

Chapter 595

(Senate Bill 1154)

AN ACT concerning

Income Tax – Film Production Activity Tax Credit – Alterations

FOR the purpose of altering the definition of “film production activity” to include each season of a television series; excluding certain activities from eligibility for the film production activity tax credit program; altering the definition of “direct costs” to exclude compensation for certain film production employees; authorizing a Maryland small or independent film entity to qualify as a film production entity under certain circumstances; altering certain information that the application for the tax credit must include; altering the minimum amount of direct costs a film production entity must incur in the State to qualify for the tax credit; altering a certain audit requirement to apply only to a film production entity with total direct costs that exceed a certain amount; providing that the Secretary of Commerce may not issue tax credit certificates for credit amounts that in the aggregate exceed a certain amount for certain fiscal years; prohibiting the Secretary from issuing more than a certain amount in tax credit certificates to a single film production activity; requiring the Secretary to make available a certain percent of the total amount of tax credits that the Secretary may approve in a fiscal year to Maryland small or independent film entities; repealing the Maryland Film Production Activity Reserve Fund and certain limitations on the amount of tax credit certificates that may be issued; defining a certain term; providing for the application of this Act; and generally relating to the film production activity tax credit.

BY repealing and reenacting, with amendments,
 Article – Tax – General
 Section 10–730
 Annotated Code of Maryland
 (2016 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Tax – General

10–730.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Department” means the Department of Commerce.
- (3) (i) “Film production activity” means:

1. the production of a film or video project that is intended for nationwide commercial distribution; **AND**

2. **FOR A TELEVISION SERIES, EACH SEASON OF THE TELEVISION SERIES.**

(ii) “Film production activity” includes the production of:

1. a feature film;
2. a television project;
3. a commercial;
4. a corporate film; **OR**
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;
8. **AN INFOMERCIAL;**
9. **A DIGITAL PROJECT;**

10. AN ANIMATION PROJECT; OR

11. A MULTIMEDIA PROJECT.

(4) “MARYLAND SMALL OR INDEPENDENT FILM ENTITY” MEANS A QUALIFIED FILM PRODUCTION ENTITY THAT:

(I) HAS BEEN INCORPORATED IN MARYLAND FOR AT LEAST 1 YEAR;

(II) IS INDEPENDENTLY OWNED AND OPERATED;

(III) IS NOT A SUBSIDIARY OF ANOTHER ENTITY;

(IV) IS NOT DOMINANT IN ITS FIELD OF OPERATION;

(V) EMPLOYS 25 OR FEWER FULL-TIME EMPLOYEES; AND

~~(H)~~ (VI) EMPLOYS MARYLAND RESIDENTS AS AT LEAST 40% OF ITS WORKFORCE IN THE FILM PRODUCTION ACTIVITY.

~~(4)~~ **(5)** “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)~~ **(6)** “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)~~ **(7)** “Secretary” means the Secretary of Commerce.

~~(7)~~ **(8)** “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)~~ **(9)** (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:

1. 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; **OR**

2. WRITERS, DIRECTORS, OR PRODUCERS.

(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 **MARYLAND RESIDENT AND OUT-OF-STATE** employees and total wages to be paid; and

(iii) the anticipated dates for carrying out the major elements of the film production activity.

(3) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION, TO** qualify as a film production entity, the estimated total direct costs incurred in the State must exceed ~~[\$500,000]~~ **\$250,000**.

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

(5) ~~The~~ **FOR A FILM PRODUCTION ENTITY WITH TOTAL DIRECT COSTS THAT EXCEED \$250,000, 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 subsections ~~(f) and (g)~~ **(F) AND (H)** 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.

(e) (1) In accordance with § 2.5–109 of the Economic Development Article, the Department shall submit a report that includes:

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

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

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

(iv) 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;

(v) a list of companies doing business in the State that directly provided goods or services for film production activity during the reporting period that qualified during the reporting period as minority business enterprises under § 14–301(f) of the State Finance and Procurement Article;

(vi) a list of companies doing business in the State that directly provided goods or services for film production activity during the reporting period that, as determined by the Department, are considered small businesses; and

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

(2) On or before July 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:

(i) the amount of tax credits necessary to maintain the current level of film production activity in the State; and

(ii) the amount of tax credits necessary to attract new film production activity to the State.

(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; ~~AND~~

~~(IV) FOR EACH OF FISCAL YEARS 2019 THROUGH 2021, \$30,000,000~~ FOR FISCAL YEAR 2019, \$15,000,000 \$8,000,000;

~~(V) FOR FISCAL YEAR 2020, \$20,000,000~~ \$11,000,000;

~~(VI) FOR FISCAL YEAR 2021, \$25,000,000~~ \$14,000,000; AND

~~(VII) FOR FISCAL YEAR 2022, \$17,000,000; AND~~

~~(VII) (VIII) FOR FISCAL YEAR 2022 2023 AND EACH FISCAL YEAR THEREAFTER, \$30,000,000~~ \$20,000,000.

(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.

(3) THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS TOTALING MORE THAN \$10,000,000 IN THE AGGREGATE FOR A SINGLE FILM PRODUCTION ACTIVITY.

(4) (I) FOR FISCAL YEAR 2019 AND EACH FISCAL YEAR THEREAFTER, THE SECRETARY SHALL MAKE 10% OF THE CREDIT AMOUNT AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION AVAILABLE FOR MARYLAND SMALL OR INDEPENDENT FILM ENTITIES.

(II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY MARYLAND SMALL OR INDEPENDENT FILM ENTITIES IS LESS THAN THE AMOUNT MADE AVAILABLE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SECRETARY SHALL MAKE AVAILABLE THE UNUSED AMOUNT OF CREDITS FOR USE BY QUALIFIED FILM PRODUCTION ENTITIES.

[(g) (1) In this subsection, “Reserve Fund” means the Maryland Film Production Activity Tax Credit Reserve Fund established under paragraph (2) of this subsection.

(2) (i) There is a Maryland Film Production Activity Tax Credit Reserve Fund that is a special continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(ii) The money in the Reserve Fund shall be invested and reinvested by the Treasurer, and interest and earnings shall be credited to the General Fund.

(3) (i) Subject to the provisions of this subsection, the Secretary shall issue an initial tax credit certificate for the total direct costs incurred by a film production entity that qualifies for a tax credit.

(ii) An initial tax credit certificate issued under this subsection shall state the maximum amount of tax credit for which the film production entity is eligible.

(iii) 1. Except as otherwise provided in this subparagraph, for any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.

2. If the aggregate credit amounts under initial tax credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial tax credit certificates for the next fiscal year.

3. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than under paragraph (4)

of this subsection, the maximum credit amounts in the aggregate for which the Secretary may issue initial tax credit certificates shall be reduced by the amount transferred.

(iv) For fiscal year 2017 and each fiscal year thereafter, it is the intent of the General Assembly that the Governor include in the budget bill an appropriation to the Reserve Fund in an amount equal to the amount the Department reports as necessary under subsection (e)(2) of this section to:

1. maintain the current level of film production activity in the State; and
2. attract new film production activity to the State.

(v) Notwithstanding the provisions of § 7–213 of the State Finance and Procurement Article, the Governor may not reduce an appropriation to the Reserve Fund in the State budget as approved by the General Assembly.

(vi) Based on the actual amount of total direct costs incurred by a film production entity, the Secretary shall issue a final tax credit certificate to the film production entity.

(4) (i) Except as provided in this paragraph, money appropriated to the Reserve Fund shall remain in the Fund.

(ii) 1. Within 15 days after the end of each calendar quarter, the Department shall notify the Comptroller as to each final credit certificate issued during the quarter:

A. the maximum credit amount stated in the initial tax credit certificate for the film production entity; and

B. the final certified credit amount for the film production entity.

2. On notification that a final credit amount has been certified, the Comptroller shall transfer an amount equal to the credit amount stated in the initial tax credit certificate for the film production entity from the Reserve Fund to the General Fund.]

[(h)] (G) (1) Except as provided in paragraph (2) of this subsection, a qualified film production entity that receives a tax credit certificate under this section for a film production activity shall include:

(i) for a feature film project, a 5-second long static or animated logo that promotes the State in the end credits before the below-the-line crew crawl for the life of the project and a link to the State's Web site on the project's Web site;

(ii) for a television series project, an embedded 5-second long static or animated logo that promotes the State during each broadcast worldwide for the life of the project and a link to the State's Web site on the project's Web site; or

(iii) for any other project, the State logo at the end of each project and in online promotions.

(2) In lieu of including a State logo as required under paragraph (1) of this subsection, the qualified film production entity may offer alternative marketing opportunities to be evaluated by the Department to ensure that those opportunities offer equal or greater promotional value to the State.

[(i)] (H) (1) FOR A MARYLAND SMALL OR INDEPENDENT FILM ENTITY TO QUALIFY AS A FILM PRODUCTION ENTITY:

(I) THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE STATE SHALL EXCEED \$25,000; AND

(II) AT LEAST 50% OF THE FILMING OF THE FILM PRODUCTION ACTIVITY MUST OCCUR WITHIN THE STATE.

(2) THE SECRETARY SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT AND ISSUE A TAX CREDIT CERTIFICATE TO A MARYLAND SMALL OR INDEPENDENT FILM ENTITY FOR 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT, NOT TO EXCEED \$125,000.

(I) 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 this Act shall take effect July 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.

Approved by the Governor, May 15, 2018.