

**STATE-LAW, 2003 NY S 6060 , Enacted, (August 20, 2004) PART 01
OF 02.**

2003 NY S 6060 , Enacted

New York

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

SUMMARY: Enacts language relating to implementing appropriations made in the state revenue budget pursuant to article VII of the constitution.-SAME__AS:

Current Legislative Status

01/21/2004 INTRODUCED.

01/21/2004 To SENATE Committee on FINANCE.

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session: New York 227th Annual Legislative Session

cite: 2003 NY S 6060

Enacted

August 20, 2004

Office of the Governor

STATE OF NEW YORK

S. 6060--B A. 9560--B

SENATE - ASSEMBLY

January 21, 2004

PART P

Section 1. The tax law is amended by adding a new section 24 to read as follows:

Section 24. EMPIRE STATE FILM PRODUCTION CREDIT. (A)(1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A QUALIFIED FILM PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIETOR OF A QUALIFIED 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 TEN PERCENT AND THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED FILM, PROVIDED THAT 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. 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 PRODUCTIONS 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.

(3) NO QUALIFIED PRODUCTION COSTS USED BY A TAXPAYER EITHER AS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED FOR UNDER 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 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.

(2) "PRODUCTION COSTS" MEANS ANY COSTS FOR TANGIBLE PROPERTY USED AND SERVICES PERFORMED DIRECTLY AND PREDOMINANTLY IN THE PRODUCTION (INCLUDING PRE-PRODUCTION AND POST PRODUCTION) OF A QUALIFIED FILM. "PRODUCTION COSTS" SHALL NOT INCLUDE (I) COSTS FOR A STORY, SCRIPT OR SCENARIO TO BE USED FOR A QUALIFIED FILM AND (II) WAGES OR SALARIES OR OTHER COMPENSATION FOR WRITERS, DIRECTORS, INCLUDING MUSIC DIRECTORS, PRODUCERS AND PERFORMERS (OTHER THAN BACKGROUND ACTORS WITH NO SCRIPTED LINES). "PRODUCTION COSTS" GENERALLY INCLUDE TECHNICAL AND CREW PRODUCTION COSTS, SUCH AS EXPENDITURES FOR FILM PRODUCTION FACILITIES, OR ANY PART THEREOF, PROPS, MAKEUP, WARDROBE, FILM PROCESSING, CAMERA, SOUND RECORDING, SET CONSTRUCTION, LIGHTING, SHOOTING, EDITING AND MEALS.

(3) "QUALIFIED FILM" MEANS A FEATURE-LENGTH FILM, 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. "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).

(4) "FILM PRODUCTION FACILITY" SHALL MEAN A BUILDING AND/OR COMPLEX OF BUILDINGS AND THEIR IMPROVEMENTS AND ASSOCIATED BACK-LOT FACILITIES IN WHICH FILMS ARE OR ARE INTENDED TO BE REGULARLY PRODUCED AND WHICH CONTAIN AT LEAST ONE SOUND STAGE.

(5) "QUALIFIED FILM PRODUCTION FACILITY" SHALL MEAN A FILM PRODUCTION FACILITY IN THE STATE, WHICH CONTAINS AT LEAST ONE SOUND STAGE HAVING A MINIMUM OF SEVEN THOUSAND SQUARE FEET OF CONTIGUOUS PRODUCTION SPACE.

(6) "QUALIFIED FILM PRODUCTION COMPANY" IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP, OR OTHER ENTITY OR INDIVIDUAL WHICH OR WHO IS PRINCIPALLY ENGAGED IN THE PRODUCTION OF A QUALIFIED FILM AND CONTROLS THE QUALIFIED FILM DURING PRODUCTION.

(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: SUBDIVISION 36.

(2) ARTICLE 22: SECTION 606: SUBSECTION (GG).

Section 2. Section 210 of the tax law is amended by adding a new subdivision 36 to read as follows:

36. EMPIRE STATE FILM PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION TWENTY-FOUR OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION TWENTY-FOUR AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(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 THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, FIFTY PERCENT OF THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. THE BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

EMPIRE STATE FILM PRODUCTION AMOUNT OF CREDIT FOR QUALIFIED CREDIT UNDER SUBSECTION (GG) PRODUCTION COSTS IN PRODUCTION OF A QUALIFIED FILM UNDER SUBDIVISION THIRTY-SIX OF SECTION TWO HUNDRED TEN

Section 4. Section 606 of the tax law is amended by adding a new subsection (gg) to read as follows:

(GG) EMPIRE STATE FILM PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ELIGIBLE PURSUANT TO SECTION TWENTY-FOUR OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION TWENTY-FOUR AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(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, FIFTY PERCENT OF 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. THE BALANCE OF SUCH CREDIT NOT CREDITED OR REFUNDED IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE IMMEDIATELY SUCCEEDING TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX

FOR SUCH YEAR. THE EXCESS, IF ANY, OF THE AMOUNT OF THE CREDIT OVER THE TAX FOR SUCH SUCCEEDING YEAR 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 opening paragraph of section 1201-a of the tax law is designated subdivision (a) and a new subdivision (b) is added to read as follows:

(B) EMPIRE STATE FILM PRODUCTION CREDIT. ANY CITY IN THIS STATE HAVING A POPULATION OF ONE MILLION OR MORE, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED TO ADOPT AND AMEND LOCAL LAWS TO ALLOW A CREDIT AGAINST THE GENERAL CORPORATION TAX IMPOSED PURSUANT TO THE AUTHORITY OF CHAPTER SEVEN HUNDRED SEVENTY-TWO OF THE LAWS OF NINETEEN HUNDRED SIXTY-SIX WHICH SHALL BE SUBSTANTIALLY IDENTICAL TO THE CREDIT ALLOWED UNDER SECTION TWENTY-FOUR OF THIS CHAPTER, EXCEPT THAT (A) THE PERCENTAGE OF QUALIFIED PRODUCTION COSTS USED TO CALCULATE SUCH CREDIT SHALL BE FIVE PERCENT, AND (B) WHENEVER SUCH SECTION TWENTY-FOUR REFERENCES THE STATE, SUCH WORDS SHALL BE READ AS REFERENCING THE CITY. SUCH CREDIT SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE CREDIT ALLOWED UNDER SUBDIVISION THIRTY-SIX OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

Section 6. Section 1310 of the tax law is amended by adding a new subsection (f) to read as follows:

(F) EMPIRE STATE FILM PRODUCTION CREDIT. ANY CITY IN THIS STATE HAVING A POPULATION OF ONE MILLION OR MORE, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED TO ADOPT AND AMEND LOCAL LAWS TO ALLOW A CREDIT AGAINST THE TAXES, EXCEPT FOR THE TAXES DETERMINED UNDER SECTIONS THIRTEEN HUNDRED ONE-A AND THIRTEEN HUNDRED ONE-B OF THIS ARTICLE, IMPOSED PURSUANT TO THE AUTHORITY OF THIS ARTICLE WHICH CREDIT SHALL BE SUBSTANTIALLY IDENTICAL TO THE CREDIT ALLOWED UNDER SECTION TWENTY-FOUR OF THIS CHAPTER, EXCEPT THAT (A) THE PERCENTAGE OF QUALIFIED PRODUCTION COSTS USED TO CALCULATE SUCH CREDIT SHALL BE FIVE PERCENT, AND (B) WHENEVER SUCH SECTION TWENTY-FOUR REFERENCES THE STATE, SUCH WORDS SHALL BE READ AS REFERENCING THE CITY. SUCH CREDIT SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE CREDIT ALLOWED UNDER SUBSECTION (GG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER.

Section 7. Maximum amount of credits. (a) The aggregate amount of tax credits allowed under section 24, subdivision 36 of section 210 and subsection (gg) of section 606 of the tax law in any calendar year shall be \$25 million. 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 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.

(b) The aggregate amount of tax credits allowed pursuant to the authority of subdivision (b) of section 1201-a and subdivision (f) of section 1310 of the tax law in any calendar year shall be \$12.5 million. Such aggregate amount of credits shall be allocated by the mayor's office of film, theater and broadcasting 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 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.

(c) The New York state commissioner of economic development, after consulting with the New York state commissioner of taxation and finance, the New York city commissioner of finance and the mayor's office of film, theater and broadcasting, shall promulgate regulations by October 31, 2004 to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. In addition, upon enactment of a local law allowing tax credits pursuant to the authority of subdivision (b) of section 1201-a and subdivision (f) of section 1310 of the tax law, the mayor's office of film, theater and broadcasting shall promulgate as soon as practicable substantially similar rules to establish procedures for the allocation of tax credits as required by subdivision (b) 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 New York state department of taxation and finance or the New York city department of finance 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 or the city administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such October 31, 2004 deadline.

Section 8. The commissioner of the department of taxation and finance, in conjunction with the director of the governor's office for motion picture and television development, shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted in February of each year evaluating the effectiveness of the film production tax credit provided by this act in stimulating the growth of the film industry in the state. Such report shall include, but not be limited to, in total and by qualified film, the number of qualified films, the qualified production costs, the production costs, the qualified film production facilities, and the credit amounts claimed by each qualified film, as well as the impact on employment and the economy of the state and city of New York. Such report shall be based on data available from the application filed with the governor's office for motion picture and television development for allocation of film production 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 for changes in the calculation or administration of the credit, and any other recommendation of the commissioner regarding continuing modification, or repeal of such act, and such other information regarding the act as the commissioner may feel useful and appropriate.

Section 9. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2004, with respect to "qualified production costs" paid or incurred on or after such effective date, regardless of whether the production of the qualified film commenced before such date, provided further that this act shall expire and be deemed repealed 4 years after such date, provided further that the expiration and repeal of this act shall not affect the carry over of any credit allowed pursuant to this act and, subsequent to the expiration and repeal of this act, such carry over credits shall be allowed as provided by and pursuant to the provisions of this act, and provided further that the IMB credit for energy taxes under subsection (t-1) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in subdivision (a) of section 49 of part Y of chapter 63 of the laws of 2000.