

MD S 536 , Third Reading

Maryland

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

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Third Reading

February 22, 2022

McCray

SENATE BILL 536

By: ~~Senator McCray~~ *Senators McCray, Guzzone, Rosapepe, Corderman, Eckardt, Edwards, Elfreth, Griffith, Jackson, King, Salling, Young, and Zucker*

Introduced and read first time: January 28, 2022

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 17, 2022

CHAPTER

AN ACT concerning

Income Tax - Film Production Activity Tax Credit - Digital Animation Projects

FOR the purpose of expanding eligibility for the credit against the State income tax for certain film production activities to include certain digital animation projects; and generally relating to the film production activity tax credit.

BY repealing and reenacting, with amendments,

Article - Tax - General

Section 10-730

Annotated Code of Maryland

(2016 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Tax - General

10-730.

(a) (1) In this section the following words have the meanings indicated.

(2) "Department" means the Department of Commerce.

(3) ***"DIGITAL ANIMATION PROJECT" MEANS THE CREATION, DEVELOPMENT, AND PRODUCTION OF COMPUTER-GENERATED ANIMATION CONTENT FOR DISTRIBUTION OR EXHIBITION TO THE GENERAL PUBLIC.***

(4) (i) "Film production activity" means:

1. the production of a film or video project that is intended for nationwide commercial

distribution; and

2. for a television series, each season of the television series.

(ii) "Film production activity" includes the production of:

1. a feature film;
2. a television project;
3. a commercial;
4. a corporate film; ~~or~~
5. a music video ; **OR**

6. A DIGITAL ANIMATION PROJECT .

(iii) "Film production activity" does not include production of:

1. a student film;
2. a noncommercial personal video;
3. a sports broadcast;
4. a broadcast of a live event;
5. a talk show;
6. a video, computer, or social networking game;
7. pornography;
8. an infomercial;
9. ~~a digital project;~~

~~10.~~ **10.** *A DIGITAL PROJECT OR* an animation project *OTHER THAN A DIGITAL ANIMATION PROJECT* ; or

~~11.~~ **10.** a multimedia project.

~~(4)~~ **(5)** "Maryland small or independent film entity" means a qualified film production entity that:

- (i) has been incorporated in Maryland for at least 3 months;
- (ii) is independently owned and operated;
- (iii) is not a subsidiary of another entity;
- (iv) is not dominant in its field of operation;
- (v) employs 25 or fewer full-time employees; and
- (vi) employs Maryland residents as at least 40% of its workforce in the film production activity.

~~(5)~~ **(6)** "Pornography" means any production for which records are required to be maintained under Section 2257 of Title 18, U.S.C., with respect to any performer in such production engaging in sexually explicit conduct.

~~(6)~~ **(7)** "Qualified film production entity" means an entity that:

- (i) is carrying out a film production activity; and
- (ii) the Secretary determines to be eligible for the tax credit under this section in accordance with subsection (c) of this section.

~~(7)~~ **(8)** "Secretary" means the Secretary of Commerce.

~~(8)~~ **(9)** "Television series" means a group of program episodes intended for television broadcast or transmission with a common series title, with or without a predetermined number of episodes, and shall include a miniseries and a pilot episode produced for an intended television series.

~~(9)~~ **(10)** (i) "Total direct costs", with respect to a film production activity, means the total costs incurred in the State that are necessary to carry out the film production activity.

(ii) "Total direct costs" includes costs incurred for:

1. employee wages and benefits;
2. fees for services;
3. acquiring or leasing property; and
4. any other expense necessary to carry out a film production activity, including costs associated with:
 - A. set construction and operation;
 - B. wardrobe, makeup, and related services;
 - C. photography and sound synchronization, lighting, and related services and materials;
 - D. editing and related services, including film processing, transfers of film to tape or digital format, sound mixing, computer graphic services, special effects services, and animation services;
 - E. salary, wages, and other compensation including related benefits, for work performed in the State, paid to persons employed in the production;
 - F. rental of facilities in the State and equipment used in the State;
 - G. leasing of vehicles;
 - H. food and lodging;
 - I. music, if performed, composed, or recorded by a Maryland musician or published by a person or company domiciled in Maryland;
 - J. travel expenses incurred to bring persons employed, either directly or indirectly, in the production of the project to Maryland, but not including expenses of these persons departing from Maryland; and
 - K. legal and accounting services performed by attorneys or accountants licensed in Maryland.

(iii) "Total direct costs" does not include any salary, wages, or other compensation for:

1. personal services of an individual who receives more than \$500,000 in salary, wages, or other compensation for personal services in connection with any film production activity; or
2. writers, directors, or producers.

(b) (1) A qualified film production entity may claim a credit against the State income tax for film production activities in the State in an amount equal to the amount stated in the final tax credit certificate approved by the Secretary for film production activities.

(2) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified film production entity for that taxable year, the qualified film production entity may claim a refund in the amount of the excess.

(c) (1) Before beginning a film production activity, a film production entity shall submit to the Department an application to qualify as a film production entity.

(2) The application shall describe the anticipated film production activity, including:

- (i) the projected total budget;
- (ii) the estimated number of Maryland resident and out-of-state employees and total wages to be paid; and
- (iii) the anticipated dates for carrying out the major elements of the film production activity.

(3) Except as provided in subsection (h) of this section, to qualify as a film production entity, the estimated total direct costs incurred in the State must exceed \$250,000.

(4) The application shall include any other information required by the Secretary.

(5) For a film production entity with total direct costs that exceed \$250,000, the Secretary may require the information provided in an application to be verified by an independent auditor selected and paid for by the film production entity seeking certification.

(6) The Secretary shall:

- (i) determine if the film production entity qualifies for the credit under this section; and
 - (ii) notify the Comptroller of the estimated amount of total direct costs and the taxable year the credit will be claimed.
- (d) (1) After completion of the film production activity, a qualified film production entity shall apply to the Department for a tax credit certificate.
- (2) The application shall be on a form required by the Secretary and shall include:
- (i) proof of the total direct costs that qualify for the tax credit; and
 - (ii) the number of employees hired and wages paid.
- (3) Subject to subsections (f) and (h) of this section, the Secretary shall determine the total direct costs that qualify for the tax credit and issue a tax credit certificate for:
- (i) except as provided in item (ii) of this paragraph, 25% of the total direct costs that qualify for the tax credit; and
 - (ii) for a television series, 27% of the total direct costs that qualify for the tax credit.
- (e) (1) In accordance with Section 2.5-109 of the Economic Development Article, the Department shall submit a report that includes:
- (i) the number of film production entities submitting applications under subsection (c) of this section;
 - (ii) the number and amount of tax credit certificates issued under subsection (d) of this section;
 - (iii) the number of local technicians, actors, and extras hired for film production activity during the reporting period;
 - (iv) a list of companies doing business in the State, including hotels, that directly provided goods or services for film production activity during the reporting period;
 - (v) a list of companies doing business in the State that directly provided goods or services for film production activity during the reporting period that qualified during the reporting period as minority business enterprises under Section 14-301(f) of the State Finance and Procurement Article;
 - (vi) a list of companies doing business in the State that directly provided goods or services for film production activity during the reporting period that, as determined by the Department, are considered small businesses; and
 - (vii) any other information that indicates the economic benefits to the State resulting from film production activity during the reporting period.
- (2) On or before July 1 of each year, the Department shall report to the Governor and, subject to Section 2-1257 of the State Government Article, the General Assembly on:
- (i) the amount of tax credits necessary to maintain the current level of film production activity in the State; and
 - (ii) the amount of tax credits necessary to attract new film production activity to the State.
- (f) (1) Except as provided in paragraph (2) of this subsection, the Secretary may not issue tax credit certificates for credit amounts in the aggregate totaling more than:
- (i) for fiscal year 2014, \$25,000,000;
 - (ii) for fiscal year 2015, \$7,500,000;
 - (iii) for fiscal year 2016, \$7,500,000;
 - (iv) for fiscal year 2019, \$8,000,000;
 - (v) for fiscal year 2020, \$11,000,000; and
 - (vi) for fiscal year 2021 and each fiscal year thereafter, \$12,000,000.
- (2) If the aggregate credit amounts under the tax credit certificates issued by the Secretary total less than the maximum provided under paragraph (1) of this subsection in any fiscal year, any

excess amount may be carried forward and issued under tax credit certificates in a subsequent fiscal year.

(3) The Secretary may not issue tax credit certificates for credit amounts totaling more than \$10,000,000 in the aggregate for a single film production activity.

(4) (i) For fiscal year 2019 and each fiscal year thereafter, the Secretary shall make 10% of the credit amount authorized under paragraph (1) of this subsection available for Maryland small or independent film entities.

(ii) If the total amount of credits applied for by Maryland small or independent film entities is less than the amount made available under subparagraph (i) of this paragraph, the Secretary shall make available the unused amount of credits for use by qualified film production entities.

(g) (1) Except as provided in paragraph (2) of this subsection, a qualified film production entity that receives a tax credit certificate under this section for a film production activity shall include:

(i) for a feature film project, a 5-second long static or animated logo that promotes the State in the end credits before the below-the-line crew crawl for the life of the project and a link to the State's website on the project's website;

(ii) for a television series project, an embedded 5-second long static or animated logo that promotes the State during each broadcast worldwide for the life of the project and a link to the State's website on the project's website; or

(iii) for any other project, the State logo at the end of each project and in online promotions.

(2) In lieu of including a State logo as required under paragraph (1) of this subsection, the qualified film production entity may offer alternative marketing opportunities to be evaluated by the Department to ensure that those opportunities offer equal or greater promotional value to the State.

(h) (1) For a Maryland small or independent film entity to qualify as a film production entity:

(i) the estimated total direct costs incurred in the State shall exceed \$25,000; and

(ii) at least 50% of the filming of the film production activity must occur within the State.

(2) The Secretary shall determine the total direct costs that qualify for the tax credit and issue a tax credit certificate to a Maryland small or independent film entity for 25% of the total direct costs that qualify for the tax credit, not to exceed \$125,000.

(i) The Department and the Comptroller jointly shall adopt regulations to carry out the provisions of this section and to specify criteria and procedures for the application for, approval of, and monitoring of continuing eligibility for the tax credit under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022, and shall be applicable to all taxable years beginning after December 31, 2021.