

NY A 9509, Enacted

New York

SUMMARY: Enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2020-2021 state fiscal year. ~ SAME AS: #NY S 7509

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/22/2020 INTRODUCED.

01/22/2020 To ASSEMBLY Committee on WAYS AND MEANS.

02/22/2020 Amended in ASSEMBLY Committee on WAYS AND MEANS.

03/31/2020 Amended in ASSEMBLY Committee on WAYS AND MEANS.

03/31/2020 From ASSEMBLY Committee on WAYS AND MEANS.

03/31/2020 To ASSEMBLY Committee on RULES.

04/01/2020 From ASSEMBLY Committee on RULES.

04/01/2020 Substituted by S7509B.

~

session: New York 243rd Annual Legislative Session cite: 2019 NY A 9509

Introduced January 22, 2020

Office of the Governor STATE OF NEW YORK S. 7509 A. 9509 SENATE - ASSEMBLY

January 22, 2020

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the

Constitution -- read once and referred to the Committee on Ways and Means

AN ACT

***** TEXT OMITTED, DOES NOT PERTAIN TO FILM *****

... to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit (Part M);

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2020-2021 state fiscal year. Each component is wholly contained within a Part identified as Parts A through BB. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

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PART M

Section 1. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 4 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

- (1) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of ~~thirty~~ **twenty-five** percent and the qualified production costs paid or incurred in the production of a qualified film, provided that:
 - (i) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and with out the state in the production of such qualified film, and
 - (ii) except with respect to a qualified independent film production company or pilot, at least ten percent of the total principal photography shooting days spent in the production of such qualified film must be spent at a qualified film production facility. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a

qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. However, in the case of a qualified film that receives funds from additional pool 2, no credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) 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. 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 2. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 4 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

- (2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that:
 - (i) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film, and
 - (ii) except with respect to a qualified independent film production company or pilot, at least ten percent of the total principal photography shooting days spent in the production of such qualified film must be spent at a qualified film production facility. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. However, in the case of a qualified film that receives funds from additional pool 2, no credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the *first*

taxable year **beginning** immediately **following after** the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development. 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 3. Paragraph 3 of subdivision (b) of section 24 of the tax law, as amended by section 1 of part B of chapter 59 of the laws of 2013, is amended to read as follows:

- (2) "Qualified film" means a feature-length film, television film, relocated television production, television pilot ~~and/or each episode of a~~ or television series, regardless of the medium by means of which the film, pilot or **episode series** is created or conveyed. **A "qualified film" with the exception of a television pilot, whose majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, or Suffolk county or any of the five New York City boroughs shall have a minimum budget of one million dollars. A "qualified film", with the exception of a television pilot, whose majority of principal photography shooting days in the production of the qualified film are shot in any other county of the state than those listed in the preceding sentence shall have a minimum budget of two hundred fifty thousand dollars.** "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 4. Paragraph 3 of subdivision (b) of section 24 of the tax law, as amended by section 1 of part B of chapter 59 of the laws of 2013, 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); **or**

(iii) other than a relocated television production, a television series commonly known as variety entertainment, variety sketch and variety talk, i.e., a program with components of improvisational or scripted content (monologues, sketches, interviews), either exclusively or in combination with other entertainment elements such as musical performances, dancing, cooking, crafts, pranks, stunts, and games and which may be further defined in regulations of the commissioner of economic development. However, a qualified film shall include a television series as described in subparagraph (iii) of this paragraph only if an application for such series has been deemed conditionally eligible for the tax credit under this section prior to April first, two thousand twenty, such series remains in continuous production for each season, and an annual application for each season of such series is continually submitted for such series after April first, two thousand twenty.

Section 5. Paragraph 2 of subdivision (a) of section 31 of the tax law, as amended by chapter 268 of the laws of 2012, is amended to read as follows:

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of ~~thirty~~ **twenty-five** percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located within the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law or ~~thirty-five~~ **thirty** percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located elsewhere in the state.

Section 5-a. Paragraph 5 of subdivision (a) of section 24 of the tax law, as amended by section 1 of part SSS of chapter 59 of the laws of 2019, is amended to read as follows:

(5) For the period two thousand fifteen through two thousand ~~twenty-four~~ **twenty-five** , 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: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans,

Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, 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 ~~twenty-four~~ **twenty-five** 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 ~~twenty-four~~ **twenty-five**.

Section 5-b. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by chapter 683 of the laws of 2019, 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 additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand ~~twenty-four~~ **twenty-five** 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 article in two thousand thirteen and two thousand fourteen, 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 ~~twenty-four~~ **twenty-five** and five million dollars of the annual allocation shall be made available for the television writers' and directors' fees and salaries credit pursuant to section twenty-four-b of this article in each year starting in two thousand twenty through two thousand ~~twenty-four~~ **twenty-five** . 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 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 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 twenty of section two hundred ten-B 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 thirty-two of section two hundred ten-B and subsection (qq) 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 6. This act shall take effect immediately; provided, however, that the amendments made by sections one, three and five of this act shall apply to applications that are filed with the governor's office for motion picture and television development on or after April 1, 2020.