



## Ohio Revised Code

### Section 122.85 Tax credit-eligible productions.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

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(A) As used in this section and in sections 5726.55, 5733.59, 5747.66, and 5751.54 of the Revised Code:

(1) "Tax credit-eligible production" means a motion picture or Broadway theatrical production certified by the director of development services under division (B) of this section as qualifying the production company and its production contractors for a tax credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code.

(2) "Certificate owner" means a production company or production contractor to which a tax credit certificate is issued.

(3) "Production company" means an individual, corporation, partnership, limited liability company, or other form of business association that is registered with the secretary of state and that is producing a motion picture or Broadway theatrical production.

(4) "Eligible expenditures" means expenditures made after June 30, 2009, for goods or services purchased and consumed in this state by a production company directly for the production of a tax credit-eligible production or for postproduction activities, or for advertising and promotion of the production.

"Eligible expenditures" includes, but is not limited to, expenditures for cast and crew wages, accommodations, costs of set construction and operations, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories, film processing, transfer, sound mixing, special and visual effects, music, location fees, and the purchase or rental of facilities and equipment.

(5) "Motion picture" means entertainment content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films;



documentaries; long-form, specials, miniseries, series, and interstitial television programming; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; video games; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. "Motion picture" does not include any television program created primarily as news, weather, or financial market reports, a production featuring current events or sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service or in-house corporate advertising or other similar productions, a production for purposes of political advocacy, or any production for which records are required to be maintained under 18 U.S.C. 2257 with respect to sexually explicit content.

(6) "Broadway theatrical production" means a prebroadway production, long run production, or tour launch that is directed, managed, and performed by a professional cast and crew and that is directly associated with New York city's broadway theater district.

(7) "Prebroadway production" means a live stage production that is scheduled for presentation in New York city's broadway theater district after the original or adaptive version is performed in a qualified production facility.

(8) "Long run production" means a live stage production that is scheduled to be performed at a qualified production facility for more than five weeks, with an average of at least six performances per week.

(9) "Tour launch" means a live stage production for which the activities comprising the technical period are conducted at a qualified production facility before a tour of the original or adaptive version of the production begins.

(10) "Qualified production facility" means a facility located in this state that is used in the development or presentation to the public of theater productions.

(11) "Production contractor" means an individual, corporation, partnership, limited liability



company, or other form of business association that is registered with the secretary of state and that, pursuant to a contract with a production company producing a motion picture in this state, provides any of the following services to the production company with respect to that production: editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution.

(B) For the purpose of encouraging and developing strong film and theater industries in this state, the director of development services may certify a motion picture or Broadway theatrical production produced by a production company as a tax credit-eligible production. In the case of a television series, the director may certify the production of each episode of the series as a separate tax credit-eligible production. A production company shall apply for certification of a motion picture or Broadway theatrical production as a tax credit-eligible production on a form and in the manner prescribed by the director. Each application shall include the following information:

- (1) The name and telephone number of the production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the first preproduction date through the last production and postproduction dates in Ohio and, in the case of a Broadway theatrical production, a list of each scheduled performance in a qualified production facility;
- (4) The Ohio production office or qualified production facility address and telephone number;
- (5) The total production budget;
- (6) The total budgeted eligible expenditures and the percentage that amount is of the total production budget of the motion picture or Broadway theatrical production;
- (7) In the case of a motion picture, the total percentage of the production being shot in Ohio;
- (8) The level of employment of cast and crew who reside in Ohio;



- (9) A synopsis of the script;
- (10) In the case of a motion picture, the shooting script;
- (11) A creative elements list that includes the names of the principal cast and crew and the producer and director;
- (12) Documentation of financial ability to undertake and complete the motion picture or Broadway theatrical production, including documentation that shows that the company has secured funding equal to at least fifty per cent of the total production budget;
- (13) Estimated value of the tax credit based upon total budgeted eligible expenditures;
- (14) Estimated amount of state and local taxes to be generated in this state from the production;
- (15) Estimated economic impact of the production in this state;
- (16) Any other information considered necessary by the director.

Within ninety days after certification of a motion picture or Broadway theatrical production as a tax credit-eligible production, and any time thereafter upon the request of the director of development services, the production company shall present to the director sufficient evidence of reviewable progress. If the production company fails to present sufficient evidence, the director may rescind the certification. If the production of a motion picture or Broadway theatrical production does not begin within ninety days after the date it is certified as a tax credit-eligible production, the director shall rescind the certification unless the director finds that the production company shows good cause for the delay, meaning that the production was delayed due to unforeseeable circumstances beyond the production company's control or due to action or inaction by a government agency. Upon rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification.

(C)(1) A production company whose motion picture or Broadway theatrical production has been



certified as a tax credit-eligible production may apply to the director of development services on or after July 1, 2009, for a refundable credit against the tax imposed by section 5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The director in consultation with the tax commissioner shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application. The application shall state the name and address of each production contractor with which the production company contracted for services and the amount of eligible expenditures paid or incurred under the contract with respect to the production.

The credit is determined as follows:

- (a) If the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures as finally determined under division (D) of this section, whichever is least, is less than or equal to three hundred thousand dollars, no credit is allowed;
  - (b) If the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures as finally determined under division (D) of this section, whichever is least, is greater than three hundred thousand dollars, the credit for the production company equals thirty per cent of the least of such budgeted or actual eligible expenditure amounts and the credit for each production contractor equals thirty per cent of the amount of eligible expenditures paid or incurred under the contract with respect to the production.
- (2) Except as provided in division (C)(4) of this section, if the director of development services approves a production company's application for a credit, the director shall issue a tax credit certificate to the company and to each of the company's production contractors identified in the application. 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 eligible expenditures on which the credit is based and the amount of the credit. Upon the issuance of a certificate, the director shall certify to the tax commissioner the name of the production company or contractor to which the certificate was issued, the amount of eligible expenditures shown on the certificate, the amount of the credit, and any other information required by the rules adopted to administer this section.



(3) The amount of eligible expenditures for which a tax credit may be claimed is 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 eligible expenditures are finally determined under section 5703.19 of the Revised Code and division (D) 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.

(4) No tax credit certificate may be issued before the completion of the tax credit-eligible production. Not more than forty million dollars of tax credit may be allowed per fiscal year provided that, for any fiscal year in which the amount of tax credits allowed under this section is less than that maximum annual amount, the amount not allowed for that fiscal year shall be added to the maximum annual amount that may be allowed for the following fiscal year.

(5) The director shall review and approve applications for tax credits in two rounds each fiscal year. The first round of credits shall be awarded not later than the last day of July of the fiscal year, and the second round of credits shall be awarded not later than the last day of the ensuing January. The amount of credits awarded in the first round of applications each fiscal year shall not exceed twenty million dollars plus any credit allotment that was not awarded in the preceding fiscal year and carried over under division (C)(4) of this section. For each round, the director shall rank applications on the basis of the extent of positive economic impact each tax credit-eligible production is likely to have in this state and the effect on developing a permanent workforce in motion picture or theatrical production industries in the state. For the purpose of such ranking, the director shall give priority to tax-credit eligible productions that are television series or miniseries due to the long-term commitment typically associated with such productions. The economic impact ranking shall be based on the production company's total expenditures in this state directly associated with the tax credit-eligible production. 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.

The director shall approve productions 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.



(D) A production company whose motion picture or Broadway theatrical production has been certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production, postproduction, and advertising and promotion expenditures to identify the expenditures that qualify as eligible expenditures. The certified public accountant shall issue a report to the company and to the director of development services certifying the company's eligible expenditures and any other information required by the director. Upon receiving and examining the report, the director may disallow any expenditure the director determines is not an eligible expenditure. If any expenditure disallowed under this division was included in the expenditure for a contract with a production contractor, the contractor's credit amount shall be reduced in proportion to such disallowed expenditure. If the director disallows an expenditure, the director shall issue a written notice to the production company or affected production contractor 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 finally the lesser of the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures for the purpose of computing the amount of the credit.

(E) No credit shall be allowed under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless the director has reviewed the report and made the determination prescribed by division (D) of this section.

(F) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible motion picture production or program of any Broadway theatrical production.

(G)(1) The director of development services in consultation with the tax commissioner shall adopt rules for the administration of this section, including rules setting forth and governing the criteria for determining whether a motion picture or Broadway theatrical production is a tax credit-eligible production; activities that constitute the production or postproduction of a motion picture or Broadway theatrical production; reporting sufficient evidence of reviewable progress; expenditures that qualify as eligible expenditures; a schedule and deadlines for applications to be submitted and reviewed; a competitive process for approving credits based on likely economic impact in this state and development of a permanent workforce in motion picture or theatrical production industries in



this state; consideration of geographic distribution of credits; and implementation of the program described in division (H) of this section. The rules shall be adopted under Chapter 119. of the Revised Code.

(2) 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. All grants, gifts, fees, and contributions made to the director for marketing and promotion of the motion picture industry within this state shall also be credited to the fund.

(H) The director of development services shall establish a program for the training of Ohio residents who are or wish to be employed in the film or multimedia industry. Under the program, the director shall:

(1) Certify individuals as film and multimedia trainees. In order to receive such a certification, an individual must be an Ohio resident, have participated in relevant on-the-job training or have completed a relevant training course approved by the director, and have met any other requirements established by the director.

(2) Accept applications from production companies that intend to hire and provide on-the-job training to one or more certified film and multimedia trainees who will be employed in the company's tax credit-eligible production.

(3) Upon completion of a tax-credit eligible production, and upon the receipt of any salary information and other documentation required by the director, authorize a reimbursement payment to each production company whose application was approved under division (H)(2) of this section. The payment shall equal fifty per cent of the salaries paid to film and multimedia trainees employed in the production.