

4549--A

2015-2016 Regular Sessions

I N S E N A T E

March 27, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the creation of the empire state music production credit

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 42 to read
2 as follows:
3 S 42. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A)(1) ALLOWANCE OF CRED-
4 IT. A TAXPAYER WHICH IS A QUALIFIED MUSIC PRODUCTION COMPANY, OR A QUAL-
5 IFIED INDEPENDENT MUSIC PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIE-
6 TOR OF OR A MEMBER OF A PARTNERSHIP WHICH IS A QUALIFIED MUSIC
7 PRODUCTION COMPANY OR A QUALIFIED INDEPENDENT MUSIC PRODUCTION COMPANY,
8 AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS
9 CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX.
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) OF TWENTY-FIVE
12 PERCENT AND THE QUALIFIED PRODUCTION COSTS PAID IN THE PRODUCTION OF
13 MUSIC BY THE TAXPAYER. QUALIFYING MUSIC PRODUCTIONS SHALL BE COMMER-
14 CIALLY LICENSED SOUND RECORDING PROJECTS HAVING AS THEIR PRINCIPAL PLACE
15 OF PRODUCTION AND RECORDING THIS STATE AND REQUIRING EXPENDITURES IN
16 EXCESS OF TWENTY-FIVE THOUSAND DOLLARS. IF THE ANNUAL COST OF SUCH
17 PRODUCTIONS TO A TAXPAYER EXCEEDS ONE HUNDRED THOUSAND DOLLARS, BUT NO
18 SINGLE SUCH PRODUCTION EXCEEDS ONE HUNDRED THOUSAND DOLLARS, SUCH
19 TAXPAYER MAY APPLY FOR THE CREDIT ALLOWED BY THIS SECTION ON AN AGGRE-
20 GATE BASIS PROVIDED SUCH TAXPAYER EMPLOYES TEN OR MORE RESIDENTS OF THIS
21 STATE. QUALIFIED PRODUCTION COSTS SHALL MEAN COSTS FOR TANGIBLE PROPERTY

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

LBD01211-05-6

1 USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINANTLY IN THE PRODUCTION
2 OF QUALIFIED MUSIC PRODUCTION IN THIS STATE. QUALIFYING MUSIC
3 PRODUCTION COSTS SHALL INCLUDE STUDIO RENTAL FEES AND RELATED COSTS;
4 INSTRUMENT AND EQUIPMENT RENTAL FEES; PRODUCTION SESSION FEES FOR MUSI-
5 CIANS, SONGWRITERS, COMPOSERS, ARRANGERS, MUSIC PRODUCERS, PROGRAMMERS,
6 ENGINEERS AND TECHNICIANS; MIXING AND MASTERING SERVICES OF QUALIFYING
7 MUSIC PRODUCTIONS; AND HOTEL CATERING AND LOCAL TRANSPORTATION EXPENDI-
8 TURES DIRECTLY RELATED TO MUSIC PRODUCTION. COSTS SHALL NOT INCLUDE
9 RECORDING LIVE CONCERTS; ARTISTS AND PRODUCER ROYALTIES OR ADVANCES;
10 LICENSING FEES FOR SAMPLES; INTERPOLATIONS OR OTHER MUSIC CLEARANCE
11 COSTS; MASTERING OR POST-PRODUCTION EXPENDITURES FOR PROJECTS THAT WERE
12 NOT PRINCIPALLY TRACKED AND RECORDED IN THIS STATE; NOR ANY COSTS ASSO-
13 CIATED WITH MANUFACTURING, DUPLICATION, PACKAGING, DISTRIBUTION,
14 PROMOTION, MARKETING AND TOURING NOT SPECIFICALLY OUTLINED ABOVE.

15 (3) NO QUALIFIED PRODUCTION COSTS USED BY A TAXPAYER AS THE BASIS FOR
16 THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION SHALL BE
17 USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS
18 CHAPTER.

19 (B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED
20 UNDER THIS SECTION, SUBDIVISION FORTY-NINE OF SECTION TWO HUNDRED TEN-B
21 AND SUBSECTION (CCC) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY
22 CALENDAR YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS AND ONE MILLION TWO
23 HUNDRED FIFTY THOUSAND DOLLARS IN ANY GIVEN WEEK. SUCH AGGREGATE AMOUNT
24 OF CREDITS SHALL BE ALLOCATED BY THE EMPIRE STATE DEVELOPMENT CORPO-
25 RATION AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF
26 FILING AN APPLICATION FOR ALLOCATION OF MUSIC PRODUCTION CREDIT WITH
27 SUCH OFFICE. NO SINGLE TAXPAYER MAY CLAIM OR BE AWARDED MORE THAN TEN
28 PERCENT OF THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS
29 SECTION. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY
30 PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR
31 SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING
32 BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

33 (C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN
34 THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

35 (1) ARTICLE 9-A: SECTION 210-B: SUBDIVISION 49

36 (2) ARTICLE 22: SECTION 606: SUBSECTION (CCC)

37 S. 2. Section 210-B of the tax law is amended by adding a new subdivi-
38 sion 49 to read as follows:

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

43 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
44 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
45 THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF
46 SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF THE
47 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE
48 YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN
49 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
50 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED,
51 HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHT-
52 Y-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THER-
53 EON.

54 S. 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
55 of the tax law is amended by adding a new clause (xli) to read as
56 follows:

(XLI) EMPIRE STATE MUSIC
PRODUCTION CREDIT UNDER
SUBSECTION (CCC)
AMOUNT OF CREDIT FOR
QUALIFIED PRODUCTION CREDIT
MUSIC UNDER SUBDIVISION
FORTY-NINE OF SECTION TWO
HUNDRED TEN-B

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

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

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

S 5. The empire state development corporation shall conduct a study analyzing the economic impact of the tax credit authorized pursuant to section one of this act and shall report its findings, conclusions and recommendations to the governor and the legislature on or before one year from the date this act shall become a law, and shall submit with its report such legislative proposals as it deems necessary to implement its recommendations. The empire state development corporation shall list the recipients of the tax credit authorized pursuant to section one of this act on their official internet website.

S 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.