

STATE OF NEW YORK

3457--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 27, 2025

Introduced by M. of A. McDONALD, SEAWRIGHT, LUNSFORD, STIRPE, TAYLOR, BRABENEC, SLATER, BLUMENCRANZ, BRONSON, BICHOTTE HERMELYN, DAVILA, SIMPSON, WOERNER, BERGER -- Multi-Sponsored by -- M. of A. LEVENBERG -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to extending the period during which the empire state digital gaming media production tax credit may be claimed, the eligibility criteria for such tax credit, and allowing unused allowable credits to be rolled over to the following tax year

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 subdivisions (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-two.
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 million dollars. Such credit shall be allo-
17 cated by the department of economic development in order of priority
18 based upon the date of filing an application for allocation of digital
19 gaming media production credit with such office. An applicant shall

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

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1 submit an annual application which shall include all qualified digital
2 gaming media productions for the taxable year along with an estimate of
3 the digital gaming media production costs. The application can be
4 submitted no earlier than ninety days prior to the first day of the
5 applicable taxable year. If the total amount of allocated credits
6 applied for in any particular year exceeds the aggregate amount of tax
7 credits allowed for such year under this section, such excess shall be
8 treated as having been applied for on the first day of the subsequent
9 taxable year. Provided, however, that for taxable years beginning on or
10 after January first, two thousand twenty-three, if the total amount of
11 allocated credits applied for in any particular year is less than the
12 aggregate amount of tax credits allowed for such year under this
13 section, any unused portion may be carried over and added to the aggre-
14 gate amount of credits allowed in the next succeeding taxable year or
15 years.

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

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

36 (2) "Digital gaming media production costs" means any costs for wages
37 [~~or salaries~~] paid to individuals, [~~other than actors or writers,~~
38 directly employed for services performed by those individuals directly
39 [~~and predominantly~~] in the creation of a digital gaming media production
40 or productions. [~~Up to one hundred thousand dollars in wages and sala-~~
41 ~~ries paid to such employees, other than actors and writers, directly~~
42 ~~employed shall be used in the calculation of this credit.~~] Digital
43 gaming media production costs include but shall not be limited to
44 payments for services performed directly [~~and predominantly~~] in the
45 development (including concept creation), [~~design,~~] production (includ-
46 ing concept creation), design, production (including testing), editing
47 (including encoding) and compositing (including the integration of
48 digital files for interaction by end users) of digital gaming media.
49 Digital gaming media production costs shall not include expenses
50 incurred for the distribution, marketing, promotion, or advertising
51 content generated by end users, other costs not directly [~~and predomi-~~
52 ~~nantly~~] related to the creation, production or modification of digital
53 gaming media or costs used by the taxpayer as a basis of the calculation
54 of any other tax credit allowed under this chapter. In addition, [~~sala-~~
55 ~~ries or other income distribution~~] wages related to the creation of
56 digital gaming media for any person who predominately serves in a corpo-

1 rate capacity in the role of chief executive officer, chief financial
2 officer, president, treasurer or similar corporate position and who is
3 not directly engaged in services related to the creation of a digital
4 gaming media production or productions shall not be included as digital
5 gaming media production costs if the digital gaming media production
6 entity has more than ten employees. [~~Salaries or other income~~] Wages
7 paid to a person serving in such a role for the digital gaming media
8 production entity shall also not be included if the person was employed
9 by a related person of the digital gaming media production entity within
10 sixty months of the date the digital gaming media production entity
11 applied for the tax credit certificate described in subdivision (d) of
12 this section. For purposes of the preceding sentence, a related person
13 shall have the same meaning as the term "related person" in section four
14 hundred sixty-five of the internal revenue code. [~~Furthermore, any~~
15 ~~income or other distribution to any individual including, but not limit-~~
16 ~~ed to, licensing or royalty fees, who holds an ownership interest in a~~
17 ~~digital gaming media production entity, whether or not such individual~~
18 ~~is serving in the role of chief executive officer, chief financial offi-~~
19 ~~cer, president, treasurer or similar position for such an entity, shall~~
20 ~~not be included as digital gaming media production costs. Up to four~~
21 ~~million dollars in qualified digital gaming media production costs per~~
22 ~~production shall be used in the calculation of this credit.] Digital
23 gaming media production costs shall not include those costs used by the
24 taxpayer or another taxpayer as the basis calculation of any other tax
25 credit allowed under this chapter.~~

26 (3) "Qualified digital gaming media production costs" means digital
27 gaming media production costs only to the extent such costs are attrib-
28 utable to the use of property or the performance of services by any
29 persons within the state directly [~~and predominantly~~] in the creation,
30 production or modification of digital gaming related media. [~~Such total~~
31 ~~production costs incurred and paid in this state shall be equal to or~~
32 ~~exceed seventy five percent of total cost of an eligible production~~
33 ~~incurred and paid within and without this state.]~~

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

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

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

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

55 § 4. This act shall take effect immediately and shall apply to taxable
56 years beginning on and after January 1, 2025 and before January 1, 2032.