

# STATE OF NEW YORK

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7562

2023-2024 Regular Sessions

## IN SENATE

June 6, 2023

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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:

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

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

13 § 2. Paragraph 4 of subdivision (e) of section 24 of the tax law, as  
14 amended by section 6 of part D of chapter 59 of the laws of 2023, is  
15 amended to read as follows:

16 (4) Additional pool 2 - The aggregate amount of tax credits allowed in  
17 subdivision (a) of this section shall be increased by an additional four  
18 hundred twenty million dollars in each year starting in two thousand ten  
19 through two thousand twenty-three and seven hundred million dollars each  
20 year starting in two thousand twenty-four through two thousand thirty-  
21 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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1 shall be available for the empire state film post production credit  
2 pursuant to section thirty-one of this article in two thousand thirteen  
3 and two thousand fourteen, twenty-five million dollars of the annual  
4 allocation shall be available for the empire state film post production  
5 credit pursuant to section thirty-one of this article in each year  
6 starting in two thousand fifteen through two thousand twenty-three, and  
7 forty-five million dollars of the annual allocation shall be available  
8 for the empire state film post production credit pursuant to section  
9 thirty-one of this article in each year starting in two thousand twen-  
10 ty-four through two thousand thirty-four. Provided further, five million  
11 dollars of the annual allocation shall be made available for the tele-  
12 vision writers' and directors' fees and salaries credit pursuant to  
13 section twenty-four-b of this article in each year starting in two thou-  
14 sand twenty through two thousand thirty-four. This amount shall be allo-  
15 cated by the department of economic development among taxpayers in  
16 accordance with subdivision (a) of this section. If the commissioner of  
17 economic development determines that the aggregate amount of tax credits  
18 available from additional pool 2 for the empire state film production  
19 tax credit have been previously allocated, and determines that the pend-  
20 ing applications from eligible applicants for the empire state film post  
21 production tax credit pursuant to section thirty-one of this article is  
22 insufficient to utilize the balance of unallocated empire state film  
23 post production tax credits from such pool, the remainder, after such  
24 pending applications are considered, shall be made available for allo-  
25 cation in the empire state film tax credit pursuant to this section,  
26 subdivision twenty of section two hundred ten-B and subsection (gg) of  
27 section six hundred six of this chapter. Also, if the commissioner of  
28 economic development determines that the aggregate amount of tax credits  
29 available from additional pool 2 for the empire state film post  
30 production tax credit have been previously allocated, and determines  
31 that the pending applications from eligible applicants for the empire  
32 state film production tax credit pursuant to this section is insuffi-  
33 cient to utilize the balance of unallocated film production tax credits  
34 from such pool, then all or part of the remainder, after such pending  
35 applications are considered, shall be made available for allocation for  
36 the empire state film post production credit pursuant to this section,  
37 subdivision thirty-two of section two hundred ten-B and subsection (qq)  
38 of section six hundred six of this chapter. The department of economic  
39 development must notify taxpayers of their allocation year and include  
40 the allocation year on the certificate of tax credit. Taxpayers eligible  
41 to claim a credit must report the allocation year directly on their  
42 empire state film production credit tax form for each year a credit is  
43 claimed and include a copy of the certificate with their tax return. In  
44 the case of a qualified film that receives funds from additional pool 2  
45 where the taxpayer filed an initial application before April first, two  
46 thousand twenty-three, no empire state film production credit shall be  
47 claimed before the later of (1) the taxable year the production of the  
48 qualified film is complete, or (2) the taxable year immediately follow-  
49 ing the allocation year for which the film has been allocated credit by  
50 the department of economic development. In the case of a qualified film  
51 that receives funds from additional pool 2 where the taxpayer filed an  
52 initial application on or after April first, two thousand twenty-three,  
53 no empire state film production credit shall be claimed before the later  
54 of (1) the taxable year the production of the qualified film is  
55 complete, or (2) the taxable year that includes the last day of the

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

3 § 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as  
4 amended by section 7 of part D of chapter 59 of the laws of 2023, is  
5 amended to read as follows:

6 (4) Additional pool 2 - The aggregate amount of tax credits allowed in  
7 subdivision (a) of this section shall be increased by an additional four  
8 hundred twenty million dollars in each year starting in two thousand ten  
9 through two thousand twenty-three and seven hundred million dollars in  
10 each year starting in two thousand twenty-four through two thousand  
11 thirty-four, provided however, seven million dollars of the annual allo-  
12 cation shall be available for the empire state film post production  
13 credit pursuant to section thirty-one of this article in two thousand  
14 thirteen and two thousand fourteen, twenty-five million dollars of the  
15 annual allocation shall be available for the empire state film post  
16 production credit pursuant to section thirty-one of this article in each  
17 year starting in two thousand fifteen through two thousand twenty-three,  
18 and forty-five million dollars of the annual allocation shall be avail-  
19 able for the empire state film post production credit pursuant to  
20 section thirty-one of this article in each year starting in two thousand  
21 twenty-four through two thousand thirty-four. This amount shall be allo-  
22 cated by the department of economic development among taxpayers in  
23 accordance with subdivision (a) of this section. If the commissioner of  
24 economic development determines that the aggregate amount of tax credits  
25 available from additional pool 2 for the empire state film production  
26 tax credit have been previously allocated, and determines that the pend-  
27 ing applications from eligible applicants for the empire state film post  
28 production tax credit pursuant to section thirty-one of this article is  
29 insufficient to utilize the balance of unallocated empire state film  
30 post production tax credits from such pool, the remainder, after such  
31 pending applications are considered, shall be made available for allo-  
32 cation in the empire state film tax credit pursuant to this section,  
33 subdivision twenty of section two hundred ten-B and subsection (gg) of  
34 section six hundred six of this chapter. Also, if the commissioner of  
35 economic development determines that the aggregate amount of tax credits  
36 available from additional pool 2 for the empire state film post  
37 production tax credit have been previously allocated, and determines  
38 that the pending applications from eligible applicants for the empire  
39 state film production tax credit pursuant to this section is insuffi-  
40 cient to utilize the balance of unallocated film production tax credits  
41 from such pool, then all or part of the remainder, after such pending  
42 applications are considered, shall be made available for allocation for  
43 the empire state film post production credit pursuant to this section,  
44 subdivision thirty-two of section two hundred ten-B and subsection (qq)  
45 of section six hundred six of this chapter. The department of economic  
46 development must notify taxpayers of their allocation year and include  
47 the allocation year on the certificate of tax credit. Taxpayers eligible  
48 to claim a credit must report the allocation year directly on their  
49 empire state film production credit tax form for each year a credit is  
50 claimed and include a copy of the certificate with their tax return. In  
51 the case of a qualified film that receives funds from additional pool 2  
52 where the taxpayer filed an initial application before April first, two  
53 thousand twenty-three, no empire state film production credit shall be  
54 claimed before the later of (1) the taxable year the production of the  
55 qualified film is complete, or (2) the taxable year immediately follow-  
56 ing the allocation year for which the film has been allocated credit by

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

9 § 4. This act shall take effect immediately and shall be deemed to  
10 have been in full force and effect on and after the effective date of  
11 part D of chapter 59 of the laws of 2023; provided, however, that the  
12 amendments made to paragraph 4 of subdivision (e) of section 24 of the  
13 tax law made by section two of this act shall take effect on the same  
14 date and in the same manner as section 6 of chapter 683 of the laws of  
15 2019, as amended, takes effect.