

COMMITTEE SUBSTITUTE

for

H. B. 2773

(BY DELEGATE(S) ESPINOSA, OVERINGTON,
STORCH, SKINNER, ASHLEY AND UPSON)

(Originating in the House Committee on Finance)
[February 20, 2015]

A BILL to amend and reenact §13-11X-3 and §11-13X-5 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Film Industry Investment tax credit; defining terms; decreasing the amount of credit allocated by the film office; specifying the amount of tax credit allowed to eligible companies as a percentage of qualified expenditures; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3 and §11-13X-5 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) of
3 this section have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by the context in
5 which the term is used.

6 (b) *Terms defined.* —

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

9 (2) “Direct production expenditure” means a transaction that
10 occurs in the State of West Virginia or with a West Virginia
11 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~~ loan-out
16 company for the an individual’s services ~~of a performing artist~~
17 if:

18 (i) The ~~personal services corporation~~ loan-out company is
19 subject to West Virginia income tax on those payments; and

20 (ii) The ~~performing artist~~ individual receiving payments
21 from the ~~personal services corporation~~ loan-out company is
22 subject to West Virginia income tax; and

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

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

25 (ii) Set construction and operations, wardrobe, accessories
26 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 a
36 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 productions.

42 ~~(4) “Feature length” means in excess of forty minutes.~~

43 ~~(5)~~ (4) “Film industry production” means a qualified project
44 intended for reasonable national or international commercial
45 exploitation.

46 ~~(6)~~ (5) “Film office” means the West Virginia Film Office,
47 which is a division of the West Virginia Department of
48 Commerce.

49 (6) “Loan-out company” —

50 (A) The term “loan-out company” means and includes a
51 corporation, partnership, limited liability company, S-
52 corporation, association, nominee trust, or any entity other than
53 an individual:

54 (i) Which is owned and controlled by an actor, performer,
55 director, producer, cast member, crew member or other

56 individual who performs services used directly in a qualified
57 project,

58 (ii) Which, for contractual purposes, serves as an entity
59 separate from the individual that owns and controls the loan-out
60 company, and

61 (iii) Which contracts with an eligible company to provide
62 such services.

63 (B) The term loan-out company does not include any
64 company or entity retained by the eligible company to provide
65 tangible property or catering, construction, trailers, equipment or
66 transportation.

67 (C) For purposes of this definition, a loan-out company is
68 “owned and controlled” by an individual, if more than fifty
69 percent of the loan-out company is owned by the individual, or,
70 in the case of a publicly owned business, more than fifty percent
71 of all classes or types of the stock of the loan-out company is
72 owned by the individual, and management of the loan-out
73 company is controlled directly or indirectly by the individual.

74 (7) “Post- production expenditure” means a transaction that
75 occurs in West Virginia or with a West Virginia vendor after the

76 completion of principal photography, including editing and
77 negative cutting, Foley recording and sound effects, automatic
78 dialogue replacement (also known as ADR or dubbing), special
79 effects or visual effects, including computer-generated imagery
80 or other effects, scoring and music editing, sound editing,
81 beginning and end credits, soundtrack production, subtitling or
82 addition of sound or visual effects; but not including an
83 expenditure for advertising, marketing, distribution or expense
84 payments.

85 (8) “Qualified project” means a ~~feature length~~ theatrical or
86 direct-to-video or Internet broadcast motion picture, a made-for-
87 television motion picture, a television miniseries or series, a
88 television pilot program, a television documentary, a television
89 special, a commercial, a music video, commercial still
90 photography, programming containing both audio and video
91 entertainment or educational content created for reasonable
92 national or international commercial exploitation, ~~a television~~
93 ~~pilot program, a television series, and a television mini-series~~
94 that incurs a minimum of \$25,000 in direct production
95 expenditures ~~and~~ or post-production expenditures, as defined by

96 this subsection, in West Virginia. The term excludes news or
97 current affairs programming, radio broadcasts, a weather or
98 market program, ~~an~~ a live interview or talk show, a sporting
99 event or show, an awards show, a gala, a production that solicits
100 funds, ~~a home shopping program, a program that primarily~~
101 ~~markets a product or service~~, political advertising or a concert
102 production.

103 A qualified project may be produced on any single media or
104 multimedia program that:

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

107 (B) Can be viewed or reproduced;

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

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

113 (E) Is intended for reasonable commercial exploitation for
114 the delivery medium used; and

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

117 (9) “Tax Commissioner” means the West Virginia State Tax
118 Commissioner or his or her designee.

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

1 (a) *Base allowance.* — The amount of credit allowed to
2 every eligible company, except as provided in subsection (b) of
3 this section, is ~~twenty-seven~~ twenty-five percent.

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

11 (c) *Application of the credits.* — The tax credit allowed
12 under this section shall be applied to the eligible company’s state
13 tax liability as provided in section seven of this article.

14 (d) *Limitation of the credits.* — No more than ~~\$5~~ \$3 million
15 of the tax credits may be allocated by the film office in any given

16 West Virginia state fiscal year. The film office shall allocate the
17 tax credits in the order the applications therefor are received.

18 (e) Effective date. – The amendments to this section, enacted
19 in the 2015 Regular Legislative Session, shall apply to projects
20 for which an allocation of tax credit is made by the film office
21 under this section for fiscal years beginning on and after July 1,
22 2015.

