

STATE OF NEW YORK

7182

2017-2018 Regular Sessions

IN ASSEMBLY

April 12, 2017

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the empire state film production tax credit

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 1 of subdivision (a) of section 24 of the tax
2 law, as amended by section 3 of part Q of chapter 57 of the laws of
3 2010, is amended to read as follows:

4 (1) Allowance of credit. A taxpayer which is a qualified film
5 production company, ~~[e*]~~ a qualified independent film production compa-
6 ny, or a qualified converted industrial space film production company or
7 which is a sole proprietor of or a member of a partnership which is a
8 qualified film production company ~~[e*]~~, a qualified independent film
9 production company, or a qualified converted industrial space film
10 production company, and which is subject to tax under articles nine-A or
11 twenty-two of this chapter, shall be allowed a credit against such tax,
12 pursuant to the provisions referenced in subdivision (c) of this
13 section, to be computed as hereinafter provided.

14 § 2. Paragraph 2 of subdivision (a) of section 24 of the tax law, as
15 amended by section 4 of part Q of chapter 57 of the laws of 2010, is
16 amended to read as follows:

17 (2) The amount of the credit shall be the product (or pro rata share
18 of the product, in the case of a member of a partnership) of thirty
19 percent and the qualified production costs paid or incurred in the
20 production of a qualified film, provided that, except with respect to a
21 qualified converted industrial film production company: (i) the quali-
22 fied production costs (excluding post production costs) paid or incurred
23 which are attributable to the use of tangible property or the perform-
24 ance of services at a qualified film production facility in the
25 production of such qualified film equal or exceed seventy-five percent

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

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1 of the production costs (excluding post production costs) paid or
2 incurred which are attributable to the use of tangible property or the
3 performance of services at any film production facility within and with-
4 out the state in the production of such qualified film, and (ii) except
5 with respect to a qualified independent film production company or
6 pilot, at least ten percent of the total principal photography shooting
7 days spent in the production of such qualified film must be spent at a
8 qualified film production facility. However, except with respect to a
9 qualified converted industrial film production company, if the qualified
10 production costs (excluding post production costs) which are attribut-
11 able to the use of tangible property or the performance of services at a
12 qualified film production facility in the production of such qualified
13 film is less than three million dollars, then the portion of the quali-
14 fied production costs attributable to the use of tangible property or
15 the performance of services in the production of such qualified film
16 outside of a qualified film production facility shall be allowed only if
17 the shooting days spent in New York outside of a film production facili-
18 ty in the production of such qualified film equal or exceed seventy-five
19 percent of the total shooting days spent within and without New York
20 outside of a film production facility in the production of such quali-
21 fied film. In the case of a qualified converted industrial film
22 production company the sole criterion shall be that the company paid or
23 incurred at least fifty thousand dollars of qualified converted indus-
24 trial space expenses (excluding post production costs) to produce a
25 qualified film, and that the qualified converted industrial space
26 expenses equal or exceed thirty-four percent of the total production
27 costs (excluding post production costs) paid or incurred within and
28 without the state in the production of such qualified film. The credit
29 shall be allowed for the taxable year in which the production of such
30 qualified film is completed, except that with respect to a qualified
31 converted industrial film production company having incurred at least
32 fifty thousand dollars of qualified converted industrial space expenses
33 with respect to a qualified film, such company may apply for the credit
34 using an interim application notwithstanding that the qualified film is
35 not yet completed. However, in the case of a qualified film that
36 receives funds from additional pool 2, no credit shall be claimed before
37 the later of (1) the taxable year the production of the qualified film
38 is complete, or (2) the taxable year immediately following the allo-
39 cation year for which the film has been allocated credit by the gover-
40 nor's office for motion picture and television development. In the case
41 of a qualified converted industrial space film production company, a
42 qualified film shall be deemed to be complete in the taxable year in
43 which the qualified film is actually completed, or the taxable year in
44 which an interim application is properly filed under this section in
45 respect of such qualified film. If the amount of the credit claimed by a
46 taxpayer other than a qualified converted industrial space film
47 production company is at least one million dollars but less than five
48 million dollars, the credit shall be claimed over a two year period
49 beginning in the first taxable year in which the credit may be claimed
50 and in the next succeeding taxable year, with one-half of the amount of
51 credit allowed being claimed in each year. If the amount of the credit
52 claimed by a taxpayer other than a qualified industrial space film
53 production company is at least five million dollars, the credit shall be
54 claimed over a three year period beginning in the first taxable year in
55 which the credit may be claimed and in the next two succeeding taxable

1 years, with one-third of the amount of the credit allowed being claimed
2 in each year.

3 § 3. Paragraph 3 of subdivision (a) of section 24 of the tax law, as
4 added by section 1 of part P of chapter 60 of the laws of 2004, is
5 amended to read as follows:

6 (3) No qualified production costs used by a taxpayer either as the
7 basis for the allowance of the credit provided for under this section or
8 used in the calculation of the credit provided for under this section
9 shall be used by such taxpayer to claim any other credit allowed pursu-
10 ant to this chapter. If any taxpayer claims or previously claimed the
11 benefit of any credit under this section other than with respect to a
12 qualified film produced by a qualified converted industrial space film
13 production company at a qualified converted industrial space film
14 production facility, the taxpayer shall not be entitled to claim credits
15 with respect to qualifying converted industrial space expenses under the
16 rules applicable to qualified converted industrial space film production
17 companies.

18 § 4. Paragraph 4 of subdivision (a) of section 24 of the tax law, as
19 added by section 5 of part Q of chapter 57 of the laws of 2010, is
20 amended to read as follows:

21 (4) Notwithstanding the foregoing provisions of this subdivision, a
22 qualified film production company ~~[ex]~~, a qualified independent film
23 production company, or a qualified converted industrial space film
24 production company, that has applied for credit under the provisions of
25 this section, agrees as a condition for the granting of the credit: (i)
26 to include in each qualified film distributed by DVD, or other media for
27 the secondary market, a New York promotional video approved by the
28 governor's office of motion picture and television development or to
29 include in the end credits of each qualified film "Filmed With the
30 Support of the New York State Governor's Office of Motion Picture and
31 Television Development" and a logo provided by the governor's office of
32 motion picture and television development, and (ii) to certify that it
33 will purchase taxable tangible property and services, defined as quali-
34 fied production costs pursuant to paragraph one of subdivision (b) of
35 this section, only from companies registered to collect and remit state
36 and local sales and use taxes pursuant to articles twenty-eight and
37 twenty-nine of this chapter.

38 § 5. Paragraph 5 of subdivision (a) of section 24 of the tax law, as
39 amended by chapter 420 of the laws of 2016, is amended to read as
40 follows:

41 (5) For the period two thousand fifteen through two thousand nineteen,
42 in addition to the amount of credit established in paragraph two of this
43 subdivision, a taxpayer shall be allowed a credit equal to the product
44 (or pro rata share of the product, in the case of a member of a partner-
45 ship) of ten percent and the amount of wages or salaries paid to indi-
46 viduals directly employed (excluding those employed as writers, direc-
47 tors, music directors, producers and performers, including background
48 actors with no scripted lines) by a qualified film production company
49 ~~[ex]~~, a qualified independent film production company, or a qualified
50 converted industrial space film production company for services
51 performed by those individuals in one of the counties specified in this
52 paragraph in connection with a qualified film with a minimum budget of
53 five hundred thousand dollars. For purposes of this additional credit,
54 the services must be performed in one or more of the following counties:
55 Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung,
56 Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex,

Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates. The aggregate amount of tax credits allowed pursuant to the authority of this paragraph shall be five million dollars each year during the period two thousand fifteen through two thousand nineteen of the annual allocation made available to the program pursuant to paragraph four of subdivision (e) of this section. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for under this paragraph in any year exceeds the aggregate amount of tax credits allowed for such year under this paragraph, such excess shall be treated as having been applied for on the first day of the next year. If the total amount of allocated tax credits applied for under this paragraph at the conclusion of any year is less than five million dollars, the remainder shall be treated as part of the annual allocation made available to the program pursuant to paragraph four of subdivision (e) of this section. However, in no event may the total of the credits allocated under this paragraph and the credits allocated under paragraph five of subdivision (a) of section thirty-one of this article exceed five million dollars in any year during the period two thousand fifteen through two thousand nineteen.

§ 6. Paragraph 2 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. Other than with respect to qualified converted industrial space expenses paid or incurred by a qualified converted industrial space film production company, "[~~Production~~] production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

§ 7. Paragraph 3 of subdivision (b) of section 24 of the tax law, as amended by section 1 of part B of chapter 59 of the laws of 2013, is amended to read as follows:

(3) "Qualified film" means a feature-length film, television film, relocated television production, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed~~[-]~~, provided, however, that except as to be provided in regulations issued by the commissioner of economic development with respect to a qualified film produced by a converted industrial space film production company, "[~~Qualified~~] qualified film" shall not include [~~(i)~~] a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock

1 footage, sporting event or sporting program, game show, award ceremony,
2 film or program intended primarily for industrial, corporate or institu-
3 tional end-users, fundraising film or program, daytime drama (i.e.,
4 daytime "soap opera"), commercials, music videos or "reality" program[
5 ~~or (ii)~~]. In no case shall "qualified film" include a production for
6 which records are required under section 2257 of title 18, United States
7 code, to be maintained with respect to any performer in such production
8 (reporting of books, films, etc. with respect to sexually explicit
9 conduct).

10 § 8. Paragraph 5 of subdivision (b) of section 24 of the tax law, as
11 amended by section 8 of part Q of chapter 57 of the laws of 2010, is
12 amended to read as follows:

13 (5) "Qualified film production facility" shall mean a film production
14 facility in the state, which contains at least one sound stage having a
15 minimum of seven thousand square feet of contiguous production space,
16 provided, however, that except with respect to a qualified film
17 production facility being used by a qualified independent film
18 production company or a qualified converted industrial space film
19 production facility being used by a qualified converted industrial space
20 film production company: (i) a film production facility in the city of
21 New York must contain at least one sound stage having a minimum of seven
22 thousand square feet of contiguous production space that is sound proof
23 with a Noise Criteria ("NC") of 30 or better, has sufficient heating and
24 air conditioning for shooting without the need for supplemental units,
25 incorporates a permanent grid and sufficient built-in electric service
26 for shooting without the need for generators, and is column-free with a
27 clear height of at least sixteen feet under the permanent grid; and (ii)
28 an armory owned by the state or city of New York located in the city of
29 New York that does not satisfy the criteria of subparagraph (i) of this
30 paragraph shall be treated as a qualified film production facility upon
31 certification by the governor's office of motion picture and television
32 development of a petition submitted to that office by a qualified film
33 production company establishing that no qualified film production facil-
34 ity is available in the city of New York that has stage space available
35 for shooting such company's film. Such petition shall be submitted no
36 later than ninety days prior to the start of principal photography for
37 the qualified film and the governor's office of motion picture and tele-
38 vision development shall have ten days to certify or reject the peti-
39 tion. A stage will be deemed unavailable if consideration has been paid
40 for its use or such stage is currently under an agreement with an option
41 for use and, in either circumstance, such period of use includes the
42 petitioner's estimated start date of principal photography.

43 § 9. Subdivision (b) of section 24 of the tax law is amended by adding
44 four new paragraphs 9, 10, 11, and 12 to read as follows:

45 (9) "Qualified converted industrial space film production facility"
46 shall mean any film production facility in the state: (i) located in a
47 district that, under the zoning classifications promulgated by the New
48 York city planning commission, is currently or was formerly classified
49 as a manufacturing district; (ii) owned or leased by a qualified
50 converted industrial space film production company; and (iii) which
51 contains at least one sound stage having a minimum of four thousand five
52 hundred square feet of contiguous production space, that is sound proof
53 with a noise criteria of thirty or better, has sufficient heating and
54 air conditioning for shooting without the need for supplemental units,
55 incorporates sufficient built-in electric service for shooting without
56 the need for generators, has built-in live ingest and data transfer

1 facilities, and has a clear height of at least thirteen feet but not
2 more than fourteen feet. For purposes of this paragraph as applied to
3 any qualified converted industrial space film production facility,
4 "contiguous" shall not be interpreted to require any production space in
5 such facility to be column-free.

6 (10) "Qualified converted industrial space film production company" is
7 a corporation, partnership, limited partnership or limited liability
8 company which: (i) owns or leases a qualified converted industrial
9 space film production facility; (ii) employs throughout the year at
10 least eight hundred full-time staff in New York, of which at least five
11 hundred staff are located at the qualified converted industrial space
12 film production facility; and (iii) during the course of its ownership
13 or lease of the facility has invested a minimum of thirty-five million
14 dollars in capital expenditures to repurpose the facility as a film
15 production facility for the purpose of conducting film production activ-
16 ity therein.

17 (11) "Qualified converted industrial space expenses" shall mean
18 production costs (excluding post production costs) paid or incurred by a
19 qualified converted industrial space film production company in one or
20 more taxable years, and attributable to: (i) the use of tangible proper-
21 ty at a qualified converted industrial space film production facility,
22 (ii) the performance of services including wages paid to employees
23 located at a qualified converted industrial space film production facil-
24 ity, and (iii) wages that qualify for the ten percent credit under para-
25 graph five of subdivision (a) of this section. Qualified converted
26 industrial space expenses shall include costs for a story, script or
27 scenario to be used for a qualified film and wages or salaries or other
28 compensation for writers, directors, including music directors, produc-
29 ers and performers.

30 (12) "Interim application" shall mean an application filed by a quali-
31 fied converted industrial space film production company for production
32 credits under this section for a qualified film with respect to which
33 the company has paid or incurred at least fifty thousand dollars of
34 eligible spend.

35 § 10. Paragraph 4 of subdivision (e) of section 24 of the tax law, as
36 amended by section 1-a of part P of chapter 60 of the laws of 2016, is
37 amended to read as follows:

38 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
39 subdivision (a) of this section shall be increased by an additional four
40 hundred twenty million dollars in each year starting in two thousand ten
41 through two thousand nineteen provided however, seven million dollars of
42 the annual allocation shall be available for the empire state film post
43 production credit pursuant to section thirty-one of this article in two
44 thousand thirteen and two thousand fourteen and twenty-five million
45 dollars of the annual allocation shall be available for the empire state
46 film post production credit pursuant to section thirty-one of this arti-
47 cle in each year starting in two thousand fifteen through two thousand
48 nineteen. This amount shall be allocated by the governor's office for
49 motion picture and television development among taxpayers in accordance
50 with subdivision (a) of this section. If the commissioner of economic
51 development determines that the aggregate amount of tax credits avail-
52 able from additional pool 2 for the empire state film production tax
53 credit have been previously allocated, and determines that the pending
54 applications from eligible applicants for the empire state film post
55 production tax credit pursuant to section thirty-one of this article is
56 insufficient to utilize the balance of unallocated empire state film

1 post production tax credits from such pool, the remainder, after such
2 pending applications are considered, shall be made available for allo-
3 cation in the empire state film tax credit pursuant to this section,
4 subdivision [~~thirty-six~~] twenty of section two hundred [~~ten~~] ten-B and
5 subsection (gg) of section six hundred six of this chapter. Also, if the
6 commissioner of economic development determines that the aggregate
7 amount of tax credits available from additional pool 2 for the empire
8 state film post production tax credit have been previously allocated,
9 and determines that the pending applications from eligible applicants
10 for the empire state film production tax credit pursuant to this section
11 is insufficient to utilize the balance of unallocated film production
12 tax credits from such pool, then all or part of the remainder, after
13 such pending applications are considered, shall be made available for
14 allocation for the empire state film post production credit pursuant to
15 this section, subdivision [~~forty-one~~] thirty-two of section two hundred
16 [~~ten~~] ten-B and subsection [~~(gg)~~] (qq) of section six hundred six of
17 this chapter. The governor's office for motion picture and television
18 development must notify taxpayers of their allocation year and include
19 the allocation year on the certificate of tax credit. Taxpayers eligible
20 to claim a credit must report the allocation year directly on their
21 empire state film production credit tax form for each year a credit is
22 claimed and include a copy of the certificate with their tax return. In
23 the case of a qualified film that receives funds from additional pool 2
24 other than a qualified film produced by a qualified converted industrial
25 space film production company, no empire state film production credit
26 shall be claimed before the later of the taxable year the production of
27 the qualified film is complete, or the taxable year immediately follow-
28 ing the allocation year for which the film has been allocated credit by
29 the governor's office for motion picture and television development. In
30 the case of a qualified converted industrial space film production
31 company, a qualified film shall be deemed to be complete in the taxable
32 year in which the qualified film is actually completed, or the taxable
33 year in which an interim application is properly filed under this
34 section in respect of such qualified film.

35 § 11. The state commissioner of economic development, after consulting
36 with the state commissioner of taxation and finance, shall promulgate
37 any regulations as may be necessary to effectuate the changes instituted
38 by this act by December 31, 2017.

39 (i) The commissioner of economic development, after consulting with
40 the commissioner of taxation and finance, shall promulgate rules to
41 update the definitions contained in the regulations to be consistent
42 with section 24 of the tax law, as amended by this act. Such rules and
43 regulations shall include provisions with respect to qualified converted
44 industrial space film production companies describing the application
45 process, the due dates for such applications, the standards which shall
46 be used to evaluate the applications, the documentation that will be
47 provided to substantiate to the department of taxation and finance the
48 amount of tax credits allocated to such taxpayers, under what conditions
49 all or a portion of this tax credit may be revoked, and such other
50 provisions as deemed necessary and appropriate. Notwithstanding any
51 other provisions to the contrary in the state administrative procedure
52 act, such rules and regulations may be adopted on an emergency basis if
53 necessary to meet such December 31, 2017 deadline, and shall explicitly
54 provide for a mechanism for a qualified converted industrial space film
55 production company with at least fifty thousand dollars in eligible
56 spend paid or incurred over one or more tax years commencing on or after

1 January 1, 2017 to claim the credit with respect to such year on its
2 timely filed New York state income tax return for such tax year, includ-
3 ing any excess eligible for refund under subdivision 48 of section 210-B
4 of the tax law. The rules shall ensure that no such applications submit-
5 ted with respect to a qualified film is rejected as premature or incom-
6 plete, based on submission of sufficient supporting documentation.
7 Regardless of whether such rules and regulation have been adopted, the
8 commissioner shall not under any circumstances deny or fail to certify a
9 qualified converted industrial space film production company with
10 respect to any qualified film produced at a qualified converted indus-
11 trial space film production facility, including any interim application
12 meeting the fifty thousand dollar threshold contained in paragraph 2 of
13 subdivision (a) of section 24 of the tax law, as amended by section two
14 of this act, on account of such rules and regulations not having been
15 promulgated. The governor's office for motion picture and television
16 development must notify each qualified converted industrial space film
17 production company of its allocation year with respect to each applica-
18 tion meeting the requirements of section 24 of the tax law, as amended
19 by this act.

20 (ii) The state commissioner of economic development, after consulting
21 with the state commissioner of taxation and finance, shall promulgate
22 rules to modify the definition of "qualified film" solely with respect
23 to a qualified converted industrial space film production company, to
24 explicitly permit such company to obtain the credit under paragraph (1)
25 of subdivision (a) of section 24 of the tax law for content transmitted
26 via any means or medium including television, film, digital media, and
27 mobile, and will permit such a company to file applications under
28 section 24 of the tax law for: (a) documentary films and shorts; (b)
29 "how-to" (i.e., instructional) films or programs; (c) long-form,
30 specials, mini-series, series, and interstitial television programming;
31 and (d) "reality" programming. The new rules shall exempt any qualified
32 film produced by a qualified converted industrial space film production
33 company from scripting requirements.

34 § 12. This act shall take effect immediately and shall apply to taxa-
35 ble years beginning on or after January 1, 2017.