

Chapter 516

(Senate Bill 672)

AN ACT concerning

~~Income Tax~~ Maryland Film Production Activity Credit Employment Act of 2011

FOR the purpose of repealing the Film Production Rebate Program; allowing certain film production entities to claim a credit against the State income tax for certain costs incurred for certain film production activities within the State; requiring a film production entity to apply to the Department of Business and Economic Development to be a qualified film production entity; requiring the Secretary of Business and Economic Development to determine if a film production entity qualifies for the credit; requiring that to qualify for the credit certain estimated costs incurred in the State must exceed a certain amount; authorizing the Secretary to require the entity to provide certain information; authorizing the Secretary to require that certain information be verified by an independent auditor; requiring a qualified film production entity to apply for a tax credit certificate from the Department; authorizing the Secretary to provide for the form of the application; requiring the application to include certain information; requiring the Secretary to determine the total direct costs that qualify for the tax credit and issue a tax credit certificate for a certain percentage of the total direct costs; limiting the total credit amounts for which the Secretary may issue initial tax credit certificates for each fiscal year; requiring the Secretary to notify the Comptroller of the amount of any tax credit certificate issued; providing that the total direct costs for a film production activity may not include the wages of an employee if the employee's wages exceed a certain amount; requiring that each year the Department report to the Governor and the General Assembly certain information regarding the tax credit and certain economic impacts of the credit; requiring the Department and the Comptroller to jointly adopt certain regulations; defining certain terms; providing for the application of this Act; providing for the termination of certain provisions of this Act; and generally relating to an income tax credit for certain film production activities.

BY repealing

Article – Economic Development

Section 4–401 through 4–407 and the subtitle “Subtitle 4. Film Production Rebate Fund”

Annotated Code of Maryland

(2008 Volume and 2010 Supplement)

BY adding to

Article – Tax – General
Section 10–729
Annotated Code of Maryland
(2010 Replacement Volume)

Preamble

WHEREAS, The State of Maryland has a long and successful history of movie making in the State; and

WHEREAS, Producing large scale movies in Maryland provides strong stimulus to the State’s economy by creating jobs for Maryland workers and generating sales by Maryland businesses; and

WHEREAS, Significant amounts of State and local tax revenues are generated by the economic activity created from producing films in Maryland; and

WHEREAS, Maryland’s geographic, cultural, physical, and historic attributes provide many favorable settings for film production in the State; and

WHEREAS, Key decision makers in the movie industry have demonstrated a preference for and commitment to making movies in the State; and

WHEREAS, The scope of film production activity is broad and diverse resulting in substantial expenditures within a state on local companies and businesses that become part of the film production activity; and

WHEREAS, In addition to economic benefits derived from film production activity, the long–term benefits include development and establishment of spin–off film production activities such as editing, sound production, creative and artistic activities, development of permanent facilities such as sound stages and studios and cottage industries related to independent movie making, documentaries, advertising, and other film and video activity; and

WHEREAS, Other states have established proven models for attracting film production activity to their states to the detriment of such activity in Maryland; and

WHEREAS, Maryland can adopt such proven methods resulting in the immediate generation of new economic activity within the State, including the derivative benefits described above; and

WHEREAS, Maryland’s economy and Maryland’s State and local tax revenues would receive the direct benefit of these new activities prior to issuance of the tax credit certificates enabling the film production entity to claim the tax credit; and

WHEREAS, The production of television series in Maryland results in even greater positive economic benefits to the State, providing extended employment for Maryland residents and sustained revenues for local companies providing goods and services to production entities producing television series in Maryland; and

WHEREAS, The Governor and the General Assembly find and declare that the net benefit to Maryland as a result of this increased economic activity is positive and is necessary for strengthening the State's economic condition; now, therefore,

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

Article – Economic Development

[Subtitle 4. Film Promotion Rebate Fund.]

[4–401.

- (a) In this subtitle the following words have the meanings indicated.
- (b) (1) “Film production activity” means the production of a film or video project that is intended for nationwide commercial distribution.
- (2) “Film production activity” includes the production of:
 - (i) a feature film;
 - (ii) a television project;
 - (iii) a commercial;
 - (iv) a corporate film;
 - (v) an infomercial;
 - (vi) a music video;
 - (vii) a digital project;
 - (viii) an animation project; and
 - (ix) a multimedia project.
- (3) “Film production activity” does not include:
 - (i) production of a:

1. student film;
2. noncommercial personal video;
3. sports broadcast;
4. broadcast of a live event; or
5. talk show; or

(ii) any activity not necessary to and undertaken directly and exclusively for the making of a master film, tape, or image.

(c) “Fund” means the Film Production Rebate Fund established under § 4–405 of this subtitle.

(d) “Qualified film production entity” means an entity that:

(1) is carrying out a film production activity; and

(2) the Secretary determines to be eligible for the rebate provided under this subtitle in accordance with § 4–403 of this subtitle.

(e) (1) “Total direct costs”, with respect to a film production activity, means the total costs incurred in the State that are necessary to carry out the film production activity.

(2) “Total direct costs” includes costs incurred for:

(i) employee wages and benefits;

(ii) fees for services;

(iii) acquiring or leasing property; and

(iv) any other expense necessary to carry out a film production activity.]

[4–402.

It is the intent of the General Assembly that the rebate provided under this subtitle is for the purpose of:

(1) increasing film production activity in the State;

- (2) bringing economic benefits to the residents of the State; and
- (3) generating increased employment opportunities for the residents of the State.]

[4-403.

(a) To be eligible for a rebate under this subtitle, a qualified film production entity shall incur total direct costs of at least \$500,000 in the State for a single film production activity.

(b) To qualify for the rebate provided under this subtitle, a film production entity shall notify the Department of the intent of the entity to seek the rebate before beginning the film production activity.

(c) To apply for the rebate, the film production entity shall submit to the Secretary:

(1) a description of the anticipated film production activity, including its projected total budget with estimated number of employees and total wages, and anticipated dates for carrying out the major elements of the film production activity; and

(2) any other information that the Secretary requires related to the film production activity and the entity seeking the rebate.

(d) The Secretary may require any information required under this section to be verified by an independent auditor that:

(1) the film production entity seeking the rebate certification selects and pays for; and

(2) the Secretary approves.

(e) As a condition of applying for and receiving the rebate, the qualified film production entity shall enter into a grant agreement with the Department that is satisfactory to the Department.]

[4-404.

The Department may grant to a qualified film production entity, from the Fund, a rebate not to exceed 25% of the total direct costs that the qualified film production entity has paid for a particular film production activity.]

[4-405.

- (a) There is a Film Production Rebate Fund in the Department.
- (b) The Department shall administer the Fund.
- (c) (1) The Fund is a special, nonlapsing fund that is not subject to reversion under § 7–302 of the State Finance and Procurement Article.
(2) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.
- (d) The Fund consists of:
 - (1) money appropriated by the State to the Fund;
 - (2) repayments of any defaulted grant from the Fund; and
 - (3) any other money made available to the Department for the Fund.
- (e) The Department may use the Fund to:
 - (1) make grants to qualified film production entities as rebates in accordance with this subtitle; and
 - (2) pay the administrative, legal, and actuarial expenses of the Fund.
- (f) (1) The Treasurer shall invest the money of the Fund in the same manner as other money of the State may be invested.
(2) Any investment earnings of the Fund shall be credited to the Fund.]

[4–406.

The Secretary shall adopt regulations to specify eligibility criteria and application procedures for the rebate under this subtitle.]

[4–407.

(a) On or before December 31 of each year, the Department shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly on the grants provided as rebates for film production activity in the preceding fiscal year.

(b) The report shall include:

- (1) the number of local technicians, actors, and extras hired for film production activity during the reporting period;
- (2) a list of companies doing business in the State, including hotels, that directly provided goods or services for film production activity during the reporting period; and
- (3) any other information that indicates the economic benefits to the State resulting from film production activity during the reporting period.]

Article – Tax – General

10-729.

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

(2) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

(3) (I) “FILM PRODUCTION ACTIVITY” MEANS THE PRODUCTION OF A FILM OR VIDEO PROJECT THAT IS INTENDED FOR NATIONWIDE COMMERCIAL DISTRIBUTION.

(II) “FILM PRODUCTION ACTIVITY” INCLUDES THE PRODUCTION OF:

- 1. A FEATURE FILM;**
- 2. A TELEVISION PROJECT;**
- 3. A COMMERCIAL;**
- 4. A CORPORATE FILM;**
- 5. AN INFOMERCIAL;**
- 6. A MUSIC VIDEO;**
- 7. A DIGITAL PROJECT;**
- 8. AN ANIMATION PROJECT; OR**
- 9. A MULTIMEDIA PROJECT.**

(III) “FILM PRODUCTION ACTIVITY” DOES NOT INCLUDE PRODUCTION OF:

- 1. A STUDENT FILM;**
- 2. A NONCOMMERCIAL PERSONAL VIDEO;**
- 3. A SPORTS BROADCAST;**
- 4. A BROADCAST OF A LIVE EVENT;**
- 5. A TALK SHOW;**
- 6. A VIDEO, COMPUTER, OR SOCIAL NETWORKING GAME; OR**
- 7. PORNOGRAPHY.**

(4) “PORNOGRAPHY” MEANS ANY PRODUCTION FOR WHICH RECORDS ARE REQUIRED TO BE MAINTAINED UNDER § 2257 OF TITLE 18, U.S.C., WITH RESPECT TO ANY PERFORMER IN SUCH PRODUCTION ENGAGING IN SEXUALLY EXPLICIT CONDUCT.

(5) “QUALIFIED FILM PRODUCTION ENTITY” MEANS AN ENTITY THAT:

- (I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND**
- (II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.**

(6) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT.

(7) “TELEVISION SERIES” MEANS A GROUP OF PROGRAM EPISODES INTENDED FOR TELEVISION BROADCAST OR TRANSMISSION WITH A COMMON SERIES TITLE, WITH OR WITHOUT A PREDETERMINED NUMBER OF EPISODES, AND SHALL INCLUDE A MINISERIES AND A PILOT EPISODE PRODUCED FOR AN INTENDED TELEVISION SERIES.

(8) (I) “TOTAL DIRECT COSTS”, WITH RESPECT TO A FILM PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.

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

- 1. EMPLOYEE WAGES AND BENEFITS;**
- 2. FEES FOR SERVICES;**
- 3. ACQUIRING OR LEASING PROPERTY; AND**
- 4. ANY OTHER EXPENSE NECESSARY TO CARRY OUT A FILM PRODUCTION ACTIVITY, INCLUDING COSTS ASSOCIATED WITH:**
 - A. SET CONSTRUCTION AND OPERATION;**
 - B. WARDROBE, MAKEUP, AND RELATED SERVICES;**
 - C. PHOTOGRAPHY AND SOUND SYNCHRONIZATION, LIGHTING, AND RELATED SERVICES AND MATERIALS;**
 - D. EDITING AND RELATED SERVICES, INCLUDING FILM PROCESSING, TRANSFERS OF FILM TO TAPE OR DIGITAL FORMAT, SOUND MIXING, COMPUTER GRAPHIC SERVICES, SPECIAL EFFECTS SERVICES, AND ANIMATION SERVICES;**
 - E. SALARY, WAGES, AND OTHER COMPENSATION INCLUDING RELATED BENEFITS, FOR WORK PERFORMED IN THE STATE, PAID TO PERSONS EMPLOYED IN THE PRODUCTION, WRITERS, DIRECTORS, AND PRODUCERS;**
 - F. RENTAL OF FACILITIES IN THE STATE AND EQUIPMENT USED IN THE STATE;**
 - G. LEASING OF VEHICLES;**
 - H. FOOD AND LODGING;**
 - I. MUSIC, IF PERFORMED, COMPOSED, OR RECORDED BY A MARYLAND MUSICIAN OR PUBLISHED BY A PERSON OR COMPANY DOMICILED IN MARYLAND;**
 - J. TRAVEL EXPENSES INCURRED TO BRING PERSONS EMPLOYED, EITHER DIRECTLY OR INDIRECTLY, IN THE PRODUCTION OF THE**

PROJECT TO MARYLAND, BUT NOT INCLUDING EXPENSES OF THESE PERSONS DEPARTING FROM MARYLAND; AND

K. LEGAL AND ACCOUNTING SERVICES PERFORMED BY ATTORNEYS OR ACCOUNTANTS LICENSED IN MARYLAND.

(III) "TOTAL DIRECT COSTS" DOES NOT INCLUDE ANY SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN INDIVIDUAL WHO RECEIVES MORE THAN ~~\$1,000,000~~ \$500,000 IN SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY FILM PRODUCTION ACTIVITY.

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

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

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

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

(I) THE PROJECTED TOTAL BUDGET;

(II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL WAGES TO BE PAID; AND

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

(3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$500,000.

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

(5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.

(6) THE SECRETARY SHALL:

(I) DETERMINE IF THE FILM 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 FILM PRODUCTION ACTIVITY, A QUALIFIED FILM 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) 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:

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT; AND

(II) FOR A TELEVISION SERIES, 27% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT.

(4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.

(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:

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

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

(3) THE NUMBER OF LOCAL TECHNICIANS, ACTORS, AND EXTRAS HIRED FOR FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD;

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

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

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, FOR ANY FISCAL YEAR, THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING MORE THAN ~~\$15,000,000~~ \$7,500,000.

(2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX CREDIT CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN ~~\$15,000,000~~ \$7,500,000 IN ANY FISCAL YEAR, ANY EXCESS AMOUNT MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES IN A SUBSEQUENT FISCAL YEAR.

(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, 2011, and shall be applicable to all taxable years beginning after December 31, 2010.~~

SECTION 2. AND BE IT FURTHER ENACTED, That § 10-729 of the Tax – General Article as enacted by this Act shall take effect July 1, 2011, and shall be applicable to all taxable years beginning after December 31, 2010. Section 10-729 of the Tax – General Article as enacted by this Act shall remain effective for a period of 3 years and, at the end of July 1, 2014, with no further action required by the General

Assembly, shall be abrogated and of no further force and effect. The Secretary of Business and Economic Development may not issue credit certificates under § 10-729 of the Tax – General Article for any fiscal year beginning on or after July 1, 2014.

Approved by the Governor, May 19, 2011.