



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2299

Introduced 2/18/2009, by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/218 new

Creates the Theater Production Tax Credit Act and amends the Illinois Income Tax Act. Sets forth procedures and criteria for the Department of Commerce and Economic Opportunity to award a tax credit to accredited theater productions. Bases the amount of the credit on the amount of the Illinois labor expenditure and marketing spending in support of the Illinois performances approved by the Department. Requires the Department to submit an annual report concerning the credit program. Provides that the Theater Production Tax Credit Act is repealed on January 1, 2011. Effective immediately.

LRB096 10460 JDS 20632 b

FISCAL NOTE ACT
MAY APPLY

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 1. Short title. This Act may be cited as the
5 Theater Production Tax Credit Act.

6 Section 5. Purpose. The Illinois economy depends heavily on
7 the commercial for-profit theater industry and the
8 pre-Broadway and long-run shows that come to Illinois. Due to
9 competition from other prominent theater cities in attracting
10 and prolonging successful pre-Broadway and long-run shows,
11 Illinois must move aggressively with new business development
12 investment tools so that Illinois is more competitive in site
13 location decision making for show producers. In an increasingly
14 global economy, Illinois' long term development will benefit
15 from rational, strategic use of State resources in support of
16 pre-Broadway theater and long run show development and growth.
17 It is the purpose of this Act to preserve and expand the
18 existing human infrastructure for the presentation of live
19 theater in Illinois. It shall be the policy of this State to
20 promote and encourage the training and hiring of Illinois
21 residents who represent the diversity of the Illinois
22 population through the creation and implementation of
23 training, education, and recruitment programs organized in

1 cooperation with Illinois colleges and universities, labor
2 organizations, and the commercial for-profit theater industry.

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

4 "Accredited theater production" means a for-profit live
5 stage presentation in theaters with a seating capacity of over
6 1200 seats within the State of Illinois that is either (i) a
7 pre-Broadway production or (ii) a long-run production for which
8 the aggregate Illinois labor and marketing expenditures exceed
9 \$100,000.

10 A "pre-Broadway production" means a live stage production
11 that is mounted and performed in an Illinois theater, with a
12 presentation scheduled for Broadway's Theater District in New
13 York City within 12 months after the Illinois presentation

14 A "long-run production" means a live stage production that
15 is performed in an Illinois theater for longer than 8 weeks,
16 with at least 6 performances per week.

17 "Accredited theater production certificate" means a
18 certificate issued by the Department certifying that the
19 production is an accredited theater production that meets the
20 guidelines of this Act.

21 "Applicant" means a taxpayer that is a theatre producer,
22 owner, operator, or presenter that is presenting or has
23 presented a stage presentation located within the State of
24 Illinois and that (i) owns the theatrical rights of the stage
25 presentation for the Illinois production period or (ii) has

1 contracted directly with the owner of the theatrical rights or
2 a person acting on behalf of the owner to provide performances
3 of the production.

4 "Credit" means, for an accredited theater production
5 approved by the Department:

6 (i) 20% of the Illinois marketing and labor spending
7 for each taxable year; plus

8 (ii) 15% of the Illinois labor expenditures generated
9 by the employment of residents of geographic areas of high
10 poverty or high unemployment, as determined by the
11 Department.

12 "Department" means the Department of Commerce and Economic
13 Opportunity.

14 "Director" means the Director of Commerce and Economic
15 Opportunity.

16 "Illinois labor expenditure" means salary or wages paid to
17 employees of the applicant for services on the accredited
18 production. To qualify as an Illinois labor expenditure, the
19 expenditure must be:

20 (1) Reasonable in the circumstances.

21 (2) Incurred by the applicant for services on or after
22 January 1, 2008.

23 (3) Incurred for the production stages of the
24 accredited production, from the final script stage to the
25 end of the post-production stage.

26 (4) Limited to the first \$100,000 of wages paid or

1 incurred to each employee of a production commencing on or
2 after May 1, 2008.

3 (5) Exclusive of the salary or wages paid to or
4 incurred for the 2 highest paid employees of the
5 production.

6 (6) Directly attributable to the accredited
7 production.

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

11 (8) Paid to persons resident in Illinois at the time
12 the payments were made.

13 (9) Paid for services rendered in Illinois.

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

17 (1) Expenses to purchase, from vendors within
18 Illinois, tangible personal property that is used in the
19 accredited production.

20 (2) Expenses to acquire services, from vendors in
21 Illinois for a stage presentation.

22 (3) The compensation, not to exceed \$100,000 for any
23 one employee, for contractual or salaried employees who are
24 Illinois residents performing services with respect to the
25 accredited production.

26 "Qualified production facility" means stage facilities in

1 the State in which live theatrical shows are or are intended to
2 be regularly produced and that contain at least one stage and a
3 seating capacity of over 1200 seats.

4 Section 15. Powers of the Department. The Department, in
5 addition to those powers granted under the Civil Administrative
6 Code of Illinois, is granted and has all the powers necessary
7 or convenient to carry out and effectuate the purposes and
8 provisions of this Act, including, but not limited to, power
9 and authority to:

10 (1) Adopt rules deemed necessary and appropriate for the
11 administration of the tax credit program; establish forms for
12 applications, notifications, contracts, or any other
13 agreements; and accept applications at any time during the
14 year.

15 (2) Assist applicants pursuant to the provisions of this
16 Act to promote, foster, and support theater development and
17 production and its related job creation or retention within the
18 State.

19 (3) Gather information and conduct inquiries, in the manner
20 and by the methods as it deems desirable, including any
21 information required for the Department to comply with Section
22 45 and, without limitation, gathering information with respect
23 to applicants for the purpose of making any designations or
24 certifications necessary or desirable or to gather information
25 to assist the Department with any recommendation or guidance in

1 the furtherance of the purposes of this Act, including, but not
2 limited to, information as to whether the applicant
3 participated in training, education, and recruitment programs
4 that are organized in cooperation with Illinois colleges and
5 universities and labor organizations, and are designed to
6 promote and encourage the training and hiring of Illinois
7 residents who represent the diversity of the Illinois
8 population.

9 (4) Provide for sufficient personnel to permit
10 administration, staffing, operation, and related support
11 required to adequately discharge its duties and
12 responsibilities described in this Act from funds as may be
13 appropriated by the General Assembly for the administration of
14 this Act.

15 (5) Require applicants, upon written request, to issue any
16 necessary authorization to the appropriate federal, State, or
17 local authority for the release of information concerning a
18 project being considered under the provisions of this Act, with
19 the information requested to include, but not be limited to,
20 financial reports, returns, or records relating to the
21 applicant or the accredited theater production.

22 (6) Require that an applicant must at all times keep proper
23 books of record and account in accordance with generally
24 accepted accounting principles consistently applied, with the
25 books, records, or papers related to the accredited production
26 in the custody or control of the taxpayer open for reasonable

1 Department inspection and audits, and including, without
2 limitation, the making of copies of the books, records, or
3 papers, and the inspection or appraisal of any of the assets of
4 the applicant or the accredited production.

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

13 Section 20. Tax credit awards. Subject to the conditions
14 set forth in this Act, an applicant is entitled to a credit as
15 approved by the Department under Section 40 of this Act.

16 Section 25. Application for certification of accredited
17 production. Any applicant proposing an accredited theater
18 production located or planned to be located in Illinois may
19 request an accredited theater production certificate by formal
20 application to the Department.

21 Section 30. Review of application for accredited theater
22 production certificate.

23 (a) In determining whether to issue an accredited theater

1 production certificate, the Department must determine that a
2 preponderance of the following conditions exist:

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

5 (2) The applicant's production is economically sound
6 and will benefit the people of the State of Illinois by
7 increasing opportunities for employment and strengthen the
8 economy of Illinois.

9 (3) The applicant has filed a diversity plan with the
10 Department outlining specific goals (i) for hiring
11 minority persons and females, as defined in the Business
12 Enterprise for Minorities, Females, and Persons with
13 Disabilities Act, and (ii) for using vendors receiving
14 certification under the Business Enterprise for
15 Minorities, Females, and Persons with Disabilities Act;
16 the Department has approved the plan as meeting the
17 requirements established by the Department; and the
18 Department has verified that the applicant has met or made
19 good faith efforts in achieving those goals. The Department
20 must adopt any rules that are necessary to ensure
21 compliance with the provisions of this item (3) and that
22 are necessary to require that the applicant's plan reflects
23 the diversity of this State.

24 (4) The applicant's theater production application
25 indicates whether the applicant intends to participate in
26 training, education, and recruitment programs that are

1 organized in cooperation with Illinois colleges and
2 universities, labor organizations, and the commercial
3 for-profit theater industry and are designed to promote and
4 encourage the training and hiring of Illinois residents who
5 represent the diversity of the Illinois population.

6 (5) That, if not for the credit, the applicant's
7 production would not occur in Illinois, which may be
8 demonstrated by any means including, but not limited to,
9 evidence that the applicant has multi-state or
10 international location options and could reasonably and
11 efficiently locate outside of the State, demonstration
12 that at least one other state or nation is being considered
13 for the production, evidence that the receipt of the credit
14 is a major factor in the applicant's decision and that
15 without the credit the applicant likely would not create or
16 retain jobs in Illinois, or demonstration that receiving
17 the credit is essential to the applicant's decision to
18 create or retain new jobs in the State.

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

22 (b) If any of the provisions in this Section conflict with
23 any existing collective bargaining agreements, the terms and
24 conditions of those collective bargaining agreements shall
25 control.

1 Section 35. Issuance of Tax Credit Certificate.

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

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

10 Section 40. Amount and duration of the credit. The amount
11 of the credit awarded under this Act is based on the amount of
12 the Illinois labor expenditure and marketing spending in
13 support of the Illinois performances approved by the Department
14 for the accredited theater production as set forth under
15 Section 10. The duration of the credit may not exceed one
16 taxable year.

17 Section 45. Training programs for skills in critical
18 demand. To accomplish the purposes of this Act, the Department
19 may use the training programs provided for Illinois under
20 Section 605-800 of the Department of Commerce and Economic
21 Opportunity Law of the Civil Administrative Code of Illinois.

22 Section 50. Evaluation of tax credit program; reports to
23 the General Assembly.

1 (a) The Department shall evaluate the tax credit program.
2 The evaluation must include an assessment of the effectiveness
3 of the program in creating and retaining new jobs in Illinois
4 and of the revenue impact of the program, and may include a
5 review of the practices and experiences of other states or
6 nations with similar programs. Upon completion of this
7 evaluation, the Department shall determine the overall success
8 of the program, and may make a recommendation to extend,
9 modify, or not extend the program based on this evaluation.

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

13 (1) the economic impact of the tax credit program,
14 including the number of jobs created and retained,
15 including whether the job positions are entry level,
16 management, talent related, vendor related, or production
17 related;

18 (2) the amount of accredited theater production
19 spending brought to Illinois, including the amount of
20 spending and type of Illinois vendors hired in connection
21 with an accredited theater production; and

22 (3) an overall picture of whether the human
23 infrastructure of the commercial for-profit theater
24 industry in Illinois reflects the geographical, racial and
25 ethnic, gender, and income level diversity of the State of
26 Illinois.

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

4 (1) an identification of each vendor that provided
5 goods or services that were included in an accredited
6 production's Illinois production spending;

7 (2) the amount paid to each identified vendor by the
8 accredited theater production;

9 (3) for each identified vendor, a statement as to
10 whether the vendor is a minority owned business or a female
11 owned business, as defined under Section 2 of the Business
12 Enterprise for Minorities, Females, and Persons with
13 Disabilities Act; and

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

17 Section 55. Repeal. This Act is repealed on January 1,
18 2011.

19 Section 900. The Illinois Income Tax Act is amended by
20 adding Section 218 as follows:

21 (35 ILCS 5/218 new)

22 Sec. 218. Live theater production credit.

23 (a) For tax years beginning on or after January 1, 2009, a

1 taxpayer who has been awarded a tax credit under the Theater
2 Production Tax Credit Act is entitled to a credit against the
3 taxes imposed under subsections (a) and (b) of Section 201 of
4 this Act in an amount determined by the Department of Commerce
5 and Economic Opportunity under that Act.

6 (b) If the taxpayer is a partnership or Subchapter S
7 corporation, the credit is allowed to the partners or
8 shareholders in accordance with the determination of income and
9 distributive share of income under Sections 702 and 704 and
10 Subchapter S of the Internal Revenue Code.

11 (c) A transfer of this credit may be made by the taxpayer
12 earning the credit within one year after the credit is awarded
13 in accordance with rules adopted by the Department of Commerce
14 and Economic Opportunity.

15 (d) The Department of Revenue, in cooperation with the
16 Department of Commerce and Economic Opportunity, must
17 prescribe rules to enforce and administer the provisions of
18 this Section.

19 (e) This Section is exempt from the provisions of Section
20 250 of this Act.

21 (f) The credit may not be carried back. If the amount of
22 the credit exceeds the tax liability for the year, the excess
23 may be carried forward and applied to the tax liability of the
24 5 taxable years following the excess credit year. The credit
25 shall be applied to the earliest year for which there is a tax
26 liability. If there are credits from more than one tax year

1 that are available to offset a liability, the earlier credit
2 shall be applied first. In no event, may a credit under this
3 Section reduce the taxpayer's liability to less than zero.

4 Section 999. Effective date. This Act takes effect upon
5 becoming law.