

# CO H 1358, Enrolled

Colorado

SUMMARY: Adds established payments to loan-out companies as a qualified local expenditure for the purpose of qualifying for the film incentive income tax credit removes a condition that the credit is available only in years that the amount of state revenues is in excess of the limitation of state fiscal year spending by at least specified amount; extends the deadline for a tax credit effectiveness study to be submitted to the finance committees of the house of representatives.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

03/04/2024 INTRODUCED.

03/04/2024 To HOUSE Committee on FINANCE.

03/21/2024 From HOUSE Committee on FINANCE: Reported favorably.

03/21/2024 To HOUSE Committee on APPROPRIATIONS.

04/25/2024 From HOUSE Committee on APPROPRIATIONS: Reported favorably with amendment.

04/25/2024 In HOUSE. To second reading.

04/25/2024 Committee amendment adopted on HOUSE floor.

04/25/2024 In HOUSE. Read second time and amended. To third reading.

04/26/2024 In HOUSE. Read third time. Passed HOUSE. \*\*\*\*\*To SENATE.

04/29/2024 To SENATE Committee on FINANCE.

04/30/2024 From SENATE Committee on FINANCE: Reported favorably.

04/30/2024 To SENATE Committee on APPROPRIATIONS.

05/04/2024 From SENATE Committee on APPROPRIATIONS: Reported favorably.

05/04/2024 In SENATE. To second reading.

05/07/2024 In SENATE. Read second time. To third reading.

05/08/2024 In SENATE. Read third time. Passed SENATE.

05/15/2024 Eligible for GOVERNOR'S desk.

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session: Colorado 2nd Regular Session of the 74th General Assembly

cite: 2024 CO H 1358

Enrolled

May 15, 2024

Herod

AN ACT

HOUSE BILL 24-1358

BY REPRESENTATIVE(S) Herod and Snyder, Amabile, Bacon, Bird, Boesenecker, Daugherty, Duran, English, Froelich, Garcia, Hamrick, Hernandez, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Marvin, Mauro, McCormick, McLachlan, Ortiz, Ricks, Sirota, Titone, Valdez, Velasco, Willford, Woodrow, Young, McCluskie;

also SENATOR(S) Mullica and Baisley, Cutter, Jaquez Lewis, Michaelson Jenet, Priola, Sullivan.

CONCERNING THE FILM INCENTIVE INCOME TAX CREDIT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 39-22-559, **amend** (2)(i)(VIII), (2)(i)(IX), **(3)**, (5)(a), **(6)(a) introductory portion, (6)(a)(I), (6)(a)(II) introductory portion, (6)(b), (6)(c)(I), (6)(c)(II)(A), (6)(d), (7)**, and (8); **add** (2)(i)(X); and **repeal** (5)(b) as follows:

**39-22-559. Film incentive tax credit - tax preference performance statement - review - legislative declaration - definitions - repeal.** (2) As used in this section, unless the context otherwise requires:

(i) "Qualified local expenditure" means a payment made by a production company operating in Colorado to a person or business in Colorado in connection with production activities in Colorado. "Qualified local expenditure" includes, but need not be limited to:

(VIII) Payments for other direct costs incurred by the film production company that are deemed appropriate by the office; ~~and~~

(IX) Payments of up to one million dollars per employee or contractor, made by a production company to pay the wages or salaries of employees or contractors who participate in the production activities. In order for any wage or salary to be considered a qualified local expenditure, all Colorado income taxes shall be withheld and paid either by the production company or the individual. Any payments in excess of one million dollars per employee or contractor shall be excluded ; **AND**

**(X) PAYMENTS OF UP TO ONE MILLION DOLLARS PER CALENDAR YEAR PER PERSONAL SERVICE CORPORATION, AS DEFINED IN SECTION 24-48.5-114 (4.5)(a), MADE BY A PRODUCTION COMPANY TO A PERSONAL SERVICE CORPORATION TO PAY THE WAGES OR SALARIES OF AN EMPLOYEE-OWNER OF THE PERSONAL SERVICE CORPORATION, AS DEFINED IN SECTION 24-48.5-114 (4.5)(b), WHO PARTICIPATES IN THE PRODUCTION ACTIVITIES. IN ORDER FOR ANY WAGE OR SALARY TO BE CONSIDERED A QUALIFIED LOCAL EXPENDITURE, THE PRODUCTION COMPANY MUST FILE AN INFORMATION RETURN PURSUANT TO SECTION 39-22-604 (21) REGARDING THE PAYMENTS MADE TO THE PERSONAL SERVICE CORPORATION. ANY PAYMENTS IN EXCESS OF ONE MILLION DOLLARS PER PERSONAL SERVICE CORPORATION ARE EXCLUDED.**

(3) Subject to the limitations set forth in ~~subsection (5)~~ **SUBSECTIONS (5) AND (6)** of this section, for income tax years commencing on or after January 1, 2024, ~~but before January 1, 2025; JANUARY 1, 2032~~, there shall be allowed a film incentive tax credit with respect to income taxes imposed pursuant to this article 22 to any production company **MAKING AT LEAST ONE HUNDRED THOUSAND DOLLARS IN ACTUAL QUALIFIED LOCAL EXPENDITURES AND** employing a workforce for any in-state production activity made up of at least fifty percent Colorado residents in ~~the AN amount equal to:~~ **NOT TO EXCEED TWENTY-TWO PERCENT OF THE ACTUAL QUALIFIED LOCAL EXPENDITURES.**

~~(a) Twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds one hundred thousand dollars for a production company that originates production activities in Colorado;~~

~~(b) Twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds two hundred fifty thousand dollars for a production company that produces a television commercial or video game and that does not originate production activities in Colorado but employs a workforce made up of at least fifty percent Colorado residents for any in-state production activity; and~~

~~(c) Twenty-two percent of the total amount of the production company's qualified local expenditures if the executive director of the office of economic development determines, in the executive director's discretion, that the production company meets the criteria of either subsection (3)(a) or (3)(b) of this section and filmed in a rural community, or a marginalized urban center or used local infrastructure when filming.~~

~~(5) (a) For the income tax year that commences during the 2024 calendar year, AND FOR EACH CALENDAR YEAR THEREAFTER, the maximum aggregate amount of all tax credits allowed pursuant to subsection (3) THAT THE OFFICE MAY RESERVE PURSUANT TO SUBSECTION (6) of this section is five million dollars PER CALENDAR YEAR. if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, the controller certifies that, for the state fiscal year that includes the first day of the calendar year the amount of state revenues in excess of the limitation of state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for the state fiscal year that the voters of the state have not authorized the state to retain and spend and that are not required to be refunded pursuant to a refund mechanism set forth in sections 39-3-209, 39-3-210, or any other section other than the refund mechanisms described in part 20 of article 22 of this title 39 is at least fifty million dollars.~~

~~(b) For all income tax years that commence in a single calendar year, if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, the controller certifies that, for the state fiscal year that includes the first day of the calendar year, the amount of state revenues in excess of the limitation of state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for the state fiscal year that the voters of the state have not authorized the state to retain and spend and that are not required to be refunded pursuant to a refund mechanism set forth in sections 39-3-209, 39-3-210, or any other section other than the refund mechanisms described in part 20 of article 22 of this title 39 is less than fifty million dollars, then the tax credit otherwise allowed under subsection (3) of this section is not allowed for those income tax years unless the general assembly, acting by bill, specifies a maximum aggregate amount of such tax credits that is allowed for that income tax year.~~

*(6) (a) For a production company to claim a tax credit pursuant to subsection (3) of this section, the production company must apply to the office FOR A TAX CREDIT RESERVATION, in a manner to be determined by the office prior to beginning production activities in the state for the project for which the production company is seeking a tax credit. The application FOR A TAX CREDIT RESERVATION must include a statement of intent by the production company to produce a film in Colorado for which the production company will be eligible to receive the tax credit. The production company must submit, in conjunction with the application, any documentation necessary to demonstrate that:*

*(I) The production company's projected qualified local expenditures will satisfy the minimum expenditures requirements EXPENDITURE REQUIREMENT specified in subsection (3)(a) or (3)(b) SUBSECTION (3) of this section, as applicable and, if applicable, the requirements set forth in subsection (3)(c) of this section; and*

*(II) If the production company seeks a tax credit specified in subsection (3)(a) SUBSECTION (3) of this section, the production company will originate production activities in Colorado, including copies of income tax forms, proof of voter registration, or copies of utility bills, to provide documentary evidence that, as of the date of applying for a tax credit:*

*(b) (I) The office shall review each application FOR A TAX CREDIT RESERVATION submitted by a production company before the production company begins work on a film in Colorado. Based on the information provided in the production company's application the office shall make an initial determination of whether the production company will be eligible to receive a tax credit and estimate the amount of the tax credit that may be granted to the production company. The office, with the approval of the Colorado economic development commission created in section 24-46-102, shall grant conditional written approval to a production company that, based on the information provided by the production company and on an analysis of such information by the office and the Colorado economic development commission, the production company will satisfy the requirements of subsection (3) of this section and be eligible to claim a tax credit. The office shall not grant conditional written approval to a production company until the production company and the office have entered into a contract. FOR A TAX CREDIT RESERVATION, THE OFFICE MAY DETERMINE THAT A PRODUCTION COMPANY IS ENTITLED TO A TAX CREDIT RESERVATION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. THE OFFICE*

SHALL ISSUE TAX CREDIT RESERVATIONS SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SUBSECTION (6) AND IN SUBSECTION (5) OF THIS SECTION. THE OFFICE SHALL NOT ISSUE TAX CREDIT RESERVATIONS AFTER DECEMBER 31, 2029.

(II) IF THE OFFICE RESERVES A TAX CREDIT FOR THE BENEFIT OF A PRODUCTION COMPANY, THE OFFICE SHALL NOTIFY THE PRODUCTION COMPANY IN WRITING OF THE RESERVATION AND THE AMOUNT RESERVED. THE RESERVATION OF A TAX CREDIT BY THE OFFICE FOR A PRODUCTION COMPANY DOES NOT ENTITLE THE PRODUCTION COMPANY TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE UNTIL THE PRODUCTION COMPANY COMPLIES WITH ALL OF THE OTHER REQUIREMENTS SPECIFIED IN THIS SECTION FOR THE ISSUANCE OF THE TAX CREDIT CERTIFICATE. WHEN THE OFFICE APPROVES A TAX CREDIT RESERVATION, THE OFFICE MAY ALSO IMPOSE ADDITIONAL REQUIREMENTS, WHICH A PRODUCTION COMPANY SHALL SATISFY AS PART OF COMPLETING THE PRODUCTION ACTIVITIES BEFORE A TAX CREDIT CERTIFICATE IS ISSUED TO THE PRODUCTION COMPANY.

(III) IF APPROVED, THE OFFICE MAY ISSUE A TAX CREDIT RESERVATION TO A PRODUCTION COMPANY IN AN AMOUNT NOT TO EXCEED TWENTY-TWO PERCENT OF THE ESTIMATED QUALIFIED LOCAL EXPENDITURES.

(c) (I) (A) A PRODUCTION COMPANY SHALL COMPLETE THE PRODUCTION ACTIVITIES IN COLORADO ON OR BEFORE DECEMBER 31, 2031. Upon completion of the production activities in Colorado, a production company that received ~~conditional approval for~~ a tax credit RESERVATION from the office must retain a certified public accountant ~~liceneed~~ LICENSED to practice in the state or a certified public accounting firm that is registered in the state, to review and report in writing, and in accordance with professional standards, regarding the accuracy of the financial documents that detail the expenses incurred in the course of the film production activities in Colorado. The certified public accountant's written report must include documentation of the production company's expenditures, including its actual qualified local expenditures, and any documentation necessary to show that the production company employed a workforce for the in-state production activities made up of at least fifty percent Colorado residents. When the production company provides a copy of the certified public accountant's written report and the production company certifies in writing to the office that the amount of the production company's actual qualified local expenditures equals or exceeds the applicable minimum total amount of the production company's qualified local expenditures as specified in subsection (3) of this section, the office shall conduct a review of the certified public accountant's written report to ensure the requirements of this section are met. If the office is satisfied that the requirements of this section are met, and the office confirms that the certified public accountant who provided the written report is from the list described in subsection (6)(c)(II)(B) of this section, then the office shall issue to the production company a tax credit certificate that evidences the production company's right to claim the tax credit allowed under subsection (3) of this section. The tax credit certificate must include the taxpayer's name, the taxpayer's social security number or federal employer identification number, the approved tax credit amount, the income tax year for which the tax credit is being allowed, and any other information that the executive director of the department of revenue may require. ~~The office shall not issue tax credit certificates for all income tax years that commence in a single income tax year in excess of the maximum aggregate amount for such income tax years.~~

(B) IF THE OFFICE DETERMINES THAT A PRODUCTION COMPANY HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (6), THE OFFICE SHALL NOTIFY THE PRODUCTION COMPANY AND MAY RESCIND THE TAX CREDIT RESERVATION. IF THE OFFICE RESCINDS THE TAX CREDIT RESERVATION, THE PRODUCTION COMPANY MAY SUBMIT A NEW TAX CREDIT RESERVATION APPLICATION PURSUANT TO THIS SUBSECTION (6). WHEN THE OFFICE RESCINDS A TAX CREDIT RESERVATION IN A CALENDAR YEAR, THE MAXIMUM AGGREGATE AMOUNT OF ALL TAX CREDITS THAT THE OFFICE MAY RESERVE IN THAT CALENDAR YEAR SET FORTH IN SUBSECTION (5)(a) OF THIS SECTION IS INCREASED BY THE AMOUNT OF THE RESCINDED TAX CREDIT RESERVATION.

*(II) (A) Any services provided by a certified public accountant to meet the requirements of this ~~subsection (5)(e)~~ SUBSECTION (6)(c) must be performed in Colorado.*

*(d) The office shall develop procedures for the administration of this section, including application guidelines for production companies applying to receive a tax credit RESERVATION.*

*(7) (a) A production company shall claim the credit allowed under subsection (3) of this section by including the credit certificate issued to the production company by the office pursuant to subsection (6)(c)(I) of this section with its income tax return for the income tax year for which the certificate was issued. If the amount of the tax credit exceeds the production company's income taxes due on the income of the production company for the income tax year, the excess credit is not carried forward and shall be refunded to the taxpayer.*

*(b) THE OFFICE SHALL, IN A SUFFICIENTLY TIMELY MANNER TO ALLOW THE DEPARTMENT TO PROCESS RETURNS CLAIMING THE INCOME TAX CREDIT ALLOWED IN THIS SECTION, PROVIDE THE DEPARTMENT WITH AN ELECTRONIC REPORT OF EACH PRODUCTION COMPANY TO WHICH THE OFFICE ISSUED A TAX CREDIT CERTIFICATE FOR THE PRECEDING INCOME TAX YEAR THAT INCLUDES THE FOLLOWING INFORMATION:*

*(I) THE PRODUCTION COMPANY'S NAME;*

*(II) THE AMOUNT OF THE INCOME TAX CREDIT; AND*

*(III) THE PRODUCTION COMPANY'S SOCIAL SECURITY NUMBER OR THE PRODUCTION COMPANY'S COLORADO ACCOUNT NUMBER AND FEDERAL EMPLOYER IDENTIFICATION NUMBER.*

*(8) The office of economic development and the office shall jointly review the effectiveness of the credit and report the results of the review to the house of representatives finance committee and the senate finance committee, or their successor committees, no later than ~~February 4, 2025~~, JULY 1, 2028.*

*SECTION 2. Appropriation. For the 2024-25 state fiscal year, \$29,120 is appropriated to the office of the governor for use by economic development programs. This appropriation is from the general fund. To implement this act, the office may use this appropriation for the Colorado office of film, television, and media.*

*SECTION 3. Appropriation. For the 2024-25 state fiscal year, \$400,000 is appropriated to the office of the governor for use by economic development programs. This appropriation is from the Colorado office of film, television, and media operational account cash fund created in section 24-48.5-116 (5)(a), C.R.S. To implement this act, the office may use this appropriation for the Colorado office of film, television, and media.*

**SECTION 4. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.