STATE OF NEW YORK

384

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

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

AN ACT to amend the tax law, the economic development law and the state finance law, in relation to providing a production tax credit for electronic sporting events; 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:

Section 1. The tax law is amended by adding a new section 45-a to read as follows:

§ 45-a. Electronic sporting event production credit. (a) Allowance of credit. (1) A taxpayer that is subject to tax under article nine-A or twenty-two of this chapter that is a production entity engaged in production of electronic sporting events, or who is a sole proprietor of or a member of a partnership, that is a qualified production entity engaged in production of electronic sporting events, that incurs at least two hundred fifty thousand dollars of qualified production costs with respect to an electronic sports production, shall be allowed a credit against such tax to be computed as provided herein for taxable years beginning on or after January first, two thousand twenty-four and before January first, two thousand twenty-nine.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation) of twenty-five percent and the qualified production costs of one or more electronic sporting events. Such credit shall be computed based on all of the production costs incurred with respect to a completed electronic sporting event, regardless of whether such costs were incurred prior to the taxable year in which the electronic sporting event is completed. With respect to an electronic sports television

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

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series, the entire season of episodes of such series shall be considered one event.

(3) The amount of credit allowed under this section shall not exceed twenty million dollars with respect to any one electronic sporting event.

(b) Definitions. As used in this section:

(1) "Electronic sporting event" or "Esports event" means a scheduled form of organized multiplayer video game competition, particularly between professional players, individually or as teams, organized by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed broadcast. Esports event does not include: (i) news or current affairs program, interview or talk program, network promos, i.e., commercials promoting television series or movies, "how-to" (i.e., instructional) commercial or program, commercial or program consisting entirely of stock footage, trailers promoting theatrical films, sporting event or sporting program, game show, award ceremony, daytime drama (i.e., daytime "soap opera"), or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, commercials, etc. with respect to sexually explicit conduct).

(2) "Production costs" means any costs incurred for property used and services performed directly and predominantly in the production of an Esports event in New York, including but not limited to any wages or salaries required to be withheld by the production company pursuant to section six hundred seventy-one of this chapter and any other compensation paid to an employee or contractor of the production company for work performed in New York, including any per diem, stipend, or living allowance; the costs of any permits, licenses and insurance necessary for the production of the Esports event; the cost of any rentals or leases of equipment or facilities necessary for the production of the Esports event; and similar expenses paid or incurred in the course of the production, provided that with respect to any tangible property with a purchase price of twenty-five thousand dollars or more, the amount to be included shall be the purchase price of such property less the fair market value of such property on the date the production is completed. Production costs shall not include compensation in excess of one million dollars paid to any one specific individual. Salaries or other income distribution related to production of an Esports event for any person who serves in the role of chief executive officer, chief financial officer, president, treasurer or similar position shall not be included if the production entity has more than ten employees. Salaries or other income to a person serving in such a role for the production entity shall also not be included if the person was employed by a related person of the production entity within sixty months of the date the production entity applied for the tax credit certificate described in subdivision (c) 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. Up to twenty million dollars in production costs per production shall be used in the calculation of this credit. 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 production costs" means 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 production of an Esports event. 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) "Production entity" means a corporation, partnership, limited partnership or other entity or individual engaged in the production of Esports events.

(5) "Video game" means electronic or computerized game software that users manipulate through interactive devices to generate images on a display screen.

(c) To be eligible for the Esports production credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development, which certificate shall set forth the amount of the credit that may be claimed and the taxable year in which it shall be claimed. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. In order to properly administer this credit, the department shall be allowed to exchange information with the department of economic development about the taxpayers claiming this credit, including information about the tax credits claimed. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation. The taxpayer shall claim the tax credit in the taxable year that begins in the year for which it is allocated credit under this section.

(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-a.

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

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

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

55-a. Electronic sporting event production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five-a of this chapter shall be allowed a credit to be computed as provided in such section forty-five-a 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 (xlx) to read as follows:

(xlx) Electronic sporting event production credit under subsection (ooo)	Amount of credit under subdivision fifty-five-a of section two hundred ten-B

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

(ooo) Electronic sporting event production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five-a of this chapter shall be allowed a credit to be computed as provided in such section forty-five-a 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.

(3) With regard to certificates of tax credit issued, the commissioner of economic development shall reduce by one-half of one percent the amount of credit allowed to a taxpayer and this reduced amount shall be reported on a certificate of tax credit issued pursuant to this section and the regulations promulgated by the commissioner of economic development to implement this credit program.

(4) By January thirty-first of each year, the commissioner of economic development shall report to the comptroller the total amount of such reductions of tax credit during the immediately preceding calendar year. On or before March thirty-first of each year, the comptroller shall transfer without appropriations from the general fund to the Esports training and development fund established under section ninety-seven-bbbbb of the state finance law an amount equal to the total amount of such reductions reported by the commissioner of economic development for the immediately preceding calendar year.

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

§ 242-a. Reports on electronic sporting events 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-five. 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-a of the tax law during the half year, broken down by month;

(b) the number of Esports events, which have been allocated tax credits of less than one million dollars per event, and the total dollar amount of credits allocated to those events;

(c) the number of Esports events, which have been allocated tax credits of more than one million dollars, and the total dollar amount of credits allocated to those events;

(d) a list of each eligible Esports production entity, which has been allocated a tax credit enumerated pursuant to section forty-five-a of the tax law, and for each of those productions, (i) the estimated number of employees associated with the production, (ii) the estimated qualifying costs for the production, (iii) the estimated total costs of the production, (iv) the credit eligible employee hours for each production, and (v) total wages for such credit eligible employee hours for each production; and

(e) (i) the name of each taxpayer allocated a tax credit for each project and the county of residence or incorporation of such taxpayer or, if the taxpayer does not reside or is not incorporated in New York,

the state of residence or incorporation; however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits must be included in the report instead of information about the taxpayer claiming the tax credit, (ii) the amount of tax credit allocated to each taxpayer; provided however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the amount of tax credit earned by each entity must be included in the report instead of information about the taxpayer claiming the tax credit, and (iii) information identifying the project associated with each taxpayer for which a tax credit was claimed under section forty-five-a of the tax law.

2. The empire state development corporation shall file a report on a triennial 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 first report shall be filed no later than March first, two thousand twenty-six. The report must be prepared by an independent third party auditor and include: (a) information regarding the Esports production credit program including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds; (b) an economic impact study prepared by an independent third party of the program with special emphasis on the regional impact by region and the total dollar amount of credits allocated to those projects distributed by region pursuant to subdivision (b) of section forty-five-a of the tax law; and (c) any other information or statistical information that the commissioner of economic development deems to be useful in analyzing the effects of the programs.

§ 6. The state finance law is amended by adding a new section 97-bbbbb to read as follows:

§ 97-bbbbb. Electronic sports training and development fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the electronic sports training and development fund or the "Esports training and development fund".

2. Such fund shall consist of the funds transferred by the comptroller to the fund from the general fund without appropriation, as determined under subsection (ooo) of section six hundred six of the tax law. Nothing contained herein shall prevent the state from receiving grants, gifts, or bequests for the fund and depositing them into the fund according to law.

3. Monies in the fund shall be expended only for job creation and training programs approved by the commissioner of economic development that support efforts to recruit, hire, promote, retain, develop and train a diverse and inclusive workforce as production company employees in the electronic sporting event industry within the state of New York including, but not limited to, those programs that promote development in economically distressed areas of the state. The commissioner of economic development shall promulgate regulations that set forth relevant definitions, minimum standards, and criteria for such fund and eligible training programs.

4. Monies shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of economic development.

§ 7. This act shall take effect immediately and shall apply to taxable years beginning on January 1, 2024 and before January 1, 2030; provided that sections one through four of this act shall expire and be deemed repealed December 31, 2029.