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

6530

I N S E N A T E

February 23, 2012

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, and the tax law, in relation to the aggregate annual amount of such credit against state taxes

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

Section 1. Sections 7 and 8 of part P of chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, subdivision (a) of section 7 as amended by section 4 of part WW-1 of chapter 57 of the laws of 2008, subdivision (b) of section 7 as amended by section 2 and subdivision (c) of section 1 as amended by section 3 of part Y of chapter 62 of the laws of 2006, subdivision (d) of section 7 as amended by section 1 of part Q of chapter 57 of the laws of 2010, subdivision (e) of section 7 as amended by section 1 of part C of chapter 312 of the laws of 2010, are amended to read as follows:

S 7. Maximum amount of credits. (a) [The aggregate amount of tax credits allowed under section 24, subdivision 36 of section 210 and subsection (gg) of section 606 of the tax law in any calendar year shall be $25 million in 2004 and 2005, $60 million in 2006 and 2007, $65 million in 2008, $75 million in 2009, $85 million in 2010, $90 million in 2011 and 2012, and $110 million in 2013. Such aggregate amount of credits 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 for allocation of film production credit with such office. 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.

(b)] The aggregate amount of tax credits allowed pursuant to the authority of subdivision (b) of section 1201-a of the tax law in any

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

LBD14617-01-2

calendar year shall be $12.5 million in 2004 and 2005 and $30 million in 2006 through 2011. Such aggregate amount of credits shall be allocated by the mayor's office of film, theater and broadcasting among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. 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 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 commissioner of the mayor's office of film, theater and broadcasting, shall amend regulations by October 31, 2006 to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. In addition, upon] (B) UPON enactment of a local law allowing tax credits pursuant to the authority of subdivision (b) of section 1201-a of the tax law, the mayor's office of film, theater and broadcasting shall amend as soon as practicable substantially similar rules to establish procedures for the allocation of tax credits as required by subdivision [(b)] (A) 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 by 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 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.

[(d) Additional pool 1 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional $350 million in 2009. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section.

(e) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional $420 million in 2010, $420 million in 2011, $420 million in 2012, $420 million in 2013 and $420 million in 2014 provided however, $7 million of the annual allocation shall be available for the empire state film post production credit pursuant to section 31 of the tax law. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the director of the governor's office for motion picture and television development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the post production tax credit pursuant to section 31 of the tax law is insufficient to utilize the balance of unallocated post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to section 24, subdivision 36 of section 210 and subsection (gg) of section 606 of the tax law. The governor's office for motion picture and television development must

notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.]

S 8. The commissioner of the department of taxation and finance, in conjunction with the director of the governor's office for motion picture and television development, shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted in February of each year evaluating the effectiveness of the film production tax credit provided by this act in stimulating the growth of the film industry in the state. Such report shall include, but not be limited to, in total and by qualified film, the number of qualified films, the qualified production costs, the production costs, the qualified film production facilities, and the credit amounts claimed by each qualified film, as well as the impact on employment and the economy of the state and city of New York. Such report shall be based on data available from the application filed with the governor's office for motion picture and television development for allocation of film production credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations for changes in the calculation or administration of the credit, RECOMMENDATIONS ON WHETHER, BASED ON THE INFORMATION IN SUCH ANNUAL REPORT, AN ANNUAL LIMITATION OF THE AGGREGATE AMOUNT OF TAX CREDITS UNDER SECTION 24, SUBDIVISION 36 OF SECTION 210 AND SUBSECTION (GG) OF SECTION 606 OF THE TAX LAW SHOULD BE IMPOSED, and any other recommendation of the commissioner regarding continuing modification, or repeal of such act, and such other information regarding the act as the commissioner may feel useful and appropriate.

S 2. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 4 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(2) 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 thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that: (i) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film, and (ii) except with respect to a qualified independent film production company or pilot, at least ten percent of the total principal photography shooting days spent in the production of such qualified film must be spent at a qualified film production facility. However, if the qualified production costs (excluding post production costs) which are attributable to the

use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. [However, in the case of a qualified film that receives funds from additional pool 2, no credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.] If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the first taxable year in which the credit may be claimed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year.

S 3. This act shall take effect January 1, 2015 and shall apply to tax years commencing on or after such date.