

As Reported by the House Finance Committee

131st General Assembly

Regular Session

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Sub. H. B. No. 475

Representative Schuring

A BILL

To amend section 122.85 of the Revised Code to 1
authorize motion picture companies to transfer 2
the authority to claim refundable motion picture 3
tax credits to other persons, to adjust how the 4
credit is calculated, to increase the total 5
amount of credits that may be awarded per year, 6
to remove the limit on the maximum credit amount 7
that may be awarded to a motion picture, to 8
require at least 5% of a motion picture 9
company's eligible production expenditures be 10
paid to minority business enterprises, and to 11
create a job training program for resident film 12
crew members. 13

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 122.85 of the Revised Code be 14
amended to read as follows: 15

Sec. 122.85. (A) As used in this section and in sections 16
5726.55, 5733.59, 5747.66, and 5751.54 of the Revised Code: 17

(1) "Tax credit-eligible production" means a motion 18
picture production certified by the director of development 19

services under division (B) of this section as qualifying the 20
motion picture company for a tax credit under section 5726.55, 21
5733.59, 5747.66, or 5751.54 of the Revised Code. 22

(2) "Certificate owner" means a motion picture company to 23
which a tax credit certificate is issued or a person to which 24
the company has transferred under division (H) of this section 25
the authority to claim all or a part of the tax credit 26
authorized by that certificate. 27

(3) "Motion picture company" means an individual, 28
corporation, partnership, limited liability company, or other 29
form of business association producing a motion picture. 30

(4) "Eligible production expenditures" means expenditures 31
made after June 30, 2009, for goods or services purchased and 32
consumed in this state by a motion picture company directly for 33
the production of a tax credit-eligible production. 34

"Eligible production expenditures" includes, but is not 35
limited to, expenditures for ~~resident and nonresident~~ cast and 36
crew wages, accommodations, costs of set construction and 37
operations, editing and related services, photography, sound 38
synchronization, lighting, wardrobe, makeup and accessories, 39
film processing, transfer, sound mixing, special and visual 40
effects, music, location fees, and the purchase or rental of 41
facilities and equipment. 42

(5) "Motion picture" means entertainment content created 43
in whole or in part within this state for distribution or 44
exhibition to the general public, including, but not limited to, 45
feature-length films; documentaries; long-form, specials, 46
miniseries, series, and interstitial television programming; 47
interactive web sites; sound recordings; videos; music videos; 48

interactive television; interactive games; video games; 49
commercials; any format of digital media; and any trailer, 50
pilot, video teaser, or demo created primarily to stimulate the 51
sale, marketing, promotion, or exploitation of future investment 52
in either a product or a motion picture by any means and media 53
in any digital media format, film, or videotape, provided the 54
motion picture qualifies as a motion picture. "Motion picture" 55
does not include any television program created primarily as 56
news, weather, or financial market reports, a production 57
featuring current events or sporting events, an awards show or 58
other gala event, a production whose sole purpose is 59
fundraising, a long-form production that primarily markets a 60
product or service or in-house corporate advertising or other 61
similar productions, a production for purposes of political 62
advocacy, or any production for which records are required to be 63
maintained under 18 U.S.C. 2257 with respect to sexually 64
explicit content. 65

(6) "Minority business enterprise" has the same meaning as 66
in section 122.71 of the Revised Code. 67

(B) For the purpose of encouraging and developing a strong 68
film industry in this state, the director of development 69
services may certify a motion picture produced by a motion 70
picture company as a tax credit-eligible production. In the case 71
of a television series, the director may certify the production 72
of each episode of the series as a separate tax credit-eligible 73
production. A motion picture company shall apply for 74
certification of a motion picture as a tax credit-eligible 75
production on a form and in the manner prescribed by the 76
director. Each application shall include the following 77
information: 78

(1) The name and telephone number of the motion picture production company;	79 80
(2) The name and telephone number of the company's contact person;	81 82
(3) A list of the first preproduction date through the last production date in Ohio;	83 84
(4) The Ohio production office address and telephone number;	85 86
(5) The total production budget of the motion picture;	87
(6) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget of the motion picture;	88 89 90
(7) The total percentage of the motion picture being shot in Ohio;	91 92
(8) The level of employment of cast and crew who reside in Ohio;	93 94
(9) A synopsis of the script;	95
(10) The shooting script;	96
(11) A creative elements list that includes the names of the principal cast and crew and the producer and director;	97 98
(12) Documentation of financial ability to undertake and complete the motion picture;	99 100
(13) Estimated value of the tax credit based upon total budgeted eligible production expenditures;	101 102
(14) Any other information considered necessary by the director.	103 104

Within ninety days after certification of a motion picture 105
as a tax credit-eligible production, and any time thereafter 106
upon the request of the director of development services, the 107
motion picture company shall present to the director sufficient 108
evidence of reviewable progress. If the motion picture company 109
fails to present sufficient evidence, the director may rescind 110
the certification. Upon rescission, the director shall notify 111
the applicant that the certification has been rescinded. Nothing 112
in this section prohibits an applicant whose tax credit-eligible 113
production certification has been rescinded from submitting a 114
subsequent application for certification. 115

(C) (1) A motion picture company whose motion picture has 116
been certified as a tax credit-eligible production may apply to 117
the director of development services on or after July 1, 2009, 118
for a refundable credit against the tax imposed by section 119
5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The 120
director in consultation with the tax commissioner shall 121
prescribe the form and manner of the application and the 122
information or documentation required to be submitted with the 123
application. 124

The credit is determined as follows: 125

(a) If the total budgeted eligible production expenditures 126
stated in the application submitted under division (B) of this 127
section or the actual eligible production expenditures as 128
finally determined under division (D) of this section, whichever 129
is least, is less than or equal to three hundred thousand 130
dollars, no credit is allowed; 131

(b) If the total budgeted eligible production expenditures 132
stated in the application submitted under division (B) of this 133
section or the actual eligible production expenditures as 134

finally determined under division (D) of this section, whichever 135
is least, is greater than three hundred thousand dollars, the 136
credit equals ~~the sum of the following, subject to the~~ 137
~~limitation in division (C) (4) of this section:~~ 138

~~(i) Twenty five thirty per cent of the least of such 139
budgeted or actual eligible expenditure amounts ~~excluding~~ 140
~~budgeted or actual eligible expenditures for resident cast and~~ 141
~~crew wages;~~ 142~~

~~(ii) Thirty five per cent of budgeted or actual eligible 143
expenditures for resident cast and crew wages. 144~~

(2) Except as provided in ~~division~~ divisions (C) (4) and 145
(5) of this section, if the director of development services 146
approves a motion picture company's application for a credit, 147
the director shall issue a tax credit certificate to the 148
company. The director in consultation with the tax commissioner 149
shall prescribe the form and manner of issuing certificates. The 150
director shall assign a unique identifying number to each tax 151
credit certificate and shall record the certificate in a 152
register devised and maintained by the director for that 153
purpose. The certificate shall state the amount of the eligible 154
production expenditures on which the credit is based and the 155
amount of the credit. Upon the issuance of a certificate, the 156
director shall certify to the tax commissioner the name of the 157
applicant, the amount of eligible production expenditures shown 158
on the certificate, and any other information required by the 159
rules adopted to administer this section. 160

(3) The amount of eligible production expenditures for 161
which a tax credit may be claimed ~~is~~ and the percentage of such 162
expenditures paid to minority business enterprises are subject 163
to inspection and examination by the tax commissioner or 164

employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Once the eligible production expenditures and the percentage of such expenditures paid to minority business enterprises are finally determined under section 5703.19 of the Revised Code and division (D) of this section, the credit amount is not subject to adjustment unless the director determines an error was committed in the computation of the credit amount.

(4) No tax credit certificate may be issued before the completion of the tax credit-eligible production. Not more than forty million dollars of tax credit may be allowed per fiscal ~~biennium beginning on or after July 1, 2011, and not more than twenty million dollars may be allowed in the first year of the biennium. At any time, not more than five million dollars of tax credit may be allowed per tax credit-eligible production year beginning July 1, 2016.~~

(5) No tax credit certificate may be issued under this section unless five per cent or more of the motion picture company's actual eligible production expenditures are paid to one or more minority business enterprises.

(D) A motion picture company whose motion picture has been certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production expenditures to identify the expenditures that qualify as eligible production expenditures and to determine the percentage of such eligible production expenditures that were paid to minority business enterprises. The certified public accountant shall issue a report to the company and to the director of development services certifying the company's eligible production

expenditures, the percentage of such expenditures paid to 195
minority business enterprises, and any other information 196
required by the director. Upon receiving and examining the 197
report, the director may disallow any expenditure the director 198
determines is not an eligible production expenditure and may 199
modify the percentage of eligible production expenditures paid 200
to minority business enterprises if the director determines that 201
the reported percentage is incorrect. If the director disallows 202
an expenditure or modifies the percentage paid to minority 203
business enterprises, the director shall issue a written notice 204
to the motion picture production company stating that the 205
expenditure is disallowed or that the percentage is modified and 206
the reason for the disallowance or modification. Upon 207
examination of the report and disallowance of any expenditures, 208
the director shall determine finally the lesser of the total 209
budgeted eligible production expenditures stated in the 210
application submitted under division (B) of this section or the 211
actual eligible production expenditures for the purpose of 212
computing the amount of the credit. The director shall also 213
determine finally the percentage of eligible production 214
expenditures paid by the motion picture company to minority 215
business enterprises for the purpose of ascertaining compliance 216
or noncompliance with division (C) (5) of this section. 217

(E) No credit shall be allowed under section 5726.55, 218
5733.59, 5747.66, or 5751.54 of the Revised Code unless the 219
director has reviewed the report and made the determination 220
prescribed by division (D) of this section. 221

(F) This state reserves the right to refuse the use of 222
this state's name in the credits of any tax credit-eligible 223
motion picture production. 224

(G) (1) The director of development services in 225
consultation with the tax commissioner shall adopt rules for the 226
administration of this section, including rules setting forth 227
and governing the criteria for determining whether a motion 228
picture production is a tax credit-eligible production; 229
activities that constitute the production of a motion picture; 230
reporting sufficient evidence of reviewable progress; 231
expenditures that qualify as eligible production expenditures; a 232
competitive process for approving credits; ~~and~~ consideration of 233
geographic distribution of credits; and implementation of the 234
program described in division (I) of this section. The rules 235
shall be adopted under Chapter 119. of the Revised Code. 236

(2) The director may require a reasonable application fee 237
to cover administrative costs of the tax credit program. The 238
fees collected shall be credited to the business assistance fund 239
created in section 122.174 of the Revised Code. All grants, 240
gifts, fees, and contributions made to the director for 241
marketing and promotion of the motion picture industry within 242
this state shall also be credited to the fund. The director 243
shall use money in the fund to pay expenses related to the 244
administration of the Ohio film office and the credit authorized 245
by this section and sections 5726.55, 5733.59, 5747.66, and 246
5751.54 of the Revised Code. 247

(H) (1) After the director of development services makes 248
the determination required under division (D) of this section, a 249
motion picture company to which a tax credit certificate is 250
issued may transfer the authority to claim all or a portion of 251
the amount of the tax credit the motion picture company is 252
authorized to claim pursuant to that certificate under section 253
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code to one 254
or more other persons. Within thirty days after a transfer under 255

this division, the motion picture company shall submit the 256
following information to the director, on a form prescribed by 257
the director: 258

(a) Information necessary for the director to identify the 259
certificate that is the basis for the transfer; 260

(b) The portion or amount of the tax credit transferred to 261
each transferee; 262

(c) The portion or amount of the tax credit that the 263
motion picture company retains the authority to claim; 264

(d) The tax identification number of each transferee; 265

(e) The date of the transfer; 266

(f) Any other information required by the director; 267

(g) Any information required by the tax commissioner. 268

The director shall deliver a copy of any submission 269
received under division (H) (1) of this section to the tax 270
commissioner. 271

(2) A transferee may not claim a credit under section 272
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless 273
and until the transferring motion picture company complies with 274
division (H) (1) of this section. A transferee may claim the 275
transferred amount of any credit or portion of a credit for the 276
same taxable year or tax period for which the transferring 277
motion picture company was authorized to claim the credit or 278
portion of a credit pursuant to the certificate. A motion 279
picture company shall make no transfer under division (H) (1) of 280
this section after the last day of the tax period or taxable 281
year for which the motion picture company is required to claim 282
the credit pursuant to the certificate. 283

A motion picture company may make not more than one 284
transfer under division (H) (1) of this section for each tax 285
credit certificate, but pursuant to that transaction, may 286
allocate the authority to claim a portion of the credit to more 287
than one transferee. A motion picture company may not authorize 288
more than one transferee to claim the same portion of a credit. 289

(I) The director of development services shall establish a 290
program for the training of Ohio residents who are or wish to be 291
employed in the film or multimedia industry. Under the program, 292
the director shall: 293

(1) Certify individuals as film and multimedia trainees. 294
In order to receive such a certification, an individual must be 295
an Ohio resident, have participated in relevant on-the-job 296
training or have completed a relevant training course approved 297
by the director, and have met any other requirements established 298
by the director. 299

(2) Accept applications from motion picture companies that 300
intend to hire and provide on-the-job training to one or more 301
certified film and multimedia trainees who will be employed in 302
the company's tax credit-eligible production. 303

(3) Upon completion of a tax-credit eligible production, 304
and upon the receipt of any salary information and other 305
documentation required by the director, authorize a 306
reimbursement payment to each motion picture company whose 307
application was approved under division (I) (2) of this section. 308
The payment shall equal fifty per cent of the salaries paid to 309
film and multimedia trainees employed in the production. 310

Section 2. That existing section 122.85 of the Revised 311
Code is hereby repealed. 312

Section 3. The amendment by this act of section 122.85 of	313
the Revised Code applies to tax credit certificates issued under	314
that section on or after July 1, 2016.	315