

MD S 452, Enacted - Interim

Maryland

SUMMARY: Expands eligibility for the credit against the State income tax for certain film production activities to include documentaries, talk, reality, and game shows; defines total direct costs; increases the percentages of such costs that qualify for the credit; establishes the Maryland Entertainment Council to study and make recommendations regarding Maryland's film, television, and entertainment industry; alters the aggregate amount of tax credit certificates that the Secretary of Commerce may issue each year.~SAME AS:

Changes in Bill text reflected as:

Text Deleted

Text Added

Text Vetoed

Current Legislative Status

02/02/2023 INTRODUCED.

02/02/2023 To SENATE Committee on BUDGET AND TAXATION.

02/02/2023 Hearing Scheduled 2/22 at 1:00 p.m.

03/20/2023 From SENATE Committee on BUDGET AND TAXATION: Reported as amended.

03/20/2023 Committee amendment adopted on SENATE floor.

03/20/2023 Second reading passed with amendments. To third reading.

03/20/2023 Passed SENATE. *****To HOUSE.

03/21/2023 To HOUSE Committee on WAYS AND MEANS.

03/21/2023 Hearing Scheduled 3/30 at 1:00 p.m.

04/06/2023 From HOUSE Committee on WAYS AND MEANS: Reported as amended.

04/06/2023 Committee amendment adopted on HOUSE floor.

04/06/2023 Second reading passed with amendments. To third reading.

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

04/10/2023 SENATE concurred in HOUSE amendments.

04/10/2023 Eligible for GOVERNOR'S desk.

05/08/2023 Signed by GOVERNOR.

05/08/2023 Chapter No. 434

~

session: Maryland 2023 Regular Session - 443rd Session of the General Assembly

cite: 2023 MD S 452

Enacted - Interim

May 8, 2023

Griffith

SENATE BILL 452

ENROLLED BILL

-- Budget and Taxation/Ways and Means --

Introduced by **Senators Griffith, Corderman, Elfreth, Guzzone, Jackson, King, Klausmeier, Muse, Salling, M. Washington, ~~and Watson~~ Watson, Bailey, Benson, Hester, Hettleman, McCray, Rosapepe, and Zucker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

AN ACT concerning

~~Income Tax~~ **Film Production Activity** *Income Tax Credit - Alterations and Maryland Entertainment Council*

FOR the purpose of expanding eligibility for the credit against the State income tax for certain film production activities to include documentaries and talk, reality, and game shows; altering the definition of "total direct costs" to include certain compensation for certain individuals; increasing the percentages of total direct costs that qualify for the tax credit; *establishing the Maryland Entertainment Council to study and make recommendations regarding Maryland's film, television, and entertainment industry*; altering the aggregate amount of tax credit certificates that the Secretary of Commerce may issue each fiscal year; and generally relating to the film production activity tax credit *and the Maryland Entertainment Council*.

BY repealing and reenacting, with amendments,

Article - Tax - General

Section 10-730

Annotated Code of Maryland

(2022 Replacement Volume)

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;

5. a music video; ~~or~~

6. a digital animation project ;

~~7. A DOCUMENTARY; OR OR~~

~~8. A TALK, REALITY, OR GAME SHOW ;OR~~

~~9. A LIVE TO TAPE EVENT.~~

(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.~~ ~~6.~~ pornography;
- ~~8.~~ ~~7.~~ an infomercial;
- ~~9.~~ ~~8.~~ a digital project or an animation project other than a digital animation project; or
- ~~10.~~ ~~9.~~ a multimedia project.

(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.

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

(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.

(8) "Secretary" means the Secretary of Commerce.

(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.

(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. SALARIES, WAGES, OR OTHER COMPENSATION FOR WRITERS, DIRECTORS, OR PRODUCERS DOMICILED IN THE STATE ; AND~~

~~4.~~ ~~5.~~ 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. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, 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%~~ **28%** of the total direct costs that qualify for the tax credit; and
 - (ii) for a television series, ~~27%~~ **30%** of the total direct costs that qualify for the tax credit.
- (e) In accordance with § 2.5-109 of the Economic Development Article, the Department shall submit a report on film production activity in the State and the economic benefits to the State resulting from film production activity during the reporting period.
- (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 YEARS~~ 2021 ~~and each fiscal year thereafter~~ **THROUGH 2023-2024** ~~2023~~, \$12,000,000 ;
 - (VII) FOR FISCAL YEAR 2024, \$15,000,000;**
 - (VIII) FOR FISCAL YEAR 2025, \$17,500,000;**
 - ~~(VII) (IX) FOR FISCAL YEAR 2024 YEARS 2025 THROUGH 2028 YEAR 2026,~~ **\$25,000,000 \$20,000,000; AND**
 - ~~(VIII) (X) FOR FISCAL YEAR 2025-2029 2027 AND EACH FISCAL YEAR THEREAFTER, \$50,000,000~~ **\$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%~~ 28% 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, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Maryland Entertainment Council.

(b) (1) Subject to paragraph (2) of this subsection, the Council consists of:

(i) one member of the Senate of Maryland, appointed by the President of the Senate;

(ii) one member of the House of Delegates, appointed by the Speaker of the House;

(iii) the Governor's appointed Senior Advisor on Film, Television, and Entertainment; and

(iv) the following members, appointed by the Governor:

1. one expert in the business of the film, television, and entertainment industry, such as an executive, producer, studio representative, or an individual holding a leadership role within the industry;

2. one expert in workforce development or higher education related to the film, television, and entertainment industry;

3. one expert in emerging technologies or specialties of the film, television, and entertainment industry, such as an expert in gaming, artificial intelligence, visual effects, animation, post-production, or another related specialty;

4. one expert in legal or policy fields specific to the film, television, and entertainment industry;

5. one representative of the independent film and television community;

6. one representative of nongovernmental entities or philanthropic institutions that support film, television, or entertainment directly or creative economies more broadly; and

7. one representative of organized labor in the entertainment industry.

(2) The Governor may appoint up to three additional individuals as honorary cochairs of the Council who are:

(i) individuals with extraordinary cultural capital and commanding significant influence within the film, television, and entertainment industry;

(ii) business leaders commanding a significant stake within the film, television, and entertainment industry; or

(iii) individuals who have defined the current cultural brand of the film, television, and entertainment industry within the State.

(3) An individual appointed as an honorary cochair of the Council shall be a nonvoting member of the Council whose responsibilities shall be limited to the promotion and business development of Maryland's film, television, and entertainment industry.

(c) The Senior Advisor on Film, Television, and Entertainment shall chair the Council.

(d) The Department of Commerce shall provide staff for the Council.

(e) A member of the Council:

(1) may not receive compensation as a member of the Council; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Council shall:

(1) assess Maryland's existing assets, opportunities, and competitive position within the film, television, and entertainment industry;

(2) study:

(i) Maryland's State, local, and private assets that currently support Maryland's film, television, and entertainment industry, including key infrastructure, existing workforce, workforce pipelines, scenic profile, emerging specialties, and independent creative communities;

(ii) existing State programs, agencies, offices, grant programs, and commissions across State agencies that support the film, television, and entertainment industry;

(iii) models, competitive profiles, methods, and legislation that states have utilized to incentivize necessary infrastructure and workforce to support the film, television, and entertainment industry;

(iv) industry needs, disruptive trends, and emerging technologies within the film, television, and entertainment industry; and

(v) complementary industries, aligned businesses, and potential corporate, philanthropic, and other partners for the film, television, and entertainment industry; and

(3) make recommendations on the development of a coordinated, comprehensive strategic plan to position Maryland as an emerging leader in the film, television, and entertainment industry.

(g) On or before December 1, 2023, the Council shall submit a preliminary report to the Governor, the Secretary of Commerce, and, in accordance with § 2-1257 of the State Government Article, the General Assembly that includes:

(1) an assessment of Maryland's existing infrastructure, creative profile, and core structural advantages that the State is uniquely positioned to leverage;

(2) recommendations on how to best utilize existing State offices, commissions, and programs to advance Maryland's film, television, and entertainment industry and what, if any, additional investments should be made to support these State functions;

(3) a clear definition of Maryland's creative and competitive profile; and

(4) recommendations to measure the economic impact of additional investment in the film, television, and entertainment industry.

(h) On or before September 1, 2024, the Council shall submit its final report to the Governor, the Secretary of Commerce, and, in accordance with § 2-1257 of the State Government Article, the General Assembly on:

(1) the matters included in the Council's preliminary report;

(2) recommendations regarding the expansion of eligibility for film 14 production incentives, including with respect to live to tape events, and the potential 15 economic impact from that expansion;

~~(2)~~ *(3) recommendations to strengthen the structure and funding of the State's existing film and theatrical production incentives to ensure a greater return on investment on Maryland's investment in the film, television, and entertainment industry;*

~~(3)~~ *(4) recommendations for additional State investment to bolster identified specialties and high-leverage growth opportunities in the film, television, and entertainment industry;*

~~(4)~~ *(5) recommendations to support and grow Maryland's independent creative community and incentivize export promotions of Maryland-based talent;*

~~(5)~~ *(6) methods to bolster film-, television-, and entertainment-related business development and identify potential industry partnerships;*

~~(6)~~ *(7) methods to sustainably grow the film, television, and entertainment workforce and identify potential workforce development and higher education partners; and*

~~(7)~~ *(8) other recommendations, as appropriate, to support and grow the economic impact of Maryland's film, television, and entertainment industry.*

SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General 32 Assembly that the Department of Commerce encourage Maryland-based film entities to 33 apply for the credit authorized under § 10-730 of the Tax - General Article, as enacted by Section 1 of this Act.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be applicable to all taxable years beginning after December 31, 2022.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023. Section 2 of this Act shall remain effective for a period of 2 years and, at the end of June 30, 2025, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.