

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. B. No. 475

Representative Schuring

A BILL

To amend section 122.85 of the Revised Code to
authorize motion picture companies to transfer
the authority to claim refundable motion picture
tax credits to other persons, to adjust how the
credit is calculated, to increase the total
amount of credits that may be awarded per year,
to remove the limit on the maximum credit amount
that may be awarded to a motion picture, and to
create a job training program for resident film
crew members.

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 production certified by the director of development
services under division (B) of this section as qualifying the
motion picture 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 company to 20
which a tax credit certificate is issued or a person to which 21
the company has transferred under division (H) of this section 22
the authority to claim all or a part of the tax credit 23
authorized by that certificate. 24

(3) "Motion picture company" means an individual, 25
corporation, partnership, limited liability company, or other 26
form of business association producing a motion picture. 27

(4) "Eligible production expenditures" means expenditures 28
made after June 30, 2009, for goods or services purchased and 29
consumed in this state by a motion picture company directly for 30
the production of a tax credit-eligible production. 31

"Eligible production expenditures" includes, but is not 32
limited to, expenditures for ~~resident and nonresident~~ cast and 33
crew wages, accommodations, costs of set construction and 34
operations, editing and related services, photography, sound 35
synchronization, lighting, wardrobe, makeup and accessories, 36
film processing, transfer, sound mixing, special and visual 37
effects, music, location fees, and the purchase or rental of 38
facilities and equipment. 39

(5) "Motion picture" means entertainment content created 40
in whole or in part within this state for distribution or 41
exhibition to the general public, including, but not limited to, 42
feature-length films; documentaries; long-form, specials, 43
miniseries, series, and interstitial television programming; 44
interactive web sites; sound recordings; videos; music videos; 45
interactive television; interactive games; video games; 46
commercials; any format of digital media; and any trailer, 47
pilot, video teaser, or demo created primarily to stimulate the 48
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

(B) For the purpose of encouraging and developing a strong 63
film industry in this state, the director of development 64
services may certify a motion picture produced by a motion 65
picture company as a tax credit-eligible production. In the case 66
of a television series, the director may certify the production 67
of each episode of the series as a separate tax credit-eligible 68
production. A motion picture company shall apply for 69
certification of a motion picture as a tax credit-eligible 70
production on a form and in the manner prescribed by the 71
director. Each application shall include the following 72
information: 73

(1) The name and telephone number of the motion picture 74
production company; 75

(2) The name and telephone number of the company's contact 76
person; 77

(3) A list of the first preproduction date through the 78
last production date in Ohio; 79

(4) The Ohio production office address and telephone number;	80 81
(5) The total production budget of the motion picture;	82
(6) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget of the motion picture;	83 84 85
(7) The total percentage of the motion picture being shot in Ohio;	86 87
(8) The level of employment of cast and crew who reside in Ohio;	88 89
(9) A synopsis of the script;	90
(10) The shooting script;	91
(11) A creative elements list that includes the names of the principal cast and crew and the producer and director;	92 93
(12) Documentation of financial ability to undertake and complete the motion picture;	94 95
(13) Estimated value of the tax credit based upon total budgeted eligible production expenditures;	96 97
(14) Any other information considered necessary by the director.	98 99
Within ninety days after certification of a motion picture as a tax credit-eligible production, and any time thereafter upon the request of the director of development services, the motion picture company shall present to the director sufficient evidence of reviewable progress. If the motion picture company fails to present sufficient evidence, the director may rescind the certification. Upon rescission, the director shall notify	100 101 102 103 104 105 106

the applicant that the certification has been rescinded. Nothing 107
in this section prohibits an applicant whose tax credit-eligible 108
production certification has been rescinded from submitting a 109
subsequent application for certification. 110

(C) (1) A motion picture company whose motion picture has 111
been certified as a tax credit-eligible production may apply to 112
the director of development services on or after July 1, 2009, 113
for a refundable credit against the tax imposed by section 114
5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The 115
director in consultation with the tax commissioner shall 116
prescribe the form and manner of the application and the 117
information or documentation required to be submitted with the 118
application. 119

The credit is determined as follows: 120

(a) If the total budgeted eligible production expenditures 121
stated in the application submitted under division (B) of this 122
section or the actual eligible production expenditures as 123
finally determined under division (D) of this section, whichever 124
is least, is less than or equal to three hundred thousand 125
dollars, no credit is allowed; 126

(b) If the total budgeted eligible production expenditures 127
stated in the application submitted under division (B) of this 128
section or the actual eligible production expenditures as 129
finally determined under division (D) of this section, whichever 130
is least, is greater than three hundred thousand dollars, the 131
credit equals ~~the sum of the following, subject to the~~ 132
~~limitation in division (C) (4) of this section:-~~ 133

~~(i) Twenty-five thirty per cent of the least of such 134
budgeted or actual eligible expenditure amounts ~~excluding~~ 135~~

~~budgeted or actual eligible expenditures for resident cast and
crew wages;~~ 136
137

~~(ii) Thirty five per cent of budgeted or actual eligible
expenditures for resident cast and crew wages.~~ 138
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(2) Except as provided in division (C) (4) of this section, 140
if the director of development services approves a motion 141
picture company's application for a credit, the director shall 142
issue a tax credit certificate to the company. The director in 143
consultation with the tax commissioner shall prescribe the form 144
and manner of issuing certificates. The director shall assign a 145
unique identifying number to each tax credit certificate and 146
shall record the certificate in a register devised and 147
maintained by the director for that purpose. The certificate 148
shall state the amount of the eligible production expenditures 149
on which the credit is based and the amount of the credit. Upon 150
the issuance of a certificate, the director shall certify to the 151
tax commissioner the name of the applicant, the amount of 152
eligible production expenditures shown on the certificate, and 153
any other information required by the rules adopted to 154
administer this section. 155

(3) The amount of eligible production expenditures for 156
which a tax credit may be claimed is subject to inspection and 157
examination by the tax commissioner or employees of the 158
commissioner under section 5703.19 of the Revised Code and any 159
other applicable law. Once the eligible production expenditures 160
are finally determined under section 5703.19 of the Revised Code 161
and division (D) of this section, the credit amount is not 162
subject to adjustment unless the director determines an error 163
was committed in the computation of the credit amount. 164

(4) No tax credit certificate may be issued before the 165

completion of the tax credit-eligible production. ~~Not more than~~ 166
~~forty million dollars of tax credit may be allowed per fiscal~~ 167
~~biennium beginning on or after July 1, 2011, and not more than~~ 168
~~twenty million dollars may be allowed in the first year of the~~ 169
~~biennium. At any time, not more than five million dollars of tax~~ 170
~~credit may be allowed per tax credit-eligible production. The~~ 171
~~total amount of credits allowed under this section per fiscal~~ 172
~~year shall not exceed the annual cap. If the total amount of~~ 173
~~credits allowed in a fiscal year is less than the annual cap,~~ 174
~~the difference between the amount allowed and the annual cap~~ 175
~~shall be carried forward and added to the aggregate amount of~~ 176
~~credits that may be allowed in the following fiscal year.~~ 177

As used in this division, "annual cap" shall equal 178
seventy-five million dollars plus any amount of credit authority 179
carried forward from previous fiscal years under this division. 180

(D) A motion picture company whose motion picture has been 181
certified as a tax credit-eligible production shall engage, at 182
the company's expense, an independent certified public 183
accountant to examine the company's production expenditures to 184
identify the expenditures that qualify as eligible production 185
expenditures. The certified public accountant shall issue a 186
report to the company and to the director of development 187
services certifying the company's eligible production 188
expenditures and any other information required by the director. 189
Upon receiving and examining the report, the director may 190
disallow any expenditure the director determines is not an 191
eligible production expenditure. If the director disallows an 192
expenditure, the director shall issue a written notice to the 193
motion picture production company stating that the expenditure 194
is disallowed and the reason for the disallowance. Upon 195
examination of the report and disallowance of any expenditures, 196

the director shall determine finally the lesser of the total 197
budgeted eligible production expenditures stated in the 198
application submitted under division (B) of this section or the 199
actual eligible production expenditures for the purpose of 200
computing the amount of the credit. 201

(E) No credit shall be allowed under section 5726.55, 202
5733.59, 5747.66, or 5751.54 of the Revised Code unless the 203
director has reviewed the report and made the determination 204
prescribed by division (D) of this section. 205

(F) This state reserves the right to refuse the use of 206
this state's name in the credits of any tax credit-eligible 207
motion picture production. 208

(G) (1) The director of development services in 209
consultation with the tax commissioner shall adopt rules for the 210
administration of this section, including rules setting forth 211
and governing the criteria for determining whether a motion 212
picture production is a tax credit-eligible production; 213
activities that constitute the production of a motion picture; 214
reporting sufficient evidence of reviewable progress; 215
expenditures that qualify as eligible production expenditures; a 216
competitive process for approving credits; ~~and~~ consideration of 217
geographic distribution of credits; and implementation of the 218
program described in division (I) of this section. The rules 219
shall be adopted under Chapter 119. of the Revised Code. 220

(2) The director may require a reasonable application fee 221
to cover administrative costs of the tax credit program. The 222
fees collected shall be credited to the business assistance fund 223
created in section 122.174 of the Revised Code. All grants, 224
gifts, fees, and contributions made to the director for 225
marketing and promotion of the motion picture industry within 226

this state shall also be credited to the fund. The director 227
shall use money in the fund to pay expenses related to the 228
administration of the Ohio film office and the credit authorized 229
by this section and sections 5726.55, 5733.59, 5747.66, and 230
5751.54 of the Revised Code. 231

(H) (1) After the director of development services makes 232
the determination required under division (D) of this section, a 233
motion picture company to which a tax credit certificate is 234
issued may transfer the authority to claim all or a portion of 235
the amount of the tax credit the motion picture company is 236
authorized to claim pursuant to that certificate under section 237
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code to one 238
or more other persons. Within thirty days after a transfer under 239
this division, the motion picture company shall submit the 240
following information to the director, on a form prescribed by 241
the director: 242

(a) Information necessary for the director to identify the 243
certificate that is the basis for the transfer; 244

(b) The portion or amount of the tax credit transferred to 245
each transferee; 246

(c) The portion or amount of the tax credit that the 247
motion picture company retains the authority to claim; 248

(d) The tax identification number of each transferee; 249

(e) The date of the transfer; 250

(f) Any other information required by the director; 251

(g) Any information required by the tax commissioner. 252

The director shall deliver a copy of any submission 253
received under division (H) (1) of this section to the tax 254

commissioner. 255

(2) A transferee may not claim a credit under section 256
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless 257
and until the transferring motion picture company complies with 258
division (H) (1) of this section. A transferee may claim the 259
transferred amount of any credit or portion of a credit for the 260
same taxable year or tax period for which the transferring 261
motion picture company was authorized to claim the credit or 262
portion of a credit pursuant to the certificate. A motion 263
picture company shall make no transfer under division (H) (1) of 264
this section after the last day of the tax period or taxable 265
year for which the motion picture company is required to claim 266
the credit pursuant to the certificate. 267

A motion picture company may make not more than one 268
transfer under division (H) (1) of this section for each tax 269
credit certificate, but pursuant to that transaction, may 270
allocate the authority to claim a portion of the credit to more 271
than one transferee. A motion picture company may not authorize 272
more than one transferee to claim the same portion of a credit. 273

(I) The director of development services shall establish a 274
program for the training of Ohio residents who are or wish to be 275
employed in the film or multimedia industry. Under the program, 276
the director shall: 277

(1) Certify individuals as film and multimedia trainees. 278
In order to receive such a certification, an individual must be 279
an Ohio resident, have participated in relevant on-the-job 280
training or have completed a relevant training course approved 281
by the director, and have met any other requirements established 282
by the director. 283

(2) Accept applications from motion picture companies that 284
intend to hire and provide on-the-job training to one or more 285
certified film and multimedia trainees who will be employed in 286
the company's tax credit-eligible production. 287

(3) Upon completion of a tax-credit eligible production, 288
and upon the receipt of any salary information and other 289
documentation required by the director, authorize a 290
reimbursement payment to each motion picture company whose 291
application was approved under division (I) (2) of this section. 292
The payment shall equal fifty per cent of the salaries paid to 293
film and multimedia trainees employed in the production. 294

Section 2. That existing section 122.85 of the Revised 295
Code is hereby repealed. 296

Section 3. The amendment by this act of section 122.85 of 297
the Revised Code applies to tax credit certificates issued under 298
that section on or after July 1, 2016. 299