

2010 CT S 176 , Enacted - Final

Connecticut

SUMMARY: Modifies provisions related to the film tax credit regarding total production expenses or costs including post production costs within the state and the definition of compensation.~SAME AS:

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/16/2010 INTRODUCED.

02/17/2010 To JOINT Committee on COMMERCE.

02/18/2010 Public Hearing Scheduled 02/25.

03/18/2010 From JOINT Committee on COMMERCE: Reported with substitute.

03/19/2010 Filed with Legislative Commissioner's Office.

03/22/2010 Referred to Office of Legislative Research and Office of Fiscal Analysis.

03/29/2010 Committee Substitute reported out of Legislative Commissioner's Office.

03/29/2010 Senate Calendar No. 118 .

03/29/2010 Reissued by Legislative Commissioner's Office with File No. 162

05/01/2010 SENATE adopted SENATE Amendment Schedule A 4661.

05/01/2010 To JOINT Committee on FINANCE, REVENUE AND BONDING.

05/04/2010 From JOINT Committee on FINANCE, REVENUE AND BONDING: Reported favorably.

05/04/2010 Filed with Legislative Commissioner's Office.

05/04/2010 Reported out of Legislative Commissioner's Office.

05/05/2010 Passed SENATE. *****To HOUSE.

05/05/2010 HOUSE Calendar No. 530.

05/05/2010 Rules suspended.

05/05/2010 HOUSE adopted SENATE Amendment Schedule A.

05/05/2010 Passed HOUSE.

05/18/2010 Enrolled PUBLIC ACT No. 10-107.

06/07/2010 Signed by GOVERNOR.

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session: Connecticut General Assembly - February Session, 2010

cite: 2010 CT S 176

Enacted - Final

June 7, 2010

Joint Committee on Commerce

Substitute Senate Bill No. 176

Public Act No. 10-107

AN ACT CONCERNING THE FILM TAX CREDIT.

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

Section 1. Section 12-217jj of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010):

(a) As used in this section:

- (1) “Commissioner” means the Commissioner of Revenue Services.
- (2) “Department” means the Department of Economic and Community Development.
- (3) (A) “Qualified production” means entertainment content created in whole or in part within the state, including motion pictures; documentaries; long-form, specials, mini-series, series, sound recordings, videos and music videos and interstitials television programming; interactive television; interactive games; videogames; commercials; any format of digital media, including an interactive web site, created for distribution or exhibition to the general public; and any trailer, pilot, video teaser or demo created primarily to stimulate the sale, marketing, promotion or exploitation of future investment in either a product or a qualified production via any means and media in any digital media format, film or videotape, provided such program meets all the underlying criteria of a qualified production.
- (B) “Qualified production” shall not include any ongoing television program created primarily as news, weather or financial market reports, a production featuring current events, sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production used for corporate training or in-house corporate advertising or other similar productions, or any production for which records are required to be maintained under 18 USC 2257 with respect to sexually explicit content.
- (4) “Eligible production company” means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions on a one-time or ongoing basis, and qualified by the Secretary of the State to engage in business in the state.
- (5) “Production expenses or costs” means all expenditures clearly and demonstrably incurred in the state in the ~~development,~~ preproduction, production or postproduction costs of a qualified production, including:
- (A) Expenditures incurred in the state in the form of either compensation or purchases including production work, production equipment not eligible for the infrastructure tax credit provided in section 12-217kk, *as amended by this act*, production software, postproduction work, postproduction equipment, postproduction software, set design, set construction, props, lighting, wardrobe, makeup, makeup accessories, special effects, visual effects, audio effects, film processing, music, sound mixing, editing, location fees, soundstages and any and all other costs or services directly incurred in connection with a state-certified qualified production;
- (B) Expenditures for distribution, including preproduction, production or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos and any and all content created on film or digital media, including the duplication of films, videos, CDs, DVDs and any and all digital files now in existence and those yet to be created for mass consumer consumption; the purchase, by a company in the state, of any and all equipment relating to the duplication or mass market distribution of any content created or produced in the state by any digital media format which is now in use and those formats yet to be created for mass consumer consumption; and
- (C) “Production expenses or costs” does not include the following: (i) On and after January 1, 2008, compensation in excess of fifteen million dollars paid to any individual or entity representing an individual, for services provided in the production of a qualified production and on or after January 1, 2010, compensation subject to Connecticut personal income tax in excess of twenty million dollars paid in the aggregate to any individuals or entities representing individuals, for star talent provided in the production of a qualified production; (ii) media buys, promotional events or gifts or public relations associated with the promotion or marketing of any qualified production; (iii) deferred, leveraged or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees and writer fees; (iv) costs relating to the transfer of the production tax credits; (v) any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and (vi) any expenses or costs relating to an independent certification, as required by subsection (c) of this section, or as the department may otherwise require, pertaining to the amount of production expenses or costs set forth by an eligible production company in its application for a production tax credit.
- (6) “Sound recording” means a recording of music, poetry or spoken-word performance, but does not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage or athletic event.
- (7) “State-certified qualified production” means a qualified production produced by an eligible production

company that (A) is in compliance with regulations adopted pursuant to subsection (g) of this section, (B) is authorized to conduct business in this state, and (C) has been approved by the department as qualifying for a production tax credit under this section.

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

(9) “Post-certification remedy” means the recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification or any other remedy that would have the effect of reducing or otherwise limiting the use of a tax credit provided by this section.

(10) “Compensation” means base salary or wages and does not include bonus pay, stock options, restricted stock units or similar arrangements.

(b) ~~(1)~~ The Department of Economic and Community Development shall administer a system of tax credit vouchers within the resources, requirements and purposes of this section for eligible production companies producing a state-certified qualified production in the state.

~~(A)~~ ***(1)*** For income years commencing on or after January 1, 2006, but prior to January 1, 2010, any eligible production company incurring production expenses or costs in excess of fifty thousand dollars shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to thirty per cent of such production expenses or costs.

~~(B)~~ ***(2)*** For income years commencing on or after January 1, 2010, ~~(i)~~ ***(A)*** any eligible production company incurring production expenses or costs of not less than one hundred thousand dollars, but not more than five hundred thousand dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to ten per cent of such production expenses or costs, ~~(ii)~~ ***(B)*** any such company incurring such expenses or costs of more than five hundred thousand dollars, but not more than one million dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to fifteen per cent of such production expenses or costs, and ~~(iii)~~ ***(C)*** any such company incurring such expenses or costs of more than one million dollars shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to thirty per cent of such production expenses or costs.

~~(C)~~ ***(c)*** No eligible production company incurring an amount of production expenses or costs that qualifies for such credit shall be eligible for such credit unless on or after January 1, 2010, such company conducts ***(A)*** not less than ~~fifty~~ ***twenty-five*** per cent of principal photography days within the state , or ***(B)*** expends not less than fifty per cent of postproduction costs within the state , ***or (C) expends not less than one million dollars of post production costs within the state*** .

~~(D)~~ ~~(i)~~ ***(d) (1)*** For income years commencing on or after January 1, 2009, but prior to January 1, 2010, fifty per cent of production expenses or costs shall be counted toward such credit when incurred outside the state and used within the state, and one hundred per cent of such expenses or costs shall be counted toward such credit when incurred within the state and used within the state.

~~(ii)~~ ***(2)*** For income years commencing on or after January 1, 2010, no expenses or costs incurred outside the state and used within the state shall be eligible for a credit, and one hundred per cent of such expenses or costs shall be counted toward such credit when incurred within the state and used within the state.

~~(2)~~ ***(e)*** On and after July 1, 2006, and for income years commencing on or after January 1, 2006, any credit allowed pursuant to this subsection may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, provided no credit, after issuance, may be sold, assigned or otherwise transferred, in whole or in part, more than three times.

~~(3)~~ ***(f)*** On and after July 1, 2006, and for income years commencing on or after January 1, 2006, all or part of any such credit allowed under this subsection shall be claimed against the tax imposed under chapter 207 or this chapter for the income year in which the production expenses or costs were incurred, or in the three immediately succeeding income years. Any production tax credit allowed under this subsection shall be nonrefundable.

~~(e)~~ ***(g)*** (1) An eligible production company shall apply to the department for a tax credit voucher on an

annual basis, but not later than ninety days after the first production expenses or costs are incurred in the production of a qualified production, and shall provide with such application such information as the department may require to determine such company's eligibility to claim a credit under this section. No production expenses or costs may be listed more than once for purposes of the tax credit voucher pursuant to this section, or pursuant to section 12-217kk , *as amended by this act*, or 12-217ll, and if a production expense or cost has been included in a claim for a credit, such production expense or cost may not be included in any subsequent claim for a credit.

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

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

~~(d)~~ (h) If an eligible production company sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. If such transferee sells, assigns or otherwise transfers a credit under this section to a subsequent transferee, such transferee and such subsequent transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. The notification after each transfer shall include the credit voucher number, the date of transfer, the amount of such credit transferred, the tax credit balance before and after the transfer, the tax identification numbers for both the transferor and the transferee, and any other information required by the department. Failure to comply with this subsection will result in a disallowance of the tax credit until there is full compliance on the part of the transferor and the transferee, and for a second or third transfer, on the part of all subsequent transferors and transferees. The department shall provide a copy of the notification of assignment to the commissioner upon request.

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

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

~~(g)~~ (k) The department, in consultation with the commissioner, shall adopt regulations, in accordance with the provisions of chapter 54, as may be necessary for the administration of this section.

Sec. 2. Subsection (b) of section 12-217kk of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010):

(b) (1) (A) For income years commencing prior to January 1, 2010, there shall be allowed a state-certified project credit against the tax imposed under chapter 207 or this chapter to any taxpayer that invests in a state-certified project. Such credit may be in the following amounts: (i) For state-certified projects costing greater than fifteen thousand dollars and less than one hundred fifty thousand dollars, each taxpayer may be allowed a tax credit of ten per cent of the investment made by such taxpayer; (ii) for state-certified projects costing one hundred fifty thousand dollars or more, but less than one million dollars, each taxpayer may be allowed a tax credit of fifteen per cent of the investment made by such taxpayer; and (iii) for state-certified projects costing one million dollars or more, each taxpayer may be allowed a tax credit of twenty per cent of

the investment made by such taxpayer.

(B) For income years commencing on or after January 1, 2010, there shall be allowed a state-certified project credit against the tax imposed under chapter 207 or this chapter to any taxpayer that invests three million dollars or more in a state-certified project in an amount equal to twenty per cent of the investment made by such taxpayer.

(2) Eligible expenditures pursuant to this section shall include the following: All expenditures for a capital project to provide buildings, facilities or installations, whether ~~leased or purchased~~ *a capital lease or purchase*, together with necessary equipment for a film, video, television, digital production facility or digital animation production facility; project development, including design, professional consulting fees and transaction costs; development, preproduction, production, post-production and distribution equipment and system access; and fixtures and other equipment.

(3) Any credit allowed pursuant to this section may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, and such taxpayers may sell, assign or otherwise transfer, in whole or in part, such credit. Any taxpayer holding such credit may claim such credit only for the income year in which expenditures were made by the taxpayer for the infrastructure project.

(4) Any credit allowed pursuant to this section shall be claimed against the tax imposed under chapter 207 or this chapter. If the amount of the credit allowable under this section exceeds the sum of any taxes due from a taxpayer, any such excess amount of the credit allowable under this section may be taken in any of the three immediately succeeding income years.

(5) Any tax credit earned under this section shall be nonrefundable.