STATE OF NEW YORK

7562

2023-2024 Regular Sessions

IN SENATE

June 6, 2023

Introduced by Sen. GIANARIS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend part D of chapter 59 of the laws of 2023 amending the tax law relating to the empire state film production credit and the empire state film post-production credit, in relation to the application of such provisions; and to amend the tax law, in relation to the claiming of credits under the empire state film product credit

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

Section 1. Section 10 of part D of chapter 59 of the laws of 2023 amending the tax law relating to the empire state film production credit and the empire state film post-production credit, is amended to read as follows:

§ 10. This act shall take effect immediately [~~and~~]**; provided, however, that sections one, two, two-a, three, four, five, five-a, eight, nine and nine-a of this act** shall apply to initial applications received on or after April 1, 2023; **further** provided, however, that the amendments to paragraph 4 of subdivision (e) of section 24 of the tax law made by section six of this act shall take effect on the same date and in the same manner as section 6 of chapter 683 of the laws of 2019, as amended, takes effect.

§ 2. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 6 of part D of chapter 59 of the laws of 2023, 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-three and seven hundred million dollars each year starting in two thousand twenty-four through two thousand thirty-four, provided however, seven million dollars of the annual allocation

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

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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, 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-three, and forty-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 twenty-four through two thousand thirty-four. Provided further, 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 thirty-four. This amount shall be allocated by the department of economic 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 department of economic 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 where the taxpayer filed an initial application before April first, two thousand twenty-three, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the department of economic development.** In the case of a qualified film that receives funds from additional pool 2 **where the taxpayer filed an initial application on or after April first, two thousand twenty-three**, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year that includes the last day of the

allocation year for which the film has been allocated credit by the department of economic development.

§ 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 7 of part D of chapter 59 of the laws of 2023, 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-three and seven hundred million dollars in each year starting in two thousand twenty-four through two thousand thirty-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, 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-three, and forty-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 twenty-four through two thousand thirty-four. This amount shall be allocated by the department of economic 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 department of economic 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 where the taxpayer filed an initial application before April first, two thousand twenty-three, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by**

the department of economic development. In the case of a qualified film that receives funds from additional pool 2 **where the taxpayer filed an initial application on or after April first, two thousand twenty-three**, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year that includes the last day of the allocation year for which the film has been allocated credit by the department of economic development.

§ 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after the effective date of part D of chapter 59 of the laws of 2023; provided, however, that the amendments made to paragraph 4 of subdivision (e) of section 24 of the tax law made by section two of this act shall take effect on the same date and in the same manner as section 6 of chapter 683 of the laws of 2019, as amended, takes effect.