

IL S 2181, Introduced

Illinois

SUMMARY: Amends the Film Production Services Tax Credit Act; provides that certain non-resident wages qualify as labor expenditures; creates the Production Workforce Development Fund to be funded with a fee imposed on the transfer of film production services credits; provides that the Fund shall be used exclusively to provide grants to community-based organizations, labor organizations, private and public universities, community colleges, and other organizations and institutions as deemed appropriated.

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status 02/26/2021 INTRODUCED.

02/26/2021 To SENATE Committee on ASSIGNMENTS.

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Introduced February 26, 2021 Sims

102ND GENERAL ASSEMBLY

State of Illinois 2021 and 2022 SB2181

Introduced 2/26/2021, by Sen. Elgie R. Sims, Jr. SYNOPSIS AS INTRODUCED:

35 ILCS 5/213

35 ILCS 16/10

35 ILCS 16/43

Amends the Film Production Services Tax Credit Act of 2008. Provides that certain non-resident wages qualify as Illinois labor expenditures. Creates the Illinois Production Workforce Development Fund to be funded with a fee imposed on the transfer of film production services credits. Provides that the Fund shall be used exclusively to provide grants to community-based organizations, labor organizations, private and public universities, community colleges, and other organizations and institutions as deemed appropriated by the Department of Commerce and Economic Opportunity to administer workforce training programs that support efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce in the film industry. Amends the Illinois Income Tax Act to

make conforming changes. Effective immediately. FISCAL NOTE ACT MAY APPLY

A BILL FOR

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 3. The Illinois Income Tax Act is amended by changing Section 213 as follows:

(35 ILCS 5/213)

Sec. 213. Film production services credit. For tax years beginning on or after January 1, 2004, a taxpayer who has been awarded a tax credit under the Film Production Services Tax Credit Act or under the Film Production Services Tax Credit Act of 2008 is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act in an amount determined by the Department of Commerce and Economic Opportunity under those Acts. If the taxpayer is a partnership or Subchapter S corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code.

A transfer of this credit may be made by the taxpayer earning the credit within one year after the credit is awarded in accordance with rules adopted by the Department of Commerce and Economic Opportunity. ***Beginning July 1, 2021, if a credit is transferred under this Section by the taxpayer, then the transferor taxpayer shall pay to the Department, upon notification of a transfer, 2.5% of the transferred credit amount eligible for out-of-state wages, as described in Section 10 of the Film Production Services Tax Credit Act of 2008, and an additional 0.25% of the total amount of the transferred credit that is not calculated on out-of-state wages, which shall be deposited into the Illinois Production Workforce Development Fund.***

The Department, in cooperation with the Department of Commerce and Economic Opportunity, must prescribe rules to enforce and administer the provisions of this Section. This Section is exempt from the provisions of Section 250 of this Act.

The credit may not be carried back. If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. In no event shall a credit under this Section reduce the taxpayer's liability to less than zero.

(Source: P.A. 94-171, eff. 7-11-05; 95-720, eff. 5-27-08.)

Section 5. The Film Production Services Tax Credit Act of 2008 is amended by changing Sections 10 and 43 as follows:

(35 ILCS 16/10)

Sec. 10. Definitions. As used in this Act:

"Accredited production" means: (i) for productions commencing before May 1, 2006, a film, video, or television production that has been certified by the Department in which the aggregate Illinois labor expenditures included in the cost of the production, in the period that ends 12 months after the time principal filming or taping of the production began, exceed \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of less than 30 minutes; and (ii) for productions commencing on or after May 1, 2006, a film, video, or television production that has been certified by the Department in which the Illinois production spending included in the cost of production in the period that ends 12 months after the time principal filming or taping of the production began exceeds \$100,000 for productions of 30 minutes or longer or exceeds \$50,000 for productions of less than 30 minutes. "Accredited production" does not include a production that:

- (1) is news, current events, or public programming, or a program that includes weather or market reports;
- (2) is a talk show;
- (3) is a production in respect of a game, questionnaire, or contest;
- (4) is a sports event or activity;
- (5) is a gala presentation or awards show;
- (6) is a finished production that solicits funds;
- (7) is a production produced by a film production company if records, as required by 18 U.S.C. 2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program; or
- (8) is a production produced primarily for industrial, corporate, or institutional purposes.

"Accredited animated production" means an accredited production in which movement and characters' performances are created using a frame-by-frame technique and a significant number of major characters are animated. Motion capture by itself is not an animation technique.

"Accredited production certificate" means a certificate issued by the Department certifying that the production is an accredited production that meets the guidelines of this Act.

"Applicant" means a taxpayer that is a film production company that is operating or has operated an accredited production located within the State of Illinois and that (i) owns the copyright in the accredited production throughout the Illinois production period or (ii) has contracted directly with the owner of the copyright in the accredited production or a person acting on behalf of the owner to provide services for the production, where the owner of the copyright is not an eligible production corporation.

"Credit" means:

- (1) for an accredited production approved by the Department on or before January 1, 2005 and commencing before May 1, 2006, the amount equal to 25% of the Illinois labor expenditure approved by the Department. The applicant is deemed to have paid, on its balance due day for the year, an amount equal to 25% of its qualified Illinois labor expenditure for the tax year. For Illinois labor expenditures generated by the employment

of residents of geographic areas of high poverty or high unemployment, as determined by the Department, in an accredited production commencing before May 1, 2006 and approved by the Department after January 1, 2005, the applicant shall receive an enhanced credit of 10% in addition to the 25% credit; and

- (2) for an accredited production commencing on or after May 1, 2006, the amount equal to:
 - (i) 20% of the Illinois production spending for the taxable year; plus
 - (ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department; and
- (3) for an accredited production commencing on or after January 1, 2009, the amount equal to:
 - (i) 30% of the Illinois production spending for the taxable year; plus
 - (ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department.

"Department" means the Department of Commerce and Economic Opportunity.

"Director" means the Director of Commerce and Economic Opportunity.

"Illinois labor expenditure" means salary or wages paid to employees of the applicant for services on the accredited production . †

To qualify as an Illinois labor expenditure, the expenditure must be:

- (1) Reasonable in the circumstances.
- (2) Included in the federal income tax basis of the property.
- (3) Incurred by the applicant for services on or after January 1, 2004.
- (4) Incurred for the production stages of the accredited production, from the final script stage to the end of the post-production stage.
- (5) Limited to the first \$25,000 of wages paid or incurred to each employee of a production commencing before May 1, 2006 and the first \$100,000 of wages paid or incurred to each employee of a production commencing on or after May 1, 2006 **and prior to July 1, 2021. For productions commencing on or after July 1, 2021, the first \$500,000 of out-of-state wages of each non-resident paid or incurred by the production company and loan out corporations qualify, subject to withholding payments provided for in Article 7 of the Illinois Income Tax Act. Additionally, all resident wages paid or incurred by the production company qualify.**
- (6) For a production commencing before May 1, 2006, exclusive of the salary or wages paid to or incurred for the 2 highest paid employees of the production.

- (7) Directly attributable to the accredited production.
- (8) (Blank).
- (9) **Prior to July 1, 2021, paid Paid** to persons resident in Illinois at the time the payments were made. **For a production company commencing production on or after July 1, 2021, resident and non-resident wages will qualify as an Illinois labor expenditure. Notwithstanding the foregoing, only wages paid to non-residents working in the following positions shall be qualified Illinois labor expenditures: Writers, Director, Director of Photography, Production Designer, Costume Designer, Production Accountant, VFX Supervisor, Editor, Composer. For a film with Illinois production spending of \$25,000,000 or less, a television production or video, no more than 2 non-resident actors' wages shall qualify as an Illinois labor expenditure. For a film with Illinois production spending of more than \$25,000,000 no more than 4 non-resident actors' wages shall qualify as Illinois labor expenditures.**
- (10) Paid for services rendered in Illinois.

"Illinois production spending" means the expenses incurred by the applicant for an accredited production, including, without limitation, all of the following:

- (1) expenses to purchase, from vendors within Illinois, tangible personal property that is used in the accredited production;
- (2) expenses to acquire services, from vendors in Illinois, for film production, editing, or processing; and
- (3) **before July 1, 2021**, the compensation, not to exceed \$100,000 for any one employee, for contractual or salaried employees who are Illinois residents performing services with respect to the accredited production. **After July 1, 2021 resident wages and non-resident wages described above are Illinois Labor Expenditures.**

"Loan out company" means a personal service corporation or other entity that is under contract with the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Qualified production facility" means stage facilities in the State in which television shows and films are or are intended to be regularly produced and that contain at least one sound stage of at least 15,000 square feet.

Rulemaking authority to implement **Public Act 95-1006** ~~this amendatory Act of the 95th General Assembly~~, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 97-796, eff. 7-13-12; revised 7-18-19.)

Sec. 43. Training programs for skills in critical demand.

- (a) To accomplish the purposes of this Act, the Department may use the training programs provided for Illinois under Section 605-800 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.
- (b) *The Illinois Production Workforce Development Fund is created as a special fund in the State Treasury. Beginning July 1, 2021, amounts paid to the Department of Commerce and Economic Opportunity under Section 213 of the Illinois Income Tax Act, a film production services credit shall be deposited into the Fund. The Fund shall be used exclusively to provide grants to community-based organizations, labor organizations, private and public universities, community colleges, and other organizations and institutions as deemed appropriated by the Department to administer workforce training programs that support efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce in the film industry.*

Pursuant to Section 213 of the Illinois Income Tax Act, the Fund shall receive deposits in amounts not to exceed 0.25% of the amount of each credit certificate issued that is not calculated on out-of-state wages and transferred or claimed on an Illinois tax return in the quarter such credit was transferred or claimed, however, in addition to the foregoing, such amount shall also include 2.5% of the credit amount calculated on wages paid to non-residents that is transferred or claimed on an Illinois tax return in the quarter such credit was transferred or claimed.

At the request of the Department, the State Comptroller and the State Treasurer may advance amounts to the Fund on an annual basis not to exceed \$1,000,000 in any fiscal year. The fund from which the moneys are advanced shall be reimbursed in the same fiscal year for any such advance payments as described in this subsection. The method of reimbursement shall be set forth in rules.

Of the appropriated funds in a given fiscal year, 50% of the appropriated funds shall be reserved for organizations that meet one of the following criteria. The organization is: (1) a minority-owned business as defined by the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; (2) located in an underserved area as defined by the Economic Development for a Growing Economy Tax Credit Act; or (3) on an annual basis, training a cohort of program participants where at least 50% of the program participants are either a minority person as defined by the Business Enterprise for Minorities, Women, and Persons with Disabilities Act or reside in an underserved area as defined by the Economic Development for a Growing Economy Tax Credit Act.

The Illinois Production Workforce Development Fund shall be administered by the Department. The Department may adopt rules necessary to administer the provisions of this Section.

Notwithstanding any other law to the contrary, the Illinois Production

Workforce Development Fund is not subject to sweeps, administrative charge-backs, or any other fiscal or budgetary maneuver that would in any way transfer any amounts from the Illinois Production Workforce Development Fund.

(c) By June 30 of each fiscal year, the Department must submit to the General Assembly a report that includes the following information:

(1) an identification of the organizations and institutions that received funding to administer workforce training programs during the fiscal year;

(2) the number of total persons trained and the number of persons trained per workforce training program in the fiscal year; and

(3) in the aggregate, per organization, the number of persons identified as a minority person or that reside in an underserved area that received training in the fiscal year.

(Source: P.A. 95-720, eff. 5-27-08.)

Section 99. Effective date. This Act takes effect upon becoming law.