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
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-1. Short title.

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

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

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


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

(b) Terms defined.

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

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

(A) Payment of wages, fringe benefits or fees for talent, management, or labor to a person who is a resident of West Virginia;
(B) Payment to a personal services corporation for the services of a performing artist if:

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

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

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

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

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

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

(iv) Editing and related services;

(v) Rental of facilities and equipment;

(vi) Leasing of vehicles;

(vii) Food or lodging;

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

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

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

(3) “Eligible film production company” means a person or business entity that produces one or more “films” as defined by this subsection.
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(4) “Federal new markets tax credit program” means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

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

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

(B) Can be viewed or reproduced;

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

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

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

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

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

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

An eligible film production company may apply for, and the tax commissioner shall allow, a nonrefundable tax credit
in an amount equal to the percentage specified in section five
of this article of:

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

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

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

(B) For services performed in West Virginia; and

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

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

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

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

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

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

(2) An additional two percent above the credit allowed
under paragraph (1) of this subsection if at least twenty-five
percent the full-time workforce of the eligible film
production company, or its authorized payroll service
company, is comprised of residents of West Virginia.

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

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

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

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

§11-13W-6. Requirements for credit.

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

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

(2) Apply to the tax commissioner on forms and in the
manner the commissioner may prescribe; and
(3) Submit to the West Virginia development office information required by the development office to demonstrate conformity with the requirements of this section and shall agree in writing:

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

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

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

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

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

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

(c) If the eligible film production company is claiming a film tax credit under subsection (b), section five of this article, the eligible film production company shall also provide to the tax commissioner a list of the names and social security numbers of all West Virginia residents employed full time or hired as apprentices in the state on the commercial film or audiovisual project for which the film tax credit is being sought.
(d) If the requirements of this section have been complied with, the tax commissioner shall approve the film tax credit and issue a document granting the appropriate tax credit.

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

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

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

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

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

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated
organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

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

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

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

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

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

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


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


The burden of proof is on the film production company claiming the credit allowed by this article to establish by clear and convincing evidence that the film production company is entitled to the amount of credit asserted for the taxable year.
§11-13W-11. Tax credit review and accountability.

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

1. The number of eligible production companies claiming the credit;

2. The number of new jobs, if any, created by the tax credit; and

3. The cost of the credit.

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


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

The credit allowed by this article shall be allowed upon eligible expenditures occurring after the thirty-first day of December, two thousand seven.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th day of April, 2007.

Governor