

SENATE BILL 360

Q3

9lr0622

By: **Senators Guzzone, Griffith, King, and Peters**

Introduced and read first time: January 31, 2019

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Theatrical Production Tax Credit**

3 FOR the purpose of allowing certain theatrical production entities to claim a credit against
4 the State income tax for certain costs incurred for certain theatrical productions
5 within the State; requiring a theatrical production entity to apply to the Department
6 of Commerce to be a qualified theatrical production entity; requiring the Secretary
7 of Commerce to determine if a theatrical production entity qualifies for the credit;
8 requiring that to qualify for the credit certain estimated costs incurred in the State
9 must exceed a certain amount; authorizing the Secretary to require the entity to
10 provide certain information and to require that certain information be verified by an
11 independent auditor; requiring a qualified theatrical production entity to apply for a
12 tax credit certificate from the Department; authorizing the Secretary to provide for
13 the form of the application; requiring the application to include certain information;
14 requiring the Secretary to determine the total direct costs that qualify for the tax
15 credit and issue a tax credit certificate for a certain percentage of the total direct
16 costs; limiting the total credit amounts for which the Secretary may issue initial tax
17 credit certificates for each fiscal year and for a single entity; requiring the Secretary
18 to notify the Comptroller of the amount of any tax credit certificate issued; providing
19 that the total direct costs for a theatrical production activity may not include the
20 wages of an employee if the employee's wages exceed a certain amount; requiring
21 that the Department report annually to the Governor and the General Assembly
22 certain information regarding the tax credit and certain economic impacts of the
23 credit; requiring the Department and the Comptroller to jointly adopt certain
24 regulations; defining certain terms; providing for the application of this Act; and
25 generally relating to an income tax credit for certain theatrical productions.

26 BY repealing and reenacting, with amendments,
27 Article – Economic Development
28 Section 2.5–109(a)(4)
29 Annotated Code of Maryland
30 (2018 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Tax – General
3 Section 10–749
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2018 Supplement)

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

8 **Article – Economic Development**

9 2.5–109.

10 (a) In this section, “economic development program” means:

11 (4) each of the tax credit programs administered by the Department,
12 including:

13 (i) the Film Production Activity Tax Credit;

14 (ii) the Job Creation Tax Credit;

15 (iii) the One Maryland Economic Development Tax Credit;

16 (iv) the Biotechnology Investment Incentive Tax Credit;

17 (v) the Research and Development Tax Credit;

18 (vi) the Security Clearance Administrative Expenses and
19 Construction and Equipment Costs Tax Credit;

20 (vii) the Cybersecurity Investment Incentive Tax Credit; [and]

21 (viii) the Aerospace, Electronics, or Defense Contract Tax Credit; AND

22 **(IX) THE THEATRICAL PRODUCTION TAX CREDIT.**

23 **Article – Tax – General**

24 **10–749.**

25 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
26 **INDICATED.**

27 **(2) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.**

1 **(3) “QUALIFIED THEATRICAL PRODUCTION ENTITY” MEANS AN**
2 **ENTITY THAT:**

3 **(I) IS CARRYING OUT A THEATRICAL PRODUCTION; AND**

4 **(II) IS DETERMINED BY THE SECRETARY TO BE ELIGIBLE FOR**
5 **THE TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF**
6 **THIS SECTION.**

7 **(4) “QUALIFIED THEATRICAL PRODUCTION FACILITY” MEANS A**
8 **FACILITY LOCATED IN THE STATE IN WHICH A THEATRICAL PRODUCTION IS**
9 **PERFORMED.**

10 **(5) “SECRETARY” MEANS THE SECRETARY OF COMMERCE.**

11 **(6) “THEATRICAL PRODUCTION” MEANS A FOR-PROFIT LIVE**
12 **THEATRICAL TOURING PRODUCTION THAT, IN ITS ORIGINAL OR ADAPTIVE VERSION,**
13 **IS PERFORMED IN A QUALIFIED THEATRICAL PRODUCTION FACILITY.**

14 **(7) (I) “TOTAL DIRECT COSTS” MEANS THE TOTAL COSTS**
15 **INCURRED IN THE STATE THAT ARE NECESSARY TO CARRY OUT THE DEVELOPMENT,**
16 **PRODUCTION, PERFORMANCE, OR OPERATION OF A THEATRICAL PRODUCTION.**

17 **(II) “TOTAL DIRECT COSTS” INCLUDES COSTS INCURRED FOR:**

18 **1. SET CONSTRUCTION AND OPERATION;**

19 **2. SPECIAL AND VISUAL EFFECTS;**

20 **3. WARDROBE, MAKEUP, AND RELATED SERVICES;**

21 **4. SOUND, LIGHTING, STAGING, AND RELATED SERVICES**
22 **AND MATERIALS;**

23 **5. SALARY, WAGES, AND OTHER COMPENSATION**
24 **INCLUDING RELATED BENEFITS, FOR WORK PERFORMED IN THE STATE, PAID TO**
25 **PERSONS EMPLOYED IN THE THEATRICAL PRODUCTION;**

26 **6. ADVERTISING AND PUBLIC RELATIONS;**

27 **7. RENTAL OF FACILITIES IN THE STATE AND**
28 **EQUIPMENT USED IN THE STATE;**

1 8. LEASING OF VEHICLES;

2 9. FOOD AND LODGING; AND

3 10. TRAVEL EXPENSES FOR BRINGING PERSONS
4 EMPLOYED, EITHER DIRECTLY OR INDIRECTLY, BY THE THEATRICAL PRODUCTION
5 TO THE STATE, BUT NOT INCLUDING EXPENSES FOR DEPARTING FROM THE STATE.

6 (III) "TOTAL DIRECT COSTS" DOES NOT INCLUDE ANY SALARY,
7 WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN INDIVIDUAL
8 WHO RECEIVES MORE THAN \$200,000 PER WEEK IN SALARY, WAGES, OR OTHER
9 COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY THEATRICAL
10 PRODUCTION.

11 (B) (1) A QUALIFIED THEATRICAL PRODUCTION ENTITY MAY CLAIM A
12 CREDIT AGAINST THE STATE INCOME TAX FOR THEATRICAL PRODUCTION
13 ACTIVITIES IN THE STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE
14 TAX CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR A THEATRICAL
15 PRODUCTION.

16 (2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY
17 TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE QUALIFIED
18 THEATRICAL PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE QUALIFIED
19 THEATRICAL PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT OF THE
20 EXCESS.

21 (C) (1) BEFORE BEGINNING A THEATRICAL PRODUCTION ACTIVITY, A
22 THEATRICAL PRODUCTION ENTITY MUST SUBMIT TO THE DEPARTMENT AN
23 APPLICATION TO QUALIFY AS A THEATRICAL PRODUCTION ENTITY.

24 (2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED
25 THEATRICAL PRODUCTION ACTIVITY, INCLUDING:

26 (I) THE PROJECTED TOTAL BUDGET;

27 (II) THE ESTIMATED NUMBER OF MARYLAND RESIDENT AND
28 OUT-OF-STATE EMPLOYEES AND TOTAL WAGES TO BE PAID; AND

29 (III) THE ANTICIPATED DATES FOR CARRYING OUT THE MAJOR
30 ELEMENTS OF THE THEATRICAL PRODUCTION.

31 (3) TO QUALIFY AS A THEATRICAL PRODUCTION ENTITY, THE

1 ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$100,000.

2 (4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION
3 REQUIRED BY THE SECRETARY.

4 (5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED IN
5 AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED AND
6 PAID FOR BY THE THEATRICAL PRODUCTION ENTITY SEEKING CERTIFICATION.

7 (6) THE SECRETARY SHALL:

8 (I) DETERMINE IF THE THEATRICAL PRODUCTION ENTITY
9 QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND

10 (II) NOTIFY THE COMPTROLLER OF THE ESTIMATED AMOUNT
11 OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE CLAIMED.

12 (D) (1) AFTER COMPLETION OF THE THEATRICAL PRODUCTION
13 ACTIVITY, A QUALIFIED THEATRICAL PRODUCTION ENTITY SHALL APPLY TO THE
14 DEPARTMENT FOR A TAX CREDIT CERTIFICATE.

15 (2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE
16 SECRETARY AND SHALL INCLUDE:

17 (I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR
18 THE TAX CREDIT; AND

19 (II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.

20 (3) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE SECRETARY
21 SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT
22 AND ISSUE A TAX CREDIT CERTIFICATE FOR 25% OF THE TOTAL DIRECT COSTS THAT
23 QUALIFY FOR THE TAX CREDIT.

24 (E) (1) IN ACCORDANCE WITH § 2.5-109 OF THE ECONOMIC
25 DEVELOPMENT ARTICLE, THE DEPARTMENT SHALL SUBMIT A REPORT THAT
26 INCLUDES:

27 (I) THE NUMBER OF THEATRICAL PRODUCTION ENTITIES
28 SUBMITTING APPLICATIONS UNDER SUBSECTION (C) OF THIS SECTION;

29 (II) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES
30 ISSUED UNDER SUBSECTION (D) OF THIS SECTION;

1 (III) THE NUMBER OF LOCAL TECHNICIANS AND ACTORS HIRED
2 FOR A THEATRICAL PRODUCTION DURING THE REPORTING PERIOD;

3 (IV) A LIST OF COMPANIES DOING BUSINESS IN THE STATE,
4 INCLUDING HOTELS, THAT DIRECTLY PROVIDED GOODS OR SERVICES FOR A
5 THEATRICAL PRODUCTION DURING THE REPORTING PERIOD;

6 (V) A LIST OF COMPANIES DOING BUSINESS IN THE STATE THAT
7 DIRECTLY PROVIDED GOODS OR SERVICES FOR A THEATRICAL PRODUCTION
8 DURING THE REPORTING PERIOD THAT QUALIFIED DURING THE REPORTING
9 PERIOD AS MINORITY BUSINESS ENTERPRISES UNDER § 14-301(F) OF THE STATE
10 FINANCE AND PROCUREMENT ARTICLE;

11 (VI) A LIST OF COMPANIES DOING BUSINESS IN THE STATE THAT
12 DIRECTLY PROVIDED GOODS OR SERVICES FOR A THEATRICAL PRODUCTION
13 DURING THE REPORTING PERIOD THAT, AS DETERMINED BY THE DEPARTMENT, ARE
14 CONSIDERED SMALL BUSINESSES; AND

15 (VII) ANY OTHER INFORMATION THAT INDICATES THE ECONOMIC
16 BENEFITS TO THE STATE RESULTING FROM THEATRICAL PRODUCTION ACTIVITY
17 DURING THE REPORTING PERIOD.

18 (2) ON OR BEFORE JULY 1 EACH YEAR, THE DEPARTMENT SHALL
19 REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
20 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON:

21 (I) THE AMOUNT OF TAX CREDITS NECESSARY TO MAINTAIN
22 THE CURRENT LEVEL OF THEATRICAL PRODUCTION ACTIVITY IN THE STATE; AND

23 (II) THE AMOUNT OF TAX CREDITS NECESSARY TO ATTRACT
24 NEW THEATRICAL PRODUCTIONS TO THE STATE.

25 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
26 THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS
27 IN THE AGGREGATE TOTALING MORE THAN \$10,000,000 IN ANY FISCAL YEAR.

28 (2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX CREDIT
29 CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN THE MAXIMUM
30 PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ANY FISCAL YEAR, ANY
31 EXCESS AMOUNT MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT
32 CERTIFICATES IN A SUBSEQUENT FISCAL YEAR.

1 **(3) THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR**
2 **CREDIT AMOUNTS TOTALING MORE THAN \$2,000,000 IN THE AGGREGATE FOR A**
3 **SINGLE THEATRICAL PRODUCTION.**

4 **(G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT**
5 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO SPECIFY**
6 **CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL OF, AND**
7 **MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT UNDER THIS**
8 **SECTION.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
10 1, 2019, and shall be applicable to all taxable years beginning after December 31, 2018.