



Ohio Legislative Service Commission

Bill Analysis

Stephen Estelle

Sub. H.B. 6

128th General Assembly
(As Passed by the House)

Reps. Patten and Schneider, DeGeeter, Garrison, Harris, Heard, Letson, Luckie, Murray, Newcomb, Szollosi, Yuko, Winburn, Chandler, Foley, Koziura, Slesnick, Yates, Book, Boyd, Celeste, DeBose, Domenick, Dyer, Fende, Garland, Goyal, Harwood, Lundy, Mallory, Mandel, Miller, Pryor, Stewart, Sykes, B. Williams, S. Williams

BILL SUMMARY

- Authorizes a refundable, nontransferable credit against the corporation franchise tax or the income tax for motion pictures produced at least partly in Ohio, subject to approval by the Director of Development.
- Credit equals 25% of expenditures for goods and services purchased and consumed in Ohio directly for the production.
- Requires Ohio production expenditures to exceed \$300,000 before a credit is authorized.
- Limits total credits allowed to \$20 million per fiscal biennium (not more than \$10 million of which may be allowed in the first year of a biennium) and \$5 million per production.
- Creates the Motion Picture Tax Credit Program Operating Fund and authorizes fund money to be used for Ohio Film Office expenses and to pay the costs of administering the credit.

CONTENT AND OPERATION

Movie and television production tax credit

(R.C. 122.85, 5733.58, 5733.98, 5747.66, and 5747.98)

The bill authorizes a refundable credit against the corporation franchise tax or the income tax for a motion picture company that produces at least part of a motion

picture in Ohio. The credit may be claimed against the corporation franchise tax even if the corporation is no longer subject to the tax due to the phase-out and cessation of the tax for nonfinancial corporations. To receive the credit, a corporation must file a return as if it were still subject to the tax. The credit is awarded in the manner in which it would be awarded if the tax still applied, except that it is not subtracted from any tax liability.

For purposes of the income tax, pass-through entity allocation is permitted for individuals who own all or part of a motion picture company organized as a pass-through entity.

Credit amount; overall limit

The credit equals 25% of budgeted eligible production expenditures or actual eligible production expenditures, whichever is less. If the lesser of the two does not exceed \$300,000, however, no credit is allowed. Not more than \$20 million in credits may be allowed per fiscal biennium (not more than \$10 million of which may be allowed in the first year of a biennium), and not more than \$5 million in credits may be allowed per production.

Eligible productions and expenditures

"Motion picture" is defined as "entertainment content" created partly or wholly in Ohio for distribution or exhibition to the general public. It includes feature-length films; documentaries; television series, miniseries, and specials; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; videogames; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. It excludes sexually explicit productions for which records must be maintained under 18 U.S.C. 2257 and television news, weather, sports, market reports, award shows and galas, fundraisers, "infomercials," political advertising, and in-house advertising. "Eligible production expenditures" is defined to mean expenditures for goods or services (including payroll) purchased and consumed in Ohio directly for the production. With respect to payroll for nonresident cast and crew, 100% of such payroll counts towards eligible production expenditures for tax-credit eligible productions certified before July 1, 2010. For tax-credit eligible productions certified on or after that date, only 75% of such payroll counts.

Application for production certification and credit certificate

To be eligible to receive a credit, a motion picture company must first apply to the Director of Development for certification of the motion picture as a tax credit-eligible production. The Director determines the manner and form of application. The application must include the following information, among other things:

- (1) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;
- (2) The total production budget;
- (3) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget;
- (4) The total percentage of the motion picture being shot in Ohio;
- (5) The level of employment of cast and crew who reside in Ohio;
- (6) A synopsis of the script and the shooting script;
- (7) A creative elements list that includes the names of the principal cast and crew, and the producer and director;
- (8) The motion picture's distribution plan, including domestic and international distribution, and sales estimates for the picture;
- (9) Documentation of financial ability to undertake and complete the motion picture.

If the Director of Development certifies the motion picture as a tax credit-eligible production, the motion picture company must submit "sufficient evidence of reviewable progress" to the Director within 90 days of the certification, and at any time thereafter upon the Director's request. If the company fails to do so, the Director may rescind the certification. If the Director rescinds a certification, a company is not prohibited from re-applying.

If a motion picture company's production has been certified as a tax-credit eligible production, on or after July 1, 2009, the company may apply for a tax credit certificate. The form and manner of the application are determined by the Director in consultation with the Tax Commissioner.

Examination of expenditures

Before a credit certificate may be issued, the production must have been completed, and the company must hire, at its own expense, an independent certified public accountant (CPA) to determine the production expenditures that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and to the motion picture company, and must provide to the Director any additional information the Director requires.

After receiving the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. If the Director disallows an expenditure, the Director must issue a written notice to the motion picture company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the CPA's report and denial of any eligible production expenditures, the Director must determine, for purposes of computing the credit, the lesser of total budgeted eligible production expenditures as stated in the application for certification, or the actual eligible production expenditures. After making that determination, and so long as the applicable eligible production expenditures amount is greater than \$300,000, the Director must determine the credit amount and issue a tax credit certificate to the motion picture company. The credit amount is not subject to adjustment unless the Director determines an error was made in the computation of the credit amount.

Credit certificate

The credit certificate must contain a unique identifying number and state the credit amount and the amount of the eligible production expenditures on which the credit is based. The certificate information must be recorded in a register maintained by the Director of Development. Upon issuance of a certificate, the Director must certify to the Tax Commissioner the name of the applicant, the amount of eligible production expenditures shown on the certificate, and any other information required under rules adopted to administer the credit program.

Administrative rules

The bill requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules pursuant to Chapter 119. to administer the tax credit program. The rules must address what constitutes a tax credit-eligible production and eligible expenditures, activities that constitute the production of a motion picture, reporting sufficient evidence of reviewable progress, a process for competitive approval of credits, and geographical distribution of credits.

Motion picture tax credit program operating fund

The Director of Development may require applicants for certification and applicants for tax credits to pay a "reasonable" fee to pay administrative costs of the tax credit. Fee proceeds must be credited to the Motion Picture Tax Credit Program Operating Fund, which the bill creates. Fund money may include the fee proceeds, grants, gifts, and contributions, and must be used for administering the tax credit program, for marketing and promoting the motion picture industry in Ohio and funding the Department of Development's Ohio Film Office.

Use of state's name in credits

The bill specifies that the state reserves the right to refuse the use of its name in the credits of any tax credit-eligible production.

HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Ways & Means	03-03-09
Passed House (83-14)	03-03-09

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