

REVENUE

(35 ILCS 16/) Film Production Services Tax Credit Act of 2008.

(35 ILCS 16/1)

Sec. 1. Short title. This Act may be cited as the Film Production Services Tax Credit Act of 2008.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/5)

Sec. 5. Purpose. The General Assembly finds that the Illinois economy is highly vulnerable to other states and nations that have major financial incentive programs targeted to the motion picture industry. Because of the incentive programs of these competitor locations, Illinois must move aggressively with new business development investment tools so that Illinois is more competitive in site location decision-making for film productions. In an increasingly global economy, Illinois' long-term development will benefit from rational, strategic use of State resources in support of film production development and growth. It is the purpose of this Act to preserve and expand the existing human infrastructure for the motion picture industry in Illinois. It shall be the policy of this State to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population through the creation and implementation of training, education, and recruitment programs organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/10)

Sec. 10. Definitions. As used in this Act:

"Accredited production" means: (i) for productions commencing before May 1, 2006, a film, video, or television production that has been certified by the Department in which the aggregate Illinois labor expenditures included in the cost of the production, in the period that ends 12 months after the time principal filming or taping of the production began, exceed \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of less than 30 minutes; and (ii) for productions commencing on or after May 1, 2006, a film, video, or television production that has been certified by the Department in which the Illinois production spending included in the cost of production in the period that ends 12 months after the time principal filming or taping of the production began exceeds \$100,000 for productions of 30 minutes or longer or exceeds \$50,000 for productions of less than 30 minutes. "Accredited production" does not include a production that:

- (1) is news, current events, or public programming, or a program that includes weather or market reports;
- (2) is a talk show;
- (3) is a production in respect of a game, questionnaire, or contest;
- (4) is a sports event or activity;
- (5) is a gala presentation or awards show;
- (6) is a finished production that solicits funds;
- (7) is a production produced by a film production company if records, as required by 18 U.S.C. 2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program; or
- (8) is a production produced primarily for industrial, corporate, or institutional purposes.

"Accredited animated production" means an accredited production in which movement and characters' performances are created using a frame-by-frame technique and a significant number of major characters are animated. Motion capture by itself is not an animation technique.

"Accredited production certificate" means a certificate issued by the Department certifying that the production is an accredited production that meets the guidelines of this Act.

"Applicant" means a taxpayer that is a film production company that is operating or has operated an accredited production located within the State of Illinois and that (i) owns the copyright in the accredited production throughout the Illinois production period or (ii) has contracted directly with the owner of the copyright in the accredited production or a person acting on behalf of the owner to provide services for the production, where the owner of the copyright is not an eligible production corporation.

"Credit" means:

(1) for an accredited production approved by the Department on or before January 1, 2005 and commencing before May 1, 2006, the amount equal to 25% of the Illinois labor expenditure approved by the Department. The applicant is deemed to have paid, on its balance due day for the year, an amount equal to 25% of its qualified Illinois labor expenditure for the tax year. For Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department, in an accredited production commencing before May 1, 2006 and approved by the Department after January 1, 2005, the applicant shall receive an enhanced credit of 10% in addition to the 25% credit; and

(2) for an accredited production commencing on or after May 1, 2006, the amount equal to:

(i) 20% of the Illinois production spending for the taxable year; plus

(ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department; and

(3) for an accredited production commencing on or after January 1, 2009, the amount equal to:

(i) 30% of the Illinois production spending for the taxable year; plus

(ii) 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department.

"Department" means the Department of Commerce and Economic Opportunity.

"Director" means the Director of Commerce and Economic Opportunity.

"Illinois labor expenditure" means salary or wages paid to employees of the applicant for services on the accredited production;

To qualify as an Illinois labor expenditure, the expenditure must be:

(1) Reasonable in the circumstances.

(2) Included in the federal income tax basis of the property.

(3) Incurred by the applicant for services on or after January 1, 2004.

(4) Incurred for the production stages of the accredited production, from the final script stage to the end of the post-production stage.

(5) Limited to the first \$25,000 of wages paid or incurred to each employee of a production commencing before May 1, 2006 and the first \$100,000 of wages paid or incurred to each employee of a production commencing on or after May 1, 2006.

(6) For a production commencing before May 1, 2006, exclusive of the salary or wages paid to or incurred for the 2 highest paid employees of the production.

(7) Directly attributable to the accredited production.

(8) (Blank).

(9) Paid to persons resident in Illinois at the time the payments were made.

(10) Paid for services rendered in Illinois.

"Illinois production spending" means the expenses incurred by the applicant for an accredited production, including, without limitation, all of the following:

(1) expenses to purchase, from vendors within Illinois, tangible personal property that is used in the accredited production;

(2) expenses to acquire services, from vendors in Illinois, for film production, editing, or processing; and

(3) the compensation, not to exceed \$100,000 for any one employee, for contractual or salaried employees who are Illinois residents performing services with respect to the accredited production.

"Qualified production facility" means stage facilities in the State in which television shows and films are or are intended to be regularly produced and that contain at least one sound stage of at least 15,000 square feet.

Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois

Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.
(Source: P.A. 97-796, eff. 7-13-12.)

(35 ILCS 16/15)

Sec. 15. Powers of the Department. The Department, in addition to those powers granted under the Civil Administrative Code of Illinois, is granted and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, power and authority to:

(a) Adopt rules deemed necessary and appropriate for the administration of the tax credit program; establish forms for applications, notifications, contracts, or any other agreements; and accept applications at any time during the year.

(b) Assist applicants pursuant to the provisions of this Act to promote, foster, and support film production and its related job creation or retention within the State.

(c) Gather information and conduct inquiries, in the manner and by the methods as it deems desirable, including any information required for the Department to comply with Section 45 and, without limitation, gathering information with respect to applicants for the purpose of making any designations or certifications necessary or desirable or to gather information to assist the Department with any recommendation or guidance in the furtherance of the purposes of this Act, including, but not limited to, information as to whether the applicant participated in training, education, and recruitment programs that are organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry, and are designed to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population.

(d) Provide for sufficient personnel to permit administration, staffing, operation, and related support required to adequately discharge its duties and responsibilities described in this Act from funds as may be appropriated by the General Assembly for the administration of this Act.

(e) Require applicants, upon written request, to issue any necessary authorization to the appropriate federal, state, or local authority for the release of information concerning a project being considered under the provisions of this Act, with the information requested to include, but not be limited to, financial reports, returns, or records relating to the applicant or the accredited production.

(f) Require that an applicant must at all times keep proper books of record and account in accordance with generally accepted accounting principles consistently applied, with the books, records, or papers related to the accredited production in the custody or control of the taxpayer open for reasonable Department inspection and audits, and including, without limitation, the making of copies of the books, records, or papers, and the inspection or appraisal of any of the assets of the applicant or the accredited production.

(g) Take whatever actions are necessary or appropriate to protect the State's interest in the event of bankruptcy, default, foreclosure, or noncompliance with the terms and conditions of financial assistance or participation required under this Act, including the power to sell, dispose, lease, or rent, upon terms and conditions determined by the Director to be appropriate, real or personal property that the Department may receive as a result of these actions.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/20)

Sec. 20. Tax credit awards. Subject to the conditions set forth in this Act, an applicant is entitled to a credit as approved by the Department under Section 40 of this Act.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/25)

Sec. 25. Application for certification of accredited production. Any applicant proposing a film or television production located or planned to be located in Illinois may request an accredited production certificate by formal application to the Department.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/30)

Sec. 30. Review of application for accredited production certificate.

(a) In determining whether to issue an accredited production

certificate, the Department must determine that a preponderance of the following conditions exist:

- (1) The applicant's production intends to make the expenditure in the State required for certification.
- (2) The applicant's production is economically sound and will benefit the people of the State of Illinois by increasing opportunities for employment and strengthen the economy of Illinois.
- (3) The applicant has filed a diversity plan with the Department outlining specific goals (i) for hiring minority persons and females, as defined in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, and (ii) for using vendors receiving certification under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act; the Department has approved the plan as meeting the requirements established by the Department; and the Department has verified that the applicant has met or made good-faith efforts in achieving those goals. The Department must adopt any rules that are necessary to ensure compliance with the provisions of this item (3) and that are necessary to require that the applicant's plan reflects the diversity of this State.
- (4) The applicant's production application indicates whether the applicant intends to participate in training, education, and recruitment programs that are organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population.
- (5) That, if not for the credit, the applicant's production would not occur in Illinois, which may be demonstrated by any means including, but not limited to, evidence that the applicant has multi-state or international location options and could reasonably and efficiently locate outside of the State, or demonstration that at least one other state or nation is being considered for the production, or evidence that the receipt of the credit is a major factor in the applicant's decision and that without the credit the applicant likely would not create or retain jobs in Illinois, or demonstration that receiving the credit is essential to the applicant's decision to create or retain new jobs in the State.

(6) Awarding the credit will result in an overall positive impact to the State, as determined by the Department using the best available data.

(b) If any of the provisions in this Section conflict with any existing collective bargaining agreements, the terms and conditions of those collective bargaining agreements shall control.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/35)

Sec. 35. Issuance of Tax Credit Certificate.

(a) In order to qualify for a tax credit under this Act, an applicant must file an application, on forms prescribed by the Department, providing information necessary to calculate the tax credit, and any additional information as required by the Department.

(b) Upon satisfactory review of the application, the Department shall issue a Tax Credit Certificate stating the amount of the tax credit to which the applicant is entitled.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/40)

Sec. 40. Amount and duration of the credit. The amount of the credit awarded under this Act is based on the amount of the Illinois labor expenditure and Illinois production spending approved by the Department for the production as set forth under Section 10. The duration of the credit may not exceed one taxable year.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/42)

Sec. 42. Sunset of credits. The application of credits awarded pursuant to this Act shall be limited by a reasonable and appropriate sunset date. A taxpayer shall not be entitled to take a credit awarded pursuant to this

Act for tax years beginning on or after 10 years after the effective date of this amendatory Act of the 97th General Assembly. After the initial 10-year sunset, the General Assembly may extend the sunset date by 5-year intervals.

(Source: P.A. 97-2, eff. 5-6-11; 97-3, eff. 5-6-11.)

(35 ILCS 16/43)

Sec. 43. Training programs for skills in critical demand. To accomplish the purposes of this Act, the Department may use the training programs provided for Illinois under Section 605-800 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/44)

Sec. 44. Accredited animated productions. Each applicant requesting credits for an accredited animated production commencing on or after July 1, 2010 may make an application to the Department in each taxable year beginning with the taxable year in which the production commences and ending with the taxable year in which production is complete, provided that no credit may be claimed under this Section for a taxable year ending prior to December 31, 2012.

(Source: P.A. 97-796, eff. 7-13-12.)

(35 ILCS 16/45)

Sec. 45. Evaluation of tax credit program; reports to the General Assembly.

(a) The Department shall evaluate the tax credit program. The evaluation must include an assessment of the effectiveness of the program in creating and retaining new jobs in Illinois and of the revenue impact of the program, and may include a review of the practices and experiences of other states or nations with similar programs. Upon completion of this evaluation, the Department shall determine the overall success of the program, and may make a recommendation to extend, modify, or not extend the program based on this evaluation.

(b) At the end of each fiscal quarter, the Department must submit to the General Assembly a report that includes, without limitation, the following information:

(1) the economic impact of the tax credit program, including the number of jobs created and retained, including whether the job positions are entry level, management, talent-related, vendor-related, or production-related;

(2) the amount of film production spending brought to Illinois, including the amount of spending and type of Illinois vendors hired in connection with an accredited production; and

(3) an overall picture of whether the human infrastructure of the motion picture industry in Illinois reflects the geographical, racial and ethnic, gender, and income-level diversity of the State of Illinois.

(c) At the end of each fiscal year, the Department must submit to the General Assembly a report that includes, without limitation, the following information:

(1) an identification of each vendor that provided goods or services that were included in an accredited production's Illinois production spending;

(2) the amount paid to each identified vendor by the accredited production;

(3) for each identified vendor, a statement as to whether the vendor is a minority owned business or a female owned business, as defined under Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act; and

(4) a description of any steps taken by the Department to encourage accredited productions to use vendors who are a minority owned business or a female owned business.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/50)

Sec. 50. Program terms and conditions. Any documentary materials or data made available or received by any agent or employee of the Department are confidential and are not public records to the extent that the materials or data consist of commercial or financial information regarding

the operation of the production of the applicant for or recipient of any tax credit under this Act.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/90)

Sec. 90. Continuation of prior law. This Act replaces and is intended to be a continuation of the Film Production Services Tax Credit Act, which was repealed on January 1, 2008.

(Source: P.A. 95-720, eff. 5-27-08.)

(35 ILCS 16/95)

Sec. 95. (Repealed).

(Source: P.A. 95-720, eff. 5-27-08. Repealed by P.A. 95-1006, eff. 12-15-08.)

(35 ILCS 16/905)

Sec. 905. (Amendatory provisions; text omitted).

(Source: P.A. 95-720, eff. 5-27-08; text omitted.)

(35 ILCS 16/999)

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 95-720, eff. 5-27-08.)