

STATE OF NEW YORK

6498

2019-2020 Regular Sessions

IN ASSEMBLY

March 8, 2019

Introduced by M. of A. CRESPO, DICKENS, PICHARDO, PERRY, DAVILA, PRET-
LOW, SIMON, JAFFEE, LIFTON, MOSLEY, ARROYO -- Multi-Sponsored by -- M.
of A. GALEF -- read once and referred to the Committee on Ways and
Means

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 Assem-
bly, 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 (d) of this section, to be computed
11 as hereinafter provided.

12 (2) No qualified television writers' and directors' fees and salaries
13 used by a taxpayer either as the basis for the allowance of the credit
14 provided for pursuant to this section or used in the calculation of the
15 credit provided pursuant to this section shall be used by such taxpayer
16 to claim any other credit allowed pursuant to this chapter.

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

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

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

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

(3) "Qualified television writers' and directors' fees and salaries" means: (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 series 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.

(4) "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.

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

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

(7) "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.

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

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

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

(d) Notwithstanding any provision of this chapter, (i) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (ii) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(e) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision fifty-three of section two hundred ten-B and subsection (v) of section six hundred six of this chapter in any calendar year shall be five million dollars. Such aggregate amount of credits shall be allocated by the department of economic

1 development among taxpayers in order of priority based upon the date of
2 filing an application for allocation of television writers' and direc-
3 tors' fees and salaries credit with such department. If the total amount
4 of allocated credits applied for in any particular year exceeds the
5 aggregate amount of tax credits allowed for such year under this
6 section, such excess shall be treated as having been applied for on the
7 first day of the subsequent year.

8 (2) The commissioner of economic development, after consulting with
9 the commissioner, shall promulgate regulations by October thirty-first,
10 two thousand nineteen to establish procedures for the allocation of tax
11 credits as required by subdivision (a) of this section. Such rules and
12 regulations shall include provisions describing the application process,
13 the due dates for such applications, the standards which shall be used
14 to evaluate the applications, the documentation that will be provided to
15 taxpayers to substantiate to the department the amount of tax credits
16 allocated to such taxpayers, and such other provisions as deemed neces-
17 sary and appropriate. Notwithstanding any other provisions to the
18 contrary in the state administrative procedure act, such rules and regu-
19 lations may be adopted on an emergency basis if necessary to meet such
20 October thirty-first, two thousand nineteen deadline.

21 (f) The department of economic development shall submit to the gover-
22 nor, the temporary president of the senate, and the speaker of the
23 assembly, an annual report to be submitted on February first of each
24 year evaluating the effectiveness of the television writers' and direc-
25 tors' fees and salaries tax credit provided by this section in stimulat-
26 ing the growth of diversity in the film industry in the state. Such
27 report shall include, but need not be limited to, the number of quali-
28 fied film production companies and/or qualified independent film
29 production companies which received a television writers' and directors'
30 fees and salaries credit, the credit amounts claimed by each qualified
31 film production company and/or qualified independent film production
32 company, as well as the impact on employment and the economy of the
33 state. Such report shall be based on data available from the application
34 filed with the department of economic development for allocation of
35 television writers' and directors' fees and salaries credits. Notwith-
36 standing any provision of law to the contrary, the information contained
37 in the report shall be public information. The report may also include
38 any recommendations of changes in the calculation or administration of
39 the credit, and any other recommendation of the commissioner of the
40 department of economic development regarding continuing modification,
41 repeal of such act, and such other information regarding the act as the
42 commissioner of the department of economic development may feel useful
43 and appropriate.

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

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

50 (b) Application of credit. The credit allowed under this subdivision
51 for any taxable year shall not reduce the tax due for such year to less
52 than the amount prescribed in paragraph (d) of subdivision one of
53 section two hundred ten of this article. Provided, however, that if the
54 amount of the credit allowable under this subdivision for any taxable
55 year reduces the tax to such amount or if the taxpayer otherwise pays
56 tax based on the fixed dollar minimum amount, the excess shall be treat-

1 ed as an overpayment of tax to be credited or refunded in accordance
2 with the provisions of section one thousand eighty-six of this chapter.
3 Provided, further, the provisions of subsection (c) of section one thou-
4 sand eighty-eight of this chapter notwithstanding, no interest shall be
5 paid thereon.

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

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

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

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

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

25 § 5. This act shall take effect immediately, and shall apply to taxa-
26 ble years beginning on or after January 1, 2020.