

# SB3528



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3528

Introduced 2/8/2012, by Sen. Toi W. Hutchinson

#### SYNOPSIS AS INTRODUCED:

New Act  
35 ILCS 5/223 new

Creates the Interactive Digital Media Tax Credit Act. Entitles interactive digital media companies that meet certain requirements to an income tax credit in the amount of 30% of certain expenses incurred by the applicant for an accredited production in a taxable year. Authorizes taxpayers to take the credit beginning in the taxable year in which the company has met the investment requirement. Provides for the transfer of credits. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB097 19849 HLH 65126 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 Interactive Digital Media Tax Credit Act.

6 Section 5. Definitions; rules.

7 (a) As used in this Act:

8 "Interactive digital media project" means a production of  
9 interactive entertainment which is produced for distribution  
10 in commercial or educational markets, including a computer  
11 game, video game, simulation or animation, or a production  
12 intended for Internet or wireless distribution.

13 "Accredited production" means the production of an  
14 interactive digital media project that has been certified by  
15 the Department in which the Illinois production spending  
16 included in the cost of the production exceeds \$100,000 per  
17 year.

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

22 "Applicant" means a taxpayer that is an interactive digital  
23 media company that is operating or has operated an accredited

1 production located within the State of Illinois and that (i)  
2 owns the copyright in the accredited production throughout the  
3 Illinois production period or (ii) has contracted directly with  
4 the owner of the copyright in the accredited production or a  
5 person acting on behalf of the owner to provide services for  
6 the production if the owner of the copyright is not an eligible  
7 production corporation.

8 "Credit" means, for an interactive digital media  
9 accredited production commencing on or after January 1, 2013,  
10 the amount equal to 30% of the Illinois production spending for  
11 the taxable year.

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 all of the following:

20 (1) Reasonable in the circumstances.

21 (2) Included in the federal income tax basis of the  
22 property.

23 (3) Incurred by the applicant for services on or after  
24 January 1, 2011.

25 (4) Incurred for the production stages of the  
26 accredited production.

1           (5) Limited to the first \$100,000 of wages paid or  
2 incurred to each employee of a production commencing on or  
3 after January 1, 2013.

4           (6) Directly attributable to the accredited  
5 production.

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

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

11           (9) 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 an accredited production, editing, or  
20 processing; and

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

25           "Qualified production facility" means facilities in the  
26 State in which interactive digital media projects are or are

1 intended to be regularly produced.

2 (b) The Department may adopt rules necessary to implement  
3 this Act.

4 Section 10. Tax credit awards. Subject to the conditions  
5 set forth in this Act, an applicant is entitled to a credit  
6 against the tax imposed under subsections (a) and (b) of  
7 Section 201 of the Illinois Income Tax Act as approved by the  
8 Department under Section 25 of this Act.

9 Section 15. Application for certification of accredited  
10 production. Any applicant proposing an interactive digital  
11 media production located or planned to be located in Illinois  
12 may request an accredited production certificate by formal  
13 application to the Department.

14 Section 20. Issuance of Tax Credit Certificate.

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

20 (b) Upon satisfactory review of the application, the  
21 Department shall issue a Tax Credit Certificate stating the  
22 amount of the tax credit to which the applicant is entitled.  
23 The Tax Credit Certificate shall be effective for expenditures

1 made prior to the date of initial certification and shall be  
2 valid until the production is completed.

3 Section 25. Amount and duration of the credit. The amount  
4 of the credit awarded under this Act is based on the amount of  
5 the Illinois labor expenditure and Illinois production  
6 spending approved by the Department for the production as set  
7 forth under Section 5. The credit may be taken beginning with  
8 the taxable year in which the accredited production company has  
9 met the investment requirement. For each year in which such  
10 accredited production company either claims or transfers the  
11 credit, the accredited production company shall attach a  
12 schedule to the accredited production company's Illinois  
13 income tax return.

14 Section 30. Transfer of tax credits.

15 (a) Upon application and granting of an accredited  
16 production certificate by the Department, an accredited  
17 production company, or a partner or member that has received a  
18 distribution under, may elect to transfer, in whole or in part,  
19 any unused credit amount granted under this Act. An election to  
20 transfer any unused credit amount must be made no later than 5  
21 years after the date the credit is awarded, after which period  
22 the credit expires and may not be used. The Department shall  
23 notify the Department of Revenue of the election and transfer.

24 (b) An accredited production company that elects to apply a

1 credit amount against taxes remitted is permitted a one-time  
2 transfer of unused credits to one transferee. An accredited  
3 production company that elects to apply a credit amount against  
4 taxes due is permitted a one-time transfer of unused credits to  
5 no more than 4 transferees, and such transfers must occur in  
6 the same taxable year.

7 (c) The transferee is subject to the same rights and  
8 limitations as the accredited production company awarded the  
9 credit, except that the transferee may not sell or otherwise  
10 transfer the credit.

11 (d) The Department of Revenue may adopt rules to administer  
12 this Section.

13 Section 40. The Illinois Income Tax Act is amended by  
14 adding Section 223 as follows:

15 (35 ILCS 5/223 new)

16 Sec. 223. Interactive Digital Media Tax Credit. For tax  
17 years beginning on or after January 1, 2013, taxpayers who have  
18 been awarded a credit under the Interactive Digital Media Tax  
19 Credit Act are entitled to a credit against the tax imposed  
20 under subsections (a) and (b) of Section 201 of this Act as  
21 provided in the Interactive Digital Media Tax Credit Act.

22 The credit may not be carried back. If the amount of the  
23 credit exceeds the tax liability for the year, the excess may  
24 be carried forward and applied to the tax liability of the 5

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

7 This Section is exempt from the provisions of Section 250.

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