



Stephen Estelle

Bill Analysis
Legislative Service Commission

H.B. 196

127th General Assembly
(As Introduced)

Reps. Patton and Combs, Collier, DeGeeter, Stebelton, Budish, Miller, Skindell

BILL SUMMARY

- Authorizes a nonrefundable, transferable income tax credit for individuals and pass-through entity owners who invest money in a motion picture production certified by the Director of Development as a tax-credit eligible production.
- Allows a credit amount equal to a graduated percentage of investments greater than \$300,000, adjusted for the fraction of total production expenditures spent in Ohio.
- Requires an independent audit of production expenditures to verify allowable credit amounts.
- Authorizes the Director of Development to disallow expenditures that are used as the basis of credits.
- Requires production companies (or an affiliate) to indemnify the state for disallowed credits.

CONTENT AND OPERATION

Tax credit

(R.C. 122.85, 5747.66, and 5747.98)

The bill authorizes a nonrefundable income tax credit for an individual who invests money in a motion picture production certified by the Director of Development as a tax credit-eligible production. The credit is available to individuals who invest directly or who invest indirectly through a pass-through entity owned by the individual. The amount of the credit depends on the amount

of the investor's "base investment." The base investment equals the amount invested multiplied by the percentage of the total production budget spent by the motion picture production company on "eligible production expenditures." Eligible production expenditures are expenditures made in Ohio directly for the production.

No credit is allowed for a base investment of \$300,000 or less. For base investments greater than \$300,000 but not more than \$8 million, the credit equals 25% of the base investment; for investments greater than \$8 million but not more than \$100 million, the credit equals \$2 million plus 15% of the base investment in excess of \$8 million; and for base investments greater than \$100 million, the credit equals \$15.8 million plus 5% of the base investment in excess of \$100 million. If the investor is a pass-through entity, the entity may allocate the credit among its equity holders in any proportion or manner provided in the instrument governing the entity, and not necessarily in the manner that the entity's income or loss must be allocated under federal tax law.

The credit is nonrefundable, but if it exceeds the income tax otherwise due for the first year it is claimed, the excess may be carried forward for up to ten additional years.

Because the credit is transferable (see "*Transfer of credit*"), the taxpayer claiming the credit must be a "certificate owner" (i.e., must own the credit) on the last day of the taxpayer's taxable year for which the taxpayer must claim the credit. If the certificate owner is the investor, the credit must be claimed for the investor's taxable year that includes the day the investment was made. If the certificate owner is a person other than the investor (such as a credit transferee or an equity holder in a pass-through entity), the credit must be claimed for the certificate owner's taxable year that includes the last day of the investor's taxable year in which the investment was made. A credit may not be claimed unless the certificate owner holds a statement, issued by the transfer agent (see "*Transfer of credit*"), certifying the credit amount and the certificate owner's identify.

Tax credit certificate

(R.C. 122.85(D) and (E))

To receive a credit once an investment in a tax credit-eligible production is made, the investor must submit an application and any required information or documentation to the Director of Development. The Director is required to prescribe the form and manner in which applications for a credit certificate shall be made. The Director must determine the investor's base investment and issue to the investor a tax credit certificate, which identifies the base investment and credit amount and is marked with a unique identifying number assigned by the Director.

The Director must record the certificate in a register devised and maintained by the Director.

If the certificate owner is a pass-through entity, the entity must notify the transfer agent, discussed immediately below, of each equity holder's allocated share of the credit. The equity holders become the certificate owners of their respective shares.

Transfer of credit

(R.C. 122.85(F) and (G))

An investor may transfer all or part of the credit amount stated on the credit certificate. Any subsequent certificate owner also may transfer all or part of the credit represented by the certificate. All transfers must be made in accordance with rules prescribed by the Director of Development. The rules must require a certificate owner, upon transfer, to provide to the transfer agent the transferee's name, the certificate identification number, and the credit amount transferred. The transfer agent must be either the motion picture production company or a company designated by the production company. It must keep a record of credit certificate owners and credit amounts. Upon request by the certificate owner, the transfer agent must issue the statement certifying the certificate owner's identity and the credit amount. A certificate owner to whom a certificate has been transferred must obtain the statement before claiming the credit. When the transfer agent issues this certification, it must also provide a statement to the Tax Commissioner, in a form prescribed by the Commissioner, identifying the certificate owner and the credit amount.

Tax credit-eligible motion picture productions

Eligible productions

(R.C. 122.85(A) and (B))

The Director of Development may issue a tax credit certificate only for an investment in a motion picture production certified by the Director as a tax credit-eligible production. To be certified as a tax credit-eligible production, the production must be a nationally distributed feature-length film, video, television series, or commercial made in Ohio, in whole or in part, for theatrical or television viewing, or as a television pilot, produced by a production company incorporated in Ohio or domiciled and headquartered in Ohio. In addition, the production company and an affiliate must agree to indemnify the state in an amount and form acceptable to the Director (see "Indemnification of state"). If the Director

determines the affiliate is not financially capable of indemnifying the state, the Director may not certify the production.

The Director may certify multiple commercial or video productions as a single tax credit-eligible production if the Director determines that the productions are related parts of a distinct advertising, promotional, informational, or entertainment series or undertaking. Not eligible for certification are productions of television coverage of news or sporting events and productions produced by a motion picture company owned, affiliated, or controlled, in whole or in part, by a company or person in default on a loan made or guaranteed by the state.

Application for certification

(R.C. 122.85(C))

The motion picture company must apply for certification of the production on a form and in a manner prescribed by the Director. The application must include, at a minimum, all of the following information:

- (1) The name and telephone number of the motion picture production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the first preproduction date through the last production date in Ohio;
- (4) The Ohio production office address and telephone number;
- (5) The total production budget;
- (6) The amount expended in Ohio by the company directly for the production and the percentage that amount is of the total production budget;
- (7) The total percentage of the motion picture being shot in Ohio;
- (8) The level of employment of cast and crew who reside in Ohio;
- (9) A synopsis of the script;
- (10) A creative elements list that includes the names of the principal cast and crew, and the producer and director;
- (11) The motion picture's distribution plan, including domestic and international distribution, and the sales estimates for the picture.

Indemnification of state

(R.C. 122.85(B))

For a production to be certified as a tax credit-eligible production, the production company and an affiliate must agree to indemnify the state for tax credits allowed and claimed that are later determined to be greater than allowed. (See "**Eligible production expenditures**.") As explained above, the credit amount depends on the amount of the base investment, and the base investment amount depends on eligible production expenditures as a percentage of the total production budget. Because the investment will be made and the credit will be granted before the production is completed, at the time the credit amount is determined, not all expenditures will necessarily have been made. Thus, it is likely that not all eligible production expenditures will have been made. As a result, the total amount of eligible production expenditures must be estimated. If the eligible production expenditures are over-estimated, the base investment also will be over-estimated, and the credit amount allowed will have been too great.¹ The indemnification obligates the production company or affiliate, instead of the individual claiming the credit, to repay the state for any excess credit claimed on the basis of over-estimated investment.

Eligible production expenditures

(R.C. 122.85(H) and (I))

CPA certification

To determine whether an excess tax credit has been received on the basis of over-estimated eligible production expenditures, the bill requires the production company to hire, at its own expense, an independent certified public accountant. The CPA must examine the company's production expenditures to determine those that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and must provide any additional information required by the Director.

¹ The bill does not define "total production budget," the denominator in the base investment formula. As a result, it is not clear whether "total production budget" means total budgeted expenses or total actual expenses. If total actual expenses greatly exceed budgeted expenses, the resolution of that issue would significantly affect the amount by which credits were over-allowed.

Disallowance of expenditures

Upon receipt of the report, the Director may disallow any expenditure the Director determines is not an eligible production expenditure. The Director must issue a written notice to the production company within 30 days after receiving the accountant's report indicating any disallowed expenditure, the reason for the disallowance, and the manner in which the production company may appeal. If the Director does not issue the written notice within the time prescribed, the eligible production expenditures indicated in the accountant's report are conclusively determined to be the actual eligible production expenditures for the purpose of determining actual base investment amounts, the related credit amounts that should have been allowed, and the amount of any indemnification owed to the state by the production company or its affiliate.

Appeal

A production company may appeal the Director's disallowance of expenditures by filing a notice of appeal with the Director within 30 days after the Director issues the written notice. A hearing must be held at which the production company may produce evidence and testimony regarding the disallowed expenditures. Within 30 days after conclusion of the hearing, the Director may revise or affirm the initial notice of disallowance and issue a final notice to the production company stating the revision or affirmation. The Director's final notice may not be appealed.

After the issuance of the final notice, or upon the Director's failure to timely disallow expenditures, a credit may not be disallowed if it is later determined not to qualify as an eligible production expenditure.

Administrative rules

(R.C. 122.85(K))

The Director of Development is required to adopt rules for the administration of the tax credit. The Director is required to consult with the Tax Commissioner when developing rules governing the criteria for determining whether a motion picture production is a tax credit-eligible production.

Use of state's name in credits

(R.C. 122.85(J))

The state reserves the right to refuse the use of the state's name in the credits of any tax credit-eligible motion picture production.

HISTORY

ACTION

DATE

Introduced

05-03-07

h0196-i-127.doc/kl

