

NV A 20, Prefiled

Nevada

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

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Prefiled

November 18, 2020 Revenue

SUMMARY--Revises provisions relating to transferable tax credits for film and other productions. (BDR 32-267)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: Yes.

AN ACT relating to taxation; revising the types of film and other productions for which a production company may apply for certain transferrable tax credits; revising provisions governing the eligibility of a production company for certain transferrable tax credits; revising provisions governing the calculation of the amount of transferrable tax credits issued to a qualified production company; expanding the circumstances under which the Office of Economic Development is authorized to withhold transferrable tax credits; and providing other matters properly relating thereto Legislative Counsel's Digest:

Existing law establishes a program for the issuance of transferable tax credits by the Office of Economic Development to the production company of a motion picture or other qualified production, based upon qualified direct production expenditures made for the purchase of personal property or services from a Nevada business. (NRS 360.758-360.7598)

Section 1 of this bill revises the types of qualified productions for which a production company may apply for transferable tax credits by:

- (1) removing interstitial television programming and interstitial advertising as qualified productions;
- (2) removing certain limitations on reality shows; and
- (3) making an episode of a series a qualified production. (NRS 360.7586)

Existing law requires a production company to provide the Office with an audit of the qualified production not later than 90 days after the completion of principal photography or postproduction. (NRS 360.759) Section 2 of this bill requires the audit to be submitted within 270 days after the completion of principal photography or postproduction, unless the Office agrees to extend the period for submitting the audit by not more than 90 days. Section 2 also removes a requirement for a business address of the production company to be in this State and authorizes rather than requires the Office to approve an application for transferable tax credits if a production company is found to be eligible.

Existing law provides that in order for tangible personal property that is acquired by a Nevada business from a vendor outside this State for immediate resale, rental or lease to a production company to be considered a qualified direct production expenditure, not more than 50 percent of the property purchased, rented or leased by the production company for the qualified production may be acquired and purchased, rented or leased in that manner. (NRS 360.7591) Section 3 of this bill excludes from consideration as property acquired in this manner tangible personal property that remains an asset of a Nevada business after the production of the qualified production has ended. Section 3 also: (1) removes the requirement for qualified direct production expenditures to be made on or after the date on which the production company submits an application for transferable tax credits to the Office and, instead, requires qualified direct production expenditures to be made during the period in which the qualified production is produced; and (2) requires the calculation of the costs that constitute a qualified direct production expenditure by a production company to acquire tangible personal property as an asset to be performed according to regulations adopted by the Office.

Existing law authorizes the Office to withhold the transferrable tax credits, in whole or in part, until any pending legal action in Nevada against a production company or involving a qualified production is resolved. (NRS 360.7592) Section 4 of this bill authorizes the Office to also withhold the transferrable tax credits, in whole or in part, for violations of state or local law or if the production company is found to have submitted any false statement, representation or certification for the purpose of obtaining the tax credits.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1.

NRS 360.7586 is hereby amended to read as follows:

360.7586

1. "Qualified production" includes preproduction, production and postproduction and means:

- (a) A theatrical, direct-to-video or other media motion picture.
- (b) A made-for-television motion picture.
- (c) Visual effects or digital animation sequences.
- (d) A television pilot program.
- ~~(e) Interstitial television programming.~~
- ~~(f) A television, Internet or other media series, including, without limitation, a comedy, drama, miniseries, soap opera, talk show, game show or telenovela , or an episode of such a series.~~
- ~~(g) (f) A reality show , if not less than six episodes are produced concurrently in this State and the total of the qualified direct production expenditures for those episodes is \$500,000 or more.~~
- (h) (g) A national or regional commercial or series of commercials.
- (i) (h) An infomercial.
- ~~(j) An interstitial advertisement.~~

- (k) *(j)* A music video.
- (l) *(j)* A documentary film or series.
- (m) *(k)* Other visual media productions, including, without limitation, video games and mobile applications.

2. The term does not include:

- (a) A news, weather or current events program.
- (b) A production that is primarily produced for industrial, corporate or institutional use.
- (c) A telethon or any production that solicits money, other than a production which is produced for national distribution.
- (d) A political advertisement.
- (e) A sporting event ~~,~~ ***including, without limitation, a sportscast, preshow, postshow or sports newscast related to a sporting event.***
- (f) A gala ~~,~~ ***pageant*** or awards show.
- (g) Any other type of production that is excluded by regulations adopted by the Office of Economic Development pursuant to NRS 360.759.

Sec. 2. NRS 360.759 is hereby amended to read as follows:

360.759

1. A production company that produces a qualified production in this State in whole or in part may apply to the Office of Economic Development for a certificate of eligibility for transferable tax credits for any qualified direct production expenditures. The transferable tax credits may be applied to:
 - (a) Any tax imposed by chapters 363A and 363B of NRS;
 - (b) The gaming license fees imposed by the provisions of NRS 463.370;
 - (c) Any tax imposed pursuant to chapter 680B of NRS; or
 - (d) Any combination of the fees and taxes described in paragraphs (a), (b) and (c).
2. The Office ~~shall~~ ***may*** approve an application for a certificate of eligibility for transferable tax credits if the Office finds that the production company producing the qualified production qualifies for the transferable tax credits pursuant to subsection 3 ~~.~~ ***and If the Office approves the application, the Office*** shall calculate the estimated amount of the transferable tax credits pursuant to NRS 360.7592, 360.7593 and 360.7594.
3. To be eligible for transferable tax credits pursuant to this section, a production company must:
 - (a) Submit an application that meets the requirements of subsection 4;
 - (b) Provide proof satisfactory to the Office that the qualified production is in the economic interest of the State;

- (c) Provide proof satisfactory to the Office that 70 percent or more of the funding for the qualified production has been obtained;
 - (d) Provide proof satisfactory to the Office that at least 60 percent of the direct production expenditures for:
 - (1) Preproduction;
 - (2) Production; and
 - (3) If any direct production expenditures for postproduction will be incurred in this State, postproduction, of the qualified production will be incurred in this State as qualified direct production expenditures;
 - (e) Not later than **90 270** days after the completion of principal photography of the qualified production or, if any direct production expenditures for postproduction will be incurred in this State, not later than **90 270** days after the completion of postproduction, **unless the Office agrees to extend this period by not more than 90 days**, provide the Office with an audit of the qualified production that includes an itemized report of qualified direct production expenditures which:
 - (1) Shows that the qualified production incurred qualified direct production expenditures of \$500,000 or more; and
 - (2) Is certified by an independent certified public accountant in this State who is approved by the Office;
 - (f) Pay the cost of the audit required by paragraph (e); and
 - (g) Meet any other requirements prescribed by regulation pursuant to this section.
4. An application submitted pursuant to subsection 3 must contain:
- (a) A script, storyboard or synopsis of the qualified production;
 - (b) The names of the production company, producer, director and proposed cast;
 - (c) An estimated timeline to complete the qualified production;
 - (d) A summary of the budgeted expenditures for the entire production, including projected expenditures to be incurred outside of Nevada;
 - (e) Details regarding the financing of the project, including, without limitation, any information relating to a binding financing commitment, loan application, commitment letter or investment letter;
 - (f) An insurance certificate, binder or quote for general liability insurance of \$1,000,000 or more;
 - (g) The business address of the production company ; ~~which must be an address in this~~ State;
 - (h) Proof that the qualified production meets any applicable requirements relating to workers' compensation insurance;
 - (i) Proof that the production company has secured all licenses and registrations required to do business in each location in this State at which the qualified production will be produced; and

- (j) Any other information required by regulations adopted by the Office pursuant to subsection 8.
5. If the Office approves an application for a certificate of eligibility for transferable tax credits pursuant to this section, the Office shall immediately forward a copy of the certificate of eligibility which identifies the estimated amount of the tax credits available pursuant to NRS 360.7592 to:
- (a) The applicant;
 - (b) The Department; and
 - (c) The Nevada Gaming Control Board.
6. Within 60 business days after receipt of an audit provided by a production company pursuant to paragraph (e) of subsection 3 and any other accountings or other information required by the Office, the Office shall determine whether to certify the audit and make a final determination of whether a certificate of transferable tax credits will be issued. If the Office certifies the audit , ~~and~~ determines that all other requirements for the transferable tax credits have been met , ~~and determines that a certificate of transferable tax credits will be issued,~~ the Office shall notify the production company that the transferable tax credits will be issued. Within 30 days after the receipt of the notice, the production company shall make an irrevocable declaration of the amount of transferable tax credits that will be applied to each fee or tax set forth in subsection 1, thereby accounting for all of the credits which will be issued. Upon receipt of the declaration, the Office shall issue to the production company a certificate of transferable tax credits in the amount approved by the Office for the fees or taxes included in the declaration of the production company. The production company shall notify the Office upon transferring any of the transferable tax credits. The Office shall notify the Department and the Nevada Gaming Control Board of all transferable tax credits issued, segregated by each fee or tax set forth in subsection 1, and the amount of any transferable tax credits transferred.
7. An applicant for transferable tax credits pursuant to this section shall, upon the request of the Executive Director of the Office, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 3.
8. The Office:
- (a) Shall adopt regulations prescribing:
 - (1) Any additional requirements to receive transferable tax credits;
 - (2) Any additional qualified expenditures or production costs that may serve as the basis for transferable tax credits pursuant to NRS 360.7591;
 - (3) Any additional information that must be included with an application pursuant to subsection 4;
 - (4) The application review process;
 - (5) Any type of qualified production which, due to obscene or sexually explicit material, is not eligible for transferable tax credits; and
 - (6) The requirements for notice pursuant to NRS 360.7595; and
 - (b) May adopt any other regulations that are necessary to carry out the provisions of NRS 360.758 to 360.7598, inclusive.
9. The Nevada Tax Commission and the Nevada Gaming Commission:

- (a) Shall adopt regulations prescribing the manner in which transferable tax credits will be administered.
- (b) May adopt any other regulations that are necessary to carry out the provisions of NRS 360.758 to 360.7598, inclusive.

Sec. 3. NRS 360.7591 is hereby amended to read as follows:

360.7591

1. Qualified direct production expenditures must be for purchases, rentals or leases of tangible personal property or services from a Nevada business ~~on or after the date on which an applicant submits an application for the transferable tax credits,~~ *during the period in which a qualified production is produced*, must be customary and reasonable and must relate to:

- (a) Set construction and operation;
- (b) Wardrobe and makeup;
- (c) Photography, sound and lighting;
- (d) Filming, film processing and film editing;
- (e) The rental or leasing of facilities, equipment and vehicles;
- (f) Food and lodging;
- (g) Editing, sound mixing, special effects, visual effects and other postproduction services;
- (h) The payroll for Nevada residents or other personnel who provided services in this State;
- (i) Payment for goods or services provided by a Nevada business;
- (j) The design, construction, improvement or repair of property, infrastructure, equipment or a production or postproduction facility;
- (k) State and local government taxes to the extent not included as part of another cost reported pursuant to this section;
- (l) Fees paid to a producer who is a Nevada resident; and
- (m) Any other transaction, service or activity authorized in regulations adopted by the Office of Economic Development pursuant to NRS 360.759.

2. Expenditures and costs:

- (a) Related to:
 - (1) The acquisition, transfer or use of transferable tax credits;
 - (2) Marketing and distribution;
 - (3) Financing, depreciation and amortization;
 - (4) The payment of any profits as a result of the qualified production;

- (5) The payment for the cost of the audit required by NRS 360.759; and
 - (6) The payment for any goods or services that are not directly attributable to the qualified production;
- (b) For which reimbursement is received, or for which reimbursement is reasonably expected to be received;
 - (c) Which are paid to a joint venturer or a parent, subsidiary or other affiliate of the production company, unless the amount paid represents the fair market value of the purchase, rental or lease of the property or services for which payment is made;
 - (d) Which provide a pass-through benefit to a person who is not a Nevada resident; or
 - (e) Which have been previously claimed as a basis for transferable tax credits, are not qualified direct production expenditures and are not eligible to serve as a basis for transferable tax credits issued pursuant to NRS 360.759.
3. If any tangible personal property is acquired by a Nevada business from a vendor outside this State for immediate resale, rental or lease to a production company that produces a qualified production, expenditures incurred by the production company for the purchase, rental or lease of the property are qualified direct production expenditures if:
- (a) The Nevada business regularly deals in property of that kind;
 - (b) The expenditures are otherwise qualified direct production expenditures under the provisions of this section; and
 - (c) Not more than 50 percent of the property purchased, rented or leased by the production company for the qualified production is acquired and purchased, rented or leased in the manner described in this subsection.

In making the calculation required by this paragraph, the cost of any property that remains an asset of the Nevada business after production of the qualified production has ended must not be included in the calculation as property purchased, rented or leased in the manner described in this subsection.

- 4. If any tangible personal property is acquired by the production company as an asset, the calculation of the costs of the tangible personal property that constitute a qualified direct production expenditure must be performed in the manner prescribed by the Office of Economic Development by regulation.***

Sec. 4. NRS 360.7592 is hereby amended to read as follows:

360.7592

- 1. Except as otherwise provided in subsection 4 and NRS 360.7593 and 360.7594, the base amount of transferable tax credits issued to an eligible production company pursuant to NRS 360.759 must equal 15 percent of the qualified direct production expenditures.
- 2. Except as otherwise provided in subsections 3 and 4 and NRS 360.7594, in addition to the base amount calculated pursuant to subsection 1, transferable tax credits issued to an eligible production company pursuant to NRS 360.759 must include credits in an amount equal to:
 - (a) An additional 5 percent of the qualified direct production expenditures if more than 50 percent of

the below-the-line personnel of the qualified production are Nevada residents; and

- (b) An additional 5 percent of the qualified direct production expenditures if more than 50 percent of the filming days of the qualified production occurred in a county in this State in which, in each of the 2 years immediately preceding the date of application, qualified productions incurred less than \$10,000,000 of qualified direct production expenditures.

3. For the purposes of paragraph (a) of subsection 2:

- (a) Except as otherwise provided in paragraph (b) of this subsection, the percentage of the below-the-line personnel who are Nevada residents must be determined by dividing the number of workdays worked by Nevada residents by the number of workdays worked by all below-the-line personnel.
- (b) Any work performed by an extra must not be considered in determining the percentage of the below-the-line personnel who are Nevada residents.

4. The Office may:

- (a) Reduce the cumulative amount of transferable tax credits that are calculated pursuant to this section by an amount equal to any damages incurred by the State or any political subdivision of the State as a result of a qualified production that is produced in this State; or

(b) Withhold the transferable tax credits, in whole or in part ~~, until:~~

(1) Until any pending legal action in this State against a production company or involving a qualified production is resolved.

(2) If a production company violates any state or local law.

(3) If a production company is found to have submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits.

Sec. 5. The amendatory provisions of section 3 of this act apply only to the calculation of transferrable tax credits conducted on or after July 1, 2021.

Sec. 6. This act becomes effective on July 1, 2021.