

Alert | State & Local Tax (SALT)



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New York Provides Tax Credit for Video Game Production

To help offset some production costs associated with producing digital games in New York state, the Department of Economic Development on Aug. 10 issued an **emergency regulation** (at page 9) providing the procedures to claim the 25% Digital Gaming Media Production Tax Credit. This credit is not automatic and must be approved by an application process. Qualified gaming development companies are defined as those who develop “video simulation, animation, text, audio, graphics or similar gaming related property embodied in digital format.” There are 22 states with some form of tax credit for producing video games.

To qualify for the tax credit, the entity must be engaged in a qualified digital gaming media production and must have a minimum of \$100,000 in total production costs. In addition, the applicant must incur and pay a minimum of 75% of the total production costs for work performed and/or services rendered in New York state. Up to \$4 million of qualified costs per project may be used in calculating the credit, which will apply to gaming projects beginning on or after Jan. 1, 2023. Wages and salaries for employees directly involved in a digital game’s production, including for design, editing, and production, will also qualify as eligible expenses.

The credit is 25% for digital gaming development companies on eligible production costs, with an additional 10% credit for qualifying production costs incurred and paid outside the New York City metropolitan commuter transportation district, which includes all five boroughs of New York City and Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester counties. The amount available

for the credit for the industry is capped at \$5 million per year and is scheduled to run from Jan. 1, 2023, to Dec. 31, 2027, making \$25 million the total available for the five-year life of the program. The regulation also provides that no single taxpayer may receive more than \$1.5 million in tax credits per year and that costs eligible for the credit may not include those costs the taxpayer or another taxpayer uses as the basis calculation of any other tax credit allowed under the Tax Law.

There is a two-part application process. An initial application must be filed before any costs are incurred and no more than 90 days prior to the start of the digital media production. The regulations include criteria for evaluating the applications and the approval or denial of the tax credit; there also is a requirement for a diversity plan and diversity report. Upon completion of the project, a final application must be filed and if approved, a certificate of tax credit will be issued; if denied, the applicant can appeal.

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