

HCS HB 2099 -- TAX CREDITS FOR FILM PROJECTS

SPONSOR: Seitz

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Special Committee on Tourism by a vote of 10 to 0.

The following is a summary of the House Committee Substitute for HB 2099.

This bill establishes the "Missouri Entertainment Industry Investment Act" and the "Missouri Entertainment Industry Postproduction Investment Act".

MISSOURI ENTERTAINMENT INDUSTRY INVESTMENT ACT (Section 135.571, RSMO)

This bill authorizes a tax credit for any production company or qualified interactive entertainment production company and its affiliates, as such terms are defined in the bill.

This tax credit shall be available for any production company or qualified interactive entertainment production company and its affiliates that invest in a state-certified production approved by the Missouri Film Commission and the Department of Economic Development (DED) and whose average annual total production expenditures, as defined in the bill, in this state did not exceed \$30 million for the three preceding tax years. The tax credit under this bill shall be allowed if the base investment, as defined in the bill, in this state equals or exceeds \$500,000 for qualified production activities, except that any qualified interactive entertainment production company shall be allowed the tax credit under this bill if the base investment in this state equals or exceeds \$250,000 for qualified production activities on or after January 1, 2023, and shall be allowed a tax credit equal to 20% of the base investment in this state. The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10% of such base investment if the qualified production activity includes a qualified Missouri promotion.

For any production company or qualified interactive entertainment production company and its affiliates that invest in a state-certified production approved by the Film Commission and DED and whose average annual total production expenditures in this state exceeded \$30 million for the three preceding tax years, there shall be allowed a tax credit in an amount of 20% of the excess base investment, as calculated in the bill, in this state that equals or exceeds \$500,000, or \$250,000 for qualified interactive

entertainment production activities. The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10% of the excess base investment if the qualified production activities include a qualified Missouri promotion.

Additional tax credits for qualified Missouri promotion are subject to requirements outlined in the bill.

The Film Commission and DED shall prepare an annual report detailing the marketing opportunities they have approved for the additional tax credit for qualified Missouri promotion. This report shall include but not be limited to:

(1) The goals and strategy behind each marketing opportunity approved under the bill;

(2) The names of all production companies approved by the Film Commission and the Department of Economic Development to provide alternative marketing opportunities;

(3) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Missouri promotional logo; and

(4) The names of all production companies who chose to include the Missouri promotional logo designed by the Missouri Division of Tourism in their final production instead of offering the state an alternative marketing proposal.

The report shall be completed not later than January 1st of each year and presented to each member of the House Committee on Ways and Means, the Senate Committee on Ways and Means, the Senate Committee on Economic Development, the House Committee on Economic Development, the House Special Committee on Tourism, and any successor committees thereto.

For tax years beginning on or after January 1, 2023, the amount of tax credits allowed under this bill for qualified interactive entertainment production companies and affiliates shall not exceed \$12,500,000 for each tax year. Beginning on or after January 1, 2023, qualified interactive entertainment production companies are eligible for tax credits for pre-released interactive game production; provided, however, that such credits shall not be available for a period that exceeds three tax years.

The maximum allowable credit claimed for a qualified interactive entertainment production company and its affiliates shall not exceed \$1,500,000 in any single tax year.

Qualified interactive entertainment production companies seeking to claim a tax credit under the provisions of this bill shall submit an application to the Film Commission and DED for preapproval of such tax credit. DED shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications are submitted on the same day and the amount of funds available is not sufficient to fully fund the tax credits requested, DED shall prorate the available funds between or among the applicants.

No qualified interactive entertainment production company shall be allowed to claim an amount of tax credits under this bill for any single tax year in excess of its total aggregate payroll expended to employees working within this state for the tax year that the qualified interactive entertainment production company claims the tax credits. Any amount in excess of such limit shall not be carried forward to the succeeding tax years' state tax liability, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

Before the Film Commission and DED issues its approval to the qualified interactive entertainment production company for the qualified production activities related to interactive entertainment, the qualified interactive entertainment production company shall certify that:

- (1) The qualified interactive entertainment production company maintains a business location physically located in this state; and
- (2) The qualified interactive entertainment production company has expended a total aggregate payroll of \$500,000 or more, or \$250,000 or more on or after January 1, 2023, for employees working within this state during the tax year of the qualified interactive entertainment production company.

The Film Commission and DED shall issue a certification that the qualified interactive entertainment production company meets the previously mentioned location and payroll requirements. The qualified interactive entertainment production company shall provide such certification to the Film Commission and DED. The Film Commission and DED shall not approve a tax credit claim under this bill until they receive such certification.

For tax years beginning on or after January 1, 2023, the qualified interactive entertainment production company shall report to the Department of Revenue (DOR) on its Missouri income tax return the monthly average number of full-time employees subject to Missouri income tax withholding for each respective tax year. For purposes

of this bill, the term "full-time employee" shall have the same meaning as the term is defined under the Missouri Works Program.

The Department of Revenue shall report annually to the House Committee on Ways and Means and the Senate Committee on Ways and Means, and any successor committees thereto. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company. The first report shall be submitted before July 1, 2024, and each tax year thereafter before July first.

Any postproduction company and its affiliates that claim the credit authorized under this bill shall not simultaneously receive any additional tax credits or exemptions under Chapter 135 or additional benefits available to the company under any other state programs for which the company is eligible including, but not limited to, the Missouri one start jobs training program, the real property tax increment allocation redevelopment act, the Missouri Downtown and Rural Economic Stimulus Act, the Missouri Quality Jobs Act, or the Missouri Works Program.

Any tax credits under this bill with respect to a state-certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Missouri taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company shall make only a single transfer or sale of tax credits earned in a tax year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to DED and DOR a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by DED or DOR;

(3) Failure to comply with the transferability requirements shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company

is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned or the date on which the final certification for such tax credit was issued for a tax credit subject to this bill;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, DOR shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee; provided, however, that the Department of Revenue shall not recapture a tax credit from the transferee if the tax credit was issued a valid final certification under this bill. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee shall acquire the tax credits in this bill for a minimum of 60% of the amount of the tax credits so transferred.

The credit granted under this bill shall be subject to the following conditions and limitations; provided, however, that these conditions and limitations shall not apply to a production company subject to the requirements of a final certification under this bill:

The credit may be taken beginning with the tax year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Missouri income tax return, which shall set forth the following information, at a minimum:

(1) A description of the qualified production activities, along with the certification from the Film Commission and Department of Economic Development;

(2) A detailed listing of the employee names, Social Security numbers, and Missouri wages when salaries are included in the base

investment;

(3) The amount of tax credit claimed for the tax year;

(4) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Missouri income tax liabilities;

(5) The amount of tax credit carried over from prior years;

(6) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current tax year; and

(7) The amount of tax credit to be carried over to subsequent tax years;

In the initial year in which the production company or qualified interactive entertainment production company claims the credit granted in this bill, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by the bill information demonstrating that the activities included in the base investment or excess base investment equal or exceed \$500,000 during such tax year, or \$250,000 on or after January 1, 2023, for qualified interactive entertainment production companies; and

In no event shall the amount of the tax credit under this bill for a tax year exceed the production company's or qualified interactive entertainment production company's state tax liability. Any unused credit amount may be carried forward for five years from the close of the tax year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior tax years' state tax liability.

FINAL CERTIFICATION FOR PRODUCTIONS COMPANIES

For any projects certified by the film commission and DED on or after January 1, 2023, the tax credit provided for in this bill if covered under the schedule provided in this bill shall not be allowed, claimed, assigned, sold, transferred, or utilized in any manner by a production company until final certification is issued under this bill and except under certain conditions and limitations.

A production company seeking the tax credit allowed by this bill shall apply for the tax credit in the manner provided by the DOR within one year from the date that it completes a state-certified

production. The following information shall be submitted with the application or prior to the commencement of an audit required by this bill:

- (1) A description of the state-certified production, along with its certification as a state-certified production by the film commission and department of economic development;
- (2) A detailed accounting of all qualified production activities and the attendant production expenditures included in the base investment for the state-certified production;
- (3) A detailed listing of the employee names, Social Security numbers, and Missouri wages when salaries are included in the base investment;
- (4) Receipts for tangible personal property included in the base investment as requested by the department of revenue or the auditor hired to conduct the audit for the state-certified production;
- (5) Contracts for goods or services included in the base investment as requested by the Department of Revenue or the auditor hired to conduct the audit for the state-certified production;
- (6) An Internal Revenue Service Form W-9 completed and issued by each vendor for which expenditures are included in the base investment as requested by the Department of Revenue or the auditor hired to conduct the audit for the state-certified production;
- (7) A description of the status of the distribution of the state-certified production and information related to any qualified Missouri promotion connected with such production;
- (8) The total amount of the tax credit sought for the state-certified production; and
- (9) A statement affirming that the contents of the application are true and correct.

If a production company is issued final certification of a tax credit under this bill, such tax credit shall be considered earned in the tax year in which it is issued final certification.

For each tax year in which the production company either claims or transfers the tax credit, the production company shall attach a schedule to the production company's Missouri income tax return that shall set forth the following information, at a minimum:

- (1) The amount of tax credit claimed for the tax year;

- (2) Any tax credit previously taken by the production company against Missouri income tax liabilities;
- (3) The amount of tax credit carried over from prior tax years;
- (4) The amount of tax credit utilized by the production company in the current tax year; and
- 5) The amount of tax credit to be carried over to subsequent tax years.

In no event shall the amount of the tax credit subject to subsection 10 of this section for a tax year exceed the production company's state tax liability. Any unused credit amount shall be allowed to be carried forward for three tax years from the close of the tax year in which the tax credit was issued its final certification under subsection 10 of this section. No such credit shall be allowed the production company against prior tax years' state tax liability.

Certification shall not apply to qualified interactive entertainment production companies.

AUDITS FOR PRODUCTIONS COMPANIES

For any project certified by the Film Commission and DED on or after January 1, 2023, a tax credit allowed by this section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in this bill and DOR issues a final certification of the tax credit under provisions of the bill if the total amount of such tax credit sought for the project exceeds \$2,500,000.

For any project certified by the Film Commission and the DED on or after January 1, 2024, a tax credit allowed by this section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection 9 of this section and the Department of Revenue issues a final certification of the tax credit under this subsection if the total amount of such tax credit sought for the project exceeds \$1,250,000.

For any project certified by the Film Commission and DED on or after January 1, 2025, a tax credit allowed by this bill to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided for in this bill and DOR

issues a final certification of the tax credit under this subsection.

In accordance with the schedule provided in this bill, prior to certifying a tax credit, an audit of each tax credit allowed by this section shall be conducted by an auditor in good standing with the Missouri State Board of Accountancy.

Each audit shall:

- (1) Be completed in accordance with this bill and procedures developed by DOR;
- (2) Utilize sampling methods that DOR may adopt;
- (3) Follow regulations that shall be published by DOR regarding expenditures incurred with related taxpayers;
- (4) Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the conditions of this section;
- (5) Exclude any expenditure not submitted with or that was incurred after the application was submitted; and
- (6) Be submitted to DOR, which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.

The Department of Revenue shall review each audit, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the taxpayer.

The cost of any such audit shall be borne by the production company and shall not be included as an expenditure claimed under this section.

Audits shall not apply to qualified interactive entertainment production companies.

The Department of Economic Development and The Department of Revenue shall promulgate all necessary rules and regulations for the administration of the Missouri Entertainment Industry Investment Act.

The provisions of the Missouri Entertainment Industry Investment Act shall automatically sunset December 31st, six years after the effective date.

MISSOURI ENTERTAINMENT INDUSTRY POSTPRODUCTION INVESTMENT ACT
(Section 135.752)

This bill establishes the "Missouri Entertainment Industry Postproduction Investment Act".

The bill authorizes a tax credit for any postproduction company.

Under this bill, a postproduction company that has incurred qualified postproduction expenditures, as defined in the bill, of at least \$500,000 in a tax year shall be allowed a tax credit. The amount of the tax credit shall be equal to 20% of the qualified postproduction expenditures, as defined in the bill, actually invested and expended by the postproduction company in a tax year. An additional tax credit equal to 10% of the qualified postproduction expenditures shall be allowed if the qualified production expenditures, as defined in the bill, were incurred in this state.

The amount of tax credits allowed to a postproduction company under this bill for any single tax year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the tax year the postproduction company claims the tax credit.

A postproduction company that has incurred qualified postproduction expenditures of at least \$100,000 but less than \$500,000 and has a total aggregate payroll in this state of at least \$100,000 but less than \$500,000 in a tax year shall be allowed a tax credit. The tax credit allowed shall be equal to 20% of the qualified postproduction expenditures actually invested and expended by the postproduction company in a tax year. The aggregate amount of tax credits allowed for smaller postproduction companies shall not exceed \$1 million per tax year. This \$1 million aggregate amount of tax credits is separate from, and shall not be included in, the aggregate limit in the bill.

For tax years beginning on or after January 1, 2023, the tax credits allowed under this bill, except for smaller postproduction companies, shall be subject to an aggregate annual cap of \$10 million. If the aggregate amount of tax credits claimed by taxpayers under this bill during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.

The maximum allowable tax credit under this bill claimed by a single postproduction company and its affiliates shall not exceed, in any single tax year, 20% of the aggregate amount of tax credits available for such tax year, including the amount of any aggregate annual caps rolled over from prior years.

Postproduction companies seeking to claim a tax credit under this section shall submit an application to DED for preapproval of such tax credit. The Department of Economic Development shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications are submitted on the same day and the amount of funds available are not sufficient to fully fund the tax credits requested, DED shall prorate the available funds between or among the applicants.

For tax years beginning on or after January 1, 2023, the postproduction company shall report to DOR on its Missouri income tax return the monthly average number of full-time employees subject to Missouri income tax withholding for the tax year. For purposes of this section, the term "full-time employee" shall have the same meaning as the term is defined under the Missouri Works Program. The Department of Revenue shall annually report to the House Committee on Ways and Means, the Senate Committee on Ways and Means, and any successor committees thereto. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted before July 1, 2024, and each year thereafter before July first.

Any qualified postproduction expenditures for which a production company claims a tax credit under the Missouri Entertainment Industry Investment Act shall not be eligible for postproduction expenditures for purposes of the credit authorized under this section.

Any postproduction company and its affiliates that claim the credit authorized under this section shall not simultaneously receive any additional tax credits or exemptions under Chapter 135 or additional benefits available to the company under any other state programs for which the company is eligible and which utilize withholding tax from the new jobs including, but not limited to, the Missouri One Start Jobs Training Program, the Real Property Tax Increment Allocation Redevelopment Act, the Missouri Downtown and Rural Economic Stimulus Act, the Missouri Quality Jobs Act, or the Missouri Works Program.

The credit may be taken beginning with the tax year in which the postproduction company has incurred the qualified postproduction

expenditures. For each tax year in which such postproduction company either claims or transfers the credit, the postproduction company shall attach a schedule to the postproduction company's Missouri income tax return that shall set forth the following information, at a minimum:

- (1) A description of the qualified postproduction activities;
- (2) A certification that the postproduction company maintains a business location physically located in this state;
- (3) A certification that the postproduction company expended a total aggregate payroll of \$250,000 or more for employees working within this state during the tax year of the postproduction company;
- (4) In the initial tax year in which the postproduction company claims the credit granted in this section only, information demonstrating that the qualified postproduction expenditures equal or exceed \$500,000 during such tax year;
- (5) A detailed listing of the employee names, Social Security numbers, and Missouri wages when salaries are included in the qualified postproduction expenditures;
- (6) The amount of tax credit claimed for the tax year;
- (7) The amount of tax credit carried over from prior tax years;
- (8) The amount of tax credit utilized by the postproduction company in the current tax year; and
- (9) The amount of tax credit to be carried over to subsequent tax years.

The postproduction company shall file a copy of the schedule with DED within 30 days after the schedule is filed with its income tax return;

Where the amount of tax credits under this section exceeds the postproduction company's state tax liability in a tax year, any unused credit amount may be carried forward for five tax years from the close of the tax year in which the investment occurred. No such credit shall be allowed the postproduction company against prior tax years' state tax liability; and

Any tax credits earned by a postproduction company under this bill and previously claimed but not used by such postproduction company against its income tax may be transferred or sold in whole or in

part by such postproduction company to another Missouri taxpayer, subject to the following conditions:

(1) Such postproduction company shall make only a single transfer or sale of tax credits earned in a tax year; however, the transfer or sale may involve one or more transferees;

(2) Such postproduction company shall submit to DED and to DOR a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such postproduction company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by DED or DOR;

(3) Failure to comply with this subdivision shall result in the disallowance of the tax credit until the postproduction company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(5) A transferee shall have only such rights to claim and use the tax credit that was available to such postproduction company at the time of the transfer, except for the use of the credit as outlined in the bill. To the extent that such postproduction company did not have rights to claim or use the tax credit at the time of the transfer, DOR shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and

(6) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse DOR for any department-initiated audits relating to the tax credit. This paragraph shall not apply to routine tax audits of a taxpayer that may include the review of the credit provided in this bill.

The Department of Revenue and the Department of Economic Development shall promulgate all necessary rules and regulations for the administration of the Missouri Entertainment Industry Postproduction Investment Act.

The provisions of the Missouri Entertainment Industry Postproduction Investment Act shall automatically sunset December 31st, six years after the effective date.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPOSERS: Supporters say that this will boost Missouri's economy and boost tourism. Missouri has many different landscapes that filmmakers would love to use, but they go to different states because they have tax credits. People like visiting famous film locations and this could have a lasting impact on tourism. This bill would also create jobs for people who want to work on the productions.

Testifying for the bill were Representative Seitz; Eric Dean White; Jennifer Gregory; Jerry; Karen Best; Kelly Holman; Lynn Berry; Marshall Howden; Michael Morgan; Nicholas Appleton, Jackson+Appleton; Pamela K Critchfield; Associated Industries of Missouri; Robin Jackson- Creative Director; Ruth, City of Branson; Sheila Thomas, Table Rock Lake Chamber of Commerce; Sheila Wyatt, Taney County; Shelley Waggner; Stephen N. Critchfield; Wendy White; Cole Payne, Missouri Motion Media Association; Branson - Lakes Area Chamber of Commerce; Larry Milton, City of Branson; City of Independence; City of Branson; Entertainment Software Association; Missouri Citizens For The Arts; and Janet Ellis.

Testifying against the bill was Arnie C. Dienoff.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.