

SENATE BILL 183

Q3

EMERGENCY BILL

3lr0010

By: **Chair, Budget and Taxation Committee (By Request – Departmental – Business and Economic Development) and Senator Kasemeyer**

Introduced and read first time: January 18, 2013

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Business and Economic Development – Film Production**
3 **Activity Tax Credit**

4 FOR the purpose of extending certain termination provisions for a certain income tax
5 credit allowed for certain entities that carry out certain film production
6 activities in the State; altering the amount of certain tax credit certificates that
7 the Secretary of Business and Economic Development may issue for certain
8 fiscal years; making this Act an emergency measure; and generally relating to
9 income tax credits for certain film production activities.

10 BY repealing and reenacting, with amendments,
11 Article – Tax – General
12 Section 10–730
13 Annotated Code of Maryland
14 (2010 Replacement Volume and 2012 Supplement)

15 BY repealing and reenacting, with amendments,
16 Chapter 516 of the Acts of the General Assembly of 2011
17 Section 2

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

20 **Article – Tax – General**

21 10–730.

22 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Department” means the Department of Business and Economic
2 Development.

3 (3) (i) “Film production activity” means the production of a film or
4 video project that is intended for nationwide commercial distribution.

5 (ii) “Film production activity” includes the production of:

- 6 1. a feature film;
- 7 2. a television project;
- 8 3. a commercial;
- 9 4. a corporate film;
- 10 5. an infomercial;
- 11 6. a music video;
- 12 7. a digital project;
- 13 8. an animation project; or
- 14 9. a multimedia project.

15 (iii) “Film production activity” does not include production of:

- 16 1. a student film;
- 17 2. a noncommercial personal video;
- 18 3. a sports broadcast;
- 19 4. a broadcast of a live event;
- 20 5. a talk show;
- 21 6. a video, computer, or social networking game; or
- 22 7. pornography.

23 (4) “Pornography” means any production for which records are
24 required to be maintained under § 2257 of Title 18, U.S.C., with respect to any
25 performer in such production engaging in sexually explicit conduct.

26 (5) “Qualified film production entity” means an entity that:

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

2 (ii) the Secretary determines to be eligible for the tax credit
3 under this section in accordance with subsection (c) of this section.

4 (6) "Secretary" means the Secretary of Business and Economic
5 Development.

6 (7) "Television series" means a group of program episodes intended for
7 television broadcast or transmission with a common series title, with or without a
8 predetermined number of episodes, and shall include a miniseries and a pilot episode
9 produced for an intended television series.

10 (8) (i) "Total direct costs", with respect to a film production
11 activity, means the total costs incurred in the State that are necessary to carry out the
12 film production activity.

13 (ii) "Total direct costs" includes costs incurred for:

14 1. employee wages and benefits;

15 2. fees for services;

16 3. acquiring or leasing property; and

17 4. any other expense necessary to carry out a film
18 production activity, including costs associated with:

19 A. set construction and operation;

20 B. wardrobe, makeup, and related services;

21 C. photography and sound synchronization, lighting, and
22 related services and materials;

23 D. editing and related services, including film processing,
24 transfers of film to tape or digital format, sound mixing, computer graphic services,
25 special effects services, and animation services;

26 E. salary, wages, and other compensation including
27 related benefits, for work performed in the State, paid to persons employed in the
28 production, writers, directors, and producers;

29 F. rental of facilities in the State and equipment used in
30 the State;

1 G. leasing of vehicles;

2 H. food and lodging;

3 I. music, if performed, composed, or recorded by a
4 Maryland musician or published by a person or company domiciled in Maryland;

5 J. travel expenses incurred to bring persons employed,
6 either directly or indirectly, in the production of the project to Maryland, but not
7 including expenses of these persons departing from Maryland; and

8 K. legal and accounting services performed by attorneys
9 or accountants licensed in Maryland.

10 (iii) "Total direct costs" does not include any salary, wages, or
11 other compensation for personal services of an individual who receives more than
12 \$500,000 in salary, wages, or other compensation for personal services in connection
13 with any film production activity.

14 (b) (1) A qualified film production entity may claim a credit against the
15 State income tax for film production activities in the State in an amount equal to the
16 amount stated in the final tax credit certificate approved by the Secretary for film
17 production activities.

18 (2) If the tax credit allowed under this section in any taxable year
19 exceeds the total tax otherwise payable by the qualified film production entity for that
20 taxable year, the qualified film production entity may claim a refund in the amount of
21 the excess.

22 (c) (1) Before beginning a film production activity, a film production
23 entity shall submit to the Department an application to qualify as a film production
24 entity.

25 (2) The application shall describe the anticipated film production
26 activity, including:

27 (i) the projected total budget;

28 (ii) the estimated number of employees and total wages to be
29 paid; and

30 (iii) the anticipated dates for carrying out the major elements of
31 the film production activity.

32 (3) To qualify as a film production entity, the estimated total direct
33 costs incurred in the State must exceed \$500,000.

1 (4) The application shall include any other information required by
2 the Secretary.

3 (5) The Secretary may require the information provided in an
4 application to be verified by an independent auditor selected and paid for by the film
5 production entity seeking certification.

6 (6) The Secretary shall:

7 (i) determine if the film production entity qualifies for the
8 credit under this section; and

9 (ii) notify the Comptroller of the estimated amount of total
10 direct costs and the taxable year the credit will be claimed.

11 (d) (1) After completion of the film production activity, a qualified film
12 production entity shall apply to the Department for a tax credit certificate.

13 (2) The application shall be on a form required by the Secretary and
14 shall include:

15 (i) proof of the total direct costs that qualify for the tax credit;
16 and

17 (ii) the number of employees hired and wages paid.

18 (3) Subject to subsection (f) of this section, the Secretary shall
19 determine the total direct costs that qualify for the tax credit and issue a tax credit
20 certificate for:

21 (i) except as provided in item (ii) of this paragraph, 25% of the
22 total direct costs that qualify for the tax credit; and

23 (ii) for a television series, 27% of the total direct costs that
24 qualify for the tax credit.

25 (4) The Secretary shall notify the Comptroller of the amount of a tax
26 credit certificate issued under this subsection.

27 (e) On or before January 1 of each year, the Department shall report to the
28 Governor and, subject to § 2-1246 of the State Government Article, the General
29 Assembly, on:

30 (1) the number of film production entities submitting applications
31 under subsection (c) of this section;

1 (2) the number and amount of tax credit certificates issued under
2 subsection (d) of this section;

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

5 (4) a list of companies doing business in the State, including hotels,
6 that directly provided goods or services for film production activity during the
7 reporting period; and

8 (5) any other information that indicates the economic benefits to the
9 State resulting from film production activity during the reporting period.

10 (f) (1) Except as provided in paragraph (2) of this subsection[, for any
11 fiscal year], the Secretary may not issue tax credit certificates for credit amounts in
12 the aggregate totaling more than:

13 (I) FOR FISCAL YEAR 2014, \$25,000,000;

14 (II) FOR FISCAL YEAR 2015, \$7,500,000; AND

15 (III) FOR FISCAL YEAR 2016, \$7,500,000.

16 (2) If the aggregate credit amounts under the tax credit certificates
17 issued by the Secretary total less than [\$7,500,000] **THE MAXIMUM PROVIDED**
18 **UNDER PARAGRAPH (1) OF THIS SUBSECTION** in any fiscal year, any excess amount
19 may be carried forward and issued under tax credit certificates in a subsequent fiscal
20 year.

21 (g) The Department and the Comptroller jointly shall adopt regulations to
22 carry out the provisions of this section and to specify criteria and procedures for the
23 application for, approval of, and monitoring of continuing eligibility for the tax credit
24 under this section.

25 Chapter 516 of the Acts of 2011

26 SECTION 2. AND BE IT FURTHER ENACTED, That **THE FILM**
27 **PRODUCTION ACTIVITY TAX CREDIT UNDER § [10-729] 10-730** of the
28 Tax – General Article as enacted by this Act shall take effect July 1, 2011, and shall be
29 applicable to all taxable years beginning after December 31, 2010. [Section 10-729]
30 **THE FILM PRODUCTION ACTIVITY TAX CREDIT UNDER § 10-730** of the
31 Tax – General Article as enacted by this Act shall remain effective for a period of [3] **5**
32 years and, at the end of [July 1, 2014] **JUNE 30, 2016**, with no further action required
33 by the General Assembly, shall be abrogated and of no further force and effect. The
34 Secretary of Business and Economic Development may not issue **FILM PRODUCTION**

1 **ACTIVITY TAX** credit certificates under § [10-729] **10-730** of the Tax – General
2 Article for any fiscal year beginning on or after July 1, [2014] **2016**.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
4 measure, is necessary for the immediate preservation of the public health or safety,
5 has been passed by a ye and nay vote supported by three-fifths of all the members
6 elected to each of the two Houses of the General Assembly, and shall take effect from
7 the date it is enacted.