

STATE OF NEW YORK

9760

IN ASSEMBLY

February 10, 2020

Introduced by M. of A. CRESPO -- 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; and to amend a chapter of the laws of 2019 amending the tax law relating to a television writers' and directors' fees and salaries credit, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, in relation to a television writers' and directors' fees and salaries credit and the effectiveness thereof

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

1 Section 1. Section 24-b of the tax law, as added by a chapter of the
2 laws of 2019, amending the tax law relating to a television writers' and
3 directors' fees and salaries credit, as proposed in legislative bills
4 numbers S. 5864-A and A. 6683-B, is amended to read as follows:

5 § 24-b. Television writers' and directors' fees and salaries credit.
6 (a)(1) A taxpayer which is a qualified film production company, or a
7 qualified independent film production company, or which is a sole
8 proprietor of or a member of a partnership which is a qualified film
9 production company or a qualified independent film production company,
10 and which is subject to tax under articles nine-A or twenty-two of this
11 chapter, shall be allowed a credit against such tax, pursuant to the
12 provisions referenced in subdivision (c) of this section, to be computed
13 as hereinafter provided.

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

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

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1 television writers' and directors' fees and salaries claimed for such
2 expenses incurred for the employment of any one specific writer or
3 director. In addition, under no circumstances shall the credit amount
4 include fees or salaries for more than one director per episode. The
5 credit shall be allowed for the taxable year in which the production of
6 such qualified film is completed.

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

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

14 (1) "Qualified film production company" is a corporation, partnership,
15 limited partnership, or other entity or individual whose project is
16 conditionally eligible to receive a tax credit under section twenty-four
17 of this article which or who is principally engaged in the production of
18 a qualified film and controls the qualified film during production.

19 (2) "Qualified independent film production company" is a corporation,
20 partnership, limited partnership, or other entity or individual whose
21 project is conditionally eligible to receive a tax credit under section
22 twenty-four of this article, that or who (i) is principally engaged in
23 the production of a qualified film with a maximum budget of fifteen
24 million dollars, (ii) controls the qualified film during production, and
25 (iii) either is not a publicly traded entity, or no more than five
26 percent of the beneficial ownership of which is owned, directly or indi-
27 rectly, by a publicly traded entity.

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

31 (4) "Qualified television writers' and directors' fees and salaries"
32 means[~~:(i)~~] salaries or fees paid to a writer or director who receives
33 an on-air credit[~~;(ii) for a non-credited writer, up to seventy-five~~
34 ~~thousand dollars in salaries or fees per series of episodes. Provided,~~
35 provided that in each case, such writer or director is a minority group
36 member, as defined in subdivision eight of section three hundred ten of
37 the executive law, or a woman, and provided, further, that salaries or
38 fees paid to any writer or director who is a profit participant in the
39 qualified film shall not be eligible. Such fees shall not include relo-
40 cation fees or hotel costs and per diems. In addition, such fees shall
41 not include salaries or fees paid to writers or directors for work done
42 on episodes of television series that were deemed conditionally eligible
43 for the tax credit under section twenty-four of this article prior to
44 the tax year for which the credit is first available.

45 (5) "Writer" means a person who is[~~:(i)~~] engaged by a qualified film
46 production company or a qualified independent film production company to
47 write [~~literary material (including making changes or revisions in~~
48 ~~literary material), when the company has the right by contract to direct~~
49 ~~the performance of personal services in writing or preparing such mate-~~
50 ~~rial or in making revisions, modifications or changes therein; or (ii)~~
51 ~~engaged by the company and who performs services (at the company's~~
52 ~~direction or with its consent) in writing or preparing such literary~~
53 ~~material or making revisions, modifications, or changes in such materi-~~
54 ~~al;] television scripts, outlines, rewrites, stories, or teleplays for
55 television series and [~~(iii)~~] who reports to work regularly in a writers~~

1 room located in the state. For the purposes of this definition, "writer" shall not include showrunners or executive producers.

2
3 (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 ~~(7)]~~ "Writers room" means a room or physical location in the state
8 where writers employed by a qualified film production company or qualified independent film production company write ~~[or revise literary materials]~~ television scripts, outlines, rewrites, stories, or teleplays for television series utilized in a qualified film. A writers room is located in the state only if it is in use in the state at least eighty percent of the time it is in existence.

14 ~~[(8)]~~ (7) "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 Television Producers and the Director's Guild of America and who ~~[is a resident of New York]~~ must meet the minimum criteria for work on qualified productions in New York state as established by the commissioner of economic development by regulation.

22 ~~[(9)]~~ (8) "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.

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

29 (1) article 9-A: section 210-B: subdivision 54.

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

31 (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.

46 (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

1 section, such excess shall be treated as having been applied for on the
2 first day of the subsequent year.

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

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

39 § 2. Section 6 of a chapter of the laws of 2019, amending the tax law
40 relating to a television writers' and directors' fees and salaries cred-
41 it, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, is
42 amended to read as follows:

43 § 6. Study of the underutilization of minority and women screenwriters
44 and directors. 1. Study. Subject to an appropriation which shall
45 provide sufficient funding necessary to complete such study, the depart-
46 ment of economic development shall select, through the request for
47 proposal process, an entity independent of such department which shall
48 serve as such department's designee for the purpose of conducting a
49 study to investigate the statistical significance of the underutiliza-
50 tion of minority and women screenwriters and directors. Such study shall
51 conduct or provide for an examination of, but not be limited to, a
52 comparison of available minority and women screenwriters and directors
53 against the share of screenwriting and directing work such groups
54 receive on projects in New York state to demonstrate the statistically
55 significant underutilization of that population.

1 2. Report. (a) Upon the completion of the study conducted pursuant to
2 subdivision one of this section, the department of economic development
3 shall deliver a report of the findings of such study to the governor,
4 the temporary president of the senate, and the speaker of the assembly
5 and post the study on the website of the department of economic develop-
6 ment. (b) If the department of economic development determines that the
7 study has found statistically significant evidence of the underutiliza-
8 tion of minority and women screenwriters and directors against the share
9 of screenwriting and directing work such groups receive on projects in
10 the state, then the department of economic development shall so notify
11 the governor, the temporary president of the senate, the speaker of the
12 assembly, the commissioner of taxation and finance and the legislative
13 bill drafting commission.

14 3. Powers. All other departments or agencies of the state or subdivi-
15 sions thereof, and local governments shall, at the request of the
16 department of economic development or its designee chosen pursuant to
17 subdivision one of this section, provide expertise, assistance, and/or
18 data that are relevant or material to the completion of the study
19 directed to be completed by subdivision one of this section and the
20 report directed to be completed by subdivision two of this section. The
21 department of economic development, or its designee, shall also be
22 authorized to obtain relevant information from any recognized entities
23 representing the television industry or segments thereof towards the
24 completion of such study.

25 § 7. This act shall take effect immediately, [~~and shall apply to taxa-~~
26 ~~ble years beginning on or after January 1, 2020~~] provided, however, that
27 the provisions of sections one, two, three, four, and five of this act
28 shall take effect on the first of January next succeeding the date the
29 department of economic development provides notice to the legislative
30 bill drafting commission of a determination pursuant to paragraph (b) of
31 subdivision two of section six of this act and shall apply to taxable
32 years on and after such date; provided that the department of economic
33 development shall notify the legislative bill drafting commission upon
34 the occurrence of the submission of the report provided for in paragraph
35 (b) of subdivision two of section six of this act in order that the
36 commission may maintain an accurate and timely effective data base of
37 the official text of the laws of the state of New York in furtherance of
38 effectuating the provisions of section 44 of the legislative law and
39 section 70-b of the public officers law. Effective immediately, the
40 addition, amendment and/or repeal of any rule or regulation necessary
41 for the implementation of this act on its effective date are authorized
42 to be made and completed on or before such effective date.

43 § 3. This act shall take effect immediately; provided, however that
44 section one of this act and section 6 of a chapter of the laws of 2019,
45 amending the tax law relating to a television writers' and directors'
46 fees and salaries credit, as proposed in legislative bills numbers S.
47 5864-A and A. 6683-B, as amended by section two of this act shall take
48 effect on the same date and in the same manner as such chapter of the
49 laws of 2019, takes effect.