

NY S 8009 , Chaptered

New York

SUMMARY: Enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2022 to 2023 state fiscal year.~SAME AS: NY A 9009#

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/19/2022 INTRODUCED.

01/19/2022 To SENATE Committee on FINANCE.

02/22/2022 Amended in SENATE Committee on FINANCE.

03/13/2022 Amended in SENATE Committee on FINANCE.

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04/07/2022 From SENATE Committee on FINANCE.

04/07/2022 Passed SENATE. *****To ASSEMBLY.

04/07/2022 To ASSEMBLY Committee on WAYS AND MEANS.

04/07/2022 From ASSEMBLY Committee on WAYS AND MEANS.

04/07/2022 Substituted for A9009C

04/07/2022 Passed ASSEMBLY.

04/09/2022 *****To GOVERNOR.

04/09/2022 Signed by GOVERNOR.

04/09/2022 Chapter No. 59

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Chaptered

April 9, 2022

Office of the Governor

LAWS OF NEW YORK, 2022

CHAPTER 59

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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to amend the tax law and the economic development law, in relation to the creation of the empire state digital gaming media production credit (Part OO);

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PART M

Section 1. Paragraph 4 of subdivision (a) of section 24 of the tax law, as added by section 5 of part

Q of chapter 57 of the laws of 2010, is amended to read as follows:

(4) **(i)** Notwithstanding the foregoing provisions of this subdivision, a qualified film production company or qualified independent film production company, that has applied for credit under the provisions of this section, agrees as a condition for the granting of the credit: ~~(i)~~ **(A)** to include in each qualified film distributed by DVD, or other media for the secondary market, a New York promotional video approved by the governor's office of motion picture and television development or to include in the end credits of each qualified film "Filmed With the Support of the New York State Governor's Office of Motion Picture and Television Development" and a logo provided by the governor's office of motion picture and television development, and ~~(ii)~~ **(B)** to certify that it will purchase taxable tangible property and services, defined as qualified production costs pursuant to paragraph one of subdivision (b) of this section, only from companies registered to collect and remit state and local sales and use taxes pursuant to articles twenty-eight and twenty-nine of this chapter.

(ii) On or after January first, two thousand twenty-three, a qualified film production company or qualified independent film production company that has applied for credit under the provisions of this section shall, as a condition for the granting of the credit, file a diversity plan with the governor's office for motion picture and television development outlining specific goals for hiring a diverse workforce. The commissioner of economic development shall promulgate regulations implementing the requirements of this paragraph, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, to ensure compliance with the provisions of this paragraph. The governor's office for motion picture and television development shall review each submitted plan as to whether it meets the requirements established by the commissioner of economic development, and shall verify that the applicant has met or made good-faith efforts in achieving these goals. The diversity plan also shall indicate whether the qualified film production company or qualified independent film production company that has applied for credit under the provisions of this section intends to participate in training, education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population.

Section 2. Paragraph 5 of subdivision (a) of section 24 of the tax law, as amended by section 1 of part F of chapter 59 of the laws of 2021, is amended to read as follows:

(5) For the period two thousand fifteen through two thousand ~~twenty-six~~ **twenty-nine** , 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, Sulli van, 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-six~~ **twenty-nine** 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-six~~ **twenty-nine** .

Section 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 2 of part F of chapter 59 of the laws of 2021, 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-six~~ **twenty-nine** 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-six~~ **twenty-nine** 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-six~~ **twenty-nine** . 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 4. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by section 3 of part F of chapter 59 of the laws of 2021, 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-six~~ **twenty-nine** 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 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 ~~twenty-six~~ **twenty-nine** . 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 5. Paragraph 1 of subdivision (f) of section 24 of the tax law, as added by section 2 of subpart A of part H of chapter 39 of the laws of 2019, is amended to read as follows:

(1) With regard to certificates of tax credit issued on or after January first, two thousand twenty, the commissioner of economic development shall reduce by one-quarter of one percent the amount of credit allowed to a taxpayer and this reduced amount shall be reported on a certificate of tax credit issued pursuant to this section and the regulations promulgated by the commissioner of economic development to implement this credit program. ***Provided, however, for certificates of tax credit issued on or after January first, two thousand twenty-three, the amount of credit shall be reduced by one-half of one percent allowed to the taxpayer.***

Section 6. Paragraph 6 of subdivision (a) of section 31 of the tax law, as amended by section 4 of part F of chapter 59 of the laws of 2021, is amended to read as follows:

(6) For the period two thousand fifteen through two thousand ~~twenty-six~~ **twenty-nine** , 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) 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: 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-six~~ **twenty-nine** 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 ~~twenty-six~~ **twenty-nine** .

Section 7. This act shall take effect immediately; provided, however that the amendments to paragraph 4 of subdivision (e) of section 24 of the tax law made by section three of this act shall take effect on the same date and in the same manner as section 5 of chapter 683 of the laws of 2019, as amended, takes effect.

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PART OO

Section 1. The tax law is amended by adding a new section 45 to read as follows:

Section 45. Empire state digital gaming media production credit. (a) Allowance of credit. (1) A taxpayer which is a digital gaming media production entity engaged in qualified digital gaming media production, or who is a sole proprietor of or a member of a partnership, which is a digital gaming media production entity engaged in qualified digital gaming media production, and is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax to be computed as provided herein for taxable years beginning on or after January first, two thousand twenty-three and before January first, two thousand twenty-eight.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation) of twenty-five percent and the qualified digital gaming media production costs of one or more qualified digital gaming media productions.

(3) Qualified digital gaming media production costs for a qualified digital gaming media production incurred and paid in this state but outside such metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law shall be eligible for a credit of ten percent of such eligible production costs in addition to the credit specified in paragraph two of this subdivision.

(4) All applicants to this program are required, as a condition of receiving the credit, to include in the credits of each digital game development media production language and a logo to be provided by the governor's office of motion picture and television development acknowledging the state's role in the creation of the production.

(5) A qualified digital gaming media production that has applied for credit under the provisions of this section shall, as a condition for the granting of the credit, file a diversity plan with the department of economic development outlining specific goals for hiring a diverse workforce. The commissioner of economic development shall promulgate regulations implementing the requirements of this paragraph, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, to ensure compliance with the provisions of this paragraph. The department of economic development shall review each submitted plan as to whether it meets the requirements established by the commissioner of economic development, and shall verify that the applicant has met or made good-faith efforts in achieving these goals.

(b) Allocation of credit. The aggregate amount of tax credits allowed under this section, subdivision fifty-five of section two hundred ten-B and subsection (nnn) of section six hundred six of this chapter in any taxable year shall be five million dollars. Such credit shall be allocated by the department of economic development in order of priority based upon the date of filing an application for allocation of digital gaming media production credit with such office. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent taxable year.

(c) Definitions. As used in this section:

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

(2) "Digital gaming media production costs" means any costs for wages or salaries paid to individuals, other than actors or writers, directly employed for services performed by those individuals directly and predominantly in the creation of a digital gaming media production or productions. Up to one hundred thousand dollars in wages and salaries paid to such employees, other than actors and writers, directly employed shall be used in the calculation of this credit. Digital gaming media production costs include but shall not be limited to payments for services performed directly and predominantly in the development (including concept creation), design, production (including concept creation), design, production (including testing), editing (including encoding) and compositing (including the integration of digital files for interaction by end users) of digital gaming media. Digital gaming media production costs shall not include expenses incurred for the distribution, marketing, promotion, or advertising content generated by end users, other costs not directly and predominantly related to the creation, production or modification of digital gaming media or costs used by the taxpayer as a basis of the calculation of any other tax credit allowed under this chapter. In addition, salaries or other income distribution related to the creation of digital gaming media for any person who serves in the

role of chief executive officer, chief financial officer, president, treasurer or similar position shall not be included as digital gaming media production costs if the digital gaming media production entity has more than ten employees. Salaries or other income to a person serving in such a role for the digital gaming media production entity shall also not be included if the person was employed by a related person of the digital gaming media production entity within sixty months of the date the digital gaming media production entity applied for the tax credit certificate described in subdivision (d) of this section. For purposes of the preceding sentence, a related person shall have the same meaning as the term "related person" in section four hundred sixty-five of the internal revenue code. Furthermore, any income or other distribution to any individual including, but not limited to, licensing or royalty fees, who holds an ownership interest in a digital gaming media production entity, whether or not such individual is serving in the role of chief executive officer, chief financial officer, president, treasurer or similar position for such an entity, shall not be included as digital gaming media production costs. Up to four million dollars in qualified digital gaming media production costs per production shall be used in the calculation of this credit. Digital gaming media production costs shall not include those costs used by the taxpayer or another taxpayer as the basis calculation of any other tax credit allowed under this chapter.

(3) "Qualified digital gaming media production costs" means digital gaming media production costs only to the extent such costs are attributable to the use of property or the performance of services by any persons within the state directly and predominantly in the creation, production or modification of digital gaming related media. Such total production costs incurred and paid in this state shall be equal to or exceed seventy-five percent of total cost of an eligible production incurred and paid within and without this state.

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

(d) To be eligible for the empire state digital gaming media production credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development, which certificate shall set forth the amount of the credit that may be claimed and the taxable year in which it shall be claimed. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. In order to properly administer this credit, the department shall be allowed to exchange information with the department of economic development about the taxpayers claiming this credit, including information about the tax credits claimed. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation. The taxpayer shall claim the tax credit in the taxable year that begins in the year for which it is allocated credit under this section.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article nine-A: section two hundred ten-B, subdivision fifty-five.

(2) Article twenty-two: section six hundred six, subsection (i), paragraph one, subparagraph (B), clause (xlv).

(3) Article twenty-two: section six hundred six, subsection (nn).

Section 2. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. Empire state digital gaming media production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five against the tax imposed by this article. Under no circumstances may a single taxpayer receive more than one million five hundred thousand dollars in tax credits per year.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided, however, no interest shall be paid thereon.

Section 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xlvi) to read as follows:

NOTE: THIS SECTION CONTAINS A FORM/CHART THAT IS NOT REPRODUCIBLE IN A TEXT FORMAT. PLEASE CALL STATE NET AT 1-800-726-4566 FOR ADDITIONAL INFORMATION. Section 4. Section 606 of the tax law is amended by adding a new subsection (nnn) to read as follows:

(nnn) Empire state digital gaming media production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five against the tax imposed by this article. Under no circumstances may a single taxpayer receive more than one million five hundred thousand dollars in tax credits per year.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

Section 5. The state commissioner of economic development, after consulting with the state commissioner of taxation and finance, shall promulgate regulations by July 31, 2022 to establish procedures for the allocation of tax credits as required by subdivision (a) of section 45 of the tax law. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers by the department of economic development, to substantiate to the New York state department of taxation and finance the amount of tax credits allocated to such taxpayers, under what conditions all or a portion of this tax credit may be revoked, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such July 31, 2022 deadline.

Section 6. The economic development law is amended by adding a new section 242 to read as follows:

Section 242. Reports on the digital gaming industries in New York. 1. The department of economic development shall file a report on a biannual basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The report shall be filed no later than thirty days before the mid-point and the end of the state fiscal year. The first report shall cover the calendar half year that begins on January first, two thousand twenty-four. Each report must contain the following information for the covered calendar half year:

(a) the total dollar amount of credits allocated pursuant to section forty-five of the

tax law during the half year, broken down by month;

(b) the number of digital gaming projects, which have been allocated tax credits of less than one million dollars per project, and the total dollar amount of credits allocated to those projects;

(c) the number of digital gaming projects, which have been allocated tax credits of more than one million dollars, and the total dollar amount of credits allocated to those projects;

(d) a list of each eligible digital gaming project and for each of those projects, (i) the estimated number of employees associated with the project, (ii) the estimated qualifying costs for the project, (iii) the estimated total costs of the project, (iv) the credit eligible employee hours for each project, and (v) total wages for such credit eligible employee hours for each project; and

(e) (i) 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, the state of residence or incorporation; 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, (ii) 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 (iii) information identifying the project associated with each taxpayer for which a tax credit was claimed under section forty-five of the tax law.

2. The department of economic development shall file a report on a triennial basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The first report shall be filed no later than March first, two thousand twenty-five. The report must be prepared by an independent third party auditor and include: (a) information regarding the empire state digital gaming production credit program including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds; (b) an economic impact study prepared by an independent third party of the program; and (c) any other information or statistical information that the commissioner of economic development deems to be useful in analyzing the effects of the programs.

3. In the event that this tax credit program is no longer legally in effect, the department shall not be required to produce the reports referenced in subdivisions one and two of this section.

Section 7. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2023 and before January 1, 2028.

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