

# STATE OF NEW YORK

9070

## IN ASSEMBLY

January 18, 2018

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

AN ACT to amend the public service law, in relation to authorizing the commissioner of the public service commission to administer the community media development tax credit and fund; to amend the tax law, in relation to providing a credit to certain taxpayers for contributions to the community media development fund; and to amend the state finance law, in relation to establishing the community media development fund

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

Section 1. The public service law is amended by adding a new section 28 to read as follows:

§ 28. Power to administer the community media development tax credit and fund. 1. (a) The commissioner is authorized to administer the community media development tax credit to provide tax incentives to taxpayers who are direct broadcast satellite service providers or video streaming service providers as defined in section twenty-four-b of the tax law for contributions to the community media development fund, established pursuant to section ninety-nine-m of the state finance law.

(b) The commissioner shall promulgate regulations by December thirty-first, two thousand eighteen to establish procedures for the allocation of tax credits pursuant to section twenty-four-b 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 to substantiate to the commissioner 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 December thirty-first, two thousand eighteen deadline.

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

LBD14056-01-7

1 (c) In order to be eligible for such tax credits, a taxpayer must  
2 submit an application (in a form prescribed by the commissioner) to the  
3 commissioner.

4 (d) If, after reviewing the application submitted by the taxpayer, the  
5 commissioner determines that such taxpayer has made contributions to the  
6 community media development fund, then the commissioner shall issue the  
7 taxpayer a certificate of eligibility that establishes the taxpayer as a  
8 qualified taxpayer.

9 2. (a) The commissioner is authorized to utilize the monies in the  
10 community media development fund, for distribution to eligible municipi-  
11 palities and community media organizations in proportions as provided in  
12 paragraph (b) of this subdivision, provided however, that the commis-  
13 sioner may make available up to ten percent of the monies in the fund  
14 for operational expenditures annually.

15 (b) The commissioner shall annually identify all municipalities within  
16 the state who receive a franchise fee pursuant to 47 U.S.C. section 542  
17 and have a community media organization present in such municipality and  
18 distribute the monies in the fund to such municipalities proportionally  
19 based upon the population of such municipalities. Of such monies  
20 distributed to a municipality, sixty percent shall be distributed  
21 directly to such municipality and forty percent shall be distributed to  
22 the community media organization for such municipality.

23 3. For the purposes of this section, "community media organization"  
24 shall mean the entity responsible for managing public, educational or  
25 governmental access facilities, as defined in 47 U.S.C. section 522(16).

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

28 § 24-b. Community media development tax credit. (a) For the purposes  
29 of this section the following terms shall have the following meanings:

30 (1) "Direct broadcast satellite service", means the distribution or  
31 broadcasting by satellite of video programming or services directly to  
32 receiving equipment located at an end user subscriber's or an end user  
33 customer's premises, including, but not limited to, the provision of  
34 premium channels, the provision of music or other audio services or  
35 channels, and any other service received in connection with the  
36 provision of direct broadcast satellite service.

37 (2) "Direct broadcast satellite service provider", means a person who  
38 transmits, broadcasts or otherwise provides direct broadcast satellite  
39 service to subscribers or customers in the state.

40 (3) "Video streaming service", means the distribution or broadcasting  
41 of video programming sent over the Internet and displayed by the viewer  
42 in real time for a fee on a subscription basis.

43 (4) "Video streaming service provider", means a person who transmits,  
44 broadcasts or otherwise provides video streaming service to subscribers  
45 or customers in the state.

46 (5) "Gross receipts", means all consideration of any kind or nature  
47 received by a direct broadcast satellite service provider or video  
48 streaming service provider, or an affiliate of such person, in  
49 connection with the provision of direct broadcast satellite service or  
50 video streaming service to subscribers or customers, including recurring  
51 monthly charges for direct broadcast satellite service or video stream-  
52 ing service and pay-per-view, video-on-demand and other event-based  
53 charges for direct broadcast satellite service or video streaming  
54 service; provided, however, that gross receipts shall not include:

55 (i) charges for the rental of equipment related to the provision of  
56 direct broadcast satellite service or video streaming service;

1 (ii) activation, installation, repair and maintenance charges or simi-  
2 lar service charges related to the provision of direct broadcast satel-  
3 lite service or video streaming service;

4 (iii) service order charges, service termination charges or any other  
5 administrative charges related to the provision of direct broadcast  
6 satellite service or video streaming service;

7 (iv) revenue not actually received, regardless of whether it is  
8 billed, including, but not limited to, bad debts;

9 (v) revenue received by an affiliate or other person in exchange for  
10 supplying goods and services used by a direct broadcast satellite  
11 service provider or video streaming service provider;

12 (vi) refunds, rebates or discounts made to subscribers or customers,  
13 to advertisers or to other persons;

14 (vii) revenue from telecommunications service as defined in 47 U.S.C.  
15 section 153(46);

16 (viii) revenue from information services as defined in 47 U.S.C.  
17 section 153(20);

18 (ix) revenue from any service that is subject to tax under article  
19 twenty-eight of this chapter;

20 (x) revenue from the sale of capital assets or surplus equipment not  
21 used by the purchaser to receive direct broadcast satellite service or  
22 video streaming service from the direct broadcast satellite service  
23 provider or video streaming service provider;

24 (xi) reimbursements made by programmers to the direct broadcast satel-  
25 lite service provider or video streaming service provider for marketing  
26 costs incurred by such service provider for the introduction of new  
27 programming that exceed the actual costs incurred by such service  
28 provider;

29 (xii) late payment fees collected from subscribers or customers; or

30 (xiii) charges, other than those charges specifically described here-  
31 in, that are aggregated or bundled with such specifically-described  
32 charges on a subscriber or customer's bill, if the direct broadcast  
33 satellite service provider or video streaming service provider can  
34 reasonably identify the charges in its books and records kept in the  
35 regular course of business.

36 (6) "Person", means an individual, partnership, limited liability  
37 company, trust or association, with or without transferable shares,  
38 joint-stock company, corporation, society, club, organization, institu-  
39 tion, estate, receiver, trustee, assignee or referee and any other  
40 person acting in a fiduciary or representative capacity, whether  
41 appointed by a court or otherwise, and any combination of individuals  
42 acting as a unit.

43 (7) "Subscriber or customer", means any person or member of the gener-  
44 al public who receives direct broadcast satellite service or video  
45 streaming service from a direct broadcast satellite service provider or  
46 video streaming service provider and does not further distribute such  
47 service in the ordinary course of business.

48 (8) "Video programming", means programming provided by, or comparable  
49 to programming provided by, a television broadcast station including,  
50 but not limited to, video programming provided by local networks,  
51 national broadcast networks, cable networks and all forms of pay-per-  
52 view video entertainment.

53 (b) A taxpayer who is a direct broadcast satellite service provider or  
54 video streaming service provider shall be allowed a credit of up to five  
55 percent of such service provider's gross receipts for such tax year,  
56 against the tax imposed by articles nine-A and twenty-two of this chap-

1 ter for contributions to the community media development fund estab-  
2 lished pursuant to section ninety-nine-m of the state finance law.

3 (c) The commissioner of the public service commission shall promulgate  
4 regulations by December thirty-first, two thousand eighteen to establish  
5 procedures for the allocation of tax credits as required pursuant to  
6 section twenty-eight of the public service law. Such rules and regu-  
7 lations shall include provisions describing the application process, the  
8 due dates for such applications, the standards which shall be used to  
9 evaluate the applications, the documentation that will be provided to  
10 taxpayers to substantiate to the department the amount of tax credits  
11 allocated to such taxpayers, and such other provisions as deemed neces-  
12 sary and appropriate.

13 (d) The credit allowed under this section for any taxable year shall  
14 not reduce the tax due for such year to less than the amount prescribed  
15 in paragraph (d) of subdivision one of section two hundred ten of this  
16 chapter. Provided, however, that if the amount of the credit allowable  
17 under this section for any taxable year reduces the tax to such amount,  
18 the excess shall be treated as an overpayment of tax to be credited or  
19 refunded in accordance with the provisions of section one thousand  
20 eighty-six of this chapter. Provided further, the provisions of  
21 subsection (c) of section one thousand eighty-eight of this chapter  
22 notwithstanding, no interest shall be paid thereon.

23 (e) The taxpayer may be required to attach to its tax return its  
24 certificate of eligibility issued by the commissioner of the public  
25 service commission pursuant to section twenty-eight of the public  
26 service law.

27 (f) Cross-references. For application of the credit provided for in  
28 this section, see the following provisions of this chapter:

29 (1) Article 9-A: section 210-B, subdivision 53;

30 (2) Article 22: section 606, subsection (i), paragraph (1), subpara-  
31 graph (B), clause (xliv); and

32 (3) Article 22: section 606, subsection (ccc).

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

35 53. Community media development tax credit. (a) Allowance of credit. A  
36 taxpayer shall be allowed a credit, to be computed as provided in  
37 section twenty-four-b of this chapter, against the tax imposed by this  
38 article.

39 (b) Application of credit. The credit allowed under this subdivision  
40 for any taxable year may not reduce the tax due for such year to less  
41 than the amount prescribed in paragraph (d) of subdivision one of  
42 section two hundred ten of this article. However, if the amount of cred-  
43 it allowed under this subdivision for any taxable year reduces the tax  
44 to such amount, any amount of credit thus not deductible in such taxable  
45 year will be treated as an overpayment of tax to be credited or refunded  
46 in accordance with the provisions of section one thousand eighty-six of  
47 this chapter. Provided, however, the provisions of subsection (c) of  
48 section one thousand eighty-six of this chapter notwithstanding, no  
49 interest will be paid thereon.

50 § 4. Section 606 of the tax law is amended by adding a new subsection  
51 (ccc) to read as follows:

52 (ccc) Community media development tax credit. (a) Allowance of credit.  
53 A taxpayer shall be allowed a credit, to be computed as provided in  
54 section twenty-four-b of this chapter, against the tax imposed by this  
55 article.

1 (b) Application of credit. If the amount of the credit allowed under  
2 this subsection exceeds the taxpayer's tax for the taxable year, any  
3 amount of credit not deductible in that taxable year will be treated as  
4 an overpayment of tax to be credited or refunded in accordance with the  
5 provisions of section six hundred eighty-six of this article. Provided,  
6 however, no interest will be paid thereon.

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

10 <u>(xliv) Community media</u>	<u>Amount of the credit under</u>
11 <u>development credit under</u>	<u>subdivision fifty-three of section</u>
12 <u>subsection (ccc)</u>	<u>two hundred ten-B</u>

13 § 6. The state finance law is amended by adding a new section 99-m to  
14 read as follows:

15 § 99-m. Community media development fund. 1. There is hereby estab-  
16 lished in the joint custody of the comptroller and the commissioner of  
17 taxation and finance a special fund to be known as the "community media  
18 development fund".

19 2. (a) All monies received by the comptroller or the commissioner of  
20 taxation and finance for the purpose of this fund shall be deposited  
21 herein. No monies may be transferred from this account to any other  
22 account except by authority of the commissioner of the public service  
23 commission.

24 (b) Such fund shall consist of the revenue collected pursuant to  
25 section twenty-four-b of the tax law and any other revenues collected by  
26 or appropriated to the fund pursuant to any other law.

27 3. Monies of the fund, following appropriation by the legislature,  
28 shall be utilized by the commissioner of the public service commission  
29 for distribution to municipalities and community media organizations  
30 pursuant to the provisions of section twenty-eight of the public service  
31 law. The commissioner of the public service commission may, at his or  
32 her discretion, make available up to ten percent of the monies in the  
33 fund for operational expenditures annually.

34 4. All payments of monies from the fund shall be made on the audit and  
35 warrant of the comptroller.

36 § 7. This act shall take effect immediately and apply to taxable years  
37 beginning on or after January 1, 2019.