SENATE BILL No. 39

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-32.3.

Synopsis: Media production expenditure tax credit. Reestablishes the media production expenditure tax credit (which expired in 2012), with certain changes. Provides a refundable tax credit to taxpayers that make qualified production expenditures in Indiana. Provides that the tax credit may be granted only if qualified production expenditures are at least $50,000. Provides that in the case of a taxpayer that claims the tax credit for qualified production expenditures of less than $6,000,000, the amount of the credit equals a percentage of the taxpayer's qualified production expenditures. Specifies that the percentage is: (1) 40%, in the case of qualified production expenditures paid to an individual or entity located in an economically distressed municipality or county; or (2) 35%, in the case of other qualified production expenditures. Provides that in the case of a taxpayer that claims the tax credit for qualified production expenditures of at least $6,000,000: (1) the amount of the credit equals the taxpayer's qualified production expenditures multiplied by a percentage (not more than 15%) determined by the Indiana economic development corporation (IEDC); and (2) the taxpayer must, before incurring or making the qualified production expenditures, apply to the IEDC for approval of the tax credit. Provides that the maximum amount of media production expenditure tax credits that may be allowed during a state fiscal year for all taxpayers is $2,500,000.

Effective: January 1, 2015.

Randolph

January 6, 2014, read first time and referred to Committee on Tax and Fiscal Policy.

Introduced

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 39

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 6-3.1-32.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]:

Chapter 32.3. Media Production Expenditure Tax Credit

Sec. 1. As used in this chapter, "corporation" refers to the Indiana economic development corporation.

Sec. 2. As used in this chapter, "department" refers to the department of state revenue.

Sec. 3. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 4. As used in this chapter, "qualified applicant" means a person, corporation, partnership, limited liability partnership,

limited liability company, or other entity that is engaged in the business of making qualified media productions in Indiana.

Sec. 5. (a) As used in this chapter, "qualified media production" refers to the following:

(1) Any of the following that is produced for any combination of theatrical or television viewing or as a television pilot:

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

(B) A television series, program, or feature.

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

(3) An audio recording or a music video.

(4) An advertising message broadcast on radio or television.

(5) A media production concerning:

(A) training; or

(B) external marketing or communications.

(b) The term includes preproduction, production, and postproduction work.

(c) The term does not include a production in any medium that is obscene (under the standard set forth in IC 35-49-2-1) or television coverage of news or athletic events.

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

(1) The payment of wages, salaries, and benefits to Indiana residents.

(2) Acquisition costs for a story or scenario used in the qualified media production.

(3) Acquisition costs for locations, sets, wardrobes, and accessories.

(4) Expenditures for materials used to make sets, wardrobes, and accessories.

(5) Expenditures for photography, sound synchronization, lighting, and related services.

(6) Expenditures for editing and related services.

(7) Facility and equipment rentals.

(8) Food and lodging.

(9) Legal services, if purchased from an attorney licensed to practice law in Indiana.

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

(b) The term does not include expenditures for payments of wages, salaries, or benefits to an individual who is a director, a producer, a screenwriter, or an actor (excluding extras), unless the individual is a resident of Indiana.

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. As used in this chapter, "taxpayer" means an individual or entity that has any state tax liability.

Sec. 9. (a) Subject to subsection (b), a qualified applicant that:

(1) incurs or makes qualified production expenditures of at least fifty thousand dollars ($50,000); and
(2) satisfies the requirements of this chapter;

may claim a refundable tax credit as provided in this chapter.

(b) The maximum amount of tax credits that may be allowed under this chapter during a state fiscal year for all taxpayers is two million five hundred thousand dollars ($2,500,000).

Sec. 10. This section applies to a taxpayer that claims qualified production expenditures of less than six million dollars ($6,000,000) in a taxable year for purposes of the tax credit under this chapter. Subject to section 9(b) of this chapter, the amount of the tax credit to which a taxpayer is entitled under this chapter equals the product of:

(1) a percentage equal to:

(A) forty percent (40%), in the case of qualified production expenditures paid to an individual or entity located in a municipality or county:

(i) in which twenty-five percent (25%) of the households are below the poverty level as established by the most recent United States decennial census; or

(ii) that has an average rate of unemployment for the most recent eighteen (18) month period for which data is available that is at least one and one-half (1 1/2) times the average statewide rate of unemployment for the same eighteen (18) month period; or

(B) thirty-five percent (35%), in the case of qualified production expenditures that are not described in clause

(A); multiplied by

(2) the amount of the taxpayer's qualified production expenditures in the taxable year.

Sec. 11. (a) This section applies to a taxpayer that claims qualified production expenditures of at least six million dollars ($6,000,000) in a taxable year for purposes of the tax credit under this chapter.

(b) Subject to section 9(b) of this chapter and the corporation's approval of a tax credit for the taxpayer under section 13 of this chapter, a taxpayer may claim a tax credit under this chapter that equals the product of:

(1) the percentage determined by the corporation under section 13 of this chapter; multiplied by

(2) the amount of the taxpayer's qualified production expenditures in the taxable year.

Sec. 12. (a) To receive the tax credit provided by this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided under this chapter.

(b) In the case of a taxpayer that claims a tax credit under section 11 of this chapter, the taxpayer must also file with the taxpayer's annual state tax return or returns a copy of the agreement entered into by the corporation and the taxpayer under section 13 of this chapter for the tax credit.

Sec. 13. (a) A taxpayer that proposes to claim a tax credit under section 11 of this chapter must, before incurring or making the qualified production expenditures, apply to the corporation for approval of the tax credit.

(b) After receiving an application under subsection (a), the corporation may enter into an agreement with the applicant for a tax credit under section 11 of this chapter if the corporation determines that:

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

(A) is economically viable; and

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

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

(c) If the corporation and an applicant enter into an agreement

under this section, the agreement must specify the following:

(1) The percentage to be used under section 11(b)(1) of this chapter in determining the amount of the tax credit. The percentage may not be more than fifteen percent (15%).

(2) Any requirements or restrictions that the applicant must satisfy before the applicant may claim the tax credit.

Sec. 14. If the amount of the tax credit provided under this chapter to a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer is entitled to a refund of the excess.

Sec. 15. 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. 16. A taxpayer may not sell, assign, convey, or otherwise transfer a tax credit provided under this chapter.

Sec. 17. Notwithstanding any other provision, including any reciprocity agreements entered into by the state, a taxpayer that is a corporation or a nonresident person and that claims a tax credit under this chapter (or any successor in interest in any part of the taxpayer) must file an Indiana income tax return for at least the first five (5) years that the taxpayer has income from the qualified media production for which the tax credit was granted. Notwithstanding the income apportionment provisions of IC 6-3 and any rules adopted by the department, in the case of a corporation or a nonresident person (or any successor in interest in any part of the corporation or nonresident person), the part of the income from the qualified media production that for purposes of taxation under IC 6-3 is considered to be derived from sources within Indiana is equal to:

(1) the income of the corporation or nonresident person (or the successor in interest in any part of the corporation or nonresident person) from the qualified media production; multiplied by

(2) a percentage equal to:

(A) the amount of qualified production expenditures for which the tax credit was granted for the qualified media

production; divided by

(B) the total production expenditures for the qualified media production.

Sec. 18. (a) If a taxpayer (or any successor in interest in any part of the taxpayer) fails to satisfy any condition of this chapter or any condition in an agreement under section 13 of this chapter, or fails to file tax returns as required by section 17 of this chapter, the corporation may:

(1) disallow the use of all or a part of any unused tax credit granted to the taxpayer (or any successor in interest in any part of the taxpayer) 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 taxpayer (or any successor in interest in any part of the taxpayer); or

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

(b) A taxpayer may not receive a credit under this chapter unless the taxpayer:

(1) consents that the taxpayer (and any successor in interest in any part of the taxpayer) will be subject to the jurisdiction of Indiana courts;

(2) consents that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the taxpayer (and any successor in interest in any part of the taxpayer) to the jurisdiction of Indiana courts; and

(3) consents that any civil action related to the provisions of this chapter and in which the taxpayer (or any successor in interest in any part of the taxpayer) is a party will be heard in an Indiana court.

Sec. 19. A tax credit may not be awarded under this chapter for a taxable year ending after December 31, 2017.

SECTION 2. [EFFECTIVE JANUARY 1, 2015] **(a) IC 6-3.1-32.3, as added by this act, applies to qualified production expenditures made after December 31, 2014.**

(b) This SECTION expires January 1, 2018.