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

7398

I N S E N A T E

May 14, 2014

Introduced by Sen. FARLEY -- 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 empire state film production credit

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

Section 1. Paragraphs 1 and 2 of subdivision (b) of section 24 of the tax law, paragraph 1 as amended by section 4 of part B of chapter 59 of the laws of 2013 and paragraph 2 as added by section 1 of part P of chapter 60 of the laws of 2004, are amended to read as follows:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film *AND THE COST OF CONSTRUCTING, EQUIPPING OR EXPANDING A FILM PRODUCTION FACILITY WITHIN THE STATE.*

(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). "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. *IN THE CASE OF CONSTRUCTING, EQUIPPING OR EXPANDING A FILM PRODUCTION FACILITY, "PRODUCTION COSTS" SHALL MEAN THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN-B OF THIS CHAPTER.*

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

LBD15174-01-4

S 2. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 3 of part B of chapter 59 of the laws of 2013, is amended and a new paragraph 5 is added to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand nineteen provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen and twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand nineteen. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision [thirty-six] TWENTY of section two hundred [ten] TEN-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision [forty-one] THIRTY-TWO of section two hundred [ten] TEN-B and subsection [(gg)] (QQ) of section six hundred six of this chapter. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development, PROVIDED HOWEVER, BEGINNING ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN ALLOCATIONS FROM THIS POOL SHALL GIVE PRIORITY TO APPLICANTS THAT PLAN TO CONSTRUCT, EQUIP OR EXPAND FILM PRODUCTION FACILITIES WITHIN THE STATE.

(5) IF THE TAXPAYER CLAIMS THE CREDIT ALLOWED UNDER THIS SECTION, THE TAXPAYER MAY NOT USE THE COST OF CONSTRUCTION, EQUIPPING OR EXPANSION

THAT IS THE BASIS FOR THIS CREDIT IN THE BASIS OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

S 3. This act shall take effect on the same date and in the same manner as section 15 of part A of chapter 59 of the laws of 2014, takes effect.