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

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I N S E N A T E

March 7, 2014

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:

Section 1. Paragraph 1 of subdivision (a) of section 28 of the tax law, as amended by section 1 of part I of chapter 59 of the laws of 2012, is amended to read as follows:

(1) A taxpayer which is a qualified commercial production company, or which is a sole proprietor of a qualified commercial production company, and which is 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 referenced in subdivision (c) of this section, to be computed as provided in this section. Provided, however, to be eligible for such credit, at least seventy-five percent of the production costs (excluding [post production] POST-PRODUCTION costs) paid or incurred directly and predominantly in the actual filming or recording of the qualified commercial must be costs incurred in New York state. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand [fifteen] SEVENTEEN.

S 2. Subparagraph (iii) of paragraph 2 of subdivision (a) of section 28 of the tax law, as amended by section 2 of part I of chapter 59 of the laws of 2012, is amended to read as follows:

(iii) The state annually will disburse three million of the total seven million in tax credits to all eligible production companies who film or record a qualified commercial outside of the metropolitan commuter 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.

LBD14233-04-4

two of the public authorities law, AND FOR WORK PERFORMED BY QUALIFIED POST-PRODUCTION COMPANIES FOR QUALIFIED POST-PRODUCTION WORK PERFORMED OUTSIDE SUCH METROPOLITAN TRANSPORTATION DISTRICT ON A QUALIFIED COMMERCIAL, AS PROVIDED HEREIN; provided, however, that if, after the state reviews all applications from eligible production companies who film or record a qualified commercial outside of the metropolitan commuter district for a given year, AND WORK PERFORMED BY QUALIFIED POST-PRODUCTION COMPANIES FOR QUALIFIED POST-PRODUCTION WORK PERFORMED OUTSIDE SUCH METROPOLITAN TRANSPORTATION DISTRICT ON A QUALIFIED COMMERCIAL, tax credits remain unallocated under this subparagraph, those credits shall be allotted to the credits set forth in subparagraph (i) of this paragraph for use consistent with the purposes of such subparagraph. 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 [five] EIGHT percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater than two hundred thousand dollars in the aggregate during the calendar year. Such credit will be applied to qualified production costs exceeding two hundred thousand dollars in a calendar year. IN ADDITION TO THE FOREGOING, 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 PERCENT FOR QUALIFIED POST-PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED COMMERCIAL BY A QUALIFIED COMMERCIAL POST-PRODUCTION COMPANY WHICH ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE AND PERFORMED OUTSIDE THE METROPOLITAN TRANSPORTATION DISTRICT ON A QUALIFIED COMMERCIAL. TO BE ELIGIBLE FOR SUCH POST-PRODUCTION CREDIT THE TOTAL QUALIFIED PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST BE GREATER THAN ONE HUNDRED THOUSAND DOLLARS IN THE AGGREGATE DURING THE CALENDAR YEAR FOR WORK PERFORMED IN NEW YORK STATE. SUCH CREDIT WILL BE APPLIED TO QUALIFIED PRODUCTION COSTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS IN A CALENDAR YEAR. AS USED IN THIS SUBPARAGRAPH, "POST-PRODUCTION WORK" OR "QUALIFIED POST-PRODUCTION WORK" MEANS ANY WORK PERFORMED BY A QUALIFIED COMMERCIAL PRODUCTION COMPANY OR BY A QUALIFIED COMMERCIAL POST-PRODUCTION COMPANY AS SUCH TERMS ARE DEFINED HEREIN AND INCLUDES BUT IS NOT LIMITED TO EDITING, SOUND EDITING, SPECIAL EFFECTS, GRAPHICS, COLOR TIMING OR FINISHING COSTS, AND WORK ASSOCIATED WITH THE PRODUCTION OF ORIGINAL CONTENT FOR A QUALIFIED COMMERCIAL EMPLOYING TECHNIQUES TRADITIONALLY USED IN POST-PRODUCTION FOR VISUAL EFFECTS, GRAPHIC DESIGN, ANIMATION AND MUSICAL COMPOSITION, INCLUDING THE EDITING OF PREVIOUSLY PRODUCED CONTENT FOR A QUALIFIED COMMERCIAL. THE APPLICATION FOR A CREDIT FOR SUCH QUALIFIED POST-PRODUCTION COSTS MAY BE REQUIRED AS A JOINT APPLICATION WITH THE APPLICATION FOR A CREDIT FOR A QUALIFIED COMMERCIAL.

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

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

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

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

(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 commercial. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified commercial 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 who are employed by a qualified company and musicians). "Production costs" generally include technical and crew production costs, such as expenditures for commercial production facilities and/or location costs, or any part thereof, film, audiotape, videotape or digital medium, props, makeup, wardrobe, commercial processing, camera, sound recording, scoring, set construction, lighting, shooting[, editing] and meals. For purposes of this section, "[post production] POST-PRODUCTION costs" include the production of original content for a qualified commercial employing techniques traditionally used in post-production for visual effects, graphic design, animation, and musical composition. However, where the commercial consists in its entirety of techniques such as visual effects, graphic design, or animation, such costs incurred in the production of the commercial, when occurring in New York, shall be deemed qualified production costs for the purposes of this section. Provided further, however, that "[post production] POST-PRODUCTION costs" shall not include the editing of previously produced content for a qualified commercial, EXCEPT AS OTHERWISE PROVIDED SPECIFICALLY HEREIN.

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

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

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

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

S 7. Section 7 of 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, is amended to read as follows:

S 7. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after December 31, 2011; provided, however, that the amendments to subparagraphs (i) and (iii) of paragraph 2 of subsection (a) of section 28 of the tax law made by section two of this act shall apply to calendar years beginning on and after January 1, 2012 and before January 1, [2015] 2017.

S 8. This act shall take effect immediately, and shall apply to taxable years beginning on and after January 1, 2014.