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S.B. 37
133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Schuring

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SUMMARY

- Extends eligibility for the motion picture tax credit to certain live theater productions.
- Adds post-production, advertising, and promotional expenses to the kinds of expenditures for which the credit may be claimed.
- Disqualifies motion pictures and live theater productions that do not begin within a specified period after being certified as eligible for the credit.
- Stipulates that tax credit certificates are to be awarded in two rounds – in July and January – each fiscal year.
- Requires each round's applications to be ranked on the basis of the economic and workforce development impact of the production and granted tax credits in the order of the ranking.

DETAILED ANALYSIS

Note: The provisions of this bill were enacted in H.B. 166 of the 133rd General Assembly, along with the following provisions relating to the tax credit but not included in this bill:

- Extending eligibility for the tax credit to contractors of production companies;
- Requiring that production companies and their contractors be registered with the Secretary of State as a condition of receiving the credit;
- Terminating a tax credit recipient's authority to transfer its right to claim the credit to a third party.

The remainder of this analysis does not reflect the status of the law as it exists on and after October 17, 2019, the effective date of the H.B. 166 provisions.

Motion picture tax credit

The bill modifies the motion picture tax credit, which is a refundable credit for companies that produce all or part of a motion picture in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. The credit is transferrable and may be claimed against the commercial activity tax (CAT), the financial institutions tax (FIT), or the personal income tax. A company seeking the credit must first apply to the Director of Development Services for certification of the project as a "tax credit-eligible production." Then, upon completion of the project, the company must hire an independent certified public accountant to compile a report of the company's Ohio-sourced expenditures and apply to the Director for a tax credit certificate based on that amount (or the amount of expenditures estimated in the company's initial application, whichever is less).

Broadway theatrical productions

The bill extends eligibility for the motion picture tax credit to "Broadway theatrical productions" that are directly associated with New York City's Broadway Theater District and are rehearsed or performed by a professional cast and crew at a qualified production facility – an Ohio facility that is used in the development or presentation to the public of live stage theater. Such a theatrical production qualifies for the credit if (1) the production is scheduled for presentation in New York City's Broadway Theater District after it is performed in Ohio (a "pre-Broadway production"), (2) the production is scheduled to be performed in Ohio for more than five weeks with an average of at least six performances per week (a "long run production"), or (3) the activities comprising the technical period of the production are conducted in Ohio before the beginning of a performance tour (a "tour launch").¹

The procedures for certifying Broadway theatrical productions as "tax credit-eligible" and awarding a tax credit certificate upon the completion of the production are mostly the same as those that apply to motion pictures. However, the bill makes a few adjustments to the information that is required to be submitted with the application for certification of the project (see, "**Application requirements**," below).²

Eligible expenditures

The bill broadens the types of expenses upon which the credit is based to include post-production, advertising, and promotional expenditures. Under continuing law, expenditures for goods, services, and payroll used directly for the production itself may be included in computing the amount of the credit and in meeting the \$300,000 minimum expenditure

¹ R.C. 122.85(A)(6) through (10).

² R.C. 107.036, 5726.98, 5733.98, 5747.98, and 5751.98.

threshold. The Director must adopt rules as to the specifics of what constitutes “post-production” activities.³

Application requirements

The bill makes several adjustments to the information that is required to be submitted for a motion picture or Broadway theatrical production to be certified as eligible for the credit. All applicants are required to submit an estimate of the amount of state and local taxes that will be generated from the project and of the project’s overall economic impact. Furthermore, in addition to the list of preproduction and production dates required under continuing law, the application must include a list of the post-production dates associated with the motion picture or Broadway theatrical production.

If the application concerns a Broadway theatrical production, the application need not include the percentage of the production “being shot in Ohio” or the shooting script. In lieu of submitting an address for an Ohio production office, the company may provide the address of the qualified production facility at which the Broadway theatrical production will be rehearsed or performed. Lastly, the application must include a list of each scheduled performance of the production at the qualified production facility.⁴

Rescinding certification

The bill requires the Director to rescind certification of a production if the production process does not begin within a specified period. The production process for motion pictures and Broadway theatrical productions that are certified as credit-eligible on or after the bill’s effective date must begin within 90 days of such certification unless the production company demonstrates that the delay is due to unforeseeable circumstances beyond its control or due to action or inaction by a government agency. The production process for previously certified motion pictures must begin within one year of such certification or before the bill’s 90-day effective date, whichever is later.

Continuing law requires production companies to submit “sufficient evidence of reviewable progress” within 90 days of the eligibility certification and any time thereafter at the Director’s request. The Director may (but is not required to) revoke a production’s eligibility if a company fails to report sufficient progress. If eligibility is revoked, the company may reapply for the eligibility certification.⁵

Awarding tax credits

The bill requires the Director to award tax credit certificates in two rounds each fiscal year. The first round of applications would be approved by July 31, and the second round would be approved by January 31. The amount of credits awarded in the first round of applications is

³ R.C. 122.85(A)(4), (D), and (G).

⁴ R.C. 122.85(B).

⁵ R.C. 122.85(B); Section 4 of the bill.

limited to \$20 million plus any credit allotment that was not used in the previous fiscal year. Under continuing law, the maximum amount of credits that may be awarded in any fiscal year is \$40 million.

For each round, the Director must rank the applications on the basis of the extent of positive economic impact a production would have and the effect of the production on developing a permanent Ohio workforce in the motion picture or live theater industries. Priority must be given to television series and miniseries. For the purposes of ranking applications, the “economic impact” of a production is determined based on the production company’s total expenditures in Ohio that are directly associated with the production. The production’s impact on developing a permanent Ohio workforce in the motion picture and live theater industries is determined “first by the number of new jobs created and second by the amount of payroll added” for Ohio employees.

After ranking the applications, the Director would award tax credits to productions in the order of their ranking, starting with the productions that had the greatest economic and workforce development impact. The bill requires the Director to adopt rules prescribing a schedule and deadlines for applications to be submitted and reviewed.⁶

Applications concerning television series and miniseries must be prioritized, although no requirements specify how and when certificates are to be awarded. Based on the Development Services Agency’s website, it appears that the Director awards credits whenever they are available (i.e., when the annual credit cap resets) in the order in which applications are received.⁷

Effective date

The bill’s modifications to the process of ranking applications and awarding credits – including the requirement that credits be awarded in two annual cycles – apply to fiscal years beginning on or after the bill’s effective date. The Director is required to adopt rules necessary to implement those modifications on or before that date. The other changes made by the bill apply to productions that are certified as tax credit-eligible productions on or after the bill’s effective date.⁸

⁶ R.C. 122.85(C)(5) and (G)(1).

⁷ Ohio Development Services Agency, “Ohio Film Office – Tax Credit Overview and Frequently Asked Questions,” <https://development.ohio.gov/filmoffice/Incentives.html>.

⁸ Section 3.

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Ways & Means	05-08-19
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