

KS H 2749 , Introduced

Kansas

SUMMARY: Relates to enacting the Kansas film production industry act; provides a tax credit and a sales tax exemption to incentivize film, video and digital production in Kansas; establishes a program to be administered by the Secretary of Commerce for the purpose of developing such production in Kansas.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

04/28/2022 INTRODUCED.

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session: Kansas 89th Legislature - 2022 Regular Session

cite: 2021 KS H 2749

Introduced

April 28, 2022

Taxation

Session of 2022

HOUSE BILL No. 2749

By Committee on Taxation

4-28

AN ACT concerning economic development; relating to an income tax credit and sales tax exemption program to be administered by the secretary of commerce for the purpose of developing film, video or digital production in Kansas; enacting the Kansas film production industry development act; amending K.S.A. 2021 Supp. 79-3606, as amended by section 16 of 2022 Senate Bill No. 347, and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 6, and amendments thereto, shall be known and may be cited as the Kansas film production industry development act. The purpose of the Kansas film production industry development act is to incentivize film, video or digital media productions in Kansas and facilitate the development and growth of a film, video or digital media production industry and associated businesses supporting the industry in this state.

New Sec. 2. For purposes of the Kansas film production industry development act, sections 1 through 6, and amendments thereto:

(a) "Above-the-line personnel" means any individual hired or credited on screen for an eligible production for work on the production or postproduction of film as a:

(1) Principal cast member compensated for the eligible production project at a screen actors guild schedule f and above payment rate; or

(2) producer, screenwriter or director.

(b) "Act" means the Kansas film production industry development act.

(c) "Affiliates" means those entities that are included in the production company's affiliated group as defined in section 1504(a) of the internal revenue code, 26 U.S.C. Section 1504 (a), and all other entities that are 50% or more owned, directly or indirectly, by members of the affiliated group.

(d) “Based in Kansas” or “Kansas-based” means, in reference to an individual or company, that the individual or company is subject to income tax liability under the Kansas income tax act.

(e) “Certified production” or “certified project” means an eligible production that has agreed to one or more qualified Kansas promotions and that has been approved by the secretary of commerce as eligible for tax incentives pursuant to the provisions of section 3, and amendments thereto.

(f) “Crew” means any individual who works on production or postproduction for an eligible production. “Crew” does not include above-the-line personnel.

(g) (1) “Eligible production” or “eligible project” means a production:

(A) (i) Of a new film, video or digital project, or a portion or portions of such project, produced in this state, including a feature film, documentary, series, pilot, movie for television, televised commercial advertisement, music video, video game, content-based mobile application or a virtual reality, augmented reality, multi-media or new media project;

(ii) produced in whole or in part, in short or in long form, and may include animation and music and green screen, motion capture and similar production techniques;

(iii) fixed on a delivery system that includes, but is not limited to, film, videotape, computer disc, laser disc or any element of the digital domain, from which the program or completed project is viewed or reproduced; and

(iv) intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, streaming, digital platforms or electronic delivery systems designed for the distribution or playing of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming companies or public broadcasting stations; and

(B) that incurs or is reasonably anticipated to incur qualified eligible production or postproduction expenses of at least \$50,000, as determined by the secretary.

(2) “Eligible production” or “eligible project” does not include the coverage of news or athletic events, local advertising, local interest programming, instructional videos, corporate videos, any project that is not intended for multimarket commercial distribution or any portion of a project not shot, recorded or created in Kansas. “Eligible production” or “eligible project” shall not include any production that includes child pornography as defined in K.S.A. 75-2589, and amendments thereto, or obscene material as defined in K.S.A. 2021 Supp. 21-6401, and amendments thereto.

(3) For purposes of the income tax credit as allowed under section 4(f), and amendments thereto, “eligible production” or “eligible project” means the same as defined in paragraphs (1) and (2), except that a production not intended for multimarket commercial distribution may be included and the amount of eligible expenses required shall be at least \$25,000.

(h) “Eligible television series” means a series television production project intended for multimarket commercial distribution, with an order for multiple episodes in a single season, not less than 25% of the series season is filmed within Kansas and the production incurs qualifying eligible expenses of more than \$50,000.

(i) “Eligible wages and salaries” means:

(1) (A) Wages or salaries paid by the production company to crew for work in Kansas designated as for production or for postproduction of an eligible production;

(B) for which the production company is required to remit withholding payments to the department of revenue under the Kansas withholding and declaration of estimated tax act; and

(C) at least 10% of the total wage or salary expenditure for crew is paid to crew who are residents of this state. The secretary and the Kansas arts industry director may agree upon a higher percentage requirement; and

(2) the amounts of wages, salaries or payments paid to above-the-line personnel, except that the eligible amount of such wages, salaries or payments shall not comprise more than 25% of qualified production expenditures as defined in subsection (s).

(j) "Film" means a professional single media, multimedia, video or audiovisual program or feature, that may be digital, that is not child pornography as defined in K.S.A. 75-2589, and amendments thereto, or obscene material as defined in K.S.A. 2021 Supp. 21-6401, and amendments thereto. "Film" includes, but is not limited to, film produced for an interactive game or a documentary, special, music video, television commercial or television program, or a portion thereof, that is filmed or taped for cable, television, streaming network, national or regional syndication or for a feature-length motion picture intended for theatrical release or for network, streaming, national or regional syndication or broadcast.

(k) "High impact production" means a production for which production or postproduction expenditures are at least \$50,000,000, and at least 1/3 of such total expenditures constitute qualified expenditures approved by the secretary of commerce.

(l) "Kansas film media industry development expenditure" means documented financial, promotional or in-kind contributions or educational or workforce development efforts, at standard rates set by the secretary of commerce in consultation with the Kansas creative arts industries commission, in partnership with related Kansas industry labor organizations or educational institutions, toward the furtherance of the Kansas film or digital media industry. Promotional efforts include, but are not limited to, the promotion of the Kansas industry by directors, actors or producers affiliated with the production company's project through social media that is managed by the state, radio or television interviews facilitated by the department of commerce, enhanced screen credit acknowledgments or related events that are facilitated, conducted or sponsored by the secretary of commerce or the Kansas creative arts industries commission.

(m) "Multi-film deal" means a project in which a production company films at least 75% of main crew principal photography for three or more films in this state within three years or starts main crew principal photography on the third film within a five-year period.

(n) "Nonresident crew member" means an individual who is not a Kansas resident, hired for work on a qualifying production project within this state.

(o) "Production company" means a person, producer or company that produces film for, including, but not limited to, exhibition in theaters, television, interactive games, cable, syndication or streaming networks. "Production company" includes affiliates of a production company when approved by the secretary and identified in the agreement executed pursuant to section 3, and amendments thereto.

(p) (1) "Postproduction expenditures" means expenditures made in Kansas directly for postproduction activities in Kansas for an eligible production by a production company and includes, but are not limited to, the following categories:

(A) Eligible wages or salaries of above-the-line personnel or crew designated as postproduction;

(B) sound synchronization, recording or mixing;

(C) color grading;

(D) editing and related services;

(E) visual effects or special effects;

(F) computer graphics, special effects or animation services;

(G) film processing or format transfers;

(H) music production, recording, mixing or composition;

(I) licensing of music produced in this state or created by a Kansas resident;

(J) rental of facilities or equipment;

(K) leasing of vehicles, including leasing of airplanes, for postproduction-related transportation and costs of food and lodging; and

(L) other direct postproduction costs of an eligible production in accordance with generally accepted entertainment industry practices.

(2) "Postproduction expenditures" does not include goods, equipment or vehicles not purchased, rented or leased in Kansas from a Kansas-based vendor and when not used in Kansas. "Postproduction expenditures" does not include any expenditures for activities, work or services not conducted in Kansas and not performed by a Kansas-based vendor. A vendor that acts as a conduit to enable purchases, rentals or leases to qualify as "production expenditures" that would not otherwise qualify shall not be considered a Kansas-based vendor with respect to such purchases, rentals or leases. "Postproduction expenditures" does not include costs for footage shot outside this state, marketing, story rights or distribution.

(q) (1) "Production expenditures" means expenditures made in Kansas directly related to or used for production activities in this state for an eligible production by a production company, including, but not limited to, the following categories:

- (A) Eligible wages or salaries of above-the-line personnel or crew designated as production;
- (B) set construction, maintenance, repair or modification, set furnishings and operations, wardrobe, make-up, materials used to construct costumes, props or scenery, accessories and related services;
- (C) scripts, musical scores or storyboards and drafting and design supplies;
- (D) photography, sound synchronization, lighting and related services;
- (E) editing and related services;
- (F) rental of buildings, facilities or equipment and leasing of vehicles, including, but not limited to, leasing of airplanes;
- (G) transportation costs, including, but not limited to, leasing of vehicles or airplanes, directly related to production activities in Kansas;
- (H) food and lodging;
- (I) sound recording or mixing services;
- (J) computer graphics, special effects and animation services;
- (K) film processing or format transfers;
- (L) airfare if purchased through a Kansas travel agency;
- (M) insurance costs and bonding if purchased through a Kansas insurance agency; and
- (N) other direct costs of producing film in accordance with generally accepted entertainment industry practices.

(2) "Production expenditures" does not include goods, equipment or vehicles not purchased, rented or leased in Kansas from a Kansas-based vendor. "Production expenditures" does not include any expenditures for activities, work or services not conducted in Kansas and services not performed at the filming site unless the vendor is a Kansas-based vendor. "Production expenditures" does not include postproduction expenditures as defined in subsection (p) when used for postproduction activities.

(r) "Qualified postproduction expenditures" means the funds actually invested and expended by a production company that are postproduction expenditures made in this state and that are directly used in a certified production, including, but not limited to, any Kansas film media industry development expenditures, and approved by the secretary of commerce. "Qualified postproduction expenditures" shall not exceed the usual and customary cost of the goods or services acquired. The secretary of commerce or the secretary of revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliates, or the sale or purchase is not an arm's length transaction. "Qualified postproduction expenditures" does not include postproduction expenditures for which another taxpayer claims the production tax credit pursuant to section 4, and amendments thereto.

(s) "Qualified production expenditures" means the funds actually invested and expended by a production company that are production expenditures made in this state and directly used in a certified production, including any Kansas film media industry development expenditures, and approved by the secretary of commerce. "Qualified production expenditures" shall not exceed the

usual and customary cost of the goods or services acquired. The secretary of commerce or the secretary of revenue may determine the value of the goods or services for purposes of this act when the buyer and seller are affiliates, or the sale or purchase is not an arm's length transaction. "Qualified production expenditures" does not include production expenditures for which another taxpayer claims the production tax credit pursuant to section 4, and amendments thereto. "Qualified production expenditures" does not include wages, salaries or payment paid to above-the-line personnel that constitute more than 25% of total production expenditures.

(t) "Qualified Kansas promotion" means a promotion of this state, approved by the secretary as to content, distribution, duration and placement within a production, video or interactive game or in associated online or other promotions, that consists of a static or animated logo that promotes Kansas, an embedded Kansas promotion or a Kansas advertisement and that may include a link to a Kansas website.

(u) "Secretary" means the secretary of commerce.

(v) "Vendor" means an individual or business that sells or leases goods or services that are related to standard production industry inventory or services, has a physical presence in Kansas, is registered with the secretary of state, is subject to income tax liability under the Kansas income tax act and is subject to applicable sales tax reporting requirements. "Vendor" does not include a personal services business.

New Sec. 3.(a) There is hereby created the Kansas film industry development program. The purpose of the Kansas film industry development program is to:

(1) Provide tax incentives, including, but not limited to, an income tax credit and a sales tax exemption, for eligible projects produced in Kansas by production companies that meet the requirements of this act and are approved as certified projects by the secretary of commerce; and

(2) provide support programs or services, including, but not limited to, professional development, infrastructure investments and marketing efforts to develop film industry-related Kansas businesses.

(b) The program shall be administered by the secretary of commerce with the assistance of the Kansas creative arts industries commission. The secretary of commerce shall consult with the Kansas creative arts industries commission in administering this act to ensure the best possible use of Kansas resources for promoting and developing film production and related industry in Kansas. In determining whether to approve a project as a certified project, the secretary shall consider the immediate impact and potential future impact of the project on the development and growth of the Kansas film, video and digital media production industry. The secretary may limit, by category, specified eligible expenditures or total amounts of eligible production or postproduction expenditures that may be approved by the secretary as qualified production or postproduction expenditures. The aggregate total amount of income tax credits and expenditures for support programs or services under this act shall not exceed \$10,000,000 in a fiscal year and the total aggregate amount of income tax credits shall not exceed \$9,000,000 in a fiscal year. The secretary shall designate at least 10% of such total aggregate amount of \$10,000,000 for support programs or services under subsection (a)(2).

(c) To be eligible for an income tax credit or a sales tax exemption under this act, a production company shall, prior to the commencement of the project or of principal photography, submit the following to the secretary of commerce in the form and manner and with such information and documentation as required by the secretary:

(1) An application for approval of the production as an eligible production and for designation as a certified production;

(2) evidence of adequate financing for the project;

(3) evidence of a certificate of general liability insurance with a minimum coverage of \$1,000,000, or a greater amount if required by the secretary, and workers compensation coverage in compliance with Kansas law that shall include coverage of employer liability;

(4) a description of the project, timelines and anticipated completion dates, anticipated eligible expenditures and project activities to be conducted in Kansas, anticipated employment of crew

who are Kansas residents and Kansas-based above-the-line personnel or use of Kansas-based vendors and any anticipated construction or contribution of production infrastructure or participation in Kansas film media industry development activities; and

(5) an economic impact statement showing the economic impact from the activities of the project. Such economic impact statement shall indicate the impact on the region of the state in which the project production or production-related activities are conducted and any impact on the state as a whole. The secretary may consider the size of the project when determining the scope and information required.

(d) If the secretary determines that the project is an eligible project and approves the application, the production company shall enter into an agreement with the secretary prior to the commencement of the project on such terms and conditions as the secretary may require. Such terms and conditions shall include, but not be limited to, qualified Kansas promotions to be provided and any limitations the secretary may impose on the amounts of eligible production or postproduction expenditures that may be approved by the secretary as qualified expenditures, whether in total or for specified eligible expenditures or specified eligible expenditure categories. The production company shall agree to the provision of documentation and information to the secretary or the secretary of revenue on a regular basis as requested by the secretary to determine qualified expenditures and compliance with the requirements of this act and rules and regulations adopted by the secretary pursuant to this act. The production company shall agree to the provision of information to the secretary on a regular basis as requested by the secretary regarding the progress of the project and estimated completion date. The terms and conditions shall include provisions for repayment of income tax credits or sales tax exempted if requirements of this act or rules and regulations are not met, provisions requiring cooperation with any audit conducted pursuant to this act and provisions for submission of information as required for publication on the Kansas economic incentive database and for the secretary's reports to the legislature as provided by section 5, and amendments thereto. Such terms and conditions may also include the facilitation of, coordination with or provision of support services for Kansas businesses and organizations to enable participation in the project or the development of the Kansas film industry by the production company.

(e) Upon approval by the secretary of commerce as an eligible and certified project and the execution of the agreement as provided in subsection (d), the secretary may approve an application by the production company for a sales tax exemption for production or postproduction expenditures pursuant to the provisions of K.S.A. 79-3606(pppp), and amendments thereto, and shall notify the applicant and the secretary of revenue of such approval. In considering approval of such sales tax exemption, the secretary shall prioritize expenditures in rural areas or in economically depressed urban areas to the extent feasible. The secretary may require that all or a portion of expenditures eligible for exemption from sales tax be made with businesses located in such areas, as determined by the secretary. A production company receiving a sales tax exemption shall provide the secretary or the secretary of revenue with such documentation as requested by the secretary or the secretary of revenue to show that expenditures have been made as required.

(f) Prior to receipt by a production company of any income tax credit authorized by this act, the secretary shall examine and determine, in the sole discretion of the secretary, the amount of eligible production or eligible postproduction expenditures that are qualified production expenditures or qualified postproduction expenditures of the production company and that such expenditures are for a certified production. No expenditure that was exempt from sales taxation pursuant to K.S.A. 79-3606(pppp), and amendments thereto, shall also be a basis for the income tax credit pursuant to section 4, and amendments thereto, unless specifically approved by the secretary. The production company shall provide such information and documentation as requested by the secretary to make such determination. In addition, the production company shall provide evidence as required by the secretary that:

- (1) The production company has filed all Kansas tax returns and tax documents required by law and withholding taxes have been submitted as required by law;
- (2) all crew who are Kansas residents and local vendors have been paid and that there are no

pending liens in this state against the production company; and

(3) the certified project for which a sales tax exemption has been granted or an income tax credit is requested has been completed, or in the discretion of the secretary, a phase of the certified project has been completed and adequate assurance, as determined by the secretary, has been provided that the project will be fully completed.

(g) As a condition of receiving any income tax credits pursuant to this act, the production company shall provide the secretary with a report by a certified public accountant licensed to practice in Kansas, prepared at the expense of the applicant, verifying that the expenditures have been made in compliance with the requirements of this act. The report shall be provided with a claim for income tax credits as required by section 4, and amendments thereto, or as required by the secretary.

(h) The secretary shall notify the production company and the secretary of revenue of determinations of qualified expenditures made by the secretary of commerce.

(i) The secretary of commerce and the secretary of revenue may adopt rules and regulations to implement the provisions of this act.

New Sec. 4. (a) For any production company or its affiliates that make qualified production or qualified postproduction expenditures for a certified production approved by the secretary of commerce, there shall be allowed an income tax credit against the tax imposed under the Kansas income tax act in the amount as determined pursuant to subsection (d). The tax credit shall be applied against the production company's income tax liability for the taxable year in which the expenditures are made by the eligible production company. If the amount of the tax credit allowed exceeds the production company's income tax liability for the taxable year, an amount equal to the remainder of the unused tax credits shall be refunded to the production company. If the eligible production company is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability entity, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or members of such limited liability entity in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability entity and in accordance with the agreement executed pursuant to section 3, and amendments thereto. The aggregate total amount of credits allowed under this section shall not exceed \$9,000,000 in a fiscal year.

(b) A claim for a tax credit shall be filed with the secretary of revenue as part of a return filed by the production company pursuant to the Kansas income tax act. The order that agreements are executed with the secretary of commerce pursuant to section 3, and amendments thereto, shall determine the order that credit claims are allocated by the secretary of revenue. A claim shall be submitted with a return or amended return within one calendar year of the date of the last eligible production expenditure or the last eligible postproduction expenditure for the certified production that would be eligible for an income tax credit as provided by subsection (a). All qualified production expenditures or postproduction expenditures incurred during the taxable year by a production company for a certified production shall be submitted for credit as part of the same income tax return. A tax credit claim for qualified expenditures during a taxable year shall not be divided and submitted with multiple returns or in multiple years.

(c) The claim shall include a copy of the project certification and the determination of qualified production or postproduction expenditures by the secretary of commerce. The claim shall also include a report by a certified public accountant licensed to practice in Kansas, prepared at the expense of the applicant, verifying that the expenditures have been made in compliance with the requirements of this act.

(d) The amount of the tax credit shall be equal to 30% of:

(1) The qualified production expenditures for the certified project; or

(2) the qualified postproduction expenses for a certified project with no qualified production expenses.

(e) The secretary of commerce may approve additional credits as follows:

(1) (A) In addition to the amount authorized by subsection (d)(1), up to 5% of the qualified production expenditures for an eligible multi-film deal, eligible television series, a high-impact production or contributions to film-related infrastructure or workforce development in Kansas, including, but not limited to, contributions to permanent sets, sound stages, film editing facilities, computer graphics, special effects or animation facilities, educational facilities or programs, internships or apprenticeships or equipment for production activities, in the amount such contributions are approved by the secretary of commerce; or

(B) up to 5% for qualified production expenditures for a production if 50% or more of the crew or above-the-line personnel are Kansas residents; or

(2) in addition to the amount authorized under subsection (d)(1) or (2), up to an additional 5%, as determined by the secretary, of the amount of the qualified production expenditures or qualified postproduction expenditures, as applicable, of a certified project of a production company that has previously received an income tax credit under this act with respect to such certified project.

(f) In addition to or in lieu of the credits authorized by subsection (d), as determined by the secretary, a Kansas-based production company, or a Kansas-based company that hires a Kansas-based production company, that incurs at least \$25,000 in qualified expenditures, including, but not limited to, expenditures for a production not intended for multimarket distribution but that otherwise constitute qualified expenditures, and meets all other qualifications for a tax credit under this act shall receive a nonrefundable tax credit in the amount of 25% of such qualified production expenditures.

(g) For purposes of determining the payment of credit claims pursuant to this section, the secretary of revenue may require that credit claims of affiliates be combined into one claim if necessary to accurately reflect closely integrated activities of affiliates.

(h) If a production company hires another production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the income tax credit authorized by this section.

New Sec. 5. On or before January 31 of years 2023 through 2027, the secretary of commerce shall submit an annual report to the standing committees on commerce, labor and economic development and taxation of the house and the standing committees on commerce and assessment and taxation of the senate. The report shall include the amounts and recipients of tax incentives approved by the secretary pursuant to this act for the prior fiscal year and to the date of the report, anticipated tax incentive amounts for the current fiscal year, the production companies that have applied for and that have been certified for projects, a description of ongoing and completed projects and the impact of such projects and the program on the film, video or digital production industry in Kansas.

New Sec. 6. No sales tax exemption or income tax credit pursuant to this act shall apply or be awarded for expenditures made on or after January 1, 2027.

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(pppp) as provided by section 3, and amendments thereto, all sales of tangible personal property or services constituting production or postproduction expenditures purchased for the purpose of a certified project by a production company that meets the requirements established in the Kansas film production industry development act, and that has been approved for a project exemption certificate by the secretary of commerce, and the sale and installation of machinery and equipment constituting production or postproduction expenditures purchased by such production company for use in this state for a certified project. Such sales tax exemptions may be limited by the secretary of commerce as provided by section 3, and amendments thereto. When a production company contracts for construction, reconstruction, enlargement or remodeling

of any facility for purposes of a certified project that constitutes a production or postproduction expenditure, the production company shall obtain from the state and furnish to the contractor an exemption certificate for the certified project, and the contractor may purchase materials, machinery and equipment for incorporation in such work. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the work, the contractor shall furnish to the owner of the production company a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection and section 3, and amendments thereto. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof who uses or otherwise disposes of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in K.S.A. 79-3615(h), and amendments thereto. As used in this subsection, certified project, production company, production expenditure and postproduction expenditure mean the same as defined in section 2, and amendments thereto .

Sec. 8. K.S.A. 2021 Supp. 79-3606, as amended by section 16 of 2022 Senate Bill No. 347, is hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.