

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2099
101ST GENERAL ASSEMBLY

4205H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto two new sections relating to tax credits for qualified film projects.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto two new sections, to be known as sections 135.751 and 135.752, to read as follows:

135.751. 1. This act shall be known and may be cited as the "Missouri Entertainment Industry Investment Act".

2. As used in this section, the following terms mean:

(1) "Affiliates", those entities that are included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code, as amended, and all other entities that are owned fifty percent or more, directly or indirectly, by members of the affiliated group;

(2) "Base investment", the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state-certified production or productions;

(3) "Film commission", the office of the Missouri film commission;

(4) "Game platform", the electronic delivery system used to launch or play an interactive game;

(5) "Game sequel", an interactive game that builds upon the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from the original game;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **(6) "Loan-out company", a personal service company contracted with and**
19 **retained by a production company to provide individual personnel who are not**
20 **employees of the production company, including actors, directors, producers, writers,**
21 **production designers, production managers, costume designers, directors of**
22 **photography, editors, casting directors, first assistant directors, second unit directors,**
23 **stunt coordinators, and similar personnel, for performance of services used directly in a**
24 **qualified production activity. The term does not include persons retained by a**
25 **production company to provide tangible property or outside independent contractor**
26 **services, such as catering, construction, trailers, equipment, and transportation;**

27 **(7) "Multimarket commercial distribution", paid commercial distribution with**
28 **media buys that extend to markets outside of the state;**

29 **(8) "Prereleased interactive game", a new game, the offering of an existing game**
30 **on a new game platform, or a game sequel that is in the developmental stages of**
31 **production, which may be available to individuals for testing purposes but is not**
32 **generally made available or distributed to consumers or to the general public;**

33 **(9) "Production company", a company, other than a qualified interactive**
34 **entertainment production company, primarily engaged in qualified production activities**
35 **that have been approved by the film commission and the department of economic**
36 **development. The term "production company" shall not be construed to include any**
37 **form of business owned, affiliated, or controlled, in whole or in part, by any company or**
38 **person that is in default on any tax obligation of the state, or a loan made by the state or**
39 **a loan guaranteed by the state;**

40 **(10) "Production expenditures":**

41 **(a) Includes preproduction, production, and postproduction expenditures**
42 **incurred in this state that are directly used in a qualified production activity**
43 **including, but not limited to, the following: set construction and operation;**
44 **wardrobes, make-up, accessories, and related services; costs associated with**
45 **photography and sound synchronization; expenditures excluding license fees incurred**
46 **with Missouri companies for sound recordings and musical compositions; sound**
47 **recording projects used in feature films, series, pilots, or movies; lighting and related**
48 **services and materials; editing and related services; rental of facilities and equipment;**
49 **leasing of vehicles; costs of food and lodging; digital or tape editing; film processing;**
50 **transfers of film to tape or digital format; sound mixing; computer graphics services;**
51 **special effects services; animation services; total aggregate payroll; airfare, if purchased**
52 **through a Missouri travel agency or travel company; insurance costs and bonding, if**
53 **purchased through a Missouri insurance agency; and other direct costs of producing the**
54 **project in accordance with generally accepted entertainment industry practices;**

55 **(b) Includes payments to a loan-out company by a production company or**
56 **qualified interactive entertainment production company that has met its withholding**
57 **tax obligations as set out below. The production company or qualified interactive**
58 **entertainment production company shall withhold the applicable Missouri income tax**
59 **on all payments to loan-out companies for services performed in this state. Any**
60 **amounts so withheld shall be deemed to have been withheld by the loan-out company on**
61 **wages paid to its employees for services performed in this state under chapter 143. The**
62 **amounts so withheld shall be allocated to the loan-out company's employees based on**
63 **the payments made to the loan-out company's employees for services performed in this**
64 **state. For purposes of this section and chapter 143, loan-out company nonresident**
65 **employees performing services in this state shall be considered taxable nonresidents and**
66 **the loan-out company shall be subject to income taxation in the tax year in which the**
67 **loan-out company's employees perform services in this state, notwithstanding any other**
68 **provisions of law to the contrary. Such withholding liability shall be subject to penalties**
69 **and interest in the same manner as employee withholding taxes and the department**
70 **shall provide by regulation the manner in which such liability shall be assessed and**
71 **collected; and**

72 **(c) Shall not be construed to include:**

73 **a. Postproduction expenditures for footage shot outside the state, marketing,**
74 **story rights, or distribution;**

75 **b. Any expenditure for work or services not conducted or rendered in the state,**
76 **provided that:**

77 **(i) Expenditures for services not performed at the filming site shall only qualify**
78 **if the vendor is a Missouri vendor; and**

79 **(ii) Expenditures for services conducted or rendered both in Missouri and**
80 **outside Missouri shall qualify only to the extent the service is conducted or rendered in**
81 **Missouri;**

82 **c. Expenditures for goods that were not purchased or rented or leased in this**
83 **state from a Missouri vendor. Expenditures for goods shall qualify only to the extent**
84 **such goods are used in this state. A vendor that acts as a conduit to enable purchases or**
85 **rentals to qualify that would not otherwise qualify shall not be considered a Missouri**
86 **vendor with respect to such purchases, rentals, or leases; or**

87 **d. Any transaction subject to taxation or fees and for which taxes or fees have**
88 **not been demonstrably paid;**

89 **(11) "Qualified Missouri promotion", a qualified promotion of this state**
90 **approved by the film commission and the department of economic development**
91 **consisting of a:**

92 (a) Qualified movie production that includes a five-second long static or
93 animated logo that promotes Missouri in the end credits before the below-the-line crew
94 crawl for the life of the project and that includes a link to the Missouri division of
95 tourism's website on the project's web page;

96 (b) Qualified television production that includes an embedded five-second long
97 Missouri promotion during each broadcast worldwide for the life of the project and
98 which includes a link to the Missouri division of tourism's website on the project's web
99 page;

100 (c) Qualified music video that includes a logo designed by the Missouri division
101 of tourism at the end of each video and within online promotions; or

102 (d) Qualified interactive game that includes a fifteen-second long Missouri
103 advertisement in units sold and embedded in online promotions;

104 (12) "Qualified interactive entertainment production company", a company
105 that:

106 (a) Maintains a physical business location in Missouri;

107 (b) On or after January 1, 2023, had a total aggregate payroll of two hundred
108 fifty thousand dollars or more for employees working within the state in the tax year the
109 qualified interactive entertainment production company claims the tax credits;

110 (c) Has gross income less than one hundred million dollars for the tax year; and

111 (d) Is primarily engaged in qualified production activities related to interactive
112 entertainment that have been approved by the film commission and the department of
113 economic development.

114

115 The term "qualified interactive entertainment production company" shall not be
116 construed to include any form of business owned, affiliated, or controlled, in whole or in
117 part, by any company or person that is in default on any tax obligation of the state, or a
118 loan made by the state or a loan guaranteed by the state;

119 (13) "Qualified production activities":

120 (a) Only the following productions of new film, video, or digital projects
121 produced in this state and approved by the film commission and the department of
122 economic development as state-certified productions: feature films, series, pilots,
123 movies for television, televised commercial advertisements, music videos, interactive
124 entertainment, or prereleased interactive games. Such activities shall include projects
125 recorded in this state, in whole or in part, in either short or long form, animation and
126 music; fixed on a delivery system, which includes, but is not limited to, film, videotape,
127 computer disc, laser disc, and any element of the digital domain, from which the
128 program is viewed or reproduced; and which are intended for multimarket commercial

129 **distribution via theaters, video on demand, direct to DVD, digital platforms designed for**
130 **the distribution of interactive games, or licensing for exhibition by individual television**
131 **stations, groups of stations, networks, advertiser supported sites, cable television**
132 **stations, or public broadcasting stations; and**

133 **(b) The term "qualified production activities" shall not be construed to include**
134 **the coverage of news or athletic events, local interest programming, instructional videos,**
135 **corporate videos, any project that is not intended for multimarket commercial**
136 **distribution, or any project not shot, recorded, or originally created in Missouri;**

137 **(14) "Resident", the same meaning as in section 143.101;**

138 **(15) "State-certified production", a production engaged in qualified production**
139 **activities that have been approved by the film commission and the department of**
140 **economic development in accordance with regulations promulgated under this section.**
141 **In the instance of a "work for hire" in which one production company or qualified**
142 **interactive entertainment production company hires another production company or**
143 **qualified interactive entertainment production company to produce a project or**
144 **contribute elements of a project for pay, the hired company shall be considered a service**
145 **provider for the hiring company, and the hiring company shall be entitled to the film tax**
146 **credit;**

147 **(16) "State tax liability", the same meaning as in section 135.550;**

148 **(17) "Total aggregate payroll", the total sum expended by a production company**
149 **or qualified interactive entertainment production company on salaries paid to**
150 **employees working within this state in a state-certified production or productions.**
151 **For purposes of this section:**

152 **(a) With respect to a single employee, the portion of any salary that exceeds five**
153 **hundred thousand dollars for a single production shall not be included when calculating**
154 **total aggregate payroll; and**

155 **(b) All payments to a single employee and any legal entity in which the employee**
156 **has any direct or indirect ownership interest shall be considered as having been paid to**
157 **the employee and shall be aggregated regardless of the means of payment or**
158 **distribution.**

159 **3. (1) For any production company or qualified interactive entertainment**
160 **production company and its affiliates that invest in a state-certified production**
161 **approved by the film commission and the department of economic development and**
162 **whose average annual total production expenditures in this state did not exceed thirty**
163 **million dollars for the three preceding tax years, there shall be allowed an income tax**
164 **credit against the tax imposed under chapter 143, excluding withholding tax under**
165 **section 143.191 to 143.265, and subject to the additional limitations set forth in this**

166 section. The tax credit under this subsection shall be allowed if the base investment in
167 this state equals or exceeds five hundred thousand dollars for qualified production
168 activities, except that any qualified interactive entertainment production company shall
169 be allowed the tax credit under this subsection if the base investment in this state equals
170 or exceeds two hundred fifty thousand dollars for qualified production activities on or
171 after January 1, 2023, and shall be calculated as follows:

172 (a) The production company or qualified interactive entertainment production
173 company shall be allowed a tax credit equal to twenty percent of the base investment in
174 this state; and

175 (b) a. The production company or qualified interactive entertainment
176 production company shall be allowed an additional tax credit equal to ten percent of
177 such base investment if the qualified production activity includes a qualified Missouri
178 promotion. Such additional tax credit shall be allowed for any qualified production that
179 includes a qualified Missouri promotion upon its release to the general public. In lieu of
180 the inclusion of the Missouri promotional logo, the production company or qualified
181 interactive entertainment production company may offer alternative marketing
182 opportunities to be evaluated by the film commission and the department of
183 economic development to ensure that the alternative marketing opportunities offer
184 equal or greater promotional value to the state. The department of economic
185 development shall electronically certify to the department of revenue when the
186 requirements of this paragraph and subdivision (2) of subsection 4 of this section have
187 been met;

188 b. The additional percentage of tax credit allowed by this subdivision and by
189 subdivision (1) of subsection 4 of this section shall not be allowed to a production
190 company for any qualified production activity or state-certified production that has not
191 been commercially distributed in multiple markets; and

192 c. The additional percentage of tax credit that is allowed by this subdivision and
193 by subdivision (1) of subsection 4 of this section shall not be issued final certification
194 under subsection 10 of this section unless the state-certified production has been
195 commercially distributed in multiple markets within five years of the date that the
196 project was first certified by the film commission and the department of economic
197 development.

198 (2) The base investment and the amount of the credit allowed by this subsection
199 and by subsection 4 of this section with respect to a production company shall be subject
200 to the limitations of and any reductions required by subsection 10 of this section.

201 (3) The film commission and the department of economic development shall
202 jointly prepare an annual report detailing the marketing opportunities approved under

203 the provisions of paragraph (b) of subdivision (1) of this subsection. The report shall
204 include, but not be limited to:

205 (a) The goals and strategy behind each marketing opportunity approved under
206 the provisions of paragraph (b) of subdivision (1) of this subsection;

207 (b) The names of all production companies approved by the film commission
208 and the department of economic development to provide alternative marketing
209 opportunities;

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

212 (d) The names of all production companies who chose to include the Missouri
213 promotional logo in their final production instead of offering the state an alternative
214 marketing proposal.

215

216 The report required under this subdivision shall be completed not later than January
217 first of each year and presented to each member of the house committee on ways and
218 means, the senate committee on ways and means, the senate committee on economic
219 development, the house committee on economic development, the house special
220 committee on tourism, and any successor committees thereto.

221 4. (1) For any production company or qualified interactive entertainment
222 production company and its affiliates that invest in a state-certified production
223 approved by the film commission and the department of economic development and
224 whose average annual total production expenditures in this state exceeded thirty million
225 dollars for the three preceding tax years, there shall be allowed an income tax credit
226 against the tax imposed under chapter 143, excluding withholding tax under section
227 143.191 to 143.265, and subject to the additional limitations set forth in this subsection.
228 For purposes of this subsection, the excess base investment in this state is computed by
229 taking the current year production expenditures in a state-certified production and
230 subtracting the average of the annual total production expenditures for the three
231 preceding tax years. The tax credit shall be calculated as follows:

232 (a) If the excess base investment in this state equals or exceeds five hundred
233 thousand dollars, or two hundred fifty thousand dollars for qualified interactive
234 entertainment production activities on or after January 1, 2023, the production
235 company or qualified interactive entertainment production company and its affiliates
236 shall be allowed a tax credit of twenty percent of such excess base investment; and

237 (b) The production company or qualified interactive entertainment production
238 company and its affiliates shall be allowed an additional tax credit equal to ten percent
239 of the excess base investment if the qualified production activities include a qualified

240 **Missouri promotion. Such additional tax credit shall be allowed for any qualified**
241 **production that includes a qualified Missouri promotion upon its release to the general**
242 **public. In lieu of the inclusion of the Missouri promotional logo, the production**
243 **company or qualified interactive entertainment production company may offer**
244 **marketing opportunities to be evaluated by the department of economic development**
245 **to ensure that they offer equal or greater promotional value to the state.**

246 **(2) The film commission and the department of economic development shall**
247 **prepare an annual report detailing the marketing opportunities they have approved**
248 **under the provisions of paragraph (b) of subdivision (1) of this subsection. The report**
249 **shall include, but not be limited to:**

250 **(a) The goals and strategy behind each marketing opportunity approved under**
251 **the provisions of paragraph (b) of subdivision (1) of this subsection;**

252 **(b) The names of all production companies approved by the film commission**
253 **and the department of economic development to provide alternative marketing**
254 **opportunities;**

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

257 **(d) The names of all production companies who chose to include the Missouri**
258 **promotional logo in their final production instead of offering the state an alternative**
259 **marketing proposal.**

260

261 **The report required under this subdivision shall be completed not later than January**
262 **first of each year and presented to each member of the house committee on ways and**
263 **means, the senate committee on ways and means, the senate committee on economic**
264 **development, the house committee on economic development, the house special**
265 **committee on tourism, and any successor committees thereto.**

266 **5. (1) For tax years beginning on or after January 1, 2023, the amount of tax**
267 **credits allowed under this section for qualified interactive entertainment production**
268 **companies and affiliates shall not exceed twelve million five hundred thousand dollars**
269 **for each tax year. Beginning on or after January 1, 2023, qualified interactive**
270 **entertainment production companies are eligible for tax credits for prereleased**
271 **interactive game production; provided, however, that such credits shall not be**
272 **available for a period that exceeds three tax years.**

273 **(2) The maximum allowable credit claimed for a qualified interactive**
274 **entertainment production company and its affiliates shall not exceed one million five**
275 **hundred thousand dollars in any single tax year.**

276 **(3) Qualified interactive entertainment production companies seeking to claim a**
277 **tax credit under the provisions of this section shall submit an application to the film**
278 **commission and the department of economic development for preapproval of such tax**
279 **credit. The department of economic development shall preapprove the tax credits based**
280 **on the order in which properly completed applications were submitted. In the event**
281 **that two or more applications are submitted on the same day and the amount of funds**
282 **available is not sufficient to fully fund the tax credits requested, the department of**
283 **economic development shall prorate the available funds between or among the**
284 **applicants.**

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

292 **(5) Before the film commission and department of economic development issues**
293 **its approval to the qualified interactive entertainment production company for the**
294 **qualified production activities related to interactive entertainment, the qualified**
295 **interactive entertainment production company shall certify that:**

296 **(a) The qualified interactive entertainment production company maintains a**
297 **business location physically located in this state; and**

298 **(b) The qualified interactive entertainment production company had expended a**
299 **total aggregate payroll of two hundred fifty thousand dollars or more on or after**
300 **January 1, 2023, for employees working within this state during the tax year of the**
301 **qualified interactive entertainment production company.**

302 **(6) The film commission and department of economic development shall issue a**
303 **certification that the qualified interactive entertainment production company meets the**
304 **requirements under subdivision (5) of this subsection. The qualified interactive**
305 **entertainment production company shall provide such certification to the film**
306 **commission and department of economic development. The film commission and the**
307 **department of economic development shall not approve a tax credit claim under this**
308 **section until they receive such certification.**

309 **(7) For tax years beginning on or after January 1, 2023, the qualified interactive**
310 **entertainment production company shall report to the department of revenue on its**
311 **Missouri income tax return the monthly average number of full-time employees subject**
312 **to Missouri income tax withholding for each respective tax year. For purposes of this**

313 section, the term "full-time employee" shall have the same meaning as the term is
314 defined under section 620.2005.

315 (8) Notwithstanding section 143.788, the department of revenue shall report
316 annually to the house committee on ways and means and the senate committee on ways
317 and means, and any successor committees thereto. The report shall include the name,
318 tax year beginning, and monthly average number of full-time employees for each
319 qualified interactive entertainment production company. The first report shall be
320 submitted before July 1, 2024, and each tax year thereafter before July first.

321 6. Notwithstanding any provision of law to the contrary, any production
322 company or qualified interactive entertainment production company and its affiliates
323 that claim the credit authorized under this section shall not simultaneously receive any
324 additional tax credits or exemptions under this chapter or additional benefits available
325 to the company under any other state programs for which the company is eligible
326 including, but not limited to, the Missouri one start jobs training program under
327 sections 620.800 to 620.809, the real property tax increment allocation redevelopment
328 act under sections 99.800 to 99.865, the Missouri downtown and rural economic
329 stimulus act under sections 99.915 to 99.980, the Missouri quality jobs act under sections
330 620.1875 to 620.1890, or the Missouri works program under sections 620.2000 to
331 620.2020.

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

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

342 (2) Such production company or qualified interactive entertainment production
343 company shall submit to the department of economic development and the department
344 of revenue a written notification of any transfer or sale of tax credits within thirty days
345 after the transfer or sale of such tax credits. The notification shall include such
346 production company's or qualified interactive entertainment production company's tax
347 credit balance prior to transfer, the credit certificate number, the remaining balance
348 after transfer, all tax identification numbers for each transferee, the date of transfer, the

349 amount transferred, and any other information required by the department of economic
350 development or the department of revenue;

351 (3) Failure to comply with this subsection shall result in the disallowance of the
352 tax credit until the production company or qualified interactive entertainment
353 production company is in full compliance;

354 (4) The transfer or sale of this tax credit does not extend the time in which such
355 tax credit can be used. The carry-forward period for a tax credit that is transferred or
356 sold shall begin on the date on which the tax credit was originally earned or the date on
357 which the final certification for such tax credit was issued for a tax credit subject to the
358 provisions of subsection 10 of this section;

359 (5) A transferee shall have only such rights to claim and use the tax credit that
360 were available to such production company or qualified interactive entertainment
361 production company at the time of the transfer. To the extent that such production
362 company or qualified interactive entertainment production company did not have rights
363 to claim or use the tax credit at the time of the transfer, the department of revenue shall
364 either disallow the tax credit claimed by the transferee or recapture the tax credit from
365 the transferee; provided, however, that the department of revenue shall not recapture a
366 tax credit from the transferee if the tax credit was issued a valid final certification under
367 subsection 10 of this section. The transferee's recourse is against such production
368 company or qualified interactive entertainment production company; and

369 (6) The transferee shall acquire the tax credits in this section for a minimum of
370 sixty percent of the amount of the tax credits so transferred.

371 8. The credit granted under this section shall be subject to the following
372 conditions and limitations; provided, however, that this subsection shall not apply to a
373 production company subject to the requirements of subsection 9 or 10 of this section:

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

382 (a) A description of the qualified production activities, along with the
383 certification from the film commission and department of economic development;

384 (b) A detailed listing of the employee names, Social Security numbers, and
385 Missouri wages when salaries are included in the base investment;

- 386 (c) The amount of tax credit claimed for the tax year;
- 387 (d) Any tax credit previously taken by the production company or qualified
388 interactive entertainment production company against Missouri income tax liabilities;
- 389 (e) The amount of tax credit carried over from prior years;
- 390 (f) The amount of tax credit utilized by the production company or qualified
391 interactive entertainment production company in the current tax year; and
- 392 (g) The amount of tax credit to be carried over to subsequent tax years;
- 393 (2) In the initial year in which the production company or qualified interactive
394 entertainment production company claims the credit granted in this section, the
395 production company or qualified interactive entertainment production company shall
396 include in the description of the qualified production activities required by paragraph
397 (a) of subdivision (1) of this subsection information demonstrating that the activities
398 included in the base investment or excess base investment equal or exceed five hundred
399 thousand dollars during such tax year, or two hundred fifty thousand dollars on or after
400 January 1, 2023, for qualified interactive entertainment production companies; and
- 401 (3) In no event shall the amount of the tax credit under this section for a tax year
402 exceed the production company's or qualified interactive entertainment production
403 company's state tax liability. Any unused credit amount may be carried forward for
404 five years from the close of the tax year in which the investment occurred. No such
405 credit shall be allowed the production company or qualified interactive entertainment
406 production company against prior tax years' state tax liability.
- 407 9. (1) For any projects certified by the film commission and the department of
408 economic development on or after January 1, 2023, the tax credit provided for in this
409 section if covered under the schedule provided in subdivision (1) of subsection 10 of this
410 section shall not be allowed, claimed, assigned, sold, transferred, or utilized in any
411 manner by a production company until final certification is issued under subsection 10
412 of this section and except under the conditions and limitations of this subsection.
- 413 (2) A production company seeking the tax credit allowed by this section shall
414 apply for the tax credit in the manner provided by the department of revenue within one
415 year from the date that it completes a state-certified production. The following
416 information shall be submitted with the application or prior to the commencement of an
417 audit required by subsection 10 of this section:
- 418 (a) A description of the state-certified production, along with its certification as a
419 state-certified production by the film commission and department of economic
420 development;

421 **(b) A detailed accounting of all qualified production activities and the attendant**
422 **production expenditures included in the base investment for the state-certified**
423 **production;**

424 **(c) A detailed listing of the employee names, Social Security numbers, and**
425 **Missouri wages when salaries are included in the base investment;**

426 **(d) Receipts for tangible personal property included in the base investment as**
427 **requested by the department of revenue or the auditor hired to conduct the audit for the**
428 **state-certified production;**

429 **(e) Contracts for goods or services included in the base investment as requested**
430 **by the department of revenue or the auditor hired to conduct the audit for the state-**
431 **certified production;**

432 **(f) An Internal Revenue Service Form W-9 completed and issued by each vendor**
433 **for which expenditures are included in the base investment as requested by the**
434 **department of revenue or the auditor hired to conduct the audit for the state-certified**
435 **production;**

436 **(g) A description of the status of the distribution of the state-certified production**
437 **and information related to any qualified Missouri promotion connected with such**
438 **production;**

439 **(h) The total amount of the tax credit sought for the state-certified production;**
440 **and**

441 **(i) A statement affirming that the contents of the application are true and**
442 **correct.**

443 **(3) If a production company is issued final certification of a tax credit under**
444 **subsection 10 of this section, such tax credit shall be considered earned in the tax year in**
445 **which it is issued final certification.**

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

450 **(a) The amount of tax credit claimed for the tax year;**

451 **(b) Any tax credit previously taken by the production company against Missouri**
452 **income tax liabilities;**

453 **(c) The amount of tax credit carried over from prior tax years;**

454 **(d) The amount of tax credit utilized by the production company in the current**
455 **tax year; and**

456 **(e) The amount of tax credit to be carried over to subsequent tax years.**

457 **(5) In no event shall the amount of the tax credit subject to subsection 10 of this**
458 **section for a tax year exceed the production company's state tax liability. Any unused**
459 **credit amount shall be allowed to be carried forward for three tax years from the close**
460 **of the tax year in which the tax credit was issued its final certification under subsection**
461 **10 of this section. No such credit shall be allowed the production company against prior**
462 **tax years' state tax liability.**

463 **(6) This subsection shall not apply to qualified interactive entertainment**
464 **production companies.**

465 **10. (1) (a) For any project certified by the film commission and the department**
466 **of economic development on or after January 1, 2023, a tax credit allowed by this**
467 **section to a production company shall not be claimed, assigned, sold, transferred, or**
468 **utilized in any manner until the production company applies for the tax credit as**
469 **provided in subsection 9 of this section and the department of revenue issues a final**
470 **certification of the tax credit under this subsection if the total amount of such tax credit**
471 **sought for the project exceeds two million five hundred thousand dollars.**

472 **(b) For any project certified by the film commission and the department of**
473 **economic development on or after January 1, 2024, a tax credit allowed by this section**
474 **to a production company shall not be claimed, assigned, sold, transferred, or utilized in**
475 **any manner until the production company applies for the tax credit as provided in**
476 **subsection 9 of this section and the department of revenue issues a final certification of**
477 **the tax credit under this subsection if the total amount of such tax credit sought for the**
478 **project exceeds one million two hundred fifty thousand dollars.**

479 **(c) For any project certified by the film commission and the department of**
480 **economic development on or after January 1, 2025, a tax credit allowed by this section**
481 **to a production company shall not be claimed, assigned, sold, transferred, or utilized in**
482 **any manner until the production company applies for the tax credit as provided in**
483 **subsection 9 of this section and the department of revenue issues a final certification of**
484 **the tax credit under this subsection.**

485 **(2) In accordance with the schedule provided in subdivision (1) of this**
486 **subsection, prior to certifying a tax credit under this section, an audit of each tax credit**
487 **allowed by this section shall be conducted by an auditor in good standing with the**
488 **Missouri state board of accountancy.**

489 **(3) Each audit shall:**

490 **(a) Be completed in accordance with this section and procedures developed by**
491 **the department of revenue;**

492 **(b) Utilize sampling methods that the department of revenue may adopt;**

493 (c) Follow regulations that shall be published by the department of revenue
494 regarding expenditures incurred with related taxpayers as such term is defined in
495 section 135.100;

496 (d) Verify each reported expenditure that is included in the audit and identify
497 and exclude each such expenditure that does not fully meet the conditions of this section;

498 (e) Exclude any expenditure not submitted with or that was incurred after the
499 application required by subsection 9 of this section was submitted; and

500 (f) Be submitted to the department of revenue, which shall review the audit,
501 make adjustments as necessary, and issue a final certification to the production
502 company.

503 (4) The department of revenue shall review each audit, perform additional
504 auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit,
505 and issue the final certification of the tax credit to the taxpayer.

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

508 (6) This subsection shall not apply to qualified interactive entertainment
509 production companies.

510 11. The department of economic development shall determine through the
511 promulgation of rules and regulations which projects qualify for the tax credits
512 authorized under this section. The department of economic development and
513 department of revenue shall promulgate all necessary rules and regulations for the
514 administration of this section. Any rule or portion of a rule, as that term is defined in
515 section 536.010, that is created under the authority delegated in this section shall
516 become effective only if it complies with and is subject to all of the provisions of chapter
517 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable,
518 and if any of the powers vested with the general assembly under chapter 536 to review,
519 to delay the effective date, or to disapprove and annul a rule are subsequently held
520 unconstitutional, then the grant of rulemaking authority and any rule proposed or
521 adopted after August 28, 2022, shall be invalid and void.

522 12. Under section 23.253 of the Missouri sunset act:

523 (1) The provisions of this section shall automatically sunset December thirty-first
524 six years after the effective date of this section unless reauthorized by an act of the
525 general assembly;

526 (2) If such provisions are reauthorized, the provisions of this section shall
527 automatically sunset December thirty-first twelve years after the effective date of the
528 reauthorization of such provisions; and

529 **(3) This section shall terminate on September first of the calendar year**
530 **immediately following the calendar year in which the provisions of this section are**
531 **sunset.**

135.752. 1. This act shall be known and may be cited as the "Missouri
2 **Entertainment Industry Postproduction Investment Act".**

3 **2. As used in this section, the following terms mean:**

4 **(1) "Affiliates", those entities that are included in the production company's**
5 **affiliated group as defined in Section 1504(a) of the Internal Revenue Code, as amended,**
6 **and all other entities that are owned fifty percent or more directly or indirectly by**
7 **members of the affiliated group;**

8 **(2) "Multimarket commercial distribution", paid commercial distribution media**
9 **buys that extend to markets outside the state;**

10 **(3) "Postproduction company", a company that:**

11 **(a) Maintains a business location physically located in this state;**

12 **(b) Has a total aggregate payroll of two hundred fifty thousand dollars or more**
13 **for employees working within the state in the tax year the postproduction company**
14 **claims the tax credits; and**

15 **(c) Is engaged in qualified postproduction activities that have been approved by**
16 **the department of economic development.**

17

18 **The term "postproduction company" shall not be construed to include any form of**
19 **business owned, affiliated, or controlled, in whole or in part, by any company or person**
20 **that is in default on any tax obligation of the state, or a loan made by the state or a loan**
21 **guaranteed by the state. In the instance of a "work for hire" in which one**
22 **postproduction company hires another postproduction company to engage in qualified**
23 **postproduction activities for pay, the hired company shall be considered a service**
24 **provider for the hiring company and the hiring company shall be entitled to the**
25 **postproduction tax credit only if the department of revenue certifies that the hired**
26 **company is a Missouri company employing workers in this state and that the work is**
27 **done solely in this state;**

28 **(4) "Qualified postproduction activities", the activities performed on a qualified**
29 **production employing traditional, emerging, and new workflow techniques used in**
30 **postproduction for picture, sound, and music editing, rerecording and mixing, visual**
31 **effects, graphic design, original scoring, animation, musical composition, and other**
32 **activities performed after initial production and including activities performed on**
33 **previously produced and edited content;**

34 **(5) "Qualified postproduction expenditures", expenditures incurred in this state**
35 **directly in qualified postproduction activities including, but not limited to:**

36 **(a) Costs associated with photography and sound synchronization;**

37 **(b) Expenditures, excluding license fees, incurred with Missouri companies for**
38 **sound recordings and musical compositions, lighting, and related services and**
39 **materials;**

40 **(c) Editing and related services;**

41 **(d) Rental of facilities and equipment;**

42 **(e) Leasing of vehicles;**

43 **(f) Costs of food and lodging;**

44 **(g) Digital or tape editing, film processing, transfers of film to tape or digital**
45 **format, sound mixing, computer graphics services, special effects services, and**
46 **animation services;**

47 **(h) Total aggregate payroll;**

48 **(i) Airfare, if purchased through a Missouri travel agency or travel company;**

49 **(j) Insurance costs and bonding, if purchased through a Missouri insurance**
50 **agency; and**

51 **(k) Other direct postproduction costs for the project in accordance with**
52 **generally accepted entertainment industry practices.**

53

54 **This term includes expenditures incurred in this state for footage shot inside or outside**
55 **this state;**

56 **(6) "Qualified production":**

57 **(a) Only the following productions of film, video, or digital project: feature films,**
58 **series, pilots, movies for television, televised commercial advertisements, music videos,**
59 **interactive entertainment, or sound recording projects used in feature films, series,**
60 **pilots, or movies for television;**

61 **(b) The term "qualified production" shall include projects shot, recorded, or**
62 **originally created in either short or long form, animation and music; fixed on a delivery**
63 **system which includes, but is not limited to, film, videotape, computer disc, laser disc,**
64 **and any element of the digital domain, from which the program is viewed or**
65 **reproduced; and which are intended for multimarket commercial distribution via**
66 **theaters, video on demand, direct to DVD, digital platforms designed for the**
67 **distribution of interactive games, or licensing for exhibition by individual television**
68 **stations, groups of stations, networks, advertiser supported sites, cable television**
69 **stations, or public broadcasting stations; and**

70 (c) The term "qualified production activities" shall not be construed to include
71 the coverage of news and athletic events, local interest programming, instructional
72 videos, and corporate videos;

73 (7) "State tax liability", the meaning given to such term as defined under section
74 135.550;

75 (8) "Total aggregate payroll", the total sum expended by a postproduction
76 company on salaries paid to employees working within this state on qualified
77 postproduction activities.

78 3. (1) A postproduction company that has incurred qualified postproduction
79 expenditures of at least five hundred thousand dollars in a tax year shall be allowed a
80 tax credit against the tax imposed by chapter 143, excluding withholding tax under
81 section 143.191 to 143.265, subject to the conditions and limitations set forth in this
82 section.

83 (2) (a) The tax credit allowed shall be equal to twenty percent of the qualified
84 postproduction expenditures actually invested and expended by the postproduction
85 company in a tax year.

86 (b) An additional tax credit equal to ten percent of the qualified postproduction
87 expenditures shall be allowed if the qualified production expenditures, as defined in
88 section 135.751, were incurred in this state.

89 (3) The amount of tax credits allowed to a postproduction company under this
90 section for any single tax year shall not exceed the postproduction company's total
91 aggregate payroll expended to employees working within this state for the tax year the
92 postproduction company claims the tax credit.

93 4. (1) A postproduction company that has incurred qualified postproduction
94 expenditures of at least one hundred thousand dollars but less than five hundred
95 thousand dollars and has a total aggregate payroll in this state of at least one hundred
96 thousand dollars but less than five hundred thousand dollars in a tax year shall be
97 allowed a tax credit against the state tax liability imposed under chapter 143, excluding
98 withholding tax under section 143.191 to 143.265, and subject to the additional
99 limitations set forth in this section.

100 (2) The tax credit allowed shall be equal to twenty percent of the qualified
101 postproduction expenditures actually invested and expended by the postproduction
102 company in a tax year.

103 (3) The aggregate amount of tax credits allowed under this subsection for
104 smaller postproduction companies shall not exceed one million dollars per tax year.
105 This one million dollar aggregate amount of tax credits is separate from, and shall not
106 be included in, the aggregate amount of tax credits under subsection 5 of this section.

107 **5. For tax years beginning on or after January 1, 2023, the tax credits allowed**
108 **under this section for all postproduction companies shall be subject to an aggregate**
109 **annual cap of ten million dollars. If the aggregate amount of tax credits claimed by**
110 **taxpayers under this section during a year is less than the aggregate annual cap**
111 **applicable to such year, the unclaimed portion of the aggregate annual cap shall be**
112 **added to the aggregate annual cap applicable to the next succeeding year or years until**
113 **it is fully claimed.**

114 **6. (1) The maximum allowable tax credit under this section claimed by a single**
115 **postproduction company and its affiliates shall not exceed, in any single tax year, twenty**
116 **percent of the aggregate amount of tax credits available for such tax year under**
117 **subsection 5 of this section, including the amount of any aggregate annual caps rolled**
118 **over from prior years.**

119 **(2) Postproduction companies seeking to claim a tax credit under this section**
120 **shall submit an application to the department of economic development for preapproval**
121 **of such tax credit. The department of economic development shall preapprove the tax**
122 **credits based on the order in which properly completed applications were submitted. In**
123 **the event that two or more applications are submitted on the same day and the amount**
124 **of funds available are not sufficient to fully fund the tax credits requested, the**
125 **department of economic development shall prorate the available funds between or**
126 **among the applicants.**

127 **7. For tax years beginning on or after January 1, 2023, the postproduction**
128 **company shall report to the department of revenue on its Missouri income tax return**
129 **the monthly average number of full-time employees subject to Missouri income tax**
130 **withholding for the tax year. For purposes of this section, the term "full-time**
131 **employee" shall have the same meaning as the term is defined under section 620.2005.**
132 **Notwithstanding section 143.788, for such tax years, the department shall annually**
133 **report to the house committee on ways and means, the senate committee on ways and**
134 **means, and any successor committees thereto. The report shall include the name, tax**
135 **year beginning, and monthly average number of full-time employees for each**
136 **postproduction company. The first report shall be submitted before July 1, 2024,**
137 **and each year thereafter before July first.**

138 **8. (1) Any qualified postproduction expenditures for which a production**
139 **company claims a tax credit under section 135.751 shall not be eligible for**
140 **postproduction expenditures for purposes of the credit authorized under this section.**

141 **(2) Notwithstanding any provision of law to the contrary, any postproduction**
142 **company and its affiliates that claim the credit authorized under this section shall not**
143 **simultaneously receive any additional tax credits or exemptions under this chapter or**

144 **additional benefits available to the company under any other state programs for which**
145 **the company is eligible and which utilize withholding tax from the new jobs including,**
146 **but not limited to, the Missouri one start jobs training program under sections 620.800**
147 **to 620.809, the real property tax increment allocation redevelopment act under sections**
148 **99.800 to 99.865, the Missouri downtown and rural economic stimulus act under**
149 **sections 99.915 to 99.980, the Missouri quality jobs act under sections 620.1875 to**
150 **620.1890, or the Missouri works program under sections 620.2000 to 620.2020.**

151 **9. The credit granted under this section shall be subject to the following**
152 **conditions and limitations:**

153 **(1) The credit may be taken beginning with the tax year in which the**
154 **postproduction company has incurred the qualified postproduction expenditures. For**
155 **each tax year in which such postproduction company either claims or transfers the**
156 **credit, the postproduction company shall attach a schedule to the postproduction**
157 **company's Missouri income tax return that shall set forth the following information, at**
158 **a minimum:**

159 **(a) A description of the qualified postproduction activities;**

160 **(b) A certification that the postproduction company maintains a business**
161 **location physically located in this state;**

162 **(c) A certification that the postproduction company expended a total aggregate**
163 **payroll of two hundred fifty thousand dollars or more for employees working within this**
164 **state during the tax year of the postproduction company;**

165 **(d) In the initial tax year in which the postproduction company claims the credit**
166 **granted in this section only, information demonstrating that the qualified**
167 **postproduction expenditures equal or exceed five hundred thousand dollars during**
168 **such tax year;**

169 **(e) A detailed listing of the employee names, Social Security numbers, and**
170 **Missouri wages when salaries are included in the qualified postproduction expenditures;**

171 **(f) The amount of tax credit claimed for the tax year;**

172 **(g) The amount of tax credit carried over from prior tax years;**

173 **(h) The amount of tax credit utilized by the postproduction company in the**
174 **current tax year; and**

175 **(i) The amount of tax credit to be carried over to subsequent tax years.**

176

177 **The postproduction company shall file a copy of the schedule with the department of**
178 **economic development within thirty days after the schedule is filed with its income tax**
179 **return;**

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

185 (3) Any tax credits earned by a postproduction company under this section and
186 previously claimed but not used by such postproduction company against its income tax
187 may be transferred or sold in whole or in part by such postproduction company to
188 another Missouri taxpayer, subject to the following conditions:

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

192 (b) Such postproduction company shall submit to the department of economic
193 development and to the department of revenue a written notification of any transfer or
194 sale of tax credits within thirty days after the transfer or sale of such tax credits. The
195 notification shall include such postproduction company's tax credit balance prior to
196 transfer, the credit certificate number, the remaining balance after transfer, all tax
197 identification numbers for each transferee, the date of transfer, the amount transferred,
198 and any other information required by the department of economic development or the
199 department of revenue;

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

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

205 (e) A transferee shall have only such rights to claim and use the tax credit that
206 was available to such postproduction company at the time of the transfer, except for the
207 use of the credit in paragraph (b) of subdivision (1) of this subsection. To the extent that
208 such postproduction company did not have rights to claim or use the tax credit at the
209 time of the transfer, the department of revenue shall either disallow the tax credit
210 claimed by the transferee or recapture the tax credit from the transferee. The
211 transferee's recourse is against such postproduction company; and

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

216 **10. The department of revenue and the department of economic development**
217 **shall promulgate all necessary rules and regulations for the administration of this**
218 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
219 **created under the authority delegated in this section shall become effective only if it**
220 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
221 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
222 **vested with the general assembly under chapter 536 to review, to delay the effective date,**
223 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**
224 **of rulemaking authority and any rule proposed or adopted after August 28, 2022, shall**
225 **be invalid and void.**

226 **11. Under section 23.253 of the Missouri sunset act:**

227 **(1) The provisions of this section shall automatically sunset December thirty-first**
228 **six years after the effective date of this section unless reauthorized by an act of the**
229 **general assembly;**

230 **(2) If such provisions are reauthorized, the provisions of this section shall**
231 **automatically sunset December thirty-first twelve years after the effective date of the**
232 **reauthorization of such provisions; and**

233 **(3) This section shall terminate on September first of the calendar year**
234 **immediately following the calendar year in which the provisions of this section are**
235 **sunset.**

✓