

SB 610

FILED

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**WEST VIRGINIA LEGISLATURE**

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**



**ENROLLED**

**Senate Bill No. 610**

(BY SENATORS PALUMBO, STOLLINGS AND PLYMALE)

[Passed April 10, 2009; in effect ninety days from passage.]

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## Senate Bill No. 610

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AN ACT to amend and reenact §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Film Industry Investment Act; providing and eliminating definitions; increasing the amount of credit allowed in certain years; providing requirements to claim credit; providing for use of credit and transfer process; eliminating liability of transferees for credit that is disqualified; authorizing issuance of rules by the Secretary of Commerce for administration of the film credit; and making amendments retroactively applicable to taxable years beginning after December 31, 2007.

*Be it enacted by the Legislature of West Virginia:*

That §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 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  
3 (b) of this section have the meanings ascribed to them by  
4 this section, unless a different meaning is clearly required  
5 by the 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 transac-  
10 tion that occurs in the State of West Virginia or with a  
11 West Virginia vendor and includes:

12 (A) Payment of wages, fees and costs for related fringe  
13 benefits provided for talent, management or labor that are  
14 subject to West Virginia income tax;

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, accesso-  
26 ries 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-  
34 based travel agency or travel company;
- 35 (ix) Insurance coverage and bonding if purchased  
36 through a West Virginia-based insurance agent; and
- 37 (x) Other direct costs of producing a qualified project in  
38 accordance with generally accepted entertainment indus-  
39 try practices.
- 40 (3) "Eligible company" means a person or business  
41 entity engaged in the business of producing film industry  
42 productions.
- 43 (4) "Feature length" means in excess of forty minutes.
- 44 (5) "Film industry production" means a qualified  
45 project intended for reasonable national or international  
46 commercial exploitation.
- 47 (6) "Film office" means the West Virginia Film Office,  
48 which is a division of the West Virginia Department of  
49 Commerce.
- 50 (7) "Postproduction expenditure" means a transaction  
51 that occurs in West Virginia or with a West Virginia  
52 vendor after the completion of principal photography,  
53 including editing and negative cutting, Foley recording  
54 and sound effects, automatic dialogue replacement (also  
55 known as ADR or dubbing), special effects or visual  
56 effects, including computer-generated imagery or other  
57 effects, scoring and music editing, sound editing, begin-  
58 ning and end credits, soundtrack production, subtitling or

59 addition of sound or visual effects; but not including an  
60 expenditure for advertising, marketing, distribution or  
61 expense payments.

62 (8) "Qualified project" means a feature length theatri-  
63 cal or direct-to-video motion picture, a made-for-televi-  
64 sion motion picture, a commercial, a music video, commer-  
65 cial still photography, a television pilot program, a  
66 television series and a television mini-series that incurs a  
67 minimum of \$25,000 in direct production expenditures and  
68 post-production expenditures, as defined by this subsec-  
69 tion, in West Virginia. The term excludes news or current  
70 affairs programming, a weather or market program, an  
71 interview or talk show, a sporting event or show, an  
72 awards show, a gala, a production that solicits funds, a  
73 home shopping program, a program that primarily mar-  
74 kets a product or service, political advertising or a concert  
75 production.

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

78 (A) Is fixed on film, digital medium, videotape, com-  
79 puter disk, laser disc or other similar delivery medium;

80 (B) Can be viewed or reproduced;

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

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

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

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

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

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

1 (a) *Base allowance.* –

2 The amount of credit allowed to every eligible com-  
3 pany, except as provided in subsection (b) of this section,  
4 shall be twenty-seven percent.

5 (b) *Extra allowance for hiring of local workers.* – Any  
6 amount allowed in subsection (a) of this section shall be  
7 increased by an additional four percent if the eligible  
8 company, or its authorized payroll service company,  
9 employs ten or more West Virginia residents as part of its  
10 full-time employees working in the state or as apprentices  
11 working in the state.

12 (c) *Application of the credits.* – The tax credit allowed  
13 under this section shall be applied to the eligible com-  
14 pany's state tax liability as provided in section seven of  
15 this article.

16 (d) *Limitation of the credits.* – No more than \$10  
17 million of the tax credits shall be allocated by the film  
18 office in any given West Virginia state fiscal year. The  
19 film office shall allocate the tax credits in the order the  
20 applications therefor are received.

**§11-13X-6. Requirements for credit.**

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

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

8 in West Virginia with assistance of the West Virginia Film  
9 Industry 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  
13 the film office to demonstrate conformity with the re-  
14 quirements of this section and shall agree in writing:

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

17 (B) To delay filing of a claim for the tax credit autho-  
18 rized by this article until the film office delivers written  
19 notification to the Tax Commissioner that the eligible  
20 company has fulfilled all requirements for the credit.

21 The film office shall determine the eligibility of the  
22 company and the qualification of each project, and shall  
23 report this information to the Tax Commissioner in a  
24 manner and at times the film office and the Tax Commis-  
25 sioner shall agree upon.

26 (b) Upon completion of a qualified project:

27 (1) An eligible company shall have filed all required  
28 West Virginia tax reports and returns and paid any  
29 balance of West Virginia tax due on those returns;

30 (2) All claims for the tax credit shall be filed with an  
31 expense verification report prepared by an independent  
32 certified public accountant, utilizing “agreed upon  
33 procedures” which are prescribed by the film office in  
34 accordance with generally accepted auditing standards in  
35 the United States. The certified public accountant will  
36 render a report as to the qualification of the credits,  
37 consistent with guidelines to be determined by the film  
38 office and approved by the Tax Commissioner; and

39 (3) An eligible company claiming an extra allowance for  
40 employing local workers shall submit to the film office  
41 documentation verifying West Virginia residency for all  
42 individuals claimed to qualify for the extra allowance.  
43 The documentation shall include the name, home address  
44 and telephone number for all individuals used to qualify  
45 for the extra allowance.

46 (c) If the requirements of this section have been com-  
47 plied with, the film office shall approve the film tax credit  
48 and issue a document granting the appropriate tax credit  
49 to the eligible company and shall report this information  
50 to the Tax Commissioner.

**§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  
3 of 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 subsection (b), (c) or (d), section seven of this article for  
7 that taxable year, the excess may be applied against those  
8 taxes, in the order and manner stated in section seven of  
9 this article, for succeeding taxable years until the earlier  
10 of the following:

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

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

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



16 (c) No carryback is allowed to a prior taxable year that  
17 does not have qualified expenditures for the amount of  
18 any unused portion of any annual credit allowance.

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

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

31 (1) A single transfer or sale may involve one or more  
32 transferees, assignees or purchasers. A transfer or sale of  
33 the credits may involve multiple transfers to one or more  
34 transferees, assignees or purchasers;

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

50 (3) The film office shall not approve the transfer or  
51 assignment of a tax credit if the seller or transferor has an  
52 outstanding tax obligation with the State of West Virginia  
53 for any prior taxable year.

54 (f) The transferee, assignee or purchaser shall apply  
55 such credits in the same manner and against the same  
56 taxes as specified in this article.

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

63 (h) The Tax Commissioner shall not seek recourse  
64 against the transferee for any portion of the credit that  
65 may be subsequently disqualified.

66 Failure to comply with this section will result in the  
67 disallowance of the tax credit until the seller or transferor  
68 is in full compliance.

**§11-13X-9. Legislative rules.**

1 (a) The Tax Commissioner shall propose for promulga-  
2 tion rules pursuant to article three, chapter twenty-nine-a  
3 of this code as may be necessary to carry out the purposes  
4 of this article.

5 (b) The Secretary of the West Virginia Department of  
6 Commerce may propose for promulgation rules pursuant  
7 to article three, chapter twenty-nine-a of this code as may  
8 be necessary to carry out the purposes of this article.

**§11-13X-13. Effective date.**

1 (a) The credit allowed by this article shall be allowed  
2 upon eligible expenditures occurring after December 31,  
3 2007.

4 (b) The amendments to this article enacted in the year  
5 2009 shall apply to all taxable years beginning after  
6 December 31, 2007, and shall apply with retroactive effect  
7 with relation to taxable years beginning prior to the date  
8 of passage of such amendments.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *4<sup>th</sup>*  
*May*  
Day of ....., 2009.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 2:57pm