

## 2013 NY S 2609 , Chaptered

New York

SUMMARY: Amends various laws to provide for the enactment of the State Budget.~SAME AS: NY A 3009#

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

01/22/2013 INTRODUCED.

01/22/2013 To SENATE Committee on FINANCE.

02/13/2013 Amended in SENATE Committee on FINANCE.

02/22/2013 Amended in SENATE Committee on FINANCE.

03/11/2013 Amended in SENATE Committee on FINANCE.

03/24/2013 Amended in SENATE Committee on FINANCE.

03/26/2013 From SENATE Committee on FINANCE.

03/27/2013 Passed SENATE. \*\*\*\*\*To ASSEMBLY.

03/27/2013 To ASSEMBLY Committee on WAYS AND MEANS.

03/28/2013 From ASSEMBLY Committee on WAYS AND MEANS.

03/28/2013 Substituted for A 3009.

03/28/2013 Passed ASSEMBLY.

03/28/2013 \*\*\*\*\*To GOVERNOR.

03/28/2013 Signed by GOVERNOR.

03/28/2013 Chapter No. 59

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session: New York 236th Annual Legislative Session

cite: 2013 NY S 2609

Chaptered

March 28, 2013

Office of the Governor

LAWS OF NEW YORK, 2013

CHAPTER 59

AN ACT to amend the tax law, in relation to the temporary metropolitan transportation business tax surcharge (Part A); to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit; and to amend part Y-1 of chapter 57 of the laws of 2009 amending the tax law relating to the empire state film production credit, in relation to reports (Part B);

Became a law March 28, 2013, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED.**

PART B

Section 1. Paragraph 3 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(3) "Qualified film" means a feature-length film, television film, *relocated television production*, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos 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, films, etc. with respect to sexually explicit conduct).

Section 2. Subdivision (b) of section 24 of the tax law is amended by adding a new paragraph 8 to read as follows:

*(8) "Relocated television production" shall mean, notwithstanding the limitations in subparagraph (i) of paragraph three of this subdivision, a television production that is a talk or variety program that filmed at least five seasons outside the state prior to its first relocated season in New York, the episodes are filmed before a studio audience of two hundred or more, and the relocated television production incurs (i) at least thirty million dollars in annual production costs in the state, or (ii) at least ten million dollars in capital expenditures at a qualified production facility in the state.*

Section 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as added by chapter 268 of the laws of 2012, is amended to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an ~~addition- additional~~ four hundred twenty million dollars in *each year starting in* two thousand ten ~~-, four hundred twenty million dollars in two thousand eleven, four hundred twenty million dollars in two thousand twelve, four hundred twenty million dollars in two thousand thirteen and four hundred twenty million dollars in two thousand fourteen- through two thousand nineteen~~ provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this ~~chapter- article in two thousand thirteen and two thousand fourteen and twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand nineteen~~. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the ~~director of the governor's office for motion picture and television development- commissioner of economic development~~ determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the *empire state film* post production tax credit pursuant to section thirty-one of this ~~chapter- article~~ is insufficient to utilize the balance of unallocated *empire state film* post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision thirty-six of section two hundred ten and subsection (gg) of section six hundred six of this chapter. *Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision forty-one of section two hundred ten and subsection (gg) of section six hundred six of this chapter.* The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is

complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

Section 4. Paragraph 1 of subdivision (b) of section 24 of the tax law, as amended by section 6 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film ~~—, provided, however, that qualified production costs shall not include post production costs unless the portion of the post production costs paid or incurred that is attributable to the use of tangible property or the performance of services in New York in the production of such qualified film equals or exceeds seventy-five percent of the total post production costs spent within and without New York in the production of such qualified film—~~ .

Section 5. Paragraph 3 of subdivision (a) of section 31 of the tax law, as added by section 12 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(3) (i) A taxpayer shall not be eligible for the credit established by this section *for qualified post production costs, excluding the costs for visual effects and animation,* unless the qualified post production costs *, excluding the costs for visual effects and animation,* at a qualified post production facility meet or exceed seventy-five percent of the total post production costs *, excluding the costs for visual effects and animation,* paid or incurred in the post production of the qualified film at any post production facility. (ii) *A taxpayer shall not be eligible for the credit established by this section for qualified post production costs which are costs for visual effects or animation unless the qualified post production costs for visual effects or animation at a qualified post production facility meet or exceed three million dollars or twenty percent of the total post production costs for visual effects or animation paid or incurred in the post production of a qualified film at any post production facility, whichever is less.* (iii) *A taxpayer may claim a credit for qualified post production costs excluding the costs for visual effects and animation, and for qualified post production costs of visual effects and animation, provided that the criteria in subparagraphs (i) and (ii) of this paragraph are both satisfied.* The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

Section 5-a. Subdivision (a) of section 31 of the tax law, as added by section 12 of part Q of chapter 57 of the laws of 2010, is amended by adding a new paragraph 5 to read as follows:

*(5) If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the first taxable year in which the credit may be claimed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year.*

Section 6. Section 3 of part Y-1 of chapter 57 of the laws of 2009, amending the tax law relating to the empire state film production credit, is amended to read as follows:

Section 3. *a.* The governor's office of motion picture and television development shall file a report on a quarterly basis with the director of the division of the budget and the chairmen of the assembly ways and means committee and senate finance committee. The report shall be filed within fifteen days after the close of the calendar quarter. The first report shall cover the calendar quarter that begins April 1, 2009. The report must contain the following information for the calendar quarter:

- (1) the total dollar amount of credits allocated during each month of the calendar quarter, broken down by month;
- (2) the number of film projects which have been allocated tax credits of less than \$1 million per project and the total dollar amount of credits allocated to those projects;
- (3) the number of film projects which have been allocated tax credits of \$1 million or more but less than \$5 million per project and the total dollar amount of credits allocated to those projects;
- (4) the number of film projects which have been allocated tax credits of \$5 million or more per project and the total dollar amount of credits allocated to those projects; ~~—and~~
- (5) a list of each film project which has been allocated a tax credit and for each of those projects (a) the estimated number of employees associated with the project, (b) the estimated qualified costs for the project, ~~—and~~ (c) the estimated total costs of

the project , (d) the credit-eligible man hours for each project; and (e) total wages for such credit-eligible man hours for each project; and

(6)(a) 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, then the state of residence or incorporation; 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 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, (b) 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 (c) information identifying the project associated with each taxpayer for which a tax credit was claimed under section 24 or section 31, as added by chapter 57 of the laws of 2010, of the tax law, including the name of the film and county in which the project is located; and

b. The governor's office of motion picture and television development shall file a report on a biennial basis with the director of the division of the budget and the chairs of the assembly ways and means committee and senate finance committee. The report shall be filed within fifteen days after the close of the calendar year. The first report shall cover a two year period that begins on January first, two thousand thirteen. The report must be prepared by an independent third party auditor and include: (1) information regarding the empire state film production credit and post production credit programs including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds; (2) an economic impact study prepared by an independent third party of the film credit programs; and (3) any other information and/or other statistical information that the commissioner of economic development deems to be useful in analyzing the effects of the program .

Section 7. Subdivision (a) of section 24 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) For the period two thousand fifteen through two thousand nineteen, in addition to the amount of credit established in paragraph two of this subdivision, a taxpayer shall be allowed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the amount of wages or salaries paid to individuals directly employed (excluding those employed as writers, directors, music directors, producers and performers, including background actors with no scripted lines) by a qualified film production company or a qualified independent film production company for services performed by those individuals in one of the counties specified in this paragraph in connection with a qualified film with a minimum budget of five hundred thousand dollars. For purposes of this additional credit, the services must be performed in one or more of the following counties: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, or Yates. The aggregate amount of tax credits allowed pursuant to the authority of this paragraph shall be five million dollars each year during the period two thousand fifteen through two thousand nineteen of the annual allocation made available to the program pursuant to paragraph four of subdivision (e) of this section. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for under this paragraph in any year exceeds the aggregate amount of tax credits allowed for such year under this paragraph, such excess shall be treated as having been applied for on the first day of the next year. If the total amount of allocated tax credits applied for under this paragraph at the conclusion of any year is less than five million dollars, the remainder shall be treated as part of the annual allocation made available to the program pursuant to paragraph four of subdivision (e) of this section. However, in no event may the total of the credits allocated under this paragraph and the credits allocated under paragraph five of subdivision (a) of section thirty-one of this article exceed five million dollars in any year during the period two thousand fifteen through two thousand nineteen.

Section 8. Subdivision (a) of section 31 of the tax law, as added by section 12 of Part Q of chapter 57 of the laws of 2010, is amended by adding a new paragraph 5 to read as follows:

(5) For the period two thousand fifteen through two thousand nineteen, in addition to the amount of credit established in

*paragraph two of subdivision (a) of this section, a taxpayer shall be allowed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the amount of wages or salaries paid to individuals directly employed (excluding those employed as writers, directors, music directors, producers and performers, including background actors with no scripted lines) for services performed by those individuals in one of the counties specified in this paragraph in connection with the post production work on a qualified film with a minimum budget of five hundred thousand dollars at a qualified post production facility in one of the counties listed in this paragraph. For purposes of this additional credit, the services must be performed in one or more of the following counties: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, or Yates. The aggregate amount of tax credits allowed pursuant to the authority of this paragraph shall be five million dollars each year during the period two thousand fifteen through two thousand nineteen of the annual allocation made available to the empire state film post production credit pursuant to paragraph four of subdivision (e) of section twenty-four of this article. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing an application for allocation of post production credit with such office. If the total amount of allocated credits applied for under this paragraph in any year exceeds the aggregate amount of tax credits allowed for such year under this paragraph, such excess shall be treated as having been applied for on the first day of the next year. If the total amount of allocated tax credits applied for under this paragraph at the conclusion of any year is less than five million dollars, the remainder shall be treated as part of the annual allocation for two thousand seventeen made available to the empire state film post production credit pursuant to paragraph four of subdivision (e) of section twenty four of this article. However, in no event may the total of the credits allocated under this paragraph and the credits allocated under paragraph five of subdivision (a) of section twenty-four of this article exceed five million dollars in any year during the period two thousand fifteen through two thousand nineteen.*

Section 9. This act shall take effect immediately, provided, however, that sections four and five of this act shall apply to (a) taxpayers submitting initial applications to the governor's office of motion picture and television development on or after the date this act shall have become a law, and (b) to taxpayers who filed an initial application before this act shall have become a law but who have not yet submitted a final application to the governor's office of motion picture and television development on or before the date this act shall have become a law, provided such taxpayers agree to have the amendments made to section 3 of part Y-1 of chapter 57 of the laws of 2009, amending the tax law relating to the empire state film production credit, which added a new paragraph 6 to subdivision (a) of such section 3 apply to them; and the amendments made to section 3 of part Y-1 of chapter 57 of the laws of 2009, amending the tax law relating to the empire state film production credit, with the exception of subdivision b of such section, shall only apply to taxpayers submitting initial applications to the governor's office of motion picture and television development on or after the date this act shall become a law.

**SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED.**