STATE OF NEW YORK

7126--B

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. McDONALD, SEAWRIGHT, LUNSFORD, STIRPE, TAYLOR, BRABENEC, SLATER, BLUMENCRANZ, BRONSON, BICHOTTE HERMELYN, DAVILA -- Multi-Sponsored by -- M. of A. LEVENBERG -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the eligibility criteria for the digital gaming tax credit

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

Section 1. Subdivisions (b) and (c) of section 45 of the tax law, as added by section 1 of part OO of chapter 59 of the laws of 2022, are amended to read as follows:

(b) Allocation of credit. The aggregate amount of tax credits allowed under this section, subdivision fifty-five of section two hundred ten-B and subsection (nnn) of section six hundred six of this chapter in any taxable year shall be five million dollars. Such credit shall be allocated by the department of economic development in order of priority based upon the date of filing an application for allocation of digital gaming media production credit with such office. **An applicant shall submit an annual application which shall include all qualified digital gaming media productions for the taxable year along with an estimate of the digital gaming media production costs. The application can be submitted no earlier than ninety days prior to the first day of the applicable taxable year.** 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

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

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treated as having been applied for on the first day of the subsequent taxable year.

(c) Definitions. As used in this section:

(1) "Qualified digital gaming media production" means: (i) a website, the digital media production costs of which are paid or incurred predominately in connection with (A) video simulation, animation, text, audio, graphics or similar gaming related property embodied in digital format, and (B) interactive features of digital gaming (e.g., links, message boards, communities or content manipulation); (ii) video or interactive games produced primarily for distribution over the internet, wireless network or successors thereto; and (iii) animation, simulation or embedded graphics digital gaming related software intended for commercial distribution regardless of medium; provided, however, that the qualified digital game development media productions described in subparagraphs (i) through (iii) of this paragraph must have digital media production costs equal to or in excess of [~~one hundred~~] **fifty** thousand dollars per production. A qualified digital gaming media production does not include a website, video, interactive game or software that is used predominately for: electronic commerce (retail or wholesale purposes other than the sale of video interactive games), gambling (including activities regulated by a New York gaming agency), or political advocacy purposes.

(2) "Digital gaming media production costs" means any costs for wages [~~or salaries~~] paid to individuals, [~~other than actors or writers,~~] directly employed for services performed by those individuals directly [~~and predominantly~~] in the creation of a digital gaming media production or productions. [~~Up to one hundred thousand dollars in wages and salaries paid to such employees, other than actors and writers, directly employed shall be used in the calculation of this credit.~~] Digital gaming media production costs include but shall not be limited to payments for 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, other costs not directly [~~and predominantly~~] related to the creation, production or modification of digital gaming media or costs used by the taxpayer as a basis of the calculation of any other tax credit allowed under this chapter. In addition, [~~salaries or other income distribution~~] **wages** related to the creation of digital gaming media for any person who **predominately** serves in **a corporate capacity in** the role of chief executive officer, chief financial officer, president, treasurer or similar **corporate** position **and who is not directly engaged in services related to the creation of a digital gaming media production or productions** shall not be included as digital gaming media production costs if the digital gaming media production entity has more then ten employees. [~~Salaries or other income~~] **Wages paid** to a person serving in such a role for the digital gaming media production entity shall also not be included if the person was employed by a related person of the digital gaming media production entity within sixty months of the date the digital gaming media production entity applied for the tax credit certificate described in subdivision (d) of this section. For purposes of the preceding sentence, a related person shall have the same meaning as the term "related person" in section four

hundred sixty-five of the internal revenue code. [~~Furthermore, any income or other distribution to any individual including, but not limited to, licensing or royalty fees, who holds an ownership interest in a digital gaming media production entity, whether or not such individual is serving in the role of chief executive officer, chief financial officer, president, treasurer or similar position for such an entity, shall not be included as digital gaming media production costs. Up to four million dollars in qualified digital gaming media production costs per production shall be used in the calculation of this credit.~~] Digital gaming media production costs shall not include those costs used by the taxpayer or another taxpayer as the basis calculation of any other tax credit allowed under this chapter.

(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.~~]

(4) "Digital gaming media production entity" means a corporation, partnership, limited partnership or other entity or individual engaged in qualified digital game development media production.

§ 2. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2024 and before January 1, 2028.