

As Passed by the Senate

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S. B. No. 331

Senator Patton

**Cosponsors: Senators LaRose, Schaffer, Beagle, Bacon, Balderson, Eklund,
Hite, Hughes, Jones, Kearney, Manning, Obhof, Oelslager, Schiavoni, Turner,
Widener**

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A B I L L

To amend section 122.85 of the Revised Code to 1
increase the maximum total amount of tax credits 2
allowed per year for completion of motion pictures 3
certified as tax credit-eligible productions. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 122.85 of the Revised Code be amended 5
to read as follows: 6

Sec. 122.85. (A) As used in this section and in sections 7
5733.59 and 5747.66 of the Revised Code: 8

(1) "Tax credit-eligible production" means a motion picture 9
production certified by the director of development under division 10
(B) of this section as qualifying the motion picture company for a 11
tax credit under section 5733.59 or 5747.66 of the Revised Code. 12

(2) "Certificate owner" means a motion picture company to 13
which a tax credit certificate is issued. 14

(3) "Motion picture company" means an individual, 15
corporation, partnership, limited liability company, or other form 16

of business association producing a motion picture. 17

(4) "Eligible production expenditures" means expenditures 18
made after June 30, 2009, for goods or services purchased and 19
consumed in this state by a motion picture company directly for 20
the production of a tax credit-eligible production. 21

"Eligible production expenditures" includes, but is not 22
limited to, expenditures for resident and nonresident cast and 23
crew wages, accommodations, costs of set construction and 24
operations, editing and related services, photography, sound 25
synchronization, lighting, wardrobe, makeup and accessories, film 26
processing, transfer, sound mixing, special and visual effects, 27
music, location fees, and the purchase or rental of facilities and 28
equipment. 29

(5) "Motion picture" means entertainment content created in 30
whole or in part within this state for distribution or exhibition 31
to the general public, including, but not limited to, 32
feature-length films; documentaries; long-form, specials, 33
miniseries, series, and interstitial television programming; 34
interactive web sites; sound recordings; videos; music videos; 35
interactive television; interactive games; ~~videogames~~ video games; 36
commercials; any format of digital media; and any trailer, pilot, 37
video teaser, or demo created primarily to stimulate the sale, 38
marketing, promotion, or exploitation of future investment in 39
either a product or a motion picture by any means and media in any 40
digital media format, film, or videotape, provided the motion 41
picture qualifies as a motion picture. "Motion picture" does not 42
include any television program created primarily as news, weather, 43
or financial market reports, a production featuring current events 44
or sporting events, an awards show or other gala event, a 45
production whose sole purpose is fundraising, a long-form 46
production that primarily markets a product or service or in-house 47
corporate advertising or other similar productions, a production 48

for purposes of political advocacy, or any production for which 49
records are required to be maintained under 18 U.S.C. 2257 with 50
respect to sexually explicit content. 51

(B) For the purpose of encouraging and developing a strong 52
film industry in this state, the director of development may 53
certify a motion picture produced by a motion picture company as a 54
tax credit-eligible production. In the case of a television 55
series, the director may certify the production of each episode of 56
the series as a separate tax credit-eligible production. A motion 57
picture company shall apply for certification of a motion picture 58
as a tax credit-eligible production on a form and in the manner 59
prescribed by the director. Each application shall include the 60
following information: 61

(1) The name and telephone number of the motion picture 62
production company; 63

(2) The name and telephone number of the company's contact 64
person; 65

(3) A list of the first preproduction date through the last 66
production date in Ohio; 67

(4) The Ohio production office address and telephone number; 68

(5) The total production budget of the motion picture; 69

(6) The total budgeted eligible production expenditures and 70
the percentage that amount is of the total production budget of 71
the motion picture; 72

(7) The total percentage of the motion picture being shot in 73
Ohio; 74

(8) The level of employment of cast and crew who reside in 75
Ohio; 76

(9) A synopsis of the script; 77

(10) The shooting script; 78

(11) A creative elements list that includes the names of the principal cast and crew and the producer and director;

(12) Documentation of financial ability to undertake and complete the motion picture;

(13) Estimated value of the tax credit based upon total budgeted eligible production expenditures;

(14) Any other information considered necessary by the director.

Within ninety days after certification of a motion picture as a tax credit-eligible production, and any time thereafter upon the director's request, the motion picture company shall present to the director of development sufficient evidence of reviewable progress. If the motion picture company fails to present sufficient evidence, the director of development may rescind the certification. Upon rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification.

(C)(1) A motion picture company whose motion picture has been certified as a tax credit-eligible production may apply to the director of development on or after July 1, 2009, for a refundable credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code. The director in consultation with the tax commissioner shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application.

The credit is determined as follows:

(a) If the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures as finally

determined under division (D) of this section, whichever is least, 110
is less than or equal to three hundred thousand dollars, no credit 111
is allowed; 112

(b) If the total budgeted eligible production expenditures 113
stated in the application submitted under division (B) of this 114
section or the actual eligible production expenditures as finally 115
determined under division (D) of this section, whichever is least, 116
is greater than three hundred thousand dollars, the credit equals 117
the sum of the following, subject to the limitation in division 118
(C)(4) of this section: 119

(i) Twenty-five per cent of the least of such budgeted or 120
actual eligible expenditure amounts excluding budgeted or actual 121
eligible expenditures for resident cast and crew wages; 122

(ii) Thirty-five per cent of budgeted or actual eligible 123
expenditures for resident cast and crew wages. 124

(2) Except as provided in division (C)(4) of this section, if 125
the director of development approves a motion picture company's 126
application for a credit, the director shall issue a tax credit 127
certificate to the company. The director in consultation with the 128
tax commissioner shall prescribe the form and manner of issuing 129
certificates. The director shall assign a unique identifying 130
number to each tax credit certificate and shall record the 131
certificate in a register devised and maintained by the director 132
for that purpose. The certificate shall state the amount of the 133
eligible production expenditures on which the credit is based and 134
the amount of the credit. Upon the issuance of a certificate, the 135
director shall certify to the tax commissioner the name of the 136
applicant, the amount of eligible production expenditures shown on 137
the certificate, and any other information required by the rules 138
adopted to administer this section. 139

(3) The amount of eligible production expenditures for which 140

a tax credit may be claimed is subject to inspection and 141
examination by the tax commissioner or employees of the 142
commissioner under section 5703.19 of the Revised Code and any 143
other applicable law. Once the eligible production expenditures 144
are finally determined under section 5703.19 of the Revised Code 145
and division (D) of this section, the credit amount is not subject 146
to adjustment unless the director determines an error was 147
committed in the computation of the credit amount. 148

(4) No tax credit certificate may be issued before the 149
completion of the tax credit-eligible production. ~~For the fiscal~~ 150
~~biennium beginning July 1, 2009, and ending June 30, 2011, not~~ 151
~~more than thirty million dollars of tax credit may be allowed, of~~ 152
~~which not more than ten million dollars of tax credit may be~~ 153
~~allowed in the first year of the biennium. In succeeding fiscal~~ 154
~~biennia, not~~ Not more than ~~twenty~~ forty million dollars of tax 155
credit may be allowed per fiscal biennium beginning on or after 156
July 1, 2011, and not more than ~~ten~~ twenty million dollars may be 157
allowed in the first year of the biennium. At any time, not more 158
than five million dollars of tax credit may be allowed per tax 159
credit-eligible production. 160

(D) A motion picture company whose motion picture has been 161
certified as a tax credit-eligible production shall engage, at the 162
company's expense, an independent certified public accountant to 163
examine the company's production expenditures to identify the 164
expenditures that qualify as eligible production expenditures. The 165
certified public accountant shall issue a report to the company 166
and to the director of development certifying the company's 167
eligible production expenditures and any other information 168
required by the director. Upon receiving and examining the report, 169
the director may disallow any expenditure the director determines 170
is not an eligible production expenditure. If the director 171
disallows an expenditure, the director shall issue a written 172

notice to the motion picture production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine finally the lesser of the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures for the purpose of computing the amount of the credit.

(E) No credit shall be allowed under section 5733.59 or 5747.66 of the Revised Code unless the director has reviewed the report and made the determination prescribed by division (D) of this section.

(F) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible motion picture production.

(G)(1) The director of development in consultation with the tax commissioner shall adopt rules for the administration of this section, including rules setting forth and governing the criteria for determining whether a motion picture production is a tax credit-eligible production; activities that constitute the production of a motion picture; reporting sufficient evidence of reviewable progress; expenditures that qualify as eligible production expenditures; a competitive process for approving credits; and consideration of geographic distribution of credits. The rules shall be adopted under Chapter 119. of the Revised Code.

(2) The director may require a reasonable application fee to cover administrative costs of the tax credit program. The fees collected shall be credited to the motion picture tax credit program operating fund, which is hereby created in the state treasury. The motion picture tax credit program operating fund shall consist of all grants, gifts, fees, and contributions made to the director of development for marketing and promotion of the

motion picture industry within this state. The director of 205
development shall use money in the fund to pay expenses related to 206
the administration of the Ohio film office and the credit 207
authorized by this section and sections 5733.59 and 5747.66 of the 208
Revised Code. 209

Section 2. That existing section 122.85 of the Revised Code 210
is hereby repealed. 211