



General Assembly

February Session, 2020

Raised Bill No. 5465

LCO No. 2369



Referred to Committee on FINANCE, REVENUE AND BONDING

Introduced by:
(FIN)

AN ACT CONCERNING THE APPLICABILITY OF THE FILM PRODUCTION TAX CREDIT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-217jj of the 2020 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective January 1, 2021, and applicable to income years commencing on or*
4 *after January 1, 2021*):

5 (a) As used in this section:

6 (1) "Commissioner" means the Commissioner of Revenue Services.

7 (2) "Department" means the Department of Economic and
8 Community Development.

9 (3) (A) "Qualified production" means entertainment content created
10 in whole or in part within the state, including motion pictures, except as
11 otherwise provided in this subparagraph; documentaries; long-form,
12 specials, mini-series, series, sound recordings, videos and music videos

13 and interstitials television programming; interactive television;
14 relocated television production; interactive games; videogames;
15 commercials; any format of digital media, including an interactive web
16 site, created for distribution or exhibition to the general public; and any
17 trailer, pilot, video teaser or demo created primarily to stimulate the
18 sale, marketing, promotion or exploitation of future investment in either
19 a product or a qualified production via any means and media in any
20 digital media format, film or videotape, provided such program meets
21 all the underlying criteria of a qualified production. For state fiscal years
22 ending on or after June 30, 2014, "qualified production" shall not include
23 a motion picture that has not been designated as a state-certified
24 qualified production prior to July 1, 2013, and no tax credit voucher for
25 such motion picture may be issued for such motion picture, except, for
26 state fiscal years ending on or after June 30, 2015, "qualified production"
27 shall include a motion picture for which twenty-five per cent or more of
28 the principal photography shooting days are in this state at a facility that
29 receives not less than twenty-five million dollars in private investment
30 and opens for business on or after July 1, 2013, and a tax credit voucher
31 may be issued for such motion picture.

32 (B) "Qualified production" shall not include any ongoing television
33 program created primarily as news, weather or financial market reports;
34 a production featuring current events, other than a relocated television
35 production, sporting events, an awards show or other gala event; a
36 production whose sole purpose is fundraising; a long-form production
37 that primarily markets a product or service; a production used for
38 corporate training or in-house corporate advertising or other similar
39 productions; or any production for which records are required to be
40 maintained under 18 USC 2257, as amended from time to time, with
41 respect to sexually explicit content.

42 (4) "Eligible production company" means a corporation, partnership,
43 limited liability company, or other business entity engaged in the
44 business of producing qualified productions on a one-time or ongoing
45 basis, and qualified by the Secretary of the State to engage in business
46 in the state.

47 (5) "Production expenses or costs" means all expenditures clearly and
48 demonstrably incurred in the state in the preproduction, production or
49 postproduction costs of a qualified production, including:

50 (A) Expenditures incurred in the state in the form of either
51 compensation or purchases including production work, production
52 equipment not eligible for the infrastructure tax credit provided in
53 section 12-217kk, production software, postproduction work,
54 postproduction equipment, postproduction software, set design, set
55 construction, props, lighting, wardrobe, makeup, makeup accessories,
56 special effects, visual effects, audio effects, film processing, music,
57 sound mixing, editing, location fees, soundstages and any and all other
58 costs or services directly incurred in connection with a state-certified
59 qualified production;

60 (B) Expenditures for distribution, including preproduction,
61 production or postproduction costs relating to the creation of trailers,
62 marketing videos, commercials, point-of-purchase videos and any and
63 all content created on film or digital media, including the duplication of
64 films, videos, CDs, DVDs and any and all digital files now in existence
65 and those yet to be created for mass consumer consumption; the
66 purchase, by a company in the state, of any and all equipment relating
67 to the duplication or mass market distribution of any content created or
68 produced in the state by any digital media format which is now in use
69 and those formats yet to be created for mass consumer consumption;
70 and

71 (C) "Production expenses or costs" does not include the following: (i)
72 On and after January 1, 2008, compensation in excess of fifteen million
73 dollars paid to any individual or entity representing an individual, for
74 services provided in the production of a qualified production and on or
75 after January 1, 2010, compensation subject to Connecticut personal
76 income tax in excess of twenty million dollars paid in the aggregate to
77 any individuals or entities representing individuals, for star talent
78 provided in the production of a qualified production; (ii) media buys,
79 promotional events or gifts or public relations associated with the

80 promotion or marketing of any qualified production; (iii) deferred,
81 leveraged or profit participation costs relating to any and all personnel
82 associated with any and all aspects of the production, including, but not
83 limited to, producer fees, director fees, talent fees and writer fees; (iv)
84 costs relating to the transfer of the production tax credits; (v) any
85 amounts paid to persons or businesses as a result of their participation
86 in profits from the exploitation of the qualified production; and (vi) any
87 expenses or costs relating to an independent certification, as required by
88 subsection [(g)] (h) of this section, or as the department may otherwise
89 require, pertaining to the amount of production expenses or costs set
90 forth by an eligible production company in its application for a
91 production tax credit.

92 (6) "Sound recording" means a recording of music, poetry or spoken-
93 word performance, but does not include the audio portions of dialogue
94 or words spoken and recorded as part of a motion picture, video,
95 theatrical production, television news coverage or athletic event.

96 (7) "State-certified qualified production" means a qualified
97 production produced by an eligible production company that (A) is in
98 compliance with regulations adopted pursuant to subsection [(k)] (l) of
99 this section, (B) is authorized to conduct business in this state, and (C)
100 has been approved by the department as qualifying for a production tax
101 credit under this section.

102 (8) "Interactive web site" means a web site, the production costs of
103 which (A) exceed five hundred thousand dollars per income year, and
104 (B) is primarily (i) interactive games or end user applications, or (ii)
105 animation, simulation, sound, graphics, story lines or video created or
106 repurposed for distribution over the Internet. An interactive web site
107 does not include a web site primarily used for institutional, private,
108 industrial, retail or wholesale marketing or promotional purposes, or
109 which contains obscene content.

110 (9) "Post-certification remedy" means the recapture, disallowance,
111 recovery, reduction, repayment, forfeiture, decertification or any other

112 remedy that would have the effect of reducing or otherwise limiting the
113 use of a tax credit provided by this section.

114 (10) "Compensation" means base salary or wages and does not
115 include bonus pay, stock options, restricted stock units or similar
116 arrangements.

117 (11) "Relocated television production" means:

118 (A) An ongoing television program all of the prior seasons of which
119 were filmed outside this state, and may include current events shows,
120 except those referenced in subparagraph (B)(i) of this subdivision.

121 (B) An eligible production company's television programming in this
122 state that (i) is not a general news program, sporting event or game
123 broadcast, and (ii) is created at a qualified production facility that has
124 had a minimum investment of twenty-five million dollars made by such
125 eligible production company on or after January 1, 2012, at which
126 facility the eligible production company creates ongoing television
127 programming as defined in subparagraph (A) of this subdivision, and
128 creates at least two hundred new jobs in Connecticut on or after January
129 1, 2012. For purposes of this subdivision, "new job" means a full-time
130 job, as defined in section 12-217ii, that did not exist in this state prior to
131 January 1, 2012, and is filled by a new employee, and "new employee"
132 includes a person who was employed outside this state by the eligible
133 production company prior to January 1, 2012, but does not include a
134 person who was employed in this state by the eligible production
135 company or a related person, as defined in section 12-217ii, with respect
136 to the eligible production company during the prior twelve months.

137 (C) A relocated television production may be a state-certified
138 qualified production for not more than ten successive income years,
139 after which period the eligible production company shall be ineligible
140 to resubmit an application for certification.

141 (b) (1) The Department of Economic and Community Development
142 shall administer a system of tax credit vouchers within the resources,

143 requirements and purposes of this section for eligible production
144 companies producing a state-certified qualified production in the state.

145 (2) Any eligible production company incurring production expenses
146 or costs shall be eligible for a credit (A) for income years commencing
147 on or after January 1, 2010, but prior to January 1, 2018, against the tax
148 imposed under chapter 207 or this chapter, [and] (B) for income years
149 commencing on or after January 1, 2018, but prior to January 1, 2021,
150 against the tax imposed under chapter 207 or 211 or this chapter, and
151 (C) for income years commencing on or after January 1, 2021, against the
152 tax imposed under chapter 207, 211, 219 or this chapter, as follows: (i)
153 For any such company incurring such expenses or costs of not less than
154 one hundred thousand dollars, but not more than five hundred
155 thousand dollars, a credit equal to ten per cent of such expenses or costs,
156 (ii) for any such company incurring such expenses or costs of more than
157 five hundred thousand dollars, but not more than one million dollars, a
158 credit equal to fifteen per cent of such expenses or costs, and (iii) for any
159 such company incurring such expenses or costs of more than one million
160 dollars, a credit equal to thirty per cent of such expenses or costs.

161 (c) No eligible production company incurring an amount of
162 production expenses or costs that qualifies for such credit shall be
163 eligible for such credit unless on or after January 1, 2010, such company
164 conducts (1) not less than fifty per cent of principal photography days
165 within the state, or (2) expends not less than fifty per cent of
166 postproduction costs within the state, or (3) expends not less than one
167 million dollars of postproduction costs within the state.

168 (d) For income years commencing on or after January 1, 2010, no
169 expenses or costs incurred outside the state and used within the state
170 shall be eligible for a credit, and one hundred per cent of such expenses
171 or costs shall be counted toward such credit when incurred within the
172 state and used within the state.

173 (e) (1) On and after July 1, 2006, and for income years commencing
174 on or after January 1, 2006, any credit allowed pursuant to this section

175 may be sold, assigned or otherwise transferred, in whole or in part, to
176 one or more taxpayers, provided (A) no credit, after issuance, may be
177 sold, assigned or otherwise transferred, in whole or in part, more than
178 three times, (B) in the case of a credit allowed for the income year
179 commencing on or after January 1, 2011, and prior to January 1, 2012,
180 any entity that is not subject to tax under chapter 207 or this chapter may
181 transfer not more than fifty per cent of such credit in any one income
182 year, and (C) in the case of a credit allowed for an income year
183 commencing on or after January 1, 2012, any entity that is not subject to
184 tax under chapter 207 or this chapter may transfer not more than
185 twenty-five per cent of such credit in any one income year.

186 (2) Notwithstanding the provisions of subdivision (1) of this
187 subsection, any entity that is not subject to tax under this chapter or
188 chapter 207 shall not be subject to the limitations on the transfer of
189 credits provided in subparagraphs (B) and (C) of said subdivision (1),
190 provided such entity owns not less than fifty per cent, directly or
191 indirectly, of a business entity, as defined in section 12-284b.

192 (3) Notwithstanding the provisions of subdivision (1) of this
193 subsection, any qualified production that is created in whole or in
194 significant part, as determined by the Commissioner of Economic and
195 Community Development, at a qualified production facility shall not be
196 subject to the limitations of subparagraph (B) or (C) of said subdivision
197 (1). For purposes of this subdivision, "qualified production facility"
198 means a facility (A) located in this state, (B) intended for film, television
199 or digital media production, and (C) that has had a minimum
200 investment of three million dollars, or less if the Commissioner of
201 Economic and Community Development determines such facility
202 otherwise qualifies.

203 (4) (A) For the income year commencing January 1, 2018, any credit
204 that is sold, assigned or otherwise transferred, in whole or in part, to one
205 or more taxpayers pursuant to subdivision (1) of this subsection may be
206 claimed against the tax imposed under chapter 211 only if there is
207 common ownership of at least fifty per cent between such taxpayer and

208 the eligible production company that sold, assigned or otherwise
209 transferred such credit. Such taxpayer may only claim ninety-two per
210 cent of the amount of such credit entered by the department on the
211 production tax credit voucher.

212 (B) For income years commencing on or after January 1, 2019, any
213 credit that is sold, assigned or otherwise transferred, in whole or in part,
214 to one or more taxpayers pursuant to subdivision (1) of this subsection,
215 which credit is claimed against the tax imposed under chapter 211, shall
216 be subject to the following limits:

217 (i) The taxpayer may only claim ninety-five per cent of the amount of
218 such credit entered by the department on the production tax credit
219 voucher; and

220 (ii) If there is common ownership of at least fifty per cent between
221 such taxpayer and the eligible production company that sold, assigned
222 or otherwise transferred such credit, such taxpayer may only claim
223 ninety-two per cent of the amount of such credit entered by the
224 department on the production tax credit voucher.

225 (5) For income years commencing on or after January 1, 2021, any
226 credit that is claimed against the tax imposed under chapter 219 shall be
227 subject to the following limits:

228 (A) Any credit that is sold, assigned or otherwise transferred, in
229 whole or in part, to one or more taxpayers pursuant to subdivision (1)
230 of this subsection may be claimed against the tax imposed under chapter
231 219 only if there is common ownership of at least fifty per cent between
232 such taxpayer and the eligible production company that sold, assigned
233 or otherwise transferred such credit; and

234 (B) The eligible production company or taxpayer claiming the credit
235 against the tax imposed under chapter 219 may only claim ninety-two
236 per cent of the amount of such credit entered by the department on the
237 production tax credit voucher.

238 (f) (1) On and after July 1, 2006, and for income years commencing on
239 or after January 1, 2006, but prior to January 1, 2015, all or part of any
240 such credit allowed under this section may be claimed against the tax
241 imposed under chapter 207 or this chapter for the income year in which
242 the production expenses or costs were incurred, or in the three
243 immediately succeeding income years.

244 (2) For production tax credit vouchers issued on or after July 1, 2015,
245 but prior to January 1, 2018, all or part of any such credit may be claimed
246 against [(A)] the tax imposed under chapter 207 or this chapter, [or] for
247 the income year in which the production expenses or costs were
248 incurred, or in the five immediately succeeding income years.

249 [(B) for income years commencing on or after January 1, 2018,] (3) For
250 production tax credit vouchers issued on or after July 1, 2018, but prior
251 to January 1, 2021, all or part of any such credit may be claimed against
252 the tax imposed under chapter 207 or 211 or this chapter, for the income
253 year in which the production expenses or costs were incurred, or in the
254 five immediately succeeding income years.

255 (4) For production tax credit vouchers issued on or after January 1,
256 2021, all or part of any such credit may be claimed against the tax
257 imposed under chapter 207, 211, 219 or this chapter, for the income year
258 in which the production expenses or costs were incurred, or in the five
259 immediately succeeding income years.

260 [(3)] (g) Any production tax credit allowed under this [subsection]
261 section shall be nonrefundable.

262 [(g)] (h) (1) An eligible production company shall apply to the
263 department for a tax credit voucher on an annual basis, but not later
264 than ninety days after the first production expenses or costs are incurred
265 in the production of a qualified production, and shall provide with such
266 application such information as the department may require to
267 determine such company's eligibility to claim a credit under this section.
268 No production expenses or costs may be listed more than once for
269 purposes of the tax credit voucher pursuant to this section, or pursuant

270 to section 12-217kk or 12-217ll, and if a production expense or cost has
271 been included in a claim for a credit, such production expense or cost
272 may not be included in any subsequent claim for a credit.

273 (2) Not later than ninety days after the end of the annual period, or
274 after the last production expenses or costs are incurred in the production
275 of a qualified production, an eligible production company shall apply
276 to the department for a production tax credit voucher, and shall provide
277 with such application such information and independent certification as
278 the department may require pertaining to the amount of such
279 company's production expenses or costs. Such independent certification
280 shall be provided by an audit professional chosen from a list compiled
281 by the department. If the department determines that such company is
282 eligible to be issued a production tax credit voucher, the department
283 shall enter on the voucher the amount of production expenses or costs
284 that has been established to the satisfaction of the department and the
285 amount of such company's credit under this section. The department
286 shall provide a copy of such voucher to the commissioner, upon request.

287 (3) The department shall charge a reasonable administrative fee
288 sufficient to cover the department's costs to analyze applications
289 submitted under this section.

290 [(h)] (i) If an eligible production company sells, assigns or otherwise
291 transfers a credit under this section to another taxpayer, the transferor
292 and transferee shall jointly submit written notification of such transfer
293 to the department not later than thirty days after such transfer. If such
294 transferee sells, assigns or otherwise transfers a credit under this section
295 to a subsequent transferee, such transferee and such subsequent
296 transferee shall jointly submit written notification of such transfer to the
297 department not later than thirty days after such transfer. The
298 notification after each transfer shall include the credit voucher number,
299 the date of transfer, the amount of such credit transferred, the tax credit
300 balance before and after the transfer, the tax identification numbers for
301 both the transferor and the transferee, and any other information
302 required by the department. Failure to comply with this subsection will

303 result in a disallowance of the tax credit until there is full compliance on
304 the part of the transferor and the transferee, and for a second or third
305 transfer, on the part of all subsequent transferors and transferees. The
306 department shall provide a copy of the notification of assignment to the
307 commissioner upon request.

308 [(i)] (j) Any eligible production company that submits information to
309 the department that it knows to be fraudulent or false shall, in addition
310 to any other penalties provided by law, be liable for a penalty equal to
311 the amount of such company's credit entered on the production tax
312 credit voucher issued under this section.

313 [(j)] (k) No tax credits transferred pursuant to this section shall be
314 subject to a post-certification remedy, and the department and the
315 commissioner shall have no right, except in the case of possible material
316 misrepresentation or fraud, to conduct any further or additional review,
317 examination or audit of the expenditures or costs for which such tax
318 credits were issued. The sole and exclusive remedy of the department
319 and the commissioner shall be to seek collection of the amount of such
320 tax credits from the entity that committed the fraud or
321 misrepresentation.

322 [(k)] (l) The department, in consultation with the commissioner, shall
323 adopt regulations, in accordance with the provisions of chapter 54, as
324 may be necessary for the administration of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2021, and applicable to income years commencing on or after January 1, 2021</i>	12-217jj

Statement of Purpose:

To allow the film production tax credit to be claimed against the sales tax under certain circumstances and at a reduced rate.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]