

SENATE BILL 976

Q3, C8
SB 596/09 – B&T

0lr2884
CF 0lr2882

By: **Senator Colburn**

Introduced and read first time: February 19, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Film Production Activity Credit**

3 FOR the purpose of repealing the Film Production Rebate Program; allowing certain
4 film production entities to claim a credit against the State income tax for
5 certain costs incurred for certain film production activities within the State;
6 requiring a film production entity to apply with the Department of Business and
7 Economic Development to be a qualified film production entity; requiring the
8 Secretary of Business and Economic Development to determine if the film
9 production entity qualifies for the credit; requiring that the estimated total
10 direct costs incurred in the State exceed a certain amount; authorizing the
11 Secretary to require the entity to provide certain information; authorizing the
12 Secretary to require that certain information be verified by an independent
13 auditor; requiring a qualified film production entity to apply for a tax credit
14 certificate from the Department; authorizing the Secretary to provide for the
15 form of the application; requiring the application to include certain information;
16 requiring the Secretary to determine the total direct costs that qualify for the
17 tax credit and issue a tax credit certificate for a certain percentage of the total
18 direct costs; requiring the Secretary to notify the Comptroller of the amount of
19 any tax credit certificate issued; providing that the total direct costs for a film
20 production activity may not include the wages of an employee if the employee's
21 wages exceed a certain amount; requiring that each year the Department report
22 to the Governor and the General Assembly certain information regarding the
23 tax credit; requiring the Department and the Comptroller to jointly adopt
24 certain regulations; defining certain terms; providing for the application of this
25 Act; and generally relating to an income tax credit for certain film production
26 activities.

27 BY repealing

28 Article – Economic Development

29 Section 4–401 through 4–407 and the subtitle “Subtitle 4. Film Production
30 Rebate Fund”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Volume and 2009 Supplement)

3 BY adding to
4 Article – Tax – General
5 Section 10–728
6 Annotated Code of Maryland
7 (2004 Replacement Volume and 2009 Supplement)

8 Preamble

9 WHEREAS, The State of Maryland has a long and successful history of
10 moviemaking in the State; and

11 WHEREAS, Producing large scale movies in Maryland provides strong stimulus
12 to the State’s economy by creating jobs for Maryland workers and generating sales by
13 Maryland businesses; and

14 WHEREAS, Significant amounts of State and local tax revenues are generated
15 by the economic activity created from producing films in Maryland; and

16 WHEREAS, Maryland’s geographic, cultural, physical, and historic attributes
17 provide many favorable settings for film production in the State; and

18 WHEREAS, Key decision makers in the movie industry have demonstrated a
19 preference in and commitment to making movies in the State; and

20 WHEREAS, The scope of film production activity is broad and diverse resulting
21 in substantial expenditures within a state on local companies and businesses that
22 become part of the film production activity; and

23 WHEREAS, In addition to economic benefits derived from film production
24 activity, the long-term benefits include development and establishment of spin-off
25 film production activities such as editing, sound production, creative and artistic
26 activities, development of permanent facilities such as sound stages, studios, and
27 cottage industries related to independent moviemaking, documentaries, advertising,
28 and other film and video activity; and

29 WHEREAS, Other states have established proven models for attracting film
30 production activity to their states to the detriment of such activity in Maryland; and

31 WHEREAS, Maryland can adopt such proven methods resulting in the
32 immediate generation of new economic activity within the State, including the
33 derivative benefits described above; and

1 WHEREAS, Maryland's economy and Maryland's State and local tax revenues
2 would receive the direct benefit of these new activities prior to the distribution of the
3 rebated portion of the film production costs back to the film production company; and

4 WHEREAS, The Governor and the General Assembly find and declare that the
5 net benefit to Maryland as a result of this increased economic activity is positive and is
6 necessary for strengthening the State's economic condition; now, therefore,

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

9 **Article – Economic Development**

10 **[Subtitle 4. Film Production Rebate Fund.]**

11 **[4–401.**

12 (a) In this subtitle the following words have the meanings indicated.

13 (b) (1) “Film production activity” means the production of a film or video
14 project that is intended for nationwide commercial distribution.

15 (2) “Film production activity” includes the production of:

- 16 (i) a feature film;
- 17 (ii) a television project;
- 18 (iii) a commercial;
- 19 (iv) a corporate film;
- 20 (v) an infomercial;
- 21 (vi) a music video;
- 22 (vii) a digital project;
- 23 (viii) an animation project; and
- 24 (ix) a multimedia project.

25 (3) “Film production activity” does not include:

- 26 (i) production of a:
- 27 1. student film;

- 1 2. noncommercial personal video;
- 2 3. sports broadcast;
- 3 4. broadcast of a live event; or
- 4 5. talk show; or

5 (ii) any activity not necessary to and undertaken directly and
6 exclusively for the making of a master film, tape, or image.

7 (c) “Fund” means the Film Production Rebate Fund established under §
8 4–405 of this subtitle.

9 (d) “Qualified film production entity” means an entity that:

10 (1) is carrying out a film production activity; and

11 (2) the Secretary determines to be eligible for the rebate provided
12 under this subtitle in accordance with § 4–403 of this subtitle.

13 (e) (1) “Total direct costs”, with respect to a film production activity,
14 means the total costs incurred in the State that are necessary to carry out the film
15 production activity.

16 (2) “Total direct costs” includes costs incurred for:

17 (i) employee wages and benefits;

18 (ii) fees for services;

19 (iii) acquiring or leasing property; and

20 (iv) any other expense necessary to carry out a film production
21 activity.]

22 [4–402.

23 It is the intent of the General Assembly that the rebate provided under this
24 subtitle is for the purpose of:

25 (1) increasing film production activity in the State;

26 (2) bringing economic benefits to the residents of the State; and

1 (3) generating increased employment opportunities for the residents of
2 the State.]

3 [4-403.

4 (a) To be eligible for a rebate under this subtitle, a qualified film production
5 entity shall incur total direct costs of at least \$500,000 in the State for a single film
6 production activity.

7 (b) To qualify for the rebate provided under this subtitle, a film production
8 entity shall notify the Department of the intent of the entity to seek the rebate before
9 beginning the film production activity.

10 (c) To apply for the rebate, the film production entity shall submit to the
11 Secretary:

12 (1) a description of the anticipated film production activity, including
13 its projected total budget with estimated number of employees and total wages, and
14 anticipated dates for carrying out the major elements of the film production activity;
15 and

16 (2) any other information that the Secretary requires related to the
17 film production activity and the entity seeking the rebate.

18 (d) The Secretary may require any information required under this section to
19 be verified by an independent auditor that:

20 (1) the film production entity seeking the rebate certification selects
21 and pays for; and

22 (2) the Secretary approves.

23 (e) As a condition of applying for and receiving the rebate, the qualified film
24 production entity shall enter into a grant agreement with the Department that is
25 satisfactory to the Department.]

26 [4-404.

27 The Department may grant to a qualified film production entity, from the Fund,
28 a rebate not to exceed 25% of the total direct costs that the qualified film production
29 entity has paid for a particular film production activity.]

30 [4-405.

31 (a) There is a Film Production Rebate Fund in the Department.

1 (b) The Department shall administer the Fund.

2 (c) (1) The Fund is a special, nonlapsing fund that is not subject to
3 reversion under § 7-302 of the State Finance and Procurement Article.

4 (2) The Treasurer shall hold the Fund separately and the Comptroller
5 shall account for the Fund.

6 (d) The Fund consists of:

7 (1) money appropriated by the State to the Fund;

8 (2) repayments of any defaulted grant from the Fund; and

9 (3) any other money made available to the Department for the Fund.

10 (e) The Department may use the Fund to:

11 (1) make grants to qualified film production entities as rebates in
12 accordance with this subtitle; and

13 (2) pay the administrative, legal, and actuarial expenses of the Fund.

14 (f) (1) The Treasurer shall invest the money of the Fund in the same
15 manner as other money of the State may be invested.

16 (2) Any investment earnings of the Fund shall be credited to the
17 Fund.]

18 [4-406.

19 The Secretary shall adopt regulations to specify eligibility criteria and
20 application procedures for the rebate under this subtitle.]

21 [4-407.

22 (a) On or before December 31 of each year, the Department shall report to
23 the Governor and, in accordance with § 2-1246 of the State Government Article, to the
24 General Assembly on the grants provided as rebates for film production activity in the
25 preceding fiscal year.

26 (b) The report shall include:

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

- 1 1. A STUDENT FILM;
- 2 2. A NONCOMMERCIAL PERSONAL VIDEO;
- 3 3. A SPORTS BROADCAST;
- 4 4. A BROADCAST OF A LIVE EVENT; OR
- 5 5. A TALK SHOW.

6 (4) “QUALIFIED FILM PRODUCTION ENTITY” MEANS AN ENTITY
7 THAT:

8 (I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND

9 (II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE
10 TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF
11 THIS SECTION.

12 (5) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND
13 ECONOMIC DEVELOPMENT.

14 (6) (I) “TOTAL DIRECT COSTS”, WITH RESPECT TO A FILM
15 PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE
16 THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.

17 (II) “TOTAL DIRECT COSTS” INCLUDES COSTS INCURRED
18 FOR:

19 1. EMPLOYEE WAGES AND BENEFITS;

20 2. FEES FOR SERVICES;

21 3. ACQUIRING OR LEASING PROPERTY; AND

22 4. ANY OTHER EXPENSE NECESSARY TO CARRY OUT
23 A FILM PRODUCTION ACTIVITY.

24 (III) “TOTAL DIRECT COSTS” DOES NOT INCLUDE ANY
25 SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN
26 INDIVIDUAL WHO RECEIVES MORE THAN \$1,000,000 IN SALARY, WAGES, OR

1 OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY
2 FILM PRODUCTION ACTIVITY.

3 (B) (1) A QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A CREDIT
4 AGAINST THE STATE INCOME TAX FOR FILM PRODUCTION ACTIVITIES IN THE
5 STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE FINAL TAX
6 CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR FILM PRODUCTION
7 ACTIVITIES.

8 (2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY
9 TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE
10 QUALIFIED FILM PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE
11 QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT
12 OF THE EXCESS.

13 (C) (1) BEFORE BEGINNING A FILM PRODUCTION ACTIVITY, A FILM
14 PRODUCTION ENTITY SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION TO
15 QUALIFY AS A FILM PRODUCTION ENTITY.

16 (2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED FILM
17 PRODUCTION ACTIVITY, INCLUDING:

18 (I) THE PROJECTED TOTAL BUDGET;

19 (II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL
20 WAGES TO BE PAID; AND

21 (III) THE ANTICIPATED DATES FOR CARRYING OUT THE
22 MAJOR ELEMENTS OF THE FILM PRODUCTION ACTIVITY.

23 (3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED
24 TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$500,000.

25 (4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION
26 REQUIRED BY THE SECRETARY.

27 (5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED
28 IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED
29 AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.

30 (6) THE SECRETARY SHALL:

1 **(I) DETERMINE IF THE FILM PRODUCTION ENTITY**
2 **QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND**

3 **(II) NOTIFY THE COMPTROLLER OF THE ESTIMATED**
4 **AMOUNT OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE**
5 **CLAIMED.**

6 **(D) (1) AFTER COMPLETION OF THE FILM PRODUCTION ACTIVITY, A**
7 **QUALIFIED FILM PRODUCTION ENTITY SHALL APPLY TO THE DEPARTMENT FOR**
8 **A TAX CREDIT CERTIFICATE.**

9 **(2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE**
10 **SECRETARY AND SHALL INCLUDE:**

11 **(I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY**
12 **FOR THE TAX CREDIT; AND**

13 **(II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.**

14 **(3) THE SECRETARY SHALL DETERMINE THE TOTAL DIRECT**
15 **COSTS THAT QUALIFY FOR THE TAX CREDIT AND ISSUE A TAX CREDIT**
16 **CERTIFICATE FOR 28% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE**
17 **TAX CREDIT.**

18 **(4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE**
19 **AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.**

20 **(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT**
21 **SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE**
22 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:**

23 **(1) THE NUMBER OF FILM PRODUCTION ENTITIES TO APPLY**
24 **UNDER SUBSECTION (C) OF THIS SECTION; AND**

25 **(2) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES**
26 **ISSUED UNDER SUBSECTION (D) OF THIS SECTION.**

27 **(F) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT**
28 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO**
29 **SPECIFY CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL**
30 **OF, AND MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT**
31 **UNDER THIS SECTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2010, and shall be applicable to all taxable years beginning after December 31,
3 2009.