HOUSE BILL No. 1193

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-33-5-14; IC 6-3.1-35.

Synopsis: Film and media production tax credit. Establishes the Indiana film and media production expenditure tax credit. Provides a refundable tax credit to qualified applicants that make certain qualified production expenditures for a qualified media production in Indiana. Provides that the tax credit may be granted only if qualified production expenditures meet certain thresholds. Provides that the amount of the credit equals the qualified production expenditures multiplied by a percentage determined by the Indiana destination development corporation (corporation). Provides that the qualified applicant must, before incurring or making the qualified production expenditures, apply to the corporation for approval of the tax credit. Provides certain requirements that must be included in a tax credit agreement. Specifies that these tax credits may not be awarded for a taxable year ending after December 31, 2029.

Effective: July 1, 2021.

Cook, Karickhoff, Torr

January 7, 2021, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1193

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 5-33-5-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 14. The corporation may employ a film commissioner and other necessary staff to perform duties as directed that relate to a film and media production expenditure tax credit program under IC 6-3.1-35.**

SECTION 2. IC 6-3.1-35 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 35. Indiana Film and Media Production Expenditure Tax Credit

Sec. 1. As used in this chapter, "corporation" refers to the Indiana destination development corporation established by IC 5-33-3-1.

Sec. 2. As used in this chapter, "Film Indiana" refers to the program administered by the corporation that provides support for the film, television, commercial, and news media industries.

Sec. 3. As used in this chapter, "qualified applicant" means a person, corporation, partnership, limited liability partnership, limited liability company, or other entity that:

(1) is engaged in the business of making a qualified media production in Indiana; and

(2) has any state tax liability.

The term includes an assignee that is assigned some part of a credit under section 16 of this chapter.

Sec. 4. As used in this chapter, "qualified Indiana resident" means an individual who:

(1) maintains a dwelling in Indiana as the individual's principal place of residence and is present in Indiana for not less than six (6) months during the year; and

(2) has signed a declaration of residency that certifies that the individual has maintained a dwelling in Indiana as the individual's principal place of residence for not less than six (6) months immediately preceding the production start date for the applicable qualified media production.

Sec. 5. (a) As used in this chapter, "qualified media production" refers to the following for which at least fifty percent (50%) of the total incurred expenses for production are qualified production expenditures:

(1) A feature length film, including an independent or studio production, or a documentary.

(2) A television episodic series, program, or feature.

(3) A digital media production that is intended for reasonable commercial exploitation.

(4) A music video, video game, or game show.

(5) An advertising message, except for political advertising, that is intended to be distributed in any media form.

(6) An educational media production, provided that the educational media production is not produced primarily for industrial or corporate purposes.

(7) Animation or music recorded in Indiana fixed on any delivery system, including film, videotape, computer disc, laser disc, or any digital format.

(b) The term does not include the following:

(1) Television coverage of:

(A) athletic events;

(B) news; or

(C) current events.

(2) Programs that include weather reports or financial reports

as a material portion of the program.

(3) Talk shows in which a host interviews or talks with guests.

(4) Awards shows or gala productions.

(5) Any production that is intended to solicit donations, other than donations that are:

(A) deductible, in whole or in part, for federal income tax purposes; or

(B) solicited as funding for a project or business venture.

(6) Any political advertising message.

(7) A production produced primarily for industrial or corporate purposes.

(8) A production in any medium that is obscene (under the standard set forth in IC 35-49-2-1).

Sec. 6. (a) As used in this chapter, "qualified production expenditure" means any of the following expenses incurred in Indiana or expenditures in Indiana that are made in the direct production (including the direct preproduction and direct postproduction) of a qualified media production in Indiana:

(1) Acquisition costs for locations, facilities, offices, and equipment.

(2) Acquisition costs for sets, production props, wardrobes, special effects, and accessories.

(3) Expenditures for materials used to make and operate sets, production props, wardrobes, special effects, and accessories.

(4) Expenditures for photography, sound synchronization, film processing, digital imaging, lighting, and related services.

(5) Expenditures for editing, visual effects, sound mixing, composing, animation, music supervision, and related services.

(6) Food and lodging.

(7) Expenditures for travel within Indiana at a rate that is not more than the Internal Revenue Service standard mileage rate used to calculate the deductible costs of operating an automobile for business.

(8) Commercial airfare travel expenditures incurred to transport cast members and crew members to and from Indiana.

(9) Legal services, if purchased from an attorney admitted to the Indiana bar.

(10) Accounting services, if purchased from a certified public accountant licensed in Indiana.

(11) Shipping costs when originating from a location in

Indiana.

(12) Receiving costs when a shipment is received at a location in Indiana.

(13) Any other production expenditure for which taxes are assessed or imposed by the state.

(14) The total sum expended on wages, salaries, and benefits. Expenses under this subdivision do not include expenses described in subdivision (15) or (17).

(15) Expenditures for skilled workforce training of crew members who are qualified Indiana residents.

(16) Financing fees, if the entity charging the fees is a financial institution (as defined in IC 5-13-4-10) in Indiana.

(17) The payment of student internships, if the student who receives the internship payment is enrolled at a state educational institution (as defined in IC 21-7-13-32).

(18) Expenditures for acquisition of rights to a story or story material and scripts.

(19) Acquisition costs and expenditures for:

(A) vehicles that are to be directly used as part of the qualified media production; and

(B) the leasing or rental of vehicles.

(b) The term does not include the following expenses or expenditures:

(1) Expenditures for tangible personal property acquired in a transaction outside Indiana, even if the property is subject to the use tax under IC 6-2.5-3.

(2) The payment of penalties or fines.

(3) The performance of services or the conveyance of property in an in kind exchange.

(4) Any production expenditures for tangible personal property or services that are acquired from a business (or an agent of a business) that does not maintain a physical presence in Indiana.

(5) Expenditures for cellular telephone service.

(6) Marketing and advertising costs.

(7) Any expenses that are incurred after the qualified media production becomes commercially available to the general public.

(8) Airfare travel expenditures for private or chartered aircraft.

(9) Acquisition costs of vehicles that are not to be directly used as part of the qualified media production.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:
(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
(2) IC 6-5.5 (the financial institutions tax); and
(3) IC 27-1-18-2 (the insurance premiums tax);
as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 8. (a) Subject to entering into an agreement with the corporation under section 10 of this chapter, a qualified applicant who:
(1) incurs or makes qualified production expenditures:
(A) in the case of a qualified media production described in section 5(a)(1) through 5(a)(6) of this chapter, five hundred thousand dollars ($500,000); or
(B) in the case of a qualified media production described in section 5(a)(7) of this chapter, of at least one hundred thousand dollars ($100,000); and
(2) otherwise satisfies the requirements of this chapter;
in Indiana is entitled to a credit against the qualified applicant's state tax liability for a taxable year if the qualified applicant incurs or makes qualified production expenditures as certified by the corporation for that year. Before claiming a tax credit, a qualified applicant must apply to the corporation for approval. An application must be submitted before incurring or making the qualified production expenditures.

(b) The corporation shall prescribe the form of the application.

(c) In the case of a qualified media production described in section 5(a)(1) of this chapter, a qualified applicant must provide a confirmation that the qualified applicant is seeking a valid completion bond for the project.

Sec. 9. Subject to the corporation's approval of a tax credit for the qualified applicant under this chapter, the amount of the tax credit that a qualified applicant may claim under this chapter is equal to the product of:
(1) the amount of the qualified applicant's qualified production expenditures in the taxable year; multiplied by
(2) the percentage determined by the corporation under section 10(e)(1) of this chapter.

Sec. 10. (a) The corporation shall review an application submitted under section 8(a) of this chapter not later than thirty (30) days after the application is received.

(b) An applicant for a tax credit shall pay an application fee in an amount determined by the corporation at the time an application is submitted. Application fees must be used by the corporation toward paying the compensation of the film commissioner and any necessary staff employed by the corporation under IC 5-33-5-14.

(c) After receiving and reviewing an application, the corporation may enter into an agreement with the qualified applicant for a tax credit under this chapter if the corporation determines that:

(1) the qualified applicant's proposed qualified media production:

(A) is economically viable; and

(B) will increase economic growth and job creation in Indiana; and

(2) the qualified applicant's proposed qualified media production and qualified production expenditures otherwise satisfy the requirements of this chapter.

The corporation shall require the qualified applicant to enter into an agreement with the corporation as a condition of receiving the tax credit under this chapter.

(d) The corporation shall consult with Film Indiana in making the decision to enter into an agreement with a qualified applicant under subsection (c).

(e) If the corporation and a qualified applicant enter into an agreement under this section, the agreement must contain at least the following provisions:

(1) The percentage to be used under section 9(2) of this chapter in determining the amount of the tax credit.

(2) The following conditions that the qualified applicant must satisfy before the qualified applicant may claim a tax credit under the program:

(A) The qualified applicant must certify that the applicant has not engaged in the production of obscene material (under the standard set forth in IC 35-49-2-1).

(B) In the case of a qualified media production for which an application for a tax credit under this chapter is submitted before January 1, 2023, production must commence not later than one hundred twenty (120) days after the qualified applicant and the corporation enter into an agreement.

(C) In the case of a qualified media production for which

an application for a tax credit under this chapter is submitted after December 31, 2022, production must commence not later than ninety (90) days after the qualified applicant and the corporation enter into an agreement.

(D) In the case of a qualified media production described in section 5(a)(1) of this chapter, the qualified applicant has obtained a completion bond for the project.

(3) The following obligations of the qualified applicant:

(A) The qualified applicant must agree to comply with applicable state and federal laws during the course of the production, including:

(i) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(ii) the state minimum wage law under IC 22-2-2;

(iii) worker's compensation system requirements under IC 22-3-5 and IC 22-3-7; and

(iv) unemployment compensation system requirements under IC 22-4-1 through IC 22-4-39.5.

(B) The qualified applicant must agree to place in the credits of the qualified media production (if the production contains credits):

(i) a statement indicating "filmed in Indiana"; and

(ii) the logo of Film Indiana.

(C) The qualified applicant must agree to submit to Film Indiana a viewable copy of the final qualified media production not later than ten (10) days after the production is complete and is commercially available to the general public.

(D) The qualified applicant must agree to provide Film Indiana with specified promotional material for the qualified media production (such as photos, trailer scenes, and poster art). In addition, the qualified applicant must agree to convey to Film Indiana a copyright license that permits Film Indiana to use the promotional material for archival purposes, government relations purposes, and marketing purposes.

(E) The qualified applicant must agree to the review and audit of the qualified production expenditures by the film commissioner. The film commissioner may determine whether the qualified production expenditures were reasonable.

(4) The following consents to civil process and procedures in Indiana:

(A) The qualified applicant must consent that the applicant (and any successor in interest in any part of the qualified applicant) will be subject to the jurisdiction of Indiana courts.

(B) The qualified applicant must consent that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the applicant (and any successor in interest in any part of the qualified applicant) to the jurisdiction of Indiana courts.

(C) The qualified applicant must consent that any civil action related to the provisions of this chapter in which the applicant (or any successor in interest in any part of the qualified applicant) is a party will be heard in an Indiana court.

(f) Not later than ten (10) days after the corporation and a qualified applicant enter into an agreement under this section, the qualified applicant shall pay a final administrative review fee to the corporation in an amount determined by the corporation. Final administrative review fees must be used by the corporation toward paying the compensation of the film commissioner and any necessary staff employed by the corporation under IC 5-33-5-14.

(g) If, after the final administrative review, the corporation determines that the qualified applicant met the requirements of this chapter to claim a tax credit, the corporation shall provide a certification to the department of state revenue and the qualified applicant certifying that the qualified applicant's qualified media production has met the requirements for a tax credit.

Sec. 11. A qualified applicant shall provide the corporation with any information necessary, including any information considered necessary by the film commissioner, to determine the qualified applicant's compliance with the terms of the qualified applicant's agreement with the corporation and tax credit to which the qualified applicant is entitled under this chapter.

Sec. 12. To receive the tax credit provided by this chapter, a qualified applicant must claim the tax credit on the qualified applicant's annual state tax return or returns in the manner prescribed by the department of state revenue. The qualified applicant shall submit to the department of state revenue the certification of the corporation stating the percentage of tax credit allowable under this chapter and all other information that the

department determines is necessary for the calculation of the tax credit provided by this chapter and for the determination of whether an expenditure was for a qualified production expenditure.

Sec. 13. If a pass through entity is entitled to a tax credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 14. If a qualified applicant (or any successor in interest in any part of the qualified applicant) fails to satisfy any condition of this chapter or any condition or obligation in an agreement under section 10 of this chapter, the corporation may:

(1) disallow the use of all or a part of any unused tax credit granted to the qualified applicant (or any successor in interest in any part of the qualified applicant) under this chapter;

(2) recapture all or a part of the tax credit under this chapter that has been applied to the state tax liability of the qualified applicant (or any successor in interest in any part of the qualified applicant); or

(3) both disallow the tax credit under subdivision (1) and recapture the tax credit under subdivision (2).

Sec. 15. (a) If the amount of the tax credit for a taxable year exceeds the qualified applicant's state tax liability for that taxable year, the qualified applicant may carry the excess over to the immediately following taxable years. The amount of the tax credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the qualified applicant to obtain a tax credit under this chapter for any subsequent taxable year.

(b) A qualified applicant is not entitled to a carryback or refund of any unused tax credit.

Sec. 16. (a) The qualified applicant may assign any part of the tax credit that the qualified applicant may claim under this chapter. A tax credit that is assigned under this subsection remains subject to this chapter. If a qualified applicant assigns a part of a tax credit during a taxable year, the assignee may not subsequently assign all or part of the tax credit to another taxpayer. Nothing in this subsection shall prohibit a qualified applicant from making

more than one (1) assignment of any part of the tax credit, but a qualified applicant may not assign the same part of a tax credit more than once.

(b) Before a tax credit may be assigned, the qualified applicant must notify the corporation of the assignment of the tax credit in the manner prescribed by the corporation. An assignment of a tax credit must be in writing, and both the qualified applicant and assignee shall report the assignment on the qualified applicant's and the assignee's state tax returns for the year in which the assignment is made, in the manner prescribed by the department. A qualified applicant may not receive value in connection with an assignment under this section that exceeds the value of the part of the tax credit assigned.

Sec. 17. The corporation may adopt guidelines and prescribe forms necessary to implement this section.

Sec. 18. A tax credit may not be awarded under this chapter for a taxable year ending after December 31, 2029.

Sec. 19. This chapter expires January 1, 2030.