HB 1148

Department of Legislative Services

2011 Session

FISCAL AND POLICY NOTE

House Bill 1148 (Delegate Griffith, *et al.*)

Ways and Means and Economic Matters

Income Tax - Film Production Activity Credit

This bill converts the existing Film Production Rebate Program into a tax credit program. The value of the subsidy to each qualifying company is equal to 25% of the qualified direct costs of a film production activity and 27% of the direct qualified costs of a television series. The Department of Business and Economic Development (DBED) can award a maximum of $15.0 million in credits in each fiscal year. The bill also alters several provisions related to eligibility and program reporting requirements. DBED and the Comptroller's Office are required to adopt regulations to implement the tax credit.

The bill takes effect July 1, 2011, and applies to tax year 2011 and beyond.

Fiscal Summary

State Effect: General fund revenues decrease by $15.0 million annually beginning in FY 2012 due to tax credits claimed for eligible expenses, which reflects the maximum amount of credits awarded in each year. General fund expenditures decrease by $1.0 million annually beginning in FY 2012 due to the repeal of the film production rebate program.

($ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	($15.0)	($15.0)	($15.0)	($15.0)	($15.0)
GF Expenditure	($1.0)	($1.0)	($1.0)	($1.0)	($1.0)
Net Effect	($14.0)	($14.0)	($14.0)	($14.0)	($14.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A qualified film production entity that meets the requirements specified in the bill and is approved by DBED will receive a tax credit equal to 25% of qualified film production costs incurred in the State. For a television series, the value of the credit is increased to 27%. If the amount of the tax credit exceeds the total tax liability in the tax year, the entity can claim a refund in the amount of the excess. In order to qualify for the tax credit, the estimated total direct costs incurred in the State must exceed $500,000. DBED can award a maximum of $15.0 million in credits in each fiscal year.

Total direct costs include (1) employee wages and benefits; (2) fees for services; (3) expenses for acquiring or leasing property; and (4) any other expense necessary to carry out a film production activity. The bill includes the expenses associated with the following activities as eligible for the credit: (1) set construction and operation; (2) wardrobe, makeup, and related services; (3) photography and sound synchronization, lighting, and related services and materials; (4) editing and related services; (5) compensation including related benefits, for work performed in the State, paid to persons employed in the production, writers, directors, and producers; (6) rental of facilities in the State and equipment used in the State; (7) leasing of vehicles; (8) food and lodging; (9) music, if performed, composed, or otherwise created by a person or company domiciled in Maryland; (10) travel expenses necessary to bring persons employed, either directly or indirectly, in the production of the product to the State; and (11) legal and accounting services performed by attorneys or accountants licensed in Maryland. Any salary, wages, or other compensation for personal services of an individual who receives more than $1 million in salary, wages, or other compensation for personal services in connection with any film production activity may not be included in total direct costs.

The film production entity must notify DBED of its intent to seek the tax credit before the production activity begins. A film production entity is also required to submit an application containing specified information, including the project's estimated total budget and the anticipated dates for carrying out the major elements of the film production activity.

Film production activity is defined as the production of a film or video product that is intended for nationwide commercial distribution and includes a(n) feature film, television project, commercial, infomercial, corporate film, music video, digital project, animation project, or multimedia project. Film production activity does not include a student film; noncommercial personal video; sports broadcast; broadcast of a live event; talk show; video, computer, or social networking game; or pornography.

By January 1 of each year, DBED must report to the Governor and the General Assembly on the number of applicants and the number and amount of tax credit certificates issued in the prior year. DBED and the Comptroller's Office are required to jointly adopt regulations to implement the bill.

Current Law: Chapter 96 of 2005 established the Film Production Employer Wage Rebate Grant Program. To qualify for the rebate, a film production activity must be intended for nationwide commercial distribution and have direct costs in the State of at least $500,000, which may include wages and benefits, fees for services, expenses for acquiring or leasing property, or any other necessary expense. Eligible activities include, but are not limited to, feature films, commercials, and animation projects. The rebate is not available for sports broadcasts, live events, talk shows, or student films. DBED must determine whether the producer of the production is eligible for the rebate.

Chapter 96 also established the Film Production Employer Wage Rebate Fund, which is used to make rebate grants and pay the administrative expenses of the fund. The fund consists of money appropriated by the State, repayment of defaulted grants, and any other money made available to it. In each fiscal year, the maximum amount of subsidy payments made by DBED is limited to the amount of money appropriated to the rebate fund.

Chapter 87 of 2007 altered the value of the subsidy received by a company from a rebate of 50% of the first $25,000 of each qualified employee's wages (up to a total maximum of $2 million), to a maximum of 25% of the direct costs of the film production activity. This does not apply to employees earning over $1 million for a production. Chapter 87 did not cap the total amount of the award to each company and provided that the amount disbursed is at the discretion of DBED.

By December 31 of each year, DBED must report specified information on the rebates granted in the prior fiscal year to the Governor and the General Assembly.

In addition to the wage rebate program, Chapter 432 of 2000 exempts the sale of tangible personal property or a taxable service that is used directly in connection with a "film production activity" from the State sales and use tax. Tangible personal property or a taxable service include items such as film, camera equipment, vehicle rentals, lighting and stage equipment, and props. The film producer or production company must apply to DBED for certification of eligibility for the exemption.

Background: In response to incentives and cost advantages offered in other countries, a handful of states earlier this decade began offering incentives to attract local film production. Competition among states and other countries has led to a proliferation of incentive programs – about 40 states offer significant incentives to the industry. In addition, states have increased the value of incentives in this more competitive environment. Although the film industry has expanded outside of California and New York, film production employment remains concentrated in these two states.

Maryland Film Industry and Rebate Program

The proposed fiscal 2012 State budget includes $1.0 million in funding for the Film Production Rebate Program, the same amount of funding received in fiscal 2011. A recent report estimated that the film industry employed 2,200 individuals in the State, less than one-tenth of 1% of total nonfarm employment in the State. Although modest compared with other states, a total of $19.0 million in subsidies have been paid since fiscal 2006 – an annual average of $3.2 million. Although Maryland has numerous business tax incentives, few business tax credits are explicitly available to one particular industry. By comparison, the proposed fiscal 2012 budget includes $8 million in funding for the biotechnology investment tax credit. The State biotechnology industry employed over 26,000 individuals in 2007. Maryland faces strong competition from other states that have dedicated substantial resources to establishing and maintaining a film industry. In 2004, production of the film *Annapolis* was relocated from Maryland to Pennsylvania in part because the City of Philadelphia and Pennsylvania offered between $2 million and $3 million in incentives. In another example, Baltimore City was reportedly being considered as the site for the recent film *The Curious Case of Benjamin Button* before the State of Louisiana ultimately paid $27.1 million in incentives to the film's production company.

State Revenues: The bill converts the existing Film Production Rebate Program to a tax credit program. DBED can award a maximum of $15.0 million in credits each fiscal year. Tax credits can be claimed beginning in tax year 2011. Based on the amount of credits claimed in other states, it is estimated that DBED will award the maximum amount of credits by the end of calendar 2011 and in each subsequent year. As a result, general fund revenues will decrease by $15.0 million annually beginning in fiscal 2012.

State Expenditures: Repealing the film production rebate program will eliminate general fund expenditures from the rebate fund. It is assumed that, if the bill passes, any amount of money appropriated to the fund in fiscal 2012 will be rescinded through the budget process or by the Board of Public Works. It is also assumed that the program is level funded in future years. As a result, general fund expenditures will decrease by $1.0 million annually beginning in fiscal 2012.

Additional Information

Prior Introductions: Similar bills were introduced in the 2009 and 2010 sessions. SB 596 of 2009, SB 98 of 2010, and SB 976 of 2010 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 908 of 2009 received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: SB 672 (Senator Kasemeyer) - Budget and Taxation.

Information Source(s): Department of Business and Economic Development, Comptroller's Office, Department of Legislative Services

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mc/jrb

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