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

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I N A S S E M B L Y

January 14, 2013

Introduced by M. of A. JAFFEE, ENGLEBRIGHT, MILLMAN, WRIGHT, THIELE, CRESPO, ROSENTHAL, QUART -- Multi-Sponsored by -- M. of A. FARRELL, GLICK, HEASTIE, O'DONNELL, PERRY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to eligibility for the empire state film production credit

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

Section 1. Paragraph 1 of subdivision (a) of section 24 of the tax law, as amended by section 3 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(1) Allowance of credit. A taxpayer which is a qualified film production company, or a qualified independent film production company, or which is a sole proprietor of or a member of a partnership which is a qualified film production company or a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision [(c)] (G) of this section, to be computed as [hereinafter] provided IN THIS SECTION.

S 2. Paragraph 2 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended and a new paragraph 8 is added to read as follows:

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include [(i) costs for a story, script or scenario to be used for a qualified film and (ii)] wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). WRITERS' FEES AND SALARIES SHALL BE ELIGIBLE PRODUCTION COSTS SUBJECT TO THE PROVISIONS OF SUBDIVISION (C) OF THIS SECTION; PROVIDED,

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

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HOWEVER, THAT FEES THAT ARE BASED ON DEFERRED, LEVERAGED OR PROFIT PARTICIPATION COSTS, OR ARE IN EXCESS OF THOSE OTHERWISE PERMITTED BY SUBDIVISION (C) OF THIS SECTION SHALL NOT BE ELIGIBLE PRODUCTION COSTS. "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(8) "WRITER" MEANS A WRITER EMPLOYED OR RETAINED TO WRITE OR REVISE SCRIPTS, SCREEN PLAYS, TELEPLAYS, DIALOGUE, SKETCHES, ROUTINES OR NARRATIONS.

S 3. Subdivisions (c), (d) and (e) of section 24 of the tax law are relettered subdivisions (g), (h) and (f), respectively and three new subdivisions (c), (d) and (e) are added to read as follows:

(C) FOR A FEATURE FILM OR TELEVISION PRODUCTION, WRITERS' FEES AND SALARIES SHALL BE ELIGIBLE COSTS; PROVIDED, HOWEVER, SUCH COSTS SHALL NOT EXCEED FIFTY THOUSAND DOLLARS PER WRITER PER QUALIFIED FILM. PROVIDED, FURTHER, THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A WRITER'S FEES AND SALARY SHALL BE ELIGIBLE FOR THE MAXIMUM AMOUNT OF THE CREDIT GRANTED BY THIS SUBDIVISION, IF SUCH WRITER IS A RESIDENT OF THIS STATE.

(D) WHERE MORE THAN THREE WRITERS ARE HIRED OR RETAINED FOR SERVICE ON AN ELIGIBLE PRODUCTION AND AT LEAST ONE SUCH WRITER IS A MINORITY GROUP MEMBER, AS DEFINED BY SUBDIVISION EIGHT OF SECTION THREE HUNDRED TEN OF THE EXECUTIVE LAW, OR A WOMAN SUCH COSTS SHALL NOT EXCEED SEVENTY THOUSAND DOLLARS PER WRITER PER QUALIFIED FILM.

(E) FOR EACH TAX YEAR, NOT MORE THAN FIVE MILLION DOLLARS IN TAX CREDITS FOR WRITERS' FEES AND SALARIES SHALL BE GRANTED PURSUANT TO THIS SECTION. SUCH CREDITS SHALL ONLY BE AVAILABLE FROM CREDITS ALLOWED FOR PRODUCTION COSTS PURSUANT TO THIS SECTION.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to the tax year in which it takes effect and all subsequent tax years.