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

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:

Section 1. The tax law is amended by adding a new section 42 to read as follows:

S 42. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A)(1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A QUALIFIED MUSIC PRODUCTION COMPANY, OR A QUALIFIED INDEPENDENT MUSIC PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIETOR OF OR A MEMBER OF A PARTNERSHIP WHICH IS A QUALIFIED MUSIC PRODUCTION COMPANY OR A QUALIFIED INDEPENDENT MUSIC PRODUCTION COMPANY, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX.

(2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF TWENTY-FIVE PERCENT AND THE QUALIFIED PRODUCTION COSTS PAID IN THE PRODUCTION OF MUSIC BY THE TAXPAYER. QUALIFYING MUSIC PRODUCTIONS SHALL BE COMMERCIALLY LICENSED SOUND RECORDING PROJECTS HAVING AS THEIR PRINCIPAL PLACE OF PRODUCTION AND RECORDING THIS STATE AND REQUIRING EXPENDITURES IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS. IF THE ANNUAL COST OF SUCH PRODUCTIONS TO A TAXPAYER EXCEEDS ONE HUNDRED THOUSAND DOLLARS, BUT NO SINGLE SUCH PRODUCTION EXCEEDS ONE HUNDRED THOUSAND DOLLARS, SUCH TAXPAYER MAY APPLY FOR THE CREDIT ALLOWED BY THIS SECTION ON AN AGGREGATE BASIS PROVIDED SUCH TAXPAYER EMPLOYES TEN OR MORE RESIDENTS OF THIS 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.

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USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINANTLY IN THE PRODUCTION OF QUALIFIED MUSIC PRODUCTION IN THIS STATE. QUALIFYING MUSIC PRODUCTION COSTS SHALL INCLUDE 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; MIXING AND MASTERING SERVICES OF QUALIFYING MUSIC PRODUCTIONS; AND HOTEL CATERING AND LOCAL TRANSPORTATION EXPENDITURES DIRECTLY RELATED TO MUSIC PRODUCTION. COSTS SHALL NOT INCLUDE RECORDING LIVE CONCERTS; ARTISTS AND PRODUCER ROYALTIES OR ADVANCES; LICENSING FEES FOR SAMPLES; INTERPOLATIONS OR OTHER MUSIC CLEARANCE COSTS; MASTERING OR POST-PRODUCTION EXPENDITURES FOR PROJECTS THAT WERE NOT PRINCIPALLY TRACKED AND RECORDED IN THIS STATE; NOR ANY COSTS ASSOCIATED WITH MANUFACTURING, DUPLICATION, PACKAGING, DISTRIBUTION, PROMOTION, MARKETING AND TOURING NOT SPECIFICALLY OUTLINED ABOVE.

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

(B) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION, SUBDIVISION FORTY-NINE OF SECTION TWO HUNDRED TEN-B AND SUBSECTION (CCC) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY CALENDAR YEAR SHALL BE TWENTY-FIVE MILLION DOLLARS AND ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS IN ANY GIVEN WEEK. 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 MUSIC PRODUCTION CREDIT WITH SUCH OFFICE. NO SINGLE TAXPAYER MAY CLAIM OR BE AWARDED MORE THAN TEN PERCENT OF THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION. 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 YEAR.

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

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

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

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

49. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A) 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.

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

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