

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

10083

I N A S S E M B L Y

May 10, 2016

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

AN ACT to amend the tax law and the economic development law, in
relation to the creation of the empire state music production credit
and the empire state digital gaming media production credit; and to
repeal subdivision 11 of section 352 of the economic development law
relating thereto

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 43 to read
2 as follows:
3 S 43. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT.
4 (1) A TAXPAYER WHICH IS A MUSIC PRODUCTION ENTITY ENGAGED IN QUALIFIED
5 MUSIC PRODUCTION, OR WHO IS A SOLE PROPRIETOR OF OR A MEMBER OF A PART-
6 NERSHIP, WHICH IS A MUSIC PRODUCTION ENTITY ENGAGED IN QUALIFIED MUSIC
7 PRODUCTION, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF
8 THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX TO BE COMPUTED
9 AS PROVIDED HEREIN.
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 OR LIMITED
12 LIABILITY COMPANY) OF TWENTY-FIVE PERCENT AND THE ELIGIBLE PRODUCTION
13 COSTS OF ONE OR MORE QUALIFIED MUSIC PRODUCTIONS.
14 (3) ELIGIBLE PRODUCTION COSTS FOR A QUALIFIED MUSIC PRODUCTION
15 INCURRED AND PAID IN THIS STATE BUT OUTSIDE SUCH METROPOLITAN COMMUTER
16 TRANSPORTATION DISTRICT SHALL BE ELIGIBLE FOR A CREDIT OF TEN PERCENT OF
17 SUCH ELIGIBLE PRODUCTION COSTS IN ADDITION TO THE CREDIT SPECIFIED IN
18 PARAGRAPH TWO OF THIS SUBDIVISION.
19 (4) NO ELIGIBLE PRODUCTION COSTS CLAIMED BY A TAXPAYER AS THE BASIS
20 FOR THE CREDIT UNDER THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO
21 CLAIM ANY OTHER CREDIT PURSUANT TO THIS CHAPTER.
22 (B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED
23 UNDER THIS SECTION, SUBDIVISION FIFTY-TWO OF SECTION TWO HUNDRED TEN-B
24 AND SUBSECTION (FFF) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY
25 TAXABLE YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS. SUCH AGGREGATE AMOUNT

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

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1 OF CREDITS SHALL BE ALLOCATED BY THE EMPIRE STATE DEVELOPMENT CORPO-
2 RATION AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF
3 FILING AN APPLICATION FOR ALLOCATION OR MUSIC PRODUCTION CREDITS WITH
4 SUCH OFFICE. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY
5 PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR
6 SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING
7 BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT TAXABLE YEAR.

8 (C) DEFINITIONS. AS USED IN THIS SECTION:

9 (1) "MUSIC PRODUCTION" MEANS THE CREATION OF A SOUND RECORDING AND ANY
10 RELATED MUSIC VIDEO, EITHER OF WHICH IS INTENDED FOR COMMERCIAL RELEASE.
11 A "MUSIC PRODUCTION" DOES NOT INCLUDE RECORDINGS THAT ARE PRIMARILY
12 SPOKEN WORD OR WILDLIFE OR NATURE SOUNDS, OR PRODUCED FOR INSTRUCTIONAL
13 USE OR ADVERTISING OR PROMOTIONAL PURPOSES.

14 (2) "QUALIFIED MUSIC PRODUCTION" IS A MUSIC PRODUCTION IN WHICH ELIGI-
15 BLE PRODUCTION COSTS EQUAL TO OR ARE IN EXCESS OF SEVEN THOUSAND FIVE
16 HUNDRED DOLLARS IF INCURRED AND PAID IN THIS STATE IN THE TWELVE MONTHS
17 PRECEDING THE DATE ON WHICH THE CREDIT IS CLAIMED. PROVIDED, HOWEVER, IF
18 SUCH PRODUCTION COSTS ARE INCURRED AND PAID OUTSIDE THE METROPOLITAN
19 COMMUTER TRANSPORTATION DISTRICT IN THIS STATE, SUCH PRODUCTION COSTS
20 SHALL BE EQUAL TO OR IN EXCESS OF THREE THOUSAND SEVEN HUNDRED FIFTY
21 DOLLARS TO BE A QUALIFIED MUSIC PRODUCTION FOR THE PURPOSES OF THIS
22 PARAGRAPH.

23 (3) "ELIGIBLE PRODUCTION COSTS FOR A QUALIFIED MUSIC PRODUCTION" ARE
24 COSTS INCURRED AND PAID IN THIS STATE FOR TANGIBLE PROPERTY AND SERVICES
25 USED IN THE PRODUCTION OF QUALIFIED MUSIC PRODUCTION, AS DETERMINED BY
26 THE DEPARTMENT OF ECONOMIC DEVELOPMENT, INCLUDING, BUT NOT LIMITED TO:
27 (I) STUDIO RENTAL FEES AND RELATED COSTS, (II) INSTRUMENT AND EQUIPMENT
28 RENTAL FEES, (III) PRODUCTION SESSION FEES FOR PROGRAMMERS, ENGINEERS,
29 AND TECHNICIANS, (IV) MIXING AND MASTERING SERVICES, AND (V) LOCAL
30 TRANSPORTATION EXPENDITURES DIRECTLY RELATED TO MUSIC PRODUCTION AND
31 PROVIDED AT OR TO THE SITE OF SUCH MUSIC PRODUCTION. ELIGIBLE PRODUCTION
32 COSTS SHALL NOT INCLUDE: (I) COSTS FOR TANGIBLE PROPERTY OR SERVICES
33 USED OR PERFORMED OUTSIDE OF THIS STATE, (II) PERFORMANCE FEES FOR
34 ARTISTS, (III) SALARIES OR RELATED COMPENSATION FOR PRODUCERS OR SONG-
35 WRITERS, (IV) COMPOSER, ARTIST OR PRODUCER RESIDUAL ROYALTIES OR
36 ADVANCES, (V) LICENSING FEES FOR SAMPLES, (VI) INTERPOLATIONS OR OTHER
37 MUSIC CLEARANCE COSTS, (VII) MASTERING OR POST-PRODUCTION EXPENDITURES
38 FOR PROJECTS THAT WERE NOT PRINCIPALLY TRACKED AND RECORDED IN THIS
39 STATE, OR (VIII) ANY COSTS ASSOCIATED WITH MANUFACTURING, DUPLICATION,
40 PACKAGING, DISTRIBUTION, PROMOTION, MARKETING OR TOURING NOT SPECIF-
41 ICALLY OUTLINED IN THIS SUBPARAGRAPH. WITH RESPECT TO THE PRODUCTION OF
42 A MUSIC VIDEO, ELIGIBLE PRODUCTION COSTS ARE THOSE DEFINED IN PARAGRAPH
43 TWO OF SUBDIVISION (B) OF SECTION TWENTY-FOUR OF THIS ARTICLE. SUCH
44 TOTAL PRODUCTION COSTS INCURRED AND PAID IN THIS STATE SHALL BE EQUAL TO
45 OR EXCEED SEVENTY-FIVE PERCENT OF TOTAL COST OF AN ELIGIBLE PRODUCTION
46 INCURRED AND PAID WITHIN AND WITHOUT THIS STATE.

47 (D) REPORTING. THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL SUBMIT AN
48 ANNUAL REPORT, ON OR BEFORE DECEMBER FIRST OF EACH YEAR, TO THE GOVER-
49 NOR, THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE TEMPORARY PRESIDENT
50 OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY, INCLUDING, BUT NOT
51 LIMITED TO, THE FOLLOWING INFORMATION REGARDING THE PREVIOUS CALENDAR
52 YEAR REGIONALLY, FOR ACTIVITY WITHIN AND WITHOUT THE METROPOLITAN COMMU-
53 TER TRANSPORTATION DISTRICT; THE TOTAL DOLLAR AMOUNT OF CREDITS ALLO-
54 CATED, THE NAME AND ADDRESS OF EACH ELIGIBLE MUSIC PRODUCTION ENTITY
55 ALLOCATED CREDITS UNDER THIS SECTION, AND THE TOTAL AMOUNT OF CREDITS
56 ALLOCATED TO EACH ELIGIBLE MUSIC PRODUCTION ENTITY. THE REPORT MAY ALSO

1 INCLUDE ANY RECOMMENDATIONS FOR CHANGES IN THE CALCULATION OR ADMINIS-
2 TRATION OF THE CREDIT, AND ANY OTHER INFORMATION REGARDING THIS CREDIT
3 AS MAY BE USEFUL AND APPROPRIATE.

4 (E) CROSS-REFERENCES. FOR APPLICATIONS OF THE CREDIT PROVIDED FOR IN
5 THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

6 (1) ARTICLE NINE-A: SECTION TWO HUNDRED TEN-B, SUBDIVISION FIFTY-TWO.

7 (2) ARTICLE TWENTY-TWO: SECTION SIX HUNDRED SIX, SUBSECTION (I), PARA-
8 GRAPH ONE, SUBPARAGRAPH (B), CLAUSE (XLIII).

9 (3) ARTICLE TWENTY-TWO: SECTION SIX HUNDRED SIX, SUBSECTION (FFF).

10 S 2. Section 210-B of the tax law is amended by adding a new subdivi-
11 sion 52 to read as follows:

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

16 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
17 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
18 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF
19 SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF THE
20 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE
21 YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN
22 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
23 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER, PROVIDED,
24 HOWEVER, NO INTEREST SHALL BE PAID THEREON.

25 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
26 of the tax law is amended by adding a new clause (xliii) to read as
27 follows:

28 (XLIII) EMPIRE STATE MUSIC	AMOUNT OF CREDIT
29 PRODUCTION CREDIT UNDER	UNDER SUBDIVISION
30 SUBSECTION (FFF)	FIFTY-TWO OF SECTION TWO HUNDRED
31	TEN-B

32 S 4. Section 606 of the tax law is amended by adding a new subsection
33 (fff) to read as follows:

34 (FFF) EMPIRE STATE MUSIC PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A
35 TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-THREE OF THIS CHAPTER
36 SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION
37 FORTY-THREE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

38 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER
39 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH
40 YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
41 ED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS
42 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

43 S 5. The tax law is amended by adding a new section 44 to read as
44 follows:

45 S 44. EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (A) ALLOW-
46 ANCE OF CREDIT. (1) A TAXPAYER WHICH IS A DIGITAL GAMING MEDIA
47 PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL GAMING MEDIA PRODUCTION,
48 OR WHO IS A SOLE PROPRIETOR OF OR A MEMBER OF A PARTNERSHIP, WHICH IS A
49 DIGITAL GAMING MEDIA PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL
50 GAMING MEDIA PRODUCTION, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR
51 TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX
52 TO BE COMPUTED AS PROVIDED HEREIN.

53 (2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE
54 OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP OR LIMITED

LIABILITY COMPANY) OF TWENTY-FIVE PERCENT AND THE ELIGIBLE PRODUCTION COSTS OF ONE OR MORE QUALIFIED DIGITAL GAMING MEDIA PRODUCTIONS.

(3) ELIGIBLE DIGITAL GAMING MEDIA PRODUCTION COSTS FOR A QUALIFIED DIGITAL GAMING MEDIA PRODUCTION INCURRED AND PAID IN THIS STATE BUT OUTSIDE SUCH METROPOLITAN COMMUTER TRANSPORTATION DISTRICT SHALL BE ELIGIBLE FOR A CREDIT OF TEN PERCENT OF SUCH ELIGIBLE PRODUCTION COSTS IN ADDITION TO THE CREDIT SPECIFIED IN PARAGRAPH TWO OF THIS SUBDIVISION.

(4) NO ELIGIBLE PRODUCTION COSTS CLAIMED BY A TAXPAYER AS THE BASIS FOR THE CREDIT UNDER THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT PURSUANT TO THIS CHAPTER.

(B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION, SUBDIVISION FIFTY-THREE OF SECTION TWO HUNDRED TEN-B AND SUBSECTION (GGG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY TAXABLE YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE EMPIRE STATE DEVELOPMENT CORPORATION AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF DIGITAL GAMING MEDIA 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 TAXABLE YEAR.

(C) DEFINITIONS. AS USED IN THIS SECTION:

(1) "QUALIFIED DIGITAL GAMING MEDIA PRODUCTION" MEANS: (I) A WEBSITE, THE DIGITAL MEDIA PRODUCTION COSTS OF WHICH ARE PAID OR INCURRED PREDOMINATELY IN CONNECTION WITH (A) VIDEO SIMULATION, ANIMATION, TEXT, AUDIO, GRAPHICS OR SIMILAR GAMING RELATED PROPERTY EMBODIED IN DIGITAL FORMAT, AND (B) INTERACTIVE FEATURES OF DIGITAL GAMING (E.G., LINKS, MESSAGE BOARDS, COMMUNITIES OR CONTENT MANIPULATION); (II) VIDEO OR INTERACTIVE GAMES PRODUCED PRIMARILY FOR DISTRIBUTION OVER THE INTERNET, WIRELESS NETWORK OR SUCCESSORS THERETO; (III) ANIMATION, SIMULATION OR EMBEDDED GRAPHICS DIGITAL GAMING RELATED SOFTWARE INTENDED FOR COMMERCIAL DISTRIBUTION REGARDLESS OF MEDIUM; AND (IV) A DIGITAL GAMING MEDIA PRODUCTION IN WHICH QUALIFIED DIGITAL GAMING MEDIA PRODUCTION COSTS EQUAL TO OR ARE IN EXCESS OF SEVEN THOUSAND FIVE HUNDRED DOLLARS IF INCURRED AND PAID IN THIS STATE IN TWELVE MONTHS PRECEDING THE DATE ON WHICH THE CREDIT IS CLAIMED. PROVIDED, HOWEVER, IF SUCH A PRODUCTION COSTS ARE INCURRED AND PAID OUTSIDE THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT IN THIS STATE, SUCH PRODUCTION COSTS SHALL BE EQUAL TO OR IN EXCESS OF THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS TO BE A QUALIFIED DIGITAL GAMING MEDIA PRODUCTION FOR PURPOSES OF THIS PARAGRAPH. A QUALIFIED DIGITAL GAMING MEDIA PRODUCTION DOES NOT INCLUDE A WEBSITE, VIDEO, INTERACTIVE GAME OR SOFTWARE THAT IS USED PREDOMINATELY FOR: ELECTRONIC COMMERCE (RETAIL OR WHOLESALE PURPOSES OTHER THAN THE SALE OF VIDEO OR INTERACTIVE GAMES), GAMBLING (INCLUDING ACTIVITIES REGULATED BY A NEW YORK GAMING AGENCY), EXCLUSIVE LOCAL CONSUMPTION FOR ENTITIES NOT ACCESSIBLE BY THE GENERAL PUBLIC INCLUDING INDUSTRIAL OR OTHER PRIVATE PURPOSES, AND POLITICAL ADVOCACY PURPOSES.

(2) "DIGITAL GAMING MEDIA PRODUCTION COSTS" MEANS ANY COSTS FOR PROPERTY USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINATELY IN THE CREATION OF A DIGITAL GAMING MEDIA PRODUCTION OR PRODUCTIONS. DIGITAL GAMING MEDIA PRODUCTION COSTS INCLUDE BUT SHALL NOT BE LIMITED TO TO PAYMENTS FOR PROPERTY USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINATELY IN THE DEVELOPMENT (INCLUDING CONCEPT CREATION), DESIGN, PRODUCTION (INCLUDING CONCEPT CREATION), DESIGN, PRODUCTION (INCLUDING

1 TESTING), EDITING (INCLUDING ENCODING) AND COMPOSITING (INCLUDING THE
2 INTEGRATION OF DIGITAL FILES FOR INTERACTION BY END USERS) OF DIGITAL
3 GAMING MEDIA. DIGITAL GAMING MEDIA PRODUCTION COSTS SHALL NOT INCLUDE
4 EXPENSES INCURRED FOR THE DISTRIBUTION, MARKETING, PROMOTION, OR ADVER-
5 TISING CONTENT GENERATED BY END-USERS OR OTHER COSTS NOT DIRECTLY AND
6 PREDOMINATELY RELATED TO THE CREATION, PRODUCTION OR MODIFICATION OF
7 DIGITAL GAMING MEDIA. IN ADDITION, SALARIES OR OTHER INCOME DISTRIBUTION
8 RELATED TO THE CREATION OF DIGITAL GAMING MEDIA FOR ANY PERSON WHO
9 SERVES IN THE ROLE OF CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER,
10 PRESIDENT, TREASURER OR SIMILAR POSITION SHALL NOT BE INCLUDED AS
11 DIGITAL GAMING MEDIA PRODUCTION COSTS. FURTHERMORE, ANY INCOME OR OTHER
12 DISTRIBUTION TO ANY INDIVIDUAL WHO HOLDS MORE THAN A FIVE PERCENT OWNER-
13 SHIP INTEREST IN A DIGITAL GAMING MEDIA PRODUCTION ENTITY SHALL NOT BE
14 INCLUDED AS DIGITAL GAMING MEDIA PRODUCTION COSTS.

15 (3) "QUALIFIED DIGITAL GAMING MEDIA PRODUCTION COSTS" MEANS DIGITAL
16 GAMING MEDIA PRODUCTION COSTS ONLY TO THE EXTENT SUCH COSTS ARE ATTRIB-
17 UTABLE TO THE USE OF PROPERTY OR THE PERFORMANCE OF SERVICES BY ANY
18 PERSONS WITHIN THE STATE DIRECTLY AND PREDOMINANTLY IN THE CREATION,
19 PRODUCTION OR MODIFICATION OF DIGITAL GAMING RELATED MEDIA. SUCH TOTAL
20 PRODUCTION COSTS INCURRED AND PAID IN THIS STATE SHALL BE EQUAL TO OR
21 EXCEED SEVENTY-FIVE PERCENT OF TOTAL COST OF AN ELIGIBLE PRODUCTION
22 INCURRED AND PAID WITHIN AND WITHOUT THIS STATE.

23 (D) REPORTING. THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL SUBMIT AN
24 ANNUAL REPORT, ON OR BEFORE DECEMBER FIRST OF EACH YEAR, TO THE GOVER-
25 NOR, THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE TEMPORARY PRESIDENT
26 OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY, INCLUDING, BUT NOT
27 LIMITED TO, THE FOLLOWING INFORMATION REGARDING THE PREVIOUS CALENDAR
28 YEAR REGIONALLY, FOR ACTIVITY WITHIN AND WITHOUT THE METROPOLITAN COMMU-
29 TER TRANSPORTATION DISTRICT; THE TOTAL DOLLAR AMOUNT OF CREDITS ALLO-
30 CATED, THE NAME AND ADDRESS OF EACH ELIGIBLE DIGITAL GAMING MEDIA
31 PRODUCTION ENTITY ALLOCATED CREDITS UNDER THIS SECTION, AND THE TOTAL
32 AMOUNT OF CREDITS ALLOCATED TO EACH ELIGIBLE DIGITAL GAMING MEDIA
33 PRODUCTION ENTITY. THE REPORT MAY ALSO INCLUDE ANY RECOMMENDATIONS FOR
34 CHANGES IN THE CALCULATION OR ADMINISTRATION OF THE CREDIT, AND ANY
35 OTHER INFORMATION REGARDING THIS CREDIT AS MAY BE USEFUL AND APPROPRI-
36 ATE.

37 (E) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN
38 THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

39 (1) ARTICLE NINE-A: SECTION TWO HUNDRED TEN-B, SUBDIVISION
40 FIFTY-THREE.

41 (2) ARTICLE TWENTY-TWO: SECTION SIX HUNDRED SIX, SUBSECTION (I), PARA-
42 GRAPH ONE, SUBPARAGRAPH (B), CLAUSE (XLIV).

43 (3) ARTICLE TWENTY-TWO: SECTION SIX HUNDRED SIX, SUBSECTION (GGG).

44 S 6. Section 210-B of the tax law is amended by adding a new subdivi-
45 sion 53 to read as follows:

46 53. EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (A) ALLOWANCE
47 OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-FOUR OF
48 THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN
49 SUCH SECTION FORTY-FOUR AGAINST THE TAX IMPOSED BY THIS ARTICLE.

50 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
51 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
52 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF
53 SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF THE
54 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE
55 YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN
56 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE

1 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER, PROVIDED,
 2 HOWEVER, NO INTEREST SHALL BE PAID THEREON.

3 S 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 4 of the tax law is amended by adding a new clause (xliv) to read as
 5 follows:

6 (XLIV) EMPIRE STATE DIGITAL	AMOUNT OF CREDIT
7 GAMING MEDIA PRODUCTION	UNDER SUBDIVISION
8 CREDIT UNDER SUBSECTION (GGG)	FIFTY-THREE OF SECTION
9	TWO HUNDRED TEN-B

10 S 8. Section 606 of the tax law is amended by adding a new subsection
 11 (ggg) to read as follows:

12 (GGG) EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (1) ALLOW-
 13 ANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION
 14 FORTY-FOUR OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS
 15 PROVIDED IN SUCH SECTION FORTY-FOUR AGAINST THE TAX IMPOSED BY THIS
 16 ARTICLE.

17 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER
 18 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH
 19 YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
 20 ED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS
 21 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

22 S 9. The state commissioner of economic development, after consulting
 23 with the state commissioner of taxation and finance, shall promulgate
 24 regulations by December 31, 2016 to establish procedures for the allo-
 25 cation of tax credits as required by subdivision (a) of section 43 and
 26 subdivision (a) of section 44 of the tax law. Such rules and regulations
 27 shall include provisions describing the application process, the due
 28 dates for such applications, the standards which shall be used to evalu-
 29 ate the applications, the documentation that will be provided to taxpay-
 30 ers substantiate to the New York state department of taxation and
 31 finance the amount of tax credits allocated to such taxpayers, under
 32 what conditions all or a portion of this tax credit may be revoked, and
 33 such other provisions as deemed necessary and appropriate. Notwithstand-
 34 ing any other provisions to the contrary in the state administrative
 35 procedure act, such rules and regulations may be adopted on an emergency
 36 basis if necessary to meet such December 31, 2016 deadline.

37 S 10. Subdivision 11 of section 352 of the economic development law is
 38 REPEALED.

39 S 11. Subdivisions 1, 3 and 5 of section 353 of the economic develop-
 40 ment law, as amended by section 2 of part K of chapter 59 of the laws of
 41 2015, are amended to read as follows:

42 1. To be a participant in the excelsior jobs program, a business enti-
 43 ty shall operate in New York state predominantly:

44 (a) as a financial services data center or a financial services back
 45 office operation;

46 (b) in manufacturing;

47 (c) in software development and new media;

48 (d) in scientific research and development;

49 (e) in agriculture;

50 (f) in the creation or expansion of back office operations in the
 51 state;

52 (g) in a distribution center;

53 (h) in an industry with significant potential for private-sector
 54 economic growth and development in this state as established by the
 55 commissioner in regulations promulgated pursuant to this article. In

1 promulgating such regulations the commissioner shall include job and
2 investment criteria; OR

3 (i) as an entertainment company[; or

4 (j) in music production].

5 3. For the purposes of this article, in order to participate in the
6 excelsior jobs program, a business entity operating predominantly in
7 manufacturing must create at least ten net new jobs; a business entity
8 operating predominately in agriculture must create at least five net new
9 jobs; a business entity operating predominantly as a financial service
10 data center or financial services customer back office operation must
11 create at least fifty net new jobs; a business entity operating predomi-
12 nantly in scientific research and development must create at least five
13 net new jobs; a business entity operating predominantly in software
14 development must create at least five net new jobs; a business entity
15 creating or expanding back office operations must create at least fifty
16 net new jobs; [a business entity operating predominately in music
17 production must create at least five net new jobs;] a business entity
18 operating predominantly as an entertainment company must create or
19 obtain at least one hundred net new jobs; or a business entity operating
20 predominantly as a distribution center in the state must create at least
21 seventy-five net new jobs, notwithstanding subdivision five of this
22 section; or a business entity must be a regionally significant project
23 as defined in this article; or

24 5. A not-for-profit business entity, a business entity whose primary
25 function is the provision of services including personal services, busi-
26 ness services, or the provision of utilities, and a business entity
27 engaged predominantly in the retail or entertainment industry, other
28 than a business operating as an entertainment company as defined in this
29 article [and other than a business entity engaged in music production],
30 and a company engaged in the generation or distribution of electricity,
31 the distribution of natural gas, or the production of steam associated
32 with the generation of electricity are not eligible to receive the tax
33 credit described in this article.

34 S 12. Subdivision 21 of section 352 of the economic development law,
35 as amended by section 1 of part K of chapter 59 of the laws of 2015, is
36 amended to read as follows:

37 21. "Software development" means the creation of coded computer
38 instructions [or production or post-production of video games, as
39 defined in subdivision one-a of section six hundred eleven of the gener-
40 al business law, other than those embedded and used exclusively in
41 advertising, promotional websites or microsites,] and [also] includes
42 new media as defined by the commissioner in regulations.

43 S 13. This act shall take effect immediately and shall apply to taxa-
44 ble years beginning on or after January 1, 2016.