DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement

1. **Patron** Ghazala F. Hashmi

2. **Bill Number** SB 251

   House of Origin:
   X **Introduced**
   _____ **Substitute**
   _____ **Engrossed**

   Second House:
   _____ **In Committee**
   _____ **Substitute**
   _____ **Enrolled**

3. **Committee** Senate Finance and Appropriations

4. **Title** Content Manufacturing Tax Credit

5. **Summary/Purpose:**

This bill would rename the Motion Picture Production Tax Credit as the Content Manufacturing Tax Credit and would make the following changes to such tax credit:

- Increase the annual aggregate credit cap by $40 million from $6.5 million to $46.5 million for Fiscal Year 2024 and each fiscal year thereafter.
- Allow a carryover of the aggregate credit cap from one fiscal year to another fiscal year if the full cap is not utilized.
- Repeal the January 1, 2027 sunset date applicable to the credit.

After January 1, 2027, if investments in either new physical production infrastructure or new vendor establishments, or both, of $100 million have not occurred in Virginia, the annual aggregate credit cap would be reduced from $46.5 million per fiscal year to $10 million per fiscal year.

If enacted during the 2024 regular session of the General Assembly, this bill would become effective July 1, 2024.

6. **Budget amendment necessary:** Yes.
   Item(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department"), Virginia Film Office, and Virginia Tourism Authority consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2025.

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2025. The portion of this bill increasing the annual aggregate credit cap by $40 million from $6.5 million to $46.5 million would have an estimated negative General Fund revenue impact of approximately $40 million annually, with a greater impact of up to $80 million in Fiscal Year 2025. Due to the timing of the effective date of the legislation, the $40 million impact attributable to the aggregate credit cap increase for Fiscal Year 2024 could double the impact in Fiscal Year 2025 or, alternatively, increase the impact in subsequent years, depending on when the Virginia Film Office chooses to allocate the credits.

The portion of the bill that would allow unused portions of the fiscal year cap to be rolled over to increase a subsequent fiscal year's cap would create uncertainty in terms of when the impact would occur, which could shift revenues between fiscal years and result in an unknown, potentially significant, negative revenue impact in a particular fiscal year. The bill would provide an affirmative mechanism for permitting unallocated credits to pour over to future fiscal years for allocation to taxpayers. Therefore, for any given fiscal year, the credit as modified by this bill could have a negative revenue impact in excess of $46.5 million to the extent that such unallocated credits are provided to taxpayers in excess of the $46.5 million annual credit cap for a given fiscal year. The impact is unknown and would depend on the amount of unallocated credits that would accrue and be allocated in such years.

The portion of this bill reducing the annual aggregate credit cap from $46.5 million per fiscal year to $10 million per fiscal year if certain conditions are not met by January 1, 2027 would have an unknown negative General Fund revenue impact because it is unknown whether the specified conditions would not be met by January 1, 2027.

The portion of this bill that would repeal the January 1, 2027 sunset provision would have no impact on General Fund revenue because the extension of the sunset date for income tax credits is assumed in the official General Fund revenue forecast.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Film Office
Virginia Tourism Authority

10. Technical amendment necessary: No.

11. Other comments:

Motion Picture Production Tax Credit

During the 2011 Session, the General Assembly enacted the Motion Picture Production Tax Credit. This credit consists of a series of refundable individual and corporate income credits for motion picture production companies that meet certain criteria. A motion picture production company with qualifying expenses of at least $250,000 may receive a credit equal to 15 percent of qualifying expenses or 20 percent of qualifying expenses if the production is filmed in an economically distressed area of Virginia.

A motion picture production company may receive an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in Virginia when total production costs in Virginia are at least $250,000, but not more than $1 million. This additional credit is equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed $1 million.

A motion picture production company may also receive an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in Virginia.

“Qualifying expenses” are defined as the sum of the following amounts spent in Virginia by a production company for the production of a motion picture film or an episodic television series filmed in Virginia:

- Goods and services leased or purchased.
- Compensation and wages of up to $1 million per individual for personal services with respect to a single motion picture production.

The Virginia Film Office is generally responsible for administering the credit. The Department is responsible for administering the credit bank with respect to the majority of Virginia’s tax credits, including the Motion Picture Production Tax Credit.

The aggregate amount of all credits that may be allocated to taxpayers is capped at $6.5 million per fiscal year. Any allocated credits, below such amount, are carried forward and made available for allocation in future fiscal years.

The sunset date of the Motion Picture Production Tax Credit is currently January 1, 2027.

<u>Media-Related Sales and Use Tax Exemption</u>

Beginning July 1, 1995 and ending July 1, 2027, Virginia exempts the equipment, parts and accessories used in the production of audiovisual works, as well as

- The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or audiovisual work for the purpose of using or incorporation into an audiovisual work;

- The provision of production services or fabrication in connection with an audiovisual work; or

- The transfer or use of tangible personal property incident to the performance of such services or fabrication.

Sunset Dates for Income Tax Credits

During the 2012 Session, the General Assembly enacted House Bill 246 (2012 *Acts of Assembly*, Chapter 265), which prohibits legislation from adding a new credit or renewing an existing credit unless the legislation contains a sunset date of no longer than five years from the effective date of the new or renewed credit.

Proposed Legislation

This bill would rename the Motion Picture Production Tax Credit as the Content Manufacturing Tax Credit and would make the following changes to such tax credit:

- Increase the annual aggregate credit cap by $40 million from $6.5 million to $46.5 million for Fiscal Year 2024 and each fiscal year thereafter.

- Allow a carryover of the aggregate credit cap from one fiscal year to another fiscal year if the full cap is not utilized.

- Repeal the January 1, 2027 sunset date applicable to the credit.

After January 1, 2027, if investments in either new physical production infrastructure or new vendor establishments, or both, of $100 million have not occurred in Virginia, the annual aggregate credit cap would be reduced from $46.5 million per fiscal year to $10 million per fiscal year. The qualifying criteria used by the Virginia Tourism Authority in granting credits would be expanded to include the amount of capital investment in the Commonwealth.

"Eligible project" would be defined as the production of a motion picture or an episodic television series. "Eligible project" would not include any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

“Episodic television series" would be defined as a television program consisting of multiple episodes of a single season. In the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

"Physical production infrastructure" would be defined as buildings, facilities, and equipment located in Virginia and necessary for the production of eligible projects.

"Qualifying expenses" would be defined the same as under current law but would not include any expenses that were exempt from retail sales and use tax pursuant to the Virginia Retail Sales and Use Tax Act. However, if a taxpayer accrued such expenses at least one year prior to entering into a memorandum of understanding with the Virginia Tourism Authority pursuant and such expenses were exempt from retail sales and use tax, such expenses may be counted as qualifying expenses.

If enacted during the 2024 regular session of the General Assembly, this bill would become effective July 1, 2024.

Similar Legislation

House Bill 771 is identical to this bill.

cc : Secretary of Finance

Date: 2/5/2024 JLOF
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