

Chapter 259

(Senate Bill 597)

AN ACT concerning

Income Tax – Theatrical Production Tax Credit

FOR the purpose of allowing certain theatrical production entities to claim a credit against the State income tax for certain costs incurred for certain theatrical productions within the State; making the credit refundable under certain circumstances; requiring the Department of Commerce to administer the credit; and generally relating to an income tax credit for theatrical productions.

BY repealing and reenacting, with amendments,
Article – Economic Development
Section 2.5–109(a)(4)
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY adding to
Article – Tax – General
Section 10–754
Annotated Code of Maryland
(2016 Replacement Volume and 2021 Supplement)

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

Article – Economic Development

2.5–109.

- (a) In this section, “economic development program” means:
- (4) each of the tax credit programs administered by the Department, including:
- (i) the Film Production Activity Tax Credit;
 - (ii) the Job Creation Tax Credit;
 - (iii) the One Maryland Economic Development Tax Credit;
 - (iv) the Biotechnology Investment Incentive Tax Credit;
 - (v) the Research and Development Tax Credit;

- (vi) the Security Clearance Administrative Expenses and Construction and Equipment Costs Tax Credit;
 - (vii) the Innovation Investment Incentive Tax Credit;
 - (viii) the More Jobs for Marylanders Tax Credit;
 - (ix) the Purchase of Cybersecurity Technology or Service Tax Credit;
 - (x) the Opportunity Zone Enhancement Tax Credit; [and]
 - (xi) the Small Business Relief Tax Credit; AND
- (XII) THE THEATRICAL PRODUCTION TAX CREDIT.**

Article – Tax – General

10-754.

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

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

(3) “NATIONAL TOURING PRODUCTION” MEANS A FOR-PROFIT LIVE STAGE THEATRICAL PRODUCTION THAT:

(I) IS PRESENTED IN A QUALIFIED THEATRICAL PRODUCTION FACILITY FOR AT LEAST TWO PUBLIC PERFORMANCES; AND

(II) AFTER THE PRODUCTION’S FINAL PERFORMANCE UNDER ITEM (I) OF THIS PARAGRAPH, IS PERFORMED FOR AT LEAST 4 WEEKS IN AT LEAST FOUR CITIES OUTSIDE THE STATE.

(4) “PRE-BROADWAY PRODUCTION” MEANS A FOR-PROFIT LIVE STAGE THEATRICAL PRODUCTION THAT:

(I) IS PRESENTED IN A QUALIFIED THEATRICAL PRODUCTION FACILITY FOR AT LEAST EIGHT PUBLIC PERFORMANCES; AND

(II) IN THE PRODUCTION’S ORIGINAL OR ADAPTIVE VERSION:

1. HAS NEVER BEEN PERFORMED OR HAS BEEN PERFORMED ONLY ON A LIMITED BASIS IN THE IMMEDIATELY PRECEDING 5 YEARS; AND

2. IS BEING PREPARED EXCLUSIVELY AT THE QUALIFIED THEATRICAL PRODUCTION FACILITY FOR A PRESENTATION IN THE BROADWAY THEATER DISTRICT WITHIN 12 MONTHS AFTER THE PRODUCTION'S FINAL PRESENTATION IN A QUALIFIED THEATRICAL PRODUCTION FACILITY.

(5) "QUALIFIED THEATRICAL PRODUCTION ENTITY" MEANS AN ENTITY THAT:

(I) IS CARRYING OUT A THEATRICAL PRODUCTION; AND

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

(6) "QUALIFIED THEATRICAL PRODUCTION FACILITY" MEANS A FACILITY LOCATED IN THE STATE IN WHICH A THEATRICAL PRODUCTION IS PERFORMED.

(7) "SECRETARY" MEANS THE SECRETARY OF COMMERCE.

(8) "THEATRICAL PRODUCTION" MEANS:

(I) A NATIONAL TOURING PRODUCTION; OR

(II) A PRE-BROADWAY PRODUCTION.

(9) (I) "TOTAL DIRECT COSTS" MEANS THE TOTAL COSTS INCURRED IN THE STATE THAT ARE NECESSARY TO CARRY OUT THE DEVELOPMENT, PRODUCTION, PERFORMANCE, OR OPERATION OF A THEATRICAL PRODUCTION.

(II) "TOTAL DIRECT COSTS" INCLUDES COSTS INCURRED FOR:

1. SET CONSTRUCTION AND OPERATION;

2. SPECIAL AND VISUAL EFFECTS;

3. WARDROBE, MAKEUP, AND RELATED SERVICES;

4. SOUND, LIGHTING, STAGING, AND RELATED SERVICES

AND MATERIALS;

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

6. ADVERTISING AND PUBLIC RELATIONS ASSOCIATED WITH THE PERFORMANCE OF THE THEATRICAL PRODUCTION IN A QUALIFIED THEATRICAL PRODUCTION FACILITY;

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

8. LEASING OF VEHICLES;

9. FOOD AND LODGING; AND

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

(III) "TOTAL DIRECT COSTS" DOES NOT INCLUDE ANY SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN INDIVIDUAL WHO RECEIVES MORE THAN \$100,000 PER WEEK IN SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY THEATRICAL PRODUCTION.

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

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

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

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

(I) THE PROJECTED TOTAL BUDGET;

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

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

(3) TO QUALIFY AS A THEATRICAL PRODUCTION ENTITY, THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$100,000.

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

(5) THE SECRETARY SHALL:

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

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

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

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

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

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

(3) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED IN AN APPLICATION FOR THE TAX CREDIT CERTIFICATE TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED AND PAID FOR BY THE THEATRICAL PRODUCTION ENTITY SEEKING THE TAX CREDIT CERTIFICATE.

(4) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE SECRETARY SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT

AND ISSUE A TAX CREDIT CERTIFICATE FOR 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT.

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

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

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

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

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

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

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

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

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING MORE THAN ~~\$10,000,000~~ \$5,000,000 IN ANY FISCAL YEAR.

(2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX CREDIT CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN THE MAXIMUM PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ANY FISCAL YEAR, ANY

EXCESS AMOUNT MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES IN A SUBSEQUENT FISCAL YEAR.

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022, and shall be applicable to all taxable years beginning after December 31, 2021, but before January 1, 2027. It shall remain effective for a period of 5 years and, at the end of June 30, 2027, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 12, 2022.