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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Lanese and Carruthers

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SUMMARY

- Authorizes a refundable income tax credit for certain entertainment technology companies engaged in postproduction and digital distribution of motion pictures or extended reality experiences.
- Requires companies to meet certain employment, internship, payroll, and investment thresholds to qualify for the credit.
- Requires that the tax credit be awarded only upon completion of the motion picture or extended reality project and only if the company incurs at least $100,000 in qualifying expenditures in connection with the project.
- Sets the amount of the credit to 10% of qualifying expenditures for projects also certified for a film and theater credit or, for other projects, 30% of qualifying expenditures plus an additional 5% if the services were performed at an Ohio entertainment technology facility.
- Limits the total amount of credits that may be issued as follows:
  - $2 million in each of FYs 2022 and 2023;
  - $5 million in each of FYs 2024 and 2025;
  - $10 million in each of FYs 2026 and 2027; and
  - $20 million in FY 2028 and all following FYs.
- Limits the amount of credits that may be issued to any one company to 20% of available credits for that fiscal year.
- Requires the Director of Development to issue credits on a first-come, first-served basis, and allows the Director to offer a reduced credit in the event a company's requested credit amount would exceed the bill's overall or per-company credit caps.

- Allows a company issued a credit to transfer it to one or more other taxpayers.
- Authorizes the Tax Commissioner to reduce or revoke the credit in the event that nonqualifying expenditures are used to calculate the credit amount.

DETAILED ANALYSIS

Entertainment Technology Initiative

The bill establishes the Entertainment Technology Initiative to be administered by the Department of Development (DEV). The Initiative provides for a refundable tax credit against the state income tax for certain "qualifying" entertainment technology companies engaged in postproduction and digital distribution services for motion pictures or extended reality experiences. The credit may be awarded independently or in conjunction with a film and theater tax credit, which is available under continuing law to production companies that incur at least $300,000 of "eligible expenditures" producing in Ohio all or part of a motion picture or Broadway theater production.[1]

The credit authorized by the bill is more expansive than the film and theater tax credit in that it is available to smaller projects (i.e., those with qualifying expenditures exceeding only $100,000) and to projects involving digital distribution and extended reality experiences, neither of which are contemplated by the film and theater tax credit. However, the credit is also more exclusive than the film and theater credit in that it is not available to theater producers and it requires applicants to meet certain employment, internship, payroll, and investment thresholds. The Director of DEV, in consultation with the Tax Commissioner, may adopt rules to administer the Initiative.[2]

Qualifying entertainment technology companies

Only pass-through entities, e.g., S corporations, partnerships, and LLCs, engaged in the business of performing postproduction or digital distribution services for motion pictures or extended reality experiences are eligible for the bill's tax credit. The company must also demonstrate compliance with certain employment, internship, payroll, and investment thresholds.[3]

Employment

For the 12 months prior to completion of the project, the company must employ a minimum number of "qualifying employees" who work in full time positions that consist primarily of performing postproduction or digital distribution services in Ohio. To qualify, the employees must be one of the following on the date their employment begins:

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[1] R.C. 122.85, not in the bill.

[2] R.C. 122.852(J).

[3] R.C. 122.852(B).

- An Ohio resident;
- Enrolled in an accredited institution of higher education in Ohio;
- A graduate of such an institution within the preceding 12 months.

For projects completed before July 1, 2025, the company must employ at least three qualifying employees. For projects completed after that date, the company must employ at least five qualifying employees.[4]

Internships

The company must also employ at least two interns who assisted with the project that is the subject of the tax credit application and who, at the time the internship began, were enrolled in an accredited institution of higher education in Ohio. To qualify for the purposes of the credit, the duration of the internship must be at least three months.[5]

Payroll

For the twelve months preceding completion of the project, the company must maintain an aggregate qualifying payroll of at least $150,000, if the project was completed before July 1, 2025, or at least $300,000 if completed after that date. Qualifying payroll includes wages, salaries, and other compensation paid to employees for performing postproduction and digital distribution services in Ohio.[6]

Investment

The company must have incurred at least $500,000 in "Ohio investment expenditures" before the project was completed. Such expenditures may include qualifying payroll and amounts paid to purchase, lease, construct, expand, or improve a qualifying technology entertainment facility. The bill specifies that all of the following costs qualify as Ohio investment expenditures:

- Design, engineering, and construction of a qualifying entertainment technology facility;
- Exploring and implementing sustainability features and other equipment or design characteristics that increase energy efficiency or contribute to a public or private certification of such a facility;
- Technical improvements to HVAC and electrical systems, including the design and installation of solar and wind energy systems or geothermal heating systems;
- Purchase and installation of electric vehicle charting stations.

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[4] R.C. 122.852(A)(7) and (B)(2)(a).

[5] R.C. 122.852(B)(2)(b).

[6] R.C. 122.852(A)(8) and (B)(2)(c).

Conversely, a company's Ohio investment expenditures cannot include expenditures for which the company received a film and theater credit or a credit under the bill.[7]

The bill defines "qualifying entertainment technology facility" as a building or complex of buildings having at least 5,000 square feet of cumulative floor space, located in Ohio, and used primarily for postproduction or digital distribution services.[8]

Postproduction and digital distribution services

The credit is based upon expenditures incurred in performing "postproduction or digital distribution services," which the bill defines as processes that occur after the filming, shooting, or recording phase of production, including image processing and sound synchronization; editing and related services; transfer of film to tape or digital format; audio recording and mixing; music composition and recording; visual effects; motion graphics and animation; color grading; data storage; film or music delivery; postproduction supervision; video mastering; metadata generation; creation and distribution of digital cinema packages; quality control; digital delivery; advertising and promotion; and distribution.[9]

Qualifying projects

The credit is available for projects involving motion pictures or extended reality experiences. "Motion picture" is defined by continuing law as entertainment content created partly or wholly in Ohio for distribution or exhibition to the general public. The term expressly includes feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; interactive websites; sound recordings; videos; music videos; interactive television; interactive games; video games; commercials; any format of digital media; and certain trailers, pilots, video teasers, or demos. It excludes sexually explicit productions; television news; weather; sports; market reports; award shows and galas; fundraisers; infomercials; political advertising; and in-house advertising.[10]

The bill defines an "extended reality experience" as one that utilizes mixed, extended, virtual, or augmented reality technology, machine wearable technology, multiplatform storytelling technics, or certain other modalities described by the bill.[11]

Qualifying expenditures

To qualify for a tax credit, the project must involve at least $100,000 in qualifying expenditures incurred after the bill's 90-day effective date. "Qualifying expenditures" are costs directly incurred in Ohio for the project and can include expenses for qualifying payroll (see

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[7] R.C. 122.852(A)(4) and (B)(2)(d).

[8] R.C. 122.852(A)(10).

[9] R.C. 122.852(A)(9).

[10] R.C. 122.85(A)(5), not in the bill.

[11] R.C. 122.852(A)(13).

"**Payroll**" above); equipment rental; vehicle leases; food; lodging; airfare purchased through an Ohio travel agent or company; insurance costs and bonding purchased through an Ohio insurance company; and other costs directly related to postproduction and digital distribution services and consistent with generally accepted entertainment industry practices.[12]

Application

To obtain a credit, an entertainment technology company may apply to the Director of DEV. Unlike the film and theater tax credit, which involves a two-step application process, the entertainment technology initiative credit requires only one application to be submitted after completion of the project. The application must include all of the following:

- The company's name and address;
- Documentation showing that the company meets the employment, internship, payroll, and investment thresholds described above;
- A description of the project, including a synopsis of the script;
- A creative elements list including the names of the cast, crew, producer, and director;
- Certification that the project is not a sexually explicit production for which records must be maintained under federal law;[13]
- If the project is certified for a film and theater tax credit, a copy of the notice of certification;
- A description of the postproduction or digital distribution services performed for the project along with a written statement or master services agreement between the production company and the applicant confirming a mutual commitment for those services;
- A report itemizing the qualifying expenditures prepared by an independent certified public accountant;
- The date on which the project was completed;
- Any other information required by the Director.[14]

Evaluation of applications

After receiving a credit application, the Director of DEV has 30 days to approve or deny it and notify the company of that determination. The Director must review applications in the order in which they were received. In making its determination, the Director may inspect the company's records to evaluate the accuracy of the information provided. Expenditures can be

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[12] R.C. 122.852(A)(8) and (11).

[13] 18 United States Code (U.S.C.) 2257.

[14] R.C. 122.852(B)(1).

disallowed if the Director determines they do not qualify. Expenditures can be included even if they were also used to compute a separate film and theater tax credit. However, the same expenditures cannot be the basis for more than one Entertainment Technology Initiative credit.[15]

If an application is incomplete, the Director may request the missing information or reject the application.[16] The Director must reject an application if it does not meet the criteria discussed above or if one of the credit caps has been reached (see "**Credit caps**," below).[17] The Director must also reject an application if the company that submitted it is owned, affiliated with, or controlled by a person who owes taxes, workers' compensation premiums, unemployment contributions, or other public debts certified to the Attorney General for collection or a person for which such an obligation has been discharged through bankruptcy.[18]

Tax credit certificate and amount

The bill requires the Director of DEV, upon approving an application, to issue a tax credit certificate to the applicant listing the amount of the credit and the amount of qualifying expenditures used in calculating the credit amount. The amount of the credit equals one of the following:

- 10% of qualifying expenditures if the project is certified as a tax credit-eligible production for the purposes of the film and theater tax credit;
- 30% of qualifying expenditures for any other projects, plus an additional 5% if the postproduction or digital distribution services are performed at a qualifying entertainment technology facility owned or leased by the applicant.[19]

Credit caps

Credits are issued on a first-come, first-served basis. The aggregate amount of credits issued by the Director cannot exceed:

- $2 million for each of FYs 2022 and 2023;
- $5 million for each of FYs 2024 and 2025;
- $10 million for each of FYs 2026 and 2027; and
- $20 million for any later fiscal year.

[15] R.C. 122.852(C)(1) and (3).

[16] R.C. 122.852(C)(2).

[17] R.C. 122.852(D)(1) to (4).

[18] R.C. 122.852(D)(5).

[19] R.C. 122.852(E).

A single company and its affiliates cannot receive more than 20% of a given fiscal year's total credit limit. Affiliates include those that directly or indirectly control, are controlled by, or are under common control with the applicant company.[20]

If approving a credit would exceed either limitation, the Director must send notice to the applicant rejecting the requested credit amount and explaining the reason for such rejection. In the same notice, the Director may offer a lesser credit amount that would not exceed the limitations. The applicant can accept that lesser credit as full consideration for the qualifying expenses or can reject the offer and reapply in a later fiscal year. If an applicant does not respond to the notice in writing within 30 days, the Director must consider the lesser offer rejected.[21]

Claiming the credit

Once a tax credit certificate is issued, the applicant or a transferee may claim an income tax credit for that taxable year. The credit is refundable, so the amount of the credit that exceeds the tax due is refunded to the taxpayer.[22]

Transferability

The qualifying entertainment technology company that applied for and was issued a tax credit certificate may transfer the right to claim all or part of the tax credit to one or more taxpayers by notifying the Director of DEV and the Tax Commissioner in writing. The notice must identify each transferee and the amount of credit transferred to each. Upon receiving such a notice, the Director must issue updated tax credit certificates, containing all the required information, to the transferees and to the Commissioner. The company that was originally awarded the credit may transfer it to multiple transferees in more than one transaction, but a transferee may not transfer the credit to another person.[23]

Credit reduction or revocation

If the Tax Commissioner determines that some or all of the expenditures used to compute the credit amount are not qualifying expenditures, the Commissioner may reduce the credit amount or revoke the credit entirely. If the credit has already been claimed, the Commissioner is authorized to make an assessment against the company or taxpayers to which the company transferred the credit. The assessment amount equals the difference between the credit claimed and the amount that should have been authorized without the ineligible expenditures.[24]

[20] R.C. 122.852(A)(1).

[21] R.C. 122.852(F).

[22] R.C. 122.852(H) and 5747.98.

[23] R.C. 122.852(G).

[24] R.C. 122.852(I).

HISTORY

Action	Date
Introduced	03-15-22

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