STATE OF NEW YORK

6683--B

2019-2020 Regular Sessions

IN ASSEMBLY

March 15, 2019

Introduced by M. of A. CRESPO -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

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

§ 24-b. Television writers' and directors' fees and salaries credit. (a)(1) 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) of this section, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified television writers' and directors' fees and salaries costs paid or incurred in the production of a qualified film, provided that: (i) the credit amount shall not exceed fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such expenses incurred for the employment of any one specific writer or director for the production of a single television pilot or a single episode of a television series, and (ii) the credit amount shall not exceed one hundred fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such

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

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expenses incurred for the employment of any one specific writer or director. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

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

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

(1) "Qualified film production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production.

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

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

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

(6) "Literary material" shall be deemed to include stories, adaptations, treatments, original treatments, scenarios, continuities, teleplays, screenplays, dialogue, scripts, sketches, plots, outlines, narrative synopses, routines, narrations, and formats.

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

(8) "Director" means an individual employed or retained to direct the production, as the word "direct" is commonly used in the motion picture industry, and who would be classified as a director under the basic agreement in place between the Association of Motion Picture and Tele-

vision Producers and the Director's Guild of America and who is a resident of New York.

(9) "Profit participant" is an individual who has negotiated for a percentage of profits generated by a qualified film. Profit participation does not include monies contractually required by collectively bargained agreements for reuse of a qualified film 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 54.

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

(d) Notwithstanding any provision of this chapter, (1) 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 (2) 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-four 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 development among taxpayers in order of priority based upon the date of filing an application for allocation of television writers' and directors' fees and salaries credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations by October thirty-first, two thousand nineteen to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. 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 department 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 October thirty-first, two thousand nineteen deadline.

(f) The department of economic development shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted on February first of each year evaluating the effectiveness of the television writers' and directors' fees and salaries tax credit provided by this section in stimulating the growth of diversity in the film industry in the state. Such report shall include, but need not be limited to, the number of qualified film production companies and/or qualified independent film production companies which received a television writers' and directors' fees and salaries credit, the credit amounts claimed by each qualified film production company and/or qualified independent film production company, as well as the impact on employment and the economy of the state. Such report shall be based on data available from the application filed with the department of economic development for allocation of television writers' and directors' fees and salaries credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations of changes in the calculation or administration of the credit, and any other recommendation of the commissioner of the department of economic development regarding continuing modification, repeal of such act, and such other information regarding the act as the commissioner of the department of economic development may feel useful and appropriate.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 54 to read as follows:

54. 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 treated 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 thousand 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 credited 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 (xlv) to read as follows:

(xlv) Television writers' and directors' fees and salaries credit under subsection (v)	Amount of credit for the sum of qualified television writers' and directors' salaries credit under subdivision fifty-four of section two hundred ten-B

§ 5. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 2 of part SSS of chapter 59 of the laws of 2019, is amended to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand twenty-four provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen [~~and~~]**,** twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand twenty-four **and five million dollars of the annual allocation shall be made available for the television writers' and directors' fees and salaries credit pursuant to section twenty-four-b of this article in each year starting in two thousand twenty through two thousand twenty-four**. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision twenty of section two hundred ten-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision thirty-two of section two hundred ten-B and subsection (qq) of section six hundred six of this chapter. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

§ 6. This act shall take effect immediately, and shall apply to taxable years beginning on or after January 1, 2020.