ARIZONA STATE SENATE

Fifty-First Legislature, First Regular Session

FACT SHEET FOR S.B. 1242

multimedia production; tax incentives

Purpose

Creates individual and corporate tax credits for qualified production expenditures for multimedia production costs and privately funded multimedia production facilities.

Background

The Motion Picture Tax Incentives Program (Program) was enacted and expanded by the Legislature in 2005, 2006 and 2007 to provide economic and tax incentives to attract the motion picture industry to Arizona. The Program expired at the end of TY 2010. The Program offered the following two categories of income tax credits: production and infrastructure.

The fiscal impact to the state General Fund is unknown at this time.

Provisions

Multimedia Production Tax Credits

1. Creates, retroactive to January 1, 2012, individual and, retroactive to January 1, 2013, corporate tax credits for qualified production expenditures (QPE) by a multimedia production company (production company). Repeals the credits on January 1, 2023.

2. Specifies that the amount of the credit for an individual production is:
   a) 20 percent of the amount of QPE exceeding $250,000 that are preapproved by the multimedia production liaison (liaison);
   b) an additional 5 percent of the amount of QPE exceeding $250,000 if, for at least 50 percent of the production, the production company uses a privately funded production facility (production facility) that is certified by the liaison; and
   c) an additional 5 percent of wages paid to employees who are residents of this state for work performed in Arizona directly related to the production.

3. Requires the liaison to certify production facilities for the purposes of tax credits if the production facility:
   a) employs Arizona residents for at least 50 percent of its full-time employment positions within the state; and
   b) has certified infrastructure investment with a value of at least $50 million. Outlines steps to determine if a production facility has the infrastructure investment amount.

4. Prohibits the amount of credit from exceeding $15 million for any individual production by a qualified production company. Prohibits the liaison from certifying more than one income tax credit for production facilities each fiscal year, and no credit, computed as 15 percent of the certified infrastructure investment, from exceeding $10 million.

5. Stipulates that a production company may only receive a credit that is based on the QPE submitted by the production company and certified by the liaison.

6. Requires a production company to meet the following in order to qualify for a credit:
   a) have QPE of at least $250,000 in production costs. Stipulates that wages included as QPE must be subject to Arizona income tax and, with respect to any individual, not more than $1 million for a single production. Allows a company to aggregate costs for multiple productions within a single fiscal year for the purpose of reaching the minimum expenditure threshold;
   b) exclude property that requires records be maintained as required by the United States Child Protection and Obscenity Enforcement Act (18 U.S. Code Section 2257);
   c) enter into a written managed review agreement with the liaison that establishes the requirements to be conducted at the production company's expense. Outlines statutory requirements for the managed review;
   d) include an acknowledgment that the production was filmed in Arizona in the end credits; and
   e) receive preapproval and post-approval certification of the production from the liaison.

7. Stipulates that an approved credit offset tax liability for the taxable year in which the taxpayer received post-approval for the production.

8. Requires the credit be claimed on a timely filed original income tax return, including extensions.

9. Prohibits the Arizona Department of Revenue (DOR) from allowing a credit to a taxpayer who has a delinquent tax balance.

10. Permits co-owners of a production company to allocate the credit among the co-owners on any basis without regard to their proportional ownership interest. Prohibits the total credits allowed all such owners from exceeding the amount that would have been allowed for a sole owner of the company.

11. Specifies that if the allowable tax credit exceeds the taxpayer's income tax liability or if the taxpayer has no tax liability in Arizona, the excess amount may be paid to the taxpayer as a refund. Allows, if the DOR determines that any amount refunded is incorrect or invalid, the excess credit amount to be treated as a tax deficiency.

12. Prohibits a taxpayer who claims the credit from claiming a privately funded multimedia production facility credit (production facility credit) for the same costs.

13. Stipulates that the credit is in lieu of a deduction of those expenses allowed by the Internal Revenue Code.

Multimedia Production Liaison

14. Requires the Chief Executive Officer (CEO) of the Arizona Commerce Authority (ACA) to appoint a liaison.

15. Authorizes the liaison to supervise and evaluate the preapproval and post-approval of tax credits and coordinate the interests of the ACA, Office of Tourism, DOR and other agencies, political subdivisions and private entities in promoting multimedia production in Arizona.

16. Requires the liaison to qualify production companies that produce one or more motion pictures in Arizona for credits, as applicable.

17. Requires the liaison to:
    a) adopt rules, forms and procedures as necessary to facilitate the orderly application, evaluation and approval of credits and post them on the liaison's website; and
    b) maintain annual data and other information on the total amount of monies credited.

18. Stipulates that any information gathered from production companies and production facilities is considered confidential taxpayer information, except that the liaison is required to post the following in its annual report:
    a) the name of each production company and production facility, the number of days shooting and the number of full time equivalent employees, itemized by productions in preproduction, production and post-production stage of activity;
    b) the amount of income tax credits preapproved during the taxable year; and
    c) the amount of credits post-approved with respect to each production during the year.

Preapproval

19. Requires a production company initially applying for qualification to report the following, in a form and manner prescribed by the liaison, to the liaison:
    a) the name, address, telephone number and website of the production company;
    b) the name and address of the individual who will maintain expenditure records in Arizona;
    c) the projected first preproduction date and last production date in Arizona;
    d) the estimated total budget of the production;
    e) the estimated total expenditures in Arizona;
    f) the estimated total number of days in preproduction, production and postproduction in Arizona;
    g) the estimated level of employment of Arizona residents in the cast and crew;
    h) a script, including a synopsis, the proposed director and preliminary list of the cast and producer. Requires a televisions series, other than a pilot production, to

provide a synopsis of the general nature of the series, a description of the characters and the intended nature of their interactions, a description of the locations and sets, and the intended distribution or broadcast medium with specific TV networks, if known, in lieu of a script; and

i) an affirmation signed by a principal of the production company who will be credited on screen as the producer or producers that the production company agrees to furnish records of expenditures to the liaison on request.

20. Requires the applicant to notify the liaison of the Arizona office address and telephone number within ten days after submitting the initial application.

21. Requires the liaison to establish the process for qualifying and preapproving a production company for a credit as follows:
    a) allows the liaison to adopt a schedule for receiving applications during each year as necessary to expedite and manage the application review and evaluation process;
    b) requires each application to be accompanied by a nonrefundable application fee in an amount prescribed by the CEO. Requires the liaison to deposit the revenues from the fee into the Multimedia Production Fund;
    c) requires the liaison to review the application, within 30 days after receiving a complete application, to determine whether the production company satisfies all of the criteria necessary to receive preapproval; and
    d) requires the liaison to issue a preapproval letter to a qualifying applicant that is effective for the purposes of the credit for 24 months.

22. Allows the liaison to conduct a site visit to verify that production has begun.

23. Specifies, if the production company fails to provide documentation of either of the following, that preapproval of a production lapses, the application is void and the amount of preapproved credit does not apply against the dollar limit (see provision 25):
    a) its expenditure in Arizona the lesser of ten percent of the estimated total stated budget of the production or $250,000; or
    b) a completion bond, equal to the estimated total budget of the preapproved production. Defines *completion bond*.

24. Specifies, if the production facility fails to provide documentation of either of the following, that preapproval lapses, the application is void and the amount of preapproved credit does not apply against the dollar limit (see provision 25):
    a) a total expenditure of $5 million in this state; or
    b) a surety bond equal to the certified infrastructure investment amount.

25. Prohibits the liaison from preapproving income tax credits that exceed a total of $70 million for any fiscal year (dollar limit). Specifies that, of that amount, $10 million each year is reserved for privately funded multimedia production facility credits and $60 million is reserved for multimedia production credits.

26. Applies the preapproved amount against the dollar limit for the fiscal year in which the application was submitted, regardless of whether the initial preapproval period extends

into the following year or years. Permits a production company to voluntarily relinquish unused credit amounts before the expiration of the initial preapproval or requalification period.

27. Requires the liaison to allocate the income tax credits based on priority placement established by the date the production company files its application. Provides for exemptions.

28. Requires the liaison to reallocate the amount of credits that are voluntarily relinquished or lapse. Requires the credits be reallocated to other production companies that applied in the original credit year, based on priority placement. Stipulates that the amount of the reallocated credit continues to apply against the dollar limit of the original credit year regardless of the year in which the reallocation occurs.

29. Prescribes that for any year an unused balance occurs in the credits authorized under the dollar limit, requires the balance to be allocated to production companies that successfully appeal the denial of approval.

Post-approval

30. Requires a production company, on completion of a prequalified multimedia production and after completion of the managed review, to:
    a) apply to the liaison in writing for post-approval of income tax credits;
    b) submit a viewable copy of the motion picture. Provides an exemption; and
    c) certify the total amount of actual eligible production costs associated with the project.

31. Requires, within 90 days after the production company's application for post-approval, the liaison to either:
    a) provide post-approval if the production company has met the eligibility requirements. Specifies liaison action after providing post-approval;
    b) request additional information necessary for a determination of eligibility. Specifies liaison action in regards to requesting additional information; or
    c) issue a denial of post-approval with written findings supporting the denial. Requires the liaison to deny an application for post-approval if:
        i. the production company fails to meet all of the established criteria; or
        ii. the liaison determines that, regardless of the production medium, the production would constitute an obscene motion picture or obscene pictorial publication, depicts obscene sexual activity or would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor.

32. Allows the liaison to prohibit, if a preapproved production company fails to undertake production and also fails to voluntarily relinquish the unused credit amounts within the 90-day period, the production company and all persons signing the application from receiving or participating in any production company that applies for or receives tax credits for three years after the original application.

33. Requires a production facility, on completion, to apply to the liaison in writing for post-approval of the certified infrastructure investment in the project. Requires the liaison, if the applicant has met the eligibility requirements, to provide post-approval of the investment amount and notify the DOR that the applicant may claim the credit.

Privately Funded Multimedia Production Facility Tax Credit

34. Creates an individual and corporate tax credit for investments in privately funded multimedia production facilities (production facilities). Repeals the production facility credit on January 1, 2043.

35. Specifies that the amount of the production facility credit is 15 percent of the postapproved certified infrastructure investment in the project during the taxable year as reported by the liaison to the DOR.

36. Allows the taxpayer to apply the production facility credit against income taxes for the taxable year in which the production facility is completed.

37. Prohibits the DOR from allowing a production facility tax credit to a taxpayer who has a delinquent tax balance.

38. Permits co-owners of a production facility to allocate the production facility credit among co-owners on any basis without regard to their proportional ownership interest. Prohibits the total production facility credits allowed all such owners from exceeding the amount that would have been allowed for a sole owner of the company.

39. Allows the taxpayer to carry the amount of the claim not used to offset taxes up to five consecutive taxable years' income tax liability if the allowable production facility credit exceeds the taxes due on the claimant's income.

40. Requires the DOR to maintain annual data on the total amount of monies credited.

41. Requires the DOR to adopt rules and publish and prescribe forms and procedures as necessary.

42. Prohibits a taxpayer who claims the production facility credit from claiming a multimedia production tax credit for the same costs.

43. Stipulates that the production facility credit is in lieu of a deduction of those expenses allowed by the Internal Revenue Code.

Multimedia Production Fund

44. Establishes the Multimedia Production Fund (Fund), consisting of revenues from the preapproval application fee for the credit.

45. Requires the liaison to administer the Fund.

46. Prescribes that Fund monies are continuously appropriated to the liaison for the purposes of administering the credit.

47. Requires the State Treasurer to invest and divest monies in the Fund, on notice from the liaison. Requires monies earned from investments be credited to the Fund.

48. Exempts the Fund from statute relating to the lapsing of appropriations.

General Provisions

49. Adds the credits to the income tax credit review schedule.

50. Requires a production facility to maintain data on the number of productions using its facility each year and report that information to the Speaker of the House of Representatives and the President of the Senate by December 31 of each year.

51. Allows the DOR to disclose confidential information to the liaison for the purposes of qualifying and approving tax credits and fulfilling reporting responsibilities.

52. As session law, requires the liaison to work with Arizona universities and community colleges to develop a program to encourage multimedia production companies that apply for tax credits to offer internships and mentoring programs for qualified students who are pursuing postsecondary degrees in motion picture and multimedia production.

53. As session law, requires the liaison to report to the Joint Legislative Income Tax Credit Review Committee on the employment of residents in full-time positions in motion picture and multimedia productions in Arizona that qualified for income tax credits by July 31, 2016.

54. Defines *multimedia production company* or *production company*, *qualified production expenditure*, *resident*, *television series*, *infrastructure investment*, *privately funded multimedia production facility* or *production facility*, *soundstage*, *support* and *augmentation facilities and multimedia infrastructure project*.

55. Contains a purpose statement.

56. Makes technical and conforming changes.

57. Becomes effective on the general effective date.

Prepared by Senate Research
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JT/tf