



Stephen Estelle

Final Analysis
Legislative Service Commission

Sub. H.B. 196

127th General Assembly
(As Passed by the General Assembly)

Reps. Patton and Combs, Collier, Stebelton, Gibbs, J. Hagan, Schindel, Mecklenborg, Dolan, Aslanides, Bacon, Batchelder, Coley, Evans, Grady, Huffman, Hughes, Schneider, Uecker, Webster

Sens. Amstutz, Grendell, Harris, Coughlin

Vetoed: January 6, 2009

ACT SUMMARY

- Would have authorized 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 before 2014.
- Would have allowed a credit equal to 25% of investments greater than \$300,000, adjusted for the fraction of total production expenditures budgeted to be spent in Ohio.
- Would have limited the amount of credit certificates that may be issued to \$100 million per year and \$25 million per production.
- Would have required an independent audit of production expenditures to verify Ohio expenditures.
- Would have authorized the Director of Development to disallow expenditures certified as Ohio expenditures by the independent auditor.
- Would have required the Director of Development to recalculate credits using actual expenditure amounts.
- Would have required production companies (or an affiliate) to reimburse the state for excess credits allowed and claimed.

CONTENT AND OPERATION

Tax credit

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

The act would have authorized 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 certification was required to be made in or after 2009, but before 2014. The credit was available to individuals who invested directly or who invested indirectly through a pass-through entity owned by the individual. The amount of the credit depended on the amount of the investor's "base investment." The base investment was the amount invested multiplied by the percentage of the total budgeted expenditures anticipated to be spent by the motion picture production company on "eligible production expenditures." Eligible production expenditures were expenditures made in or after 2009 for goods or services consumed in Ohio directly for the production.¹

No credit was allowed for an investment of \$300,000 or less. For investments greater than \$300,000, the credit was 25% of the base investment. If the investor is a pass-through entity, the entity was permitted to 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 was nonrefundable, but if it exceeded the income tax otherwise due for the first year it was claimed, the excess was permitted to be carried forward for up to ten additional years.

Because the credit was transferable (see "Transfer of credit"), the taxpayer claiming the credit was required to 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 was the investor, the credit must have been claimed for the investor's taxable year that included the day the investment was made. If the certificate owner was 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 included the last day of the

¹ At the end of the production, base investments would have been recalculated using actual expenditure amounts. Overestimated credits allowed and claimed would have been recaptured from the motion picture production company or an affiliate (see "Reimbursement of state").

investor's taxable year in which the investment was made. A credit was not permitted to be claimed unless the certificate owner held a statement, issued by the transfer agent (see "*Transfer of credit*"), certifying the credit amount and the certificate owner's identity.

Tax credit certificate

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

Under the vetoed act, to receive a credit once an investment in a tax credit-eligible production was made, the investor was required to submit an application and any required information or documentation to the Director of Development. The Director was required to prescribe the form and manner in which applications for a credit certificate were required to be made. The Director was required to determine the investor's base investment based upon budgeted Ohio and budgeted total expenditures and issue to the investor a tax credit certificate, which would have identified the base investment and credit amount and been marked with a unique identifying number assigned by the Director. The Director was required to record the certificate in a register devised and maintained by the Director.

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

Not more than \$100 million in tax credit certificates were permitted to be issued per year, and not more than \$25 million in tax credit certificates were permitted to be issued per tax credit-eligible production.

Transfer of credit

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

Under the vetoed act, an investor could transfer all or part of the credit amount stated on the credit certificate. Any subsequent certificate owner also could transfer all or part of the credit represented by the certificate. All transfers were required to be made in accordance with rules prescribed by the Director of Development. The rules would have required 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 would have to have been either the motion picture production company or a company designated by the production company. It was required to keep a record of credit certificate owners and credit amounts. Upon request by the certificate owner, the transfer agent was required to issue the statement certifying the certificate owner's identity

and the credit amount. A certificate owner to whom a certificate has been transferred was required to obtain the statement before claiming the credit. When the transfer agent issued this certification, it also was required to 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))

Under the vetoed act, the Director of Development was permitted to 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 motion picture must have contained entertainment content created in whole or in part in Ohio. "Motion pictures" include feature-length films, videos, television series, commercials, video games, interactive web sites, and certain other specified productions. In addition, the production company and an affiliate were required to agree to reimburse the state for any excess credit (see "**Reimbursement of state**"). If the Director determined the affiliate was not financially capable of reimbursing the state, the Director could not certify the production.

The Director was permitted to certify multiple commercial or video productions as a single tax credit-eligible production if the Director determined that the productions were related parts of a distinct advertising, promotional, informational, or entertainment series or undertaking. Not eligible for certification were productions of television coverage of news, weather, financial market reports, sports, and award shows. Also excluded were political advocacy productions, fundraising productions, certain sexually explicit productions, 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))

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

- (1) The name, address, 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 scheduled first preproduction date through the scheduled last production date in Ohio;
- (4) The total production budget;
- (5) The amount expended in Ohio by the company directly for the production and the percentage that amount was of the total production budget;
- (6) The total percentage of the motion picture being shot in Ohio;
- (7) The level of employment of cast and crew who reside in Ohio;
- (8) A synopsis of the script;
- (9) A creative elements list that includes the names of the principal cast and crew, and the producer and director.

Reimbursement of state

(R.C. 122.85(B))

Under the vetoed act, for a production to be certified as a tax credit-eligible production, the production company and an affiliate were required to agree to reimburse the state for tax credits allowed and claimed that were later determined to have been overestimated. (See "**Eligible production expenditure verification.**") As explained above, the credit amount depended on the amount of the base investment, and the base investment amount depended on eligible production expenditures as a percentage of the total production budget. Because the investment would have been made and the credit would have been granted before the production was completed, at the time the credit amount was determined, not all expenditures would necessarily have been made. Thus, not all eligible production expenditures would have been made. As a result, the total amount of eligible production expenditures had to be estimated. If the eligible production expenditures were over-estimated, the base investment also would be over-estimated, and the credit amount allowed would have been too great. The reimbursement provision obligated 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 expenditures.

Eligible production expenditure verification

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

CPA certification

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

Disallowance of expenditures

Under the vetoed act, upon receipt of the report, the Director could disallow any expenditure certified by the CPA that the Director determined was not an eligible production expenditure. The Director was required to issue a written notice to the production company, within 30 days after receiving the CPA's report, indicating any disallowed expenditure, the reason for the disallowance, and the manner in which the production company could appeal. If the Director did not issue the written notice within the time prescribed, the eligible production expenditures indicated in the CPA's report were 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 reimbursement owed to the state by the production company or its affiliate.

Appeal

Under the vetoed act, a production company could appeal the Director's disallowance of expenditures by filing a notice of appeal with the Director within 30 days after the Director issued the written notice. A hearing was required to be held at which the production company could produce evidence and testimony regarding the disallowed expenditures. Within 30 days after conclusion of the hearing, the Director could 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 could not be appealed.

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

Administrative rules

(R.C. 122.85(K); Section 3)

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

Use of state's name in credits

(R.C. 122.85(J))

The state reserved 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
Reported, H. Ways & Means	11-25-08
Passed House (50-39)	12-03-08
Reported, S. Ways & Means & Economic Development	12-17-08
Passed Senate (21-11)	12-17-08

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