

# SENATE . . . . . No. 2439

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Senate, July 14, 2016 – Text of amendment (31) (offered by Senator Tarr) to the Ways and Means amendment (Senate, No. 2423) to the House Bill relative to job creation, workforce development and infrastructure investment.

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## The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court  
(2015-2016)

1 by inserting the following sections:

2 "SECTION XX. Section 6 of Chapter 62 of the General Laws, as appearing in the 2008  
3 Official Edition, is further amended by adding the following subsection:

4 (t) There shall be established a live theater tax credit program under which a live theater  
5 company doing business with a Massachusetts based theater venue, theater company, theater  
6 presenter or producer may be eligible. The credit may be claimed against the taxes due pursuant  
7 to this chapter or Chapter 63. The credit shall be established to support the expansion of pre-  
8 Broadway, pre off-Broadway live theater, Broadway tour launches and World Premieres and  
9 shall assist in the development of long run show development and growth.

10 (1) As used in this section the following words shall, unless the context clearly requires  
11 otherwise, have the following meanings:

12 "Commissioner" means the commissioner of revenue.

13 "Company" means a live theater company, however organized.

14 “Eligible theater production” means a live stage musical or theatrical production or tour  
15 being presented in a qualified production facility, as defined in this chapter that is either: (a) a  
16 Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a Broadway Tour Launch  
17 or (d) a World Premiere.

18 “Eligible theater production certificate” means a certificate issued by the Massachusetts  
19 Office of Travel and Tourism certifying that the production is an eligible theater production that  
20 meets the guidelines of this chapter.

21 “Advertising and public relations expenditure” means costs incurred within the state by  
22 the Eligible theater productions for goods or services related to the marketing, public relations,  
23 creation and placement of print, electronic, television, billboards and other forms of advertising  
24 to promote the Eligible theater production.

25 “Office” means the Massachusetts office of travel and tourism.

26 "Payroll" means all salaries, wages, fees, and other compensation wages including, but  
27 not limited to, taxes, benefits, and any other consideration incurred or paid to talent and non-  
28 talent employees of the applicant who are residents of the commonwealth of Massachusetts for  
29 services rendered to and on behalf of an eligible theater production. The expenditure shall be  
30 incurred or paid by the applicant for services related to any portion of an eligible theater  
31 production from its pre-production stages, including, but not limited to, (a) the writing of the  
32 script, (b) casting, (c) hiring of service providers, (d) purchases from vendors, (e) marketing, (f)  
33 advertising, (g) public relations, (h) load in, (i) rehearsals, (j) performances, (k) other eligible  
34 theater production related activities, (l) load out; provided further, said labor expenditure shall be

35 directly attributable to the eligible theater production and shall be limited to the first \$100,000 of  
36 wages incurred or paid to each employee of an eligible theater production in each tax year.

37 “Pre-Broadway Production” means a live stage production that, in its original or adaptive  
38 version, is performed in a qualified production facility having a presentation scheduled for New  
39 York City’s Broadway theater district within (12) months after its Massachusetts presentation.

40 “Pre-Off Broadway Production” means a live stage production that, in its original or  
41 adaptive version, is performed in a qualified production facility having a presentation scheduled  
42 for New York City’s Off-Broadway’s theater district within (12) months after its Massachusetts  
43 presentation.

44 “Broadway Tour Launch” means a live stage production that, in its original or adaptive  
45 version, is performed in a qualified production facility that was originally presented in New York  
46 City’s Broadway theater district and opens its US tour in Massachusetts.

47 “Production and Performance Expenditures” means a contemporaneous exchange of cash  
48 or cash equivalent for goods or services related to development, production, performance or  
49 operating expenditures incurred in this state for a qualified theater production including, but not  
50 limited to, expenditures for design, construction and operation, including sets, special and visual  
51 effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting,  
52 staging, payroll, transportation expenditures, advertising and public relations expenditures,  
53 facility expenses, rentals, per diems, accommodations and other related costs.

54 “Qualified Production Facility” means a facility located in the State of Massachusetts in  
55 which live theatrical productions are, or are intended to be, exclusively presented that contains at

56 least one stage, a seating capacity of three hundred fifty (350) or more seats, and dressing rooms,  
57 storage areas, and other ancillary amenities necessary for the Eligible theater production.

58 “Massachusetts Office of Travel and Tourism” means the office within the secretariat of  
59 economic development that has been established in order to market Massachusetts as a leisure  
60 travel destination in order to generate state and local tax revenues, create jobs, and support  
61 travel-related businesses.

62 “Transportation expenditures” means expenditures for the packaging, crating, and  
63 transportation both to the state for use in a qualified theater production of sets, costumes, or other  
64 tangible property constructed or manufactured out of state, and/or from the state after use in a  
65 qualified theater production of sets, costumes, or other tangible property constructed or  
66 manufactured in this state and the transportation of the cast and crew to and from the state. Such  
67 term shall include the packaging, crating, and transporting of property and equipment used for  
68 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and  
69 related accessories and materials, as well as any other performance or production-related  
70 property and equipment.

71 “World Premiere” means a live stage production performed in a qualified production  
72 facility of an original work which has never been commercially presented in public before.

73 (2) Any person, firm, partnership, trust, estate or other entity that receives an eligible  
74 theater production certificate shall be allowed a tax credit equal to thirty-five percent (35%) of  
75 production and performance expenditures which shall consist of payroll and twenty-five percent  
76 (25%) of the production and performance expenditures and transportation expenditures for the  
77 eligible theater production and to be computed as provided in this chapter against a tax imposed

78 by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall be limited  
79 to certified production cost directly attributable to activities in the state and transportation  
80 expenditures defined above. The total production budget shall be a minimum of one hundred  
81 thousand dollars (\$100,000).

82 (3) No more than five million dollars (\$5,000,000) in total may be issued for any tax year  
83 for musical and theatrical production tax credits pursuant to this chapter.

84 (4) The tax credit shall be allowed against the tax for the taxable period in which the  
85 credit is earned and can be carried forward for not more than five (5) succeeding tax years.

86 (5) Credits allowed to a company, which is a subchapter S corporation, partnership, or a  
87 limited liability company that is taxed as a partnership, shall be passed through respectively to  
88 persons designated as partners, members or owners of such companies on a pro rata basis or  
89 pursuant to an executed agreement among such persons designated as subchapter S corporation  
90 shareholders, partners, or members documenting an alternate distribution method without regard  
91 to their sharing of other tax or economic attributes of such entity.

92 (6) If the company has not claimed the tax credits in whole or part, taxpayers eligible for  
93 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or  
94 otherwise to any individual or entity and such assignee of the tax credits that have not claimed  
95 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,  
96 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired  
97 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed  
98 pursuant to this chapter or Chapter 63, as appropriate. The assignee may apply the tax credit  
99 against taxes imposed on the assignee for not more than three (3) succeeding tax years. The

100 assignor shall perfect the transfer by notifying the commissioner of revenue, in writing, within  
101 thirty (30) calendar days following the effective date of the transfer and shall provide any  
102 information as may be required by the commissioner to administer and carry out the provisions  
103 of this section.

104 (7) For purposes of this chapter, any assignment or sales proceeds received by the  
105 assignor for its assignment or sale of the tax credits allowed pursuant to this section and Section  
106 38GG of Chapter 63 shall be exempt from this title.

107 (8) In the case of a corporation, this credit is only allowed against the tax of a corporation  
108 included in a consolidated return that qualifies for the credit and not against the tax of other  
109 corporations that may join in the filing of a consolidated tax return, provided, however, that in  
110 the case of a corporation that files a consolidated return with one or more other corporations with  
111 operations in Massachusetts, the credit will be allowed to be included in a consolidated return  
112 with respect to such corporations with operations in Massachusetts only.

113 (9) The applicant or applicants shall properly prepare, sign and submit to the  
114 Massachusetts office of travel and tourism an application for initial certification of the theater  
115 production. The application shall include such information and data as the office deems  
116 reasonably necessary for the proper evaluation and administration of said application, including,  
117 but not limited to, any information about the theater production company or their related  
118 partners/presenters and a specific Massachusetts live theater or musical production. The office  
119 shall review the completed applications and determine whether it meets the requisite criteria and  
120 qualifications for the initial certification for the production and/or presentation. If the initial  
121 certification is granted, the office shall issue a notice of initial certification of the eligible theater

122 production and/or presentation to the theater production company, co-producer or presenter and  
123 to the commissioner. The notice shall state that, after appropriate review, the initial application  
124 meets the appropriate criteria for conditional eligibility. The notice of initial certification will  
125 provide a unique identification number for the production/presentation and is only a statement of  
126 conditional eligibility for the production/presentation and, as such, does not grant or convey any  
127 Massachusetts tax benefits.

128           (10) Upon completion of an eligible theater production, the applicant or applicants shall  
129 properly prepare, sign and submit to the office an application for final certification of the eligible  
130 theater production. The final application shall also contain a cost report and an “accountant’s  
131 certification.” The office and commissioner may rely without independent investigation, upon  
132 the accountant’s certification, in the form of an opinion, confirming the accuracy of the  
133 information included in the cost report. Upon review of a duly completed and filed application  
134 and upon no later than thirty (30) days of submission thereof, the commissioner will make a  
135 determination pertaining to the final certification of the eligible theater production and the  
136 resultant tax credits.

137           (11) Upon completion of an eligible theater production, the applicant or applicants shall  
138 deposit an amount equal to 15% of the tax credits received pursuant to this chapter into the  
139 Massachusetts Cultural Council Facilities Fund. The Massachusetts Cultural Council shall use  
140 these funds to address issues related to the workforce development and sustainability of the  
141 Massachusetts live theater industry.

142           (12) Upon determination that the company qualifies for final certification and the  
143 resultant tax credits, the commissioner shall issue to the company: (1) an eligible theater

144 production certificate; and (2) a tax credit certificate in an amount in accordance with this section  
145 (b) hereof. A musical and theatrical production company is prohibited from using state funds,  
146 state loans or state guaranteed loans to qualify for the live theater infrastructure tax credit. All  
147 documents that are issued by the office pursuant to this section shall reference the identification  
148 number that was issued to the production as part of its initial certification.

149 (13) The Massachusetts office of travel and tourism, in consultation as needed with the  
150 commissioner of revenue, shall promulgate such rules and regulations as are necessary to carry  
151 out the intent and purposes of this chapter in accordance with the general guidelines provided  
152 herein for the certification of the production and the resultant production credit.

153 (14) If information comes to the attention of the Massachusetts Office of Travel and  
154 Tourism that is materially inconsistent with representations made in an application, the office  
155 may deny the requested certification. In the event that tax credits or a portion of tax credits are  
156 subject to recapture for ineligible costs and such tax credits have been transferred, assigned  
157 and/or allocated, the state will pursue its recapture remedies and rights against the applicant of  
158 the theater production tax credits. No redress shall be sought against assignees, sellers,  
159 transferees or allocates of such credits.

160 (15) No credits shall be issued on or after January 1, 2022 unless the production has  
161 received initial certification under this section prior to January 1, 2022.

162 SECTION XY. Chapter 63 of the General Laws, as appearing in the 2008 Official  
163 Edition, is further amended by adding the following section:

164 Section 38GG. There shall be established a live theater tax credit program under which a  
165 live theater company doing business with a Massachusetts based theater venue, theater company,

166 theater presenter or producer may be eligible. The credit may be claimed against the taxes due  
167 pursuant to this chapter or Chapter 62. The credit shall be established to support the expansion of  
168 pre-Broadway, pre off-Broadway live theater, Broadway tour launches and World Premieres and  
169 shall assist in the development of long run show development and growth.

170 (a) As used in this section the following words shall, unless the context clearly requires  
171 otherwise, have the following meanings:

172 “Commissioner” means the commissioner of revenue.

173 “Company” means a live theater company, however organized.

174 “Eligible theater production” means a live stage musical or theatrical production or tour  
175 being presented in a qualified production facility, as defined in this chapter that is either: (a) a  
176 Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a Broadway Tour Launch  
177 or (d) a World Premiere.

178 “Eligible theater production certificate” means a certificate issued by the Massachusetts  
179 Office of Travel and Tourism certifying that the production is an eligible theater production that  
180 meets the guidelines of this chapter.

181 “Advertising and public relations expenditure” means costs incurred within the state by  
182 the Eligible theater productions for goods or services related to the marketing, public relations,  
183 creation and placement of print, electronic, television, billboards and other forms of advertising  
184 to promote the Eligible theater production.

185 “Office” means the Massachusetts office of travel and tourism.

186 "Payroll" means all salaries, wages, fees, and other compensation wages including, but  
187 not limited to, taxes, benefits, and any other consideration incurred or paid to talent and non-  
188 talent employees of the applicant who are residents of the commonwealth of Massachusetts for  
189 services rendered to and on behalf of an eligible theater production. The expenditure shall be  
190 incurred or paid by the applicant for services related to any portion of an eligible theater  
191 production from its pre-production stages, including, but not limited to, (a) the writing of the  
192 script, (b) casting, (c) hiring of service providers, (d) purchases from vendors, (e) marketing, (f)  
193 advertising, (g) public relations, (h) load in, (i) rehearsals, (j) performances, (k) other eligible  
194 theater production related activities, (l) load out; provided further, said labor expenditure shall be  
195 directly attributable to the eligible theater production and shall be limited to the first \$100,000 of  
196 wages incurred or paid to each employee of an eligible theater production in each tax year.

197 "Pre-Broadway Production" means a live stage production that, in its original or adaptive  
198 version, is performed in a qualified production facility having a presentation scheduled for New  
199 York City's Broadway theater district within (12) months after its Massachusetts presentation.

200 "Pre-Off Broadway Production" means a live stage production that, in its original or  
201 adaptive version, is performed in a qualified production facility having a presentation scheduled  
202 for New York City's Off-Broadway's theater district within (12) months after its Massachusetts  
203 presentation.

204 "Broadway Tour Launch" means a live stage production that, in its original or adaptive  
205 version, is performed in a qualified production facility that was originally presented in New York  
206 City's Broadway theater district and opens its US tour in Massachusetts.

207           “Production and Performance Expenditures” means a contemporaneous exchange of cash  
208 or cash equivalent for goods or services related to development, production, performance or  
209 operating expenditures incurred in this state for a qualified theater production including, but not  
210 limited to, expenditures for design, construction and operation, including sets, special and visual  
211 effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting,  
212 staging, payroll, transportation expenditures, advertising and public relations expenditures,  
213 facility expenses, rentals, per diems, accommodations and other related costs.

214           “Qualified Production Facility” means a facility located in the State of Massachusetts in  
215 which live theatrical productions are, or are intended to be, exclusively presented that contains at  
216 least one stage, a seating capacity of three hundred fifty (350) or more seats, and dressing rooms,  
217 storage areas, and other ancillary amenities necessary for the Eligible theater production.

218           “Massachusetts Office of Travel and Tourism” means the office within the secretariat of  
219 economic development that has been established in order to market Massachusetts as a leisure  
220 travel destination in order to generate state and local tax revenues, create jobs, and support  
221 travel-related businesses.

222           “Transportation expenditures” means expenditures for the packaging, crating, and  
223 transportation both to the state for use in a qualified theater production of sets, costumes, or other  
224 tangible property constructed or manufactured out of state, and/or from the state after use in a  
225 qualified theater production of sets, costumes, or other tangible property constructed or  
226 manufactured in this state and the transportation of the cast and crew to and from the state. Such  
227 term shall include the packaging, crating, and transporting of property and equipment used for  
228 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and

229 related accessories and materials, as well as any other performance or production-related  
230 property and equipment.

231 “World Premiere” means a live stage production performed in a qualified production  
232 facility of an original work which has never been commercially presented in public before.

233 (b) Any person, firm, partnership, trust, estate or other entity that receives an eligible  
234 theater production certificate shall be allowed a tax credit equal to thirty-five percent (35%) of  
235 production and performance expenditures which shall consist of payroll and twenty –five percent  
236 (25%) of the production and performance expenditures and transportation expenditures for the  
237 eligible theater production and to be computed as provided in this chapter against a tax imposed  
238 by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall be limited  
239 to certified production cost directly attributable to activities in the state and transportation  
240 expenditures defined above. The total production budget shall be a minimum of one hundred  
241 thousand dollars (\$100,000).

242 (c) No more than five million dollars (\$5,000,000) in total may be issued for any tax year  
243 for musical and theatrical production tax credits pursuant to this chapter or chapter 62.

244 (d) The tax credit shall be allowed against the tax for the taxable period in which the  
245 credit is earned and can be carried forward for not more than five (5) succeeding tax years.

246 (e) If the company has not claimed the tax credits in whole or part, taxpayers eligible for  
247 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or  
248 otherwise to any individual or entity and such assignee of the tax credits that have not claimed  
249 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,  
250 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired

251 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed  
252 pursuant to this chapter or Chapter 62, as appropriate. The assignee may apply the tax credit  
253 against taxes imposed on the assignee for not more than three (3) succeeding tax years. The  
254 assignor shall perfect the transfer by notifying the commissioner of revenue, in writing, within  
255 thirty (30) calendar days following the effective date of the transfer and shall provide any  
256 information as may be required by the commissioner to administer and carry out the provisions  
257 of this section.

258 (f) For purposes of this chapter, any assignment or sales proceeds received by the  
259 assignor for its assignment or sale of the tax credits allowed pursuant to this section and  
260 subsection (t) of section 6 of Chapter 62 shall be exempt from this title.

261 (g) In the case of a corporation, this credit is only allowed against the tax of a corporation  
262 included in a consolidated return that qualifies for the credit and not against the tax of other  
263 corporations that may join in the filing of a consolidated tax return, provided, however, that in  
264 the case of a corporation that files a consolidated return with one or more other corporations with  
265 operations in Massachusetts, the credit will be allowed to be included in a consolidated return  
266 with respect to such corporations with operations in Massachusetts only.

267 (h) The applicant or applicants shall properly prepare, sign and submit to the  
268 Massachusetts office of travel and tourism an application for initial certification of the theater  
269 production. The application shall include such information and data as the office deems  
270 reasonably necessary for the proper evaluation and administration of said application, including,  
271 but not limited to, any information about the theater production company or their related  
272 partners/presenters and a specific Massachusetts live theater or musical production. The office

273 shall review the completed applications and determine whether it meets the requisite criteria and  
274 qualifications for the initial certification for the production and/or presentation. If the initial  
275 certification is granted, the office shall issue a notice of initial certification of the eligible theater  
276 production and/or presentation to the theater production company, co-producer or presenter and  
277 to the commissioner. The notice shall state that, after appropriate review, the initial application  
278 meets the appropriate criteria for conditional eligibility. The notice of initial certification will  
279 provide a unique identification number for the production/presentation and is only a statement of  
280 conditional eligibility for the production/presentation and, as such, does not grant or convey any  
281 Massachusetts tax benefits.

282 (i) Upon completion of an eligible theater production, the applicant or applicants shall  
283 properly prepare, sign and submit to the office an application for final certification of the eligible  
284 theater production. The final application shall also contain a cost report and an “accountant’s  
285 certification.” The office and commissioner may rely without independent investigation, upon  
286 the accountant’s certification, in the form of an opinion, confirming the accuracy of the  
287 information included in the cost report. Upon review of a duly completed and filed application  
288 and upon no later than thirty (30) days of submission thereof, the commissioner will make a  
289 determination pertaining to the final certification of the eligible theater production and the  
290 resultant tax credits.

291 (j) Upon determination that the company qualifies for final certification and the resultant  
292 tax credits, the commissioner shall issue to the company: (1) an eligible theater production  
293 certificate; and (2) a tax credit certificate in an amount in accordance with this section (b) hereof.  
294 A musical and theatrical production company is prohibited from using state funds, state loans or  
295 state guaranteed loans to qualify for the live theater infrastructure tax credit. All documents that

296 are issued by the office pursuant to this section shall reference the identification number that was  
297 issued to the production as part of its initial certification.

298 (k) Upon completion of an eligible theater production, the applicant or applicants shall  
299 deposit an amount equal to 15% of the tax credits received pursuant to this chapter into the  
300 Massachusetts Cultural Council Facilities Fund. The Massachusetts Cultural Council shall use  
301 these funds to address issues related to the workforce development and sustainability of the  
302 Massachusetts live theater industry.

303 (l) The Massachusetts office of travel and tourism, in consultation as needed with the  
304 commissioner of revenue, shall promulgate such rules and regulations as are necessary to carry  
305 out the intent and purposes of this chapter in accordance with the general guidelines provided  
306 herein for the certification of the production and the resultant production credit.

307 (m) If information comes to the attention of the Massachusetts Office of Travel and  
308 Tourism that is materially inconsistent with representations made in an application, the office  
309 may deny the requested certification. In the event that tax credits or a portion of tax credits are  
310 subject to recapture for ineligible costs and such tax credits have been transferred, assigned  
311 and/or allocated, the state will pursue its recapture remedies and rights against the applicant of  
312 the theater production tax credits. No redress shall be sought against assignees, sellers,  
313 transferees or allocates of such credits.

314 (n) No credits shall be issued on or after January 1, 2022 unless the production has  
315 received initial certification under this section prior to January 1, 2022."