STATE OF NEW YORK

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R. R. 399

2017-2018 Regular Sessions

IN ASSEMBLY

April 17, 2017

Introduced by M. of A. CRESPO, DICKENS, PICHARDO, PERRY, DAVILA, SEPULVEDA, PRETLOW, SIMON, JAFFEE, LIFTON, GJONAJ, MOSLEY, ARROYO -- Multi-Sponsored by -- M. of A. GALEF -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the tax law, in relation to a television writers' and directors' fees and salaries 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 24-b to read as follows:

§ 24-b. Television writers' and directors' fees and salaries credit. (a)(1) A taxpayer which is a qualified film production company, or a qualified independent film production company, or which is a sole proprietor of or a member of a partnership which is a qualified film production company or a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (d) of this section, to be computed as hereinafter provided.

(2) No qualified television writers' and directors' fees and salaries used by a taxpayer either as the basis for the allowance of the credit provided for pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

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

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(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified film production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production.

(2) "Qualified independent film production company" is a corporation, partnership, limited partnership, or other entity or individual, that or who (i) is principally engaged in the production of a qualified film with a maximum budget of fifteen million dollars, (ii) controls the qualified film during production, and (iii) either is not a publicly traded entity, or no more than five percent of the beneficial ownership of which is owned, directly or indirectly, by a publicly traded entity.

(3) "Qualified television writers' and directors' fees and salaries" means: (i) for each writer or director who receives an on-air credit, fifty thousand dollars in fees or salary per episode; (ii) for each non-credited writer, seventy-five thousand dollars per series of episodes; and (iii) for each eligible writer or director, an overall total of one hundred fifty thousand dollars per series per season. Provided that in each case, such writer or director is a minority group member, as defined by subdivision eight of section three hundred ten of the executive law, or a woman, and provided, further, that any writer or director who is a profit participant in the qualified production shall not be eligible.

(4) "Writer" means a writer who is employed or retained to write or revise scripts, screenplays, teleplays, dialogue, sketches, routines or narrations and who reports to work regularly in a writers room located in the state.

(5) "Director" means the individual employed or retained to direct the production, as the word "direct" is commonly used in the motion picture industry.

(6) "Writers room" means a room or physical location where television stories are conceived by writers.

(7) "Profit participant" is an individual who has negotiated for a percentage of profits generated by their television show. Profit participation does not include monies contractually required by collectively bargained agreements for reuse of the program on different platforms over time.

(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 53.

(2) article 22: section 606: subsection (v).

(d) Notwithstanding any provision of this chapter, (i) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (ii) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount

of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(e) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision fifty-three of section two hundred ten-B and subsection (v) of section six hundred six of this chapter in any calendar year shall be five million dollars. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers in order of priority based upon the date of filing an application for allocation of television writers' and directors' fees and salaries credit with such department. 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.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations by October thirty-first, two thousand seventeen to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. 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 to substantiate to the department the amount of tax credits allocated to such taxpayers, 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 October thirty-first, two thousand seventeen deadline.

(f) The department of economic development shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted on February first of each year evaluating the effectiveness of the television writers' and directors' fees and salaries tax credit provided by this section in stimulating the growth of diversity in the film industry in the state. Such report shall include, but need not be limited to, the number of qualified film production companies and/or qualified independent film production companies which received a television writers' and directors' fees and salaries credit, the credit amounts claimed by each qualified film production company and/or qualified independent film production company, as well as the impact on employment and the economy of the state. Such report shall be based on data available from the application filed with the department of economic development for allocation of television writers' and directors' fees and salaries credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations of changes in the calculation or administration of the credit, and any other recommendation of the commissioner of the department of economic development regarding continuing modification, repeal of such act, and such other information regarding the act as the commissioner of the department of economic development may feel useful and appropriate.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Television writers' and directors' fees and salaries credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-b of this chapter shall be allowed a credit to be computed as provided in such section 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 or if the taxpayer otherwise pays tax based on the fixed dollar minimum 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, further, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 3. Section 606 of the tax law is amended by adding a new subsection (v) to read as follows:

(v) Television writers' and directors' fees and salaries credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-b of this chapter shall be allowed a credit to be computed as provided in such section 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.

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

(xlix) Television writers' and directors' fees and salaries credit under subsection (v)	Amount of credit for the sum of qualified television writers' and directors' salaries credit under subdivision fifty-three of section two hundred ten-B

§ 5. This act shall take effect immediately, and shall apply to taxable years beginning on or after January 1, 2018.