

# STATE OF NEW YORK

9194

## IN ASSEMBLY

February 9, 2022

Introduced by M. of A. McDONALD, WOERNER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the economic development law, in relation to the creation of the empire state digital gaming media production credit; and providing for the repeal of certain provisions upon expiration thereof

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 45 to read  
2 as follows:

3 § 45. Empire state digital gaming media production credit. (a) Allow-  
4 ance of credit. (1) A taxpayer which is a digital gaming media  
5 production entity engaged in qualified digital gaming media production,  
6 or who is a sole proprietor of or a member of a partnership, which is a  
7 digital gaming media production entity engaged in qualified digital  
8 gaming media production, and is subject to tax under article nine-A or  
9 twenty-two of this chapter, shall be allowed a credit against such tax  
10 to be computed as provided herein.

11 (2) The amount of the credit shall be the product (or pro rata share  
12 of the product, in the case of a member of a partnership or limited  
13 liability company) of twenty-five percent and the eligible production  
14 costs of one or more qualified digital gaming media productions.

15 (3) Eligible digital gaming media production costs for a qualified  
16 digital gaming media production incurred and paid in this state but  
17 outside such metropolitan commuter transportation district shall be  
18 eligible for a credit of ten percent of such eligible production costs  
19 in addition to the credit specified in paragraph two of this subdivi-  
20 sion.

21 (4) Eligible production costs shall not include those costs used by  
22 the taxpayer or another taxpayer as the basis calculation of any other  
23 tax credit allowed under this chapter or allowed in any other state.

24 (b) Allocation of credit. The aggregate amount of tax credits allowed  
25 under this section, subdivision fifty-five of section two hundred ten-B  
26 and subsection (nnn) of section six hundred six of this chapter in any

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

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1 taxable year shall be fifty million dollars. The aggregate amount of  
2 credits for any taxable year must be distributed on a regional basis as  
3 follows: twenty-five percent of the aggregate amount of credits shall be  
4 available for qualified digital gaming media productions that incur at  
5 least sixty percent of eligible production costs for a qualified digital  
6 gaming media production in region one; ten percent of the aggregate  
7 amount of credits shall be available for qualified digital gaming media  
8 productions that incur at least sixty percent of eligible production  
9 costs for a qualified digital gaming media production in region two; and  
10 sixty-five percent of the aggregate amount of credits shall be available  
11 for qualified digital gaming media productions that incur at least sixty  
12 percent of eligible production costs for a qualified digital gaming  
13 media production in region three. If such regional distribution is not  
14 fully allocated in any taxable year, the remainder of such credits shall  
15 be available for allocation to any region in the subsequent tax year.  
16 For the purposes of this section region one shall contain the city of  
17 New York; region two shall contain the counties of Westchester, Rock-  
18 land, Nassau and Suffolk; and region three shall contain any county not  
19 contained in regions one and two. Such credit shall be allocated by the  
20 empire state development corporation among taxpayers in order of priori-  
21 ty based upon the date of filing an application for allocation of  
22 digital gaming media production credit with such office. If the total  
23 amount of allocated credits applied for in any particular year exceeds  
24 the aggregate amount of tax credits allowed for such year under this  
25 section, such excess shall be treated as having been applied for on the  
26 first day of the subsequent taxable year.

27 (c) Definitions. As used in this section:

28 (1) "Qualified digital gaming media production" means: (i) a website,  
29 the digital media production costs of which are paid or incurred predo-  
30 minately in connection with (A) video simulation, animation, text,  
31 audio, graphics or similar gaming related property embodied in digital  
32 format, and (B) interactive features of digital gaming (e.g., links,  
33 message boards, communities or content manipulation); (ii) video or  
34 interactive games produced primarily for distribution over the internet,  
35 wireless network or successors thereto; (iii) animation, simulation or  
36 embedded graphics digital gaming related software intended for commer-  
37 cial distribution regardless of medium; and (iv) a digital gaming media  
38 production in which qualified digital gaming media production costs  
39 equal to or are in excess of seven thousand five hundred dollars if  
40 incurred and paid in this state in twelve months preceding the date on  
41 which the credit is claimed. Provided, however, if such production costs  
42 are incurred and paid outside the metropolitan commuter transportation  
43 district in this state, such production costs shall be equal to or in  
44 excess of three thousand seven hundred fifty dollars to be a qualified  
45 digital gaming media production for purposes of this paragraph. A quali-  
46 fied digital gaming media production does not include a website, video,  
47 interactive game or software that is used predominately for: electronic  
48 commerce (retail or wholesale purposes other than the sale of video or  
49 interactive games), gambling (including activities regulated by a New  
50 York gaming agency), exclusive local consumption for entities not acces-  
51 sible by the general public including industrial or other private  
52 purposes, and political advocacy purposes.

53 (2) "Digital gaming media production costs" means any costs for prop-  
54 erty used and wages or salaries paid to individuals directly employed  
55 for services performed by those individuals directly and predominantly  
56 in the creation of a digital gaming media production or productions.

Digital gaming media production costs include but shall not be limited to payments for property used and services performed directly and predominantly in the development (including concept creation), design, production (including concept creation), design, production (including testing), editing (including encoding) and compositing (including the integration of digital files for interaction by end users) of digital gaming media. Digital gaming media production costs shall not include expenses incurred for the distribution, marketing, promotion, or advertising content generated by end-users or other costs not directly and predominantly related to the creation, production or modification of digital gaming media. In addition, salaries or other income distribution related to the creation of digital gaming media for any person who serves in the role of chief executive officer, chief financial officer, president, treasurer or similar position shall not be included as digital gaming media production costs. Furthermore, any income or other distribution to any individual who holds an ownership interest in a digital gaming media production entity shall not be included as digital gaming media production costs.

(3) "Qualified digital gaming media production costs" means digital gaming media production costs only to the extent such costs are attributable to the use of property or the performance of services by any persons within the state directly and predominantly in the creation, production or modification of digital gaming related media. Such total production costs incurred and paid in this state shall be equal to or exceed seventy-five percent of total cost of an eligible production incurred and paid within and without this state.

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

(1) Article nine-A: section two hundred ten-B, subdivision fifty-five.

(2) Article twenty-two: section six hundred six, subsection (i), paragraph one, subparagraph (B), clause (xlvi).

(3) Article twenty-two: section six hundred six, subsection (nnn).

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. Empire state digital gaming media production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five 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, 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, however, no interest shall be paid thereon.

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

<u>(xlvi) Empire state digital</u>	<u>Amount of credit</u>
<u>gaming media production</u>	<u>under subdivision</u>
<u>credit under subsection (nnn)</u>	<u>fifty-five of section</u>
	<u>two hundred ten-B</u>

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

(nnn) Empire state digital gaming media production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five 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.

§ 5. The state commissioner of economic development, after consulting with the state commissioner of taxation and finance, shall promulgate regulations by December 31, 2022 to establish procedures for the allocation of tax credits as required by subdivision (a) of section 45 of the tax law. 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 substantiate to the New York state department of taxation and finance the amount of tax credits allocated to such taxpayers, under what conditions all or a portion of this tax credit may be revoked, 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 December 31, 2022 deadline.

§ 6. The economic development law is amended by adding a new section 242 to read as follows:

§ 242. Reports on the digital gaming industries in New York. 1. The empire state development corporation shall file a report on a biannual basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The report shall be filed no later than thirty days before the mid-point and the end of the state fiscal year. The first report shall cover the calendar half year that begins on January first, two thousand twenty-four. Each report must contain the following information for the covered calendar half year:

(a) the total dollar amount of credits allocated pursuant to section forty-five of the tax law during the half year, broken down by month;

(b) the number of digital gaming projects, which have been allocated tax credits of less than one million dollars per project, and the total dollar amount of credits allocated to those projects distributed by region pursuant to subdivision (b) of section forty-five of the tax law;

(c) the number of digital gaming projects, which have been allocated tax credits of more than one million dollars, and the total dollar amount of credits allocated to those projects distributed by region pursuant to subdivision (b) of section forty-five of the tax law;

(d) a list of each eligible digital gaming project, which has been allocated a tax credit enumerated by region pursuant to subdivision (b) of section forty-five of the tax law, and for each of those projects, (i) the estimated number of employees associated with the project, (ii) the estimated qualifying costs for the projects, (iii) the estimated total costs of the project, (iv) the credit eligible employee hours for each project, and (v) total wages for such credit eligible employee hours for each project; and

1 (e) (i) the name of each taxpayer allocated a tax credit for each  
2 project and the county of residence or incorporation of such taxpayer  
3 or, if the taxpayer does not reside or is not incorporated in New York,  
4 the state of residence or incorporation; however, if the taxpayer claims  
5 a tax credit because the taxpayer is a member of a limited liability  
6 company, a partner in a partnership or a shareholder in a subchapter S  
7 corporation, the name of each limited liability company, partnership or  
8 subchapter S corporation earning any of those tax credits must be  
9 included in the report instead of information about the taxpayer claim-  
10 ing the tax credit, (ii) the amount of tax credit allocated to each  
11 taxpayer; provided however, if the taxpayer claims a tax credit because  
12 the taxpayer is a member of a limited liability company, a partner in a  
13 partnership or a shareholder in a subchapter S corporation, the amount  
14 of tax credit earned by each entity must be included in the report  
15 instead of information about the taxpayer claiming the tax credit, and  
16 (iii) information identifying the project associated with each taxpayer  
17 for which a tax credit was claimed under section forty-five of the tax  
18 law.

19 2. The empire state development corporation shall file a report on a  
20 triennial basis with the director of the division of the budget and the  
21 chairpersons of the assembly ways and means committee and senate finance  
22 committee. The first report shall be filed no later than March first,  
23 two thousand twenty-five. The report must be prepared by an independent  
24 third party auditor and include: (a) information regarding the empire  
25 state digital gaming production credit program including the efficiency  
26 of operations, reliability of financial reporting, compliance with laws  
27 and regulations and distribution of assets and funds; (b) an economic  
28 impact study prepared by an independent third party of the program with  
29 special emphasis on the regional impact by region and the total dollar  
30 amount of credits allocated to those projects distributed by region  
31 pursuant to subdivision (b) of section forty-five of the tax law; and  
32 (c) any other information or statistical information that the commis-  
33 sioner of economic development deems to be useful in analyzing the  
34 effects of the programs.

35 § 7. This act shall take effect immediately and shall apply to taxable  
36 years beginning on January 1, 2022 and before January 1, 2027; provided  
37 that sections one through four of this act shall expire and be deemed  
38 repealed December 31, 2026.