Maryland
DEPARTMENT OF COMMERCE

Wes Moore | Governor
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DATE:	March 30, 2023
BILL NO:	Senate Bill 452
BILL TITLE:	Income Tax - Film Production Activity Tax Credit - Alterations
COMMITTEE:	House Ways and Means
POSITION:	Support with Amendment

The Maryland Department of Commerce (Commerce) supports Senate Bill 452 - Income Tax - Film Production Activity Tax Credit – Alterations with amendment.

Background:
Senate Bill 452 increases from $12M to $25M in FY 24 and $50M in FY 25 and each fiscal year thereafter, the amount of tax incentives Commerce can authorize through the Film Production Activity Tax Credit in a year. The bill also expands the eligible costs and types of film productions, as well as increases the percentage of eligible costs that qualify for the tax credit.

Rationale:
Maryland has a long history of film production. We have a strong crew base, a wealth of talent and many support services. We have a variety of locations, and our film office has a strong reputation. With all of the positive reasons to film in Maryland, industry decision makers constantly question why Maryland lags behind other states in establishing a consistent and sufficiently funded incentive program.

Thirty-five states presently offer incentives to attract film production. Maryland ranks 24th in the amount of incentives available per fiscal year. The program has been limited with inconsistent funding levels since its inception, but SB 452 would make Maryland more competitive with programs in other states.

During the last year, Maryland lost at least two television series, one major limited series (with strong historical ties to Maryland), and a feature film because there were not enough tax credits available. All wanted to film here but did not due to the lack of incentives. The above losses are productions that had extensive discussions with the Film Office, over a long period of time, and whose first choice was to film in Maryland. There are dozens of other productions that took Maryland off their list as soon as they were told that incentives were not available. Countless productions do not even consider Maryland because the tax credit program is so limited in funding.

The loss of these productions means that the jobs, the revenue for local businesses, and the millions in economic impact went to states that are actively pursuing the film industry. The competition for securing the benefits of film production is fierce. In our region, Pennsylvania has $100 million per year in film incentives, Ohio has $40 million per year, and New Jersey has $100 million per year. Even Mississippi has $20 million per year. Oklahoma, a state with limited film and television history and very little infrastructure, has $30 million per year. Georgia, Illinois, Connecticut, Massachusetts, and Maine all have uncapped incentive programs. As a result, the Georgia peach logo is constantly seen at the end of television series and blockbuster movies. New Mexico recently raised its annual funding to $100 million per year and as a result, NETFLIX has committed to investing more than $1 billion over the next 10 years on sound stages, infrastructure, and production activity in New Mexico making the state a hub for NETFLIX productions. NBC/Universal just committed to building a soundstage complex and investing $500 million in the state as well. A 2021 study determined that every dollar in tax credits results in $8.40 in economic impact in New Mexico. Additionally, colleges and universities are ramping up their curriculums to meet the job demands of the productions coming to New Mexico.

Since the inception of the Film Production Activity Tax Credit in 2011, the nineteen productions that have qualified for tax credits have had a combined economic impact in Maryland of well over a billion dollars. During its six seasons in Maryland, House of Cards hired more than 2,000 Maryland residents per season and purchased or rented goods and services from more than 2,000 Maryland businesses per season. Each season averaged $118 million in economic impact for the State.

Increasing the cap on the program as directed through SB 452 will allow Maryland to compete in attracting and retaining productions to grow its film industry, and to benefit from the numerous economic and ancillary benefits of film and television production.

Explanation of Amendment:
As currently drafted, Senate Bill 452 includes language which Commerce believes would put the program in violation of the U.S. Constitution. Page 4 lines 10 and 11 add "salaries, wages, or other compensation for writers, directors, and producers domiciled in the State" as eligible expenses for the purposes of the tax credit. It has been the position of the Office of the Attorney General that tax credits issued for employees based on their residence and not place of employment is a violation of the Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution.

Pending the will of the Committee with regard to these salaries there are a few ways to amend the bill to retain the program's compliance with the Constitution. One would be to strike lines 10 and 11 and keep those salaries ineligible. Another option would be to strike "domiciled in Maryland" and fully allow those salaries as eligible expenses. A final option would be to strike "domiciled in Maryland" but also add language allowing those salaries solely for the purpose of the Small and Independent Film Entities portion of the program. Commerce is happy to work with the Committee on this language.

Commerce respectfully requests a favorable report with amendment on Senate Bill 452.