

2005 NY S 6460, Enacted - Veto Override

New York

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

~~Text Added~~

~~Text Vetoed~~

SUMMARY: Amends various tax laws in relation to implementing the budget.--SAME AS:

Current Legislative Status

01/20/2006 INTRODUCED.

01/20/2006 To SENATE Committee on FINANCE.

02/23/2006 Amended in SENATE Committee on FINANCE.

03/10/2006 Amended in SENATE Committee on FINANCE.

03/13/2006 From SENATE Committee on FINANCE.

03/13/2006 Passed SENATE. *****To ASSEMBLY.

03/14/2006 To ASSEMBLY Committee on WAYS AND MEANS.

03/21/2006 Recalled from ASSEMBLY. *****Returned to SENATE.

03/22/2006 To SENATE Committee on FINANCE.

03/28/2006 Amended in SENATE Committee on FINANCE.

03/29/2006 From SENATE Committee on FINANCE.

03/31/2006 Passed SENATE. *****To ASSEMBLY.

03/31/2006 To ASSEMBLY Committee on WAYS AND MEANS.

03/31/2006 From ASSEMBLY Committee on WAYS AND MEANS.

03/31/2006 Substituted for A 9560.

03/31/2006 Passed ASSEMBLY.

03/31/2006 *****To GOVERNOR.

04/12/2006 Vetoed by GOVERNOR. Veto No. 208 of 2006.

04/26/2006 GOVERNOR'S veto overridden by SENATE.

04/26/2006 GOVERNOR'S veto overridden by ASSEMBLY.

06/06/2006 Chapter No. 62

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session: New York 229th Annual Legislative Session

cite: 2005 NY S 6460

Enacted - Veto Override

April 26, 2006

Office of the Governor

STATE OF NEW YORK

S. 6460--C

Cal. No. 502

SENATE - ASSEMBLY

January 20, 2006

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, recommitted to the committee on Finance, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to creating an empire state child credit (Part A); to amend the real property tax law and the tax law, in relation to providing for a STAR tax rebate (Part B); to amend the tax law, in relation to eliminating the marriage penalty in the personal income tax (Part C); to amend the tax law, in relation to the subtraction from adjusted gross income for members of the New York state organized militia serving pursuant to active duty orders issued by the federal government (Part D); to amend the tax law, in relation to the taxation of premiums from annuity contracts (Part E); to amend the tax law, in relation to providing a tax credit for real property taxes on land covered by certain conservation easements (Part F); to amend the tax law, in relation to brownfield redevelopment tax credits (Part G); to amend the tax law, in relation to the sales tax vendor credit authorized under article 28 (Part H); to amend chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to amend the tax law, in relation to permitting certain banking corporations otherwise subject to tax under article 32 of the tax law to make an election to be taxed under article 9-A of such law; and to amend the administrative code of the city of New York, in relation to permitting certain banking corporations otherwise subject to tax under subchapter 3 of chapter 6 of title 11 of the administrative code of the city of New York to be taxed under subchapter 2 of such code (Part I); to amend the tax law and the administrative code of the city of New York, in relation to extending the tax rate reduction under the New York state real estate transfer tax and the New York city real property transfer tax for conveyances of real property to existing real estate investment trusts (Part J); to amend the tax law, in relation to the acreage and income limits applicable to the school tax credit on qualified agricultural land (Part K); to amend the tax law, in relation to certification of registration to collect sales and compensating use taxes by certain contractors, affiliates and subcontractors (Part L); to amend chapter 218 of the laws of 2004, amending the tax law relating to an exemption from the tax on admission charges with respect to certain places of amusement, in relation to making such law permanent (Part M); to amend the tax law, in relation to the method used by a nonresident and

part-year resident to report New York source income derived from stock option grants, stock appreciation rights and restricted stock (Part N); to amend chapter 714 of the laws of 2004, amending the tax law relating to limiting the credit of tax overpayments to the office of temporary and disability assistance for certain taxpayers, in relation to permanently limiting the credit of tax overpayments to the office of temporary and disability assistance for certain taxpayers (Part O); to amend the public housing law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part P); to amend the multiple dwelling law, in relation to owner obligations; and to amend chapter 349 of the laws of 1982 amending the multiple dwelling law relating to legalization of interim multiple dwellings in cities over one million, in relation to the effectiveness thereof (Part Q); to amend chapter 405 of the laws of 1999 amending the real property tax law relating to improving the administration of the school tax relief (STAR) program, in relation to the lottery game of Quick Draw (Part R); to amend the tax law, in relation to permanently eliminating the article twenty-two tax equivalent in the computation of the tax imposed on a New York S corporation (Part S); to amend the abandoned property law, in relation to the reporting of security related property; and to amend the abandoned property law, in relation to uncashed travelers checks, money orders and negotiable instruments (Part T); to amend the tax law, in relation to establishing a volunteer firefighters' and ambulance workers' property tax credit (Part U); to amend the tax law, in relation to the empire state commercial production tax credit; and providing for the repeal of such provisions upon expiration thereof (Part V); to amend the real property tax law, in relation to authorizing pilot relation to providing tax credits for biofuel production plants (Part X); to amend chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, in relation to extending the effectiveness of such credit and to increasing the annual aggregate amount of such credit available; and to amend the tax law, in relation to film and television production tax credits (Part Y); to amend the state finance law, in relation to the use of the dedicated highway and bridge trust fund and to repeal subdivision 7 of section 89-b of the state finance law relating thereto (Part Z); and to amend the tax law, in relation to the qualified empire zone enterprise credit for real property taxes (Part AA)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2006-2007 state fiscal year. Each component is wholly contained within a Part identified as Parts A through AA. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained with a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

SECTIONS NOT PERTAINING TO THE COMMERCIAL INCENTIVE HAVE BEEN OMITTED.

Section 2. The tax law is amended by adding a new section 28 to read as follows:

Section 28. EMPIRE STATE COMMERCIAL PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. (1) A TAXPAYER WHICH IS A QUALIFIED COMMERCIAL PRODUCTION COMPANY, OR WHICH IS A SOLE PROPRIETOR OF A QUALIFIED COMMERCIAL PRODUCTION COMPANY, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS PROVIDED IN THIS SECTION. PROVIDED, HOWEVER, TO BE ELIGIBLE FOR SUCH CREDIT, AT LEAST SEVENTY-FIVE PERCENT OF THE PRODUCTION COSTS (EXCLUDING POST PRODUCTION COSTS) PAID OR INCURRED DIRECTLY AND PREDOMINANTLY IN THE ACTUAL FILMING OR RECORDING OF THE QUALIFIED COMMERCIAL MUST BE QUALIFIED PRODUCTION COSTS.

(2) THE STATE HAS ANNUALLY SEVEN MILLION DOLLARS IN TOTAL TAX CREDITS TO

DISBURSE TO ALL ELIGIBLE COMMERCIAL PRODUCTION COMPANIES. THE SEVEN MILLION DOLLARS IN TOTAL TAX CREDITS SHALL BE ALLOCATED ACCORDING TO SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH:

(I) THE STATE ANNUALLY WILL DISBURSE THREE MILLION OF THE TOTAL SEVEN MILLION IN TAX CREDITS TO ALL ELIGIBLE PRODUCTION COMPANIES AND 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 TWENTY PERCENT OF THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED COMMERCIAL, PROVIDED THAT THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED WHICH ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED COMMERCIAL. TO BE ELIGIBLE FOR SAID CREDIT THE TOTAL QUALIFIED PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST BE GREATER IN THE AGGREGATE DURING THE CURRENT CALENDAR YEAR THAN THE PRECEDING CALENDAR YEAR. THE TAX CREDIT SHALL BE APPLIED ONLY TO THE AMOUNT OF THE TOTAL QUALIFIED PRODUCTION COSTS OF THE CURRENT CALENDAR YEAR THAT ARE GREATER THAN THE TOTAL AMOUNT OF PRODUCTION COSTS OF THE PRECEDING CALENDAR YEAR. THE TAX CREDIT MUST BE DISTRIBUTED TO ELIGIBLE PRODUCTION COMPANIES ON A PRO RATA BASIS, PROVIDED, HOWEVER, THAT NO SUCH QUALIFIED PRODUCTION COMPANY SHALL RECEIVE MORE THAN THREE HUNDRED THOUSAND DOLLARS ANNUALLY FOR SUCH CREDIT. THE CREDIT SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH THE PRODUCTION OF SUCH QUALIFIED COMMERCIAL IS COMPLETED.

(II) THE STATE ANNUALLY WILL DISBURSE THREE MILLION OF THE TOTAL SEVEN MILLION IN TAX CREDITS TO ALL ELIGIBLE PRODUCTION COMPANIES WHOSE PRINCIPAL PLACE OF BUSINESS IS LOCATED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW. 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 FIVE PERCENT OF THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED COMMERCIAL, PROVIDED THAT THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED WHICH ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED COMMERCIAL. TO BE ELIGIBLE FOR SAID CREDIT THE TOTAL QUALIFIED PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST BE GREATER THAN FIVE HUNDRED THOUSAND DOLLARS IN THE AGGREGATE DURING THE CALENDAR YEAR.

(III) THE STATE ANNUALLY WILL DISBURSE ONE MILLION OF THE TOTAL SEVEN MILLION IN TAX CREDITS TO ALL ELIGIBLE PRODUCTION COMPANIES WHOSE PRINCIPAL PLACE OF BUSINESS IS OUTSIDE OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW. 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 FIVE PERCENT OF THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED IN THE PRODUCTION OF A QUALIFIED COMMERCIAL, PROVIDED THAT THE QUALIFIED PRODUCTION COSTS PAID OR INCURRED WHICH ARE ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES WITHIN THE STATE IN THE PRODUCTION OF SUCH QUALIFIED COMMERCIAL. TO BE ELIGIBLE FOR SAID CREDIT THE TOTAL QUALIFIED PRODUCTION COSTS OF A QUALIFIED PRODUCTION COMPANY MUST BE GREATER THAN TWO HUNDRED THOUSAND DOLLARS IN THE AGGREGATE DURING THE CALENDAR YEAR.

(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.

NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION TO THE CONTRARY, A CORPORATION OR PARTNERSHIP, WHICH OTHERWISE QUALIFIES AS A QUALIFIED COMMERCIAL PRODUCTION COMPANY, AND IS SIMILAR IN OPERATION AND IN OWNERSHIP TO A BUSINESS ENTITY OR ENTITIES TAXABLE, OR PREVIOUSLY TAXABLE, UNDER SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR OR ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE; ARTICLE NINE-A, ARTICLE THIRTY-TWO OR THIRTY-THREE OF THIS CHAPTER OR WHICH WOULD HAVE BEEN SUBJECT TO TAX UNDER ARTICLE TWENTY-THREE OF THIS CHAPTER (AS SUCH ARTICLE WAS IN EFFECT ON JANUARY FIRST, NINETEEN HUNDRED EIGHTY) OR THE INCOME OR LOSSES OF WHICH IS OR WAS INCLUDABLE UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER SHALL NOT BE DEEMED A NEW OR SEPARATE BUSINESS, AND THEREFORE SHALL NOT BE ELIGIBLE FOR EMPIRE STATE COMMERCIAL PRODUCTION BENEFITS, IF IT WAS NOT FORMED FOR A VALID BUSINESS PURPOSE, AS SUCH TERM IS DEFINED IN CLAUSE (D) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER AND WAS FORMED SOLELY TO GAIN EMPIRE STATE COMMERCIAL PRODUCTION CREDIT BENEFITS.

(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 COMMERCIAL.

(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 COMMERCIAL. "PRODUCTION COSTS" SHALL NOT INCLUDE (I) COSTS FOR A STORY, SCRIPT OR SCENARIO TO BE USED FOR A QUALIFIED COMMERCIAL 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 WHO ARE EMPLOYED BY A QUALIFIED COMPANY AND MUSICIANS) . "PRODUCTION COSTS" GENERALLY INCLUDE TECHNICAL AND CREW PRODUCTION COSTS, SUCH AS EXPENDITURES FOR COMMERCIAL PRODUCTION FACILITIES AND/OR LOCATION COSTS, OR ANY PART THEREOF, FILM, AUDIOTAPE, VIDEOTAPE OR DIGITAL MEDIUM, PROPS, MAKEUP, WARDROBE, COMMERCIAL PROCESSING, CAMERA, SOUND RECORDING, SCORING, SET CONSTRUCTION, LIGHTING, SHOOTING, EDITING AND MEALS.

(3) "QUALIFIED COMMERCIAL" MEANS AN ADVERTISEMENT THAT IS RECORDED ON FILM, AUDIOTAPE, VIDEOTAPE OR DIGITAL MEDIUM IN NEW YORK FOR MULTI-MARKET DISTRIBUTION BY WAY OF RADIO, TELEVISION NETWORKS, CABLE, SATELLITE OR MOTION PICTURE THEATERS. "QUALIFIED COMMERCIAL" SHALL NOT INCLUDE (I) NEWS OR CURRENT AFFAIRS PROGRAM, INTERVIEW OR TALK PROGRAM, NETWORK PROMOS, I.E., COMMERCIALS PROMOTING TELEVISION SERIES OR MOVIES, "HOWTO" (I.E., INSTRUCTIONAL) COMMERCIAL OR PROGRAM, COMMERCIAL OR PROGRAM CONSISTING ENTIRELY OF STOCK FOOTAGE, TRAILERS PROMOTING THEATRICAL FILMS, SPORTING EVENT OR SPORTING PROGRAM, GAME SHOW, AWARD CEREMONY, DAYTIME DRAMA (I.E., DAYTIME "SOAP OPERA"), 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, COMMERCIALS, ETC. WITH RESPECT TO SEXUALLY EXPLICIT CONDUCT).

(4) "QUALIFIED COMMERCIAL 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 COMMERCIAL AND CONTROLS THE PRODUCTION OF THE QUALIFIED COMMERCIAL AND IS NOT THE DISTRIBUTOR OR CONTRACTING ENTITY FOR PRODUCTION OF SUCH COMMERCIAL.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISION OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 38.

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

Section 3. Section 210 of the tax law is amended by adding a new subdivision 38 to read as follows:

38. EMPIRE STATE COMMERCIAL PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS ELIGIBLE PURSUANT TO PROVISIONS OF SECTION TWENTY-EIGHT OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION 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 ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND 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 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 ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

Section 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as separately amended by chapters 446 and 537 of the laws of 2005, is amended to read as follows:

EMPIRE STATE COMMERCIAL PRODUCTION AMOUNT OF CREDIT FOR QUALIFIED CREDIT UNDER SUBSECTION (JJ) PRODUCTION COSTS IN PRODUCTION OF A QUALIFIED COMMERCIAL UNDER SUBDIVISION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN

Section 5. Section 606 of the tax law is amended by adding a new subsection (jj) to read as follows:

SECTIONS NOT PERTAINING TO THE COMMERCIAL INCENTIVE HAVE BEEN OMITTED.

(JJ) EMPIRE STATE COMMERCIAL PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS ELIGIBLE PURSUANT TO THE PROVISIONS OF SECTION TWENTY-EIGHT OF THIS CHAPTER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH SECTION 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 INTERESTS 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 6. Section 1201-a of the tax law is amended by adding a new subdivision (c) to read as follows:

(C) EMPIRE STATE COMMERCIAL 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 THE PROVISIONS OF SECTION TWENTY-EIGHT 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-EIGHT 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-EIGHT OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

Section 7. Section 1310 of the tax law is amended by adding a new subsection (g) to read as follows:

(G) EMPIRE STATE COMMERCIAL 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 THE PROVISIONS OF SECTION TWENTY-EIGHT 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-EIGHT 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 (JJ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER.

Section 8. Maximum amount of credits. (a) The aggregate amount of tax credits allowed under subparagraph (i) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be \$3 million. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers on a pro rata basis. Such office shall establish by rules and regulations a date certain on which the taxpayers eligible for such pro rata allocation shall be determined.

(b) The aggregate amount of tax credits allowed under subparagraph (ii) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be \$3 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 commercial 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 aggregate amount of tax credits allowed under subparagraph (iii) of paragraph 2 of subdivision (a) of section 28, subdivision 38 of section 210 and subsection (jj) of section 606 of the tax law in any calendar year shall be \$1 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 commercial 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.

(d) The aggregate amount of tax credits allowed pursuant to the authority of subdivision (c) of section 1201-a of the tax law in any calendar year shall be not in excess of \$3.5 million for 2006 through 2009. 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.

(e) 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, 2006 to establish procedures for the allocation of tax credits as required by subdivisions (a), (b) and (c) 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 are 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, 2006 deadline.

Section 9. 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 commercial production tax credit provided by this act in stimulating the growth of the commercial production industry in the state. Such report shall include, but not be limited to, in total, the number of qualified commercials, the qualified production costs, the production costs, and the credit amounts claimed by each qualified commercial production company, as well as the impact on employment and the economy of the state 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 commercial 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 such commissioner regarding continuing modification, or repeal of this act, and such other information regarding this act as such commissioner may feel useful and appropriate.

Section 10. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2007 and shall expire and be deemed repealed on December 31, 2011; provided, however that the **IMB** credit for energy taxes under subsection (t-1) and the state film production credit under subsection (gg) of section 606 of the tax law contained in section four 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, as amended and section 9 of part P of chapter 60 of the laws of 2004, as amended, respectively.

SECTIONS NOT PERTAINING TO THE COMMERCIAL INCENTIVE HAVE BEEN OMITTED.

Section 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through AA of this act shall be as specifically set forth in the last section of such Parts.