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I N   S E N A T E

March 7, 2014

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Introduced by Sen. GALLIVAN -- 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 empire state commercial production credit; and to amend part I of chapter 59 of the laws of 2012, amending the tax law, relating to extending the empire state commercial production tax credit; and to amend part V of chapter 62 of the laws of 2006 relating to the empire state commercial production tax credit, relating to the effectiveness thereof, in relation to the effectiveness thereof

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

1     Section 1. Paragraph 1 of subdivision (a) of section 28 of the tax  
2     law, as amended by section 1 of part I of chapter 59 of the laws of  
3     2012, is amended to read as follows:  
4     (1) A taxpayer which is a qualified commercial production company, or  
5     which is a sole proprietor of a qualified commercial production company,  
6     and which is subject to tax under article nine-A or twenty-two of this  
7     chapter, shall be allowed a credit against such tax, pursuant to the  
8     provisions referenced in subdivision (c) of this section, to be computed  
9     as provided in this section. Provided, however, to be eligible for such  
10    credit, at least seventy-five percent of the production costs (excluding  
11    [post production] POST-PRODUCTION costs) paid or incurred directly and  
12    predominantly in the actual filming or recording of the qualified  
13    commercial must be costs incurred in New York state. The tax credit  
14    allowed pursuant to this section shall apply to taxable years beginning  
15    before January first, two thousand [fifteen] SEVENTEEN.  
16    S 2. Subparagraph (iii) of paragraph 2 of subdivision (a) of section  
17    28 of the tax law, as amended by section 2 of part I of chapter 59 of  
18    the laws of 2012, is amended to read as follows:  
19    (iii) The state annually will disburse three million of the total  
20    seven million in tax credits to all eligible production companies who  
21    film or record a qualified commercial outside of the metropolitan commu-  
22    ter transportation district as defined in section twelve hundred sixty-

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

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1 two of the public authorities law, AND FOR WORK PERFORMED BY QUALIFIED  
2 POST-PRODUCTION COMPANIES FOR QUALIFIED POST-PRODUCTION WORK PERFORMED  
3 OUTSIDE SUCH METROPOLITAN TRANSPORTATION DISTRICT ON A QUALIFIED COMMERCIAL, AS PROVIDED HEREIN; provided, however, that if, after the state  
4 reviews all applications from eligible production companies who film or  
5 record a qualified commercial outside of the metropolitan commuter  
6 district for a given year, AND WORK PERFORMED BY QUALIFIED POST-PRODUC-  
7 TION COMPANIES FOR QUALIFIED POST-PRODUCTION WORK PERFORMED OUTSIDE SUCH  
8 METROPOLITAN TRANSPORTATION DISTRICT ON A QUALIFIED COMMERCIAL, tax  
9 credits remain unallocated under this subparagraph, those credits shall  
10 be allotted to the credits set forth in subparagraph (i) of this para-  
11 graph for use consistent with the purposes of such subparagraph. The  
12 amount of the credit shall be the product (or pro rata share of the  
13 product, in the case of a member of a partnership) of [five] EIGHT  
14 percent of the qualified production costs paid or incurred in the  
15 production of a qualified commercial, provided that the qualified  
16 production costs paid or incurred are attributable to the use of tangi-  
17 ble property or the performance of services within the state in the  
18 production of such qualified commercial. To be eligible for said credit  
19 the total qualified production costs of a qualified production company  
20 must be greater than two hundred thousand dollars in the aggregate  
21 during the calendar year. Such credit will be applied to qualified  
22 production costs exceeding two hundred thousand dollars in a calendar  
23 year. IN ADDITION TO THE FOREGOING, THE AMOUNT OF THE CREDIT SHALL BE  
24 THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER  
25 OF A PARTNERSHIP) OF TWENTY PERCENT FOR QUALIFIED POST-PRODUCTION COSTS  
26 PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED COMMERCIAL BY A QUALI-  
27 FIED COMMERCIAL POST-PRODUCTION COMPANY WHICH ARE ATTRIBUTABLE TO THE  
28 USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE  
29 AND PERFORMED OUTSIDE THE METROPOLITAN TRANSPORTATION DISTRICT ON A  
30 QUALIFIED COMMERCIAL. TO BE ELIGIBLE FOR SUCH POST-PRODUCTION CREDIT THE  
31 TOTAL QUALIFIED PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST  
32 BE GREATER THAN ONE HUNDRED THOUSAND DOLLARS IN THE AGGREGATE DURING THE  
33 CALENDAR YEAR FOR WORK PERFORMED IN NEW YORK STATE. SUCH CREDIT WILL BE  
34 APPLIED TO QUALIFIED PRODUCTION COSTS EXCEEDING ONE HUNDRED THOUSAND  
35 DOLLARS IN A CALENDAR YEAR. AS USED IN THIS SUBPARAGRAPH, "POST-PRODUC-  
36 TION WORK" OR "QUALIFIED POST-PRODUCTION WORK" MEANS ANY WORK PERFORMED  
37 BY A QUALIFIED COMMERCIAL PRODUCTION COMPANY OR BY A QUALIFIED COMMERCIAL  
38 POST-PRODUCTION COMPANY AS SUCH TERMS ARE DEFINED HEREIN AND  
39 INCLUDES BUT IS NOT LIMITED TO EDITING, SOUND EDITING, SPECIAL EFFECTS,  
40 GRAPHICS, COLOR TIMING OR FINISHING COSTS, AND WORK ASSOCIATED WITH THE  
41 PRODUCTION OF ORIGINAL CONTENT FOR A QUALIFIED COMMERCIAL EMPLOYING  
42 TECHNIQUES TRADITIONALLY USED IN POST-PRODUCTION FOR VISUAL EFFECTS,  
43 GRAPHIC DESIGN, ANIMATION AND MUSICAL COMPOSITION, INCLUDING THE EDITING  
44 OF PREVIOUSLY PRODUCED CONTENT FOR A QUALIFIED COMMERCIAL. THE APPLICA-  
45 TION FOR A CREDIT FOR SUCH QUALIFIED POST-PRODUCTION COSTS MAY BE  
46 REQUIRED AS A JOINT APPLICATION WITH THE APPLICATION FOR A CREDIT FOR A  
47 QUALIFIED COMMERCIAL.

48  
49 S 3. The closing paragraph of subdivision (a) of section 28 of the tax  
50 law, as added by section 2 of part V of chapter 62 of the laws of 2006,  
51 is amended to read as follows:

52 Notwithstanding any provisions of this section to the contrary, a  
53 corporation or partnership, which otherwise qualifies as a qualified  
54 commercial production company, OR A COMMERCIAL POST-PRODUCTION COMPANY,  
55 and is similar in operation and in ownership to a business entity or  
56 entities taxable, or previously taxable, under section one hundred

1 eighty-three, one hundred eighty-four or one hundred eighty-five of  
2 article nine; article nine-A, article thirty-two or thirty-three of this  
3 chapter or which would have been subject to tax under article twenty-  
4 three of this chapter (as such article was in effect on January first,  
5 nineteen hundred eighty) or the income or losses of which is or was  
6 includable under article twenty-two of this chapter shall not be deemed  
7 a new or separate business, and therefore shall not be eligible for  
8 empire state commercial production benefits, if it was not formed for a  
9 valid business purpose, as such term is defined in clause (D) of subpar-  
10 agraph one of paragraph (o) of subdivision nine of section two hundred  
11 eight of this chapter and was formed solely to gain empire state commer-  
12 cial production credit benefits.

13 S 4. Paragraph 2 of subdivision (b) of section 28 of the tax law, as  
14 amended by chapter 448 of the laws of 2009, is amended to read as  
15 follows:

16 (2) "Production costs" means any costs for tangible property used and  
17 services performed directly and predominantly in the production (includ-  
18 ing pre-production and post-production) of a qualified commercial.  
19 "Production costs" shall not include (i) costs for a story, script or  
20 scenario to be used for a qualified commercial and (ii) wages or sala-  
21 ries or other compensation for writers, directors, including music  
22 directors, producers and performers (other than background actors with  
23 no scripted lines who are employed by a qualified company and musi-  
24 cians). "Production costs" generally include technical and crew  
25 production costs, such as expenditures for commercial production facili-  
26 ties and/or location costs, or any part thereof, film, audiotape, vide-  
27 otape or digital medium, props, makeup, wardrobe, commercial processing,  
28 camera, sound recording, scoring, set construction, lighting, shooting[,  
29 editing] and meals. For purposes of this section, "[post production]  
30 POST-PRODUCTION costs" include the production of original content for a  
31 qualified commercial employing techniques traditionally used in post-  
32 production for visual effects, graphic design, animation, and musical  
33 composition. However, where the commercial consists in its entirety of  
34 techniques such as visual effects, graphic design, or animation, such  
35 costs incurred in the production of the commercial, when occurring in  
36 New York, shall be deemed qualified production costs for the purposes of  
37 this section. Provided further, however, that "[post production]  
38 POST-PRODUCTION costs" shall not include the editing of previously  
39 produced content for a qualified commercial, EXCEPT AS OTHERWISE  
40 PROVIDED SPECIFICALLY HEREIN.

41 S 5. Subdivision (b) of section 28 of the tax law is amended by adding  
42 a new paragraph 5 to read as follows:

43 (5) "QUALIFIED COMMERCIAL POST-PRODUCTION COMPANY" IS A CORPORATION,  
44 PARTNERSHIP, LIMITED PARTNERSHIP, OR OTHER ENTITY OR INDIVIDUAL WHICH OR  
45 WHO IS PRINCIPALLY ENGAGED IN THE POST-PRODUCTION OF A QUALIFIED COMMER-  
46 CIAL.

47 S 6. Paragraph 1 of subsection (jj) of section 606 of the tax law, as  
48 amended by section 4 of part I of chapter 59 of the laws of 2012, is  
49 amended to read as follows:

50 (1) Allowance of credit. A taxpayer that is eligible pursuant to the  
51 provisions of section twenty-eight of this chapter shall be allowed a  
52 credit to be computed as provided in such section against the tax  
53 imposed by this article. The tax credit allowed pursuant to this section  
54 shall apply to taxable years beginning before January first, two thou-  
55 sand [fifteen] SEVENTEEN.

1 S 7. Section 7 of part I of chapter 59 of the laws of 2012, amending  
2 the tax law, relating to extending the empire state commercial  
3 production tax credit; and to amend part V of chapter 62 of the laws of  
4 2006 relating to the empire state commercial production tax credit,  
5 relating to the effectiveness thereof, is amended to read as follows:  
6 S 7. This act shall take effect immediately and shall be deemed to  
7 have been in full force and effect on and after December 31, 2011;  
8 provided, however, that the amendments to subparagraphs (i) and (iii) of  
9 paragraph 2 of subsection (a) of section 28 of the tax law made by  
10 section two of this act shall apply to calendar years beginning on and  
11 after January 1, 2012 and before January 1, [2015] 2017.  
12 S 8. This act shall take effect immediately, and shall apply to taxa-  
13 ble years beginning on and after January 1, 2014.