

HB 3145 3

FILED

2007 APR -2 PM 2: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3145**

(By Delegates Palumbo, Webster, Cann, Amores,
Doyle, DeLong and White)



Passed March 10, 2007

In Effect Ninety Days from Passage

FILED

2007 APR -2 PM 2:52

ENROLLED

OFFICE WEST VIRGINIA
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

H. B. 3145

(BY DELEGATES PALUMBO, WEBSTER, CANN, AMORES,
DOYLE, DELONG AND WHITE)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13W-1, §11-13W-2, §11-13W-3, §11-13W-4, §11-13W-5, §11-13W-6, §11-13W-7, §11-13W-8, §11-13W-9, §11-13W-10, §11-13W-11, §11-13W-12 and §11-13W-13, all relating to activities of the film industry in West Virginia; creating a tax credit on direct production and post production expenditures directly related to the production of film or commercial audiovisual products; requiring approval of the West Virginia development office; and providing for reports of the cost effectiveness of the credits and recommendations for the expansion of the film industry in West Virginia.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended thereto a new article, designated §11-13W-1, §11-13W-2, §11-13W-3, §11-13W-4, §11-13W-5, §11-13W-6, §11-13W-7,

§11-13W-8, §11-13W-9, §11-13W-10, §11-13W-11, §11-13W-12
and §11-13W-13, all to read as follows:

**ARTICLE 13W. WEST VIRGINIA FILM INDUSTRY
INVESTMENT ACT**

§11-13W-1. Short title.

1 This article may be cited as the “West Virginia Film
2 Industry Investment Act.”

§11-13W-2. Legislative findings and purpose.

1 The legislature finds that the encouragement of economic
2 growth through the production of motion pictures and other
3 commercial film or audiovisual projects in this state is in the
4 public interest and promotes the general welfare of the people
5 of this state. In order to encourage greater economic growth
6 and development in this state, there is hereby enacted the
7 West Virginia film industry investment act.

§11-13W-3. Definitions.

1 (a) *General* -- When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 of this section have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required by the
5 context in which the term is used.

6 (b) *Terms defined.*

7 (1) “Commercial film or audiovisual project” means a
8 “film,” as defined by this subsection, or videogame intended
9 for commercial exploitation.

10 (2) “Direct production expenditure” means a transaction
11 that is subject to taxation in the state of West Virginia,
12 including:

13 (A) Payment of wages, fringe benefits or fees for talent,
14 management, or labor to a person who is a resident of West
15 Virginia;

16 (B) Payment to a personal services corporation for the
17 services of a performing artist if:

18 (i) The personal services corporation pays West Virginia
19 income tax on those payments; and

20 (ii) The performing artist receiving payments from the
21 personal services corporation pays West Virginia income tax;
22 and

23 (C) Any of the following provided by a vendor:

24 (i) The story and scenario to be used by a film;

25 (ii) Set construction and operations, wardrobe,
26 accessories and related services;

27 (iii) Photography, sound synchronization, lighting, and
28 related services;

29 (iv) Editing and related services;

30 (v) Rental of facilities and equipment;

31 (vi) Leasing of vehicles;

32 (vii) Food or lodging;

33 (viii) Airfare if purchased through a West Virginia-based
34 travel agency or travel company;

35 (ix) Insurance coverage and bonding if purchased through
36 a West Virginia-based insurance agent; and

37 (x) Other direct costs of producing a film in accordance
38 with generally accepted entertainment industry practices.

39 (3) "Eligible film production company" means a person
40 or business entity that produces one or more "films" as
41 defined by this subsection.

42 (4) “Federal new markets tax credit program” means the
43 tax credit program codified as Section 45D of the United
44 States Internal Revenue Code of 1986, as amended;

45 (5) “Film” means any single media or multimedia
46 program, excluding advertising messages other than national
47 advertising messages intended for exhibition, that:

48 (A) Is fixed on film, digital medium, videotape, computer
49 disk, laser disc or other similar delivery medium;

50 (B) Can be viewed or reproduced;

51 (C) Is not intended to and does not violate a provision of
52 article eight-c, chapter sixty-one of this code;

53 (D) Does not contain “obscene matter” or “sexually
54 explicit conduct,” as defined by article eight-a, chapter
55 sixty-one, of this code; and

56 (E) Is intended for reasonable commercial exploitation
57 for the delivery medium used.

58 (6) “Postproduction expenditure” means an expenditure
59 that occurs after the completion of principal and ongoing
60 photography, including an expenditure for editing, Foley
61 recording, automatic dialogue replacement, sound editing,
62 special effects, including computer-generated imagery or
63 other effects, scoring and music editing, beginning and end
64 credits, negative cutting, soundtrack production, dubbing,
65 subtitling or addition of sound or visual effects; but not
66 including an expenditure for advertising, marketing,
67 distribution or expense payments.

68 (7) “Tax commissioner” means the state tax
69 commissioner or a designee of the state tax commissioner.

§11-13W-4. Creation of the tax credit.

1 An eligible film production company may apply for, and
2 the tax commissioner shall allow, a nonrefundable tax credit

3 in an amount equal to the percentage specified in section five
4 of this article of:

5 (1) Direct production expenditures made in West Virginia
6 that are directly attributable to the production in West
7 Virginia of a film or commercial audiovisual product and that
8 are subject to taxation by the state of West Virginia; and

9 (2) Postproduction expenditures made in West Virginia
10 that are:

11 (A) Directly attributable to the production of a
12 commercial film or audiovisual product;

13 (B) For services performed in West Virginia; and

14 (C) Subject to the taxation by the state of West Virginia.

§11-13W-5. Amount of credit allowed; limitation of the credits.

1 (a) *Base allowance.* – (1) The amount allowed to every
2 eligible film production company, except as provided in
3 subsection (b) of this section, shall be twenty-two percent;
4 and

5 (2) For taxable years beginning prior to the first day of
6 January, two thousand ten, an additional five percent.

7 (b) *Extra allowance for hiring of local workers.* -- Any
8 amount allowed in subsection (a) of this section shall be
9 increased by:

10 (1) An additional two percent if the eligible film
11 production company, or its authorized payroll service
12 company, employs ten or more West Virginia residents as
13 part of its full time employees working in the state or as
14 apprentices working in the state.

15 (2) An additional two percent above the credit allowed
16 under paragraph (1) of this subsection if at least twenty-five
17 percent the full-time workforce of the eligible film

18 production company, or its authorized payroll service
19 company, is comprised of residents of West Virginia.

20 (c) *Application of the credits.* – The tax credit allowed
21 under this section shall be applied to the eligible production
22 company’s state tax burden as provided in section seven of
23 this article.

24 (d) *Limitation of the credits.* – No more than ten million
25 dollars of the tax credits shall be allocated by the tax
26 commissioner in any given taxable year. The tax
27 commissioner shall allocate the tax credits in the order the
28 applications therefor are received.

29 (e) The additional five percent tax credit amount
30 pursuant to subdivision (2), subsection (a) of this section
31 shall not be available with respect to expenditures attributable
32 to a production for which the film production company
33 receives a tax credit pursuant to the federal new markets tax
34 credit program.

35 (f) The film production tax credit shall not be claimed
36 with respect to direct production expenditures or
37 postproduction expenditures for which the film production
38 company has claimed an exemption from taxation pursuant
39 to article fifteen or article fifteen-a of this chapter.

§11-13W-6. Requirements for credit.

1 (a) In order for any eligible film production company to
2 claim a tax credit under this article, it shall comply with the
3 following requirements:

4 (1) If the commercial film or audiovisual project is a
5 motion picture, agree that the phrase “filmed in West
6 Virginia” shall appear in the closing credits of the motion
7 picture;

8 (2) Apply to the tax commissioner on forms and in the
9 manner the commissioner may prescribe; and

10 (3) Submit to the West Virginia development office
11 information required by the development office to
12 demonstrate conformity with the requirements of this section
13 and shall agree in writing:

14 (1) To pay all obligations the film production company
15 has incurred in West Virginia;

16 (2) To publish, at completion of principal photography,
17 a notice at least once a week for three consecutive weeks in
18 local newspapers in regions where filming has taken place to
19 notify the public of the need to file creditor claims against the
20 film production company by a specified date;

21 (3) That outstanding obligations are not waived should a
22 creditor fail to file by the specified date; and

23 (4) To delay filing of a claim for the film production tax
24 credit until the development office delivers written
25 notification to the tax commissioner that the film production
26 company has fulfilled all requirements for the credit.

27 The development office shall determine the eligibility of
28 the company and shall report this information to the tax
29 commissioner in a manner and at times the development
30 office and the tax commissioner shall agree upon.

31 (b) The application to the tax commissioner shall include
32 a certificate of the amount of direct production expenditures
33 or post production expenditures made in West Virginia for
34 which the film production company is seeking the film
35 production tax credit.

36 (c) If the eligible film production company is claiming a
37 film tax credit under subsection (b), section five of this
38 article, the eligible film production company shall also
39 provide to the tax commissioner a list of the names and social
40 security numbers of all West Virginia residents employed full
41 time or hired as apprentices in the state on the commercial
42 film or audiovisual project for which the film tax credit is
43 being sought.

44 (d) If the requirements of this section have been complied
45 with, the tax commissioner shall approve the film tax credit
46 and issue a document granting the appropriate tax credit.

§11-13W-7. Application of credit to state taxes.

1 (a) *Credit allowed.* -- Beginning in the taxable year that
2 the expenditures permitted under section four of this article
3 are incurred, eligible film production companies and owners
4 of eligible film production companies, as described in
5 subsection (d) of this section, are permitted a credit, as
6 described in section five of this article, against the taxes
7 imposed by articles twenty-three, twenty-four and twenty-one
8 of this chapter, in that order, as specified in this section.

9 (b) *Business franchise tax.* -- The credit is first applied to
10 reduce the taxes imposed by article twenty-three of this
11 chapter for the taxable year, determined after application of
12 the credits against tax provided in section seventeen of said
13 article. but before application of any other allowable credits
14 against tax.

15 (c) *Corporation net income taxes.* -- After application of
16 subsection (b) of this section, any unused credit is next
17 applied to reduce the taxes imposed by article twenty-four of
18 this chapter for the taxable year, determined before
19 application of allowable credits against tax.

20 (d) *Personal income tax.* -- (1) If the eligible taxpayer is
21 an electing small business corporation (as defined in section
22 1361 of the United States Internal Revenue Code of 1986, as
23 amended), a partnership, a limited liability company that is
24 treated as a partnership for federal income tax purposes or a
25 sole proprietorship, then any unused credit, after application
26 of subsections (b) and (c) of this subsection, is allowed as a
27 credit against the taxes imposed by article twenty-one of this
28 chapter on the income from business or other activity subject
29 to tax under article twenty-three of this chapter or on income
30 of a sole proprietor attributable to the business.

31 (2) Electing small business corporations, limited liability
32 companies, partnerships and other unincorporated

33 organizations shall allocate the credit allowed by this article
34 among its members in the same manner as profits and losses
35 are allocated for the taxable year.

**§11-13W-8. Uses of credit; unused credit; carry forward; carry
back prohibited; expiration and forfeiture
of credit.**

1 (a) No credit is allowed under this section against any
2 employer withholding taxes imposed by article twenty-one of
3 this chapter.

4 (b) If the tax credit allowed under this article in any
5 taxable year exceeds the sum of the taxes enumerated in
6 subsections (b),(c) or (d), section seven of this article for that
7 taxable year, the excess may be applied against those taxes,
8 in the order and manner stated in section seven of this article,
9 for succeeding taxable years until the earlier of the following:

10 (1) The full amount of the excess tax credit is used; or

11 (2) The expiration of the second taxable year after the
12 taxable year in which the expenditures occurred. The tax
13 credit remaining thereafter is forfeited.

14 (c) No carryback to a prior taxable year is allowed for the
15 amount of any unused portion of any annual credit allowance.

§11-13W-9. Legislative rules.

1 The tax commissioner shall propose for promulgation
2 rules pursuant to the provisions of article three, chapter
3 twenty-nine-a of this code, as may be necessary to carry out
4 the purposes of this article.

§11-13W-10. Burden of proof.

1 The burden of proof is on the film production company
2 claiming the credit allowed by this article to establish by
3 clear and convincing evidence that the film production
4 company is entitled to the amount of credit asserted for the
5 taxable year.

§11-13W-11. Tax credit review and accountability.

1 (a) Beginning on the first day of the third taxable year
2 after the passage of this article and every two years
3 thereafter, the tax commissioner shall submit to the governor,
4 the president of the Senate and the speaker of the House of
5 Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the film industry
7 investment act during the most recent two-year period for
8 which information is available. The criteria to be evaluated
9 shall include, but not limited to, for each year of the two-year
10 period:

11 (1) The number of eligible production companies
12 claiming the credit;

13 (2) The number of new jobs, if any, created by the tax
14 credit; and

15 (3) The cost of the credit.

16 (b) Eligible production companies claiming the credit
17 shall provide any information the tax commissioner may
18 require to prepare the report: *Provided*, That the information
19 provided is subject to the confidentiality and disclosure
20 provisions of section five-d and five-s, article ten of this
21 chapter.

§11-13W-12. Economic Development.

1 The development office, in consultation and coordination
2 with the appropriate public and private entities, shall
3 promote, foster, encourage and monitor the development of
4 the film industry in this state as part of its comprehensive
5 economic development strategy for West Virginia and report
6 recommendations for expanding the industry in the state to
7 the Governor and the Joint Committee on Government and
8 Finance annually on or before the first day of December.

§11-13W-13. Effective date.

1 The credit allowed by this article shall be allowed upon
2 eligible expenditures occurring after the thirty-first day of
3 December, two thousand seven.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

[Handwritten Signature]

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Handwritten Signature]

Clerk of the Senate

[Handwritten Signature]

Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within is approved this the 2nd
day of April, 2007.

[Handwritten Signature]

Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time: *4:05 pm*