, SIXTY MILLION DOLLARS IN TWO THOU-
11 SAND SIX AND TWO THOUSAND SEVEN, SIXTY-FIVE MILLION DOLLARS IN TWO THOU-
12 SAND EIGHT, SEVENTY-FIVE MILLION DOLLARS IN TWO THOUSAND NINE,
13 EIGHTY-FIVE MILLION DOLLARS IN TWO THOUSAND TEN, NINETY MILLION DOLLARS
14 IN TWO THOUSAND ELEVEN AND TWO THOUSAND TWELVE, AND ONE HUNDRED TEN
15 MILLION DOLLARS IN TWO THOUSAND THIRTEEN. SUCH AGGREGATE AMOUNT OF CRED-
16 ITS SHALL BE ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND
17 TELEVISION DEVELOPMENT AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON
18 THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF FILM PRODUCTION
19 CREDIT WITH SUCH OFFICE. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS
20 APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX
21 CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE
22 TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT
23 YEAR.

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

LBD15574-05-2

1 (2) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED PURSUANT TO THE
2 AUTHORITY OF SUBDIVISION (B) OF SECTION TWELVE HUNDRED ONE-A OF THIS
3 CHAPTER IN ANY CALENDAR YEAR SHALL BE TWELVE MILLION FIVE HUNDRED THOU-
4 SAND DOLLARS IN TWO THOUSAND FOUR AND TWO THOUSAND FIVE AND THIRTY
5 MILLION DOLLARS IN TWO THOUSAND SIX THROUGH TWO THOUSAND ELEVEN. SUCH
6 AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE MAYOR'S OFFICE OF
7 FILM, THEATER AND BROADCASTING AMONG TAXPAYERS IN ORDER OF PRIORITY
8 BASED UPON THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF FILM
9 PRODUCTION CREDIT WITH SUCH OFFICE. IF THE TOTAL AMOUNT OF ALLOCATED
10 CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT
11 OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS
12 SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE
13 SUBSEQUENT YEAR.

14 (3) ADDITIONAL POOL 1 - THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED IN
15 SUBDIVISION (A) OF THIS SECTION SHALL BE INCREASED BY AN ADDITIONAL
16 THREE HUNDRED FIFTY MILLION DOLLARS IN TWO THOUSAND NINE. THIS ADDI-
17 TIONAL AMOUNT SHALL BE ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION
18 PICTURE AND TELEVISION DEVELOPMENT AMONG TAXPAYERS IN ACCORDANCE WITH
19 SUBDIVISION (A) OF THIS SECTION.

20 (4) ADDITIONAL POOL 2 - THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED IN
21 SUBDIVISION (A) OF THIS SECTION SHALL BE INCREASED BY AN ADDITION FOUR
22 HUNDRED TWENTY MILLION DOLLARS IN TWO THOUSAND TEN, FOUR HUNDRED TWENTY
23 MILLION DOLLARS IN TWO THOUSAND ELEVEN, FOUR HUNDRED TWENTY MILLION
24 DOLLARS IN TWO THOUSAND TWELVE, FOUR HUNDRED TWENTY MILLION DOLLARS IN
25 TWO THOUSAND THIRTEEN AND FOUR HUNDRED TWENTY MILLION DOLLARS IN TWO
26 THOUSAND FOURTEEN PROVIDED HOWEVER, SEVEN MILLION DOLLARS OF THE ANNUAL
27 ALLOCATION SHALL BE AVAILABLE FOR THE EMPIRE STATE FILM POST PRODUCTION
28 CREDIT PURSUANT TO SECTION THIRTY-ONE OF THIS CHAPTER. THIS AMOUNT
29 SHALL BE ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELE-
30 VISION DEVELOPMENT AMONG TAXPAYERS IN ACCORDANCE WITH SUBDIVISION (A) OF
31 THIS SECTION. IF THE DIRECTOR OF THE GOVERNOR'S OFFICE FOR MOTION
32 PICTURE AND TELEVISION DEVELOPMENT DETERMINES THAT THE AGGREGATE AMOUNT
33 OF TAX CREDITS AVAILABLE FROM ADDITIONAL POOL 2 FOR THE EMPIRE STATE
34 FILM PRODUCTION TAX CREDIT HAVE BEEN PREVIOUSLY ALLOCATED, AND DETER-
35 MINES THAT THE PENDING APPLICATIONS FROM ELIGIBLE APPLICANTS FOR THE
36 POST PRODUCTION TAX CREDIT PURSUANT TO SECTION THIRTY-ONE OF THIS CHAP-
37 TER IS INSUFFICIENT TO UTILIZE THE BALANCE OF UNALLOCATED POST
38 PRODUCTION TAX CREDITS FROM SUCH POOL, THE REMAINDER, AFTER SUCH PENDING
39 APPLICATIONS ARE CONSIDERED, SHALL BE MADE AVAILABLE FOR ALLOCATION IN
40 THE EMPIRE STATE FILM TAX CREDIT PURSUANT TO THIS SECTION, SUBDIVISION
41 THIRTY-SIX OF SECTION TWO HUNDRED TEN AND SUBSECTION (GG) OF SECTION SIX
42 HUNDRED SIX OF THIS CHAPTER. THE GOVERNOR'S OFFICE FOR MOTION PICTURE
43 AND TELEVISION DEVELOPMENT MUST NOTIFY TAXPAYERS OF THEIR ALLOCATION
44 YEAR AND INCLUDE THE ALLOCATION YEAR ON THE CERTIFICATE OF TAX CREDIT.
45 TAXPAYERS ELIGIBLE TO CLAIM A CREDIT MUST REPORT THE ALLOCATION YEAR
46 DIRECTLY ON THEIR EMPIRE STATE FILM PRODUCTION CREDIT TAX FORM FOR EACH
47 YEAR A CREDIT IS CLAIMED AND INCLUDE A COPY OF THE CERTIFICATE WITH
48 THEIR TAX RETURN. IN THE CASE OF A QUALIFIED FILM THAT RECEIVES FUNDS
49 FROM ADDITIONAL POOL 2, NO EMPIRE STATE FILM PRODUCTION CREDIT SHALL BE
50 CLAIMED BEFORE THE LATER OF THE TAXABLE YEAR THE PRODUCTION OF THE QUAL-
51 IFIED FILM IS COMPLETE, OR THE TAXABLE YEAR IMMEDIATELY FOLLOWING THE
52 ALLOCATION YEAR FOR WHICH THE FILM HAS BEEN ALLOCATED CREDIT BY THE
53 GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT.

54 S 3. Paragraph 2 of subdivision (a) and subdivision (c) of section 31
55 of the tax law, as added by section 12 of part Q of chapter 57 of the
56 laws of 2010, are amended to read as follows:

1 (2) The amount of the credit shall be the product (or pro rata share
2 of the product, in the case of a member of a partnership) of [ten] THIR-
3 TY percent and the qualified post production costs paid in the
4 production of a qualified film at a qualified post production facility
5 LOCATED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS
6 DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES
7 LAW OR THIRTY-FIVE PERCENT AND THE QUALIFIED POST PRODUCTION COSTS PAID
8 IN THE PRODUCTION OF A QUALIFIED FILM AT A QUALIFIED POST PRODUCTION
9 FACILITY LOCATED ELSEWHERE IN THE STATE.

10 (c) Notwithstanding any other provision of law to the contrary, the
11 aggregate amount of tax credits available under this section shall not
12 exceed the amounts allowed pursuant to PARAGRAPH FOUR OF subdivision (e)
13 of section [seven of part P of chapter sixty of the laws of two thousand
14 four] TWENTY-FOUR OF THIS ARTICLE and shall be allocated in the same
15 manner as provided for in PARAGRAPH ONE OF subdivision [(a)] (E) of
16 section [seven of part P of chapter sixty of the laws of two thousand
17 four] TWENTY-FOUR OF THIS ARTICLE.

18 S 4. This act shall take effect immediately.