

HOUSE BILL 1449

Q3

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CF 8lr3577

By: **Delegates Luedtke, D. Barnes, Ebersole, Hixson, C. Howard, Reilly,
A. Washington, and M. Washington**

Introduced and read first time: February 9, 2018

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of altering the definition of “film production activity” to include each
4 season of a television series; excluding certain activities from eligibility for the film
5 production activity tax credit program; altering the definition of “direct costs” to
6 exclude compensation for certain film production employees; altering certain
7 information that the application for the tax credit must include; altering the
8 minimum amount of direct costs a film production entity must incur in the State to
9 qualify for the tax credit; providing that the Secretary of Commerce may not issue
10 tax credit certificates for credit amounts that in the aggregate exceed a certain
11 amount for certain fiscal years; prohibiting the Secretary from issuing more than a
12 certain amount in tax credit certificates to a single film production activity; repealing
13 the Maryland Film Production Activity Reserve Fund and certain limitations on the
14 amount of tax credit certificates that may be issued; providing for the application of
15 this Act; and generally relating to the film production activity tax credit.

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 10–730
19 Annotated Code of Maryland
20 (2016 Replacement Volume and 2017 Supplement)

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

23 **Article – Tax – General**

24 10–730.

25 (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 Commerce.

2 (3) (i) “Film production activity” means:

3 1. the production of a film or video project that is intended
4 for nationwide commercial distribution; **AND**

5 2. **FOR A TELEVISION SERIES, EACH SEASON OF THE**
6 **TELEVISION SERIES.**

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

8 1. a feature film;

9 2. a television project;

10 3. a commercial;

11 4. a corporate film; **OR**

12 5. [an infomercial;

13 6.] a music video[;

14 7. a digital project;

15 8. an animation project; or

16 9. a multimedia project].

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

18 1. a student film;

19 2. a noncommercial personal video;

20 3. a sports broadcast;

21 4. a broadcast of a live event;

22 5. a talk show;

23 6. a video, computer, or social networking game; **[or]**

24 7. pornography;

- 1 **8. AN INFOMERCIAL;**
2 **9. A DIGITAL PROJECT;**
3 **10. AN ANIMATION PROJECT; OR**
4 **11. A MULTIMEDIA PROJECT.**

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

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

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

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

12 (6) “Secretary” means the Secretary of Commerce.

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

17 (8) (i) “Total direct costs”, with respect to a film production activity,
18 means the total costs incurred in the State that are necessary to carry out the film
19 production activity.

20 (ii) “Total direct costs” includes costs incurred for:

21 1. employee wages and benefits;

22 2. fees for services;

23 3. acquiring or leasing property; and

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

26 A. set construction and operation;

27 B. wardrobe, makeup, and related services;

1 C. photography and sound synchronization, lighting, and
2 related services and materials;

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

6 E. salary, wages, and other compensation including related
7 benefits, for work performed in the State, paid to persons employed in the production[,
8 writers, directors, and producers];

9 F. rental of facilities in the State and equipment used in the
10 State;

11 G. leasing of vehicles;

12 H. food and lodging;

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

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

18 K. legal and accounting services performed by attorneys or
19 accountants licensed in Maryland.

20 (iii) "Total direct costs" does not include any salary, wages, or other
21 compensation for:

22 1. personal services of an individual who receives more than
23 \$500,000 in salary, wages, or other compensation for personal services in connection with
24 any film production activity; **OR**

25 **2. WRITERS, DIRECTORS, OR PRODUCERS.**

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

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

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

3 (2) The application shall describe the anticipated film production activity,
4 including:

5 (i) the projected total budget;

6 (ii) the estimated number of **MARYLAND RESIDENT AND**
7 **OUT-OF-STATE** employees and total wages to be paid; and

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

10 (3) To qualify as a film production entity, the estimated total direct costs
11 incurred in the State must exceed [~~\$500,000~~] **\$250,000**.

12 (4) The application shall include any other information required by the
13 Secretary.

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

17 (6) The Secretary shall:

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

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

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

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

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

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

28 (3) Subject to subsections (f) and (g) of this section, the Secretary shall
29 determine the total direct costs that qualify for the tax credit and issue a tax credit
30 certificate for:

31 (i) except as provided in item (ii) of this paragraph, 25% of the total

1 direct costs that qualify for the tax credit; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) for fiscal year 2015, \$7,500,000; [and]

2 (iii) for fiscal year 2016, \$7,500,000; AND

3 (IV) FOR EACH OF FISCAL YEARS 2019 THROUGH 2021,
4 **\$30,000,000.**

5 (2) If the aggregate credit amounts under the tax credit certificates issued
6 by the Secretary total less than the maximum provided under paragraph (1) of this
7 subsection in any fiscal year, any excess amount may be carried forward and issued under
8 tax credit certificates in a subsequent fiscal year.

9 (3) **THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR**
10 **CREDIT AMOUNTS TOTALING MORE THAN \$10,000,000 IN THE AGGREGATE FOR A**
11 **SINGLE FILM PRODUCTION ACTIVITY.**

12 [(g) (1) In this subsection, "Reserve Fund" means the Maryland Film
13 Production Activity Tax Credit Reserve Fund established under paragraph (2) of this
14 subsection.

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

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

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

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

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

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

33 3. For any fiscal year, if funds are transferred from the

1 Reserve Fund under the authority of any provision of law other than under paragraph (4)
2 of this subsection, the maximum credit amounts in the aggregate for which the Secretary
3 may issue initial tax credit certificates shall be reduced by the amount transferred.

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

8 1. maintain the current level of film production activity in
9 the State; and

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

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

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

17 (4) (i) Except as provided in this paragraph, money appropriated to the
18 Reserve Fund shall remain in the Fund.

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

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

24 B. the final certified credit amount for the film production
25 entity.

26 2. On notification that a final credit amount has been
27 certified, the Comptroller shall transfer an amount equal to the credit amount stated in the
28 initial tax credit certificate for the film production entity from the Reserve Fund to the
29 General Fund.]

30 **[(h)] (G)** (1) Except as provided in paragraph (2) of this subsection, a qualified
31 film production entity that receives a tax credit certificate under this section for a film
32 production activity shall include:

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

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

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

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

10 **[(i)] (H)** The Department and the Comptroller jointly shall adopt regulations to
11 carry out the provisions of this section and to specify criteria and procedures for the
12 application for, approval of, and monitoring of continuing eligibility for the tax credit under
13 this section.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
15 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.