

8702

I N A S S E M B L Y

February 4, 2014

Introduced by M. of A. LENTOL -- read once and referred to the Committee
on Ways and Means

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 ASSEM-
BLY, 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
28 AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING AN

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

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APPLICATION FOR ALLOCATION OF MUSIC PRODUCTION CREDIT WITH SUCH OFFICE. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

(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 48

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

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

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

(B) APPLICATION OF CREDIT. 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, HOWEVER, 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) EMPIRE STATE MUSIC	AMOUNT OF CREDIT FOR
PRODUCTION CREDIT UNDER	QUALIFIED PRODUCTION CREDIT
SUBSECTION (XX)	MUSIC UNDER SUBDIVISION
	FORTY-ONE OF SECTION TWO
	HUNDRED TEN

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

(XX) EMPIRE STATE MUSIC PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-ONE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION FORTY-ONE 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. The empire state development corporation shall report, to the governor and the legislature, its findings, conclusions and recommendations on or before one year from the date this act shall become a law, and shall submit with its report such legislative proposals as it deems necessary to implement its recommendations.

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