

7244

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

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3 it, is REPEALED.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.
24 (2) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED PURSUANT TO THE
25 AUTHORITY OF SUBDIVISION (B) OF SECTION TWELVE HUNDRED ONE-A OF THIS

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

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

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

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

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

4 (2) The amount of the credit shall be the product (or pro rata share
5 of the product, in the case of a member of a partnership) of [ten] TWEN-
6 TY percent and the qualified post production costs paid in the
7 production of a qualified film at a qualified post production facility.

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

16 S 4. This act shall take effect immediately.