

# STATE OF NEW YORK

4999--B

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 -- 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 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:

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

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

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

16 § 3. Paragraph 2 of subdivision (b) of section 24 of the tax law, as  
17 added by section 1 of part P of chapter 60 of the laws of 2004, is  
18 amended and four new paragraphs 9, 10, 11 and 12 are added to read as  
19 follows:

20 (2) "Production costs" means any costs for tangible property used and  
21 services performed directly and predominantly in the production (includ-

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

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1 ing pre-production and post production) of a qualified film.  
2 "Production costs" shall not include [~~(i) costs for a story, script or~~  
3 ~~scenario to be used for a qualified film and (ii)~~] wages or salaries or  
4 other compensation for writers, directors, including music directors,  
5 producers and performers (other than background actors with no scripted  
6 lines). Television writers' and directors' fees and salaries shall be  
7 eligible production costs subject to the provisions of subdivision (c)  
8 of this section; provided, however, that fees that are based on  
9 deferred, leveraged or profit participation costs, or are in excess of  
10 those otherwise permitted by subdivision (c) of this section shall not  
11 be eligible production costs. "Production costs" generally include tech-  
12 nical and crew production costs, such as expenditures for film  
13 production facilities, or any part thereof, props, makeup, wardrobe,  
14 film processing, camera, sound recording, set construction, lighting,  
15 shooting, editing and meals.

16 (9) "Writer" means a writer who is employed or retained to write or  
17 revise scripts, screenplays, teleplays, dialogue, sketches, routines or  
18 narrations and who reports to work regularly in a writers room located  
19 in the state.

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

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

25 (12) "Profit participant" is an individual who has negotiated for a  
26 percentage of profits generated by their television show. Profit partic-  
27 ipation does not include monies contractually required by collectively  
28 bargained agreements for reuse of the program on different platforms  
29 over time.

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

33 (c) For a television production, writers' and directors' fees and  
34 salaries shall be eligible costs; provided, however, such costs shall  
35 not exceed: (i) for each writer or director who receives an on-air cred-  
36 it, fifty thousand dollars in fees or salary per episode; (ii) for each  
37 non-credited writer, seventy-five thousand dollars per series of  
38 episodes; and (iii) for each eligible writer or director, an overall  
39 total of one hundred fifty thousand dollars per series per season.  
40 Provided that in each case, such writer or director is a minority group  
41 member, as defined by subdivision eight of section three hundred ten of  
42 the executive law, or a woman, and provided, further, that any writer or  
43 director who is a profit participant in the qualified production shall  
44 not be eligible.

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

49 § 5. Paragraph 5 of subdivision (a) of section 24 of the tax law, as  
50 amended by section 1 of part M of chapter 59 of the laws of 2017, is  
51 amended to read as follows:

52 (5) For the period two thousand fifteen through two thousand twenty-  
53 two, in addition to the amount of credit established in paragraph two of  
54 this subdivision, a taxpayer shall be allowed a credit equal to the  
55 product (or pro rata share of the product, in the case of a member of a  
56 partnership) of ten percent and the amount of wages or salaries paid to

1 individuals directly employed (excluding those employed as writers,  
2 directors, music directors, producers and performers, including back-  
3 ground actors with no scripted lines) by a qualified film production  
4 company or a qualified independent film production company for services  
5 performed by those individuals in one of the counties specified in this  
6 paragraph in connection with a qualified film with a minimum budget of  
7 five hundred thousand dollars. For purposes of this additional credit,  
8 the services must be performed in one or more of the following counties:  
9 Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung,  
10 Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex,  
11 Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis,  
12 Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga,  
13 Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga,  
14 Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sulli-  
15 van, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or  
16 Yates. The aggregate amount of tax credits allowed pursuant to the  
17 authority of this paragraph shall be five million dollars each year  
18 during the period two thousand fifteen through two thousand twenty-two  
19 of the annual allocation made available to the program pursuant to para-  
20 graph four of subdivision ~~(e)~~ (g) of this section. Such aggregate  
21 amount of credits shall be allocated by the governor's office for motion  
22 picture and television development among taxpayers in order of priority  
23 based upon the date of filing an application for allocation of film  
24 production credit with such office. If the total amount of allocated  
25 credits applied for under this paragraph in any year exceeds the aggre-  
26 gate amount of tax credits allowed for such year under this paragraph,  
27 such excess shall be treated as having been applied for on the first day  
28 of the next year. If the total amount of allocated tax credits applied  
29 for under this paragraph at the conclusion of any year is less than five  
30 million dollars, the remainder shall be treated as part of the annual  
31 allocation made available to the program pursuant to paragraph four of  
32 subdivision ~~(e)~~ (g) of this section. However, in no event may the  
33 total of the credits allocated under this paragraph and the credits  
34 allocated under paragraph five of subdivision (a) of section thirty-one  
35 of this article exceed five million dollars in any year during the peri-  
36 od two thousand fifteen through two thousand twenty-two.

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