

SENATE No. 2441

Senate, July 14, 2016 – Text of amendment (201) (offered by Senator Lesser) to the Ways and Means amendment (Senate, No. 2423) to the House Bill relative to job creation, workforce development and infrastructure investment.

The Commonwealth of Massachusetts

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

1 by inserting at the end thereof the following new sections:-

2 “SECTION X. 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 XX. 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.”