

HB 4684

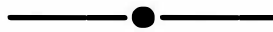
FILED

2008 MAR 31 PM 4: 56

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008



ENROLLED

House Bill No. 4684

(By Delegate Palumbo)



Passed March 8, 2008

In Effect from Passage

E N R O L L E D

FILED

2008 MAR 31 PM 4:56

H. B. 4684

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATE PALUMBO)

[Passed March 8, 2008; in effect from passage.]

AN ACT to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; specifying definitions; restricting qualification of expenditures to prevent qualification for more than one credit program; stating the amount of credit allowed in specified percentages; specifying review and certification of projects by the film office; specifying credit limitation and allocation of credit by the film office; specifying terms to be agreed by an eligible company; specifying duties of an eligible company upon completion of a qualified project; specifying forms and information to be filed by an eligible company with the film office; authorizing the transfer or sale of excess credits; specifying criteria for recapture, elimination or reduction of credit; specifying liability of credit transferor and transferee; specifying tax credit review information to be provided to the Legislature; specifying disclosure of certain information by the Tax Commissioner; and making amendments retroactively applicable to taxable years beginning after the thirty-first day of December, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-3. Definitions.

1 (a) *General.* -- When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 of this section have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required by the
5 context in which the term is used.

6 (b) *Terms defined.* --

7 (1) "Commercial exploitation" means reasonable intent
8 for public viewing for the delivery medium used.

9 (2) "Direct production expenditure" means a transaction
10 that occurs in the State of West Virginia or with a West
11 Virginia vendor, and includes:

12 (A) Payment of wages, fringe benefits or fees for talent,
13 management, or labor to a person who is a resident of West
14 Virginia;

15 (B) Payment to a personal services corporation for the
16 services of a performing artist if:

17 (i) The personal services corporation is subject to West
18 Virginia income tax on those payments; and

19 (ii) The performing artist receiving payments from the
20 personal services corporation is subject to West Virginia
21 income tax; and

22 (C) Any of the following provided by a vendor:

23 (i) The story and scenario to be used by a qualified
24 project;

25 (ii) Set construction and operations, wardrobe,
26 accessories and related services;

27 (iii) Photography, sound synchronization, lighting and
28 related services;

29 (iv) Editing and related services;

30 (v) Rental of facilities and equipment;

31 (vi) Leasing of vehicles;

32 (vii) Food or lodging;

33 (viii) Airfare if purchased through a West Virginia-based
34 travel agency or travel company;

35 (ix) Insurance coverage and bonding if purchased through
36 a West Virginia-based insurance agent; and

37 (x) Other direct costs of producing a qualified project in
38 accordance with generally accepted entertainment industry
39 practices.

40 (3) "Eligible company" means a person or business entity
41 engaged in the business of producing film industry
42 productions.

43 (4) "Feature length" means in excess of forty minutes.

44 (5) "Federal new markets tax credit program" means the
45 tax credit program codified as Section 45D of the United
46 States Internal Revenue Code of 1986, as amended;

47 (6) "Film industry production" means a qualified project
48 intended for reasonable national or international commercial
49 exploitation.

50 (7) "Film office" means the West Virginia Film Office,
51 which is a division of the West Virginia Department of
52 Commerce.

53 (8) "Postproduction expenditure" means a transaction that
54 occurs in West Virginia or with a West Virginia vendor after
55 the completion of principal photography, including editing
56 and negative cutting, Foley recording and sound effects,
57 automatic dialogue replacement (also known as ADR or
58 dubbing), special effects or visual effects, including
59 computer-generated imagery or other effects, scoring and
60 music editing, sound editing, beginning and end credits,
61 soundtrack production, subtitling or addition of sound or
62 visual effects; but not including an expenditure for
63 advertising, marketing, distribution or expense payments.

64 (9) "Qualified project" means a feature length theatrical
65 or direct-to-video motion picture, a made-for-television
66 motion picture, a commercial, a music video, commercial still
67 photography, a television pilot program, a television series
68 and a television mini-series that incurs a minimum of twenty-
69 five thousand dollars in direct production expenditures and
70 post-production expenditures, as defined by this subsection,
71 in West Virginia. The term excludes news or current affairs
72 programming, a weather or market program, an interview or
73 talk show, a sporting event or show, an awards show, a gala,

74 a production that solicits funds, a home shopping program, a
75 program that primarily markets a product or service, political
76 advertising or a concert production.

77 A qualified project may be produced on any single media
78 or multimedia program that:

79 (A) Is fixed on film, digital medium, videotape, computer
80 disk, laser disc or other similar delivery medium;

81 (B) Can be viewed or reproduced;

82 (C) Is not intended to and does not violate a provision of
83 article eight-c, chapter sixty-one of this code;

84 (D) Does not contain obscene matter or sexually explicit
85 conduct, as defined by article eight-a, chapter sixty-one, of
86 this code;

87 (E) Is intended for reasonable commercial exploitation
88 for the delivery medium used; and

89 (F) Does not contain content that portrays the State of
90 West Virginia in a significantly derogatory manner.

91 (10)"Tax Commissioner" means the West Virginia State
92 Tax Commissioner or his or her designee.

§11-13X-4. Creation of the tax credit.

1 (a) An eligible company may apply for, and the Tax
2 Commissioner shall allow, a nonrefundable tax credit in an
3 amount equal to the percentage specified in section five of
4 this article of:

5 (1) Direct production expenditures incurred in West
6 Virginia that are directly attributable to the production in
7 West Virginia of a qualified project and that occur in West
8 Virginia or with a West Virginia vendor; and

9 (2) Postproduction expenditures incurred in West
10 Virginia that are:

11 (A) Directly attributable to the production of a qualified
12 project;

13 (B) For services performed in West Virginia.

14 (b) Expenditures utilized by an eligible company for
15 purposes of calculating the tax credit authorized by this
16 article shall in no event be utilized by the eligible company
17 for the purpose calculating or qualifying investment for
18 claiming the economic opportunity tax credit authorized by
19 article thirteen-q of this chapter or the manufacturing
20 investment tax credit authorized by article thirteen-s of this
21 chapter.

§11-13X-5. Amount of credit allowed; limitation of the credits.

1 (a) *Base allowance.* —

2 (1) The amount of credit allowed to every eligible
3 company, except as provided in subsection (b) of this section,
4 shall be twenty-two percent; and

5 (2) For taxable years beginning prior to the first day of
6 January, two thousand ten, there shall be an additional credit
7 of five percent.

8 (b) *Extra allowance for hiring of local workers.* -- Any
9 amount allowed in subsection (a) of this section shall be

10 increased by an additional four percent if the eligible
11 company, or its authorized payroll service company, employs
12 ten or more West Virginia residents as part of its full-time
13 employees working in the state or as apprentices working in
14 the state.

15 (c) *Application of the credits.* — The tax credit allowed
16 under this section shall be applied to the eligible company's
17 state tax liability as provided in section seven of this article.

18 (d) *Limitation of the credits.* — No more than ten million
19 dollars of the tax credits shall be allocated by the film office
20 in any given West Virginia State fiscal year. The film office
21 shall allocate the tax credits in the order the applications
22 therefor are received.

23 (e) The additional five percent tax credit amount
24 authorized pursuant to subdivision (2), subsection (a) of this
25 section shall not be available with respect to expenditures
26 attributable to a production for which the eligible company
27 receives a tax credit pursuant to the federal new markets tax
28 credit program.

§11-13X-6. Requirements for credit.

1 (a) In order for any eligible company to claim a tax credit
2 under this article, it shall comply with the following
3 requirements:

4 (1) If the qualified project contains production credits, the
5 eligible company shall agree, upon request by the film office,
6 to recognize the State of West Virginia with the following
7 acknowledgment in the end credit roll: "Filmed in West
8 Virginia with assistance of the West Virginia Film Industry
9 Investment Act";

10 (2) Apply to the film office on forms and in the manner
11 the film office may prescribe; and

12 (3) Submit to the film office information required by the
13 film office to demonstrate conformity with the requirements
14 of this section and shall agree in writing:

15 (A) To pay all obligations the eligible company has
16 incurred in West Virginia;

17 (B) To publish, at completion of principal photography,
18 a notice at least once a week for three consecutive weeks in
19 local newspapers in regions where filming or production has
20 taken place to notify the public of the need to file creditor
21 claims against the eligible company by a specified date;

22 (C) That outstanding obligations are not waived should
23 a creditor fail to file by the specified date; and

24 (D) To delay filing of a claim for the tax credit authorized
25 by this article until the film office delivers written
26 notification to the Tax Commissioner that the eligible
27 company has fulfilled all requirements for the credit.

28 The film office shall determine the eligibility of the
29 company and the qualification of each project, and shall
30 report this information to the Tax Commissioner in a manner
31 and at times the film office and the Tax Commissioner shall
32 agree upon.

33 (b) Upon completion of a qualified project, the eligible
34 company shall:

35 (1) File all required West Virginia tax reports and returns
36 for all applicable tax years and pay any balance of West
37 Virginia tax due;

38 (2) All claims for the tax credit shall be filed with an
39 expense verification report prepared by an independent
40 certified public accountant, utilizing "Agreed Upon
41 Procedures" which are prescribed by the film office in
42 accordance with generally accepted auditing standards in the
43 United States. The certified public accountant will render a
44 report as to the qualification of the credits, consistent with
45 guidelines to be determined by the film office and approved
46 by the Tax Commissioner; and

47 (3) An eligible company claiming an extra allowance for
48 employing local workers shall submit to the film office
49 documentation verifying West Virginia residency for all
50 individuals claimed to qualify for the extra allowance. The
51 documentation shall include the name, home address and
52 telephone number for all individuals used to qualify for the
53 extra allowance.

54 (c) If the requirements of this section have been complied
55 with, the film office shall approve the film tax credit and
56 issue to the Tax Commissioner a document granting the
57 appropriate tax credit to the eligible company.

§11-13X-7. Application of credit to state taxes.

1 (a) *Credit allowed.* —

2 Beginning in the taxable year that the expenditures
3 permitted under section four of this article are incurred,
4 eligible companies and owners of eligible companies, as
5 described in subsection (d) of this section, are permitted a
6 credit, as described in section five of this article, against the
7 taxes imposed by articles twenty-three, twenty-four and
8 twenty-one of this chapter, in that order, as specified in this
9 section.

10 (b) *Business franchise tax.* —

11 The credit is first applied to reduce the taxes imposed by
12 article twenty-three of this chapter for the taxable year,
13 determined after application of the credits against tax
14 provided in section seventeen of said article, but before
15 application of any other allowable credits against tax.

16 (c) *Corporation net income taxes.* —

17 After application of subsection (b) of this section, any
18 unused credit is next applied to reduce the taxes imposed by
19 article twenty-four of this chapter for the taxable year,
20 determined before application of allowable credits against
21 tax.

22 (d) *Personal income tax.* —

23 (1) If the eligible taxpayer is an electing small business
24 corporation (as defined in section 1361 of the United States
25 Internal Revenue Code of 1986, as amended), a partnership,
26 a limited liability company that is treated as a partnership for
27 federal income tax purposes or a sole proprietorship, then any
28 unused credit, after application of subsections (b) and (c) of
29 this subsection, is allowed as a credit against the taxes
30 imposed by article twenty-one of this chapter on the income
31 from business or other activity subject to tax under article
32 twenty-three of this chapter or on income of a sole proprietor
33 attributable to the business.

34 (2) Electing small business corporations, limited liability
35 companies, partnerships and other unincorporated
36 organizations shall allocate the credit allowed by this article
37 among its members in the same manner as profits and losses
38 are allocated for the taxable year.

§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

1 (a) No credit is allowed under this section against any
2 employer withholding taxes imposed by article twenty-one of
3 this chapter.

4 (b) If the tax credit allowed under this article in any
5 taxable year exceeds the sum of the taxes enumerated in
6 subsections (b), (c) or (d), section seven of this article for that
7 taxable year, the excess may be applied against those taxes,
8 in the order and manner stated in section seven of this article,
9 for succeeding taxable years until the earlier of the following:

10 (1) The full amount of the excess tax credit is used;

11 (2) The expiration of the second taxable year after the
12 taxable year in which the expenditures occurred. The tax
13 credit remaining thereafter is forfeited; or

14 (3) The excess tax credit is transferred or sold.

15 (c) No carryback to a prior taxable year is allowed for the
16 amount of any unused portion of any annual credit allowance.

17 (d) The transfer or sale of this credit does not extend the
18 time in which the credit can be used. The carry forward
19 period for credit that is transferred or sold begins on the date
20 on which the credit was originally granted by the film office.

21 (e) Any tax credit certificate issued in accordance with
22 this article, which has been issued to an eligible company,
23 and to the extent not previously claimed against the tax of the
24 eligible company or the owner of the certificate, may be
25 transferred or sold by such eligible company to another West
26 Virginia taxpayer, subject to the following conditions:

27 (1) A single transfer or sale may involve one or more
28 transferees, assignees or purchasers. A transfer or sale of the
29 credits may involve multiple transfers to one or more
30 transferees, assignees or purchasers;

31 (2) Transferors and sellers shall apply to the film office
32 for approval of any transfer, sale or assignment of the tax
33 credit. Any amount of the tax credit that has been transferred
34 or assigned shall be subject to the same limitations and
35 conditions that apply to the eligible company's or seller's
36 entitlement, use and application of the credit. The application
37 for sale, transfer or assignment of the credit shall include the
38 transferor's tax credit balance prior to transfer, the credit
39 certificate number, the name of the seller, the transferor's
40 remaining tax credit balance after transfer, if any, all tax
41 identification numbers for both transferor and transferee, the
42 date of transfer, the amount transferred, a copy of the credit
43 certificate and any other information required by the film
44 office.

45 (3) The Tax Commissioner shall not approve the transfer
46 or assignment of a tax credit to a taxpayer if the seller or
47 transferor has an outstanding tax obligation with the State of
48 West Virginia in connection with any qualified project for
49 any prior taxable year.

50 (f) The transferee, assignee or purchaser shall apply such
51 credits in the same manner and against the same taxes as the
52 taxpayer eligible company originally awarded the credit.

53 (g) For purposes of this chapter, any proceeds received
54 by the eligible company or transferor for its assignment or
55 sale of the tax credits allowed pursuant to this section are
56 exempt from the West Virginia consumers sales and service
57 tax and use tax and from the corporate net income tax and
58 personal income tax.

59 (h) Tax credits will be subject to recapture, elimination or
60 reduction if it is determined by the Tax Commissioner that a
61 taxpayer was not entitled to the credit, in whole or in part, in
62 the tax year in which it was claimed by the taxpayer.
63 Transferors, and transferees of sold, transferred or assigned
64 tax credits bear joint and several liability for any tax, interest
65 or penalty resulting from recapture, elimination or reduction
66 of a credit claimed pursuant to this article.

67 (i) Failure to comply with this section will result in the
68 disallowance of the tax credit until the taxpayers are in full
69 compliance.

§11-13X-10. Burden of proof.

1 The burden of proof is on the eligible company claiming
2 the credit allowed by this article to establish by clear and
3 convincing evidence that the eligible company or credit
4 transferee is entitled to the amount of credit asserted for the
5 taxable year.

§11-13X-11. Tax credit review and accountability.

1 (a) Beginning on the first day of the third taxable year
2 after the passage of this article and every two years
3 thereafter, the film office shall submit to the Governor, the
4 President of the Senate and the Speaker of the House of
5 Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the film industry
7 investment act during the most recent two-year period for
8 which information is available. The criteria to be evaluated
9 shall include, but not limited to, for each year of the two-year
10 period:

11 (1) The number of eligible companies claiming the credit;

12 (2) The dollar amount of tax credit certificates issued to
13 taxpayers;

14 (3) The number of new businesses created by the tax
15 credit;

16 (4) The number of new jobs, if any, created by the tax
17 credit;

18 (5) The amount of direct expenditures made on qualified
19 projects; and

20 (6) The cost of the credit.

21 (b) Eligible companies claiming the credit shall provide
22 any information the Tax Commissioner and the film office
23 may require to prepare the report: *Provided*, That the
24 information provided is subject to the confidentiality and
25 disclosure provisions of section five-d and five-s, article ten
26 of this chapter. However, notwithstanding the provisions of
27 section five-d and five-s, article ten of this chapter, the Tax
28 Department is hereby authorized to disclose to the film office
29 and to the Development Office such tax information as may
30 be necessary to compile the report required by this section
31 and the report required by section twelve of this article.

§11-13X-12. Economic development.

1 The West Virginia Development Office, in consultation
2 and coordination with the appropriate public and private
3 entities, shall promote, foster, encourage and monitor the
4 development of the film industry in this state as part of its
5 comprehensive economic development strategy for West
6 Virginia and report recommendations for expanding the
7 industry in the state to the Governor and the Joint Committee
8 on Government and Finance annually on or before the first
9 day of December.

§11-13X-13. Effective date.

1 (a) The credit allowed by this article shall be allowed
2 upon eligible expenditures occurring after the thirty-first day
3 of December, two thousand seven.

4 (b) The amendments to this article enacted in the year
5 two thousand eight shall apply to all taxable years beginning
6 after the thirty-first day of December, two thousand seven,
7 and shall apply with retroactive effect with relation to taxable
8 years beginning prior to the date of passage of such
9 amendments.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee



Chairman House Committee

Originating in the House.

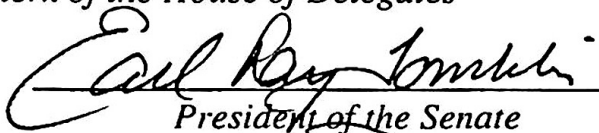
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

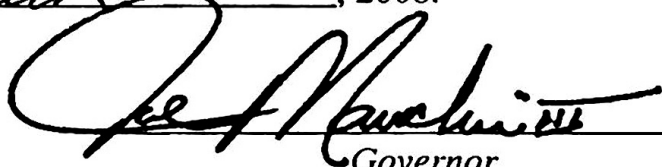


President of the Senate



Speaker of the House of Delegates

The within was approved this the 31st
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time

3:05
J