

STATE OF NEW YORK

7126--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. McDONALD -- 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

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:

1 Section 1. Paragraph 1 of subdivision (a) and subdivision (b) and (c)
2 of section 45 of the tax law, as added by section 1 of part 00 of chap-
3 ter 59 of the laws of 2022, are amended to read as follows:

4 (1) A taxpayer which is a digital gaming media production entity
5 engaged in qualified digital gaming media production, or who is a sole
6 proprietor of or a member of a partnership, which is a digital gaming
7 media production entity engaged in qualified digital gaming media
8 production, and is subject to tax under article nine-A or twenty-two of
9 this chapter, shall be allowed a credit against such tax to be computed
10 as provided herein for taxable years beginning on or after January
11 first, two thousand twenty-three and before January first, two thousand
12 [~~twenty-eight~~] thirty.

13 (b) Allocation of credit. The aggregate amount of tax credits allowed
14 under this section, subdivision fifty-five of section two hundred ten-B
15 and subsection (nnn) of section six hundred six of this chapter in any
16 taxable year shall be [~~five~~] one hundred million dollars. Such credit
17 shall be allocated by the department of economic development in order of
18 priority based upon the date of filing an application for allocation of
19 digital gaming media production credit with such office. An applicant
20 shall submit an annual application which shall include all qualified
21 digital gaming media productions for the taxable year along with an
22 estimate of the digital gaming media production costs. The application

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

LBD11262-02-4

1 can be submitted no earlier than ninety days prior to the first day of
2 the applicable taxable year. If the total amount of allocated credits
3 applied for in any particular year exceeds the aggregate amount of tax
4 credits allowed for such year under this section, such excess shall be
5 treated as having been applied for on the first day of the subsequent
6 taxable year.

7 (c) Definitions. As used in this section:

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

27 (2) "Digital gaming media production costs" means any costs for wages
28 [~~or salaries~~] paid to individuals, [~~other than actors or writers,~~
29 directly employed for services performed by those individuals directly
30 [~~and predominantly~~] in the creation of a digital gaming media production
31 or productions. [~~Up to one hundred thousand dollars in wages and sala-~~
32 ~~ries paid to such employees, other than actors and writers, directly~~
33 ~~employed shall be used in the calculation of this credit.~~] Digital
34 gaming media production costs include but shall not be limited to
35 payments for services performed directly [~~and predominantly~~] in the
36 development (including concept creation), [~~design,~~] production (includ-
37 ing concept creation), design, production (including testing), editing
38 (including encoding) and compositing (including the integration of
39 digital files for interaction by end users) of digital gaming media.
40 Digital gaming media production costs shall not include expenses
41 incurred for the distribution, marketing, promotion, or advertising
42 content generated by end users, other costs not directly [~~and predomi-~~
43 ~~nantly~~] related to the creation, production or modification of digital
44 gaming media or costs used by the taxpayer as a basis of the calculation
45 of any other tax credit allowed under this chapter. In addition, [~~sala-~~
46 ~~ries or other income distribution~~] wages related to the creation of
47 digital gaming media for any person who predominately serves in a corpo-
48 rate capacity in the role of chief executive officer, chief financial
49 officer, president, treasurer or similar corporate position and who is
50 not directly engaged in services related to the creation of a digital
51 gaming media production or productions shall not be included as digital
52 gaming media production costs if the digital gaming media production
53 entity has more than ten employees. [~~Salaries or other income~~] Wages
54 paid to a person serving in such a role for the digital gaming media
55 production entity shall also not be included if the person was employed
56 by a related person of the digital gaming media production entity within

1 sixty months of the date the digital gaming media production entity
2 applied for the tax credit certificate described in subdivision (d) of
3 this section. For purposes of the preceding sentence, a related person
4 shall have the same meaning as the term "related person" in section four
5 hundred sixty-five of the internal revenue code. [~~Furthermore, any
6 income or other distribution to any individual including, but not limit-
7 ed to, licensing or royalty fees, who holds an ownership interest in a
8 digital gaming media production entity, whether or not such individual
9 is serving in the role of chief executive officer, chief financial offi-
10 cer, president, treasurer or similar position for such an entity, shall
11 not be included as digital gaming media production costs. Up to four
12 million dollars in qualified digital gaming media production costs per
13 production shall be used in the calculation of this credit.~~] Digital
14 gaming media production costs shall not include those costs used by the
15 taxpayer or another taxpayer as the basis calculation of any other tax
16 credit allowed under this chapter.

17 (3) "Qualified digital gaming media production costs" means digital
18 gaming media production costs only to the extent such costs are attrib-
19 utable to the use of property or the performance of services by any
20 persons within the state directly [~~and predominantly~~] in the creation,
21 production or modification of digital gaming related media. [~~Such total
22 production costs incurred and paid in this state shall be equal to or
23 exceed seventy five percent of total cost of an eligible production
24 incurred and paid within and without this state.~~]

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

28 § 2. Paragraph (a) of subdivision 55 of section 210-b of the tax law,
29 as added by section 2 of part 00 of chapter 59 of the laws of 2022, is
30 amended to read as follows:

31 (a) Allowance of credit. A taxpayer who is eligible pursuant to
32 section forty-five of this chapter shall be allowed a credit to be
33 computed as provided in such section forty-five against the tax imposed
34 by this article. [~~Under no circumstances may a single taxpayer receive
35 more than one million five hundred thousand dollars in tax credits per
36 year.~~]

37 § 3. Paragraph 1 of subsection (nnn) of section 606 of the tax law, as
38 added by section 4 of part 00 of chapter 59 of the laws of 2022, is
39 amended to read as follows:

40 (1) Allowance of credit. A taxpayer who is eligible pursuant to
41 section forty-five of this chapter shall be allowed a credit to be
42 computed as provided in such section forty-five against the tax imposed
43 by this article. [~~Under no circumstances may a single taxpayer receive
44 more than one million five hundred thousand dollars in tax credits per
45 year.~~]

46 § 4. This act shall take effect immediately and shall apply to taxable
47 years beginning on and after January 1, 2023 and before January 1, 2030.