



Ohio Revised Code

Section 122.852 Film and theater capital improvement tax credit.

Effective: October 3, 2023

Legislation: House Bill 33 - 135th General Assembly

(A) As used in this section:

(1) "Capital improvement project" means a project that consists of acquiring, constructing, rehabilitating, repairing, redeveloping, expanding, or improving facilities located, or equipment used in this state for production and postproduction of motion pictures or Broadway theatrical productions.

(2) "Qualified expenditures" means expenditures incurred by a production company after June 30, 2023, for goods and services purchased and consumed directly for a capital improvement project. "Qualified expenditures" include accounting or auditing expenditures incurred in connection with the report required by division (F) of this section if paid to an independent certified public accountant certified, or an accounting firm registered under Chapter 4701. of the Revised Code. "Qualified expenditures" do not include eligible expenditures for which a production company received a tax credit under section 122.85 of the Revised Code.

(3) "Certificate owner" means a production company to which a tax credit certificate is issued under division (H) of this section or a person to which all or part of a tax credit is transferred under division (I) of this section.

(4) "Production company," "eligible expenditures," "motion picture," and "Broadway theatrical production" have the same meanings as in section 122.85 of the Revised Code.

(B) For the purpose of encouraging and developing strong film and theater industries in this state, the director of development may award a refundable credit against the tax imposed by section 5726.02, 5747.02, or 5751.02 of the Revised Code to a production company that completes a capital improvement project expected to have a positive economic impact in this state as a whole, or in any community in this state in which the facilities or equipment involved in the project are or will be located. A production company may apply to the director for a credit on a form and in the manner



prescribed by rules adopted under division (J) of this section. An application may be submitted before, during, or after completion of the capital improvement project, but not sooner than July 1, 2024, and shall include all of the following information:

- (1) The name, address, telephone number, and taxpayer identification number of the production company;
- (2) A detailed description of the capital improvement project including the location of the facilities or equipment involved in the project and an explanation of how those facilities or equipment are intended to be used in the production or postproduction of motion pictures or Broadway theatrical productions in this state;
- (3)(a) If the capital improvement project is complete at the time the application is submitted, a schedule documenting the progression of the project from its commencement to its completion;
- (b) If the capital improvement project is not complete at the time the application is submitted, a schedule for the progression, completion, and, if applicable, commencement of the project.
- (4) An estimate of the amount of the project's qualified expenditures that have been or will be incurred by the production company and, if the project is not complete at the time the application is submitted, documentation of the company's financial ability to complete the project, including documentation that shows the company has secured funding, other than the tax credit authorized by this section, equal to at least fifty per cent of the total cost of the project;
- (5) The estimated credit amount, which shall equal the lesser of five million dollars or twenty-five per cent of the production company's estimated qualified expenditures;
- (6) The estimated economic impact of the capital improvement project in this state as a whole, and in any community in this state in which the facilities or equipment involved in the project are or will be located;
- (7) Any other information considered necessary by the director.



(C) The director shall review, evaluate, and approve applications in one round per fiscal year. For each round, the director shall rank applications on the basis of the capital improvement project's likely positive economic impact and effect on developing a permanent workforce in motion picture or theatrical production industries in the state as a whole, and in any community in this state in which the facilities or equipment involved in the project are or will be located. The effect on developing a permanent workforce in the motion picture or theatrical production industries shall be evaluated first by the number of new jobs created and second by amount of payroll added with respect to employees in this state. Subject to division (D)(2) of this section, the director shall approve applications in the order of their ranking, from those with the greatest positive economic impact and workforce development effect to those with the least positive economic impact and workforce development effect. The director shall not approve an application or issue a tax credit certificate for a capital improvement project that is not likely to have a positive economic impact or workforce development impact in either the state as a whole, or any community in this state in which the facilities or equipment involved in the project are or will be located.

(D)(1) The director shall not approve more than twenty-five million dollars in estimated tax credits in total per fiscal year provided that, for any fiscal year in which the amount of estimated credits approved under this section is less than the maximum annual amount, the amount not approved for that fiscal year shall be added to the maximum annual amount that may be approved for the following fiscal year.

If the director rescinds approval of a capital improvement project under division (E)(2) of this section, the estimated credit amount attributed to that project shall be added back to the maximum total annual credit amount for that fiscal year. If the actual credit amount computed under division (H) of this section is less than the estimated credit amount approved by the director, the difference shall be added back to the maximum total annual credit amount for that fiscal year.

In any fiscal year, the director may reduce the maximum amount calculated under division (D)(1) of this section and increase the maximum amount calculated under division (D)(4) of section 122.85 of the Revised Code by the amount of that reduction.

(2) The director shall not approve more than five million dollars in estimated tax credits per fiscal year for capital improvement projects located in any single county.



(E)(1) Within ninety days after the director of development approves a capital improvement project that was not complete at the time of the production company's application, the production company shall submit sufficient evidence of reviewable progress to the director. The director may request additional updates from the production company regarding the progression of the project as often as the director considers necessary until the project is complete or approval of the project is rescinded. The production company shall respond to each such request within thirty days.

(2) The director may rescind approval of a capital improvement project if the production company fails to timely submit evidence of reviewable progress or respond to the director's request for a project update, as required by division (E)(1) of this section, or if the director determines that the progression of the project is significantly behind the schedule submitted in the tax credit application. The director shall rescind approval of a project that does not begin within ninety days after the date the application is approved unless the production company shows good cause for the delay, meaning that the project was delayed due to unforeseeable circumstances beyond the production company's control or due to action or inaction by a government agency.

(3) The director shall notify the production company upon rescinding approval of a capital improvement project. Nothing in this section prohibits the production company from reapplying for approval of the same capital improvement project.

(F)(1) A production company whose capital improvement project is approved by the director of development shall engage, at the company's expense, an independent certified public accountant to examine the company's qualified expenditures. Within ninety days after the director approves the project or within ninety days after a project approved by the director is complete, whichever is later, the certified public accountant shall issue a report to the company and to the director that includes all of the following:

(a) The amount of the company's actual qualified expenditures;

(b) Completed copies of all accounting and auditing forms required by the director in connection with the capital improvement project;



(c) An itemized review of all contract and expense items of ten thousand dollars or more that are reported as qualified expenditures;

(d) An itemized review of at least one-half of the contract and expense items of less than ten thousand dollars that are reported as qualified expenditures, both in terms of the total number of such contracts and items and the total amount of qualified expenditures reported for such contracts and items;

(e) Certification that all goods and services reported as qualified expenditures were purchased and consumed in this state.

(2) Upon receiving and examining the report, the director may disallow any expenditure the director determines is not a qualified expenditure. If the director disallows an expenditure, the director shall issue a written notice to the production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine the production company's actual qualified expenditures for the purpose of computing the amount of the credit.

(3) Qualified expenditures reported by the production company are subject to inspection and examination by the tax commissioner or employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Once the qualified expenditures are finally determined under division (F)(2) of this section, the credit amount is not subject to adjustment unless the director determines an error was committed in the computation of the credit amount.

(G) After reviewing the report and making the determination prescribed by division (F) of this section, the director of development shall issue a tax credit certificate to the production company. The director, in consultation with the tax commissioner, shall prescribe the form and manner of issuing certificates. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for that purpose. The certificate shall state the amount of the credit and the amount of the qualified expenditures upon which the credit is based. Upon issuance of a certificate, the director shall certify to the tax commissioner the name of the production company to which the certificate was issued, the amount of qualified expenditures shown on the certificate, the amount of the credit, and any other



information required by the rules adopted to administer this section.

(H) The credit amount stated on the tax credit certificate shall equal the lesser of the following:

(1) Twenty-five per cent of the production company's actual qualified expenditures, as determined by the director of development under division (F) of this section;

(2) The estimated credit amount specified in the production company's tax credit application under division (B)(5) of this section;

(3) Five million dollars.

(I)(1) A production company to which a tax credit certificate is issued under division (H) of this section may transfer the authority to claim all or a portion of the amount of the tax credit the production company is authorized to claim pursuant to that certificate under section 5726.59, 5747.67, or 5751.55 of the Revised Code to one or more other persons. Within thirty days after a transfer under this division, the production company shall submit the following information to the director of development, on a form prescribed by the director:

(a) Information necessary for the director to identify the certificate that is the basis for the transfer;

(b) The portion or amount of the tax credit transferred to each transferee;

(c) The portion or amount of the tax credit that the production company retains the authority to claim;

(d) The tax identification number of each transferee;

(e) The date of the transfer;

(f) Any other information required by the director;

(g) Any information required by the tax commissioner.



The director shall deliver a copy of any submission received under division (I)(1) of this section to the tax commissioner.

(2) A transferee may not claim a credit under section 5726.59, 5747.67, or 5751.55 of the Revised Code unless and until the transferring production company complies with division (I)(1) of this section. A transferee may claim the transferred amount of any credit or portion of a credit for the same taxable year or tax period for which the transferring production company was authorized to claim the credit or portion of a credit pursuant to the certificate. A production company shall make no transfer under division (I)(1) of this section after the last day of the tax period or taxable year for which the production company is required to claim the credit pursuant to the certificate.

A production company may make not more than one transfer under division (I)(1) of this section for each tax credit certificate, but pursuant to that transaction, may allocate the authority to claim a portion of the credit to more than one transferee. A production company may not authorize more than one transferee to claim the same portion of a credit. No transferee may transfer the right to claim the credit to another person.

(J) The director of development, in consultation with the tax commissioner, shall adopt rules in accordance with Chapter 119. of the Revised Code for the administration of this section, including rules setting forth and governing the criteria for reporting sufficient evidence of reviewable progress; expenditures that are qualified expenditures; a schedule and deadlines for applications to be submitted and reviewed; a competitive process for approving credits based on likely economic impact and development of a permanent workforce in motion picture or theatrical production industries; and consideration of geographic distribution of credits.

To cover the administrative costs of the program, the director shall require each applicant to pay an application fee equal to the lesser of ten thousand dollars or one per cent of the estimated value of the tax credit as stated in the application. The fees collected shall be credited to the tax incentives operating fund created in section 122.174 of the Revised Code.