Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 6 of the 128th G.A.

Date: February 19, 2009

Status: As Introduced

Sponsor: Reps. Patten and Schneider

Local Impact Statement Procedure Required: Yes

Contents: Authorizes a refundable, nontransferable motion picture tax credit against the income tax and corporate franchise tax

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	Potential loss up to $18.82 million over the FY 2010-FY 2011 biennium	Potential loss up to $18.82 million over the FY 2010-FY 2011 biennium	Potential loss up to $18.82 million over each fiscal biennium
Expenditures	- 0 -	- 0 -	- 0 -
Motion Picture Tax Credit Program Operating Fund (New fund)			
Revenues	Potential gain	Potential gain	Potential gain
Expenditures	Potential increase	Potential increase	Potential increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The refundable tax credit for motion picture production companies may reduce income tax and corporate franchise tax revenue by up to $20 million over the biennium. The GRF would bear 94.1% of any revenue loss.
- The Department of Development would process applications from motion picture companies to certify the tax credits for eligible production expenditures. The Director may require a reasonable application fee to cover administrative costs of the tax credit program.
- The bill establishes the motion picture tax credit program operating fund in the state treasury. The 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.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Local Government Funds (LGF, PLF)			
Revenues	Potential loss up to $1.18 million over the FY 2010-FY 2011 biennium	Potential loss up to $1.18 million over the FY 2010-FY 2011 biennium	Potential loss up to $1.18 million over each fiscal biennium
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The refundable tax credit for motion picture production companies may reduce income tax and corporate franchise tax revenue. The local government fund (LGF) and public library fund (PLF) would bear 3.68% and 2.22%, respectively, of any revenue loss from the proposed tax credit.

Detailed Fiscal Analysis

H.B. 6 creates a refundable tax credit against the personal income tax and the corporate franchise tax. The amount of the tax credit depends on the "eligible production expenditures" made after the effective date of enactment. Such expenditures are eligible expenditures made on a "tax credit-eligible production," as certified by the Director of Development. Generally, such a production must be a motion picture production; the bill defines a motion picture to be "content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; and interactive web sites;" Section 122.85(A) of the bill includes more detail about the types of production that are or are not considered a motion picture for purposes of the tax credit. Both resident and nonresident cast and crew wages are eligible expenses, but only 75% of nonresident cast and crew wages are eligible for those productions certified after July 1, 2010.

The Director of Development may adopt rules for administering the tax credits. Motion picture companies must submit applications, and with director approval, a certificate will be issued. The bill defines a motion picture company as an "individual, corporation, partnership, limited liability company, or other form of business association producing a motion picture."

No tax credit certificate may be issued before the completion of the tax credit-eligible production. No more than $20 million of credits may be allowed per fiscal biennium, and no more than $5 million may be allowed per tax credit-eligible production. If the eligible production expenditures are less than $300,000, no credit will be issued. If expenditures are greater than that amount, a credit equal to 25% of that total will be granted to approved applicants.

Fiscal Effect

Without reliable data on eligible film production expenses in Ohio, LSC could not estimate the revenue loss due to the proposed tax credit. The magnitude of any revenue loss would depend on the number of eligible productions certified by the Director of Development, under rules adopted by the Director. The revenue loss is likely to vary from year to year, depending on the value of tax certificates issued by the Director, but would be limited to no more than $20 million per fiscal biennium. The GRF would bear 94.1% of any lost revenue, the LGF would bear 3.68%, and the PLF would bear 2.22%.

Given the refundable nature of the tax credit, it is highly probable that all issued credits will be utilized by the certificate owners. The tax credit is applicable to both the personal income tax and corporate franchise tax. It is very likely that all motion picture companies receiving the credit are eligible to file an Ohio tax return against either of these two taxes. Presently, the Ohio corporate franchise tax is imposed on both domestic and foreign corporations for the privilege of doing business in Ohio. However, the tax will only apply to financial institutions beginning in tax year 2010. As such, any nonfinancial institution claiming a motion picture credit that year will more than likely receive a refund for the full amount of the credit. The bill specifically authorizes corporations that are not required to pay the corporate franchise tax to file a return and claim the credit against that tax.

The bill creates the motion picture tax credit program operating fund, which 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 Ohio. The Director may require a reasonable application fee to cover administrative costs of the tax credit program, the proceeds from which are also to be deposited in the fund. Given the uncertain nature of the application fee and other potential sources, it is difficult to estimate revenues to the motion picture tax credit program operating fund.

Presently, the Department of Development employs one individual in its film office, and it already has a division dedicated to the administration of tax credits. As of this writing, LSC has not obtained an estimate of the additional costs, if any, that may be incurred by the Department of Development.

Background – Regional Competition for Motion Pictures

Tax incentives are one of several factors that influence the sourcing of motion picture production. A producer's decision-making is also influenced by the availability of production crews and suitable filming locations.

The majority of states have enacted tax incentives for motion picture production. The structure of the credit differs significantly from state to state, though, making it very difficult to compare both the relative value to the industry of the different states' credits and the revenue loss that may be expected.

Credits may differ according to the percentage of the investment for which a credit is available, for example, though this type of difference is easy to compare across states. The credit in the bill would be worth 25% of eligible production expenditures. This would be more attractive to the industry and, holding other factors constant, would cause greater revenue losses than the 15% rate offered by Indiana. Conversely, it would be less attractive and cause smaller revenue losses than the 30% rate offered by Illinois and the 40%-42%[1] rate offered by Michigan.

But tax credits may differ in other ways that are less easily compared. Credits may be transferrable between investors and other taxpayers, or not. Tax credits may have a global cap, similar to the bill's $20 million per biennium cap, or a per production

[1] Qualifying expenditures made in a designated core community in Michigan are eligible for a 42% credit whereas those made in a "non-core" community in Michigan are eligible for a 40% credit.

cap, similar to the bill's $5 million cap, or none at all. And different states may define eligible investments differently.[2]

The proposed credit can be expected to provide support for the industry in Ohio. Given the difficulties in comparing credits across states, though, and the fact that states are continually enacting new credits and modifying existing credits, LSC economists cannot quantify the impact the bill's credit would have on Ohio's industry.

Dynamic Revenue Effect

No fewer than three states have published reports estimating the dynamic revenue effects of their film tax incentive programs. The State of Louisiana Legislative Fiscal Office estimated that state revenue gains from stimulated economic activity settle to about 16%-18% of tax credit costs. The Connecticut Department of Economic and Community Development published a fiscal impact study for the state's film incentive program. It concluded that for every dollar spent on its film tax credit, the state receives $0.08 back in additional revenue. The state of Massachusetts commissioned a study of hypothetical film expenditures and concluded that its film industry tax incentives are estimated to generate offsetting tax revenue of $17.9 million to $23.0 million for each $100 million tax expenditure. Given the lack of consensus in precisely identifying the offsetting revenue effects for other states' film incentive programs, LSC economists do not incorporate any estimate of the kind in this analysis.

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[2] Georgia and Illinois, for example, impose a cap on the amount of salary going to an individual worker on a production (e.g., a well-paid actor) that can be counted as an eligible expenditure. Generally, those states with a cap set it near $1 million per employee, but it can range from $100,000 to $15 million.