

# DE H 465 , Introduced

Delaware

SUMMARY: Relates to the Entertainment Job Act is intended to encourage jobs creation, artistic endeavors and investment in the film, television, esports and videogame industry in the state, and the attendant benefits for the economy and job growth.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

06/08/2022 INTRODUCED.

06/08/2022 To HOUSE Committee on HOUSE ADMINISTRATION.

~

session: Delaware Second Year of the 151st General Assembly

cite: 2021 DE H 465

Introduced

June 8, 2022

Longhurst

SPONSOR: Rep. Longhurst & Sen. Sokola

Reps. Bush, Carson, Heffernan, Hensley, Lambert, Lynn, Matthews, Osienski, D.

Short, Michael Smith, Smyk, K. Williams; Sens. Lawson, Mantzavinos, S. McBride,

Paradee, Poore, Walsh

HOUSE OF REPRESENTATIVES

151st GENERAL ASSEMBLY

HOUSE BILL NO. 465

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO THE DELAWARE ENTERTAINMENT JOB ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

## ***CHAPTER 18A. DELAWARE ENTERTAINMENT INVESTMENT TAX CREDIT***

### ***Section 1801A. Purpose.***

***The purpose of this chapter is to encourage artistic endeavors and investment in Delaware in the film, television, esports, and videogame industries, and the economic opportunities that come with it, by providing a tax credit for qualified production activities in the State.***

### ***Section 1802A. Definitions.***

***As used in this chapter:***

***(1) "Commercial multi-market distribution" means broadcast of the resulting content from qualified activities inside and outside of the state through theaters, cable networks, over the air broadcast, streaming, digital and hardware for distribution of digital interactive media, and such other means of content***

*distribution hereafter developed.*

*(2) "Loan-out company" means a personal service company contracted with and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified activity. The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.*

*(3) a. "Qualified activities" includes:*

*1. The creation of media projects including feature films, series, productions, commercial advertisements, webisodes, music videos, pilots, projects, award shows, game shows, and esports events, which are created for commercial multi-market distribution.*

*2. Creation of digital interactive entertainment, including videogames, and including subsequent updates and subsequent editions of digital interactive entertainment.*

*b. "Qualified activities" does not include:*

*1. Political advertising.*

*2. Industrial or instructional videos.*

*3. Content which meets the definition of "obscene" under Section 1364 of Title 11.*

*4. Live or prerecorded athletic events, which does not include esports.*

*5. Website development.*

*6. Infomercials, infotainment, or solicitation-based products.*

*(4) "Qualified company" means a company primarily engaged in or created to engage in qualified activities, which is either incorporated under the laws of Delaware or registered to do business in Delaware. "Qualified company" does not include any business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the State, or a loan made by the State, or a loan guaranteed by the State.*

*(5) "Qualified expenditure" means as follows:*

*a. For media projects, "qualified expenditure" means preproduction, production, and postproduction expenditures incurred in the State that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Delaware based travel agency or travel company; insurance costs and bonding, if purchased through a Delaware based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. "Qualified expenditures" includes expenses for all professionals whose work is directly related to the Qualified Activities including accountants and lawyers.*

*b. For digital interactive entertainment, "qualified expenditure" means all expenditures in the State directly relating to qualified Activities including without limitation the following: testing software, source code development, patches,*

updates, sprites, three-dimensional models, engine development and other back-end programming activities, performance and motion capture, audio production, tool development, original scoring, and level design; costs associated with photography and sound synchronization, lighting and related services; live operations, information technology support, data analysis and activities related to a community of users; rental of facilities and equipment; purchase of prepackaged audio files, video files, photographic files, or libraries; purchase of licenses to use pre-recorded audio files, video, or photographic files; development costs associated with producing audio files and video files to be used in the production of the end product under development. "Qualified expenditure" includes costs for all professionals whose work is directly related to the qualified activities including accountants and lawyers.

c. "Qualified expenditures" does not include expenditures for work or services conducted or rendered outside of the State.

d. "Qualified expenditures" does not include expenditures for marketing of a qualified activity or story rights or writing not incurred in the State.

(6) "Qualified production" means a production engaged in qualified activities which have been approved by the Delaware Film, Television, and Digital Entertainment Office in accordance with Section 1806A of this title.

#### **Section 1803A. Delaware Production Tax Credit.**

(a) A qualified company is entitled to credit equal to 30% of qualified expenditures for qualified activities against income or bank franchise taxes imposed under Title 5, or under Chapter 11 or Chapter 19 of this title, subject to limitations set forth in this section .

(b) To be eligible for a tax credit under this chapter, a qualified company must demonstrate that its qualified activities resulted in qualified expenditures greater than \$500,000 during the tax year. A qualified company is permitted to aggregate expenditures over the course of the year for multiple projects.

(c) A qualified company eligible for credits under this chapter may transfer, sell, or assign, any or all unused credits.

(d) Except as otherwise provided, if the amount of credit allowed pursuant to this chapter exceeds the total tax liability of the taxpayer for the tax year for which the credit is claimed, the amount of the credit not used as an offset against income or franchise taxes in said tax year shall not be refunded, but may be carried forward as a credit against the subsequent years' income or franchise tax liability for a period not exceeding 10 years, and shall be applied first to the earliest tax years possible.

(e) To be eligible for a tax credit under this section, a qualified company must provide opportunities for Delaware residents to serve as interns , in accordance with rules or regulations promulgated by the Delaware Film, Television, and Digital Entertainment Office.

#### **Section 1804A. Production tax credit; Distribution, transfer, and assignment.**

(a) Any person eligible for credit under this chapter may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain and produce to the transferee, purchaser or assignee a certificate from the Division of Revenue or the Office of the State Bank Commissioner setting forth the amount of unused credit.

(b) Credits granted to or acquired by a pass-through entity created or recognized under Delaware law, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of such entity or pursuant to an executed agreement among such partners, members, shareholders or owners if such agreement

*documents an alternate method of distribution.*

*(c) Any transferee, purchaser or assignee of tax credits under this subchapter may use such acquired credits to offset state income or franchise tax liabilities imposed upon such transferee, purchaser or assignee. To claim the state tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes, respectively.*

*(d) If the credit allowed under this section exceeds the transferee, purchaser or assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit may carry forward such excess in accordance with this title.*

*Section 1805A. Loan out withholding.*

*A production company shall withhold Delaware income tax at the rate of 6% on all payments to loan-out companies for services performed in Delaware. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Delaware. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Delaware. For purposes of this chapter and notwithstanding any other provision in this chapter to the contrary, loan-out company nonresident employees performing services in Delaware shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Delaware. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by this title and the Department shall provide by regulation the manner in which such liability shall be assessed and collected.*

*Section 1806A. Production Tax credit; procedures and administration.*

*(a) The Delaware Film, Televisions, and Digital Entertainment Office (Office) is hereby established and shall administer this chapter in cooperation with the Department.*

*(b) The Office may promulgate regulations, applications, and forms necessary to implement this chapter. The Office may establish a reasonable fee schedule for applications and other services provided under this chapter that does not exceed the approximate costs of administering this chapter.*

*(c) The Division of Revenue and the State Bank Commissioner may establish regulations and develop all appropriate procedures and applications or other forms for the implementation of all provisions of this chapter which are directly tax-related or related to certifying the value of the tax credits issued under this title and Title 5, respectively. The Division of Revenue shall also by January 1, 2023, establish regulations and develop appropriate procedures specific to taxpayers who are a qualified company for the approval of audits and for the transfer and sale of credit.*

*(d) Any person or entity seeking the Delaware production tax credit set forth in this chapter shall apply to the Office. Each applicant shall complete the application, and all other information requested and shall include such budgets, proof of financing, cast lists, location lists, etc. as may be requested by the Office.*

*(e) The Office shall, upon consideration of the application and such other matters as it deems appropriate, determine whether or not the production constitutes a qualified production. Upon completion of a qualified production, the qualified production shall submit an application of completion including an audit as required under Section 1808A of this title to the Division of Revenue.*

*(f) To claim the state tax credit allowed by this chapter the applicant, any assignee, any purchaser or any transferee of the credit shall attach the Certificate of Completion, to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or to the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes respectively.*

**Section 1807A. Appeals.**

*(a) Where any taxpayer or other person who has applied for approval or certification in accordance with this chapter objects to a noncertification decision by the Office, such person is entitled to appeal such decision to the Secretary of State or the Secretary's designee. Such appeal must be filed with the Secretary of State or the Secretary's designee within 60 days from the issuance of such noncertification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, [29 Del. C. Section [Unicode 8194]10101 et seq.] Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [ Section [Unicode 8194]10141 et seq. of Title 29] .*

*(b) Where a taxpayer or other person who is or was engaged in a qualified production in accordance with this chapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department as set forth in this title or regulations promulgated thereunder or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [ Section [Unicode 8194]10141 et seq. of Title 29] .*

**Section 1808A. Audit.**

*The Department shall conduct or cause to be conducted a full audit of each tax credit, either by the Department or an independent third party certified by the Department.*

**Section 1809A. Report.**

*Beginning 2 years after [the effective date of this Act], and every 2 years thereafter, the Department, in conjunction with the Delaware Film, Television, and Digital Entertainment Office, shall issue a report, which shall be delivered to the Governor, the Chair of the Senate Finance Committee, and the Chair of the House Revenue and Finance Committee and which shall include all of the following:*

- (1) The number of projects approved.*
- (2) The amount of credits approved.*
- (3) The number of people employed in the State in media projects or other activities eligible for a tax credit under this chapter.*
- (4) The amount of credits which have been approved but not yet utilized.*
- (5) The economic impact of the credit.*
- (6) Community impact of the industry in the State.*

**Section 1810A. Total amount of credits permitted in each fiscal year.**

*The maximum amount of credit awards under this chapter in any fiscal year may not exceed \$25,000,000.*

Section 2. This Act takes effect on January 1, 2023.

**SYNOPSIS**

The Delaware Entertainment Job Act is intended to encourage jobs creation, artistic endeavors

and investment in the film, television, esports and videogame industry in the State of Delaware, and the attendant benefits for the economy and job growth. Delaware is one of the only states in the Mid-Atlantic and country without some form of tax credit at a time when production of original content for streaming and at theaters is at an all-time high. Thirty-three states have some sort of production incentive.

This legislation will provide for a thirty-percent, transferable tax credit for an investment in the state in a film, television, esports or videogame production. All qualified productions will be required to have an audit of their expenditures following the completion of production in the state before any credits will be awarded. Further, all qualified productions will be required to provide training through an internship program so that citizens may be able to gain a valuable trade. The credits will be administered by the Delaware Film, Television, and Digital Entertainment Office in cooperation with Department of Finance.