

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:

1 Section 1. Paragraphs 1 and 2 of subdivision (b) of section 24 of the
2 tax law, paragraph 1 as amended by section 4 of part B of chapter 59 of
3 the laws of 2013 and paragraph 2 as added by section 1 of part P of
4 chapter 60 of the laws of 2004, are amended to read as follows:
5 (1) "Qualified production costs" means production costs only to the
6 extent such costs are attributable to the use of tangible property or
7 the performance of services within the state directly and predominantly
8 in the production (including pre-production and post production) of a
9 qualified film AND THE COST OF CONSTRUCTING, EQUIPPING OR EXPANDING A
10 FILM PRODUCTION FACILITY WITHIN THE STATE.
11 (2) "Production costs" means any costs for tangible property used and
12 services performed directly and predominantly in the production (including
13 pre-production and post production) of a qualified film.
14 "Production costs" shall not include (i) costs for a story, script or
15 scenario to be used for a qualified film and (ii) wages or salaries or
16 other compensation for writers, directors, including music directors,
17 producers and performers (other than background actors with no scripted
18 lines). "Production costs" generally include technical and crew
19 production costs, such as expenditures for film production facilities,
20 or any part thereof, props, makeup, wardrobe, film processing, camera,
21 sound recording, set construction, lighting, shooting, editing and
22 meals. IN THE CASE OF CONSTRUCTING, EQUIPPING OR EXPANDING A FILM
23 PRODUCTION FACILITY, "PRODUCTION COSTS" SHALL MEAN THE COST OR OTHER
24 BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND
25 OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS
26 OF BUILDINGS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION
27 TWO HUNDRED TEN-B OF THIS CHAPTER.

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

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

4 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
5 subdivision (a) of this section shall be increased by an additional four
6 hundred twenty million dollars in each year starting in two thousand ten
7 through two thousand nineteen provided however, seven million dollars of
8 the annual allocation shall be available for the empire state film post
9 production credit pursuant to section thirty-one of this article in two
10 thousand thirteen and two thousand fourteen and twenty-five million
11 dollars of the annual allocation shall be available for the empire state
12 film post production credit pursuant to section thirty-one of this arti-
13 cle in each year starting in two thousand fifteen through two thousand
14 nineteen. This amount shall be allocated by the governor's office for
15 motion picture and television development among taxpayers in accordance
16 with subdivision (a) of this section. If the commissioner of economic
17 development determines that the aggregate amount of tax credits avail-
18 able from additional pool 2 for the empire state film production tax
19 credit have been previously allocated, and determines that the pending
20 applications from eligible applicants for the empire state film post
21 production tax credit pursuant to section thirty-one of this article is
22 insufficient to utilize the balance of unallocated empire state film
23 post production tax credits from such pool, the remainder, after such
24 pending applications are considered, shall be made available for allo-
25 cation in the empire state film tax credit pursuant to this section,
26 subdivision [thirty-six] TWENTY of section two hundred [ten] TEN-B and
27 subsection (gg) of section six hundred six of this chapter. Also, if the
28 commissioner of economic development determines that the aggregate
29 amount of tax credits available from additional pool 2 for the empire
30 state film post production tax credit have been previously allocated,
31 and determines that the pending applications from eligible applicants
32 for the empire state film production tax credit pursuant to this section
33 is insufficient to utilize the balance of unallocated film production
34 tax credits from such pool, then all or part of the remainder, after
35 such pending applications are considered, shall be made available for
36 allocation for the empire state film post production credit pursuant to
37 this section, subdivision [forty-one] THIRTY-TWO of section two hundred
38 [ten] TEN-B and subsection [(gg)] (QQ) of section six hundred six of
39 this chapter. The governor's office for motion picture and television
40 development must notify taxpayers of their allocation year and include
41 the allocation year on the certificate of tax credit. Taxpayers eligible
42 to claim a credit must report the allocation year directly on their
43 empire state film production credit tax form for each year a credit is
44 claimed and include a copy of the certificate with their tax return. In
45 the case of a qualified film that receives funds from additional pool 2,
46 no empire state film production credit shall be claimed before the later
47 of the taxable year the production of the qualified film is complete, or
48 the taxable year immediately following the allocation year for which the
49 film has been allocated credit by the governor's office for motion
50 picture and television development, PROVIDED HOWEVER, BEGINNING ON OR
51 AFTER APRIL FIRST, TWO THOUSAND FIFTEEN ALLOCATIONS FROM THIS POOL SHALL
52 GIVE PRIORITY TO APPLICANTS THAT PLAN TO CONSTRUCT, EQUIP OR EXPAND FILM
53 PRODUCTION FACILITIES WITHIN THE STATE.

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

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

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