# HOUSE BILL No. 1159

DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5-5-41; IC 6-3.1-32.

**Synopsis:** Media production tax credit. Extends the duration of the sales tax exemption for property purchased for a motion picture production from December 31, 2008, to December 31, 2009. Provides that the sales tax exemption is not available if the motion picture production is a qualified media production for which the Indiana economic development corporation approves a media production expenditure tax credit. Authorizes a credit against state tax liability for certain media production expenditures.

**Effective:** January 1, 2008 (retroactive); July 1, 2008.

**Welch, Lutz, Kersey, Borror**

January 10, 2008, read first time and referred to Committee on Small Business and Economic Development.

Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.



# HOUSE BILL No. 1159

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-2.5-5-41, AS ADDED BY P.L.137-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 41. (a) As used in this section, "motion picture production" means:

(1) a feature length film, including a short feature and an independent or studio production, or a documentary; or

(2) a television series, program, or feature;

produced for any combination of theatrical or television viewing, or as a television pilot. The term includes preproduction, production, and postproduction work. However, the term does not include a motion picture that is obscene (under the standard set forth in IC 35-49-2-1) or television coverage of news or athletic events.

(b) Except as provided in ~~subsection~~ **subsections** (d) **and (e),** a transaction involving tangible personal property is exempt from the state gross retail tax if the person acquiring the property acquires it for the person's direct use in a motion picture production in Indiana after December 31, 2006.

(c) For purposes of this section, the following are not considered to be directly used in the production of a motion picture production:

(1) Food and beverage services.

(2) A vehicle or other means of transportation used to transport actors, crew members, or any other individual involved in a motion picture production.

(3) Fuel, parts, supplies, or other consumables used in a vehicle or other means of transportation used to transport actors, crew members, or any other individual involved in a motion picture production.

(4) Lodging.

(5) Packaging materials.

(d) A person is not entitled to an exemption under this section with respect to a transaction involving tangible personal property acquired for direct use in a motion picture production in Indiana if the transaction occurs after December 31, ~~2008.~~ **2009.**

**(e) A person is not entitled to an exemption under this section with respect to a transaction involving tangible personal property acquired for direct use in a motion picture production in Indiana if the motion picture production is a qualified media production (as defined in IC 6-3.1-32-5) for which the Indiana economic development corporation has approved a media production expenditure tax credit under IC 6-3.1-32.**

SECTION 2. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:

**Chapter 32. Media Production Expenditure Tax Credit**

**Sec. 1. As used in this chapter, "corporation" refers to the Indiana economic development corporation.**

**Sec. 2. As used in this chapter, "department" refers to the department of state revenue.**

**Sec. 3. As used in this chapter, "pass through entity" means:**

**(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);**

**(2) a partnership;**

**(3) a limited liability company; or**

**(4) a limited liability partnership.**

**Sec. 4. As used in this chapter, "qualified applicant" means a person, corporation, partnership, limited liability partnership, limited liability company, or other entity that is engaged in the business of making qualified media productions in Indiana.**

**Sec. 5. (a) As used in this chapter, "qualified media production"**

**refers to the following:**

**(1) Any of the following that is produced for any combination of theatrical or television viewing or as a television pilot:**

**(A) A feature length film, including a short feature, an independent or a studio production, or a documentary.**

**(B) A television series, program, or feature.**

**(2) A digital media production that is intended for reasonable commercial exploitation.**

**(3) An audio recording or a music video.**

**(4) An advertising message broadcast on radio or television.**

**(5) A media production concerning:**

**(A) training; or**

**(B) external marketing or communications.**

**(b) The term includes preproduction, production, and postproduction work.**

**(c) The term does not include a production in any medium that is obscene (under the standard set forth in IC 35-49-2-1) or television coverage of news or athletic events.**

**Sec. 6. As used in this chapter, "qualified production expenditure" means any of the following expenditures made in Indiana in the direct production of a qualified media production in Indiana:**

**(1) Expenditures for wages, salaries, and benefits paid to Indiana residents.**

**(2) Expenditures for locations, facilities, and equipment.**

**(3) Expenditures for materials used to make sets, wardrobes, and accessories.**

**(4) Expenditures for photography, sound synchronization, lighting, and related services.**

**(5) Expenditures for editing and related services.**

**(6) Expenditures for food and lodging.**

**Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:**

**(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**

**(2) IC 6-5.5 (the financial institutions tax); and**

**(3) IC 27-1-18-2 (the insurance premiums tax);**

**as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.**

**Sec. 8. As used in this chapter, "taxpayer" means an individual or entity that is required to file an annual return under:**

**(1) a statute described in section 7 of this chapter; or**

**(2) section 11 of this chapter.**

**Sec. 9. A qualified applicant that:**

**(1) obtains preapproval of a tax credit under section 12 of this chapter from the corporation;**

**(2) makes qualified production expenditures of at least one hundred thousand dollars ($100,000) in a taxable year; and**

**(3) satisfies the requirements of this chapter;**

**is entitled to a refundable tax credit for that taxable year as provided in this chapter.**

**Sec. 10. The amount of a tax credit allowed under this chapter for a particular taxable year equals the product of:**

**(1) the percentage determined by the corporation under section 12 of this chapter; multiplied by**

**(2) the amount of the qualified production expenditures made by the taxpayer in the taxable year.**

**Sec. 11. To receive the tax credit provided by this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department:**

**(1) all information that the department determines is necessary for the calculation of the credit provided under this chapter; and**

**(2) a copy of the agreement entered into by the corporation and the taxpayer under section 12 of this chapter for the tax credit.**

**Sec. 12. (a) A taxpayer may not claim a tax credit under section 11 of this chapter unless the taxpayer applies to the corporation for approval of the tax credit before making the qualified production expenditures for which the taxpayer wishes to claim a tax credit.**

**(b) After receiving an application under subsection (a), the corporation may enter into an agreement with the applicant for a tax credit under this chapter if the corporation determines that:**

**(1) the applicant has fully complied with the requirements of this chapter with respect to a tax credit awarded to the applicant for any taxable year ending before the date of the application required by this section;**

**(2) the applicant's proposed qualified media production:**

**(A) is economically sound and will benefit the people of Indiana by increasing opportunities for employment in Indiana and strengthening the economy of Indiana;**

**(B) will increase economic growth, job creation, and capital investment in Indiana;**

**(C) will result in the applicant's purchase of a significant quantity of goods and services from Indiana businesses;**

**(D) would not likely go forward in Indiana unless the applicant receives a tax credit under this chapter;**

**(E) will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data;**

**(F) supports the cultural growth and artistic capacity of Indiana communities and will be a catalyst for the development of cultural and other quality of life amenities for the people of Indiana; and**

**(G) will provide training and career development opportunities for the people of Indiana who wish to pursue careers in media production; and**

**(3) the applicant's proposed qualified media production and qualified production expenditures otherwise satisfy the requirements of this chapter.**

**(c) If the corporation and an applicant enter into an agreement under this section, the agreement must specify the following:**

**(1) The percentage to be used under section 10 of this chapter in determining the amount of the tax credit. The percentage may not be more than fifteen percent (15%).**

**(2) Any requirements or restrictions that the applicant must satisfy before the applicant may claim the tax credit.**

**(d) The corporation may not approve a tax credit for a qualified production expenditure made before April 1, 2008.**

**(e) The maximum amount of tax credits that the corporation may approve under this section during a particular taxable year for all taxpayers is five million dollars ($5,000,000).**

**Sec. 13. If the amount of the tax credit provided under this chapter to a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer is entitled to a refund of the excess.**

**Sec. 14. (a) If a pass through entity is entitled to a tax credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a refundable tax credit equal to:**

**(1) the tax credit determined for the pass through entity for the taxable year; multiplied by**

**(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is**

**entitled.**

**(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an entity who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified production expenditure.**

**Sec. 15. A taxpayer may not sell, assign, convey, or otherwise transfer a tax credit provided under this chapter.**

**Sec. 16. Notwithstanding any other provision, including any reciprocity agreements entered into by the state, a taxpayer that is a corporation or a nonresident person (or any successor in interest in any part of the taxpayer) and that claims a tax credit under this chapter shall file an Indiana income tax return for at least the first five (5) years that the taxpayer has income from the qualified media production for which the tax credit was granted. Notwithstanding the income apportionment provisions of IC 6-3 and any rules adopted by the department, in the case of a corporation or a nonresident person (or any successor in interest in any part of the corporation or nonresident person), the part of the income from the qualified media production that for purposes of taxation under IC 6-3 is considered to be derived from sources within Indiana is equal to the product of:**

**(1) the income of the corporation or nonresident person (or the successor in interest of the corporation or nonresident person) from the qualified media production; multiplied by**

**(2) a percentage equal to the quotient of:**

**(A) the amount of qualified production expenditures for which the tax credit was granted for the qualified media production; divided by**

**(B) the total production expenditures for the qualified media production.**

**Sec. 17. (a) If a taxpayer (or any successor in interest of the taxpayer) fails to satisfy any condition of this chapter or any condition in an agreement under section 12 of this chapter, or fails to file tax returns as required by section 16 of this chapter, the corporation may recapture all or a part of the tax credit under this chapter that has been applied to the state tax liability of the taxpayer (or any successor in interest of the taxpayer).**

**(b) A taxpayer may not receive a credit under this chapter unless the taxpayer:**

**(1) consents that the taxpayer (and any successor in interest**

**of the taxpayer) will be subject to the jurisdiction of Indiana courts;**

**(2) consents that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the taxpayer (and any successor in interest of the taxpayer) to the jurisdiction of Indiana courts; and**

**(3) consents that any civil action related to this chapter and in which the taxpayer (or any successor in interest of the taxpayer) is a party will be heard in an Indiana court.**

**Sec. 18. (a) A tax credit may not be awarded under this chapter for a taxable year ending after December 31, 2011.**

**(b) This chapter expires January 1, 2012.**

SECTION 3. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] **(a) The definitions set forth in IC 6-3.1-32, as added by this act, apply throughout this SECTION.**

**(b) IC 6-3.1-32, as added by this act, applies to tax credits for qualified production expenditures made after March 31, 2008, for a taxable year beginning after January 1, 2008, and ending before January 1, 2012.**

SECTION 4. **An emergency is declared for this act.**