

SB3944



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3944

Introduced 1/21/2022, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

35 ILCS 5/213
35 ILCS 16/10
35 ILCS 16/46 new
30 ILCS 105/5.970 new

Amends the Illinois Income Tax Act and the Film Production Services Tax Credit Act of 2008. Provides that, if a film production credit is transferred by the taxpayer, then the transferor taxpayer shall pay to the Department of Commerce and Economic Opportunity a specified percentage of the amount transferred, which shall be deposited into the Illinois Production Workforce Development Fund. Provides that, for productions commencing on or after July 1, 2022, the term "Illinois labor expenditures" includes wages paid to non-residents, subject to certain limitations. Amends the State Finance Act to create the Illinois Production Workforce Development Fund. Effective immediately.

LRB102 24537 HLH 33771 b

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 213 as follows:

6 (35 ILCS 5/213)

7 Sec. 213. Film production services credit. For tax years
8 beginning on or after January 1, 2004, a taxpayer who has been
9 awarded a tax credit under the Film Production Services Tax
10 Credit Act or under the Film Production Services Tax Credit
11 Act of 2008 is entitled to a credit against the taxes imposed
12 under subsections (a) and (b) of Section 201 of this Act in an
13 amount determined by the Department of Commerce and Economic
14 Opportunity under those Acts. If the taxpayer is a partnership
15 or Subchapter S corporation, the credit is allowed to the
16 partners or shareholders in accordance with the determination
17 of income and distributive share of income under Sections 702
18 and 704 and Subchapter S of the Internal Revenue Code.

19 A transfer of this credit may be made by the taxpayer
20 earning the credit within one year after the credit is awarded
21 in accordance with rules adopted by the Department of Commerce
22 and Economic Opportunity. Beginning July 1, 2022, if a credit
23 is transferred under this Section by the taxpayer, then the

1 transferor taxpayer shall pay to the Department of Commerce
2 and Economic Opportunity, upon notification of a transfer,
3 2.5% of the transferred credit amount eligible for
4 non-resident wages, as described in Section 10 of the Film
5 Production Services Tax Credit Act of 2008, and an additional
6 0.25% of the total amount of the transferred credit that is not
7 calculated on non-resident wages, which shall be deposited
8 into the Illinois Production Workforce Development Fund.

9 The Department, in cooperation with the Department of
10 Commerce and Economic Opportunity, must prescribe rules to
11 enforce and administer the provisions of this Section. This
12 Section is exempt from the provisions of Section 250 of this
13 Act.

14 The credit may not be carried back. If the amount of the
15 credit exceeds the tax liability for the year, the excess may
16 be carried forward and applied to the tax liability of the 5
17 taxable years following the excess credit year. The credit
18 shall be applied to the earliest year for which there is a tax
19 liability. If there are credits from more than one tax year
20 that are available to offset a liability, the earlier credit
21 shall be applied first. In no event shall a credit under this
22 Section reduce the taxpayer's liability to less than zero.

23 (Source: P.A. 94-171, eff. 7-11-05; 95-720, eff. 5-27-08.)

24 Section 10. The Film Production Services Tax Credit Act of
25 2008 is amended by changing Section 10 and by adding Section 46

1 as follows:

2 (35 ILCS 16/10)

3 Sec. 10. Definitions. As used in this Act:

4 "Accredited production" means: (i) for productions
5 commencing before May 1, 2006, a film, video, or television
6 production that has been certified by the Department in which
7 the aggregate Illinois labor expenditures included in the cost
8 of the production, in the period that ends 12 months after the
9 time principal filming or taping of the production began,
10 exceed \$100,000 for productions of 30 minutes or longer, or
11 \$50,000 for productions of less than 30 minutes; and (ii) for
12 productions commencing on or after May 1, 2006, a film, video,
13 or television production that has been certified by the
14 Department in which the Illinois production spending included
15 in the cost of production in the period that ends 12 months
16 after the time principal filming or taping of the production
17 began exceeds \$100,000 for productions of 30 minutes or longer
18 or exceeds \$50,000 for productions of less than 30 minutes.

19 "Accredited production" does not include a production that:

20 (1) is news, current events, or public programming, or
21 a program that includes weather or market reports;

22 (2) is a talk show;

23 (3) is a production in respect of a game,
24 questionnaire, or contest;

25 (4) is a sports event or activity;

1 (5) is a gala presentation or awards show;

2 (6) is a finished production that solicits funds;

3 (7) is a production produced by a film production
4 company if records, as required by 18 U.S.C. 2257, are to
5 be maintained by that film production company with respect
6 to any performer portrayed in that single media or
7 multimedia program; or

8 (8) is a production produced primarily for industrial,
9 corporate, or institutional purposes.

10 "Accredited animated production" means an accredited
11 production in which movement and characters' performances are
12 created using a frame-by-frame technique and a significant
13 number of major characters are animated. Motion capture by
14 itself is not an animation technique.

15 "Accredited production certificate" means a certificate
16 issued by the Department certifying that the production is an
17 accredited production that meets the guidelines of this Act.

18 "Applicant" means a taxpayer that is a film production
19 company that is operating or has operated an accredited
20 production located within the State of Illinois and that (i)
21 owns the copyright in the accredited production throughout the
22 Illinois production period or (ii) has contracted directly
23 with the owner of the copyright in the accredited production
24 or a person acting on behalf of the owner to provide services
25 for the production, where the owner of the copyright is not an
26 eligible production corporation.

1 "Credit" means:

2 (1) for an accredited production approved by the
3 Department on or before January 1, 2005 and commencing
4 before May 1, 2006, the amount equal to 25% of the Illinois
5 labor expenditure approved by the Department. The
6 applicant is deemed to have paid, on its balance due day
7 for the year, an amount equal to 25% of its qualified
8 Illinois labor expenditure for the tax year. For Illinois
9 labor expenditures generated by the employment of
10 residents of geographic areas of high poverty or high
11 unemployment, as determined by the Department, in an
12 accredited production commencing before May 1, 2006 and
13 approved by the Department after January 1, 2005, the
14 applicant shall receive an enhanced credit of 10% in
15 addition to the 25% credit; and

16 (2) for an accredited production commencing on or
17 after May 1, 2006, the amount equal to:

18 (i) 20% of the Illinois production spending for
19 the taxable year; plus

20 (ii) 15% of the Illinois labor expenditures
21 generated by the employment of residents of geographic
22 areas of high poverty or high unemployment, as
23 determined by the Department; and

24 (3) for an accredited production commencing on or
25 after January 1, 2009, the amount equal to:

26 (i) 30% of the Illinois production spending for

1 the taxable year; plus
2 (ii) 15% of the Illinois labor expenditures
3 generated by the employment of residents of geographic
4 areas of high poverty or high unemployment, as
5 determined by the Department.

6 "Department" means the Department of Commerce and Economic
7 Opportunity.

8 "Director" means the Director of Commerce and Economic
9 Opportunity.

10 "Illinois labor expenditure" means salary or wages paid to
11 employees of the applicant for services on the accredited
12 production.

13 To qualify as an Illinois labor expenditure, the
14 expenditure must be:

15 (1) Reasonable in the circumstances.

16 (2) Included in the federal income tax basis of the
17 property.

18 (3) Incurred by the applicant for services on or after
19 January 1, 2004.

20 (4) Incurred for the production stages of the
21 accredited production, from the final script stage to the
22 end of the post-production stage.

23 (5) Limited to the first \$25,000 of wages paid or
24 incurred to each employee of a production commencing
25 before May 1, 2006 and the first \$100,000 of wages paid or
26 incurred to each employee of a production commencing on or

1 after May 1, 2006 and prior to July 1, 2022. For
2 productions commencing on or after July 1, 2022, limited
3 to the first \$500,000 of wages paid or incurred to each
4 non-resident or resident employee of a production company
5 or loan out company that provides in-State services to a
6 production, whether those wages are paid or incurred by
7 the production company, loan out company, or both, subject
8 to withholding payments provided for in Article 7 of the
9 Illinois Income Tax Act. For purposes of calculating
10 Illinois labor expenditures for a television series, the
11 non-resident wage limitations provided under this
12 subparagraph are applied to the entire season.

13 (6) For a production commencing before May 1, 2006,
14 exclusive of the salary or wages paid to or incurred for
15 the 2 highest paid employees of the production.

16 (7) Directly attributable to the accredited
17 production.

18 (8) (Blank).

19 (9) Prior to July 1, 2022, paid ~~paid~~ to persons
20 resident in Illinois at the time the payments were made.
21 For a production commencing on or after July 1, 2022, paid
22 to persons resident in Illinois and non-residents at the
23 time the payments were made. For purposes of this
24 subparagraph, only wages paid to non-residents working in
25 the following positions shall be considered Illinois labor
26 expenditures: Writer, Director, Director of Photography,

1 Production Designer, Costume Designer, Production
2 Accountant, VFX Supervisor, Editor, Composer, and Actor,
3 subject to the limitations set forth under this
4 subparagraph. For an accredited Illinois production
5 spending of \$25,000,000 or less, no more than 2
6 non-resident actors' wages shall qualify as an Illinois
7 labor expenditure. For an accredited production with
8 Illinois production spending of more than \$25,000,000, no
9 more than 4 non-resident actor's wages shall qualify as
10 Illinois labor expenditures.

11 (10) Paid for services rendered in Illinois.

12 "Illinois production spending" means the expenses incurred
13 by the applicant for an accredited production, including,
14 without limitation, all of the following:

15 (1) expenses to purchase, from vendors within
16 Illinois, tangible personal property that is used in the
17 accredited production;

18 (2) expenses to acquire services, from vendors in
19 Illinois, for film production, editing, or processing; and

20 (3) for a production commencing before July 1, 2022,
21 the compensation, not to exceed \$100,000 for any one
22 employee, for contractual or salaried employees who are
23 Illinois residents performing services with respect to the
24 accredited production. For a production commencing on or
25 after July 1, 2022, the compensation, not to exceed
26 \$500,000 for any one employee, for contractual or salaried

1 employees who are Illinois residents or non-resident
2 employees, subject to the limitations set forth under
3 Section 10 of this Act.

4 "Loan out company" means a personal service corporation or
5 other entity that is under contract with the taxpayer to
6 provide specified individual personnel, such as artists, crew,
7 actors, producers, or directors for the performance of
8 services used directly in a production. "Loan out company"
9 does not include entities contracted with by the taxpayer to
10 provide goods or ancillary contractor services such as
11 catering, construction, trailers, equipment, or
12 transportation.

13 "Qualified production facility" means stage facilities in
14 the State in which television shows and films are or are
15 intended to be regularly produced and that contain at least
16 one sound stage of at least 15,000 square feet.

17 Rulemaking authority to implement Public Act 95-1006, if
18 any, is conditioned on the rules being adopted in accordance
19 with all provisions of the Illinois Administrative Procedure
20 Act and all rules and procedures of the Joint Committee on
21 Administrative Rules; any purported rule not so adopted, for
22 whatever reason, is unauthorized.

23 (Source: P.A. 102-558, eff. 8-20-21.)

24 (35 ILCS 16/46 new)

25 Sec. 46. Illinois Production Workforce Development Fund.

1 (a) The Illinois Production Workforce Development Fund is
2 created as a special fund in the State Treasury. Beginning
3 July 1, 2022, amounts paid to the Department of Commerce and
4 Economic Opportunity pursuant to Section 213 of the Illinois
5 Income Tax Act shall be deposited into the Fund. The Fund shall
6 be used exclusively to provide grants to community-based
7 organizations, labor organizations, private and public
8 universities, community colleges, and other organizations and
9 institutions that may be deemed appropriate by the Department
10 to administer workforce training programs that support efforts
11 to recruit, hire, promote, retain, develop, and train a
12 diverse and inclusive workforce in the film industry.

13 (b) Pursuant to Section 213 of the Illinois Income Tax
14 Act, the Fund shall receive deposits in amounts not to exceed
15 0.25% of the amount of each credit certificate issued that is
16 not calculated on out-of-state wages and transferred or
17 claimed on an Illinois tax return in the quarter such credit
18 was transferred or claimed. In addition, such amount shall
19 also include 2.5% of the credit amount calculated on wages
20 paid to non-residents that is transferred or claimed on an
21 Illinois tax return in the quarter such credit was transferred
22 or claimed.

23 (c) At the request of the Department, the State
24 Comptroller and the State Treasurer may advance amounts to the
25 Fund on an annual basis not to exceed \$1,000,000 in any fiscal
26 year. The fund from which the moneys are advanced shall be

1 reimbursed in the same fiscal year for any such advance
2 payments as described in this Section. The method of
3 reimbursement shall be set forth in rules.

4 (d) Of the appropriated funds in a given fiscal year, 50%
5 of the appropriated funds shall be reserved for organizations
6 that meet one of the following criteria. The organization is:
7 (1) a minority-owned business, as defined by the Business
8 Enterprise for Minorities, Women, and Persons with
9 Disabilities Act; (2) located in an underserved area, as
10 defined by the Economic Development for a Growing Economy Tax
11 Credit Act; or (3) on an annual basis, training a cohort of
12 program participants where at least 50% of the program
13 participants are either a minority person, as defined by the
14 Business Enterprise for Minorities, Women, and Persons with
15 Disabilities Act, or reside in an underserved area, as defined
16 by the Economic Development for a Growing Economy Tax Credit
17 Act.

18 (e) The Illinois Production Workforce Development Fund
19 shall be administered by the Department. The Department may
20 adopt rules necessary to administer the provisions of this
21 Section.

22 (f) Notwithstanding any other law to the contrary, the
23 Illinois Production Workforce Development Fund is not subject
24 to sweeps, administrative charge-backs, or any other fiscal or
25 budgetary maneuver that would in any way transfer any amounts
26 from the Illinois Production Workforce Development Fund.

1 (g) By June 30 of each fiscal year, the Department must
2 submit to the General Assembly a report that includes the
3 following information: (1) an identification of the
4 organizations and institutions that received funding to
5 administer workforce training programs during the fiscal year;
6 (2) the number of total persons trained and the number of
7 persons trained per workforce training program in the fiscal
8 year; and (3) in the aggregate, per organization, the number
9 of persons identified as a minority person or that reside in an
10 underserved area that received training in the fiscal year.

11 Section 90. The State Finance Act is amended by adding
12 Section 5.970 as follows:

13 (30 ILCS 105/5.970 new)

14 Sec. 5.970. The Illinois Production Workforce Development
15 Fund.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.