

SC H 4020, Amended

South Carolina

SUMMARY: Relates to the tax rebate for certain motion picture production companies; increases the annual limit; allows the use of rebates for certain expenditures and expenses; by repealing specified section; relates to distribution of admissions taxes for rebates to motion picture production companies and certain departmental expenses.~SAME AS:

Changes in Bill text reflected as:

Text Deleted

Text Added

Text Vetoed

Current Legislative Status

02/23/2023 INTRODUCED.

02/23/2023 To HOUSE Committee on WAYS AND MEANS.

03/30/2023 From HOUSE Committee on WAYS AND MEANS: Reported favorably with amendment.

04/05/2023 Committee amendment adopted on HOUSE floor.

04/06/2023 Passed HOUSE. *****To SENATE.

04/06/2023 To SENATE Committee on FINANCE.

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session: South Carolina 125th South Carolina Assembly - 1st Regular Session

cite: 2023 SC H 4020

Amended

April 5, 2023

Newton

South Carolina General Assembly

125th Session, 2023-2024

Bill 4020

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12-62-50, RELATING TO THE TAX REBATE FOR CERTAIN MOTION PICTURE PRODUCTION COMPANIES, SO AS TO INCREASE THE ANNUAL LIMIT, AND BY ALLOWING THE USE OF REBATES FOR CERTAIN EXPENDITURES AND EXPENSES; AND BY REPEALING SECTION 12-62-60 RELATING TO DISTRIBUTION OF ADMISSIONS TAXES FOR REBATES TO MOTION PICTURE PRODUCTION COMPANIES AND CERTAIN DEPARTMENTAL EXPENSES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-62-50(A)(1) of the S.C. Code is amended to read:

(1) The South Carolina Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed twenty percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings, and may not exceed twenty-five percent for South Carolina residents, for persons employed in connection with the production when total production costs in South Carolina equal or exceed one million dollars during the taxable year. The rebates in total

may not annually exceed ~~ten~~ **thirty** million dollars and shall come from the state's general fund. ***Any unused rebates may be carried forward for the next three tax years thereby increasing the annual limit in those subsequent years.*** For purposes of this section, "total aggregate payroll" does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture.

SECTION 2. Section 12-62-50 of the S.C. Code is amended by adding:

(E)(1) In addition to the rebates allowed pursuant to subsection (A), the department may rebate to a motion picture production company up to thirty percent of the expenditures made by the motion picture production company in the State if the motion picture production company has a minimum in-state expenditure of one million dollars. This item does not apply to payroll paid for motion picture production employees subject to this section or money paid to the companies described in subsection (A)(2)(a)(ii) or (iii). The allocations to motion picture production companies contemplated by this chapter must be made by the department. The department shall report annually to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee on the use of all funds pursuant to this item. The report is a public record pursuant to the Freedom of Information Act, Chapter 4, Title 30, and must be posted annually on the commission's website by July first.

(2) Also, the department may use a portion of the rebate allotment to fund the operations for the South Carolina Film Commission and for the promotion of collaborative production and educational efforts between institutions of higher learning in South Carolina and motion picture-related entities.

(3) Any rebates allowed or funds used by the department pursuant to this subsection shall reduce the annual limit set forth in subsection (A) by an equal amount.

(4) The department, in conjunction with the South Carolina Film Commission, shall adopt rules and promulgate regulations necessary to administer this subsection.

SECTION 3. Section 12-62-60 of the S.C. Code is repealed.

SECTION 4.A. Article 25, Chapter 6, Title 12 of the S.C. Code is amended by adding:

Section 12-6-3810. (A) As used in this section:

(1) "Accredited theater production" means a for profit live stage presentation in a qualified production facility, as defined in this section that is either a pre-Broadway production or a post-Broadway production.

(2) "Accredited theater production certificate" means a certificate issued by the Department of Parks, Recreation and Tourism certifying that the production is an accredited theater production that meets the guidelines of this chapter.

(3) "Advertising and public relations expenditure" means costs incurred within the state by the accredited theater productions for goods or services related to the national marketing, public relations, creation and placement of print, electronic, television, billboards and other forms of advertising to promote the accredited theater production.

(4) "Department" means the Department of Parks, Recreation, and Tourism.

(5) "Payroll" means all salaries, wages, fees, and other compensation including related benefits for services performed and costs incurred within the State.

(6) "Pre-Broadway production" means a live stage production that, in its original or adaptive version, is performed in a qualified production facility having a presentation scheduled for Broadway's theater district in New York City within twelve months after its South Carolina presentation.

(7) "Post-Broadway production" means a live stage production that, in its original or adaptive version, is performed in a qualified production facility and opens its United States tour in South Carolina after a presentation scheduled for Broadway's theater district in New York City.

(8) "Production and performance expenditures" means a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, performance, or operating expenditures incurred in this State for a qualified theater production including, but not

limited to, expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make up, accessories; costs associated with sound, lighting, staging, payroll, transportation expenditures, advertising and public relations expenditures, facility expenses, rentals, per diems, accommodations, and other related costs.

(9) "Qualified production facility" means a facility located in this State in which live theatrical productions are, or are intended to be, exclusively presented that contains at least one stage, a seating capacity of one thousand or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the accredited theater production.

(10) "Transportation expenditures" means expenditures for the packaging, crating, and transportation both to the State for use in a qualified theater production of sets, costumes, or other tangible property constructed or manufactured out of state, or from the State after use in a qualified theater production of sets, costumes, or other tangible property constructed or manufactured in this State and the transportation of the cast and crew to and from the State. The term includes the packaging, crating, and transporting of property and equipment used for special and visual effects, sound, lighting and staging, costumes, wardrobes, make up, and related accessories and materials, as well as any other performance or production related property and equipment. Transportation expenditures do not include any costs to transport property and equipment to be used only for filming and not in a qualified theater production, any indirect costs, and expenditures that are later reimbursed by a third party; or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

(B)(1) Any taxpayer that receives an accredited theater production certificate pursuant to subsection (C) is allowed an income tax credit equal to thirty percent of the total production and performance expenditures and transportation expenditures for the accredited theater production and to be computed as provided in this section. The credit is limited to certified production costs directly attributable to activities in the State and transportation expenditures. The credits must be awarded on a first-come first-serve basis, and the total amount of credits allowed for all taxpayers in a tax year may not exceed two million dollars. To be eligible to claim the credit, the total production budget must be at least one hundred thousand dollars. The tax credit may be claimed in the year in which the credit is earned and may be carried forward for the next three tax years.

(2) Credits allowed to a company that is a subchapter S corporation, partnership, or a limited liability company that is taxed as a partnership, must be passed through respectively to persons designated as partners, members, or owners on a pro rata basis or pursuant to an executed agreement among such persons designated as subchapter S corporation shareholders, partners, or members documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity.

(3) A taxpayer may sell, exchange, or otherwise transfer tax credits earned pursuant to this section. A tax credit or increment of a tax credit may be transferred only once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but the transferred credit may not be used more than three years after it was originally earned. With regard to the sale or exchange of a credit allowed under this section, general income tax principles apply for purposes of the state income tax.

(C)(1) To obtain eligibility, a taxpayer must properly prepare, sign, and submit to the department an application for initial certification of the theater production. The application shall include the information and data as the department deems reasonably necessary for the proper evaluation and administration of the application including, but not limited to, any information about the theater production company and a specific South Carolina live theater or musical production. The department shall review the completed application and determine whether it meets the requisite criteria and qualifications for the initial certification for the production. If the initial certification is granted, the department shall issue a notice of initial certification of the accredited theater production to the theater production company and to the Department of Revenue. The notice shall state that, after appropriate review, the initial application meets the appropriate criteria for conditional eligibility. The notice of initial certification will provide a unique identification

number for the production and is only a statement of conditional eligibility for the production and, as such, does not grant or convey any tax benefits.

(2) Upon completion of an accredited theater production, the taxpayer shall properly prepare, sign, and submit to the department an application for final certification of the accredited theater production. The final application shall also contain a cost report and an accountant's certification. The Department of Parks, Recreation and Tourism and the Department of Revenue may rely without independent investigation, upon the accountant's certification, in the form of an opinion, confirming the accuracy of the information included in the cost report. Upon review of a duly completed and filed application and upon no later than thirty days of submission thereof, the Department of Revenue shall make a determination pertaining to the final certification of the accredited theater production and the resultant tax credits.

(3) Upon determination that the taxpayer qualifies for final certification and the resultant tax credits, the Department of Revenue shall issue to the taxpayer: (i) an accredited theater production certificate; and (ii) a tax credit certificate in an amount in accordance with subsection (B). A musical and theatrical production company is prohibited from using state funds, state loans, or state guaranteed loans to qualify for the motion picture tax credit. All documents that are issued by the department pursuant to this section shall reference the identification number that was issued to the production as part of its initial certification.

(4) The department shall promulgate rules and regulations as are necessary to carry out the intent and purposes of this section for the certification of the production and the resultant production credit.

(5) If information comes to the attention of the department that is materially inconsistent with representations made in an application, the department may deny the requested certification. In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and the tax credits have been transferred, assigned, or allocated, the State will pursue its recapture remedies and rights against the applicant of the theater production tax credits. No redress shall be sought against assignees, sellers, transferees, or allocates of the credits.

(6) Pursuant to subsection (B), the department shall not approve any application if approval would cause tax credits to be earned in the tax year that exceeds the maximum amount of two million dollars.

(D) For the purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter, the Department of Parks, Recreation and Tourism and the Department of Revenue may examine any books, paper, records, or memoranda bearing upon the matters required to be included in the return, report, or other statement, and may require the attendance of the person executing the return, report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine the person under oath respecting any matter that the department deems pertinent or material in administration and application of this section and where not inconsistent with other legal provisions, the director may request information from the tax administrator.

B. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2022.

SECTION 5. This act takes effect upon approval by the Governor.