

SENATE BILL 354

By Norris

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, relative to tax credits for qualified production companies and to enact the "Tennessee Entertainment Industry Investment Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, is amended by adding Sections 2 through 13 as a new part 56.

SECTION 2. This part shall be known and may be cited as the "Tennessee Entertainment Industry Investment Act. "

SECTION 3. DEFINITIONS. As used in this part:

(1)

(A) "Certified production" means a qualified production that has tax credits allocated to it by the department of economic and community development based on the production's estimated qualified expenditures, up to the production's maximum certified amount of tax credits.

(B) "Certified production" does not include a production if its first day of principal photography or project start date in this state occurs before the production is certified by the development, unless the production spans more than one (1) fiscal year, was a certified production on its first day of principal photography or project start date in this state, and submits an application for continuing the same production for the subsequent fiscal year;

(2) "Commission" means the Tennessee film, entertainment and music commission;

(3) "Department" means the department of economic and community development;

(4)

(A) "Digital media project" means a production of interactive entertainment which is produced for distribution in commercial or educational markets. "Digital medical project" includes a video game or production intended for Internet or wireless distribution.

(B) "Digital media project" does not include a production deemed by the Tennessee film, entertainment and music commission to contain obscene content pursuant to 18 U.S.C. § 2257;

(5) "High-impact television series" means a production created to run multiple production seasons and having an estimated order of at least seven (7) episodes per season and qualified expenditures of at least five hundred thousand dollars (\$500,000) per episode;

(6) "Principal photography" means the filming of major or significant components of the qualified production that involves lead actors;

(7)

(A) "Production" means a:

(i) Theatrical or direct-to-video motion picture;

(ii) Made-for-television motion picture;

(iii) Visual effects or digital animation sequences produced in conjunction with a motion picture;

(iv) Commercial;

- (v) Music video;
- (vi) Industrial or educational film;
- (vii) Infomercial;
- (viii) Documentary film;
- (ix) Television pilot program;
- (x) Presentation for a television pilot program; or
- (xi) Television series, including, but not limited to, a drama, reality show, comedy, soap opera, telenovela, game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry; provided, that one (1) season of a television series is considered one (1) production;

(B) "Production" does not include a:

- (i) Weather or market program;
- (ii) Sporting event;
- (iii) Sports show;
- (iv) Gala;
- (v) Production that solicits funds;
- (vi) Home shopping program;
- (vii) Political program;
- (viii) Political documentary;
- (ix) Political advertising;
- (x) Gambling-related project or production;
- (xi) Concert production; or

(xii) Local, regional, or Internet-distributed-only news show, current-events show, pornographic production, or current-affairs show;

(C) A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device;

(8) "Production expenditures" means the costs of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction, but excludes costs for development, marketing, and distribution. "Production expenditures" includes, but is not limited to:

(A) Wages, salaries, or other compensation paid to legal residents of this state, including amounts paid through payroll service companies, for technical and production crews, directors, producers, and performers;

(i) Net expenditures for any or all of the following:

(a) Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;

(b) Rental equipment, including, but not limited to, cameras and grip or electrical equipment; and

(c) Up to one hundred fifty thousand dollars (\$150,000) for newly purchased computer software and hardware unique to the project, including servers, data

processing, and visualization technologies, which are located in and used exclusively in the state for the production of digital media;

(ii) For purposes of this subdivision (6)(B), “net expenditures” means the actual amount of money a qualified production spent for equipment or other tangible personal property, after subtracting any consideration received for reselling or transferring the item after the qualified production ends, if applicable; and

(C) Expenditures for meals, travel, and accommodations;

(9)

(A) “Qualified expenditures” means production expenditures incurred in this state by a qualified production for:

(i) Goods purchased or leased from, or services, including, but not limited to, insurance costs and bonding, payroll services, and legal fees, that are provided by a vendor or supplier in this state that is registered with the department of state or department of revenue, has a physical location in this state, and employs one (1) or more legal residents of this state; provided, that when services provided by the vendor or supplier include personal services or labor, only personal services or labor provided by residents of this state, evidenced by the required documentation of residency in this state, qualify; and

(ii) Payments to legal residents of this state in the form of salary, wages, or other compensation up to a maximum of two

hundred fifty thousand dollars (\$250,000) per resident unless otherwise specified in Section 6; provided, that a completed declaration of residency in this state shall accompany the documentation submitted to the commission for reimbursement;

(B) For a qualified production involving an event, such as an awards show, "qualified expenditures" does not include expenditures solely associated with the event itself and not directly required by the production. "Qualified expenditures" does not include expenditures incurred before certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a high-impact television series within a single season;

(C) Under no circumstances may the qualified production include in the calculation for qualified expenditures the original purchase price for equipment or other tangible personal property that is later sold or transferred by the qualified production for consideration. In such cases, the qualified expenditure is the net of the original purchase price minus the consideration received upon sale or transfer;

(10)

(A) "Qualified production" means a production in this state meeting the requirements of this part.

(B) "Qualified production" does not include a production:

(i) In which, for the first two (2) years of the incentive program, less than twenty-five percent (25%), and in subsequent years, less than fifty percent (50%), of the positions that make up its production cast and below-the-line production crew, or, in the

case of digital media projects, less than seventy-five percent (75%) of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Tennessee driver license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state; or

(ii) That is deemed by the commission to contain obscene content pursuant to 18 U.S.C. § 2257; and

(11) “Qualified production company” means a corporation, limited liability company, partnership, or other legal entity engaged in one (1) or more productions in this state.

SECTION 4. CREATION AND PURPOSE OF PROGRAM. The entertainment industry financial incentive program is created within the commission. The purpose of this program is to encourage the use of this state as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.

SECTION 5. APPLICATION PROCEDURE; APPROVAL PROCESS.

(a) Program application.—A qualified production company producing a qualified production in this state may submit a program application to the commission for the purpose of determining qualification for an award of tax credits authorized by this part no earlier than one hundred eighty (180) days before the first day of principal photography or of the project start date in this state. The applicant shall provide the commission with information required to determine whether the production is a qualified production and to determine the qualified expenditures and other information necessary for the commission to determine eligibility for the tax credit.

(b) Required documentation.—The commission shall develop an application form for qualifying an applicant as a qualified production. The form shall include, but need not be limited to, production-related information concerning employment of residents in this state, a detailed budget of planned qualified expenditures, and the applicant's signed affirmation that the information on the form has been verified and is correct. The commission shall distribute the form to all applicants.

(c) Application process.—The commission shall establish a process by which an application is accepted and reviewed and by which tax credit eligibility and award amount are determined.

(d) Certification.—The commission shall review the application within fifteen (15) business days after receipt. Upon its determination that the application contains all the information required by this section and meets the criteria set out in this part, the commission shall qualify the applicant and recommend to the department that the applicant be certified for the maximum tax credit award amount. Within five (5) business days after receipt of the recommendation, the department shall reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the commissioner of revenue.

(e) Grounds for denial.—The commission shall deny an application if it determines that the application is not complete or the production or application does not meet the requirements of this section.

(f) Verification of actual qualified expenditures.—

(1) The commission shall develop a process to verify the actual qualified expenditures of a certified production. The process shall require:

(A) A certified production to submit, in a timely manner after production ends in this state and after making all of its qualified

expenditures in this state, data substantiating each qualified expenditure, including documentation on the net expenditure on equipment and other tangible personal property made by the qualified production, to an independent certified public accountant licensed in this state;

(B) The accountant to conduct a compliance audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data, to the commission; and

(C) The commission to review the accountant's submittal and report to the department the final verified amount of actual qualified expenditures made by the certified production.

(2) The department shall determine and approve the final tax credit award amount to each certified applicant based on the final verified amount of actual qualified expenditures and shall notify the commissioner of revenue in writing that the certified production has met the requirements of the incentive program and of the final amount of the tax credit award. The final tax credit award amount may not exceed the maximum tax credit award amount certified under subsection (d).

(g) Promoting Tennessee.—The commission shall ensure that, as a condition of receiving a tax credit under this part, marketing materials promoting this state as a tourist destination or film and entertainment production destination are included, when appropriate, at no cost to the state. The materials shall, at a minimum, include placement of a "Filmed in Tennessee" or "Produced in Tennessee" logo in the end credits. The placement of a "Filmed in Tennessee" or "Produced in Tennessee" logo on all packaging material and hard media is also required, unless the placement is

prohibited by licensing or other contractual obligations. The size and placement of the logo shall be commensurate to other logos used. If no logos are used, the statement “Filmed in Tennessee using Tennessee’s Entertainment Industry Incentive,” or a similar statement approved by the commission, shall be used. The commission shall provide a logo and supply it for the purposes specified in this subsection (g).

SECTION 6. TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;
ELECTION AND DISTRIBUTION; CARRY FORWARD; CONSOLIDATED RETURNS;
PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND ACQUISITIONS.

(a) Priority for tax credit award.—The priority of a qualified production for tax credit awards shall be determined on a first-come, first-served basis within its appropriate queue, as described in subsection (b). Each qualified production shall be placed into the appropriate queue and is subject to the requirements of that queue.

(b) Tax credit eligibility.—

(1) General production queue.—Ninety-four percent (94%) of tax credits authorized pursuant to this part in any fiscal year shall be dedicated to the general production queue. The general production queue shall consist of all qualified productions other than those eligible for the commercial and music video queue or the independent, digital and emerging media production queue.

(A) A qualified production that demonstrates a minimum of five hundred thousand dollars (\$500,000) in qualified expenditures is eligible for tax credits equal to twenty percent (20%) of its actual qualified expenditures, up to a maximum of five million dollars (\$5,000,000). A qualified production that incurs qualified expenditures during multiple fiscal years may combine those expenditures to satisfy the five hundred thousand dollar (\$500,000) minimum threshold.

(B) A qualified high-impact television series shall be allowed first position in this queue for tax credit awards not yet certified.

(2) Commercial and music video queue.—Two percent (2%) of tax credits authorized pursuant to this part in any fiscal year shall be dedicated to the commercial and music video queue. A qualified production company that produces national or regional commercials or music videos may be eligible for a tax credit award if it demonstrates a minimum of seventy-five thousand dollars (\$75,000) in qualified expenditures per national or regional commercial or music video and exceeds a combined threshold of five hundred thousand dollars (\$500,000) after combining actual qualified expenditures from qualified commercials and music videos during a single fiscal year. After a qualified production company that produces commercials, music videos, or both reaches the threshold of five hundred thousand dollars (\$500,000), it is eligible to apply for certification for a tax credit award. The maximum credit award shall be equal to twenty percent (20%) of its actual qualified expenditures up to a maximum of five hundred thousand dollars (\$500,000). If there is a surplus at the end of a fiscal year after the commission certifies and determines the tax credits for all qualified commercial and video projects, the surplus tax credits shall be carried forward to the following fiscal year and be available to any eligible qualified productions under the general production queue.

(3) Independent, Digital and Emerging Media Production Queue.—Three percent (3%) of tax credits authorized pursuant to this part in any fiscal year shall be dedicated to the independent, digital and emerging media production queue. This queue is intended to encourage Tennessee independent film, digital media projects, and emerging media production. Any qualified production, excluding

commercials, infomercials or music videos, that demonstrates at least seventy-five thousand dollars (\$75,000), but not more than five hundred thousand dollars (\$500,000), in total qualified expenditures is eligible for tax credits equal to twenty percent (20%) of its actual qualified expenditures up to one hundred thousand dollars (\$100,000). If a surplus exists at the end of a fiscal year after the commission certifies and determines the tax credits for all qualified independent, digital and emerging media production projects, the surplus tax credits shall be carried forward to the following fiscal year and be available only to qualified productions under the independent, digital and emerging production queue.

(4) Post production queue.—

(A) One percent (1%) of tax credits authorized pursuant to this part in any fiscal year shall be dedicated to the post production queue. Any qualified production may be eligible for a tax credit award if it demonstrates a minimum of fifty thousand dollars (\$50,000) in qualified expenditures on post production services in Tennessee on any film, television or digital production and exceeds a combined threshold of five hundred thousand dollars (\$500,000) after combining actual qualified expenditures from qualified post production services during a single fiscal year. Qualifying post production expenditures include editing, sound mixing and color correction. If there is a surplus at the end of a fiscal year after the commission certifies and determines the tax credits for all qualified post production projects, the surplus tax credits shall be carried forward to the following fiscal year and be available to any eligible qualified productions under the general production queue.

(B) A certified production that uses music created by Tennessee residents or recorded in Tennessee is eligible for an additional tax credit equal to five percent (5%) of its actual qualified expenditures. This includes music previously composed, arranged, played and recorded by Tennessee residents or music produced exclusively for the qualified production.

(C) Qualified productions in the general production queue with expenditures of five hundred thousand dollars (\$500,000) to five million dollars (\$5,000,000) shall use a minimum of fifty thousand dollars (\$50,000) and a maximum of one million dollars (\$1,000,000) of Tennessee music to qualify for the additional tax credit.

(D) Qualified productions in the general production queue with expenditures of five million dollars (\$5,000,000) or more shall use a minimum of two hundred fifty thousand dollars (\$250,000) and a maximum of one hundred thousand dollars (\$100,000) of Tennessee music to qualify for the additional tax credit.

(E) Qualified productions in the commercial and music video queue or the independent, digital and emerging media production queue shall use a minimum of fifteen thousand dollars (\$15,000) and a maximum of fifty thousand dollars (\$50,000) of Tennessee music to qualify for the additional tax credit.

(c) Withdrawal of tax credit eligibility.—A qualified or certified production shall continue on a reasonable schedule, which includes beginning principal photography or the production project in this state no more than forty-five (45) calendar days before or after the principal photography or project start date provided in the production's program

application. The department shall withdraw the eligibility of a qualified or certified production that does not continue on a reasonable schedule.

(d) Election and distribution of tax credits.—

(1) A certified production company receiving a tax credit award under this part shall, at the time the credit is awarded by the department after production is completed and all requirements to receive a credit award have been met, make an irrevocable election to apply the credit against sales and use taxes due under title 67, chapter 6, against franchise taxes collected or accrued by the Franchise Tax Law of 1999, compiled in title 67, chapter 4, part 21, and against excise taxes collected or accrued by the Excise Tax Law of 1999, compiled in title 67, chapter 4, part 20, or against a stated sum total of these taxes. The election is binding upon any distributee, successor, transferee or purchaser. The department shall notify the department of revenue of any election made pursuant to this subsection (d).

(2) A qualified production company is eligible for tax credits against its sales and use tax liabilities and franchise and excise tax liabilities as provided in this subsection (d). However, tax credits awarded under this part shall not be claimed against sales and use tax liabilities or franchise and excise tax liabilities for any tax period beginning prior to July 1, 2012, regardless of when the credits are applied for or awarded.

(e) Tax credit carry forward.—If the certified production company cannot use the entire tax credit in the taxable year or reporting period in which the credit is awarded, any excess amount may be carried forward to a succeeding taxable year or reporting period. A tax credit applied against taxes imposed under title 67, chapter 6, may be carried forward for a maximum of five (5) years after the date the credit is awarded. A tax

credit applied against taxes imposed under the Excise Tax Law of 1999 and the Franchise Tax Law of 1999, compiled in title 67, chapter 4, parts 20 and 21, may be carried forward for a maximum of five (5) years after the date the credit is awarded, after which the credit expires and shall not be used.

(f) Partnership and noncorporate distributions.—A qualified production company that is not a corporation may elect to distribute tax credits awarded under this part to its partners or members in proportion to their respective distributive income or loss in the taxable year in which the tax credits were awarded.

(g) Mergers or acquisitions.—Tax credits available under this part to a certified production company may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section; provided, however, they may not be transferred again by the surviving or acquiring entity.

SECTION 7. TRANSFER OF TAX CREDITS.

(a) Authorization.—Upon application to the commission and approval by the department, a certified production company, or a partner or member that has received a distribution under Section 6(f), may elect to transfer, in whole or in part, any unused credit amount granted under this part. An election to transfer any unused tax credit amount under the Excise Tax Law of 1999 and the Franchise Tax Law of 1999, compiled in title 67, chapter 4, parts 20 and 21, and under title 67, chapter 6, shall be made no later than five (5) years after the date the credit is awarded, after which period the credit expires and shall not be used. The department shall notify the department of revenue of the election and transfer.

(b) Number of transfers permitted.—A certified production company that elects to apply a credit amount against taxes remitted under title 67, chapter 6 is permitted a one-time transfer of unused credits to one (1) transferee. A certified production company

that elects to apply a credit amount against taxes due under the Excise Tax Law of 1999 and the Franchise Tax Law of 1999, compiled in title 67, chapter 4, parts 20 and 21, is permitted a one-time transfer of unused credits to no more than four (4) transferees, and the transfers shall occur in the same taxable year.

(c) Transferee rights and limitations.—The transferee is subject to the same rights and limitations as the certified production company awarded the tax credit, except that the transferee shall not sell or otherwise transfer the tax credit.

SECTION 8. RELINQUISHMENT OF TAX CREDITS.

(a) Beginning July 1, 2012, a certified production company, or any person who has acquired a tax credit from a certified production company pursuant to Sections 6 and 7, may elect to relinquish the tax credit to the department of revenue in exchange for eighty percent (80%) of the amount of the relinquished tax credit.

(b) The department of revenue may approve payments to persons relinquishing tax credits pursuant to this section.

(c) Subject to legislative appropriation, the department of revenue shall request the chief financial officer or similar officer to issue warrants to persons relinquishing tax credits. Payments under this section shall be made from the fund into which the proceeds from the taxes against which the tax credits could have been applied are deposited, pursuant to the irrevocable election made by the certified production company under Section 6(d).

SECTION 9. ANNUAL ALLOCATION OF TAX CREDITS.

(a) The aggregate amount of the tax credits that may be certified pursuant to Section 5(d) shall not exceed:

(1) For fiscal year 2011-2012, fifteen million dollars (\$15,000,000);

(2) For fiscal year 2012-2013, thirty-five million dollars (\$35,000,000);

and

(3) For fiscal years 2013-2014, 2014-2015, and 2015-2016, twenty-five million dollars (\$25,000,000) per fiscal year.

(b) Any portion of the maximum amount of tax credits established per fiscal year in subsection (a) that is not certified as of the end of a fiscal year shall be carried forward and made available for certification during the following two (2) fiscal years in addition to the amounts available for certification under subsection (a) for those fiscal years.

(c) Upon approval of the final tax credit award amount pursuant to Section 5(f)(2), an amount equal to the difference between the maximum tax credit award amount previously certified under Section 5(d) and the approved final tax credit award amount shall immediately be available for recertification during the current and following fiscal years in addition to the amounts available for certification under subsection (a) for those fiscal years.

(d) If, during a fiscal year, the total amount of credits applied for, pursuant to Section 5(a), exceeds the amount of credits available for certification in that fiscal year, the excess shall be treated as having been applied for on the first day of the next fiscal year in which credits remain available for certification.

SECTION 10. RULES, POLICIES, AND PROCEDURES.

(a) The department is authorized to develop policies and procedures, and to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement and administer this section, including, but not limited to, rules specifying requirements for the application and approval process, records required for substantiation for tax credits, procedures for making the election in Section 6(d), the manner and form of documentation required to claim tax credits

awarded or transferred under this part, and marketing requirements for tax credit recipients.

(b) The department of revenue is authorized to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to administer this chapter, including rules governing the examination and audit procedures required to administer this chapter and the manner and form of documentation required to claim tax credits awarded, transferred, or relinquished under this part.

SECTION 11. AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX CREDITS; FRAUDULENT CLAIMS.

(a) Audit authority.—The department of revenue may conduct examinations and audits as provided in title 4, chapter 3, and in title 67 to verify that tax credits under this part are received, transferred, and applied according to the requirements of this part. If the department of revenue determines that tax credits are not received, transferred, or applied as required by this part, it may, in addition to the remedies provided in this section, pursue recovery of the funds pursuant to the laws and rules governing the assessment of taxes.

(b) Revocation of tax credits.—The department may revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits under this part if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this part. The department shall immediately notify the department of revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the applicant shall notify the department of revenue of any change in its tax credit claimed.

(c) Forfeiture of tax credits.—A determination by the department of revenue, as a result of an audit pursuant to subsection (a) or from information received from the commission, that an applicant received tax credits pursuant to this part to which the applicant was not entitled is grounds for forfeiture of previously claimed and received tax credits. The applicant is responsible for returning forfeited tax credits to the department of revenue, and the funds shall be paid into the general fund. Tax credits purchased in good faith are not subject to forfeiture unless the transferee submitted fraudulent information in the purchase or failed to meet the requirements in Section 7.

(d) Fraudulent claims.—Any applicant that submits fraudulent information under this part is liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent claim. An applicant that obtains a credit payment under this part through a claim that is fraudulent is liable for reimbursement of the credit amount plus a penalty in an amount double the credit amount. The penalty is in addition to any criminal penalty to which the applicant is liable for the same acts. The applicant is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

SECTION 12. ANNUAL REPORT. Each October 1, the commission shall provide an annual report for the previous fiscal year to the governor, the speaker of the senate, and the speaker of the house of representatives that outlines the return on investment and economic benefits to the state.

SECTION 13. REPEAL. This part is repealed July 1, 2015, except that:

(1) Tax credits certified under Section 5(d) before July 1, 2015, may be awarded under this part on or after July 1, 2015, if the other requirements of this part are met.

(2) Tax credits carried forward under Section 6(e) remain valid for the period specified; and

(3) Sections 7, 10 and 11 shall remain in effect until July 1, 2020.

SECTION 14. This act shall take effect on becoming a law, the public welfare requiring
it.