

SENATE BILL 536

Q3

2lr2588

By: ~~Senator McCray~~ **Senators McCray, Guzzone, Rosapepe, Corderman, Eckardt,
Edwards, Elfreth, Griffith, Jackson, King, Salling, Young, and Zucker**

Introduced and read first time: January 28, 2022

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 17, 2022

CHAPTER _____

1 AN ACT concerning

2 **Income Tax – Film Production Activity Tax Credit – Digital Animation Projects**

3 FOR the purpose of expanding eligibility for the credit against the State income tax for
4 certain film production activities to include certain digital animation projects; and
5 generally relating to the film production activity tax credit.

6 BY repealing and reenacting, with amendments,

7 Article – Tax – General

8 Section 10–730

9 Annotated Code of Maryland

10 (2016 Replacement Volume and 2021 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

12 That the Laws of Maryland read as follows:

13 **Article – Tax – General**

14 10–730.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) “Department” means the Department of Commerce.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (3) **“DIGITAL ANIMATION PROJECT” MEANS THE CREATION,**
2 **DEVELOPMENT, AND PRODUCTION OF COMPUTER–GENERATED ANIMATION**
3 **CONTENT FOR DISTRIBUTION OR EXHIBITION TO THE GENERAL PUBLIC.**

4 (4) (i) “Film production activity” means:

- 5 1. the production of a film or video project that is intended
6 for nationwide commercial distribution; and
- 7 2. for a television series, each season of the television series.

8 (ii) “Film production activity” includes the production of:

- 9 1. a feature film;
- 10 2. a television project;
- 11 3. a commercial;
- 12 4. a corporate film; [or]
- 13 5. a music video; **OR**
- 14 **6. A DIGITAL ANIMATION PROJECT.**

15 (iii) “Film production activity” does not include production of:

- 16 1. a student film;
- 17 2. a noncommercial personal video;
- 18 3. a sports broadcast;
- 19 4. a broadcast of a live event;
- 20 5. a talk show;
- 21 6. a video, computer, or social networking game;
- 22 7. pornography;
- 23 8. an infomercial;
- 24 9. [a digital project;

1 10.] A DIGITAL PROJECT OR an animation project OTHER
2 THAN A DIGITAL ANIMATION PROJECT; or

3 [11.] 10. a multimedia project.

4 [(4)] (5) “Maryland small or independent film entity” means a qualified
5 film production entity that:

6 (i) has been incorporated in Maryland for at least 3 months;

7 (ii) is independently owned and operated;

8 (iii) is not a subsidiary of another entity;

9 (iv) is not dominant in its field of operation;

10 (v) employs 25 or fewer full-time employees; and

11 (vi) employs Maryland residents as at least 40% of its workforce in
12 the film production activity.

13 [(5)] (6) “Pornography” means any production for which records are
14 required to be maintained under § 2257 of Title 18, U.S.C., with respect to any performer
15 in such production engaging in sexually explicit conduct.

16 [(6)] (7) “Qualified film production entity” means an entity that:

17 (i) is carrying out a film production activity; and

18 (ii) the Secretary determines to be eligible for the tax credit under
19 this section in accordance with subsection (c) of this section.

20 [(7)] (8) “Secretary” means the Secretary of Commerce.

21 [(8)] (9) “Television series” means a group of program episodes intended
22 for television broadcast or transmission with a common series title, with or without a
23 predetermined number of episodes, and shall include a miniseries and a pilot episode
24 produced for an intended television series.

25 [(9)] (10) (i) “Total direct costs”, with respect to a film production
26 activity, means the total costs incurred in the State that are necessary to carry out the film
27 production activity.

28 (ii) “Total direct costs” includes costs incurred for:

29 1. employee wages and benefits;

1 (b) (1) A qualified film production entity may claim a credit against the State
2 income tax for film production activities in the State in an amount equal to the amount
3 stated in the final tax credit certificate approved by the Secretary for film production
4 activities.

5 (2) If the tax credit allowed under this section in any taxable year exceeds
6 the total tax otherwise payable by the qualified film production entity for that taxable year,
7 the qualified film production entity may claim a refund in the amount of the excess.

8 (c) (1) Before beginning a film production activity, a film production entity
9 shall submit to the Department an application to qualify as a film production entity.

10 (2) The application shall describe the anticipated film production activity,
11 including:

12 (i) the projected total budget;

13 (ii) the estimated number of Maryland resident and out-of-state
14 employees and total wages to be paid; and

15 (iii) the anticipated dates for carrying out the major elements of the
16 film production activity.

17 (3) Except as provided in subsection (h) of this section, to qualify as a film
18 production entity, the estimated total direct costs incurred in the State must exceed
19 \$250,000.

20 (4) The application shall include any other information required by the
21 Secretary.

22 (5) For a film production entity with total direct costs that exceed \$250,000,
23 the Secretary may require the information provided in an application to be verified by an
24 independent auditor selected and paid for by the film production entity seeking
25 certification.

26 (6) The Secretary shall:

27 (i) determine if the film production entity qualifies for the credit
28 under this section; and

29 (ii) notify the Comptroller of the estimated amount of total direct
30 costs and the taxable year the credit will be claimed.

31 (d) (1) After completion of the film production activity, a qualified film
32 production entity shall apply to the Department for a tax credit certificate.

1 (2) The application shall be on a form required by the Secretary and shall
2 include:

3 (i) proof of the total direct costs that qualify for the tax credit; and

4 (ii) the number of employees hired and wages paid.

5 (3) Subject to subsections (f) and (h) of this section, the Secretary shall
6 determine the total direct costs that qualify for the tax credit and issue a tax credit
7 certificate for:

8 (i) except as provided in item (ii) of this paragraph, 25% of the total
9 direct costs that qualify for the tax credit; and

10 (ii) for a television series, 27% of the total direct costs that qualify
11 for the tax credit.

12 (e) (1) In accordance with § 2.5–109 of the Economic Development Article, the
13 Department shall submit a report that includes:

14 (i) the number of film production entities submitting applications
15 under subsection (c) of this section;

16 (ii) the number and amount of tax credit certificates issued under
17 subsection (d) of this section;

18 (iii) the number of local technicians, actors, and extras hired for film
19 production activity during the reporting period;

20 (iv) a list of companies doing business in the State, including hotels,
21 that directly provided goods or services for film production activity during the reporting
22 period;

23 (v) a list of companies doing business in the State that directly
24 provided goods or services for film production activity during the reporting period that
25 qualified during the reporting period as minority business enterprises under § 14–301(f) of
26 the State Finance and Procurement Article;

27 (vi) a list of companies doing business in the State that directly
28 provided goods or services for film production activity during the reporting period that, as
29 determined by the Department, are considered small businesses; and

30 (vii) any other information that indicates the economic benefits to the
31 State resulting from film production activity during the reporting period.

1 (2) On or before July 1 of each year, the Department shall report to the
2 Governor and, subject to § 2-1257 of the State Government Article, the General Assembly
3 on:

4 (i) the amount of tax credits necessary to maintain the current level
5 of film production activity in the State; and

6 (ii) the amount of tax credits necessary to attract new film
7 production activity to the State.

8 (f) (1) Except as provided in paragraph (2) of this subsection, the Secretary
9 may not issue tax credit certificates for credit amounts in the aggregate totaling more than:

10 (i) for fiscal year 2014, \$25,000,000;

11 (ii) for fiscal year 2015, \$7,500,000;

12 (iii) for fiscal year 2016, \$7,500,000;

13 (iv) for fiscal year 2019, \$8,000,000;

14 (v) for fiscal year 2020, \$11,000,000; and

15 (vi) for fiscal year 2021 and each fiscal year thereafter, \$12,000,000.

16 (2) If the aggregate credit amounts under the tax credit certificates issued
17 by the Secretary total less than the maximum provided under paragraph (1) of this
18 subsection in any fiscal year, any excess amount may be carried forward and issued under
19 tax credit certificates in a subsequent fiscal year.

20 (3) The Secretary may not issue tax credit certificates for credit amounts
21 totaling more than \$10,000,000 in the aggregate for a single film production activity.

22 (4) (i) For fiscal year 2019 and each fiscal year thereafter, the Secretary
23 shall make 10% of the credit amount authorized under paragraph (1) of this subsection
24 available for Maryland small or independent film entities.

25 (ii) If the total amount of credits applied for by Maryland small or
26 independent film entities is less than the amount made available under subparagraph (i)
27 of this paragraph, the Secretary shall make available the unused amount of credits for use
28 by qualified film production entities.

29 (g) (1) Except as provided in paragraph (2) of this subsection, a qualified film
30 production entity that receives a tax credit certificate under this section for a film
31 production activity shall include:

1 (i) for a feature film project, a 5-second long static or animated logo
2 that promotes the State in the end credits before the below-the-line crew crawl for the life
3 of the project and a link to the State's website on the project's website;

4 (ii) for a television series project, an embedded 5-second long static
5 or animated logo that promotes the State during each broadcast worldwide for the life of
6 the project and a link to the State's website on the project's website; or

7 (iii) for any other project, the State logo at the end of each project and
8 in online promotions.

9 (2) In lieu of including a State logo as required under paragraph (1) of this
10 subsection, the qualified film production entity may offer alternative marketing
11 opportunities to be evaluated by the Department to ensure that those opportunities offer
12 equal or greater promotional value to the State.

13 (h) (1) For a Maryland small or independent film entity to qualify as a film
14 production entity:

15 (i) the estimated total direct costs incurred in the State shall exceed
16 \$25,000; and

17 (ii) at least 50% of the filming of the film production activity must
18 occur within the State.

19 (2) The Secretary shall determine the total direct costs that qualify for the
20 tax credit and issue a tax credit certificate to a Maryland small or independent film entity
21 for 25% of the total direct costs that qualify for the tax credit, not to exceed \$125,000.

22 (i) The Department and the Comptroller jointly shall adopt regulations to carry
23 out the provisions of this section and to specify criteria and procedures for the application
24 for, approval of, and monitoring of continuing eligibility for the tax credit under this section.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2022, and shall be applicable to all taxable years beginning after December 31, 2021.