

10083--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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

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

LBD15150-04-6

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

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

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

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

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

52 (D) REPORTING. THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL SUBMIT AN
53 ANNUAL REPORT, ON OR BEFORE DECEMBER FIRST OF EACH YEAR, TO THE GOVER-
54 NOR, THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE TEMPORARY PRESIDENT
55 OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY, INCLUDING, BUT NOT
56 LIMITED TO, THE FOLLOWING INFORMATION REGARDING THE PREVIOUS CALENDAR

1 YEAR REGIONALLY, FOR ACTIVITY WITHIN AND WITHOUT THE METROPOLITAN COMMU-
2 TER TRANSPORTATION DISTRICT; THE TOTAL DOLLAR AMOUNT OF CREDITS ALLO-
3 CATED, THE NAME AND ADDRESS OF EACH ELIGIBLE MUSIC PRODUCTION ENTITY
4 ALLOCATED CREDITS UNDER THIS SECTION, AND THE TOTAL AMOUNT OF CREDITS
5 ALLOCATED TO EACH ELIGIBLE MUSIC PRODUCTION ENTITY. THE REPORT MAY ALSO
6 INCLUDE ANY RECOMMENDATIONS FOR CHANGES IN THE CALCULATION OR ADMINIS-
7 TRATION OF THE CREDIT, AND ANY OTHER INFORMATION REGARDING THIS CREDIT
8 AS MAY BE USEFUL AND APPROPRIATE.

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

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

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

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

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

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

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

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

33 (XLIII) EMPIRE STATE MUSIC	AMOUNT OF CREDIT
34 PRODUCTION CREDIT UNDER	UNDER SUBDIVISION
35 SUBSECTION (FFF)	FIFTY-TWO OF SECTION TWO HUNDRED
36	TEN-B

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

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

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

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

50 S 44. EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (A) ALLOW-
51 ANCE OF CREDIT. (1) A TAXPAYER WHICH IS A DIGITAL GAMING MEDIA
52 PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL GAMING MEDIA PRODUCTION,
53 OR WHO IS A SOLE PROPRIETOR OF OR A MEMBER OF A PARTNERSHIP, WHICH IS A
54 DIGITAL GAMING MEDIA PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL

1 GAMING MEDIA PRODUCTION, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR
2 TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX
3 TO BE COMPUTED AS PROVIDED HEREIN.

4 (2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE
5 OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP OR LIMITED
6 LIABILITY COMPANY) OF TWENTY-FIVE PERCENT AND THE ELIGIBLE PRODUCTION
7 COSTS OF ONE OR MORE QUALIFIED DIGITAL GAMING MEDIA PRODUCTIONS.

8 (3) ELIGIBLE DIGITAL GAMING MEDIA PRODUCTION COSTS FOR A QUALIFIED
9 DIGITAL GAMING MEDIA PRODUCTION INCURRED AND PAID IN THIS STATE BUT
10 OUTSIDE SUCH METROPOLITAN COMMUTER TRANSPORTATION DISTRICT SHALL BE
11 ELIGIBLE FOR A CREDIT OF TEN PERCENT OF SUCH ELIGIBLE PRODUCTION COSTS
12 IN ADDITION TO THE CREDIT SPECIFIED IN PARAGRAPH TWO OF THIS SUBDIVI-
13 SION.

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

17 (B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED
18 UNDER THIS SECTION, SUBDIVISION FIFTY-THREE OF SECTION TWO HUNDRED TEN-B
19 AND SUBSECTION (GGG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY
20 TAXABLE YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS. SUCH AGGREGATE AMOUNT
21 OF CREDITS SHALL BE ALLOCATED BY THE EMPIRE STATE DEVELOPMENT CORPO-
22 RATION AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF
23 FILING AN APPLICATION FOR ALLOCATION OF DIGITAL GAMING MEDIA PRODUCTION
24 CREDIT WITH SUCH OFFICE. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS
25 APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX
26 CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE
27 TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT
28 TAXABLE YEAR.

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

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

55 (2) "DIGITAL GAMING MEDIA PRODUCTION COSTS" MEANS ANY COSTS FOR PROP-
56 erty USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINATELY IN THE

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

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

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

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

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

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

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

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

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

55 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
56 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS

1 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF
 2 SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF THE
 3 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE
 4 YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN
 5 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
 6 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER, PROVIDED,
 7 HOWEVER, NO INTEREST SHALL BE PAID THEREON.

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

11 (XLIV) EMPIRE STATE DIGITAL	AMOUNT OF CREDIT
12 GAMING MEDIA PRODUCTION	UNDER SUBDIVISION
13 CREDIT UNDER SUBSECTION (GGG)	FIFTY-THREE OF SECTION
14	TWO HUNDRED TEN-B

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

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

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

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

42 S 10. Subdivision 11 of section 352 of the economic development law is
 43 REPEALED.

44 S 11. Subdivisions 1, 3 and 5 of section 353 of the economic develop-
 45 ment law, as amended by section 2 of part K of chapter 59 of the laws of
 46 2015, are amended to read as follows:

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

49 (a) as a financial services data center or a financial services back
 50 office operation;

51 (b) in manufacturing;

52 (c) in software development and new media;

53 (d) in scientific research and development;

54 (e) in agriculture;

1 (f) in the creation or expansion of back office operations in the
2 state;

3 (g) in a distribution center;

4 (h) in an industry with significant potential for private-sector
5 economic growth and development in this state as established by the
6 commissioner in regulations promulgated pursuant to this article. In
7 promulgating such regulations the commissioner shall include job and
8 investment criteria; OR

9 (i) as an entertainment company[; or

10 (j) in music production].

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

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

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

43 21. "Software development" means the creation of coded computer
44 instructions [or production or post-production of video games, as
45 defined in subdivision one-a of section six hundred eleven of the gener-
46 al business law, other than those embedded and used exclusively in
47 advertising, promotional websites or microsities,] and [also] includes
48 new media as defined by the commissioner in regulations.

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