



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 9**

128th General Assembly

(As Reported by S. Ways and Means and Economic Development)

**Sens.** Patton, Gillmor, Grendell, Gibbs, Wagoner, Coughlin, Schuring

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### **BILL SUMMARY**

- Authorizes a nonrefundable, transferable income tax credit for individuals and pass-through entity owners who invest money in a motion picture production certified by the Director of Development as a tax-credit eligible production before 2014.
- Allows a credit equal to 25% of investments greater than \$300,000, adjusted for the fraction of total production expenditures budgeted to be spent in Ohio.
- Limits the amount of credit certificates that may be issued to \$100 million per year and \$25 million per production.
- Requires an independent audit of production expenditures to verify Ohio expenditures.
- Authorizes the Director of Development to disallow expenditures certified as Ohio expenditures by the independent auditor.
- Requires the Director of Development to recalculate credits using actual expenditure amounts.
- Requires production companies (or an affiliate) to reimburse the state for excess credits allowed and claimed.

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## CONTENT AND OPERATION

### Tax credit

(R.C. 122.85, 5747.66, and 5747.98)

The bill authorizes a transferable, nonrefundable income tax credit for an individual who invests money in a motion picture production certified by the Director of Development as a tax credit-eligible production. The certification must be made in or after 2009, but before 2014. The credit is available to individuals who invest directly or who invest indirectly through a pass-through entity owned by the individual. The amount of the credit depends on the amount of the investor's "base investment." The base investment equals the amount invested multiplied by the percentage of the total budgeted expenditures anticipated to be spent by the motion picture production company on "eligible production expenditures." Eligible production expenditures are expenditures made in or after 2009 for goods or services consumed in Ohio directly for the production.<sup>1</sup>

No credit is allowed for an investment of \$300,000 or less. For investments greater than \$300,000, the credit equals 25% of the base investment. If the investor is a pass-through entity, the entity may allocate the credit among its equity holders in any proportion or manner provided in the instrument governing the entity, and not necessarily in the manner that the entity's income or loss must be allocated under federal tax law.

The credit is nonrefundable, but if it exceeds the income tax otherwise due for the first year it is claimed, the excess may be carried forward for up to ten additional years.

Because the credit is transferable (see "**Transfer of credit**"), the taxpayer claiming the credit must be a "certificate owner" (i.e., must own the credit) on the last day of the taxpayer's taxable year for which the taxpayer must claim the credit. If the certificate owner is the investor, the credit must be claimed for the investor's taxable year that includes the day the investment was made. If the certificate owner is a person other than the investor (such as a credit transferee or an equity holder in a pass-through entity), the credit must be claimed for the certificate owner's taxable year that includes the last day of the investor's taxable year in which the investment was made. A credit may not be claimed unless the certificate owner holds a statement, issued by the

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<sup>1</sup> At the end of the production, base investments are recalculated using actual expenditure amounts. Overestimated credits allowed and claimed are recaptured from the motion picture production company or an affiliate (see "**Reimbursement of state**").

transfer agent (see "**Transfer of credit**"), certifying the credit amount and the certificate owner's identity.

### **Tax credit certificate**

(R.C. 122.85(D) and (E))

To receive a credit once an investment in a tax credit-eligible production is made, the investor must submit an application and any required information or documentation to the Director of Development. The Director is required to prescribe the form and manner in which applications for a credit certificate shall be made. The Director must determine the investor's base investment based upon budgeted Ohio and budgeted total expenditures, and issue to the investor a tax credit certificate, which identifies the base investment and credit amount and is marked with a unique identifying number assigned by the Director. The Director must record the certificate in a register devised and maintained by the Director.

If the certificate owner is a pass-through entity, the entity must notify the transfer agent, discussed immediately below, of each equity holder's allocated share of the credit. The equity holders become the certificate owners of their respective shares.

Not more than \$100 million in tax credit certificates may be issued per year, and not more than \$25 million in tax credit certificates may be issued per tax credit-eligible production.

### **Transfer of credit**

(R.C. 122.85(F) and (G))

An investor may transfer all or part of the credit amount stated on the credit certificate. Any subsequent certificate owner also may transfer all or part of the credit represented by the certificate. All transfers must be made in accordance with rules prescribed by the Director of Development. The rules must require a certificate owner, upon transfer, to provide to the transfer agent the transferee's name, the certificate identification number, and the credit amount transferred. The transfer agent must be either the motion picture production company or a company designated by the production company. It must keep a record of credit certificate owners and credit amounts. Upon request by the certificate owner, the transfer agent must issue the statement certifying the certificate owner's identity and the credit amount. A certificate owner to whom a certificate has been transferred must obtain the statement before claiming the credit. When the transfer agent issues this certification, it must also provide a statement to the Tax Commissioner, in a form prescribed by the Commissioner, identifying the certificate owner and the credit amount.

## **Tax credit-eligible motion picture productions**

### **Eligible productions**

(R.C. 122.85(A) and (B))

The Director of Development may issue a tax credit certificate only for an investment in a motion picture production certified by the Director as a tax credit-eligible production. To be certified as a tax credit-eligible production, the motion picture must have entertainment content created in whole or in part in Ohio. "Motion pictures" include feature-length films, videos, television series, commercials, video games, interactive web sites, and certain other specified productions.

The Director may certify multiple commercial or video productions as a single tax credit-eligible production if the Director determines that the productions are related parts of a distinct advertising, promotional, informational, or entertainment series or undertaking. Not eligible for certification are productions of television coverage of news, weather, financial market reports, sports, and award shows. Also excluded are political advocacy productions, fundraising productions, certain sexually explicit productions, and productions produced by a motion picture company owned, affiliated, or controlled, in whole or in part, by a company or person in default on a loan made or guaranteed by the state.

### **Application for certification**

(R.C. 122.85(C))

The motion picture company must apply for certification of the production on a form and in a manner prescribed by the Director. The application must include, at a minimum, all of the following information:

- (1) The name, address, and telephone number of the motion picture production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;
- (4) The total production budget;
- (5) The amount expended in Ohio by the company directly for the production and the percentage that amount is of the total production budget;

- (6) The total percentage of the motion picture being shot in Ohio;
- (7) The level of employment of cast and crew who reside in Ohio;
- (8) A synopsis of the script;
- (9) A creative elements list that includes the names of the principal cast and crew, and the producer and director.

### **Reimbursement of state**

(R.C. 122.85(B))

For a production to be certified as a tax credit-eligible production, the production company and an affiliate must agree to reimburse the state for tax credits allowed and claimed that are later determined to have been overestimated. (See "**Eligible production expenditure verification.**") As explained above, the credit amount depends on the amount of the base investment, and the base investment amount depends on eligible production expenditures as a percentage of the total production budget. Because the investment will be made and the credit will be granted before the production is completed, at the time the credit amount is determined, not all expenditures will necessarily have been made. Thus, it is likely that not all eligible production expenditures will have been made. As a result, the total amount of eligible production expenditures must be estimated. If the eligible production expenditures are over-estimated, the base investment also will be over-estimated, and the credit amount allowed will have been too great. The reimbursement provision obligates the production company or affiliate, instead of the individual claiming the credit, to repay the state for any excess credit claimed on the basis of over-estimated expenditures.

### **Eligible production expenditure verification**

(R.C. 122.85(H) and (I))

#### **CPA certification**

To determine whether an excess tax credit has been received on the basis of over-estimated eligible production expenditures, the bill requires the production company to hire, at its own expense, an independent certified public accountant. The CPA must examine the company's production expenditures to determine those that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and to the production company, and must provide to the Director any additional information required by the Director.

## **Disallowance of expenditures**

Upon receipt of the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. The Director must issue a written notice to the production company, within 30 days after receiving the CPA's report, indicating any disallowed expenditure, the reason for the disallowance, and the manner in which the production company may appeal. If the Director does not issue the written notice within the time prescribed, the eligible production expenditures indicated in the CPA's report are conclusively determined to be the actual eligible production expenditures for the purpose of determining actual base investment amounts, the related credit amounts that should have been allowed, and the amount of any reimbursement owed to the state by the production company or its affiliate.

## **Appeal**

A production company may appeal the Director's disallowance of expenditures by filing a notice of appeal with the Director within 30 days after the Director issues the written notice. A hearing must be held at which the production company may produce evidence and testimony regarding the disallowed expenditures. Within 30 days after conclusion of the hearing, the Director may revise or affirm the initial notice of disallowance and issue a final notice to the production company stating the revision or affirmation. The Director's final notice may not be appealed.

After the issuance of the final notice, or upon the Director's failure to timely disallow expenditures, a credit may not be disallowed if it is later determined an expenditure does not qualify as an eligible production expenditure.

## **Administrative rules**

(R.C. 122.85(K); Section 3)

The Director of Development is required to adopt rules for the administration of the tax credit. The Director is required to consult with the Tax Commissioner when developing rules governing the criteria for determining whether a motion picture production is a tax credit-eligible production.

## **Use of state's name in credits**

(R.C. 122.85(J))

The state reserves the right to refuse the use of the state's name in the credits of any tax credit-eligible motion picture production.

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## HISTORY

| ACTION   | DATE     |
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| Introduced                                       | 02-10-09 |
| Reported, S. Ways & Means & Economic Development | 02-26-09 |

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