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I N S E N A T E

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Introduced by Sen. GOLDEN -- 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 creation of the empire state music production credit

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

1 Section 1. The tax law is amended by adding a new section 41 to read
2 as follows:

3 S 41. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A)(1) ALLOWANCE OF CRED-
4 IT. A TAXPAYER WHICH IS A QUALIFIED MUSIC PRODUCTION COMPANY, OR A QUAL-
5 IFIED INDEPENDENT MUSIC PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIE-
6 TOR OF OR A MEMBER OF A PARTNERSHIP WHICH IS A QUALIFIED MUSIC
7 PRODUCTION COMPANY OR A QUALIFIED INDEPENDENT MUSIC PRODUCTION COMPANY,
8 AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS
9 CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX.

10 (2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE
11 OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF TWENTY
12 PERCENT AND THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED IN THE
13 PRODUCTION OF MUSIC BY THE TAXPAYER. SUCH COSTS SHALL INCLUDE: RECORDING
14 PRODUCTION COSTS, ARTISTS' ROYALTIES, MUSICIAN SESSION FEES, GRAPHICS,
15 DIGITAL SCANNING, PROGRAMMING AND TESTING, PRODUCTION COSTS FOR MUSIC
16 VIDEOS MADE IN NEW YORK STATE AND DIRECT MARKETING EXPENDITURES INCLUD-
17 ING CONSULTANT FEES AND COSTS TO LAUNCH THE RECORDING. COSTS SHALL NOT
18 INCLUDE TOURING, PERFORMING, MANUFACTURING AND DISTRIBUTION COSTS.

19 (3) NO QUALIFIED PRODUCTION COSTS USED BY A TAXPAYER AS THE BASIS FOR
20 THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION SHALL BE
21 USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS
22 CHAPTER.

23 (B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED
24 UNDER THIS SECTION, SUBDIVISION FORTY-EIGHT OF SECTION TWO HUNDRED TEN
25 AND SUBSECTION (XX) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY
26 CALENDAR YEAR SHALL BE SIXTY MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF
27 CREDITS SHALL BE ALLOCATED BY THE EMPIRE STATE DEVELOPMENT CORPORATION

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

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1 AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING AN
2 APPLICATION FOR ALLOCATION OF MUSIC PRODUCTION CREDIT WITH SUCH OFFICE.
3 IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR
4 YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR
5 UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED
6 FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

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

9 (1) ARTICLE 9-A: SECTION 210: SUBDIVISION 48

10 (2) ARTICLE 22: SECTION 606: SUBSECTION (XX)

11 S 2. Section 210 of the tax law is amended by adding a new subdivision
12 48 to read as follows:

13 48. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A
14 TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-ONE OF THIS CHAPTER
15 SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION
16 FORTY-ONE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

17 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
18 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
19 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
20 SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE
21 UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
22 AMOUNT, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CRED-
23 ITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOU-
24 SAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
25 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
26 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

30 (XXXVII) EMPIRE STATE MUSIC	AMOUNT OF CREDIT FOR
31 PRODUCTION CREDIT UNDER	QUALIFIED PRODUCTION CREDIT
32 SUBSECTION (XX)	MUSIC UNDER SUBDIVISION
33	FORTY-ONE OF SECTION TWO
34	HUNDRED TEN

35 S 4. Subsections (yy) and (zz) of section 606 of the tax law, as
36 relettered by section 5 of part H of chapter 1 of the laws of 2003, are
37 relettered subsections (yyy) and (zzz) and a new subsection (xx) is
38 added to read as follows:

39 (XX) EMPIRE STATE MUSIC PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A
40 TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-ONE OF THIS CHAPTER
41 SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION
42 FORTY-ONE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

48 S 5. The empire state development corporation shall report, to the
49 governor and the legislature, its findings, conclusions and recommenda-
50 tions on or before one year from the date this act shall become a law,
51 and shall submit with its report such legislative proposals as it deems
52 necessary to implement its recommendations.

53 S 6. This act shall take effect on the one hundred eightieth day after
54 it shall have become a law.