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FISCAL IMPACT STATEMENT

LS 6079 | **NOTE PREPARED:** Jan 11, 2008
BILL NUMBER: SB 97 | **BILL AMENDED:** Jan 10, 2008

SUBJECT: Film Industry Production Incentives.

FIRST AUTHOR: Sen. Drozda | **BILL STATUS:** CR Adopted - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: *Media Production Tax Credit:* This bill provides a refundable tax credit to taxpayers that make qualified media production expenditures in Indiana. The bill also provides that the tax credit may not be awarded for a taxable year ending after December 31, 2011. The bill provides that the tax credit may be granted only if qualified production expenditures are at least $100,000 in the case of a film or television production or at least $50,000 in the case of other qualified media productions.

This bill also provides that in the case of a taxpayer that claims the tax credit for qualified production expenditures of less than $6,000,000, the amount of the credit equals 15% of the taxpayer's qualified production expenditures.

The bill provides that in the case of a taxpayer that claims the tax credit for qualified production expenditures of at least $6,000,000:

(1) the amount of the credit equals the taxpayer's qualified production expenditures multiplied by a percentage (not more than 15%) determined by the Indiana Economic Development Corporation (IEDC); and
(2) the taxpayer must, before incurring or making the qualified production expenditures, apply to the IEDC for approval of the tax credit.

The bill also provides that the IEDC may not approve more than $5,000,000 in media production tax credits in a taxable year for taxpayers with qualified production expenditures of at least $6,000,000. The bill provides that a taxpayer that is a corporation or a nonresident person and that claims the tax credit (or any successor in interest of the corporation or nonresident person) must file an Indiana income tax return for at least the first five years that the taxpayer has income from the qualified media production for which the tax

credit was granted.

Media Production Income Apportionment: This bill provides that, notwithstanding the income apportionment statutes, the portion of the income from the qualified media production that for purposes of income taxation is considered to be derived from sources within Indiana is equal to: (1) the amount of qualified production expenditures for which the tax credit was granted for the qualified media production; divided by (2) the total production expenditures for the qualified media production. The bill also provides that a taxpayer may not receive the tax credit unless the taxpayer consents that: (1) the taxpayer (and any successor in interest of the taxpayer) will be subject to the jurisdiction of Indiana courts; and (2) any civil action related to the tax credit and in which the taxpayer (or any successor in interest of the taxpayer) is a party will be heard in an Indiana court. This bill prohibits taxpayers from selling or otherwise transferring the tax credit.

Sales Tax Exemption for Qualified Media Productions: The bill expands the Sales Tax exemption for property acquired for use in a motion picture production to property acquired for use in qualified media productions. The bill provides that a qualified applicant may not claim a tax credit and a Sales Tax exemption for the purchase of the same tangible personal property.

Effective Date: July 1, 2008.

Summary of Net State Impact: This bill could cause a decrease in state tax collections of between approximately $150,000 and $200,000 in FY 2008, and $11.6 M and $17.9 M in FY 2009.

Explanation of State Expenditures: *Administrative Expenditures:* This bill will increase expenditures for the Department of State Revenue (DOR) and the Indiana Economic Development Corporation. The DOR will have to amend forms, adopt rules and procedures, and update computer software related to the Sales Tax exemption changes in this bill. The IEDC will realize administrative costs in forming agreements to award tax credits to certain taxpayers with expenditures for qualified media productions in the state. The amount of increased expenditures is indeterminable, but it is estimated that both the DOR and IEDC could implement these provisions through the use of existing staff and resources.

Explanation of State Revenues: *Sales Tax Exemption for Qualified Media Productions:* This bill will decrease Sales Tax collections by between $150,000 and $200,000 in FY 2008, and between $370,000 and $480,000 in FY 2009. The expanded exemption in this bill has an effective date of January 1, 2008, and current statute limits the exemption to purchases taking place before January 1, 2009. Please note that the limitation of this exemption to purchases made before January 1, 2009, could change the amount of the estimated impact depending on the timing of exempt purchases made during FY 2009. The estimated range for FY 2009, above, assumes that purchasers will make purchases earlier than usual in FY 2009 to take advantage of this Sales Tax exemption.

The bill expands the exemption by defining more types of production purchases that qualify for the Sales Tax exemption. The new definition of purchases qualifying for the exemption includes production purchases for digital media production, audio recording or music video, and advertising for radio or television. The bill does not allow an exemption when the transaction involves a qualified production expenditure as defined in the bill in IC 6-3.1-32.

Media Production Tax Credit: The bill would reduce state AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liabilities of taxpayers that incur expenses in Indiana or make expenditures in Indiana in the direct production of a qualified media production in Indiana. The potential fiscal impact of this tax credit is

summarized in (1) and (2) below. The fiscal impact from these credits could potentially begin in FY 2009 and end in FY 2012 or FY 2013 since the credit expires January 1, 2012.

(1) The tax credit could potentially result in a revenue loss ranging from about $11.2 M to $17.3 M annually from expenditures relating to media production activities already occurring in Indiana. This assumes that 50% to 75% of the estimated annual media production expenditures attributable to Indiana firms are made within Indiana and would be eligible for the tax credit. It also assumes that about 41% of the estimated production expenditures would be subject to the $5 M annual tax credit cap imposed by the bill.

(2) The amount of credits that could potentially be claimed in future years for media production activities NOT currently occurring in Indiana is indeterminable. The net revenue impact of these credits depends on how additional tax collections on new employees or taxable purchases attributable to these media production activities compare to the credit amounts claimed for the media production activities. However, if the media production activities would have occurred in the absence of the credit, the net impact would be the total credits claimed by these businesses.

The tax credit is a refundable tax credit applicable to expenses incurred in Indiana or expenditures in Indiana made in the direct production of a qualified media production in Indiana by individual or corporate taxpayers. The credit may be claimed by taxpayers that make: (1) at least $100,000 in qualified media production expenditures for a feature length film; or (2) at least $50,000 in qualified media production expenditures for any other qualified media production. The bill defines the various media productions and media production expenditures that qualify for the refundable tax credit. For pass through entities, the tax credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity. The bill prohibits the tax credit from being sold, assigned, conveyed, or otherwise transferred. The credit amount that a taxpayer may claim depends on the level of qualified media production expenditures made by the taxpayer as follows.

(1) For taxpayers with qualified media production expenditures *below* $6 M in a taxable year, the amount of the credit is equal to 15% of the qualified expenditures.

(2) For taxpayers with qualified media production expenditures *above* $6 M in a taxable year, the credit is a percentage determined by the IEDC, up to 15%, of the qualified expenditures. Furthermore, the bill caps the amount of credits the IEDC may award to all taxpayers in this group at $5 M per taxable year.

Media Production Income Apportionment: The bill provides a special income apportionment formula for income earned by a corporate or nonresident taxpayer from a qualified media production for which the taxpayer received the media production expenditure tax credit. The income from the qualified media production must be apportioned to Indiana according to the ratio of (1) the qualified media production expenditures for which the tax credit was granted to (2) the total production expenditures for the qualified media production. The impact of this provision is indeterminable, but it could potentially increase the amount of income from projects receiving the tax credit apportioned to Indiana above that which would otherwise have occurred under the current law.

Background: Revenue from the AGI Tax on corporations, the Financial Institutions Tax, and the Insurance Premiums Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund. Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the

state General Fund (49.067%), the Public Mass Transportation Fund (0.76%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: DOR; IEDC.

Local Agencies Affected:

Information Sources: Internal Revenue Service, *Statistics of Income*: *Sole Proprietorship Returns* (2000 to 2004); 2002 Economic Census; 2004 County Business Patterns.

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