

**STATE-LAW, 2005 SC H 3152 , Enacted, (May 9, 2005)**  
2005 SC H 3152 , Enacted

South Carolina

Changes in Bill text reflected as:

~~Text Deleted~~

**Text Added**

~~Text Vetoed~~

SUMMARY: Relates to the Motion Picture Incentive Act; includes an exemption from local, as well as state sales and use taxes; provides a rebate on all taxable wages; deletes a rebate to a motion picture production company for sales tax paid on accommodations; deletes the exemption for the proceeds of sales made to a motion picture company.-SAME\_\_AS:

Current Legislative Status

12/15/2004 PREFILED.

12/15/2004 To HOUSE Committee on WAYS AND MEANS.

01/11/2005 INTRODUCED.

01/11/2005 To HOUSE Committee on WAYS AND MEANS.

01/19/2005 From HOUSE Committee on WAYS AND MEANS: Reported favorably with amendment.

01/26/2005 Committee amendment adopted on HOUSE floor.

01/27/2005 Passed HOUSE. \*\*\*\*\*To SENATE.

01/27/2005 To SENATE Committee on FINANCE.

03/10/2005 From SENATE Committee on FINANCE: Reported favorably.

03/17/2005 Amended on SENATE floor.

03/18/2005 Passed SENATE. \*\*\*\*\*To HOUSE for concurrence.

03/31/2005 HOUSE concurred in SENATE amendments with additional amendments. \*\*\*\*\*To SENATE for concurrence.

04/06/2005 SENATE refused to concur in HOUSE amendments.

04/07/2005 HOUSE insists on amendments.

04/07/2005 \*\*\*\*\*To CONFERENCE Committee.

04/27/2005 CONFERENCE Committee Report adopted by HOUSE.

04/27/2005 CONFERENCE Committee Report adopted by SENATE.

04/28/2005 Ordered enrolled.

05/04/2005 \*\*\*\*\*To GOVERNOR.

05/09/2005 Signed by GOVERNOR.

05/25/2005 Act No. 56

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session: South Carolina 116th Session of the South Carolina General Assembly

cite: 2005 SC H 3152

Enacted

May 9, 2005

Harrell

SC H 3152

A BILL

TO AMEND CHAPTER 62 OF TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA MOTION PICTURE INCENTIVE ACT, SO AS TO INCLUDE AN EXEMPTION FROM LOCAL, AS WELL AS STATE, SALES AND USE TAXES, TO DEFINE "EMPLOYEE" FOR PURPOSES OF A FIVE PERCENT REBATE ON ALL TAXABLE WAGES PAID IN CONNECTION WITH AN EMPLOYEE'S WORK ON A MOTION PICTURE AND TO PROVIDE PROCEDURES FOR CLAIMING THE REBATE, TO INCREASE THE AMOUNT OF THE GENERAL FUND PORTION OF ADMISSIONS TAX COLLECTED BY THE STATE FUNDED TO THE USE OF THE SOUTH CAROLINA FILM COMMISSION TO TWENTY-SIX PERCENT AND TO PROVIDE THAT FIFTEEN PERCENT OF THAT AMOUNT MAY BE USED BY THE DEPARTMENT TO GIVE A REBATE FOR EXPENDITURES TO A MOTION PICTURE COMPANY THAT SPENDS AT LEAST ONE MILLION DOLLARS IN THE STATE; TO ALLOW UP TO SEVEN PERCENT OF THE GENERAL FUND PORTION OF ADMISSIONS TAX COLLECTED BY THE STATE AND FUNDED TO THE USE OF THE SOUTH CAROLINA FILM COMMISSION TO BE USED EXCLUSIVELY FOR MARKETING AND SPECIAL EVENTS, AND TO PROVIDE, FURTHER, THAT THE COMMISSION REPORT ANNUALLY TO THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT ON USE OF ALL ITS FUNDS IN A PUBLIC REPORT, ACCESSIBLE ON ITS WEBSITE; TO AMEND SECTION 12-36-920, AS AMENDED, RELATING TO SALES TAX ON GROSS PROCEEDS FROM RENTALS ON LODGINGS, SO AS TO DELETE A REBATE TO A MOTION PICTURE PRODUCTION COMPANY FOR SALES TAX PAID ON ACCOMMODATIONS; AND TO AMEND SECTION 1-30-25, AS AMENDED, RELATING TO THE DEPARTMENT OF COMMERCE, SO AS TO DELETE A REFERENCE TO THE STATE DEVELOPMENT BOARD.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 62, Title 12 of the 1976 Code, as added by Act 299 of 2004, is amended to read:

"CHAPTER 62

South Carolina Motion Picture Incentive Act

Section 12-62-10. This chapter may be cited as the 'South Carolina Motion Picture Incentive Act'.

Section 12-62-20. For purposes of this chapter:

(1) 'Company' means a corporation, partnership, limited liability company, or other business entity.

(2) 'Department' means the South Carolina Department of Commerce.

(3) 'Motion picture' means a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as

a television pilot produced by a motion picture production company. The term ' motion picture' does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

(4) 'Motion picture production company' means a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. 'Motion picture production company' does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

(5) 'Payroll' means salary, wages, or other compensation subject to South Carolina income tax withholdings.

(6) 'Secretary' means the Secretary of the Department of Commerce **or his designee** .

Section 12-62-30. ~~Notwithstanding the provisions of Section 12-36-2120(43),~~ A motion picture production company that intends to expend in the aggregate two hundred fifty thousand dollars or more in connection with the filming or production of one or more motion pictures in the State of South Carolina within a consecutive twelve-month period, upon making application for, meeting the requirements of, and receiving written certification of that designation from the department as provided in this chapter, shall be relieved from the payment of state **and local** sales and use taxes **administered and collected by the Department of Revenue** on funds expended in South Carolina in connection with the filming or production of a motion picture or pictures. The production of television coverage of news and athletic events is specifically excluded from the provisions of this chapter. ~~The provisions of this chapter do not apply to a sales and use tax levied by a local governmental subdivision.~~

Section 12-62-40. (A) A motion picture production company that intends to film all ~~,~~ or parts of ~~,~~ a motion picture in South Carolina and desires to be relieved from the payment of the state **and local** sales and use ~~tax~~ **taxes, administered and collected by the Department of Revenue,** as provided in this chapter shall provide an estimate of total expenditures expected to be made in South Carolina in connection with the filming or production of the motion picture. The estimate of expenditures must be filed with the department before the commencement of filming in South Carolina.

(B) At the time the motion picture production company provides the estimate of expenditures to the department, it also shall designate a member or representative of the motion picture production company to work with the department and the Department of Revenue on reporting of expenditures and other information necessary to take advantage of the tax relief afforded by this chapter.

(C)(1) An application for the tax relief provided by this chapter must be accepted only from those motion picture production companies that report anticipated expenditures in the State in the aggregate equal to or exceeding two hundred fifty thousand dollars in connection with the filming or production of one or more motion pictures in the State within a consecutive twelve-month period.

(2) The application must be approved by the ~~Director of the South Carolina Film Commission~~ **secretary** .

(3) Once the application is approved by the ~~Director of the South Carolina Film Commission~~ **secretary** , the Department of Revenue shall issue a ~~written certification of state~~-sales and use tax exemption **certificate** to the motion picture production company as evidence of the exemption. **The exemption is effective on the date the application is approved by the secretary.**

(D) A motion picture production company that is approved ~~for relief from the payment of sales and use taxes as provided by this chapter and that~~ **and receives a sales and use tax exemption certificate but** fails to expend two hundred fifty thousand dollars within a consecutive twelve-month period is liable for the sales and use taxes that would have been paid had the approval not been granted; except, that the motion picture production company must be given a sixty-day period in which to pay the sales and use taxes without incurring penalties. The sales and use taxes are considered due as of the date ~~that taxable expenditures are made~~ **the tangible personal property was purchased in or brought into South Carolina for use, storage, or consumption** .

**(E) Upon completion of the motion picture, the motion picture production company must return the sales and use tax exemption certificate to the Department of Revenue and submit a report to the department of the actual expenditures made in South Carolina in connection with the filming or production of the motion picture.**

Section 12-62-50. (A) ~~A motion picture production company is entitled to a tax rebate for the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate is equal to five percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina equal or exceed one million dollars during the taxable year. The rebate may not exceed the amount withheld on South Carolina income tax withholdings. For purposes of this section, 'total aggregate payroll' does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture.~~

~~(B) The rebate must be applied exclusively to film production employee payroll in South Carolina by the motion picture production company.~~

~~(C) The rebate must be distributed to the motion picture production company at the completion of physical production and support activities. This credit must follow the same procedures as established pursuant to Section 12-10-81(B)(1), (B)(2), (B)(6), (B)(8), and (G).~~ **(1) The South Carolina Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed fifteen percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina equal or exceed one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state's general fund. For purposes of this section, 'total aggregate payroll' does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture.**

(2)(a) For purposes of this section, an employee is an individual directly involved in the filming or post-production of a motion picture in South Carolina and who is an employee of a:

(i) motion picture production company that is directly involved in the filming or post-production of a motion picture in South Carolina; or

(ii) personal service corporation retained by a motion picture production company to provide persons used directly in the filming or post-production of a motion picture in South Carolina; or

(iii) payroll services or loan out company that is retained by a motion picture production company to provide employees who work directly in the filming or post-production of a motion picture in South Carolina.

(b) For his wages to qualify for the rebate, the employee must be certified by the department as a qualifying employee and the employee must have had South Carolina income tax withholding withheld and remitted to the Department of Revenue by a company described in item (2)(a).

(3) The rebate applies with respect to an employee described in subitem (a)(ii) or (iii) only if, before commencement of filming in South Carolina, the personal services corporation, payroll services company, or loan out company is approved and certified by the department, and makes an irrevocable assignment of its rebate to the motion picture production company that produced the motion picture. The assignment must be made on a form provided by the Department of Revenue, which must include a waiver of confidentiality pursuant to Section 12-54-240. Upon assignment, the rebate may be paid only to the motion picture production company.

(B)(1) The rebate provided in subsection (A) is available to the motion picture production company at the end of all filming in South Carolina in connection with the motion picture. The motion picture production company producing the motion picture must apply to the department for a certificate of completion once filming in South Carolina is complete. The motion picture production company must provide the information the department considers necessary to determine if the one million dollar-expenditure requirement has been met.

(2) A motion picture production company may claim the rebate by filing a request for rebate with the department once the certificate of completion is obtained. The request for rebate must be filed by the last day of February of the year following the year in which the certificate of completion is obtained. To claim the rebate, the motion picture production company and all companies described in subsection (A)(2)(a)(ii) or (iii) must be current with respect to all taxes due and owing the State at the time of filing the request for rebate. If the motion picture production company or a company described in subsection (A)(2)(a)(ii) or (iii) is not current with respect to all taxes due and owing the State, the motion picture production company is permanently barred from claiming the rebate.

(3) The motion picture production company must attach to its request for rebate a copy of the certificate of completion and a copy of all assignments of the rebate, if applicable.

(C) A motion picture production company claiming a rebate pursuant to this section, and all companies described in subsection (A)(2)(a)(ii) or (iii), must make payroll books and records available for inspection to the commission and the department at the times requested by the commission or the department. Each motion picture production company claiming the rebate, at the time of filing, must provide a report to both the commission and the department that includes the project's name, the name of each employee that worked on the motion picture, the social security number for each employee, the dates employed, the dates the employee worked on the motion picture, a job description for each employee, the total gross wages for each employee, the South Carolina taxable wages subject to withholding for each employee, the amount of rebate attributable to that employee, and other information considered necessary by the commission or the department. The report also must contain the total amount of withholding attributable to all employees that worked on the motion picture in South Carolina.

(D) For purposes of this section, and as an exception to Section 12-54-240, a motion picture production company and a company described in subsection (A)(2)(a)(ii) or (iii) agree that the commission and the department may share or provide information concerning the request for rebate and the certificate of completion among the respective taxpayers and the respective agencies.

Section 12-62-55. At the time the motion picture production company is certified by the department, it may make, with the approval of the Coordinating Council, an irrevocable assignment of future payments attributable to the rebates made pursuant to Section 12-62-40 or 12-62-50 to a designated trustee. For purposes of this chapter, 'designated trustee' means the single financier or financial institution designated by the council to receive all assignments of payments made pursuant to this chapter and to the terms of an agreement entered into by the qualifying motion picture production company. If a qualifying motion picture production company elects to assign payments to the designated trustee, the election must be made on a form provided by the department, including a waiver of confidentiality pursuant to Section 12-54-240, and the payments may be paid only to the designated trustee. The qualifying motion picture production company must file an application for the assignment with the secretary no later than thirty days after filming begins in South Carolina.

Section 12-62-60. (A)(1) An amount equal to ~~thirteen percent~~ **twenty-six percent** of the general fund portion of admissions tax collected by the State of South Carolina **for the previous fiscal year** must be funded annually **by September first** to the department for the exclusive use of the South Carolina Film Commission. The ~~South Carolina Film Commission department~~ may rebate to a motion picture production company up to ~~seven percent~~ **fifteen percent** of the ~~costs of goods and services purchased~~ **expenditures made** by the motion picture production company in the State if the motion picture production company has a minimum in-state expenditure of one million dollars. The distribution of rebates may not exceed the amount annually funded to the department for the South Carolina Film Commission from the admissions tax collected by the State.

(2) This subsection does not apply to payroll paid for motion picture production employees subject to Section 12-62-50 or money paid to the companies described in

**Section 12-62-50(A)(2)(a)(ii) or (iii). Unexpended funds from this source may be carried over to the next and succeeding fiscal years.**

**(B) Up to seven percent of the amount provided to the department in subsection (A) may be used exclusively for marketing and special events.**

~~(2)(C)~~ **(C)** The allocations to motion picture production companies contemplated by this chapter must be made by the Coordinating Council for Economic Development. The Coordinating Council for Economic Development may adopt rules and promulgate regulations for the application for and award of the rebate.

~~(B)(D)~~ **(D)** One percent of the general fund portion of admissions tax collected by the State of South Carolina must be funded to the department for the exclusive use of the South Carolina Film Commission for the promotion of collaborative production and educational efforts between institutions of higher learning in South Carolina and motion picture related entities. The department, in conjunction with the South Carolina Film Commission, shall adopt rules and promulgate regulations necessary to administer this section. **Unexpended funds from this source may be carried over to the next and succeeding fiscal years.**

**(E) The department shall report annually to the Coordinating Council on the use of all funds pursuant to this section. The report is a public record pursuant to the Freedom of Information Act, Chapter 4 of Title 30, and must be posted annually on the commission's website by January first.**

Section 12-62-70. (A)(1) Upon a determination by the Director of the Office of General Services Division of the South Carolina Budget and Control Board of the underutilization of state property by a state agency, the ~~South Carolina Film Commission~~ **department** may negotiate below-market rates for temporary use, no more than twelve months, of space for the underutilized property. The negotiations and temporary use are exempt from the provisions of the State Consolidated Procurement Code. The motion picture production company shall reimburse costs at normal and customary rates incurred by the state agency to the state agency, including costs required to repair any damage caused by the motion picture production company to real or personal property of the State.

(2) The state agency or local political subdivision that owns the property determined to be underutilized may appeal that determination of underutilization to the Budget and Control Board.

(B) The State or its political subdivisions may not charge a location **or facility** fee for properties they own if the properties are used for seven or fewer days as a location **or facility** in the production of a motion picture. A property may be used for a total of only twenty-one days without location **or facility** fees in a calendar year. The motion picture production company may be on site no longer than seven days within a thirty-day period without a location **or facility** fee charge. State-owned or political subdivision-owned properties may recoup all costs they expend on behalf **and at the direction** of the motion picture production company ~~. including State-owned or political subdivision-owned properties also may recoup a location or facility fee , after the first seven days,~~ not to exceed two thousand five hundred dollars a day. ~~Whenever possible, the public entity must direct the public property contribution to a charitable entity that is recognized as exempt under Section 501(c)(3) of the Internal Revenue Code.~~ State-owned or political subdivision-owned properties also may recoup costs required to repair damage caused by the

motion picture production company to real or personal property of the state agency or political subdivision. The motion picture production company shall reimburse all costs, at the property's normal and customary rates, to the state agency or political subdivisions incurring the costs within twenty-one calendar days of completion of production activities on site. The motion picture production company may use the publicly-owned property only on the days agreed to and approved by the state agency or political subdivision.

Section 12-62-80. The department may form a South Carolina Film Foundation to solicit donations for the recruitment of motion pictures in furtherance of the purposes of this chapter.

Section 12-62-90. The end credit roll of a motion picture that utilizes a South Carolina tax credit or rebate must recognize the State of South Carolina with the following statement: 'Filmed in South Carolina pursuant to the South Carolina Motion Picture Incentive Act'; except, that the State of South Carolina reserves the right to refuse the use of South Carolina's name in the credits of a motion picture filmed or produced in the State.

Section 12-62-100. To the extent not already provided, the department may adopt rules and promulgate regulations to carry out the intent and purposes of this chapter."

SECTION 2. Section 12-36-920(A) of the 1976 Code, as last amended by Act 299 of 2004, is further amended to read:

"(A) ~~(1)~~ A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individual's place of abode. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B).

~~(2) A motion picture production company producing a motion picture in the State of South Carolina, as those terms are defined in Chapter 62 of Title 12, is entitled to a rebate from the Department of Revenue of all of the sales taxes on accommodations paid by the motion picture production company for employees of the motion picture production company who have stayed in accommodations in South Carolina for an aggregate of thirty days over a twelve-month period. The motion picture production company must first submit to the Department of Revenue a certification as to the number of days its employees have stayed in accommodations in South Carolina. The rebate of accommodations taxes does not apply to the local accommodations tax authorized by Article 5, Chapter 1, Title 6."~~

SECTION 3. Section 1-30-25(D) of the 1976 Code, as last amended by Act 299 of 2004, is further amended to read:

"(D) ~~State Development Board~~ **Department of Commerce** , including the South Carolina Film Commission, ~~formerly provided for in Section 13-3-10, et seq.,~~ except that the department must



make reasonable rules and promulgate reasonable regulations to ensure that funds made available to film projects through its film commission are budgeted and spent so as to further the following objectives:

- (1) stimulation of economic activity to develop the potentialities of the State;
- (2) conservation, restoration, and development of the natural and physical, the human and social, and the economic and productive resources of the State;
- (3) promotion of a system of transportation for the State, through development and expansion of the highway, railroad, port, waterway, and airport systems;
- (4) promotion and correlation of state and local activity in planning public works projects;
- (5) promotion of public interest in the development of the State through cooperation with public agencies, private enterprises, and charitable and social institutions;
- (6) encouragement of industrial development, private business, commercial enterprise, agricultural production, transportation, and the utilization and investment of capital within the State;
- (7) assistance in the development of existing state and interstate trade, commerce, and markets for South Carolina goods and in the removal of barriers to the industrial, commercial, and agricultural development of the State;
- (8) assistance in ensuring stability in employment, increasing the opportunities for employment of the citizens of the State, devising ways and means to raise the living standards of the people of the State;
- (9) enhancement of the general welfare of the people; and
- (10) encouragement and consideration as appropriate so as to consider race, gender, and other demographic factors to ensure nondiscrimination, inclusion, and representation of all segments of the State to the greatest extent possible."

SECTION 4. This act takes effect upon approval by the Governor, and applies to taxable years beginning July 1, 2004, except that Sections 12-62-50(A)(1) and 12-62-60(A)(1) are effective July 1, 2005.