

# IL H 3616, Introduced

Illinois

SUMMARY: Amends the Film Production Services Tax Credit Act; provides that an accredited production may not include intense or persistent depictions of firearm violence; provides for the recapture of credits if the taxpayer fails to comply with the provisions of the act because the production includes intense or persistent depictions of firearm violence.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

02/17/2023 INTRODUCED.

02/17/2023 To HOUSE Committee on RULES.

02/28/2023 To HOUSE Committee on REVENUE & FINANCE.

03/09/2023 In HOUSE Committee on REVENUE and FINANCE: To Subcommittee on Sales, Amusement and Other Taxes.

03/10/2023 Rule 19(a)/ Re-referred to RULES Committee.

02/14/2024 To HOUSE Committee on REVENUE & FINANCE.

03/08/2024 In HOUSE Committee on REVENUE and FINANCE: To Subcommittee on Sales, Amusement and Other Taxes.

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Introduced

February 17, 2023

Reick

**103RD GENERAL ASSEMBLY**

**State of Illinois**

**2023 and 2024**

**HB3616**

Introduced, by Rep. Steven Reick

**SYNOPSIS AS INTRODUCED:**

35 ILCS 16/10

35 ILCS 16/15

35 ILCS 16/35

Amends the Film Production Services Tax Credit Act of 2008. Provides that an accredited production may not include intense or persistent depictions of firearm violence. Provides for the recapture of credits if the taxpayer fails to comply with the provisions of the Act because the production includes intense or persistent depictions of firearm violence. Effective immediately.

**A BILL FOR**

AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The Film Production Services Tax Credit Act of 2008 is amended by changing Sections 10, 15, and 35 as follows:

(35 ILCS 16/10)

Sec. 10. Definitions. As used in this Act:

"Accredited production" means: (i) for productions commencing before May 1, 2006, a film, video, or television production that has been certified by the Department in which the aggregate Illinois labor expenditures included in the cost of the production, in the period that ends 12 months after the time principal filming or taping of the production began, exceed \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of less than 30 minutes; and (ii) for productions commencing on or after May 1, 2006, a film, video, or television production that has been certified by the Department in which the Illinois production spending included in the cost of production in the period that ends 12 months after the time principal filming or taping of the production began exceeds \$100,000 for productions of 30 minutes or longer or exceeds \$50,000 for productions of less than 30 minutes. "Accredited production" does not include a production that:

- (1) is news, current events, or public programming, or a program that includes weather or market reports;
- (2) is a talk show;
- (3) is a production in respect of a game, questionnaire, or contest;
- (4) is a sports event or activity;
- (5) is a gala presentation or awards show;
- (6) is a finished production that solicits funds;
- (7) is a production produced by a film production company if records, as required by 18 U.S.C. 2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program; ~~or~~
- (8) is a production produced primarily for industrial, corporate, or institutional purposes ; ~~or~~ ;
- (9) is a production submitted to the Department for certification on or after the effective date of this amendatory Act of the 103rd General Assembly that includes intense or persistent depictions of firearm violence, as defined by the Department by rule under subsection (h) of Section 15.**

"Accredited animated production" means an accredited production in which movement and characters' performances are created using a frame-by-frame technique and a significant number of major characters are animated. Motion capture by itself is not an animation technique.

"Accredited production certificate" means a certificate issued by the Department certifying that the production is an accredited production that meets the guidelines of this Act.

"Applicant" means a taxpayer that is a film production company that is operating or has operated an accredited production located within the State of Illinois and that (i) owns the copyright in the accredited production throughout the Illinois production period or (ii) has contracted directly with the owner of the copyright in the accredited production or a person acting on behalf of the owner to provide services for the production, where the owner of the copyright is not an eligible production corporation.

"Credit" means:

- (1) for an accredited production approved by the Department on or before January 1, 2005 and commencing before May 1, 2006, the amount equal to 25% of the Illinois labor expenditure approved by the Department. The applicant is deemed to have paid, on its balance due day for the year, an amount equal to 25% of its qualified Illinois labor expenditure for the tax year. For Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department, in an accredited production commencing before May 1, 2006 and approved by the Department after January 1, 2005, the applicant shall receive an enhanced credit of 10% in addition to the 25% credit; and
- (2) for an accredited production commencing on or after May 1, 2006, the amount equal to:
  - (i) 20% of the Illinois production spending for the taxable year; plus

(ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department; and

(3) for an accredited production commencing on or after January 1, 2009, the amount equal to:

(i) 30% of the Illinois production spending for the taxable year; plus

(ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department.

"Department" means the Department of Commerce and Economic Opportunity.

"Director" means the Director of Commerce and Economic Opportunity.

"Illinois labor expenditure" means salary or wages paid to employees of the applicant for services on the accredited production.

To qualify as an Illinois labor expenditure, the expenditure must be:

(1) Reasonable in the circumstances.

(2) Included in the federal income tax basis of the property.

(3) Incurred by the applicant for services on or after January 1, 2004.

(4) Incurred for the production stages of the accredited production, from the final script stage to the end of the post-production stage.

(5) Limited to the first \$25,000 of wages paid or incurred to each employee of a production commencing before May 1, 2006 and the first \$100,000 of wages paid or incurred to each employee of a production commencing on or after May 1, 2006 and prior to July 1, 2022. For productions commencing on or after July 1, 2022, limited to the first \$500,000 of wages paid or incurred to each nonresident or resident employee of a production company or loan out company that provides in-State services to a production, whether those wages are paid or incurred by the production company, loan out company, or both, subject to withholding payments provided for in Article 7 of the Illinois Income Tax Act. For purposes of calculating Illinois labor expenditures for a television series, the nonresident wage limitations provided under this subparagraph are applied to the entire season.

(6) For a production commencing before May 1, 2006, exclusive of the salary or wages paid to or incurred for the 2 highest paid employees of the production.

(7) Directly attributable to the accredited production.

(8) (Blank).

(9) Prior to July 1, 2022, paid to persons resident in Illinois at the time the payments were made. For a production commencing on or after July 1, 2022, paid to persons resident in Illinois and nonresidents at the time the payments were made. For purposes of this subparagraph, only wages paid to nonresidents working in the following positions shall be considered Illinois labor expenditures: Writer, Director, Director of Photography, Production Designer, Costume Designer, Production Accountant, VFX Supervisor, Editor, Composer, and Actor, subject to the limitations set forth under this subparagraph. For an accredited Illinois production spending of \$25,000,000 or less, no more than 2 nonresident actors' wages shall qualify as an Illinois labor expenditure. For an accredited production with Illinois production spending of more than \$25,000,000, no more than 4 nonresident actor's wages shall qualify as Illinois labor expenditures.

(10) Paid for services rendered in Illinois.

"Illinois production spending" means the expenses incurred by the applicant for an accredited production, including, without limitation, all of the following:

(1) expenses to purchase, from vendors within Illinois, tangible personal property that is used in the accredited production;

(2) expenses to acquire services, from vendors in Illinois, for film production, editing, or processing; and

(3) for a production commencing before July 1, 2022, the compensation, not to exceed \$100,000 for any one employee, for contractual or salaried employees who are Illinois residents performing services with respect to the accredited production. For a production commencing on or after July 1, 2022, the compensation, not to exceed

\$500,000 for any one employee, for contractual or salaried employees who are Illinois residents or nonresident employees, subject to the limitations set forth under Section 10 of this Act.

"Loan out company" means a personal service corporation or other entity that is under contract with the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Qualified production facility" means stage facilities in the State in which television shows and films are or are intended to be regularly produced and that contain at least one sound stage of at least 15,000 square feet.

Rulemaking authority to implement Public Act 95-1006, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 102-558, eff. 8-20-21; 102-700, eff. 4-19-22.)

(35 ILCS 16/15)

Sec. 15. Powers of the Department. The Department, in addition to those powers granted under the Civil Administrative Code of Illinois, is granted and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, power and authority to:

(a) Adopt rules deemed necessary and appropriate for the administration of the tax credit program; establish forms for applications, notifications, contracts, or any other agreements; and accept applications at any time during the year.

(b) Assist applicants pursuant to the provisions of this Act to promote, foster, and support film production and its related job creation or retention within the State.

(c) Gather information and conduct inquiries, in the manner and by the methods as it deems desirable, including any information required for the Department to comply with Section 45 and, without limitation, gathering information with respect to applicants for the purpose of making any designations or certifications necessary or desirable or to gather information to assist the Department with any recommendation or guidance in the furtherance of the purposes of this Act, including, but not limited to, information as to whether the applicant participated in training, education, and recruitment programs that are organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry, and are designed to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population.

(d) Provide for sufficient personnel to permit administration, staffing, operation, and related support required to adequately discharge its duties and responsibilities described in this Act from funds as may be appropriated by the General Assembly for the administration of this Act.

(e) Require applicants, upon written request, to issue any necessary authorization to the appropriate federal, state, or local authority for the release of information concerning a project being considered under the provisions of this Act, with the information requested to include, but not be limited to, financial reports, returns, or records relating to the applicant or the accredited production.

(f) Require that an applicant must at all times keep proper books of record and account in accordance with generally accepted accounting principles consistently applied, with the books, records, or papers related to the accredited production in the custody or control of the taxpayer open for reasonable Department inspection and audits, and including, without limitation, the making of copies of the books, records, or papers, and the inspection or appraisal of any of the assets of the applicant or the accredited production.

(g) Take whatever actions are necessary or appropriate to protect the State's interest in the event of bankruptcy, default, foreclosure, or noncompliance with the terms and conditions of financial assistance or participation required under this Act, including the power to sell, dispose, lease, or rent, upon terms and conditions determined by the Director to be appropriate, real or personal property that the Department may receive as a result of these actions.

***(h) Adopt rules for the purpose of determining whether a production includes intense or***

***persistent depictions of firearm violence, using as guidance in the adoption of those rules the Motion Picture Association of America's classification and rating rules.***

***For the purpose of this subsection (h):***

***"Firearm" has the meaning given to that term in Section 1.1 of the Firearm Owners Identification Card Act.***

***"Intense or persistent depictions of firearm violence" means one or more depictions of a firearm being used to commit violence of a type and nature that would typically result in an "R" rating from the Motion Picture Association of America on the basis of violence.***

***If the Department determines that a production that is accredited on or after the effective date of this amendatory Act of the 103rd General Assembly does not comply with the provisions of this Act because the production includes intense or persistent depictions of firearm violence, the Department shall provide notice to the taxpayer of the alleged noncompliance and allow the taxpayer a hearing under the provisions of the Illinois Administrative Procedure Act. The Department's decision resulting from a hearing conducted under this subsection is a final administrative decision for purposes of review under the Administrative Review Law. If, after allowing the taxpayer to exhaust all administrative remedies, it is determined that the taxpayer failed to comply with the provisions of this Act because the production includes intense or persistent depictions of firearm violence, the Department of Revenue shall recapture from the taxpayer the entire credit amount previously awarded under this Act for that production.***

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/35)

Sec. 35. Issuance of Tax Credit Certificate.

(a) In order to qualify for a tax credit under this Act, an applicant must file an application, on forms prescribed by the Department, providing information necessary to calculate the tax credit, and any additional information as required by the Department.

***(a-5) For productions that are accredited on or after the effective date of this amendatory Act of the 103rd General Assembly, in addition to any other information required by the Department under subsection (a), as part of the application process, the Department shall require the applicant to (i) certify that the production will not include intense or persistent depictions of firearm violence and (ii) agree that, if the Department determines that the production does include intense or persistent depictions of firearm violence, the Department may void the tax credit agreement and recapture any credit amounts previously awarded to the applicant for that particular production.***

(b) Upon satisfactory review of the application, the Department shall issue a Tax Credit Certificate stating the amount of the tax credit to which the applicant is entitled.

(Source: P.A. 95-720, eff. 5-27-08.)

Section 99. Effective date. This Act takes effect upon becoming law.