January 11, 2008

SENATE BILL No. 97

DIGEST OF SB 97 (Updated January 9, 2008 4:10 pm - DI jhm)

Citations Affected: IC 6-2.5; IC 6-3.1; noncode.

Synopsis: Film industry production incentives. Provides a refundable tax credit to taxpayers that make qualified media production expenditure in Indiana. Provides that the tax credit may not be awarded for a taxable year ending after December 31, 2011. 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. 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. 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. 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. 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

(Continued next page)

Effective: January 1, 2008 (retroactive).

Drozda

January 8, 2008, read first time and referred to Committee on Rules and Legislative Procedure.
January 10, 2008, amended; reassigned to Committee on Tax and Fiscal Policy.

media production for which the tax credit was granted. 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. 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. Prohibits taxpayers from selling or otherwise transfer the tax credit. Expands the sales tax exemption for property acquired for use in a motion picture production to property acquired for use in qualified media productions. 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.

January 11, 2008

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.

C o p y

SENATE BILL No. 97

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 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 41. (a) As used in this section, ~~"motion picture~~ **"qualified media** 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.~~ **has the meaning set forth in IC 6-3.1-32-5.**

(b) Except as provided in ~~subsection (d),~~ **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~~ **qualified media** 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~~ **qualified media** production:

(1) Food and beverage services.

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

(3) Fuel, parts, supplies, or other consumables used in a vehicle or other means of transportation used to transport actors, **performers,** crew members, or any other individual involved in a ~~motion picture~~ **qualified media** 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 **that is:**

(1) a qualified production expenditure (as defined in IC 6-3.1-32-6) for which a tax credit is claimed under IC 6-3.1-32; or

(2) acquired for direct use in a ~~motion picture~~ **qualified media** production in Indiana if the transaction occurs after December 31, 2008.

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 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. (a) As used in this chapter, "qualified production expenditure" means any of the following expenses incurred in Indiana or expenditures in Indiana made in the direct production of a qualified media production in Indiana:

(1) The payment of wages, salaries, and benefits to Indiana residents.

(2) Acquisition costs for a story or scenario used in the qualified media production.

(3) Acquisition costs for locations, sets, wardrobes, and accessories.

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

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

(6) Expenditures for editing and related services.

(7) Facility and equipment rentals.

(8) Food and lodging.

(9) Legal services if purchased from an attorney licensed to practice law in Indiana.

(10) Any other production expenditure for which taxes are assessed or imposed by the state.

(b) The term does not include expenditures for payments of wages, salaries, or benefits to an individual who is a director, a producer, a screenwriter, or an actor (excluding extras), unless the individual is a resident of Indiana.

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 has any state tax liability.

Sec. 9. A qualified applicant that:

(1) incurs or makes qualified production expenditures of:

(A) at least one hundred thousand dollars ($100,000), in the case of a qualified media production described in section 5(a)(1) of this chapter; or

(B) at least fifty thousand dollars ($50,000), in the case of a qualified media production described in section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter; and

(2) satisfies the requirements of this chapter;

is entitled to a refundable tax credit as provided in this chapter.

Sec. 10. This section applies to a taxpayer that claims qualified production expenditures of less than six million dollars ($6,000,000) in a taxable year for purposes of the tax credit under this chapter. The amount of the tax credit to which a taxpayer is entitled under this chapter equals the product of:

(1) fifteen percent (15%); multiplied by

(2) the amount of the taxpayer's qualified production expenditures in the taxable year.

Sec. 11. This section applies to a taxpayer that claims qualified production expenditures of at least six million dollars ($6,000,000) in a taxable year for purposes of the tax credit under this chapter. If the corporation approves the granting of a tax credit to the taxpayer under section 13 of this chapter, the amount of the tax credit to which the taxpayer is entitled under this chapter equals the product of:

(1) the percentage determined by the corporation under section 13 of this chapter; multiplied by

(2) the amount of the taxpayer's qualified production expenditures in the taxable year.

Sec. 12. (a) 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 all information that the department determines is necessary for the calculation of the credit provided under this chapter.

(b) In the case of a taxpayer that claims a tax credit under section 11 of this chapter, the taxpayer must also file with the taxpayer's annual state tax return or returns a copy of the agreement entered into by the corporation and the taxpayer under section 13 of this chapter for the tax credit.

Sec. 13. (a) A taxpayer that proposes to claim a tax credit under section 11 of this chapter must, before incurring or making the qualified production expenditures, apply to the corporation for approval of the 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 section 11 of this chapter if the corporation determines that:

(1) the applicant's proposed qualified media production:

(A) is economically viable; and

(B) will increase economic growth and job creation in Indiana; and

(2) 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 11(1) 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 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. 14. 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. 15. 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 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.

Sec. 16. A taxpayer may not sell, assign, convey, or otherwise transfer a tax credit provided under this chapter.

Sec. 17. A qualified applicant is not entitled to a tax credit under this chapter for tangible personal property:

(1) that is a qualified production expenditure; and

(2) for which the qualified applicant claims an exemption under IC 6-2.5-5-41.

Sec. 18. Notwithstanding any other provision, including any reciprocity agreements entered into by the state, a taxpayer that is a corporation or a nonresident person and that claims a tax credit under this chapter (or any successor in interest in any part of the taxpayer) must 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 of state revenue, 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 portion 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:

(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:

(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. 19. (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 13 of this chapter, or fails to file tax returns as required by section 18 of this chapter, the corporation may:

(1) disallow the use of all or a part of any unused tax credit granted to the taxpayer (or any successor in interest of the taxpayer) under this chapter;

(2) 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); or

(3) both disallow the tax credit under subdivision (1) and recapture the tax credit under subdivision (2).

(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 the provisions of 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. 20. (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)] **IC 6-3.1-32, as added by this act, applies to tax credits for qualified production expenditures made after December 31, 2007.**

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

SENATE MOTION

Madam President: I move that Senator Long be removed as author of Senate Bill 97 and that Senator Drozda be substituted therefor.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 97, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 97 as introduced.)

LONG, Chairperson