

Income Tax – Business and Economic Development Film Production Activity Tax Credit

Article – Tax – General

Section §10–730

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Department” means the Department of Business and Economic Development.
- (3) (i) “Film Production Activity” means the production of a film or video project that is intended for nationwide commercial distribution.
- (ii) “Film Production Activity” includes the production of:
1. a feature film;
 2. a television project;
 3. a commercial;
 4. a corporate film;
 5. an infomercial;
 6. a music video;
 7. a digital project;
 8. an animation project; or
 9. a multimedia project.
- (iii) “Film Production Activity” does not include production of:
1. a student film;
 2. a noncommercial personal video;
 3. a sports broadcast;
 4. a broadcast of a live event;
 5. a talk show;
 6. a video, computer, or social networking game; or
 7. pornography.
- (4) “Pornography” means any production for which records are required to be maintained under §2257 of Title 18, U.S.C., with respect to any performer in such production engaging in sexually explicit conduct.
- (5) “Qualified Film Production Entity” means an entity that:
- (i) is carrying out a film production activity; and
 - (ii) the Secretary determines to be eligible for the tax credit under this section in accordance with subsection (c) of this section.
- (6) “Secretary” means the Secretary of Business and Economic Development.
- (7) “Television Series” means a group of program episodes intended for television broadcast or transmission with a common series title, with or without a

predetermined number of episodes, and shall include a miniseries and a pilot episode produced for an intended television series.

(8) (i) "Total Direct Costs", with respect to a film production activity, means the total costs incurred in the State that are necessary to carry out the film production activity.

(ii) "Total Direct Costs" includes costs incurred for:

1. employee wages and benefits;
2. fees for services;
3. acquiring or leasing property; and
4. any other expense necessary to carry out a film production

activity, including costs associated with:

- A. set construction and operation;
- B. wardrobe, makeup, and related services;
- C. photography and sound synchronization, lighting, and related services and materials;
- D. editing and related services, including film processing, transfers of film to tape or digital format, sound mixing, computer graphic services, special effects services, and animation services;
- E. salary, wages, and other compensation including related benefits, for work performed in the State, paid to persons employed in the production, writers, directors, and producers;
- F. rental of facilities in the State and equipment used in the State;
- G. leasing of vehicles;
- H. food and lodging;
- I. music, if performed, composed, or recorded by a Maryland musician or published by a person or company domiciled in Maryland;
- J. travel expenses incurred to bring persons employed, either directly or indirectly, in the production of the project to Maryland, but not including expenses of these persons departing from Maryland; and
- K. legal and accounting services performed by attorneys or accountants licensed in Maryland.

(iii) "Total Direct Costs" does not include any salary, wages, or other compensation for personal services of an individual who receives more than \$500,000 in salary, wages, or other compensation for personal services in connection with any film production activity.

(b) (1) A qualified film production entity may claim a credit against the State income tax for film production activities in the State in an amount equal to the amount stated in the final tax credit certificate approved by the Secretary for film production activities.

(2) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified film production entity for that taxable year, the qualified film production entity may claim a refund in the amount of the excess.

(c) (1) Before beginning a film production activity, a film production entity shall submit to the Department an application to qualify as a film production entity.

(2) The application shall describe the anticipated film production activity, including:

- (i) the projected total budget;
- (ii) the estimated number of employees and total wages to be paid; and
- (iii) the anticipated dates for carrying out the major elements of the film production activity.

(3) To qualify as a film production entity, the estimated total direct costs incurred in the State must exceed \$500,000.

(4) The application shall include any other information required by the Secretary.

(5) The Secretary may require the information provided in an application to be verified by an independent auditor selected and paid for by the film production entity seeking certification.

(6) The Secretary shall:

- (i) determine if the film production entity qualifies for the credit under this section; and
- (ii) notify the Comptroller of the estimated amount of total direct costs and the taxable year the credit will be claimed.

(d) (1) After completion of the film production activity, a qualified film production entity shall apply to the Department for a tax credit certificate.

(2) The application shall be on a form required by the Secretary and shall include:

- (i) proof of the total direct costs that qualify for the tax credit; and
- (ii) the number of employees hired and wages paid.

(3) Subject to subsection (f) of this section, the Secretary shall determine the total direct costs that qualify for the tax credit and issue a tax credit certificate for:

- (i) except as provided in item (ii) of this paragraph, 25% of the total direct costs that qualify for the tax credit; and
- (ii) for a television series, 27% of the total direct costs that qualify for the tax credit.

(4) The Secretary shall notify the Comptroller of the amount of a tax credit certificate issued under this subsection.

(e) On or before January 1 of each year, the Department shall report to the Governor and, subject to §2–1246 of the State Government Article, the General Assembly, on:

- (1) the number of film production entities submitting applications under subsection (c) of this section;

(2) the number and amount of tax credit certificates issued under subsection (D) of this section;

(3) the number of local technicians, actors, and extras hired for film production activity during the reporting period;

(4) a list of companies doing business in the State, including hotels, that directly provided goods or services for film production activity during the reporting period; and

(5) any other information that indicates the economic benefits to the State resulting from film production activity during the reporting period.

(f) (1) Except as provided in paragraph (2) of this subsection, the Secretary may not issue tax credit certificates for credit amounts in the aggregate totaling more than:

(I) FOR FISCAL YEAR 2014, \$25,000,000;

(II) FOR FISCAL YEAR 2015, \$7,500,000; AND

(III) FOR FISCAL YEAR 2016, \$7,500,000.

(2) If the aggregate credit amounts under the tax credit certificates issued by the Secretary total less than THE MAXIMUM PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION in any fiscal year, any excess amount may be carried forward and issued under tax credit certificates in a subsequent fiscal year.

(G) The Department and the Comptroller jointly shall adopt regulations to carry out the provisions of this section and to specify criteria and procedures for the application for, approval of, and monitoring of continuing eligibility for the tax credit under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That THE FILM PRODUCTION ACTIVITY TAX CREDIT UNDER §10-730 of the Tax – General Article as enacted by this Act shall take effect July 1, 2011, and shall be applicable to all taxable years beginning after December 31, 2010. THE FILM PRODUCTION ACTIVITY TAX CREDIT UNDER §10-730 of the Tax – General Article as enacted by this Act shall remain effective for a period of 5 years and, at the end of JUNE 30, 2016, with no further action required by the General Assembly, shall be abrogated and of no further force and effect. The Secretary of Business and Economic Development may not issue FILM PRODUCTION ACTIVITY TAX credit certificates under §10-730 of the Tax – General Article for any fiscal year beginning on or after July 1, 2016.

SECTION 2. AND BE IT FURTHER ENACTED, That this act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye or nay vote supported by three-fifths of all members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 9, 2013.