

# STATE OF NEW YORK

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2017-2018 Regular Sessions

## IN SENATE

March 3, 2017

Introduced by Sens. ALCANTARA, ADDABBO, CARLUCCI, HAMILTON -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. The tax law is amended by adding a new section 24-b to read  
2 as follows:

3 § 24-b. Television writers' and directors' fees and salaries credit.

4 (a)(1) A taxpayer which is a qualified film production company, or a  
5 qualified independent film production company, or which is a sole  
6 proprietor of or a member of a partnership which is a qualified film  
7 production company or a qualified independent film production company,  
8 and which is subject to tax under articles nine-A or twenty-two of this  
9 chapter, shall be allowed a credit against such tax, pursuant to the  
10 provisions referenced in subdivision (d) of this section, to be computed  
11 as hereinafter provided.

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

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

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

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

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

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

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

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

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

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

37 (c) Cross-references. For application of the credit provided for in  
38 this section, see the following provisions of this chapter:

39 (1) article 9-A: section 210-B: subdivision 53.

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

41 (d) Notwithstanding any provision of this chapter, (i) employees and  
42 officers of the department of economic development and the department  
43 shall be allowed and are directed to share and exchange information  
44 regarding the credits applied for, allowed, or claimed pursuant to this  
45 section and taxpayers who are applying for credits or who are claiming  
46 credits, including information contained in or derived from credit claim  
47 forms submitted to the department and applications for certification  
48 submitted to the department of economic development, and (ii) the  
49 commissioner and the commissioner of the department of economic develop-  
50 ment may release the names and addresses of any taxpayer claiming this  
51 credit and the amount of the credit earned by the taxpayer. Provided,  
52 however, if a taxpayer claims this credit because it is a member of a  
53 limited liability company or a partner in a partnership, only the amount  
54 of credit earned by the entity and not the amount of credit claimed by  
55 the taxpayer may be released.

1 (e) Maximum amount of credits. (1) The aggregate amount of tax credits  
2 allowed under this section, subdivision fifty-three of section two  
3 hundred ten-B and subsection (v) of section six hundred six of this  
4 chapter in any calendar year shall be five million dollars. Such aggre-  
5 gate amount of credits shall be allocated by the department of economic  
6 development among taxpayers in order of priority based upon the date of  
7 filing an application for allocation of television writers' and direc-  
8 tors' fees and salaries credit with such department. If the total amount  
9 of allocated credits applied for in any particular year exceeds the  
10 aggregate amount of tax credits allowed for such year under this  
11 section, such excess shall be treated as having been applied for on the  
12 first day of the subsequent year.

13 (2) The commissioner of economic development, after consulting with  
14 the commissioner, shall promulgate regulations by October thirty-first,  
15 two thousand seventeen to establish procedures for the allocation of tax  
16 credits as required by subdivision (a) of this section. Such rules and  
17 regulations shall include provisions describing the application process,  
18 the due dates for such applications, the standards which shall be used  
19 to evaluate the applications, the documentation that will be provided to  
20 taxpayers to substantiate to the department the amount of tax credits  
21 allocated to such taxpayers, and such other provisions as deemed neces-  
22 sary and appropriate. Notwithstanding any other provisions to the  
23 contrary in the state administrative procedure act, such rules and regu-  
24 lations may be adopted on an emergency basis if necessary to meet such  
25 October thirty-first, two thousand seventeen deadline.

26 (f) The department of economic development shall submit to the gover-  
27 nor, the temporary president of the senate, and the speaker of the  
28 assembly, an annual report to be submitted on February first of each  
29 year evaluating the effectiveness of the television writers' and direc-  
30 tors' fees and salaries tax credit provided by this section in stimulat-  
31 ing the growth of diversity in the film industry in the state. Such  
32 report shall include, but need not be limited to, the number of quali-  
33 fied film production companies and/or qualified independent film  
34 production companies which received a television writers' and directors'  
35 fees and salaries credit, the credit amounts claimed by each qualified  
36 film production company and/or qualified independent film production  
37 company, as well as the impact on employment and the economy of the  
38 state. Such report shall be based on data available from the application  
39 filed with the department of economic development for allocation of  
40 television writers' and directors' fees and salaries credits. Notwith-  
41 standing any provision of law to the contrary, the information contained  
42 in the report shall be public information. The report may also include  
43 any recommendations of changes in the calculation or administration of  
44 the credit, and any other recommendation of the commissioner of the  
45 department of economic development regarding continuing modification,  
46 repeal of such act, and such other information regarding the act as the  
47 commissioner of the department of economic development may feel useful  
48 and appropriate.

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

51 53. Television writers' and directors' fees and salaries credit. (a)  
52 Allowance of credit. A taxpayer who is eligible pursuant to section  
53 twenty-four-b of this chapter shall be allowed a credit to be computed  
54 as provided in such section 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 or if the taxpayer otherwise pays  
 5 tax based on the fixed dollar minimum amount, the excess shall be treat-  
 6 ed as an overpayment of tax to be credited or refunded in accordance  
 7 with the provisions of section one thousand eighty-six of this chapter.  
 8 Provided, further, the provisions of subsection (c) of section one thou-  
 9 sand eighty-eight of this chapter notwithstanding, no interest shall be  
 10 paid thereon.

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

13 (v) Television writers' and directors' fees and salaries credit. (1)  
 14 Allowance of credit. A taxpayer who is eligible pursuant to section  
 15 twenty-four-b of this chapter shall be allowed a credit to be computed  
 16 as provided in such section against the tax imposed by this article.

17 (2) Application of credit. If the amount of the credit allowable under  
 18 this subsection for any taxable year exceeds the taxpayer's tax for such  
 19 year, the excess shall be treated as an overpayment of tax to be credit-  
 20 ed or refunded as provided in section six hundred eighty-six of this  
 21 article, provided, however, that no interest shall be paid thereon.

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

25 <u>(xlix) Television writers'</u> 26 <u>and directors' fees and salaries</u> 27 <u>credit under subsection (v)</u> 28 29	<u>Amount of credit for the sum of</u> <u>qualified television writers' and</u> <u>directors' salaries credit</u> <u>under subdivision fifty-three of</u> <u>section two hundred ten-B</u>
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30 § 5. This act shall take effect immediately, and shall apply to taxa-  
 31 ble years beginning on or after January 1, 2018.