

# NY S 7160, Introduced

New York

SUMMARY: Relates to a television writers' and directors' fees and salaries credit; directs a study to be completed on the underutilization of minority and women screenwriters and directors.

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status 01/10/2020 INTRODUCED.

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Introduced January 10, 2020 Jackson

STATE OF NEW YORK 7160

IN SENATE

January 10, 2020

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to a television writers' and directors' fees and salaries credit; and to amend a chapter of the laws of 2019 amending the tax law relating to a television writers' and directors' fees and salaries credit, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, in relation to a television writers' and directors' fees and salaries credit and the effectiveness thereof

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

Section 1. Section 24-b of the tax law, as added by a chapter of the laws of 2019, amending the tax law relating to a television writers' and directors' fees and salaries credit, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, is amended to read as follows:

Section 24-b. Television writers' and directors' fees and salaries credit.

- (a)(1) A taxpayer which is a qualified film production company, or a qualified independent film production company, or which is a sole proprietor of or a member of a partnership which is a qualified film production company or a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as hereinafter provided.
- (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 television writers' and directors' fees and salaries costs paid or

incurred in the production of a qualified film, provided that: (i) the credit amount shall not exceed fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such expenses incurred for the employment of any one specific writer or director for the production of a single television pilot or a single episode of a television series, and (ii) the credit amount shall not exceed one hundred fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such expenses incurred for the employment of any one specific writer or director. ***In addition, under no circumstances shall the credit amount include fees or salaries for more than one director per episode.*** The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

- (3) No qualified television writers' and directors' fees and salaries used by a taxpayer either as the basis for the allowance of the credit provided for pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.
- (b) Definitions. As used in this section, the following terms shall have the following meanings:
- (1) "Qualified film production company" is a corporation, partnership, limited partnership, or other entity or individual ***whose project is conditionally eligible to receive a tax credit under section twenty-four of this article*** which or who is principally engaged in the production of a qualified film and controls the qualified film during production.
- (2) "Qualified independent film production company" is a corporation, partnership, limited partnership, or other entity or individual ***whose project is conditionally eligible to receive a tax credit under section twenty-four of this article***, that or who (i) is principally engaged in the production of a qualified film with a maximum budget of fifteen million dollars, (ii) controls the qualified film during production, and (iii) either is not a publicly traded entity, or no more than five percent of the beneficial ownership of which is owned, directly or indirectly, by a publicly traded entity.
- (3) "Qualified film" means a television film, 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.
- (4) "Qualified television writers' and directors' fees and salaries" means ~~:(i) salaries or fees paid to a writer or director who receives an on-air credit ;(ii) for a non-credited writer, up to seventy-five thousand dollars in salaries or fees per series of episodes. Provided~~ , ***provided*** that in each case, such writer or director is a minority group member, as defined in subdivision eight of section three hundred ten of the executive law, or a woman, and provided, further, that salaries or fees paid to any writer or director who is a profit participant in the qualified film shall not be eligible. ***Such fees shall not include relocation fees or hotel costs and per diems. In addition, such fees shall not include salaries or fees paid to writers or directors for work done on episodes of television series that were deemed conditionally eligible for the tax credit under section twenty-four of this article prior to the tax year for which the credit is first available.***
- (5) "Writer" means a person who is ~~:(i)~~ engaged by a qualified film production company or a qualified independent film production company to write ***literary material (including making changes or revisions in literary material),***

~~when the company has the right by contract to direct the performance of personal services in writing or preparing such material or in making revisions, modifications or changes therein; or (ii) engaged by the company and who performs services (at the company's direction or with its consent) in writing or preparing such literary material or making revisions, modifications, or changes in such materi- al;~~ *television scripts, outlines, rewrites, stories, or teleplays for television series* and (iii) who reports to work regularly in a writers room located in the state. *For the purposes of this definition, "writer" shall not include showrunners or executive producers.*

(6) ~~"Literary material" shall be deemed to include stories, adaptations, treatments, original treatments, scenarios, continuities, teleplays, screenplays, dialogue, scripts, sketches, plots, outlines, narrative synopses, routines, narrations, and formats.~~

(7) "Writers room" means a room or physical location *in the state* where writers employed by a qualified film production company or qualified independent film production company write ~~or revise literary materials~~ *television scripts, outlines, rewrites, stories, or teleplays for television series* utilized in a qualified film . *A writers room is located in the state only if it is in use in the state at least eighty percent of the time it is in existence .*

(8) (7) "Director" means an individual employed or retained to direct the production, as the word "direct" is commonly used in the motion picture industry, ~~and~~ who would be classified as a director under the basic agreement in place between the Association of Motion Picture and Television Producers and the Director's Guild of America and who ~~is a resident of New York~~ *must meet the minimum criteria for work on qualified productions in New York state as established by the commissioner of economic development by regulation .*

(9) (8) "Profit participant" is an individual who has negotiated for a percentage of profits generated by a qualified film. Profit participation does not include monies contractually required by collectively bargained agreements for reuse of a qualified film on different platforms over time.

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

(1) article 9-A: section 210-B: subdivision 54.

(2) article 22: section 606: subsection (v).

(d) Notwithstanding any provision of this chapter, (1) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (2) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(e) Maximum amount of credits.

(1) The aggregate amount of tax credits allowed under this section, subdivision fifty-four of section two hundred ten-B and subsection (v) of section six hundred six of this chapter in any calendar year shall be five million dollars. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers in order of priority based upon the date of filing an application for allocation of television writers' and directors' fees and salaries credit with such department. 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 year.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations ~~by October thirty-first, two thousand nineteen~~ to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. 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 to substantiate to the department the amount of tax credits allocated to such taxpayers, 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 October thirty-first, two thousand nineteen deadline** .

(f) The department of economic development shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted on February first of each year evaluating the effectiveness of the television writers' and directors' fees and salaries tax credit provided by this section in stimulating the growth of diversity in the film industry in the state. Such report shall include, but need not be limited to, the number of qualified film production companies and/or qualified independent film production companies which received a television writers' and directors' fees and salaries credit, the credit amounts claimed by each qualified film production company and/or qualified independent film production company, as well as the impact on employment and the economy of the state. Such report shall be based on data available from the application filed with the department of economic development for allocation of television writers' and directors' fees and salaries credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations of changes in the calculation or administration of the credit, and any other recommendation of the commissioner of the department of economic development regarding continuing modification, repeal of such act, and such other information regarding the act as the commissioner of the department of economic development may feel useful and appropriate.

Section 2. Section 6 of a chapter of the laws of 2019, amending the tax law relating to a television writers' and directors' fees and salaries credit, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, is amended to read as follows:

Section 6. ***Study of the underutilization of minority and women screenwriters and directors.***

***1. Study.***

***Subject to an appropriation which shall provide sufficient funding***

necessary to complete such study, the department of economic development shall select, through the request for proposal process, an entity independent of such department which shall serve as such department's designee for the purpose of conducting a study to investigate the statistical significance of the underutilization of minority and women screenwriters and directors. Such study shall conduct or provide for an examination of, but not be limited to, a comparison of available minority and women screenwriters and directors against the share of screenwriting and directing work such groups receive on projects in New York state to demonstrate the statistically significant underutilization of that population.

## 2. Report.

(a) Upon the completion of the study conducted pursuant to subdivision one of this section, the department of economic development shall deliver a report of the findings of such study to the governor, the temporary president of the senate, and the speaker of the assembly and post the study on the website of the department of economic development. (b) If the department of economic development determines that the study has found statistically significant evidence of the underutilization of minority and women screenwriters and directors against the share of screenwriting and directing work such groups receive on projects in the state, then the department of economic development shall so notify the governor, the temporary president of the senate, the speaker of the assembly, the commissioner of taxation and finance and the legislative bill drafting commission.

## 3. Powers.

All other departments or agencies of the state or subdivisions thereof, and local governments shall, at the request of the department of economic development or its designee chosen pursuant to subdivision one of this section, provide expertise, assistance, and/or data that are relevant or material to the completion of the study directed to be completed by subdivision one of this section and the report directed to be completed by subdivision two of this section. The department of economic development, or its designee, shall also be authorized to obtain relevant information from any recognized entities representing the television industry or segments thereof towards the completion of such study.

**Section 7.** This act shall take effect immediately, ~~and shall apply to taxable years beginning on or after January 1, 2020~~ provided, however, that the provisions of sections one, two, three, four, and five of this act shall take effect on the first of January next succeeding the date the department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to paragraph (b) of subdivision two of section six of this act and shall apply to taxable years on and after such date; provided that the department of economic development shall notify the legislative bill drafting commission upon the occurrence of the submission of the report provided for in paragraph (b) of subdivision two of section six of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

***Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.***

Section 3. This act shall take effect immediately; provided, however that section one of this act and section 6 of a chapter of the laws of 2019, amending the tax law relating to a television writers' and directors' fees and salaries credit, as proposed in legislative bills numbers S. 5864-A and A. 6683-B, as amended by section two of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2019, takes effect.