

MN H 4373, Introduced

Minnesota

SUMMARY: Relates to taxation; provides a refundable film production tax credit; requires reports; appropriates money. SAME AS: MN S 3992#

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status 03/11/2020 INTRODUCED.

03/11/2020 To HOUSE Committee on TAXES.

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Introduced March 11, 2020 Lislegard

HF 4373 as introduced - 91st Legislature (2019 - 2020) Posted on 03/11/2020

A bill for an act relating to taxation; providing a refundable film production tax credit; requiring reports; appropriating money; amending Minnesota Statutes 2018, section 297I.20, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 116U; 290.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. ***[116U.261] FILM PRODUCTION TAX CREDIT PROGRAM.***

Subdivision 1. Definitions.

(a) For the purposes of this section and section 290.068, the following definitions apply.

(b) "Affiliated person" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity.

(c) "Background artist" means a person who is:

(1) not a performing artist but is a person of atmospheric business whose work includes atmospheric noise, normal actions, gestures and facial

expressions of that person's assignment;

- (2) of atmospheric business whose work includes special abilities that are not stunts; or*
- (3) a substitute for another actor, whether photographed as a double or acting as a stand-in.*
- (d) "Commercial audiovisual product" means a film or a video game intended for commercial exploitation.*
- (e) "Commissioner" means the commissioner of the Department of Employment and Economic Development.*
- (f) "Department" means the Department of Employment and Economic Development.*
- (g) "Direct production expenditure" means a transaction that is subject to taxation in Minnesota and is certified by the department under this section. Direct production expenditures include:*
 - (1) payment of wages, fringe benefits, or fees for talent, management, or labor to a person who is a Minnesota resident;*
 - (2) payment for standard industry craft inventory when provided by a resident industry crew in addition to its industry crew services;*
 - (3) payment for wages and per diem for a performing artist who is not a Minnesota resident and who is directly employed by the film production company, provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in Minnesota at the maximum rate under section 290.92; and*
 - (4) production costs as defined in section 116U.26.*
- (h) "Direct production expenditure" does not include an expenditure for:*
 - (1) a gift with a value greater than \$100;*
 - (2) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if:*
 - (i) it is used in the film production; and*
 - (ii) the expenditure is less than \$2,500;*
 - (3) entertainment, amusement, or recreation;*
 - (4) hidden or other indirect service fees, costs, commissions, or other remuneration received by third parties and that are not directly paid by the film production company or expressly enumerated on a film production company's filing to claim a new film production tax credit;*

(5) wages for a person who is not a Minnesota resident; or

(6) which the film production company receives funding pursuant to section 116U.26.

(i) "Film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that is:

(1) fixed on film, a digital medium, videotape, computer disc, laser disc, or other similar delivery medium;

(2) able to be viewed or reproduced;

(3) not intended to and does not violate any provision in Minnesota law; and

(4) intended for reasonable commercial exploitation for the delivery medium used.

(j) "Film production company" means a person that produces one or more films or any part of a film.

(k) "Industry crew" means a person in a position that is off-camera and who provides technical services during the physical production of a film. Industry crew does not include a writer, director, producer, background artist, or performing artist.

(l) "Performing artist" means a person:

(1) who is an actor, on-camera stuntperson, puppeteer, pilot who is a stuntperson or actor, or specialty foreground performer or narrator; and

(2) who speaks a line of dialogue, is identified with the product, or reacts to narration as assigned. Performing artist does not include a background artist.

(m) "Postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects. Postproduction expenditure includes computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects.

Postproduction expenditure does not include an expenditure for advertising, marketing, distribution, or expense payments.

(n) "Principal photography" means the production of a film during which the main visual elements are created.

(o) "Qualified production facility" means a building, or complex of buildings, building improvements, and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one:

(1) sound stage with contiguous, clear-span floor space of at least 7,000 square feet and a ceiling height of no less than 21 feet; or

- (2) standing set that includes at least one interior, and at least five exteriors, built or repurposed for film production use on a continual basis and is located on at least 50 acres of contiguous space designated for film production use.*

Subd. 2. Certification of credit; application; limitations.

- (a) A film production company may apply to the commissioner for certification of a film production tax credit to be claimed under section 290.0683. The commissioner must prescribe the form of the application. The application must be accompanied by an application fee of \$500. Application fees are deposited in the account in the special revenue fund created under section 116U.50. Applications for certification must be made available on the commissioner's website by of the year prior to the taxable year for which the tax credit will be claimed.*
- (b) The commissioner must certify the amount of a film production company's budget for direct production expenditures and postproduction expenditures during a preproduction meeting and must allocate any allowed credit amounts, as provided in this section, on a credit certificate to the film production company. The commissioner must not certify a film production company's budget if the total expected claim exceeds \$210,000,000.*
- (c) The commissioner must not allocate more than \$110,000,000 in credit certificates for any taxable year, except as provided in paragraph (e). If a film production company submits a claim for certification and \$110,000,000 in credit certificates has already been issued, the claims must be considered in order of date of application for certification in the following taxable year.*
- (d) Claims must be placed in order of the date on which the application is filed. All applications filed with the department on the same day must be treated as having been filed contemporaneously. If two or more applications are filed on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the film production companies who filed on that day on a pro rata basis with respect to the amounts claimed, and any excess must be allocated as provided in paragraph (c).*
- (e) Any unallocated amounts for taxable years 2021 to 2023 not in excess of \$20,000,000 must be added to the aggregate amount of claims that may be authorized for payment for the following taxable year.*
- (f) The commissioner must post monthly on the department's website the aggregate amount of credits certified for each taxable year.*

Subd. 3. Additional requirements; eligibility.

- (a) A film production company that submits an application under this section must also confirm that the film will contain an acknowledgment to the state of Minnesota in the end screen credits that the production was filmed in Minnesota, and a state logo provided by the department embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production*

company and the department.

(b) To be eligible for the film and television tax credit, a film production company must submit to the commissioner information required by the commissioner to demonstrate conformity with the requirements of this section and section 290.0683, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company must provide to the commissioner a projection of the film and television tax credit claim the film production company plans to submit under section 290.0683. In addition, the film production company must agree in writing:

(1) to pay all obligations the film production company has incurred in Minnesota;

(2) to provide a notice at completion of principal photography, posted on the department's website, that:

(i) contains production company information, including the name of the production, the address of the production company, and contact information that includes a working telephone number, fax number, and e-mail address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(ii) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived if a creditor fails to file;

(4) to delay filing of a claim for the film and television tax credit until the commissioner delivers written notification to the commissioner of revenue that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film and television tax credit and supporting documentation to the commissioner within one year of the close of the film production company's taxable year in which the expenditures in Minnesota were incurred for the registered project and that are included in the credit claim.

Subd. 4. Credit allowed.

(a) A taxpayer issued a credit certificate under this section is allowed a tax credit as provided in section 290.0683.

(b) The credit amount equals 25 percent of the amount of:

(1) direct production expenditures made in Minnesota that:

(i) are directly attributable to the production in Minnesota of a film or commercial audiovisual product;

(ii) are subject to taxation by the state of Minnesota;

(iii) exclude direct production expenditures for which another taxpayer claims the film and television tax credit; and

(iv) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The commissioner may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in Minnesota that:

(i) are directly attributable to the production of a commercial film or audiovisual product;

(ii) are for postproduction services performed in Minnesota;

(iii) are subject to taxation by the state of Minnesota;

(iv) exclude postproduction expenditures for which another taxpayer claims the film and television tax credit; and

(v) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties.

(c) The commissioner may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

(d) If a film production company receives a tax credit under the federal new markets tax credit program for expenditures that also qualify for the credit under this section, the credit amount is reduced to 20 percent of the amounts as described in paragraph (b).

Subd. 5. Additional credit; television pilots and series.

(a) The commissioner must allocate an additional amount in calculating the credit equal to five percent of direct production expenditures on:

(1) a standalone pilot intended for series television in Minnesota; and

(2) series television productions intended for commercial distribution with an order for at least six episodes in a single season, provided that the Minnesota budget for each of those six episodes is \$50,000 or more.

(b) Direct production expenditures that are payments to a nonresident performing artist in a standalone pilot are not eligible for the additional credit under this subdivision.

(c) Payments to a nonresident performing artist for a television series may be eligible for the additional credit pursuant to this section, provided that:

(1) a television series completes at least one season of the scheduled

episodes for that series in Minnesota;

- (2) the film production company certifies the intention to produce a subsequent season to the series described in clause (1) in Minnesota; and*
- (3) the film production company or its parent company produces or begins production of an additional eligible television series in Minnesota during the same film production company's taxable year as the television series.*
- (d) Payments to a nonresident performing artist for the additional television series are also eligible for the additional credit under this subdivision.*
- (e) A film production company applying for an additional credit under this subdivision is not eligible for the additional credit under subdivision 6.*

Subd. 6. Additional credit; qualified production facilities.

- (a) The commissioner must allocate an additional amount in calculating the credit equal to five percent of direct production expenditures that are directly attributable and paid to a Minnesota resident who:*
 - (1) is hired as industry crew or as a producer, writer, or director working directly with the physical production; and*
 - (2) has filed a Minnesota income tax return as a resident in the two previous taxable years.*
- (b) Direct production expenditures allowed for the additional credit under this subdivision must be on a production with a total new budget of:*
 - (1) not more than \$30,000,000 that shoots at least ten principal photography days in Minnesota at a qualified production facility, provided that a film production company shall:*
 - (i) shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and*
 - (ii) for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a 24-hour period; or*
 - (2) \$30,000,000 or more that shoots at least 15 principal photography days in Minnesota at a qualified production facility, provided that a film production company shall:*
 - (i) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and*
 - (ii) for each day of the 15 days, include industry crew working on the premises of the facility for a minimum of eight hours within a 24-hour*

period.

- (c) A film production company applying for an additional credit under this subdivision is not eligible for the additional credit under subdivision 5.*

Subd. 7. Restrictions on payments for performing artists; credit limitation.

The amount of the credit certificate issued under this section for the total payments of direct production expenditures for the services of performing artists must include more than \$5,000,000 of payment for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation does apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

Subd. 8. Data privacy.

In addition to any provisions in chapter 13, the provisions classifying data in chapter 270B apply to data contained in an application submitted to the commissioner under this section.

Subd. 9. Annual reports.

- (a) By February 1 of each year, a film production company that was issued a credit certificate under this section for the prior taxable year must submit a report to the commissioner with at least the following information:*

- (1) the total aggregate wages of the members of the Minnesota resident crew;*
- (2) the number of Minnesota residents employed;*
- (3) the total number of hours worked by Minnesota residents;*
- (4) the total expenditures made in Minnesota that do not qualify for the credit;
and*
- (5) the aggregate wages paid to the members of the nonresident crew while working in Minnesota.*

- (b) The commissioner of employment and economic development must prescribe the form for the report.*

Subd. 10. Report to legislature.

- (a) By March 15 of each year, the commissioner of employment and economic development must report to the chairs and ranking minority members of the legislative committees with jurisdiction over taxes and economic development, in compliance with sections 3.195 and 3.197, on the tax credits issued under this section.*

- (b) The report must include:*

- (1) the number and amount of the credits issued;*

(2) the recipients of the credits;

(3) for each credit issued, the total amount of additional investment that did not qualify for the tax credit; and

(4) any other information relevant to evaluating the effect of these credits.

EFFECTIVE DATE. *This section is effective for film production companies that begin principal photography after December 31, 2020.*

Sec. 2. [290.0683] FILM PRODUCTION CREDIT.

Subdivision 1. Definitions. *For purposes of this section, the definitions in section 116U.261 apply.*

Subd. 2. Credit allowed.

(a) A film production company issued a credit certificate under section 116U.261 is allowed a credit against the taxes due under this chapter equal to the amount on the credit certificate.

(b) The commissioner must prescribe the form for a film production company to claim a film production tax credit. The application must include a certification from the commissioner of employment and economic development and the film production company of the amount of direct production expenditures and postproduction expenditures made in Minnesota with respect to the film production for which the film production company is seeking the credit. Applications must be submitted within one year of the date of the last direct production expenditure in Minnesota or the last postproduction expenditure in Minnesota incurred within the film production company's taxable year, whichever is later. If the amount of the requested tax credit exceeds \$5,000,000, the application must also include the results of an audit, conducted by a certified public accountant licensed to practice in Minnesota, verifying that the expenditures have been made in compliance with the requirements of this section and section 116U.261.

Subd. 3. Applicable tax year.

(a) A credit claim of less than \$2,000,000 for a taxable year is allowed immediately for the current taxable year.

(b) A credit claim of \$2,000,000 or more per taxable year, but less than \$5,000,000 per taxable year, must be divided into two equal amounts, with the first amount allowed immediately for the current taxable year and the second amount allowed for the following taxable year.

(c) A credit claim amount of \$5,000,000 or more per taxable year must be divided into three equal amounts, with the first amount allowed immediately for the current taxable year, the second amount allowed for the following taxable year, and the third amount allowed in the second taxable year following the current taxable year.

Subd. 4. Credit refundable.

If the amount of the credit under this section exceeds the taxpayer's tax liability under this chapter for any taxable year, the amount of the excess must be refunded to the taxpayer.

Subd. 5. Partnerships; multiple owners.

Credits granted to a partnership, limited liability company taxed as a partnership, S corporation, or multiple owners of property are passed through to the partners, members, shareholders, or owners, respectively, pro rata to each partner, member, shareholder, or owner based on the partner's, member's, shareholder's, or owner's share of the entity's assets or as specially allocated in the partner's, member's, shareholder's, or owner's organizational documents or any other executed, as of the last day of the taxable year.

Subd. 6. Assignment of credit.

A film production company that is issued a credit certificate may assign the certificate to another taxpayer and that taxpayer is then allowed the credit under this section or section 297I.20, subdivision 4. An assignment is not valid unless the assignee notifies the commissioner within 30 days of the date that the assignment is made. The commissioner must prescribe the forms necessary for notifying the commissioner of the assignment of a credit certificate and for claiming a credit by assignment.

Subd. 7. Audit powers.

Notwithstanding the credit certificate issued under section 116U.261, the commissioner may use any audit and examination powers under chapter 270C or 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for the amount of any improperly claimed credit.

Subd. 8. Appropriation.

The amount necessary to pay the refunds under this section is appropriated annually from the general fund to the commissioner.

EFFECTIVE DATE.

This section is effective for taxable years beginning after December 31, 2020.

Sec. 3. Minnesota Statutes 2018, section 297I.20, is amended by adding a subdivision to read:

Subd. 4. Minnesota film production tax credit.

A taxpayer assigned a credit under section 290.0683, subdivision 6, may claim a credit against the premiums tax imposed under this chapter equal to the amount indicated on the credit certificate statement issued under section 290.0683. If the amount of the credit exceeds the liability for tax under this chapter, the excess is a credit carryover to each of the ten succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. This credit does not affect the calculation of fire state aid under section 477B.03 and police state aid under section 477C.03.

EFFECTIVE DATE.

This section is effective for taxable years beginning after December 31, 2020.

Sec. 4. PURPOSE STATEMENT; TAX EXPENDITURES.

Subdivision 1. Authority.

This section is intended to fulfill the requirement under Minnesota Statutes, section 3.192, that a bill creating, renewing, or continuing a tax expenditure must include a statement of intent that clearly provides the purpose for the tax expenditure and a standard or goal against which its effectiveness may be measured.

Subd. 2. Minnesota film production tax credit.

The provisions of sections 1 and 2 allowing a Minnesota film production tax credit are intended to:

- (1) establish the film industry as a permanent component of the economic base of Minnesota;*
- (2) develop a pool of trained professionals and businesses in Minnesota to supply and support the film industry in the state;*
- (3) increase employment of Minnesota residents;*
- (4) improve the economic success of existing businesses in Minnesota; and*
- (5) develop the infrastructure in the state necessary for a thriving film industry.*