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:

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

(1) Allowance of credit. A taxpayer which is a qualified film production company, [~~or~~] a qualified independent film production company, **or a qualified converted industrial space 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**, or a qualified converted industrial space 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 (c) of this section, to be computed as hereinafter provided.

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

(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 thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that**, except with respect to a qualified converted industrial film production company**: (i) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the 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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of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film, and (ii) except with respect to a qualified independent film production company or pilot, at least ten percent of the total principal photography shooting days spent in the production of such qualified film must be spent at a qualified film production facility. However, **except with respect to a qualified converted industrial film production company,** if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. **In the case of a qualified converted industrial film production company the sole criterion shall be that the company paid or incurred at least fifty thousand dollars of qualified converted industrial space expenses (excluding post production costs) to produce a qualified film, and that the qualified converted industrial space expenses equal or exceed thirty-four percent of the total production costs (excluding post production costs) paid or incurred within and without the state in the production of such qualified film.** The credit shall be allowed for the taxable year in which the production of such qualified film is completed**, except that with respect to a qualified converted industrial film production company having incurred at least fifty thousand dollars of qualified converted industrial space expenses with respect to a qualified film, such company may apply for the credit using an interim application notwithstanding that the qualified film is not yet completed**. However, in the case of a qualified film that receives funds from additional pool 2, no credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development. **In the case of a qualified converted industrial space film production company, a qualified film shall be deemed to be complete in the taxable year in which the qualified film is actually completed, or the taxable year in which an interim application is properly filed under this section in respect of such qualified film.** If the amount of the credit **claimed by a taxpayer other than a qualified converted industrial space film production company** is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit **claimed by a taxpayer other than a qualified industrial space film production company** is at least five million dollars, the credit shall be claimed over a three year period beginning in the first taxable year in which the credit may be claimed and in the next two succeeding taxable

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

§ 3. Paragraph 3 of subdivision (a) 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:

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this section or used in the calculation of the credit provided for under this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter. **If any taxpayer claims or previously claimed the benefit of any credit under this section other than with respect to a qualified film produced by a qualified converted industrial space film production company at a qualified converted industrial space film production facility, the taxpayer shall not be entitled to claim credits with respect to qualifying converted industrial space expenses under the rules applicable to qualified converted industrial space film production companies.**

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

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

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

(5) For the period two thousand fifteen through two thousand nineteen, in addition to the amount of credit established in paragraph two of this subdivision, a taxpayer shall be allowed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the amount of wages or salaries paid to individuals directly employed (excluding those employed as writers, directors, music directors, producers and performers, including background actors with no scripted lines) by a qualified film production company [~~or~~]**,** a qualified independent film production company**, or a qualified converted industrial space film production company** for services performed by those individuals in one of the counties specified in this paragraph in connection with a qualified film with a minimum budget of five hundred thousand dollars. For purposes of this additional credit, the services must be performed in one or more of the following counties: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, 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

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

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

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

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

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

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

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

(11) "Qualified converted industrial space expenses" shall mean production costs (excluding post production costs) paid or incurred by a qualified converted industrial space film production company in one or more taxable years, and attributable to: (i) the use of tangible property at a qualified converted industrial space film production facility, (ii) the performance of services including wages paid to employees located at a qualified converted industrial space film production facility, and (iii) wages that qualify for the ten percent credit under paragraph five of subdivision (a) of this section. Qualified converted industrial space expenses shall include costs for a story, script or scenario to be used for a qualified film and wages or salaries or other compensation for writers, directors, including music directors, producers and performers.

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

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

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

post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision [~~thirty-six~~] twenty of section two hundred [~~ten~~] ten-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision [~~forty-one~~] thirty-two of section two hundred [~~ten~~] ten-B and subsection [~~(gg)~~] (qq) of section six hundred six of this chapter. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2 other than a qualified film produced by a qualified converted industrial space film production company, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development. In the case of a qualified converted industrial space film production company, a qualified film shall be deemed to be complete in the taxable year in which the qualified film is actually completed, or the taxable year in which an interim application is properly filed under this section in respect of such qualified film.

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

(i) The commissioner of economic development, after consulting with the commissioner of taxation and finance, shall promulgate rules to update the definitions contained in the regulations to be consistent with section 24 of the tax law, as amended by this act. Such rules and regulations shall include provisions with respect to qualified converted industrial space film production companies 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 substantiate to the 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, 2017 deadline, and shall explicitly provide for a mechanism for a qualified converted industrial space film production company with at least fifty thousand dollars in eligible spend paid or incurred over one or more tax years commencing on or after

January 1, 2017 to claim the credit with respect to such year on its timely filed New York state income tax return for such tax year, including any excess eligible for refund under subdivision 48 of section 210-B of the tax law. The rules shall ensure that no such applications submitted with respect to a qualified film is rejected as premature or incomplete, based on submission of sufficient supporting documentation. Regardless of whether such rules and regulation have been adopted, the commissioner shall not under any circumstances deny or fail to certify a qualified converted industrial space film production company with respect to any qualified film produced at a qualified converted industrial space film production facility, including any interim application meeting the fifty thousand dollar threshold contained in paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section two of this act, on account of such rules and regulations not having been promulgated. The governor's office for motion picture and television development must notify each qualified converted industrial space film production company of its allocation year with respect to each application meeting the requirements of section 24 of the tax law, as amended by this act.

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

§ 12. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2017.