

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 1. Short title. This Act may be cited as the Film
5 Production Services Tax Credit Act of 2008.

6 Section 5. Purpose. The General Assembly finds that the
7 Illinois economy is highly vulnerable to other states and
8 nations that have major financial incentive programs targeted
9 to the motion picture industry. Because of the incentive
10 programs of these competitor locations, Illinois must move
11 aggressively with new business development investment tools so
12 that Illinois is more competitive in site location
13 decision-making for film productions. In an increasingly
14 global economy, Illinois' long-term development will benefit
15 from rational, strategic use of State resources in support of
16 film production development and growth. It is the purpose of
17 this Act to preserve and expand the existing human
18 infrastructure for the motion picture industry in Illinois. It
19 shall be the policy of this State to promote and encourage the
20 training and hiring of Illinois residents who represent the
21 diversity of the Illinois population through the creation and
22 implementation of training, education, and recruitment
23 programs organized in cooperation with Illinois colleges and

1 universities, labor organizations, and the motion picture
2 industry.

3 Section 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 production certificate" means a certificate
11 issued by the Department certifying that the production is an
12 accredited production that meets the guidelines of this Act.

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

22 "Credit" means:

23 (1) for an accredited production approved by the
24 Department on or before January 1, 2005 and commencing
25 before May 1, 2006, the amount equal to 25% of the Illinois
26 labor expenditure approved by the Department. The

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

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

13 (i) 20% of the Illinois production spending for the
14 taxable year; plus

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

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

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

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

26 To qualify as an Illinois labor expenditure, the

1 expenditure must be:

2 (1) Reasonable in the circumstances.

3 (2) Included in the federal income tax basis of the
4 property.

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

7 (4) Incurred for the production stages of the
8 accredited production, from the final script stage to the
9 end of the post-production stage.

10 (5) Limited to the first \$25,000 of wages paid or
11 incurred to each employee of a production commencing before
12 May 1, 2006 and the first \$100,000 of wages paid or
13 incurred to each employee of a production commencing on or
14 after May 1, 2006.

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

18 (7) Directly attributable to the accredited
19 production.

20 (8) Paid in the tax year for which the applicant is
21 claiming the credit or no later than 60 days after the end
22 of the tax year.

23 (9) Paid to persons resident in Illinois at the time
24 the payments were made.

25 (10) Paid for services rendered in Illinois.

26 "Illinois production spending" means the expenses incurred

1 by the applicant for an accredited production, including,
2 without limitation, all of the following:

3 (1) expenses to purchase, from vendors within
4 Illinois, tangible personal property that is used in the
5 accredited production;

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

8 (3) the compensation, not to exceed \$100,000 for any
9 one employee, for contractual or salaried employees who are
10 Illinois residents performing services with respect to the
11 accredited production.

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

16 Section 15. Powers of the Department. The Department, in
17 addition to those powers granted under the Civil Administrative
18 Code of Illinois, is granted and has all the powers necessary
19 or convenient to carry out and effectuate the purposes and
20 provisions of this Act, including, but not limited to, power
21 and authority to:

22 (a) Adopt rules deemed necessary and appropriate for the
23 administration of the tax credit program; establish forms for
24 applications, notifications, contracts, or any other
25 agreements; and accept applications at any time during the

1 year.

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

5 (c) Gather information and conduct inquiries, in the manner
6 and by the methods as it deems desirable, including any
7 information required for the Department to comply with Section
8 45 and, without limitation, gathering information with respect
9 to applicants for the purpose of making any designations or
10 certifications necessary or desirable or to gather information
11 to assist the Department with any recommendation or guidance in
12 the furtherance of the purposes of this Act, including, but not
13 limited to, information as to whether the applicant
14 participated in training, education, and recruitment programs
15 that are organized in cooperation with Illinois colleges and
16 universities, labor organizations, and the motion picture
17 industry, and are designed to promote and encourage the
18 training and hiring of Illinois residents who represent the
19 diversity of the Illinois population.

20 (d) Provide for sufficient personnel to permit
21 administration, staffing, operation, and related support
22 required to adequately discharge its duties and
23 responsibilities described in this Act from funds as may be
24 appropriated by the General Assembly for the administration of
25 this Act.

26 (e) Require applicants, upon written request, to issue any

1 necessary authorization to the appropriate federal, state, or
2 local authority for the release of information concerning a
3 project being considered under the provisions of this Act, with
4 the information requested to include, but not be limited to,
5 financial reports, returns, or records relating to the
6 applicant or the accredited production.

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

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

24 Section 20. Tax credit awards. Subject to the conditions
25 set forth in this Act, an applicant is entitled to a credit as

1 approved by the Department under Section 40 of this Act.

2 Section 25. Application for certification of accredited
3 production. Any applicant proposing a film or television
4 production located or planned to be located in Illinois may
5 request an accredited production certificate by formal
6 application to the Department.

7 Section 30. Review of application for accredited
8 production certificate.

9 (a) In determining whether to issue an accredited
10 production certificate, the Department must determine that a
11 preponderance of the following conditions exist:

12 (1) The applicant's production intends to make the
13 expenditure in the State required for certification.

14 (2) The applicant's production is economically sound
15 and will benefit the people of the State of Illinois by
16 increasing opportunities for employment and strengthen the
17 economy of Illinois.

18 (3) The applicant has filed a diversity plan with the
19 Department outlining specific goals (i) for hiring
20 minority persons and females, as defined in the Business
21 Enterprise for Minorities, Females, and Persons with
22 Disabilities Act, and (ii) for using vendors receiving
23 certification under the Business Enterprise for
24 Minorities, Females, and Persons with Disabilities Act;

1 the Department has approved the plan as meeting the
2 requirements established by the Department; and the
3 Department has verified that the applicant has met or made
4 good-faith efforts in achieving those goals. The
5 Department must adopt any rules that are necessary to
6 ensure compliance with the provisions of this item (3) and
7 that are necessary to require that the applicant's plan
8 reflects the diversity of this State.

9 (4) The applicant's production application indicates
10 whether the applicant intends to participate in training,
11 education, and recruitment programs that are organized in
12 cooperation with Illinois colleges and universities, labor
13 organizations, and the motion picture industry and are
14 designed to promote and encourage the training and hiring
15 of Illinois residents who represent the diversity of the
16 Illinois population.

17 (5) That, if not for the credit, the applicant's
18 production would not occur in Illinois, which may be
19 demonstrated by any means including, but not limited to,
20 evidence that the applicant has multi-state or
21 international location options and could reasonably and
22 efficiently locate outside of the State, or demonstration
23 that at least one other state or nation is being considered
24 for the production, or evidence that the receipt of the
25 credit is a major factor in the applicant's decision and
26 that without the credit the applicant likely would not

1 create or retain jobs in Illinois, or demonstration that
2 receiving the credit is essential to the applicant's
3 decision to create or retain new jobs in the State.

4 (6) Awarding the credit will result in an overall
5 positive impact to the State, as determined by the
6 Department using the best available data.

7 (b) If any of the provisions in this Section conflict with
8 any existing collective bargaining agreements, the terms and
9 conditions of those collective bargaining agreements shall
10 control.

11 Section 35. Issuance of Tax Credit Certificate.

12 (a) In order to qualify for a tax credit under this Act, an
13 applicant must file an application, on forms prescribed by the
14 Department, providing information necessary to calculate the
15 tax credit, and any additional information as required by the
16 Department.

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

20 Section 40. Amount and duration of the credit. The amount
21 of the credit awarded under this Act is based on the amount of
22 the Illinois labor expenditure and Illinois production
23 spending approved by the Department for the production as set
24 forth under Section 10. The duration of the credit may not

1 exceed one taxable year.

2 Section 43. Training programs for skills in critical
3 demand. To accomplish the purposes of this Act, the Department
4 may use the training programs provided for Illinois under
5 Section 605-800 of the Department of Commerce and Economic
6 Opportunity Law of the Civil Administrative Code of Illinois.

7 Section 45. Evaluation of tax credit program; reports to
8 the General Assembly.

9 (a) The Department shall evaluate the tax credit program.
10 The evaluation must include an assessment of the effectiveness
11 of the program in creating and retaining new jobs in Illinois
12 and of the revenue impact of the program, and may include a
13 review of the practices and experiences of other states or
14 nations with similar programs. Upon completion of this
15 evaluation, the Department shall determine the overall success
16 of the program, and may make a recommendation to extend,
17 modify, or not extend the program based on this evaluation.

18 (b) At the end of each fiscal quarter, the Department must
19 submit to the General Assembly a report that includes, without
20 limitation, the following information:

21 (1) the economic impact of the tax credit program,
22 including the number of jobs created and retained,
23 including whether the job positions are entry level,
24 management, talent-related, vendor-related, or

1 production-related;

2 (2) the amount of film production spending brought to
3 Illinois, including the amount of spending and type of
4 Illinois vendors hired in connection with an accredited
5 production; and

6 (3) an overall picture of whether the human
7 infrastructure of the motion picture industry in Illinois
8 reflects the geographical, racial and ethnic, gender, and
9 income-level diversity of the State of Illinois.

10 (c) At the end of each fiscal year, the Department must
11 submit to the General Assembly a report that includes, without
12 limitation, the following information:

13 (1) an identification of each vendor that provided
14 goods or services that were included in an accredited
15 production's Illinois production spending;

16 (2) the amount paid to each identified vendor by the
17 accredited production;

18 (3) for each identified vendor, a statement as to
19 whether the vendor is a minority owned business or a female
20 owned business, as defined under Section 2 of the Business
21 Enterprise for Minorities, Females, and Persons with
22 Disabilities Act; and

23 (4) a description of any steps taken by the Department
24 to encourage accredited productions to use vendors who are
25 a minority owned business or a female owned business.

1 Section 50. Program terms and conditions. Any documentary
2 materials or data made available or received by any agent or
3 employee of the Department are confidential and are not public
4 records to the extent that the materials or data consist of
5 commercial or financial information regarding the operation of
6 the production of the applicant for or recipient of any tax
7 credit under this Act.

8 Section 90. Continuation of prior law. This Act replaces
9 and is intended to be a continuation of the Film Production
10 Services Tax Credit Act, which was repealed on January 1, 2008.

11 Section 95. Repeal. This Act is repealed on January 1,
12 2009.

13 Section 905. The Illinois Income Tax Act is amended by
14 changing Section 213 as follows:

15 (35 ILCS 5/213)

16 Sec. 213. Film production services credit. For tax years
17 beginning on or after January 1, 2004, a taxpayer who has been
18 awarded a tax credit under the Film Production Services Tax
19 Credit Act or under the Film Production Services Tax Credit Act
20 of 2008 is entitled to a credit against the taxes imposed under
21 subsections (a) and (b) of Section 201 of this Act in an amount
22 determined by the Department of Commerce and Economic

1 Opportunity under those Acts ~~the Film Production Services Tax~~
2 ~~Credit Act~~. If the taxpayer is a partnership or Subchapter S
3 corporation, the credit is allowed to the partners or
4 shareholders in accordance with the determination of income and
5 distributive share of income under Sections 702 and 704 and
6 Subchapter S of the Internal Revenue Code.

7 A transfer of this credit may be made by the taxpayer
8 earning the credit within one year after the credit is awarded
9 in accordance with rules adopted by the Department of Commerce
10 and Economic Opportunity.

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

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

25 (Source: P.A. 93-543, eff. 1-1-04; 94-171, eff. 7-11-05.)

26 Section 999. Effective date. This Act takes effect upon

1 becoming law.