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

5163--B

2013-2014 Regular Sessions

I N S E N A T E

May 13, 2013

Introduced by Sens. LITTLE, LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing business franchise and personal income tax credits for certain musical and theatrical production expenses

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

Section 1. The tax law is amended by adding a new section 24-a to read as follows:

S 24-A. MUSICAL AND THEATRICAL PRODUCTION CREDIT. (A) (1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A QUALIFIED THEATER PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIETOR OF OR A MEMBER OF A PARTNERSHIP WHICH IS A QUALIFIED THEATER PRODUCTION COMPANY, AND WHICH SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERRED TO IN SUBDIVISION (C) OF THIS SECTION, AND TO BE COMPUTED AS PROVIDED IN THIS SECTION.

(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 TWENTY-FIVE PERCENT AND THE SUM OF THE PRODUCTION AND PERFORMANCE EXPENDITURES AND THE TRANSPORTATION EXPENDITURES. 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

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

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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.

(3) NO PRODUCTION AND PERFORMANCE EXPENDITURES OR TRANSPORTATION EXPENDITURES USED BY A TAXPAYER EITHER AS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR PURSUANT TO THIS SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED PURSUANT TO THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS CHAPTER.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "QUALIFIED THEATER PRODUCTION COMPANY" MEANS ANY INDIVIDUAL, CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY ENGAGED IN PRODUCING QUALIFIED LIVE THEATER PRODUCTIONS FOR COMMERCIAL PURPOSE. SUCH COMPANY, OR ITS DESIGNATED PARTY, SHALL BE RESPONSIBLE FOR THE DIRECT PRODUCTION AND PERFORMANCE COSTS, AND BE THE SIGNATORY TO CONTRACTS WITH PAYROLL SERVICES, FACILITIES AND VENDORS, UTILIZED IN THE PRODUCTION OF QUALIFIED THEATER PRODUCTIONS.

(2) "THEATER PRODUCTION" MEANS A FOR-PROFIT LIVE STAGE PRESENTATION IN A QUALIFIED PRODUCTION FACILITY AND CERTIFIED BY THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT THAT IS EITHER: (I) A PRE-BROADWAY PRODUCTION, OR (II) A POST-BROADWAY PRODUCTION.

(3) "ADVERTISING AND PUBLIC RELATIONS EXPENDITURE" MEANS COSTS INCURRED WITHIN THE STATE BY THE ACCREDITED THEATER PRODUCTIONS FOR GOODS OR SERVICES RELATED TO THE NATIONAL MARKETING, PUBLIC RELATIONS, CREATION AND PLACEMENT OF PRINT, ELECTRONIC, TELEVISION, BILLBOARDS AND OTHER FORMS OF ADVERTISING TO PROMOTE THE ACCREDITED THEATER PRODUCTION.

(4) "PAYROLL" MEANS ALL SALARIES, WAGES, FEES, AND OTHER COMPENSATION INCLUDING RELATED BENEFITS FOR SERVICES PERFORMED AND COSTS INCURRED WITHIN THE STATE.

(5) "PRE-BROADWAY PRODUCTION" MEANS A LIVE STAGE PRODUCTION THAT, IN ITS ORIGINAL OR ADAPTIVE VERSION, IS PERFORMED IN A QUALIFIED PRODUCTION FACILITY HAVING A PRESENTATION SCHEDULED FOR BROADWAY'S THEATER DISTRICT IN THE CITY OF NEW YORK WITHIN TWELVE MONTHS AFTER ITS PRESENTATION OUTSIDE OF THE CITY OF NEW YORK.

(6) "POST-BROADWAY PRODUCTION" MEANS A LIVE STAGE PRODUCTION THAT, IN ITS ORIGINAL OR ADAPTIVE VERSION, IS PERFORMED IN A QUALIFIED PRODUCTION FACILITY AND OPENS ITS NATIONAL TOUR IN THIS STATE, BUT OUTSIDE OF THE CITY OF NEW YORK, AFTER A PRESENTATION SCHEDULED FOR BROADWAY'S THEATER DISTRICT IN THE CITY OF NEW YORK.

(7) "PRODUCTION AND PERFORMANCE EXPENDITURES" MEANS A CONTEMPORANEOUS EXCHANGE OF CASH OR CASH EQUIVALENT FOR GOODS OR SERVICES RELATED TO DEVELOPMENT, PRODUCTION, PERFORMANCE OR OPERATING EXPENDITURES INCURRED IN THIS STATE FOR A QUALIFIED THEATER PRODUCTION INCLUDING, BUT NOT LIMITED TO, EXPENDITURES FOR DESIGN, CONSTRUCTION AND OPERATION, INCLUDING SETS, SPECIAL AND VISUAL EFFECTS, COSTUMES, WARDROBES, MAKE-UP, ACCESSORIES, COSTS ASSOCIATED WITH SOUND, LIGHTING, STAGING, PAYROLL, TRANSPORTATION EXPENDITURES, ADVERTISING AND PUBLIC RELATIONS EXPENDITURES, FACILITY EXPENSES, RENTALS, PER DIEMS, ACCOMMODATIONS AND OTHER RELATED COSTS.

(8) "QUALIFIED PRODUCTION FACILITY" MEANS A FACILITY LOCATED IN THE STATE IN WHICH LIVE THEATRICAL PRODUCTIONS ARE, OR ARE INTENDED TO BE, EXCLUSIVELY PRESENTED THAT CONTAINS AT LEAST ONE STAGE, A SEATING CAPACITY OF ONE THOUSAND FIVE HUNDRED OR MORE SEATS, AND DRESSING ROOMS,

STORAGE AREAS, AND OTHER ANCILLARY AMENITIES NECESSARY FOR THE ACCREDITED THEATER PRODUCTION.

(9) (I) "TRANSPORTATION EXPENDITURES" MEANS EXPENDITURES FOR THE PACKAGING, CRATING, AND TRANSPORTATION BOTH TO THE STATE FOR USE IN A QUALIFIED THEATER PRODUCTION OF SETS, COSTUMES, OR OTHER TANGIBLE PROPERTY CONSTRUCTED OR MANUFACTURED OUT OF STATE, AND/OR FROM THE STATE AFTER USE IN A QUALIFIED THEATER PRODUCTION OF SETS, COSTUMES, OR OTHER TANGIBLE PROPERTY CONSTRUCTED OR MANUFACTURED IN THIS STATE AND THE TRANSPORTATION OF THE CAST AND CREW TO AND FROM THE STATE. SUCH TERM SHALL INCLUDE THE PACKAGING, CRATING, AND TRANSPORTING OF PROPERTY AND EQUIPMENT USED FOR SPECIAL AND VISUAL EFFECTS, SOUND, LIGHTING, AND STAGING, COSTUMES, WARDROBES, MAKE-UP AND RELATED ACCESSORIES AND MATERIALS, AS WELL AS ANY OTHER PERFORMANCE OR PRODUCTION-RELATED PROPERTY AND EQUIPMENT.

(II) TRANSPORTATION EXPENDITURES SHALL NOT INCLUDE ANY COSTS TO TRANSPORT PROPERTY AND EQUIPMENT TO BE USED ONLY FOR FILMING AND NOT IN A QUALIFIED THEATER PRODUCTION, ANY INDIRECT COSTS, AND EXPENDITURES THAT ARE LATER REIMBURSED BY A THIRD PARTY, OR ANY AMOUNTS THAT ARE PAID TO PERSONS OR ENTITIES AS A RESULT OF THEIR PARTICIPATION IN PROFITS FROM THE EXPLOITATION OF THE PRODUCTION.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 36-A.

(2) ARTICLE 22: SECTION 606: SUBSECTION (U).

(D) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE INFORMATION REGARDING THE CREDITS APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR CREDITS OR WHO ARE CLAIMING CREDITS, INCLUDING INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR CERTIFICATION SUBMITTED TO THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT.

S 2. Section 210 of the tax law is amended by adding a new subdivision 36-a to read as follows:

36-A. MUSICAL AND THEATRICAL PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION TWENTY-FOUR-A OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, FURTHER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxvii) to read as follows:

(XXXVII) MUSICAL AND THEATRICAL PRODUCTION CREDIT UNDER SUBSECTION (U)	AMOUNT OF CREDIT FOR THE SUM OF THE PRODUCTION AND PERFORMANCE EXPENDITURES AND THE TRANSPORTATION EXPENDITURES

IN AN ACCREDITED THEATRE
PRODUCTION UNDER SUBDIVISION
THIRTY-SIX-A OF SECTION TWO
HUNDRED TEN

S 4. Section 606 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) MUSICAL AND THEATRICAL PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION TWENTY-FOUR-A OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 5. This act shall take effect January 1, 2015.