

CO H 1275, Reengrossed

Colorado

SUMMARY: Concerns modifications to the performance-based incentive for film production in Colorado; clarifies the definition of qualified local expenditure for payments to personal service corporations, requiring production companies to file information income tax returns regarding such payments, and eliminating the withholding exemption for payments to nonresidents who perform services in connection with a film production for a specified number of days in a year.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

03/30/2023 INTRODUCED.

03/30/2023 To HOUSE Committee on FINANCE.

04/10/2023 From HOUSE Committee on FINANCE: Reported favorably with amendment.

04/10/2023 In HOUSE. To second reading.

04/13/2023 In HOUSE. Read second time and committee amendment adopted. To third reading.

04/14/2023 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

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Reengrossed

April 14, 2023

Lindstedt

First Regular Session

Seventy-fourth General Assembly

STATE OF COLORADO

REENGROSSED

LLS NO. 23-0956.01 Alison Killen x4350

HOUSE BILL 23-1275

HOUSE SPONSORSHIP

Lindstedt and Weinberg, Bird, English, Froelich, Garcia, Hamrick, Herod, Lieder, Lindsay, Mabrey, McCluskie, Taggart, Titone, Willford

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A BILL FOR AN ACT

CONCERNING MODIFICATIONS TO THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO, AND, IN CONNECTION THEREWITH, CLARIFYING THE

DEFINITION OF "QUALIFIED LOCAL EXPENDITURE" FOR PAYMENTS TO PERSONAL SERVICE CORPORATIONS, REQUIRING PRODUCTION COMPANIES TO FILE INFORMATION INCOME TAX RETURNS REGARDING SUCH PAYMENTS, AND ELIMINATING THE WITHHOLDING EXEMPTION FOR PAYMENTS TO NONRESIDENTS WHO PERFORM SERVICES IN CONNECTION WITH A FILM PRODUCTION FOR LESS THAN ONE HUNDRED TWENTY DAYS IN A YEAR.

Bill Summary

Section 1 of the bill modifies the definition of "qualified local expenditure" for purposes of the performance-based incentive for film production in Colorado to include payment by a production company to a personal services corporation to pay the wages or salaries of an employee-owner of the personal service corporation. "Personal service corporation" and "employee-owner of a personal service corporation" have the same meaning as set forth in the internal revenue code. A payment by a production company to a personal service corporation is a qualified local expenditure only if the production company documents the payment in an information income tax return and payments in excess of \$1 million per calendar year per personal service corporation are excluded from the calculation of the performance-based incentive.

Section 2 adds the information income tax return requirement for production companies to state income tax law and specifies that a production company is generally not required to deduct and withhold state income tax from a payment to a personal service corporation for services. However, if the information return fails to provide a taxpayer identification number for the personal service corporation that can be validated through the taxpayer identification number matching program administered by the internal revenue service, or provides a taxpayer identification number issued for a nonresident alien, then such deduction, withholding, and payment of state income tax to the department of revenue is required.

Section 2 also eliminates the withholding exemption for a payment to a nonresident individual who performs services in connection with a film production for less than 120 days in a calendar year.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-48.5-114, **amend** (7) introductory portion, (7)(h), and (7)(i); and **add** (4.5) and (7)(j) as follows:

24-48.5-114. Film, television, and media - definitions. As used in this section and sections 24-48.5-115 and 24-48.5-116, unless the context otherwise requires:

(4.5) (a) "PERSONAL SERVICE CORPORATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 269A (b)(1) OF THE INTERNAL REVENUE CODE.

(b) "EMPLOYEE-OWNER OF A PERSONAL SERVICE CORPORATION" HAS THE SAME MEANING AS "EMPLOYEE OWNER" AS SET FORTH IN SECTION 269A (b)(2) OF THE INTERNAL REVENUE CODE.

(7) "Qualified local expenditure" means a payment made by a production company operating in Colorado to a person or business in Colorado in connection with production activities in Colorado. "Qualified local expenditure" ~~shall include, but need not be~~ **INCLUDES, BUT IS NOT** limited to:

(h) Payments for other direct costs incurred by the film production company that are deemed appropriate by the office; **and**

(i) Payments of up to one million dollars per employee or contractor, made by a production company to pay the wages or salaries of employees or contractors who participate in the production activities. In order for any wage or salary to be considered a qualified local expenditure, all Colorado income taxes shall be withheld and paid either by the production company or the individual. Any payments in excess of one million dollars per employee or contractor shall be excluded ; **AND**

(j) PAYMENTS OF UP TO ONE MILLION DOLLARS PER CALENDAR YEAR PER PERSONAL SERVICE CORPORATION, MADE BY A PRODUCTION COMPANY TO A PERSONAL SERVICE CORPORATION TO PAY THE WAGES OR SALARIES OF AN EMPLOYEE-OWNER OF THE PERSONAL SERVICE CORPORATION WHO PARTICIPATE IN THE PRODUCTION ACTIVITIES.

IN ORDER FOR ANY WAGE OR SALARY TO BE A CONSIDERED A QUALIFIED LOCAL EXPENDITURE, THE PRODUCTION COMPANY MUST FILE AN INFORMATION RETURN PURSUANT TO SECTION 39-22-604 (21) REGARDING THE PAYMENTS MADE TO THE PERSONAL SERVICE CORPORATION. ANY PAYMENTS IN EXCESS OF ONE MILLION DOLLARS PER PERSONAL SERVICE CORPORATION SHALL BE EXCLUDED.

SECTION 2. In Colorado Revised Statutes, 39-22-604, **amend** (2)(a); and **add** (21) as follows:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions. (2) As used in this section, unless the context otherwise requires:

(a) "Employee" means and includes every individual who is a resident or domiciled in the state of Colorado performing services for an employer, either within or without or both within and without the state of Colorado, or any individual performing services within the state of Colorado, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes officers of corporations and individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof or the state of Colorado or any county, city or municipality, or political subdivision thereof . ~~except that the term shall not include an individual who is not a resident or domiciled in the state of Colorado and who performs services in connection with any phase of motion picture or television production or television commercials for less than one hundred twenty days during any calendar year.~~

(21) (a) ANY PRODUCTION COMPANY, AS DEFINED IN SECTION 24-48.5-114 (6), THAT MAKES A PAYMENT FOR SERVICES TO ANY PERSONAL SERVICE CORPORATION, AS DEFINED IN SECTION 24-48.5-114 (4.5)(a), MUST FILE AN INFORMATION RETURN IN A FORM PRESCRIBED BY THE DEPARTMENT OF REVENUE.

(b) NO AMOUNT IS REQUIRED TO BE DEDUCTED AND WITHHELD FROM A PAYMENT FOR SERVICES TO A PERSONAL SERVICE CORPORATION OR AN EMPLOYEE-OWNER OF A PERSONAL SERVICE CORPORATION FOR INCOME TAX DUE TO THE STATE IF THE PRODUCTION COMPANY'S INFORMATION RETURN, REQUIRED BY SUBSECTION (21)(a) OF THIS SECTION, ALLOWS TAXPAYER IDENTIFICATION NUMBER VERIFICATION THROUGH THE TAXPAYER IDENTIFICATION NUMBER MATCHING PROGRAM ADMINISTERED BY THE INTERNAL REVENUE SERVICE FOR THE PERSONAL SERVICE CORPORATION. A PRODUCTION COMPANY SHALL DEDUCT AND WITHHOLD STATE INCOME TAX AT THE RATE SET FORTH IN SECTION 39-22-104 OR 39-22-301 IF THE PERSONAL SERVICE CORPORATION THAT PERFORMED THE SERVICES:

(I) FAILS TO PROVIDE A VALIDATED TAXPAYER IDENTIFICATION NUMBER; OR

(II) PROVIDES AN INTERNAL REVENUE SERVICE-ISSUED TAXPAYER IDENTIFICATION NUMBER ISSUED FOR NONRESIDENT ALIENS.

(c) FOR PURPOSES OF ALL OTHER PROVISIONS OF THIS SECTION, EXCLUDING SUBSECTION (3)(a) OF THIS SECTION, A PRODUCTION COMPANY THAT DEDUCTS OR WITHHOLDS STATE INCOME TAX FROM A PERSONAL SERVICES CORPORATION THAT PERFORMS SERVICES PURSUANT TO THIS SUBSECTION (21) SHALL BE TREATED AS AN EMPLOYER WITHHOLDING AND DEDUCTING WAGES FROM AN EMPLOYEE, AND SUCH OTHER PROVISIONS OF THIS SECTION SHALL APPLY ACCORDINGLY. THIS SUBSECTION (21)(c) SHALL NOT BE CONSTRUED TO MAKE THE PERSONAL SERVICES CORPORATION THAT PERFORMED THE SERVICES AN EMPLOYEE OF THE PRODUCTION COMPANY THAT DEDUCTS AND WITHHOLDS STATE INCOME TAX FOR ANY OTHER PURPOSE IN LAW.

(d) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES AS NECESSARY REGARDING THE INFORMATION RETURN REQUIRED BY SUBSECTION (21)(a) OF THIS SECTION AND TO AUTHORIZE ANY AMOUNTS DEDUCTED AND WITHHELD PURSUANT TO SUBSECTION (21)(b) OF THIS SECTION TO BE PAID TO THE DEPARTMENT OF REVENUE AS PART OF THE STATE INCOME TAX RETURN.

(e) FOR PURPOSES OF THIS SUBSECTION (21), "VALIDATED TAXPAYER IDENTIFICATION NUMBER" HAS THE SAME MEANING AS SET FORTH IN SUBSECTION (18)(f) OF THIS SECTION.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) The changes related to the definition of employee and withholding requirements made in section (2) of this act apply to income tax years commencing on or after January 1, 2024.