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

5450

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law, in relation to the excelsior jobs program for music production; and to amend the tax law, in relation to the excelsior jobs program credit

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

Section 1. Section 351 of the economic development law, is amended by adding a new undesignated paragraph to read as follows:

IT IS FURTHER HEREBY FOUND AND DECLARED THAT THE PURPOSE OF THE EXCELSIOR JOBS PROGRAM ACT IS TO CREATE, RETAIN AND RECLAIM JOBS THROUGH EXPENDITURES MADE IN NEW YORK STATE. NEW YORK IS HOME TO TENS OF THOUSANDS OF MUSICIANS, SONGWRITERS, TECHNICIANS, PRODUCERS, AND OTHER BEHIND-THE-SCENES PROFESSIONALS WHO ARE INDISPENSABLE TO THE MUSIC CREATION PROCESS. SEVERAL STATES AND FOREIGN GOVERNMENTS HAVE DEVELOPED AGGRESSIVE MARKETING PROGRAMS, GRANTS AND TAX INCENTIVES TO LURE MUSIC PRODUCTION IN ORDER TO BOLSTER THEIR LOCAL MUSIC INDUSTRY AND ASSOCIATED SUPPORT SERVICES. NEW YORK STATE'S SHARE OF MUSIC PRODUCTION HAS DROPPED NEARLY FIFTY PERCENT SINCE NINETEEN HUNDRED NINETY-NINE. TODAY'S MUSIC PRODUCTION COMMUNITY OFTEN RELIES UPON SMALL CONTRACTORS AND VENDORS THAT SUPPORT THE PRODUCTION AND DISTRIBUTION OF SOUND RECORDINGS AND MUSIC VIDEOS FOR A VARIETY OF DIFFERENT ENTITIES. AS THE STATE WANTS TO PROTECT ITS CULTURAL INDUSTRIES AND ENCOURAGE ECONOMIC ACTIVITY IN ORDER TO PROTECT THE LIVELIHOODS OF THOSE INVOLVED IN THE MUSIC CREATION ECOSYSTEM, THE LEGISLATURE DEEMS IT APPROPRIATE TO AMEND THE EXCELSIOR JOBS PROGRAM TO BETTER PROMOTE MUSIC PRODUCTION INDUSTRY IN NEW YORK.

S 2. Subdivision 11 of section 352 of the economic development law, as added by section 1 of part K of chapter 59 of the laws of 2015, is amended to read as follows:

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

LBD11135-01-5

11. "Music production" means the [process of creating sound recordings of at least eight minutes, recorded in professional sound studios,] CREATION OF A SOUND RECORDING OR ANY RELATED MUSIC VIDEO, EITHER OF WHICH IS intended for commercial release. "Music production" does not include recording of live concerts, or recordings that are primarily spoken word or wildlife or nature sounds, or produced for instructional use or advertising or promotional purposes.

S 3. Section 352 of the economic development law is amended by adding eight new subdivisions 22, 23, 24, 25, 26, 27, 28 and 29 to read as follows:

22. "MUSIC PRODUCTION PROJECT" IS A MUSIC PRODUCTION WHICH (A) ENGAGES AT LEAST FIVE MUSIC PROFESSIONALS IN THE PROCESS OF CREATING AND PREPARING FOR COMMERCIAL RELEASE A SOUND RECORDING OR ANY RELATED MUSIC VIDEO OR (B) INCURS ELIGIBLE PRODUCTION COSTS OF AT LEAST SEVEN THOUSAND FIVE HUNDRED DOLLARS IN THE MCTD OR $3,750 OUTSIDE THE MCTD IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CREDIT IS CLAIMED.

23. "ELIGIBLE MUSIC PRODUCTION PROJECT" MEANS A MUSIC PRODUCTION PROJECT FOR WHICH AT LEAST FIFTY PERCENT OF ITS PRODUCTION COSTS ARE INCURRED AND PAID IN NEW YORK.

24. "ELIGIBLE PRODUCTION COSTS" ARE PRODUCTION COSTS INCURRED IN NEW YORK STATE AND INCLUDES COSTS PAID AND INCURRED FOR TANGIBLE PROPERTY AND SERVICES USED IN THE PRODUCTION OF A MUSIC PRODUCTION, INCLUDING: STUDIO RENTAL FEES AND RELATED COSTS; INSTRUMENT AND EQUIPMENT RENTAL FEES; PRODUCTION SESSION FEES FOR MUSICIANS, SONGWRITERS, COMPOSERS, ARRANGERS, MUSIC PRODUCERS, PROGRAMMERS, ENGINEERS, AND TECHNICIANS; LICENSING FEES FOR SAMPLES; INTERPOLATIONS OR OTHER MUSIC CLEARANCE COSTS; MIXING AND MASTERING SERVICES OF MUSIC PRODUCTIONS; MARKETING AND PROMOTION COSTS DIRECTLY ASSOCIATED WITH A NEWLY CREATED WORK BEING PREPARED FOR COMMERCIAL PRODUCTION (PROVIDED, HOWEVER, THAT SUCH MARKETING AND PROMOTION COSTS SHALL NOT EXCEED 25% OF THE TOTAL EXCELSIOR MUSIC PRODUCTION TAX CREDIT FOR AN ELIGIBLE MUSIC PRODUCTION PROJECT); TRANSPORTATION EXPENDITURES DIRECTLY RELATED TO MUSIC PRODUCTION AND PROVIDED AT OR TO THE SITE OF SUCH MUSIC PRODUCTION; AND OTHER RECORDING AND PRODUCTION COSTS WHICH ARE SUBJECT TO RECOUPMENT PURSUANT TO CONTRACT. PRODUCTION COSTS DO NOT INCLUDE: COSTS FOR TANGIBLE PROPERTY OR SERVICES USED OR PERFORMED OUTSIDE OF THIS STATE; MASTERING OR POST-PRODUCTION EXPENDITURES FOR PROJECTS THAT WERE NOT PRINCIPALLY TRACKED AND RECORDED IN THIS STATE; ROYALTIES PAID TO ARTISTS AND PRODUCERS FOLLOWING RECOUPMENT PURSUANT TO CONTRACT; OR ANY COSTS ASSOCIATED WITH MANUFACTURING, DUPLICATION, PACKAGING, DISTRIBUTION, OR TOURING NOT SPECIFICALLY OUTLINED ABOVE. WITH RESPECT TO THE PRODUCTION OF A MUSIC VIDEO, PRODUCTION COSTS ARE THOSE AS DEFINED IN PARAGRAPH TWO OF SUBDIVISION (B) OF SECTION TWENTY-FOUR OF THE TAX LAW.

25. "MUSIC PRODUCTION ENTITY" INCLUDES A CORPORATION, SOLE PROPRIETORSHIP, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY ENGAGED IN MUSIC PRODUCTION.

26. "ELIGIBLE MUSIC PRODUCTION ENTITY" IS A MUSIC PRODUCTION ENTITY WHICH INCURS WITHIN THE STATE AT LEAST TWENTY-FIVE THOUSAND DOLLARS IN ELIGIBLE PRODUCTION COSTS WITHIN THE MCTD OR AT LEAST TWELVE THOUSAND FIVE HUNDRED DOLLARS OUTSIDE THE MCTD IN THE TAXABLE YEAR IN WHICH THE ENTITY COMPLETES ELIGIBLE MUSIC PRODUCTION PROJECTS. TWO OR MORE ELIGIBLE MUSIC PRODUCTION ENTITIES MAY BE ELIGIBLE FOR CREDIT WITH RESPECT TO ITS OWN ELIGIBLE PRODUCTION COSTS ON A MUSIC PRODUCTION PROJECT PROVIDED THAT EACH MEETS THE REQUIREMENTS FOR OBTAINING A CREDIT WITH RESPECT TO THE PROJECT.

27. "MUSIC PROFESSIONALS" ARE PERSONS WHO DERIVE THE MAJORITY OF THEIR INCOME FROM MUSIC CREATION, PERFORMANCE, PRODUCTION AND RELATED ACTIVITIES AND INCLUDE, BUT ARE NOT LIMITED TO, SINGERS, INSTRUMENTALISTS, SONGWRITERS, PRODUCERS, SOUND ENGINEERS AND OTHER TECHNICIANS INVOLVED IN RECORDING, EDITING, MIXING AND MASTERING SOUND RECORDINGS.

28. "AN EMERGING ARTIST" IS DEFINED AS AN ARTIST WHO HAS NOT PREVIOUSLY SOLD IN EXCESS OF FIFTY THOUSAND COPIES OF HIS OR HER ALBUMS IN THE UNITED STATES. THE NUMBER OF COPIES WILL INCLUDE ALL ALBUMS THAT THE ARTIST COMMERCIALLY RELEASED IN THE UNITED STATES AND BE CALCULATED BASED UPON PUBLICLY AVAILABLE METRICS WIDELY RECOGNIZED IN THE MUSIC INDUSTRY PROVIDED THAT IT TAKES INTO ACCOUNT ALL CONSUMPTION ACTIVITY INCLUDING ON-DEMAND STREAMING AND DIGITAL TRACK SALES.

29. "EMERGING ARTIST PROJECT" MEANS A PROJECT IN WHICH THE PRIMARY ARTIST IS AN EMERGING ARTIST. IF THE PROJECT IS PERFORMED BY A GROUP OF ARTISTS, IT IS AN EMERGING ARTIST PROJECT IF MORE THAN FIFTY PERCENT OF THE GROUP'S MEMBERS ARE EMERGING ARTISTS.

S 4. Subdivision 3 of section 353 of the economic development law, as amended by section 2 of part K of chapter 59 of the laws of 2015, is amended to read as follows:

3. For the purposes of this article, in order to participate in the excelsior jobs program, a business entity operating predominantly in manufacturing must create at least ten net new jobs; a business entity operating predominately in agriculture must create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must create at least five net new jobs; a business entity operating predominantly in software development must create at least five net new jobs; a business entity creating or expanding back office operations must create at least fifty net new jobs; a business entity operating [predominately] in music production must [create at least five net new jobs;] INCUR WITHIN THE STATE AT LEAST TWENTY-FIVE THOUSAND DOLLARS IN ELIGIBLE PRODUCTION COSTS WITHIN THE MCTD OR AT LEAST TWELVE THOUSAND FIVE HUNDRED DOLLARS OUTSIDE THE MCTD IN THE TAXABLE YEAR IN WHICH THE ENTITY COMPLETES AN ELIGIBLE MUSIC PRODUCTION PROJECT; a business entity operating predominantly as an entertainment company must create or obtain at least one hundred net new jobs; or a business entity operating predominantly as a distribution center in the state must create at least seventy-five net new jobs, notwithstanding subdivision five of this section; or a business entity must be a regionally significant project as defined in this article; or

S 5. Subdivisions 5, 6 and 7 of section 355 of the economic development law are renumbered to be subdivisions 6, 7 and 8 and a new subdivision 5 is added to read as follows:

5. EXCELSIOR MUSIC PRODUCTION TAX CREDIT COMPONENT. (A) AN ELIGIBLE MUSIC PRODUCTION ENTITY MAY CLAIM A CREDIT FOR EACH MUSIC PRODUCTION PROJECT IN WHICH (I) ELIGIBLE PRODUCTION COSTS INCURRED IN THE TWELVE MONTHS PRECEDING THE DATE ON WHICH THE CREDIT IS CLAIMED ARE AT LEAST SEVEN THOUSAND FIVE HUNDRED DOLLARS IF INCURRED IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT OR THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS IF INCURRED OUTSIDE OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT.

(B) THE AMOUNT OF SUCH CREDIT IS EQUAL TO THE SUM OF (I) THE PRODUCT (OR PRO RATA SHARE 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 EACH MUSIC PRODUCTION PROJECT IN THE METROPOL-

ITAN COMMUTER TRANSPORTATION DISTRICT AND (II) THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP OR LIMITED LIABILITY COMPANY) OF THIRTY-FIVE PERCENT AND THE ELIGIBLE PRODUCTION COSTS OF EACH MUSIC PRODUCTION PROJECT OUTSIDE THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT.

(C) ELIGIBLE PRODUCTION COSTS RELATED TO EMERGING ARTISTS PROJECTS SHALL BE ELIGIBLE FOR A CREDIT OF TEN PERCENT OF SUCH ELIGIBLE PRODUCTION COSTS IN ADDITION TO THE CREDITS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDIVISION.

(D) NO COSTS USED BY AN ENTERTAINMENT COMPANY AS THE BASIS FOR THE ALLOWANCE OF A TAX CREDIT DESCRIBED IN THIS SECTION SHALL BE USED BY SUCH MUSIC PRODUCTION ENTITY TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THE TAX LAW.

S 6. Subdivision (a) of section 31 of the tax law, as amended by section 7 of part G of chapter 61 of the laws of 2011, the opening paragraph as amended by section 47 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(a) General. A taxpayer subject to tax under section one hundred eighty-five, article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to ten consecutive taxable years, is the sum of the following [four] FIVE credit components:

(1) the excelsior jobs tax credit component;

(2) the excelsior investment tax credit component;

(3) the excelsior research and development tax credit component; [and]

(4) the excelsior real property tax credit component; AND

(5) THE EXCELSIOR MUSIC PRODUCTION TAX CREDIT COMPONENT.

S 7. Subdivision (a) of section 31 of the tax law, as amended by section 7 of part S of chapter 59 of the laws of 2014, the opening paragraph as separately amended by section 47 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(a) General. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to ten consecutive taxable years, is the sum of the following [four] FIVE credit components:

(1) the excelsior jobs tax credit component;

(2) the excelsior investment tax credit component;

(3) the excelsior research and development tax credit component; [and]

(4) the excelsior real property tax credit component; AND

(5) THE EXCELSIOR MUSIC PRODUCTION TAX CREDIT COMPONENT.

S 8. This act shall take effect immediately; provided that the amendments to subdivision (a) of section 31 of the tax law made by section seven of this act shall take effect on the same date and in the same manner as section 7 of part S of chapter 59 of the laws of 2014, takes effect.