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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schuring

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SUMMARY

- Eliminates the overall cap on the motion picture and theater tax credit.
- Authorizes a credit recipient to transfer all or part of the tax credit to another person.
- Specifies that a motion picture or theatrical production that is not entirely produced in this state may still qualify for the tax credit, and expands the definition of a theatrical production.
- Requires that a production, to be credit eligible, must have a positive impact on the state as a whole or in the communities in which the production expenditures are incurred.
- Clarifies when a theatrical production begins for the purposes of an existing provision that requires the Director of Development to rescind the certification of a production that does not begin within 90 days after certification.
- Expands the information required in an existing credit accounting report.
- Modifies and delineates the types of expenditures that qualify for the credit.
- Authorizes a new, refundable tax credit for production companies that complete a capital improvement project in Ohio.
- Specifies that the new credit will equal 25% of the amount a production company spends to construct, acquire, repair, or expand facilities that will be used in a motion picture or theatrical production, up to $5 million per project.
- Caps the total amount of new credits that may be awarded each fiscal year at $100 million.

DETAILED ANALYSIS

Film and theater tax credits

The bill modifies an existing tax credit for companies that produce a motion picture or Broadway theatrical production in Ohio and authorizes a new tax credit for production companies that make a capital investment in Ohio.

With respect to the existing film and theater production credit, the bill increases the overall credit cap, makes corresponding adjustments to application and evaluation processes, allows the credit to be transferred, revises project eligibility criteria, adjusts and delineates the types of eligible expenditures, and changes the rulemaking authority of the Director of Development respecting credit administration.

Film and theater production tax credit

Background

Continuing law authorizes a film and Broadway theater production tax credit equal to 30% of a company's Ohio-sourced expenditures for goods, services, and payroll involved in a production, i.e., the company's "eligible expenditures." The credit is refundable and may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), or personal income tax. A company seeking the credit must first apply to the Director of Development 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 eligible 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.

The credit is available for a broad range of entertainment content, ranging from films, documentaries, and television shows to websites, sound recordings, music videos, and video games. News broadcasts, sporting events, award shows, and fund raising productions do not qualify for the credit. In 2019, H.B. 166 extended credit eligibility 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 an Ohio theater.

Eliminate overall cap

The bill eliminates the $40 million cap on the total amount of credits that may be awarded by the Director of Development each fiscal year. With no overall cap, the processes described by current law for evaluating and ranking tax credit applications are rendered obsolete. Therefore, the bill eliminates those processes and instead requires the Director to accept and review applications on a continuing basis – credits are awarded to all eligible productions. The bill retains the current law stipulation that no tax credit may be issued before completion of the production.

Under current law, the Director must award tax credit certificates in two rounds each fiscal year. The amount of credits awarded in the first round of applications is limited to half of the overall cap ($20 million) plus any credit allotment that was not used the previous fiscal year. For each round, the Director ranks applications on the basis of the positive economic impact the production would have and the effect of the production on developing a permanent Ohio workforce in the motion picture or live theater industries. After ranking the applications, the Director must award tax credits to productions in the order of their ranking, starting with the productions that have the greatest economic and workforce development impact.[1]

Credit transfer

The bill restores the ability of tax credit recipients to sell or transfer all or part of the tax credit to one or more persons. Such a transfer is not effectuated until the transferor notifies the Tax Commissioner in writing. The notice must include the certificate number, the name and tax identification number of the transferee, the amount of credit transferred to the transferee, and the amount of credit retained by the transferor. The right to claim a tax credit may be sold or transferred an unlimited number of times to an unlimited number of persons. However, the same notification requirement applies to each transfer.

A similar credit transfer provision applied under former law until it was repealed by H.B. 166 of the 133rd General Assembly.[2]

Project qualifications

The bill clarifies that a motion picture or Broadway theatrical production need not be produced entirely in Ohio to qualify for the tax credit. Current law does not require all production activities to occur in Ohio, but it also does not explicitly extend the credit to productions that are produced, in part, outside the state. Continuing law, unchanged by the bill, requires at least $300,000 in Ohio-sourced eligible expenditures to qualify for the credit.[3]

Under current law, a qualifying Broadway theatrical production includes a production that is scheduled to run on Broadway for more than five weeks. Under the bill, a production would qualify if it ran for more than four weeks.[4]

The bill also requires the Director of Development to evaluate a production's economic impact before certifying that it is tax credit-eligible. The Director must determine that the production is likely to have a positive economic impact on either the state as a whole or in a community in which the production company will make eligible expenditures. The economic impact may be achieved through short-term expenditures or long-term investments that would not have occurred without the production, or through a projected increase in state and local tax collected. The bill requires production companies to estimate the amount of the production's short-term expenditures, long-term investments, and estimated economic impact

[1] R.C. 122.85(C)(3) and (5).

[2] R.C. 122.85(A)(2) and (F), 5726.55, 5733.59, 5747.66, and 5751.54; see also page 102 of the LSC Final Analysis for H.B. 166 (PDF), which is available on the General Assembly's website: legislature.ohio.gov.

[3] R.C. 122.85(B)(1).

[4] R.C. 122.85(A)(8).

in its application. Under continuing law, companies are already required to submit an estimate of the increase in state and local tax collections that the production is likely to generate.[5]

In addition, continuing law requires a production company to secure funding equal to at least half of the estimated total production budget before seeking certification of a project as a tax credit-eligible production. The bill specifies that the production company cannot count the estimated value of the tax credit towards the amount of funding the company has secured.[6]

Eligible expenditures

The bill modifies and delineates the types of eligible expenditures that qualify for the tax credit. Specifically, the bill includes a table that lists over 500 types of expenses and whether each of those expenses is considered an eligible expenditure. In many cases, the table specifies that an expense qualifies only if the good or service is purchased from a business that is registered to operate in the state. The bill also provides that, if an expense is not listed in the table, it may still qualify for the credit if it meets the general definition of an eligible expenditure.

Current law specifies that advertising and promotion expenses are considered eligible expenditures. Under the bill, such expenses would only be considered eligible in the case of Broadway theatrical productions. Expenses incurred to advertise and promote a motion picture would no longer be considered eligible expenditures.

The bill also specifies that travel expenses are generally eligible for the credit. Current law does not explicitly include or exclude travel expenses.[7]

Accountant report

Continuing law requires a production company to hire an independent certified public accountant to compile a report of the company's eligible expenditures and verify that those expenditures are eligible for the tax credit. The bill expands the scope of this report to include all of the following:

- Any accounting and auditing forms required by the Director of Development;
- Certification that, when applicable, all production expenditures were paid to businesses registered in this state;
- An itemized review of all contract and expense items of $10,000 or more, and of half the contract and expense items of less than $10,000;
- Certification that all expenditures were incurred after the production's certification and before its completion;

[5] R.C. 122.85(B)(1)(n) to (B)(1)(p) and (B)(2).

[6] R.C. 122.85(B)(1)(l).

[7] R.C. 122.85(A)(4) and (11).

- Certification that all goods were purchased and consumed in this state.[8]

Revocation of certifications

Continuing law requires the Director of Development to rescind the certification of a project that does not begin within 90 days of certification, unless there is good cause for the delay. The bill clarifies that a Broadway theatrical production begins on the date the production is first performed in an Ohio theater.[9]

Administrative rules

The bill specifically requires the Director of Development to create application forms for the tax credit and to publish those forms on the Department of Development's website. There must be one form for motion pictures and a separate form for Broadway productions.[10]

Film and theater improvement tax credit

The bill authorizes a new tax credit for a motion picture or Broadway theatrical production company that completes a capital improvement project in Ohio. Eligible projects include the construction, acquisition, repair, or expansion of facilities or equipment that will be used in a motion picture or Broadway production or for postproduction.[11]

Generally, the credit equals 25% of either the company's actual Ohio-sourced capital improvement expenditures, or the amount of such expenditures estimated on the company's application, whichever is less. Eligible expenditures include the purchase of goods or services directly for use in a capital improvement project, as well as any accounting and auditing expenses incurred to comply with the bill's reporting requirements, but does not include expenses on the basis of which an existing production credit has been awarded.

The credit is capped at $5 million per project, and $100 million per fiscal year overall. If the Director of Development does not issue the full $100 million allotment in a particular fiscal year, the excess allotment can be carried forward to the next fiscal year.[12]

The credit is modeled after, and may be claimed in conjunction with, the existing film and theater production tax credit. It shares many similarities with the existing credit, as that credit has been amended by the bill, including all of the following:

- The credit is refundable and may be claimed against the CAT, FIT, and income tax;
- A credit recipient can sell or transfer all or part of the credit to another person;

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[8] R.C. 122.85(D)(2).

[9] R.C. 122.85(B)(3).

[10] R.C. 122.85(H)(3).

[11] R.C. 122.852(A)(1) and (B), 5726.58, 5726.98, 5747.67, 5747.98, 5751.55, and 5751.98.

[12] R.C. 122.852(A)(2), (D), and (H).

- A production company must show that it is making reviewable progress on its capital improvement project within 90 days after the Director approves the project. The Director can rescind approval of a project that does not begin between that 90-day deadline, unless there is good cause for the delay.
- The production company must engage an independent certified public accountant to certify the company's qualified capital improvement expenditures. The accountant's report must include similar information to what the bill requires for the existing production credit, as described in "**Accountant report**," above.
- The Director of Development must adopt rules governing the credit program, including rules for evaluating applications. These rules are exempt from continuing law requirements concerning reductions in regulatory restrictions.[13] (State agencies are required to take actions to reduce regulatory restrictions in accordance with a statutory schedule. Such actions include removing two or more existing regulatory restrictions for each new restriction adopted. A "regulatory restriction" is any part of a rule that requires or prohibits an action.[14])

The Director of Development will review and award applications for the credit in one round each fiscal year. A production company may apply for the credit either before or after the capital improvement project is complete. The Director may charge an application fee equal to the lesser of $10,000 or 1% of the estimated value of the credit.

The application must include a description of the project, the project's schedule, the estimated project expenditures and credit amount, and the estimated economic impact of the project in the state as a whole and in the community in which the project is located. The Director will rank applications based on their likely economic impact, the potential number of new jobs created, and the potential new payroll for employees in this state. After ranking the applications, the Director will award credits to projects in the order of their ranking, starting with the projects that have the greatest economic and workforce development impact.[15]

As with the existing production credit, once a project is approved and an accountant has certified the eligible expenditures, the Director will issue the production company a tax credit certificate.[16]

The credit will be available beginning in fiscal year 2024.[17]

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[13] R.C. 122.852(A)(3), (B), (E), (F), (I), and (J).

[14] R.C. 122.951 to 122.953, not in the bill.

[15] R.C. 122.852(B) and (C).

[16] R.C. 122.852(G).

[17] R.C. 122.852(A)(2).

HISTORY

Action	Date
Introduced	01-11-23

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