STATE OF NEW YORK

4862

2021-2022 Regular Sessions

IN SENATE

February 16, 2021

Introduced by Sen. HOYLMAN -- 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 and the state finance law, in relation to establishing the New York city musical and theatrical production tax credit; and providing for the repeal of such provisions upon expiration thereof

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-c to read as follows:

§ 24-c. New York city musical and theatrical production tax credit. (a) Allowance of credit. (1) A taxpayer that is a qualified New York city musical and theatrical production company, or is a sole proprietor of or a member of a partnership that is a qualified New York city musical and theatrical production company, and that is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referred to in subdivision (d) of this section, and to be computed as provided in this section.

(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 twenty-five percent and the sum of the qualified production expenditures. Provided however that the amount of the credit cannot exceed five million dollars per qualified New York city musical and theatrical production.

(3) No qualified production expenditures used by a taxpayer either as the basis for the allowance of the credit provided 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.

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

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(4) No qualified production expenditure reimbursed through a federal grant under section three hundred twenty-four of the federal consolidated appropriations act of two thousand twenty-one, referred to as save our stages, shall be used as the basis for the allowance of the credit provided pursuant to this section or used in the calculation of the credit provided pursuant to this section.

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

(1) "Qualified New York city musical and theatrical production" means a for-profit live, dramatic stage presentation that, in its original or adaptive version, is performed in a qualified New York city production facility, whether or not such production was performed in a qualified New York city production facility prior to March twelfth, two thousand twenty.

(2) "Qualified production expenditure" means any costs for tangible property used and services performed directly and predominantly in the production of a qualified New York city musical and theatrical production, including: (i) expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories and costs associated with sound, lighting, and staging; (ii) all salaries, wages, fees, and other compensation including related benefits for services performed; (iii) technical and crew production costs, such as expenditures for a qualified New York city production facility, or any part thereof, physical production storage spaces, rehearsal spaces, props, make-up, wardrobe, costumes, equipment used for special and visual effects, sound recording, set construction, and lighting; (iv) costs directly attributable to advertising, marketing and publicity; (v) expenditures incurred on or before the end of the twelfth week of public performances occurring after January, two thousand twenty-one; (vi) expenses in connection with hygiene and safety measures related to COVID-19 prevention; and (vii) all expenditures pursuant to this paragraph that were incurred after February, two thousand twenty in connection with a closing, ongoing suspension, remounting, and public performances of a production that closed in March, two thousand twenty due to COVID-19 and which reopens after January, two thousand twenty-one.

(3) "Qualified New York city production facility" means a facility located within the city of New York (i) in which live theatrical productions are or are intended to be primarily presented, (ii) that contains at least one stage, a seating capacity of five hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified New York city musical and theatrical production, and (iii) for which receipts attributable to ticket sales constitute seventy-five percent or more of gross receipts of the facility.

(4) "Qualified New York city musical and theatrical production company" is a corporation, partnership, limited partnership, or other entity or individual which is or who is principally engaged in the production of a qualified New York city musical or theatrical production that is to be performed in a qualified New York city production facility.

(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 57;

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

(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 qualified New York city musical and theatrical production company entitled to claim this credit and the amount of the credit earned by such company.

(e) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision fifty-seven of section two hundred ten-B and subsection (mmm) of section six hundred six of this chapter in any calendar year shall be fifty 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 the New York city musical and theatrical production tax credit with such department. If the total amount of allocated credits applied for in any particular calendar 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 calendar year.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations to establish procedures for the allocation of tax credits as required by this section. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards that will be used to evaluate the applications, the documentation that will be provided by applicants to substantiate to the department the amount of qualified production expenditures of such applicants, 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.

(f) Additions to the maximum amount of credits. If applications for the New York city musical and theatrical production tax credit do not exceed the aggregate amount of credits allowed in a given calendar year, such remaining amounts shall be added to the amount of credits allowed in paragraph one of subdivision (e) of this section for the immediately following calendar year.

(g) Any qualified New York city musical and theatrical production company that performs in a qualified New York city production facility and applies to receive a credit under this section shall be required to:

(1) participate in a New York state diversity and arts job training program, which may include the Broadway League's diversity and inclusion fellowship program; (2) create and implement a plan to ensure that their production is available and accessible for low or no-cost to low income New Yorkers; and (3) contribute to the New York state arts and cultural programs fund an amount up to fifty percent of the total credits received if such production company earns revenue prospectively after receipt of the credit that is at least equal to two hundred percent of its production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached. Any funds deposited pursuant to this subdivision shall be used for arts and cultural educational and workforce development programs in-school and community-based organizations.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 57 to read as follows:

57. New York city musical and theatrical production tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-c of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the 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. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year 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, 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 (mmm) to read as follows:

(mmm) New York city musical and theatrical production tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-c of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the 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 in accordance with the provisions of 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 (xlviii) to read as follows:

(xlviii) New York city musical and theatrical production tax credit	Amount of credit under subdivision fifty-seven of section two hundred ten-B

§ 5. The state finance law is amended by adding a new section 99-ii to read as follows:

§ 99-ii. New York state arts and cultural programs fund. 1. There is hereby established in the joint custody of the state comptroller and commissioner of taxation and finance a special fund to be known as the "New York state arts and cultural programs fund".

2. Such fund shall consist of all revenues received by the state, pursuant to the provisions of section twenty-four-c of the tax law and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. On or before the first day of February two thousand twenty-four, the commissioner of education shall provide a written report to the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate committee on health, the chair of the assembly health committee, the state comptroller and the

public. Such report shall include how the monies of the fund were utilized during the preceding calendar year, and shall include:

(a) the amount of money disbursed from the fund and the award process used for such disbursements;

(b) recipients of awards from the fund;

(c) the amount awarded to each;

(d) the purposes for which such awards were granted; and

(e) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

4. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of education.

5. The moneys in such fund shall be expended for the purpose of supplementing art and cultural programs for secondary and elementary children, including programs that increase access to art and cultural programs and events for children in underserved communities.

§ 6. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2021, provided, however, that this act shall expire and be deemed repealed 8 years after such effective date.