

7485--A

I N   S E N A T E

May 4, 2016

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- 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

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

LBD15150-03-6

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

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

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

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

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

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

LIMITED TO, THE FOLLOWING INFORMATION REGARDING THE PREVIOUS CALENDAR YEAR REGIONALLY, FOR ACTIVITY WITHIN AND WITHOUT THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT; THE TOTAL DOLLAR AMOUNT OF CREDITS ALLOCATED, THE NAME AND ADDRESS OF EACH ELIGIBLE MUSIC PRODUCTION ENTITY ALLOCATED CREDITS UNDER THIS SECTION, AND THE TOTAL AMOUNT OF CREDITS ALLOCATED TO EACH ELIGIBLE MUSIC PRODUCTION ENTITY. THE REPORT MAY ALSO INCLUDE ANY RECOMMENDATIONS FOR CHANGES IN THE CALCULATION OR ADMINISTRATION OF THE CREDIT, AND ANY OTHER INFORMATION REGARDING THIS CREDIT AS MAY BE USEFUL AND APPROPRIATE.

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

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

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

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

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

52. EMPIRE STATE MUSIC PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION FORTY-THREE 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, 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 (xliii) to read as follows:

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

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

(FFF) EMPIRE STATE MUSIC PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION FORTY-THREE 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 tax law is amended by adding a new section 44 to read as follows:

S 44. EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. (1) A TAXPAYER WHICH IS A DIGITAL GAMING MEDIA PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL GAMING MEDIA PRODUCTION, OR WHO IS A SOLE PROPRIETOR OF OR A MEMBER OF A PARTNERSHIP, WHICH IS A

DIGITAL GAMING MEDIA PRODUCTION ENTITY ENGAGED IN QUALIFIED DIGITAL GAMING MEDIA PRODUCTION, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX TO BE COMPUTED AS PROVIDED HEREIN.

(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 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.

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

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

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

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

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

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

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

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

53 53. EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (A) ALLOWANCE  
54 OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-FOUR OF  
55 THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN  
56 SUCH SECTION FORTY-FOUR 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, NO INTEREST SHALL BE PAID THEREON.

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

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

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

(GGG) EMPIRE STATE DIGITAL GAMING MEDIA PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION FORTY-FOUR OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION FORTY-FOUR 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 9. The state commissioner of economic development, after consulting with the state commissioner of taxation and finance, shall promulgate regulations by December 31, 2016 to establish procedures for the allocation of tax credits as required by subdivision (a) of section 43 and subdivision (a) of section 44 of the tax law. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers substantiate to the New York state department of taxation and finance the amount of tax credits allocated to such taxpayers, under what conditions all or a portion of this tax credit may be revoked, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such December 31, 2016 deadline.

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

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

1. To be a participant in the excelsior jobs program, a business entity shall operate in New York state predominantly:

- (a) as a financial services data center or a financial services back office operation;
- (b) in manufacturing;
- (c) in software development and new media;
- (d) in scientific research and development;

1 (e) in agriculture;

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

4 (g) in a distribution center;

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

10 (i) as an entertainment company[; or

11 (j) in music production].

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

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

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

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

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