

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:

1 Section 1. Subdivisions (b) and (c) of section 45 of the tax law, as
2 added by section 1 of part 00 of chapter 59 of the laws of 2022, are
3 amended to read as follows:
4 (b) Allocation of credit. The aggregate amount of tax credits allowed
5 under this section, subdivision fifty-five of section two hundred ten-B
6 and subsection (nnn) of section six hundred six of this chapter in any
7 taxable year shall be five million dollars. Such credit shall be allo-
8 cated by the department of economic development in order of priority
9 based upon the date of filing an application for allocation of digital
10 gaming media production credit with such office. An applicant shall
11 submit an annual application which shall include all qualified digital
12 gaming media productions for the taxable year along with an estimate of
13 the digital gaming media production costs. The application can be
14 submitted no earlier than ninety days prior to the first day of the
15 applicable taxable year. If the total amount of allocated credits
16 applied for in any particular year exceeds the aggregate amount of tax
17 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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1 treated as having been applied for on the first day of the subsequent
2 taxable year.

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

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

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

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

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

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

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