

STATE OF NEW YORK

8032

IN SENATE

March 21, 2018

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 a television writers' and directors' fees and salaries credit

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

1 Section 1. The tax law is amended by adding a new section 24-b to read
2 as follows:

3 § 24-b. Television writers' and directors' fees and salaries credit.

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

12 (2) The amount of the credit shall be the product (or pro rata share
13 of the product, in the case of a member of a partnership) of thirty
14 percent and the qualified television writers' and directors' fees and
15 salaries costs paid or incurred in the production of a qualified film,
16 provided that: (i) the credit amount shall not exceed fifty thousand
17 dollars for qualified television writers' and directors' fees and sala-
18 ries claimed for such expenses incurred for the employment of any one
19 specific writer or director for the production of a single television
20 pilot or a single episode of a television series, and (ii) the credit
21 amount shall not exceed one hundred fifty thousand dollars for qualified
22 television writers' and directors' fees and salaries claimed for such
23 expenses incurred for the employment of any one specific writer or
24 director. The credit shall be allowed for the taxable year in which the
25 production of such qualified film is completed.

26 (3) No qualified television writers' and directors' fees and salaries
27 used by a taxpayer either as the basis for the allowance of the credit

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

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1 provided for pursuant to this section or used in the calculation of the
2 credit provided pursuant to this section shall be used by such taxpayer
3 to claim any other credit allowed pursuant to this chapter.

4 (b) Definitions. As used in this section, the following terms shall
5 have the following meanings:

6 (1) "Qualified film production company" is a corporation, partnership,
7 limited partnership, or other entity or individual which or who is prin-
8 cipally engaged in the production of a qualified film and controls the
9 qualified film during production.

10 (2) "Qualified independent film production company" is a corporation,
11 partnership, limited partnership, or other entity or individual, that or
12 who (i) is principally engaged in the production of a qualified film
13 with a maximum budget of fifteen million dollars, (ii) controls the
14 qualified film during production, and (iii) either is not a publicly
15 traded entity, or no more than five percent of the beneficial ownership
16 of which is owned, directly or indirectly, by a publicly traded entity.

17 (3) "Qualified film" means a television film, television pilot and/or
18 each episode of a television series, regardless of the medium by means
19 of which the film, pilot or episode is created or conveyed.

20 (4) "Qualified television writers' and directors' fees and salaries"
21 means: (i) salaries or fees paid to a writer or director who receives an
22 on-air credit; (ii) for a non-credited writer, up to seventy-five thou-
23 sand dollars in salaries or fees per series of episodes. Provided that
24 in each case, such writer or director is a minority group member, as
25 defined in subdivision eight of section three hundred ten of the execu-
26 tive law, or a woman, and provided, further, that salaries or fees paid
27 to any writer or director who is a profit participant in the qualified
28 film shall not be eligible.

29 (5) "Writer" means a person who is: (i) engaged by a qualified film
30 production company or a qualified independent film production company to
31 write literary material (including making changes or revisions in liter-
32 ary material), when the company has the right by contract to direct the
33 performance of personal services in writing or preparing such material
34 or in making revisions, modifications or changes therein; or (ii)
35 engaged by the company and who performs services (at the company's
36 direction or with its consent) in writing or preparing such literary
37 material or making revisions, modifications, or changes in such materi-
38 al; and (iii) who reports to work regularly in a writers room located in
39 the state.

40 (6) "Literary material" shall be deemed to include stories, adapta-
41 tions, treatments, original treatments, scenarios, continuities, tele-
42 plays, screenplays, dialogue, scripts, sketches, plots, outlines, narra-
43 tive synopses, routines, narrations, and formats.

44 (7) "Writers room" means a room or physical location where writers
45 employed by a qualified film production company or qualified independent
46 film production company write or revise literary materials utilized in a
47 qualified film.

48 (8) "Director" means an individual employed or retained to direct the
49 production, as the word "direct" is commonly used in the motion picture
50 industry, and who would be classified as a director under the basic
51 agreement in place between the Association of Motion Picture and Tele-
52 vision Producers and the Director's Guild of America and who is a resi-
53 dent of New York.

54 (9) "Profit participant" is an individual who has negotiated for a
55 percentage of profits generated by a qualified film. Profit partic-
56 ipation does not include monies contractually required by collectively

1 bargained agreements for reuse of a qualified film on different plat-
2 forms over time.

3 (c) Cross-references. For application of the credit provided for in
4 this section, see the following provisions of this chapter:

5 (1) article 9-A: section 210-B: subdivision 53.

6 (2) article 22: section 606: subsection (v).

7 (d) Notwithstanding any provision of this chapter, (1) employees and
8 officers of the department of economic development and the department
9 shall be allowed and are directed to share and exchange information
10 regarding the credits applied for, allowed, or claimed pursuant to this
11 section and taxpayers who are applying for credits or who are claiming
12 credits, including information contained in or derived from credit claim
13 forms submitted to the department and applications for certification
14 submitted to the department of economic development, and (2) the commis-
15 sioner and the commissioner of the department of economic development
16 may release the names and addresses of any taxpayer claiming this credit
17 and the amount of the credit earned by the taxpayer. Provided, however,
18 if a taxpayer claims this credit because it is a member of a limited
19 liability company or a partner in a partnership, only the amount of
20 credit earned by the entity and not the amount of credit claimed by the
21 taxpayer may be released.

22 (e) Maximum amount of credits. (1) The aggregate amount of tax credits
23 allowed under this section, subdivision fifty-three of section two
24 hundred ten-B and subsection (v) of section six hundred six of this
25 chapter in any calendar year shall be five million dollars. Such aggre-
26 gate amount of credits shall be allocated by the department of economic
27 development among taxpayers in order of priority based upon the date of
28 filing an application for allocation of television writers' and direc-
29 tors' fees and salaries credit with such department. If the total amount
30 of allocated credits applied for in any particular year exceeds the
31 aggregate amount of tax credits allowed for such year under this
32 section, such excess shall be treated as having been applied for on the
33 first day of the subsequent year.

34 (2) The commissioner of economic development, after consulting with
35 the commissioner, shall promulgate regulations by October thirty-first,
36 two thousand eighteen to establish procedures for the allocation of tax
37 credits as required by subdivision (a) of this section. Such rules and
38 regulations shall include provisions describing the application process,
39 the due dates for such applications, the standards which shall be used
40 to evaluate the applications, the documentation that will be provided to
41 taxpayers to substantiate to the department the amount of tax credits
42 allocated to such taxpayers, and such other provisions as deemed neces-
43 sary and appropriate. Notwithstanding any other provisions to the
44 contrary in the state administrative procedure act, such rules and regu-
45 lations may be adopted on an emergency basis if necessary to meet such
46 October thirty-first, two thousand eighteen deadline.

47 (f) The department of economic development shall submit to the gover-
48 nor, the temporary president of the senate, and the speaker of the
49 assembly, an annual report to be submitted on February first of each
50 year evaluating the effectiveness of the television writers' and direc-
51 tors' fees and salaries tax credit provided by this section in stimulat-
52 ing the growth of diversity in the film industry in the state. Such
53 report shall include, but need not be limited to, the number of quali-
54 fied film production companies and/or qualified independent film
55 production companies which received a television writers' and directors'
56 fees and salaries credit, the credit amounts claimed by each qualified

1 film production company and/or qualified independent film production
2 company, as well as the impact on employment and the economy of the
3 state. Such report shall be based on data available from the application
4 filed with the department of economic development for allocation of
5 television writers' and directors' fees and salaries credits. Notwith-
6 standing any provision of law to the contrary, the information contained
7 in the report shall be public information. The report may also include
8 any recommendations of changes in the calculation or administration of
9 the credit, and any other recommendation of the commissioner of the
10 department of economic development regarding continuing modification,
11 repeal of such act, and such other information regarding the act as the
12 commissioner of the department of economic development may feel useful
13 and appropriate.

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

53. Television writers' and directors' fees and salaries credit. (a)
Allowance of credit. A taxpayer who is eligible pursuant to section
twenty-four-b of this chapter shall be allowed a credit to be computed
as provided in such section against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision
for any taxable year shall not reduce the tax due for such year to less
than the amount prescribed in paragraph (d) of subdivision one of
section two hundred ten of this article. Provided, however, that if the
amount of the credit allowable under this subdivision for any taxable
year reduces the tax to such amount or if the taxpayer otherwise pays
tax based on the fixed dollar minimum amount, the excess shall be treat-
ed as an overpayment of tax to be credited or refunded in accordance
with the provisions of section one thousand eighty-six of this chapter.
Provided, further, the provisions of subsection (c) of section one thou-
sand eighty-eight of this chapter notwithstanding, no interest shall be
paid thereon.

§ 3. Section 606 of the tax law is amended by adding a new subsection
 (v) to read as follows:

(v) Television writers' and directors' fees and salaries credit. (1)
Allowance of credit. A taxpayer who is eligible pursuant to section
twenty-four-b of this chapter shall be allowed a credit to be computed
as provided in such section against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under
this subsection for any taxable year exceeds the taxpayer's tax for such
year, the excess shall be treated as an overpayment of tax to be credit-
ed or refunded as provided in section six hundred eighty-six of this
article, provided, however, that no interest shall be paid thereon.

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

<u>(xlix) Television writers'</u>	<u>Amount of credit for the sum of</u>
<u>and directors' fees and salaries</u>	<u>qualified television writers' and</u>
<u>credit under subsection (v)</u>	<u>directors' salaries credit</u>
	<u>under subdivision fifty-three of</u>
	<u>section two hundred ten-B</u>

§ 5. This act shall take effect immediately, and shall apply to taxa-
 ble years beginning on or after January 1, 2019.