

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 525

Representative Schuring

Cosponsor: Speaker Rosenberger

A BILL

To amend section 122.85 of the Revised Code to
extend eligibility for the motion picture tax
credit to certain live stage theater
productions, to increase the maximum amount of
credits that may be awarded from \$40 million to
\$100 million per fiscal year, and to make other
revisions to the law governing administration of
the credit.

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

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

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

(1) "Tax credit-eligible production" means a motion
picture or Broadway theatrical production certified by the
director of development services under division (B) of this
section as qualifying the ~~motion picture production~~ company for
a tax credit under section 5726.55, 5733.59, 5747.66, or 5751.54
of the Revised Code.

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

(3) "~~Motion picture Production~~ company" means an individual, corporation, partnership, limited liability company, or other form of business association producing a motion picture or Broadway theatrical production.

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

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

(5) "Motion picture" means entertainment content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; video games; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the

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

(6) "Broadway theatrical production" means a live stage 63
production that meets one or more of the following criteria: 64

(a) The production is scheduled for presentation in New 65
York city's broadway theater district after the original or 66
adaptive version is performed in a qualified production 67
facility. 68

(b) The production is scheduled to be performed at a 69
qualified production facility for more than five weeks, with an 70
average of at least six performances per week. 71

(c) The activities comprising the technical period for the 72
production are conducted at a qualified production facility 73
before a tour of the original or adaptive version of the 74
production begins. 75

(7) "Qualified production facility" means a facility 76
located in this state that is used in the development or 77

presentation to the public of theater productions. 78

(B) For the purpose of encouraging and developing ~~a~~-strong 79
film ~~industry~~ and theater industries in this state, the director 80
of development services may certify a motion picture or Broadway 81
theatrical production produced by a ~~motion picture~~ production 82
company as a tax credit-eligible production. In the case of a 83
television series, the director may certify the production of 84
each episode of the series as a separate tax credit-eligible 85
production. A ~~motion picture~~ production company shall apply for 86
certification of a motion picture or Broadway theatrical 87
production as a tax credit-eligible production on a form and in 88
the manner prescribed by the director. Each application shall 89
include the following information: 90

(1) The name and telephone number of the ~~motion picture~~ 91
production company; 92

(2) The name and telephone number of the company's contact 93
person; 94

(3) A list of the first preproduction date through the 95
last production date in Ohio and, in the case of a Broadway 96
theatrical production, a list of each scheduled performance in a 97
qualified production facility; 98

(4) The Ohio production office or qualified production 99
facility address and telephone number; 100

(5) The total production budget ~~of the motion picture;~~ 101

(6) The total budgeted eligible production expenditures 102
and the percentage that amount is of the total production budget 103
of the motion picture or Broadway theatrical production; 104

(7) ~~The~~ In the case of a motion picture, the total 105

percentage of the motion picture production being shot in Ohio;	106
(8) The level of employment of cast and crew who reside in Ohio;	107 108
(9) A synopsis of the script;	109
(10) The <u>In the case of a motion picture, the</u> shooting script;	110 111
(11) A creative elements list that includes the names of the principal cast and crew and the producer and director;	112 113
(12) Documentation of financial ability to undertake and complete the <u>motion picture or Broadway theatrical production</u> , including documentation that shows that the company has secured funding equal to at least fifty per cent of the total production budget of the motion picture ;	114 115 116 117 118
(13) Estimated value of the tax credit based upon total budgeted eligible production expenditures;	119 120
(14) Any other information considered necessary by the director.	121 122
Within ninety days after certification of a motion picture <u>or Broadway theatrical production</u> as a tax credit-eligible production, and any time thereafter upon the request of the director of development services, the motion picture production company shall present to the director sufficient evidence of reviewable progress. If the motion picture production company fails to present sufficient evidence, the director may rescind the certification. <u>If the production of a motion picture or Broadway theatrical production does not begin within six months after the date it is certified as a tax credit-eligible production, the director shall rescind the certification.</u> Upon	123 124 125 126 127 128 129 130 131 132 133

rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification.

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

The credit is determined as follows:

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

(b) If the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures as finally determined under division (D) of this section, whichever is least, is greater than three hundred thousand dollars, the credit equals thirty per cent of the least of such budgeted or actual eligible expenditure amounts.

(2) Except as provided in division (C) (4) of this section,

if the director of development services approves a ~~motion-~~ 163
~~picture-production~~ company's application for a credit, the 164
director shall issue a tax credit certificate to the company. 165
The director in consultation with the tax commissioner shall 166
prescribe the form and manner of issuing certificates. The 167
director shall assign a unique identifying number to each tax 168
credit certificate and shall record the certificate in a 169
register devised and maintained by the director for that 170
purpose. The certificate shall state the amount of the eligible 171
production expenditures on which the credit is based and the 172
amount of the credit. Upon the issuance of a certificate, the 173
director shall certify to the tax commissioner the name of the 174
applicant, the amount of eligible production expenditures shown 175
on the certificate, and any other information required by the 176
rules adopted to administer this section. 177

(3) The amount of eligible production expenditures for 178
which a tax credit may be claimed is subject to inspection and 179
examination by the tax commissioner or employees of the 180
commissioner under section 5703.19 of the Revised Code and any 181
other applicable law. Once the eligible production expenditures 182
are finally determined under section 5703.19 of the Revised Code 183
and division (D) of this section, the credit amount is not 184
subject to adjustment unless the director determines an error 185
was committed in the computation of the credit amount. 186

(4) No tax credit certificate may be issued before the 187
completion of the tax credit-eligible production. Not more than 188
~~forty one hundred~~ million dollars of tax credit may be allowed 189
per fiscal year ~~beginning July 1, 2016,~~ provided that, for any 190
fiscal year in which the amount of tax credits allowed under 191
this section is less than that maximum annual amount, the amount 192
not allowed for that fiscal year shall be added to the maximum 193

annual amount that may be allowed for the following fiscal year. 194

(5) ~~In approving~~ Except as otherwise provided in this 195
division, the director shall review and approve applications for 196
tax credits under this sectioncredit certificates in two rounds 197
each fiscal year. The first round of certificates shall be 198
approved not later than the last day of July of the fiscal year, 199
and the second round of certificates shall be approved not later 200
than the last day of the ensuing January. For each round, the 201
director shall rank applications on the basis of the extent of 202
positive economic impact each tax credit-eligible production is 203
likely to have in this state. For the purpose of such ranking, 204
the director shall give priority to tax-credit eligible 205
productions that are television series or miniseries due to the 206
long-term commitment typically associated with such productions. 207
The director shall approve productions in the order of their 208
ranking, from those with the greatest positive economic impact 209
to those with the least positive economic impact. If the amount 210
of credits represented by productions approved in the first 211
round equals the maximum annual credit amount allowed under 212
division (C) (4) of this section, the director shall not conduct 213
the second round for the fiscal year. 214

(D) A ~~motion picture~~ production company whose motion 215
picture or Broadway theatrical production has been certified as 216
a tax credit-eligible production shall engage, at the company's 217
expense, an independent certified public accountant to examine 218
the company's production expenditures to identify the 219
expenditures that qualify as eligible production expenditures. 220
The certified public accountant shall issue a report to the 221
company and to the director of development services certifying 222
the company's eligible production expenditures and any other 223
information required by the director. Upon receiving and 224

examining the report, the director may disallow any expenditure 225
the director determines is not an eligible production 226
expenditure. If the director disallows an expenditure, the 227
director shall issue a written notice to the ~~motion picture~~ 228
production company stating that the expenditure is disallowed 229
and the reason for the disallowance. Upon examination of the 230
report and disallowance of any expenditures, the director shall 231
determine finally the lesser of the total budgeted eligible 232
production expenditures stated in the application submitted 233
under division (B) of this section or the actual eligible 234
production expenditures for the purpose of computing the amount 235
of the credit. 236

(E) No credit shall be allowed under section 5726.55, 237
5733.59, 5747.66, or 5751.54 of the Revised Code unless the 238
director has reviewed the report and made the determination 239
prescribed by division (D) of this section. 240

(F) This state reserves the right to refuse the use of 241
this state's name in the credits of any tax credit-eligible 242
motion picture production or program of any Broadway theatrical 243
production. 244

(G) (1) The director of development services in 245
consultation with the tax commissioner shall adopt rules for the 246
administration of this section, including rules setting forth 247
and governing the criteria for determining whether a motion 248
picture or Broadway theatrical production is a tax credit- 249
eligible production; activities that constitute the production 250
of a motion picture or Broadway theatrical production; reporting 251
sufficient evidence of reviewable progress; expenditures that 252
qualify as eligible production expenditures; a schedule and 253
deadlines for applications to be submitted and reviewed; a 254

competitive process for approving credits based on likely 255
economic impact in this state; consideration of geographic 256
distribution of credits; and implementation of the program 257
described in division (I) of this section. The rules shall be 258
adopted under Chapter 119. of the Revised Code. 259

(2) To cover the administrative costs of the program, the 260
director shall require each applicant to pay an application fee 261
equal to the lesser of ten thousand dollars or one per cent of 262
the estimated value of the tax credit as stated in the 263
application. The fees collected shall be credited to the tax 264
incentives operating fund created in section 122.174 of the 265
Revised Code. All grants, gifts, fees, and contributions made to 266
the director for marketing and promotion of the motion picture 267
industry within this state shall also be credited to the fund. 268

(H) (1) After the director of development services makes 269
the determination required under division (D) of this section, a 270
~~motion picture production~~ company to which a tax credit 271
certificate is issued may transfer the authority to claim all or 272
a portion of the amount of the tax credit ~~the motion picture~~ 273
~~company is authorized to claim pursuant to that certificate~~ 274
~~under section 5726.55, 5733.59, 5747.66, or 5751.54 of the~~ 275
~~Revised Code~~ to one or more other persons. Within thirty days 276
after a transfer under this division, the ~~motion picture~~ 277
production company shall submit the following information to the 278
director, on a form prescribed by the director: 279

(a) Information necessary for the director to identify the 280
certificate that is the basis for the transfer; 281

(b) The portion or amount of the tax credit transferred to 282
each transferee; 283

(c) The portion or amount of the tax credit that the ~~motion picture production~~ company retains the authority to claim; 284
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(d) The tax identification number of each transferee; 287

(e) The date of the transfer; 288

(f) Any other information required by the director; 289

(g) Any information required by the tax commissioner. 290

The director shall deliver a copy of any submission 291
received under division (H) (1) of this section to the tax 292
commissioner. 293

(2) A transferee may not claim a credit under section 294
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless 295
and until the transferring ~~motion picture production~~ company 296
complies with division (H) (1) of this section. A transferee may 297
claim the transferred amount of any credit or portion of a 298
credit for the same taxable year or tax period for which the 299
transferring ~~motion picture production~~ company was authorized to 300
claim the credit or portion of a credit pursuant to the 301
certificate. A ~~motion picture production~~ company shall make no 302
transfer under division (H) (1) of this section after the last 303
day of the tax period or taxable year for which the ~~motion~~ 304
~~picture production~~ company is required to claim the credit 305
pursuant to the certificate. 306

A ~~motion picture production~~ company may make not more than 307
one transfer under division (H) (1) of this section for each tax 308
credit certificate, but pursuant to that transaction, may 309
allocate the authority to claim a portion of the credit to more 310
than one transferee. A ~~motion picture production~~ company may not 311
authorize more than one transferee to claim the same portion of 312

a credit. 313

(I) The director of development services shall establish a 314
program for the training of Ohio residents who are or wish to be 315
employed in the film or multimedia industry. Under the program, 316
the director shall: 317

(1) Certify individuals as film and multimedia trainees. 318
In order to receive such a certification, an individual must be 319
an Ohio resident, have participated in relevant on-the-job 320
training or have completed a relevant training course approved 321
by the director, and have met any other requirements established 322
by the director. 323

(2) Accept applications from ~~motion picture~~ production 324
companies that intend to hire and provide on-the-job training to 325
one or more certified film and multimedia trainees who will be 326
employed in the company's tax credit-eligible production. 327

(3) Upon completion of a tax-credit eligible production, 328
and upon the receipt of any salary information and other 329
documentation required by the director, authorize a 330
reimbursement payment to each ~~motion picture~~ production company 331
whose application was approved under division (I)(2) of this 332
section. The payment shall equal fifty per cent of the salaries 333
paid to film and multimedia trainees employed in the production. 334

Section 2. That existing section 122.85 of the Revised 335
Code is hereby repealed. 336

Section 3. The amendment by this act of division (B) of 337
section 122.85 of the Revised Code requiring the Director of 338
Development Services to rescind certification of any tax credit- 339
eligible production that does not begin production within six 340
months applies to motion pictures and Broadway theatrical 341

productions that are certified on or after July 1, 2018.	342
All other amendments by this act of section 122.85 of the	343
Revised Code apply to fiscal years beginning on or after July 1,	344
2018.	345