

HOUSE No. 2773

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel M. Donahue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing incentives to the digital interactive media/entertainment industries.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>1/20/2023</i>

HOUSE No. 2773

By Representative Donahue of Worcester, a petition (accompanied by bill, House, No. 2773) of Daniel M. Donahue relative to providing tax incentives to the digital interactive media/entertainment industries. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act providing incentives to the digital interactive media/entertainment industries.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (l)(1) of Section 6 of chapter 62 of the General Laws is hereby
2 amended by adding the following definitions:-

3 “Digital interactive media/Interactive Entertainment” means products or platforms that
4 are intended for commercial production, use, or distribution; that contain at least two of the
5 following types of data: text, sound, fixed images, animated images, video, video effects or 3D
6 geometry; and that have all of the following three characteristics:

7 (i) “Digital” means a system that uses discrete (discontinuous) values ordinarily
8 symbolized numerically to represent information for input, processing, transmission, and storage.
9 A digital system would be contrasted with an “analog” system, which uses a continuous range of
10 values to represent information. The term “digital” includes, but is not limited to information
11 input, processed, transmitted and stored via the Internet.

12 (ii) “Interactive” means a digital media system for inputting, processing, transmitting,
13 or storing information or data in which users of the system are able to respond to the digital
14 media system by inputting, transmitting, processing, or storing information or data in response to
15 the information or data provided to them through the digital media system. “Digital media
16 system” means communications delivered via electronic energy where the information stored,
17 transmitted, or received is in digital form.

18 (iii) “Media” means communication tools used to store, transmit, distribute, and
19 deliver information and data. The term "media" includes methods and mechanisms for
20 information distribution through, but not limited to distributed networks, such as the Internet, and
21 through physical media such as compact disc, CD-ROM, various types of DVD, and other
22 removable storage drives and devices.

23 Digital interactive media/Interactive Entertainment shall not include: (i) software
24 development designed and developed primarily for internal or operational purposes of the
25 company, (ii) largely static Internet sites designed to provide information about a person,
26 business, company, or firm, or (iii) products regulated under the applicable gambling law.

27 “Digital Interactive Media Production Company” means a company including any
28 subsidiaries engaged in the business of producing Digital Interactive Media.

29 The term “digital interactive media production company” shall not mean or include any
30 company which is more than 25 per cent owned, affiliated, or controlled, by any company or
31 person which is in default on a loan made by the commonwealth or a loan guaranteed by the
32 commonwealth.

33 “Digital Interactive Media Production expense” means all expenditures in the state
34 directly relating to including without limitation the following: testing software, source code
35 development, patches, updates, sprites, three-dimensional models, engine development and other
36 back-end programming activities, performance and motion capture, audio production, tool
37 development, original scoring, and level design; costs associated with photography and sound
38 synchronization, lighting and related services; live operations, information technology support,
39 data analysis and activities related to a community of users; rental of facilities and equipment;
40 purchase of prepackaged audio files, video files, photographic, or libraries; purchase of licenses
41 to use pre-recorded audio files, video, or photographic files; development costs associated with
42 producing audio files and video files to be used in the production of the end product under
43 development. This shall include all professionals whose work is directly related to the digital
44 interactive media including accountants and lawyers.

45 Digital Interactive Media Production expenses shall not include any of the following: (i)
46 expenditures for or related to marketing, promotion and distribution, (ii) administrative, payroll,
47 and management services which are not directly related to digital interactive media management
48 or production, (iii) amounts that are later reimbursed by the state, (iv) costs related to the transfer
49 of tax credits and (v) amounts that are paid to persons or entities as a result of their participation
50 in profits from the exploitation of the production.

51 Subsection (l)(1) of Section 6 of chapter 62 of the General Laws is hereby further
52 amended by amending the following definitions:-

53

54 “Massachusetts production expense”, a Motion Picture Production Expense or Digital
55 Interactive Media Production Expense that was clearly and demonstrably incurred in the
56 commonwealth.

57 SECTION 2. Subsection (1)(2) of Section 6 of chapter 62 of the General Laws is hereby
58 amended by adding after “is equal to or greater than \$1,000,000” the following:-

59

60 A taxpayer engaged in the making of Digital Interactive Media shall be allowed a credit
61 against the taxes imposed by this chapter for the employment of persons within the
62 commonwealth in connection with the production in the commonwealth within any consecutive
63 12 month period. The credit shall be equal to 25 per cent of the total aggregate payroll paid by a
64 Digital Interactive Media production company that constitutes Massachusetts source income,
65 when total production costs incurred in the commonwealth equal or exceed \$50,000 during the
66 taxable year. For purposes of this subsection, the term “total aggregate payroll” shall not include
67 the salary of any employee whose salary is equal to or greater than \$1,000,000.

68 SECTION 3. Subsection (1)(3) of Section 6 of chapter 62 of the General Laws is hereby
69 amended by adding after “total principal photography days of the film take place in the
70 commonwealth” the following:-

71 A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter
72 equal to 25 per cent of all Massachusetts production expenses, where the production takes place
73 in a gateway municipality.

74 SECTION 4. Subsection (1)(5)(ii) of Section 6 of chapter 62 of the General Laws is
75 hereby amended by adding after “in connection with any motion picture” the following:- “or
76 digital interactive media”.

77 SECTION 5. Subsection (1)(7) of Section 6 of chapter 62 of the General Laws is hereby
78 amended by adding after “the administration of this subsection.” the following:- “There shall be
79 within the Massachusetts Film Office a division to manage, oversee, and administer the Digital
80 Interactive Media/Interactive Entertainment programs and to encourage digital interactive media
81 management and production in the state.

82 SECTION 6. Section 38X of Chapter 63 of the General Laws is hereby amended in
83 subsection (a) by striking the definition of “Massachusetts production expense” and inserting in
84 place thereof the following:-

85 “Massachusetts production expense”, a production expense for the motion picture or
86 digital interactive media clearly and demonstrably incurred in the commonwealth.

87 Said section is further amended in subsection (b) by adding the following:-

88 A taxpayer engaged in the making of Digital Interactive Media shall be allowed a credit
89 against the taxes imposed by this chapter for the employment of persons within the
90 commonwealth in connection with the production in the commonwealth within any consecutive
91 12 month period. The credit shall be equal to 25 per cent of the total aggregate payroll paid by a
92 Digital Interactive Media production company that constitutes Massachusetts source income,
93 when total production costs incurred in the commonwealth equal or exceed \$50,000 during the
94 taxable year. For purposes of this subsection, the term “total aggregate payroll” shall not include
95 the salary of any employee whose salary is equal to or greater than \$1,000,000.

96 Said section is further amended in subsection (c) by adding the following:-

97 A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter
98 equal to 25 per cent of all Massachusetts production expenses, where the production takes place
99 in a gateway municipality.

100

101 SECTION 7. Section 6 of chapter 64H is hereby amended by striking subsection (ww)
102 and inserting in place thereof the following:-

103 (ww) Sales of tangible personal property to a qualifying motion picture production
104 company, Digital Interactive Media Company or to an accredited film school student or Digital
105 Interactive Media school student for the production expenses related to a school film project or
106 Digital Interactive Media project.

107 For the purposes of this paragraph a qualifying motion picture production company must
108 expend in the aggregate not less than \$50,000 within the commonwealth in connection with the
109 filming or production of one or more motion pictures in the commonwealth within any
110 consecutive 12 month period and have the approval of the secretary of economic development
111 and the commissioner.

112 For the purposes of this paragraph a qualifying Digital Interactive Media production
113 company must expend in the aggregate not less than \$50,000 within the commonwealth in
114 connection with the production in the commonwealth within any consecutive 12 month period
115 and have the approval of the secretary and the commissioner.

116 Any motion picture production company that intends to film all, or parts of, a motion
117 picture or television program in the commonwealth and qualify for the exemption provided by
118 this paragraph shall provide an estimate of total expenditures to be made in the commonwealth in
119 connection with the filming or production of such motion picture or television program and shall
120 designate a member or representative of the motion picture production company as a primary
121 liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures
122 and other information as required by the commissioner. Said estimate of expenditures shall be
123 filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture
124 production company that has been approved which fails to expend \$50,000 within a consecutive
125 12 month period shall be liable for the sales taxes that would have been paid had the approval not
126 been granted. The sales taxes shall be considered due as of the date that taxable expenditures
127 were made.

128

129 Any Digital Interactive Media Production Company that intends to produce all, or parts
130 of, a Digital Interactive Media production in the commonwealth and qualify for the exemption
131 provided by this paragraph shall provide an estimate of total expenditures to be made in the
132 commonwealth in connection with the production Digital Interactive Media and shall designate a
133 member or representative of the Digital Interactive Media production company as a primary
134 liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures
135 and other information as required by the commissioner. Said estimate of expenditures shall be
136 filed no sooner than the beginning of the tax year for the qualified Digital Interactive Media
137 production company or within 90 days of the start of Digital Interactive Media Production
138 expenses and before the end of Digital Interactive Media Production expenses or within one year

139 after the end of tax year for the qualified Digital Interactive Media production company claiming
140 the tax credit. Any qualifying Digital Interactive production company that has been approved
141 which fails to expend \$50,000 within a consecutive 12 month period shall be liable for the sales
142 taxes that would have been paid had the approval not been granted. The sales taxes shall be
143 considered due as of the date that taxable expenditures were made.

144 The commissioner shall promulgate rules for the implementation of this paragraph.