

SENATE BILL 723

Q3

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By: **Senators Young, Benson, Conway, Currie, Ferguson, Guzzone, Kagan, Lee, Manno, Mathias, McFadden, Muse, Nathan-Pulliam, Peters, Pinsky, Robinson, Rosapepe, Smith, and Zucker**

Introduced and read first time: February 3, 2017

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Film Production Activity Tax Credit – Small or Independent Film**
3 **Entities**

4 FOR the purpose of authorizing a Maryland small or independent film entity to qualify as
5 a film production entity under certain circumstances; requiring that certain funding
6 in a certain reserve account be reserved for certain purposes; altering a certain audit
7 requirement to apply only to a film production entity with total direct costs that
8 exceed a certain amount; altering the amount of certain tax credit certificates that
9 the Secretary of Commerce may issue under certain circumstances; defining a
10 certain term; providing for the application of this Act; and generally relating to
11 income tax credits for certain film production activities.

12 BY repealing and reenacting, with amendments,
13 Article – Tax – General
14 Section 10–730
15 Annotated Code of Maryland
16 (2016 Replacement Volume)

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

19 **Article – Tax – General**

20 10–730.

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

22 (2) “Department” means the Department of Commerce.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

21 (4) **“MARYLAND SMALL OR INDEPENDENT FILM ENTITY” MEANS A**
22 **QUALIFIED FILM PRODUCTION ENTITY THAT:**

23 (I) **HAS BEEN INCORPORATED IN MARYLAND FOR AT LEAST 1**
24 **YEAR; AND**

1 **(II) EMPLOYS MARYLAND RESIDENTS AS AT LEAST 40% OF ITS**
2 **WORKFORCE IN THE FILM PRODUCTION ACTIVITY.**

3 **[(4)] (5)** “Pornography” means any production for which records are
4 required to be maintained under § 2257 of Title 18, U.S.C., with respect to any performer
5 in such production engaging in sexually explicit conduct.

6 **[(5)] (6)** “Qualified film production entity” means an entity that:

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

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

10 **[(6)] (7)** “Secretary” means the Secretary of Commerce.

11 **[(7)] (8)** “Television series” means a group of program episodes intended
12 for television broadcast or transmission with a common series title, with or without a
13 predetermined number of episodes, and shall include a miniseries and a pilot episode
14 produced for an intended television series.

15 **[(8)] (9)** (i) “Total direct costs”, with respect to a film production
16 activity, means the total costs incurred in the State that are necessary to carry out the film
17 production activity.

18 (ii) “Total direct costs” includes costs incurred 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 a film production
23 activity, including costs associated with:

24 A. set construction and operation;

25 B. wardrobe, makeup, and related services;

26 C. photography and sound synchronization, lighting, and
27 related services and materials;

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

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

4 F. rental of facilities in the State and equipment used in the
5 State;

6 G. leasing of vehicles;

7 H. food and lodging;

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

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

13 K. legal and accounting services performed by attorneys or
14 accountants licensed in Maryland.

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

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

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

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

28 (2) The application shall describe the anticipated film production activity,
29 including:

30 (i) the projected total budget;

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

32 and

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

3 (3) **[To] EXCEPT AS PROVIDED IN SUBSECTION (I) OF THIS SECTION,**
4 **TO** qualify as a film production entity, the estimated total direct costs incurred in the State
5 must exceed \$500,000.

6 (4) The application shall include any other information required by the
7 Secretary.

8 (5) **[The] FOR A FILM PRODUCTION ENTITY WITH TOTAL DIRECT**
9 **COSTS THAT EXCEED \$500,000, THE** Secretary may require the information provided in
10 an application to be verified by an independent auditor selected and paid for by the film
11 production entity seeking certification.

12 (6) The Secretary shall:

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

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

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

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

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

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

23 (3) Subject to subsections [(f) and (g)] **(F), (G), AND (I)** of this section, the
24 Secretary shall determine the total direct costs that qualify for the tax credit and issue a
25 tax credit certificate for:

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

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

30 (e) (1) In accordance with § 2.5–109 of the Economic Development Article, the
31 Department shall submit a report that includes:

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

3 (ii) the number and amount of tax credit certificates issued under
4 subsection (d) of this section;

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

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

10 (v) a list of companies doing business in the State that directly
11 provided goods or services for film production activity during the reporting period that
12 qualified during the reporting period as minority business enterprises under § 14–301(f) of
13 the State Finance and Procurement Article;

14 (vi) a list of companies doing business in the State that directly
15 provided goods or services for film production activity during the reporting period that, as
16 determined by the Department, are considered small businesses; and

17 (vii) any other information that indicates the economic benefits to the
18 State resulting from film production activity during the reporting period.

19 (2) On or before July 1 of each year, the Department shall report to the
20 Governor and, subject to § 2–1246 of the State Government Article, the General Assembly
21 on:

22 (i) the amount of tax credits necessary to maintain the current level
23 of film production activity in the State; and

24 (ii) the amount of tax credits necessary to attract new film
25 production activity to the State.

26 (f) (1) Except as provided in paragraph (2) of this subsection, the Secretary
27 may not issue tax credit certificates for credit amounts in the aggregate totaling more than:

28 (i) for fiscal year 2014, \$25,000,000;

29 (ii) for fiscal year 2015, \$7,500,000; and

30 (iii) for fiscal year 2016, \$7,500,000.

31 (2) If the aggregate credit amounts under the tax credit certificates issued
32 by the Secretary total less than the maximum provided under paragraph (1) of this

1 subsection in any fiscal year, any excess amount may be carried forward and issued under
2 tax credit certificates in a subsequent fiscal year.

3 (g) (1) In this subsection, "Reserve Fund" means the Maryland Film
4 Production Activity Tax Credit Reserve Fund established under paragraph (2) of this
5 subsection.

6 (2) (i) There is a Maryland Film Production Activity Tax Credit
7 Reserve Fund that is a special continuing, nonlapsing fund that is not subject to § 7-302 of
8 the State Finance and Procurement Article.

9 (ii) The money in the Reserve Fund shall be invested and reinvested
10 by the Treasurer, and interest and earnings shall be credited to the General Fund.

11 (3) (i) Subject to the provisions of this subsection, the Secretary shall
12 issue an initial tax credit certificate for the total direct costs incurred by a film production
13 entity that qualifies for a tax credit.

14 (ii) An initial tax credit certificate issued under this subsection shall
15 state the maximum amount of tax credit for which the film production entity is eligible.

16 (iii) 1. Except as otherwise provided in this subparagraph, for
17 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts
18 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that
19 fiscal year in the State budget as approved by the General Assembly.

20 2. If the aggregate credit amounts under initial tax credit
21 certificates issued in a fiscal year total less than the amount appropriated to the Reserve
22 Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be
23 issued under initial tax credit certificates for the next fiscal year.

24 3. For any fiscal year, if funds are transferred from the
25 Reserve Fund under the authority of any provision of law other than under paragraph [(4)]
26 (5) of this subsection, the maximum credit amounts in the aggregate for which the
27 Secretary may issue initial tax credit certificates shall be reduced by the amount
28 transferred.

29 (iv) For fiscal year 2017 and each fiscal year thereafter, it is the
30 intent of the General Assembly that the Governor include in the budget bill an
31 appropriation to the Reserve Fund in an amount equal to the amount the Department
32 reports as necessary under subsection (e)(2) of this section to:

33 1. maintain the current level of film production activity in
34 the State; and

35 2. attract new film production activity to the State.

1 (v) Notwithstanding the provisions of § 7–213 of the State Finance
2 and Procurement Article, the Governor may not reduce an appropriation to the Reserve
3 Fund in the State budget as approved by the General Assembly.

4 (vi) Based on the actual amount of total direct costs incurred by a
5 film production entity, the Secretary shall issue a final tax credit certificate to the film
6 production entity.

7 **(4) FOR ANY FISCAL YEAR, IF THE AMOUNT APPROPRIATED TO THE**
8 **RESERVE FUND EXCEEDS \$500,000, THE FIRST \$500,000 IN TAX CREDIT**
9 **CERTIFICATES SHALL BE RESERVED FOR MARYLAND SMALL OR INDEPENDENT FILM**
10 **ENTITIES.**

11 ~~[(4)]~~ **(5)** (i) Except as provided in this paragraph, money appropriated
12 to the Reserve Fund shall remain in the Fund.

13 (ii) 1. Within 15 days after the end of each calendar quarter, the
14 Department shall notify the Comptroller as to each final credit certificate issued during the
15 quarter:

16 A. the maximum credit amount stated in the initial tax credit
17 certificate for the film production entity; and

18 B. the final certified credit amount for the film production
19 entity.

20 2. On notification that a final credit amount has been
21 certified, the Comptroller shall transfer an amount equal to the credit amount stated in the
22 initial tax credit certificate for the film production entity from the Reserve Fund to the
23 General Fund.

24 (h) (1) Except as provided in paragraph (2) of this subsection, a qualified film
25 production entity that receives a tax credit certificate under this section for a film
26 production activity shall include:

27 (i) for a feature film project, a 5–second long static or animated logo
28 that promotes the State in the end credits before the below–the–line crew crawl for the life
29 of the project and a link to the State’s Web site on the project’s Web site;

30 (ii) for a television series project, an embedded 5–second long static
31 or animated logo that promotes the State during each broadcast worldwide for the life of
32 the project and a link to the State’s Web site on the project’s Web site; or

33 (iii) for any other project, the State logo at the end of each project and
34 in online promotions.

1 (2) In lieu of including a State logo as required under paragraph (1) of this
2 subsection, the qualified film production entity may offer alternative marketing
3 opportunities to be evaluated by the Department to ensure that those opportunities offer
4 equal or greater promotional value to the State.

5 **(I) (1) FOR A MARYLAND SMALL OR INDEPENDENT FILM ENTITY TO**
6 **QUALIFY AS A FILM PRODUCTION ENTITY:**

7 **(I) THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE**
8 **STATE SHALL EXCEED \$25,000; AND**

9 **(II) AT LEAST 50% OF THE FILMING OF THE FILM PRODUCTION**
10 **ACTIVITY MUST BE IN THE STATE.**

11 **(2) SUBJECT TO SUBSECTION (G) OF THIS SECTION, THE SECRETARY**
12 **SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT**
13 **AND ISSUE A TAX CREDIT CERTIFICATE TO A MARYLAND SMALL OR INDEPENDENT**
14 **FILM ENTITY FOR 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX**
15 **CREDIT, NOT TO EXCEED \$125,000.**

16 **[(i)] (J)** The Department and the Comptroller jointly shall adopt regulations to
17 carry out the provisions of this section and to specify criteria and procedures for the
18 application for, approval of, and monitoring of continuing eligibility for the tax credit under
19 this section.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
21 1, 2017, and shall be applicable to all film production activity tax credit certificates issued
22 after June 30, 2017.