STATE OF NEW YORK

4999

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

Introduced by Sen. ALCANTARA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

Section 1. Legislative intent. The Legislature hereby recognizes that providing tax incentive to enhance diversity in the ranks of television writers and directors will also enhance the diversity of stories and casts.

§ 2. 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 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 [~~(c)~~] **(e)** of this section, to be computed as [~~hereinafter~~] provided **in this section**.

§ 3. 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 and four new paragraphs 9, 10, 11 and 12 are added 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. "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

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

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other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). **Writers' and directors' fees and salaries shall be eligible production costs subject to the provisions of subdivision (c) of this section; provided, however, that fees that are based on deferred, leveraged or profit participation costs, or are in excess of those otherwise permitted by subdivision (c) of this section shall not be eligible production costs.** "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.

(9) "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.

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

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

(12) "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.

§ 4. Subdivisions (c), (d) and (e) of section 24 of the tax law are relettered subdivisions (e), (f) and (g), respectively and two new subdivisions (c) and (d) are added to read as follows:

(c) For a television production, writers' and directors' fees and salaries shall be eligible costs; provided, however, such costs shall not exceed: (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 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.

(d) For each tax year, not more than five million dollars in tax credits for writers' and directors' fees and salaries shall be granted pursuant to this section. Such credits shall only be available from credits allowed for production costs pursuant to this section.

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to the tax year in which it takes effect and all subsequent tax years.