

FY 2024 Executive Budget Amendments

**Amendments to Senate S.4009; Assembly A.3009
(REV Article VII Bill)**

Part D, relating to extending and enhancing the empire state film production credit and empire state film post-production credit, is amended to:

- Make various technical corrections.
- Make a technical correction to clarify that background actors are eligible for certain portions of the credits.
- Clarify that that a minimum of six episodes and not exactly six are required for eligible relocated television series.
- Remove certain references to the Governor's Office of Motion Picture and Television Development.
- Clarify the timing of the taxable year in which taxpayers can utilize tax credits.
- Remove several extraneous words.

1 receive such excess as a refund. Any refund paid pursuant to this para-
2 graph shall be deemed to be a refund of an overpayment of tax as
3 provided in section six hundred eighty-six of this article, provided,
4 however, that no interest shall be paid thereon.
5 § 3. This act shall take effect immediately, and apply to taxable
6 years beginning on or after January 1, 2023.

7

PART D

8 Section 1. Paragraph 2 of subdivision (a) of section 24 of the tax
9 law, as separately amended by sections 1 and 2 of part M of chapter 59
10 of the laws of 2020, is amended to read as follows:

11 (2) The amount of the credit shall be the product (or pro rata share
12 of the product, in the case of a member of a partnership) of [twenty-
13 five] thirty percent, or thirty-five percent in the case of an eligible
14 relocated television series, and the qualified production costs paid or
15 incurred in the production of a qualified film, provided that: (i) the
16 qualified production costs (excluding post production costs) paid or
17 incurred which are attributable to the use of tangible property or the
18 performance of services at a qualified film production facility in the
19 production of such qualified film equal or exceed seventy-five percent
20 of the production costs (excluding post production costs) paid or
21 incurred which are attributable to the use of tangible property or the
22 performance of services at any film production facility within and with-
23 out the state in the production of such qualified film, and (ii) except
24 with respect to a qualified independent film production company or
25 pilot, at least ten percent of the total principal photography shooting
26 days spent in the production of such qualified film must be spent at a
27 qualified film production facility. However, if the qualified production
28 costs (excluding post production costs) which are attributable to the
29 use of tangible property or the performance of services at a qualified
30 film production facility in the production of such qualified film is
31 less than three million dollars, then the portion of the qualified
32 production costs attributable to the use of tangible property or the
33 performance of services in the production of such qualified film outside
34 of a qualified film production facility shall be allowed only if the
35 shooting days spent in New York outside of a film production facility in
36 the production of such qualified film equal or exceed seventy-five
37 percent of the total shooting days spent within and without New York
38 outside of a film production facility in the production of such quali-
39 fied film. The credit shall be allowed for the taxable year in which the
40 production of such qualified film is completed. However, in the case of
41 a qualified film that receives funds from additional pool 2, no credit
42 shall be claimed before the later of (1) the taxable year the production
43 of the qualified film is complete, or (2) the [first] taxable year
44 [beginning immediately after the] that includes the last day of the
45 allocation year for which the film has been allocated credit by the
46 [governor's office for motion picture and television] department of
economic development. If the

47 amount of the credit is at least one million dollars but less than five
48 million dollars, the credit shall be claimed over a two year period
49 beginning in the first taxable year in which the credit may be claimed
50 and in the next succeeding taxable year, with one-half of the amount of
51 credit allowed being claimed in each year. If the amount of the credit
52 is at least five million dollars, the credit shall be claimed over a
53 three year period beginning in the first taxable year in which the cred-
54 it may be claimed and in the next two succeeding taxable years, with

1 one-third of the amount of the credit allowed being claimed in each
2 year.

3 § 2. Paragraph 5 of subdivision (a) of section 24 of the tax law, as
4 amended by section 2 of part M of chapter 59 of the laws of 2022, is
5 amended to read as follows:

6 (5) For the period two thousand fifteen through two thousand [twenty-
7 nine] thirty-four, in addition to the amount of credit established in
8 paragraph two of this subdivision, a taxpayer shall be allowed a credit
9 equal to the product (or pro rata share of the product, in the case of a
10 member of a partnership) of ten percent and the amount of wages or sala-
11 ries paid to individuals directly employed (excluding those employed as
12 writers, directors, [music directors] composers, producers and perform-
13 ers, [including] other than background actors with no scripted lines) by
a qualified
14 film production company or a qualified independent film production
15 company for services performed by those individuals in one of the coun-
16 ties specified in this paragraph in connection with a qualified film
17 with a minimum budget of five hundred thousand dollars. For purposes of
18 this additional credit, the services must be performed in one or more of
19 the following counties: Albany, Allegany, Broome, Cattaraugus, Cayuga,
20 Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware,
21 Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton,
22 Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery,
23 Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego,
24 Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca,
25 St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Wash-
26 ington, Wayne, Wyoming, or Yates. The aggregate amount of tax credits
27 allowed pursuant to the authority of this paragraph shall be five
28 million dollars each year during the period two thousand fifteen through
29 two thousand [twenty-nine] thirty-four of the annual allocation made
30 available to the program pursuant to paragraph four of subdivision (e)
31 of this section. Such aggregate amount of credits shall be allocated by
32 the [governor's office for motion picture and television] department
of economic development

33 among taxpayers in order of priority based upon the date of filing an
34 application for allocation of film production credit [with such office].
35 If the total amount of allocated credits applied for under this para-
36 graph in any year exceeds the aggregate amount of tax credits allowed
37 for such year under this paragraph, such excess shall be treated as
38 having been applied for on the first day of the next year. If the total
39 amount of allocated tax credits applied for under this paragraph at the
40 conclusion of any year is less than five million dollars, the remainder
41 shall be treated as part of the annual allocation made available to the
42 program pursuant to paragraph four of subdivision (e) of this section.
43 However, in no event may the total of the credits allocated under this
44 paragraph and the credits allocated under paragraph five of subdivision
45 (a) of section thirty-one of this article exceed five million dollars in
46 any year during the period two thousand fifteen through two thousand
47 [twenty-nine] thirty-four.

48 § 2-a. Paragraph 1 of subdivision (b) of section 24 of the tax law, as
49 amended by section 4 of part B of chapter 59 of the laws of 2013, is
50 amended to read as follows:

51 (1) "Qualified production costs" means production costs only to the
52 extent such costs are attributable to the use of tangible property or
53 the performance of services within the state directly and predominantly
54 in the production (including pre-production and post production) of a
55 qualified film. The aggregate total eligible qualified production
56 costs for producers, writers, directors, ~~actors~~ performers (other than
background actors with no scripted lines), and composers shall not

1 exceed forty percent of the aggregate sum total of all other qualified
2 production costs.

3 § 3. Paragraph 2 of subdivision (b) of section 24 of the tax law, as
4 added by section 1 of part P of chapter 60 of the laws of 2004, is
5 amended to read as follows:

6 (2) "Production costs" means any costs for tangible property used and
7 services performed directly and predominantly in the production (includ-
8 ing pre-production and post production) of a qualified film.
9 "Production costs" shall not include (i) costs for a story, script or
10 scenario to be used for a qualified film and (ii) wages or salaries or
11 other compensation for writers, directors, [including ~~music directors~~
12 composers, producers and performers (other than background actors with
13 no scripted lines) to the extent those wages or salaries or other
14 compensation exceed five hundred thousand dollars per individual.
15 "Production costs" generally include technical and crew production
16 costs, such as expenditures for film production facilities, or any part
17 thereof, props, makeup, wardrobe, film processing, camera, sound record-
18 ing, set construction, lighting, shooting, editing and meals.

19 § 4. Paragraph 8 of subdivision (b) of section 24 of the tax law, as
20 added by section 2 of part B of chapter 59 of the laws of 2013, is
21 amended to read as follows:

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

31 § 5. Subdivision (b) of section 24 of the tax law is amended by adding
32 a new paragraph 9 to read as follows:

33 (9) "Eligible relocated television series" shall mean the first two
34 years of a regularly occurring production intended to run in its initial
35 broadcast, regardless of the medium or mode of its distribution, in a
36 series of narrative and/or thematically related episodes, each of which
37 has a running time of at least thirty minutes in length (inclusive of
38 commercial advertisement and interstitial programming, if any). For the
39 purposes of this definition only, a television series produced by and
40 for media services providers described as streaming services and/or
41 digital platforms (and excluding network/cable) shall mean a regularly
42 occurring production intended to run in its initial release in a series
43 of narrative and/or thematically related episodes, the aggregate length
44 of which is at least seventy-five minutes, although the episodes them-
45 selves may vary in duration from the thirty minutes specified for
46 network/cable production, which had filmed a minimum of six episodes of
47 the tele-
48 vision series outside the state immediately prior to relocating to the
49 state, where ~~each episode of~~ the television series had a total minimum
50 budget
51 of at least one million dollars per episode.

52 § 6. Paragraph 4 of subdivision (e) of section 24 of the tax law, as
53 amended by section 3 of part M of chapter 59 of the laws of 2022, is
54 amended to read as follows:

55 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
56 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-nine] twenty-three and seven hundred

1 million dollars each year starting in two thousand twenty-four through
2 two thousand thirty-four, provided however, seven million dollars of the
3 annual allocation shall be available for the empire state film post
4 production credit pursuant to section thirty-one of this article in two
5 thousand thirteen and two thousand fourteen, twenty-five million dollars
6 of the annual allocation shall be available for the empire state film
7 post production credit pursuant to section thirty-one of this article in
8 each year starting in two thousand fifteen through two thousand [twen-
9 ty-nine and] twenty-three, and forty-five millions dollars of the annual
10 allocation shall be available for the empire state film post production
11 credit pursuant to section thirty-one of this article in each year
12 starting in two thousand twenty-four through two thousand thirty-four.
13 Provided further, five million dollars of the annual allocation shall be
14 made available for the television writers' and directors' fees and sala-
15 ries credit pursuant to section twenty-four-b of this article in each
16 year starting in two thousand twenty through two thousand [twenty-nine]
17 thirty-four. This amount shall be allocated by the [governor's office for
18 motion picture and television] department of economic development among
19 taxpayers in accordance

20 with subdivision (a) of this section. If the commissioner of economic
21 development determines that the aggregate amount of tax credits avail-
22 able from additional pool 2 for the empire state film production tax
23 credit have been previously allocated, and determines that the pending
24 applications from eligible applicants for the empire state film post
25 production tax credit pursuant to section thirty-one of this article is
26 insufficient to utilize the balance of unallocated empire state film
27 post production tax credits from such pool, the remainder, after such
28 pending applications are considered, shall be made available for allo-
29 cation in the empire state film tax credit pursuant to this section,
30 subdivision twenty of section two hundred ten-B and subsection (gg) of
31 section six hundred six of this chapter. Also, if the commissioner of
32 economic development determines that the aggregate amount of tax credits
33 available from additional pool 2 for the empire state film post
34 production tax credit have been previously allocated, and determines
35 that the pending applications from eligible applicants for the empire
36 state film production tax credit pursuant to this section is insuffi-
37 cient to utilize the balance of unallocated film production tax credits
38 from such pool, then all or part of the remainder, after such pending
39 applications are considered, shall be made available for allocation for
40 the empire state film post production credit pursuant to this section,
41 subdivision thirty-two of section two hundred ten-B and subsection (qq)
42 of section six hundred six of this chapter. The [governor's office for
43 motion picture and television] department of economic development must
44 notify taxpayers of their

45 allocation year and include the allocation year on the certificate of
46 tax credit. Taxpayers eligible to claim a credit must report the allo-
47 cation year directly on their empire state film production credit tax
48 form for each year a credit is claimed and include a copy of the certif-
49 icate with their tax return. In the case of a qualified film that
50 receives funds from additional pool 2, no empire state film production
51 credit shall be claimed before the later of (1) the taxable year the
52 production of the qualified film is complete, or (2) the taxable year
53 [imme-

54 diately following] that includes the last day of the allocation year for
55 which the film has been allo-

56 cated credit by the [governor's office for motion picture and television]
57 department of economic
58 development.

59 § 7. Paragraph 4 of subdivision (e) of section 24 of the tax law, as

55 amended by section 4 of part M of chapter 59 of the laws of 2022, is
56 amended to read as follows:

1 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
2 subdivision (a) of this section shall be increased by an additional four
3 hundred twenty million dollars in each year starting in two thousand ten
4 through two thousand [twenty-nine] twenty-three and seven hundred
5 million dollars in each year starting in two thousand twenty-four
6 through two thousand thirty-four, provided however, seven million
7 dollars of the annual allocation shall be available for the empire state
8 film post production credit pursuant to section thirty-one of this arti-
9 cle in two thousand thirteen and two thousand fourteen [and], twenty-
10 five million dollars of the annual allocation shall be available for the
11 empire state film post production credit pursuant to section thirty-one
12 of this article in each year starting in two thousand fifteen through
13 two thousand [twenty-nine] twenty-three, and forty-five million dollars
14 of the annual allocation shall be available for the empire state film
15 post production credit pursuant to section thirty-one of this article in
16 each year starting in two thousand twenty-four through two thousand
17 thirty-four. This amount shall be allocated by the [governor's office for
18 motion picture and television] department of economic development among
taxpayers in accordance

19 with subdivision (a) of this section. If the commissioner of economic
20 development determines that the aggregate amount of tax credits avail-
21 able from additional pool 2 for the empire state film production tax
22 credit have been previously allocated, and determines that the pending
23 applications from eligible applicants for the empire state film post
24 production tax credit pursuant to section thirty-one of this article is
25 insufficient to utilize the balance of unallocated empire state film
26 post production tax credits from such pool, the remainder, after such
27 pending applications are considered, shall be made available for allo-
28 cation in the empire state film tax credit pursuant to this section,
29 subdivision twenty of section two hundred ten-B and subsection (gg) of
30 section six hundred six of this chapter. Also, if the commissioner of
31 economic development determines that the aggregate amount of tax credits
32 available from additional pool 2 for the empire state film post
33 production tax credit have been previously allocated, and determines
34 that the pending applications from eligible applicants for the empire
35 state film production tax credit pursuant to this section is insuffi-
36 cient to utilize the balance of unallocated film production tax credits
37 from such pool, then all or part of the remainder, after such pending
38 applications are considered, shall be made available for allocation for
39 the empire state film post production credit pursuant to this section,
40 subdivision thirty-two of section two hundred ten-B and subsection (qq)
41 of section six hundred six of this chapter. The [governor's office for
42 motion picture and television] department of economic development must
notify taxpayers of their

43 allocation year and include the allocation year on the certificate of
44 tax credit. Taxpayers eligible to claim a credit must report the allo-
45 cation year directly on their empire state film production credit tax
46 form for each year a credit is claimed and include a copy of the certif-
47 icate with their tax return. In the case of a qualified film that
48 receives funds from additional pool 2, no empire state film production
49 credit shall be claimed before the later of (1) the taxable year the
50 production of the qualified film is complete, or (2) the taxable year
[imme-

51 diately following] that includes the last day of the allocation year for
which the film has been allo-

52 cated credit by the [governor's office for motion picture and television]
department of economic

53 development.

54 § 8. Paragraph 2 of subdivision (a) of section 31 of the tax law, as

55 amended by section 5 of part M of chapter 59 of the laws of 2020, is
56 amended to read as follows:

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

10 § 9. Paragraph 6 of subdivision (a) of section 31 of the tax law, as
11 amended by section 6 of part M of chapter 59 of the laws of 2022, is
12 amended to read as follows:

13 (6) For the period two thousand fifteen through two thousand [twenty-
14 nine] thirty-four, in addition to the amount of credit established in
15 paragraph two of this subdivision, a taxpayer shall be allowed a credit
16 equal to the product (or pro rata share of the product, in the case of a
17 member of a partnership) of ten percent and the amount of wages or sala-
18 ries paid to individuals directly employed (excluding those employed as
19 writers, directors, [music directors] composers, producers and perform-
20 ers, [including] other than background actors with no scripted lines)
for services

21 performed by those individuals in one of the counties specified in this
22 paragraph in connection with the post production work on a qualified
23 film with a minimum budget of five hundred thousand dollars at a quali-
24 fied post production facility in one of the counties listed in this
25 paragraph. For purposes of this additional credit, the services must be
26 performed in one or more of the following counties: Albany, Allegany,
27 Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton,
28 Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton,
29 Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madi-
30 son, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange,
31 Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady,
32 Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga,
33 Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates. The
34 aggregate amount of tax credits allowed pursuant to the authority of
35 this paragraph shall be five million dollars each year during the period
36 two thousand fifteen through two thousand [twenty-nine] thirty-four of
37 the annual allocation made available to the empire state film post
38 production credit pursuant to paragraph four of subdivision (e) of
39 section twenty-four of this article. Such aggregate amount of credits
40 shall be allocated by the [governor's office for motion picture and tele-
41 vision] department of economic development among taxpayers in order of
priority based upon the

42 date of filing an application for allocation of post production credit
43 with such office. If the total amount of allocated credits applied for
44 under this paragraph in any year exceeds the aggregate amount of tax
45 credits allowed for such year under this paragraph, such excess shall be
46 treated as having been applied for on the first day of the next year. If
47 the total amount of allocated tax credits applied for under this para-
48 graph at the conclusion of any year is less than five million dollars,
49 the remainder shall be treated as part of the annual allocation for two
50 thousand seventeen made available to the empire state film post
51 production credit pursuant to paragraph four of subdivision (e) of
52 section twenty-four of this article. However, in no event may the total
53 of the credits allocated under this paragraph and the credits allocated
54 under paragraph five of subdivision (a) of section twenty-four of this
55 article exceed five million dollars in any year during the period two
56 thousand fifteen through two thousand [twenty-nine] thirty-four.

1 § 10. This act shall take effect immediately for **new** initial applica-
 2 tions received on or after such effective date; provided, however, that
 3 the amendments to paragraph 4 of subdivision (e) of section 24 of the
 4 tax law made by section six of this act shall take effect on the same
 5 date and in the same manner as section 6 of chapter 683 of the laws of
 6 2019, as amended, takes effect.

7 PART E

8 Section 1. Section 1085 of the tax law is amended by adding a new
 9 subsection (e-1) to read as follows:

10 (e-1) Waiver of addition for underpayment of estimated tax. No addi-
 11 tion to tax shall be imposed under subsection (c) of this section with
 12 respect to any underpayment to the extent the commissioner determines
 13 that by reason of casualty, disaster or other unusual circumstances the
 14 imposition of such addition to tax would be against equity and good
 15 conscience.

16 § 2. This act shall take effect immediately.

17 PART F

18 Section 1. Subdivision 4 of section 484 of the economic development
 19 law, as added by section 1 of part E of chapter 59 of the laws of 2022,
 20 is amended to read as follows:

21 4. The business entity must submit its application by [March thirty-
 22 first] September thirtieth, two thousand twenty-three.

23 § 2. This act shall take effect immediately.

24 PART G

25 Section 1. Article 6 of the social services law is amended by adding a
 26 new title 1-A to read as follows:

27 TITLE 1-A

28 CHILD CARE CREATION AND EXPANSION TAX CREDIT PROGRAM

29 Section 394. Short title.

30 394-a. Definitions.

31 394-b. Eligibility criteria.

32 394-c. Application and approval process.

33 394-d. Child care creation and expansion tax credit.

34 394-e. Allocation of credit.

35 394-f. Powers and duties of the commissioner.

36 394-g. Maintenance of records.

37 § 394. Short title. This title shall be known and may be cited as the
 38 "child care creation and expansion tax credit program act".

39 § 394-a. Definitions. For the purposes of this title:

40 1. "Certificate of tax credit" shall mean the document issued to a
 41 business entity by the office after the office has verified that the
 42 business entity has met all applicable eligibility criteria in this
 43 title. The certificate shall specify the exact amount of the tax credit
 44 under this title that a business entity may claim, pursuant to section
 45 three hundred ninety-four-d of this title, and the service year.

46 2. "Child care program" shall mean a child day care for which a
 47 license or registration to operate such program has been issued by the
 48 office pursuant to section three hundred ninety of this article.

49 3. "Child care rate" shall mean the weekly child care subsidy market
 50 rates, based on the eightieth percentile of the 2021-22 New York state