

HB3616



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3616

Introduced 2/17/2023, by Rep. Steven Reick

SYNOPSIS AS INTRODUCED:

35 ILCS 16/10
35 ILCS 16/15
35 ILCS 16/35

Amends the Film Production Services Tax Credit Act of 2008. Provides that an accredited production may not include intense or persistent depictions of firearm violence. Provides for the recapture of credits if the taxpayer fails to comply with the provisions of the Act because the production includes intense or persistent depictions of firearm violence. Effective immediately.

LRB103 29478 HLH 55873 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 Film Production Services Tax Credit Act of
5 2008 is amended by changing Sections 10, 15, and 35 as follows:

6 (35 ILCS 16/10)

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

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

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

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

3 (2) is a talk show;

4 (3) is a production in respect of a game,
5 questionnaire, or contest;

6 (4) is a sports event or activity;

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

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

9 (7) is a production produced by a film production
10 company if records, as required by 18 U.S.C. 2257, are to
11 be maintained by that film production company with respect
12 to any performer portrayed in that single media or
13 multimedia program; ~~or~~

14 (8) is a production produced primarily for industrial,
15 corporate, or institutional purposes; or -

16 (9) is a production submitted to the Department for
17 certification on or after the effective date of this
18 amendatory Act of the 103rd General Assembly that includes
19 intense or persistent depictions of firearm violence, as
20 defined by the Department by rule under subsection (h) of
21 Section 15.

22 "Accredited animated production" means an accredited
23 production in which movement and characters' performances are
24 created using a frame-by-frame technique and a significant
25 number of major characters are animated. Motion capture by
26 itself is not an animation technique.

1 "Accredited production certificate" means a certificate
2 issued by the Department certifying that the production is an
3 accredited production that meets the guidelines of this Act.

4 "Applicant" means a taxpayer that is a film production
5 company that is operating or has operated an accredited
6 production located within the State of Illinois and that (i)
7 owns the copyright in the accredited production throughout the
8 Illinois production period or (ii) has contracted directly
9 with the owner of the copyright in the accredited production
10 or a person acting on behalf of the owner to provide services
11 for the production, where the owner of the copyright is not an
12 eligible production corporation.

13 "Credit" means:

14 (1) for an accredited production approved by the
15 Department on or before January 1, 2005 and commencing
16 before May 1, 2006, the amount equal to 25% of the Illinois
17 labor expenditure approved by the Department. The
18 applicant is deemed to have paid, on its balance due day
19 for the year, an amount equal to 25% of its qualified
20 Illinois labor expenditure for the tax year. For Illinois
21 labor expenditures generated by the employment of
22 residents of geographic areas of high poverty or high
23 unemployment, as determined by the Department, in an
24 accredited production commencing before May 1, 2006 and
25 approved by the Department after January 1, 2005, the
26 applicant shall receive an enhanced credit of 10% in

1 addition to the 25% credit; and

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

4 (i) 20% of the Illinois production spending for
5 the taxable year; plus

6 (ii) 15% of the Illinois labor expenditures
7 generated by the employment of residents of geographic
8 areas of high poverty or high unemployment, as
9 determined by the Department; and

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

12 (i) 30% of the Illinois production spending for
13 the taxable year; plus

14 (ii) 15% of the Illinois labor expenditures
15 generated by the employment of residents of geographic
16 areas of high poverty or high unemployment, as
17 determined by the Department.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Director" means the Director of Commerce and Economic
21 Opportunity.

22 "Illinois labor expenditure" means salary or wages paid to
23 employees of the applicant for services on the accredited
24 production.

25 To qualify as an Illinois labor expenditure, the
26 expenditure must be:

- 1 (1) Reasonable in the circumstances.
- 2 (2) Included in the federal income tax basis of the
3 property.
- 4 (3) Incurred by the applicant for services on or after
5 January 1, 2004.
- 6 (4) Incurred for the production stages of the
7 accredited production, from the final script stage to the
8 end of the post-production stage.
- 9 (5) Limited to the first \$25,000 of wages paid or
10 incurred to each employee of a production commencing
11 before May 1, 2006 and the first \$100,000 of wages paid or
12 incurred to each employee of a production commencing on or
13 after May 1, 2006 and prior to July 1, 2022. For
14 productions commencing on or after July 1, 2022, limited
15 to the first \$500,000 of wages paid or incurred to each
16 nonresident or resident employee of a production company
17 or loan out company that provides in-State services to a
18 production, whether those wages are paid or incurred by
19 the production company, loan out company, or both, subject
20 to withholding payments provided for in Article 7 of the
21 Illinois Income Tax Act. For purposes of calculating
22 Illinois labor expenditures for a television series, the
23 nonresident wage limitations provided under this
24 subparagraph are applied to the entire season.
- 25 (6) For a production commencing before May 1, 2006,
26 exclusive of the salary or wages paid to or incurred for

1 the 2 highest paid employees of the production.

2 (7) Directly attributable to the accredited
3 production.

4 (8) (Blank).

5 (9) Prior to July 1, 2022, paid to persons resident in
6 Illinois at the time the payments were made. For a
7 production commencing on or after July 1, 2022, paid to
8 persons resident in Illinois and nonresidents at the time
9 the payments were made. For purposes of this subparagraph,
10 only wages paid to nonresidents working in the following
11 positions shall be considered Illinois labor expenditures:
12 Writer, Director, Director of Photography, Production
13 Designer, Costume Designer, Production Accountant, VFX
14 Supervisor, Editor, Composer, and Actor, subject to the
15 limitations set forth under this subparagraph. For an
16 accredited Illinois production spending of \$25,000,000 or
17 less, no more than 2 nonresident actors' wages shall
18 qualify as an Illinois labor expenditure. For an
19 accredited production with Illinois production spending of
20 more than \$25,000,000, no more than 4 nonresident actor's
21 wages shall qualify as Illinois labor expenditures.

22 (10) Paid for services rendered in Illinois.

23 "Illinois production spending" means the expenses incurred
24 by the applicant for an accredited production, including,
25 without limitation, all of the following:

26 (1) expenses to purchase, from vendors within

1 Illinois, tangible personal property that is used in the
2 accredited production;

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

5 (3) for a production commencing before July 1, 2022,
6 the compensation, not to exceed \$100,000 for any one
7 employee, for contractual or salaried employees who are
8 Illinois residents performing services with respect to the
9 accredited production. For a production commencing on or
10 after July 1, 2022, the compensation, not to exceed
11 \$500,000 for any one employee, for contractual or salaried
12 employees who are Illinois residents or nonresident
13 employees, subject to the limitations set forth under
14 Section 10 of this Act.

15 "Loan out company" means a personal service corporation or
16 other entity that is under contract with the taxpayer to
17 provide specified individual personnel, such as artists, crew,
18 actors, producers, or directors for the performance of
19 services used directly in a production. "Loan out company"
20 does not include entities contracted with by the taxpayer to
21 provide goods or ancillary contractor services such as
22 catering, construction, trailers, equipment, or
23 transportation.

24 "Qualified production facility" means stage facilities in
25 the State in which television shows and films are or are
26 intended to be regularly produced and that contain at least

1 one sound stage of at least 15,000 square feet.

2 Rulemaking authority to implement Public Act 95-1006, if
3 any, is conditioned on the rules being adopted in accordance
4 with all provisions of the Illinois Administrative Procedure
5 Act and all rules and procedures of the Joint Committee on
6 Administrative Rules; any purported rule not so adopted, for
7 whatever reason, is unauthorized.

8 (Source: P.A. 102-558, eff. 8-20-21; 102-700, eff. 4-19-22.)

9 (35 ILCS 16/15)

10 Sec. 15. Powers of the Department. The Department, in
11 addition to those powers granted under the Civil
12 Administrative Code of Illinois, is granted and has all the
13 powers necessary or convenient to carry out and effectuate the
14 purposes and provisions of this Act, including, but not
15 limited to, power and authority to:

16 (a) Adopt rules deemed necessary and appropriate for the
17 administration of the tax credit program; establish forms for
18 applications, notifications, contracts, or any other
19 agreements; and accept applications at any time during the
20 year.

21 (b) Assist applicants pursuant to the provisions of this
22 Act to promote, foster, and support film production and its
23 related job creation or retention within the State.

24 (c) Gather information and conduct inquiries, in the
25 manner and by the methods as it deems desirable, including any

1 information required for the Department to comply with Section
2 45 and, without limitation, gathering information with respect
3 to applicants for the purpose of making any designations or
4 certifications necessary or desirable or to gather information
5 to assist the Department with any recommendation or guidance
6 in the furtherance of the purposes of this Act, including, but
7 not limited to, information as to whether the applicant
8 participated in training, education, and recruitment programs
9 that are organized in cooperation with Illinois colleges and
10 universities, labor organizations, and the motion picture
11 industry, and are designed to promote and encourage the
12 training and hiring of Illinois residents who represent the
13 diversity of the Illinois population.

14 (d) Provide for sufficient personnel to permit
15 administration, staffing, operation, and related support
16 required to adequately discharge its duties and
17 responsibilities described in this Act from funds as may be
18 appropriated by the General Assembly for the administration of
19 this Act.

20 (e) Require applicants, upon written request, to issue any
21 necessary authorization to the appropriate federal, state, or
22 local authority for the release of information concerning a
23 project being considered under the provisions of this Act,
24 with the information requested to include, but not be limited
25 to, financial reports, returns, or records relating to the
26 applicant or the accredited production.

1 (f) Require that an applicant must at all times keep
2 proper books of record and account in accordance with
3 generally accepted accounting principles consistently applied,
4 with the books, records, or papers related to the accredited
5 production in the custody or control of the taxpayer open for
6 reasonable Department inspection and audits, and including,
7 without limitation, the making of copies of the books,
8 records, or papers, and the inspection or appraisal of any of
9 the assets of the applicant or the accredited production.

10 (g) Take whatever actions are necessary or appropriate to
11 protect the State's interest in the event of bankruptcy,
12 default, foreclosure, or noncompliance with the terms and
13 conditions of financial assistance or participation required
14 under this Act, including the power to sell, dispose, lease,
15 or rent, upon terms and conditions determined by the Director
16 to be appropriate, real or personal property that the
17 Department may receive as a result of these actions.

18 (h) Adopt rules for the purpose of determining whether a
19 production includes intense or persistent depictions of
20 firearm violence, using as guidance in the adoption of those
21 rules the Motion Picture Association of America's
22 classification and rating rules.

23 For the purpose of this subsection (h):

24 "Firearm" has the meaning given to that term in
25 Section 1.1 of the Firearm Owners Identification Card Act.

26 "Intense or persistent depictions of firearm violence"

1 means one or more depictions of a firearm being used to
2 commit violence of a type and nature that would typically
3 result in an "R" rating from the Motion Picture
4 Association of America on the basis of violence.

5 If the Department determines that a production that is
6 accredited on or after the effective date of this amendatory
7 Act of the 103rd General Assembly does not comply with the
8 provisions of this Act because the production includes intense
9 or persistent depictions of firearm violence, the Department
10 shall provide notice to the taxpayer of the alleged
11 noncompliance and allow the taxpayer a hearing under the
12 provisions of the Illinois Administrative Procedure Act. The
13 Department's decision resulting from a hearing conducted under
14 this subsection is a final administrative decision for
15 purposes of review under the Administrative Review Law. If,
16 after allowing the taxpayer to exhaust all administrative
17 remedies, it is determined that the taxpayer failed to comply
18 with the provisions of this Act because the production
19 includes intense or persistent depictions of firearm violence,
20 the Department of Revenue shall recapture from the taxpayer
21 the entire credit amount previously awarded under this Act for
22 that production.

23 (Source: P.A. 95-720, eff. 5-27-08.)

24 (35 ILCS 16/35)

25 Sec. 35. Issuance of Tax Credit Certificate.

1 (a) In order to qualify for a tax credit under this Act, an
2 applicant must file an application, on forms prescribed by the
3 Department, providing information necessary to calculate the
4 tax credit, and any additional information as required by the
5 Department.

6 (a-5) For productions that are accredited on or after the
7 effective date of this amendatory Act of the 103rd General
8 Assembly, in addition to any other information required by the
9 Department under subsection (a), as part of the application
10 process, the Department shall require the applicant to (i)
11 certify that the production will not include intense or
12 persistent depictions of firearm violence and (ii) agree that,
13 if the Department determines that the production does include
14 intense or persistent depictions of firearm violence, the
15 Department may void the tax credit agreement and recapture any
16 credit amounts previously awarded to the applicant for that
17 particular production.

18 (b) Upon satisfactory review of the application, the
19 Department shall issue a Tax Credit Certificate stating the
20 amount of the tax credit to which the applicant is entitled.

21 (Source: P.A. 95-720, eff. 5-27-08.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.