

SB0005



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0005

Introduced 1/27/2011, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/221 new

Creates the Live Theater Production Tax Credit Act. Provides that certain taxpayers who are theater producers, owners, licensees, or operators, or who otherwise present live stage presentations within the State, are entitled to a credit against their income tax liability equal to a percentage of their Illinois production spending and Illinois labor expenditures. Provides that eligibility for the credit is determined by the Department of Commerce and Economic Opportunity. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB097 06648 HLH 46734 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 Live
5 Theater Production Tax Credit Act.

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

1 training, education, and recruitment programs organized in
2 cooperation with Illinois colleges and universities, labor
3 organizations, and the commercial for-profit live theater
4 industry.

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

6 "Accredited theater production" means a for-profit live
7 stage presentation in a qualified production facility, as
8 defined in this Section, that is either (i) a pre-Broadway
9 production or (ii) a long-run production for which the
10 aggregate Illinois labor and marketing expenditures exceed
11 \$100,000.

12 "Pre-Broadway production" means a live stage production
13 that, in its original or adaptive version, is performed in a
14 qualified production facility having a presentation scheduled
15 for Broadway's Theater District in New York City within 12
16 months after its Illinois presentation.

17 "Long-run production" means a live stage production that is
18 performed in a qualified production facility for longer than 8
19 weeks, with at least 6 performances per week, and includes a
20 production that spans the end of one tax year and the
21 commencement of a new tax year that, in combination, meets the
22 criteria set forth in this definition making it a long-run
23 production eligible for a theater tax credit award in each tax
24 year or portion thereof.

25 "Accredited theater production certificate" means a

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

4 "Applicant" means a taxpayer that is a theater producer,
5 owner, licensee, operator, or presenter that is presenting or
6 has presented a live stage presentation located within the
7 State of Illinois who:

8 (1) owns or licenses the theatrical rights of the stage
9 presentation for the Illinois production period; or

10 (2) has contracted or will contract directly with the
11 owner or licensee of the theatrical rights or a person
12 acting on behalf of the owner or licensee to provide live
13 performances of the production.

14 An applicant that directly or indirectly owns, controls, or
15 operates multiple qualified production facilities shall be
16 presumed to be and considered for the purposes of this Act to
17 be a single applicant; provided, however, that as to each of
18 the applicant's qualified production facilities, the applicant
19 shall be eligible to separately and contemporaneously (i) apply
20 for and obtain accredited theater production certificates,
21 (ii) stage accredited theater productions, and (iii) apply for
22 and receive a tax credit award certificate for each of
23 applicant's accredited theater productions performed at each
24 of the applicant's qualified production facilities.

25 "Department" means the Department of Commerce and Economic
26 Opportunity.

1 "Director" means the Director of the Department.

2 "Illinois labor expenditure" means gross salary or wages
3 including, but not limited to, taxes, benefits, and any other
4 consideration incurred or paid to non-talent employees of the
5 applicant for services rendered to and on behalf of the
6 accredited theater production. To qualify as an Illinois labor
7 expenditure, the expenditure must be:

8 (1) incurred or paid by the applicant on or after the
9 effective date of the Act for services related to any
10 portion of an accredited theater production from its
11 pre-production stages, including, but not limited to, the
12 writing of the script, casting, hiring of service
13 providers, purchases from vendors, marketing, advertising,
14 public relations, load in, rehearsals, performances, other
15 accredited theater production related activities, and load
16 out;

17 (2) directly attributable to the accredited theater
18 production;

19 (3) limited to the first \$100,000 of wages incurred or
20 paid to each employee of an accredited theater production
21 in each tax year;

22 (4) included in the federal income tax basis of the
23 property;

24 (5) paid in the tax year for which the applicant is
25 claiming the tax credit award, or no later than 60 days
26 after the end of the tax year;

1 (6) paid to persons residing in Illinois at the time
2 payments were made; and

3 (7) reasonable in the circumstances.

4 "Illinois production spending" means any and all expenses
5 directly or indirectly incurred relating to an accredited
6 theater production presented in any qualified production
7 facility of the applicant, including, but not limited to,
8 expenditures for:

9 (1) national marketing, public relations, and the
10 creation and placement of print, electronic, television,
11 billboard, and other forms of advertising; and

12 (2) the construction and fabrication of scenic
13 materials and elements; provided, however, that the
14 maximum amount of expenditures attributable to the
15 construction and fabrication of scenic materials and
16 elements eligible for a tax credit award shall not exceed
17 \$500,000 per applicant per production in any single tax
18 year.

19 "Qualified production facility" means a facility located
20 in the State in which live theatrical productions are, or are
21 intended to be, exclusively presented that contains at least
22 one stage, a seating capacity of 1,200 or more seats, and
23 dressing rooms, storage areas, and other ancillary amenities
24 necessary for the accredited theater production.

25 "Tax credit award" means the issuance to a taxpayer by the
26 Department of a tax credit award in conformance with Sections

1 40 and 45 of this Act.

2 "Tax year" means a calendar year for the period January 1
3 to and including December 31.

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, the
9 power and authority to:

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

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

19 (3) gather information and conduct inquiries, in the
20 manner and by the methods set forth in this Act, required
21 for the Department to comply with Section 40 and, without
22 limitation, obtain information with respect to applicants
23 for the purpose of making any designations or
24 certifications necessary or desirable to assist the
25 Department with any recommendation or guidance in the

1 furtherance of the purposes of this Act and relating to
2 applicants' participation in training, education, and
3 recruitment programs that are organized in cooperation
4 with Illinois colleges and universities or labor
5 organizations designed to promote and encourage the
6 training and hiring of Illinois residents who represent the
7 diversity of the Illinois population;

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

14 (5) require that the applicant at all times keep proper
15 books and records of accounts relating to the tax credit
16 award, in accordance with generally accepted accounting
17 principles consistently applied, and make, upon reasonable
18 written request by the Department, those books and records
19 available for reasonable Department inspection and audit
20 during the applicant's normal business hours. Any
21 documents or data made available to or received from the
22 applicant by any agent, employee, officer, or service
23 provider to the Department shall be deemed confidential and
24 shall not constitute public records to the extent that the
25 documents or data consist of commercial or financial
26 information regarding the operation by the applicant of any

1 theater or any accredited theater production, or any
2 recipient of any tax credit award under this Act.

3 Section 20. Tax credit award. Subject to the conditions set
4 forth in this Act, an applicant is entitled to a tax credit
5 award as approved by the Department for qualifying Illinois
6 labor expenditures and Illinois production spending for each
7 tax year in which the applicant is awarded an accredited
8 theater production certificate issued by the Department.

9 Section 25. Application for certification of accredited
10 theater production. Any applicant proposing an accredited
11 theater production located or planned to be located in Illinois
12 may request an accredited theater production certificate by
13 application to the Department.

14 Section 30. Review of application for accredited theater
15 production certificate.

16 (a) The Department shall issue an accredited theater
17 production certificate to an applicant if it finds that by a
18 preponderance the following conditions exist:

19 (1) the applicant intends to make the expenditure in
20 the State required for certification of the accredited
21 theater production;

22 (2) the applicant's accredited theater production is
23 economically sound and will benefit the people of the State

1 of Illinois by increasing opportunities for employment and
2 will strengthen the economy of Illinois;

3 (3) the following requirements related to the
4 implementation of a diversity plan have been met: (i) the
5 applicant has filed with the Department a diversity plan
6 outlining specific goals for hiring Illinois labor
7 expenditure eligible minority persons and females, as
8 defined in the Business Enterprise for Minorities,
9 Females, and Persons with Disabilities Act, and for using
10 vendors receiving certification under the Business
11 Enterprise for Minorities, Females, and Persons with
12 Disabilities Act; (ii) the Department has approved the plan
13 as meeting the requirements established by the Department
14 and verified that the applicant has met or made good faith
15 efforts in achieving those goals; and (iii) the Department
16 has adopted any rules that are necessary to ensure
17 compliance with the provisions set forth in this paragraph
18 and necessary to require that the applicant's plan reflects
19 the diversity of the population of this State;

20 (4) the applicant's accredited theater production
21 application indicates whether the applicant intends to
22 participate in training, education, and recruitment
23 programs that are organized in cooperation with Illinois
24 colleges and universities, labor organizations, and the
25 holders of accredited theater production certificates and
26 are designed to promote and encourage the training and

1 hiring of Illinois residents who represent the diversity of
2 the Illinois;

3 (5) that, if not for the tax credit award, the
4 applicant's accredited theater production would not occur
5 in Illinois, which may be demonstrated by any means,
6 including, but not limited to, evidence that: (i) the
7 applicant, presenter, owner, or licensee of the production
8 rights has other state or international location options at
9 which to present the production and could reasonably and
10 efficiently locate outside of the State, (ii) at least one
11 other state or nation could be considered for the
12 production, (iii) the receipt of the tax award credit is a
13 major factor in the decision of the applicant, presenter,
14 production owner or licensee as to where the production
15 will be presented and that without the tax credit award the
16 applicant likely would not create or retain jobs in
17 Illinois, or (iv) receipt of the tax credit award is
18 essential to the applicant's decision to create or retain
19 new jobs in the State; and

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

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

1 (c) The Department shall act expeditiously regarding
2 approval of applications for accredited theater production
3 certificates so as to accommodate the pre-production work,
4 booking, commencement of ticket sales, determination of
5 performance dates, load in, and other matters relating to the
6 live theater productions for which approval is sought.

7 Section 35. Training programs for skills in critical
8 demand. To accomplish the purposes of this Act, the Department
9 may use the training programs provided under Section 605-800 of
10 the Department of Commerce and Economic Opportunity Law of the
11 Civil Administrative Code of Illinois.

12 Section 40. Issuance of Tax Credit Award Certificate.

13 (a) In order to qualify for a tax credit award under this
14 Act, an applicant must file an application for each accredited
15 theater production at each of the applicant's qualified
16 production facilities, on forms prescribed by the Department,
17 providing information necessary to calculate the tax credit
18 award and any additional information as reasonably required by
19 the Department.

20 (b) Upon satisfactory review of the application, the
21 Department shall issue a tax credit award certificate stating
22 the amount of the tax credit award to which the applicant is
23 entitled for that tax year and shall contemporaneously notify
24 the applicant and Illinois Department of Revenue in accordance

1 with Section 221 of the Illinois Income Tax Act, as amended.

2 Section 45. Amount and payment of the tax credit award. The
3 tax credit award shall be calculated each tax year based upon
4 the filing by the applicant on forms prescribed by the
5 Department containing information regarding qualifying and
6 quantified Illinois labor expenditures, as defined in Section
7 10, net of the limitation in that Section, and Illinois
8 production spending, as defined in Section 10, net of the
9 limitation in that Section. From the amount calculated, the
10 applicant shall be entitled to receive a tax credit award of:

11 (1) 20% of the Illinois labor expenditures and Illinois
12 production spending for each tax year; plus

13 (2) 15% of the Illinois labor expenditures generated by
14 the employment of Illinois residents in geographic areas of
15 high poverty or high unemployment in each tax year, as
16 determined by the Department.

17 Following the Department's determination of the tax credit
18 award, the Department shall issue the tax credit award to the
19 applicant.

20 Section 50. Live theater tax credit award program
21 evaluation and reports.

22 (a) The Department's live theater tax credit award
23 evaluation must include:

24 (i) an assessment of the effectiveness of the program

1 in creating and retaining new jobs in Illinois;

2 (ii) an assessment of the revenue impact of the
3 program,

4 (iii) in the discretion of the Department, a review of
5 the practices and experiences of other states or nations
6 with similar programs; and

7 (iv) an assessment of the overall success of the
8 program. The Department may make a recommendation to
9 extend, modify, or not extend the program based on the
10 evaluation.

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

14 (i) an assessment of the economic impact of the
15 program, including the number of jobs created and retained,
16 and whether the job positions are entry level, management,
17 vendor, or production related;

18 (ii) 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 (iii) a determination of whether those receiving
23 qualifying Illinois labor expenditure salaries or wages
24 reflect the geographical, racial and ethnic, gender, and
25 income level diversity of the State of Illinois.

26 (c) At the end of each fiscal year, the Department shall

1 submit to the General Assembly a report that includes, without
2 limitation:

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

6 (ii) a statement of the amount paid to each identified
7 vendor by the accredited theater production and whether the
8 vendor is a minority or female owned business as defined in
9 Section 2 of the Business Enterprise for Minorities,
10 Females and Persons with Disability Act; and

11 (iii) a description of the steps taken by the
12 Department to encourage accredited theater productions to
13 use vendors who are minority or female owned businesses.

14 Section 55. Program terms and conditions. Any documentary
15 materials or data made available or received from an applicant
16 by any agent or employee of the Department are confidential and
17 are not public records to the extent that the materials or data
18 consist of commercial or financial information regarding the
19 operation of or the production of the applicant or recipient of
20 any tax credit award under this Act.

21 Section 80. The Illinois Income Tax Act is amended by
22 adding Section 221 as follows:

23 (35 ILCS 5/221 new)

1 Sec. 221. Live theater production credit.

2 (a) For tax years beginning on or after January 1, 2012, a
3 taxpayer who has received a tax credit award under the Live
4 Theater Production Tax Credit Act is entitled to a credit
5 against the taxes imposed under subsections (a) and (b) of
6 Section 201 of this Act in an amount determined under that Act
7 by the Department of Commerce and Economic Opportunity.

8 (b) If the taxpayer is a partnership, limited liability
9 partnership, limited liability company, or Subchapter S
10 corporation, the tax credit award is allowed to the partners,
11 unit holders, or shareholders in accordance with the
12 determination of income and distributive share of income under
13 Sections 702 and 704 and Subchapter S of the Internal Revenue
14 Code.

15 (c) A sale, assignment, or transfer of the tax credit award
16 may be made by the taxpayer earning the credit within one year
17 after the credit is awarded in accordance with rules adopted by
18 the Department of Commerce and Economic Opportunity.

19 (d) The Department of Revenue, in cooperation with the
20 Department of Commerce and Economic Opportunity, shall adopt
21 rules to enforce and administer the provisions of this Section.

22 (e) This Section is exempt from the provisions of Section
23 250 of this Act.

24 (f) The tax credit award may not be carried back. If the
25 amount of the credit exceeds the tax liability for the year,
26 the excess may be carried forward and applied to the tax

1 liability of the 3 tax years following the excess credit year.
2 The tax credit award shall be applied to the earliest year for
3 which there is a tax liability. If there are credits from more
4 than one tax year that are available to offset liability, the
5 earlier credit shall be applied first. In no event may a credit
6 under this Section reduce the taxpayer's liability to less than
7 zero.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.