

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:

- 1 Delete everything after the enacting clause and insert the
 2 following:
 3 SECTION 1. IC 6-2.5-5-41 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
 5 Sec. 41. (a) As used in this section, "~~motion picture~~ **qualified media**
 6 ~~production~~" means:
 7 (1) ~~a feature length film, including a short feature and an~~
 8 ~~independent or studio production; or a documentary; or~~
 9 (2) ~~a television series; program; or feature;~~
 10 ~~produced for any combination of theatrical or television viewing; or as~~
 11 ~~a television pilot. The term includes preproduction; production; and~~
 12 ~~postproduction work. However, the term does not include a motion~~
 13 ~~picture that is obscene (under the standard set forth in IC 35-49-2-1) or~~
 14 ~~television coverage of news or athletic events. **has the meaning set**~~
 15 ~~forth in IC 6-3.1-32-5.~~
 16 (b) Except as provided in ~~subsection (d); subsections (d) and (e),~~
 17 a transaction involving tangible personal property is exempt from the
 18 state gross retail tax if the person acquiring the property acquires it for
 19 the person's direct use in a ~~motion picture~~ **qualified media** production
 20 in Indiana after December 31, 2006.
 21 (c) For purposes of this section, the following are not considered
 22 to be directly used in the production of a ~~motion picture~~ **qualified**
 23 **media** production:
 24 (1) Food and beverage services.
 25 (2) A vehicle or other means of transportation used to transport
 26 actors, **performers**, crew members, or any other individual

- 1 involved in a ~~motion picture~~ **qualified media** production.
- 2 (3) Fuel, parts, supplies, or other consumables used in a vehicle
- 3 or other means of transportation used to transport actors,
- 4 **performers**, crew members, or any other individual involved in
- 5 a ~~motion picture~~ **qualified media** production.
- 6 (4) Lodging.
- 7 (5) Packaging materials.
- 8 (d) A person is not entitled to an exemption under this section with
- 9 respect to a transaction involving tangible personal property **that is:**
- 10 **(1) a qualified production expenditure (as defined in**
- 11 **IC 6-3.1-32-6) for which a tax credit is claimed under**
- 12 **IC 6-3.1-32; or**
- 13 **(2) acquired for direct use in a ~~motion picture~~ qualified media**
- 14 **production in Indiana if the transaction occurs after December**
- 15 **31, 2008.**
- 16 SECTION 2. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE
- 17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 18 JANUARY 1, 2008 (RETROACTIVE)]:
- 19 **Chapter 32. Media Production Expenditure Tax Credit**
- 20 **Sec. 1. As used in this chapter, "corporation" refers to the**
- 21 **Indiana economic development corporation.**
- 22 **Sec. 2. As used in this chapter, "department" refers to the**
- 23 **department of state revenue.**
- 24 **Sec. 3. As used in this chapter, "pass through entity" means:**
- 25 **(1) a corporation that is exempt from the adjusted gross**
- 26 **income tax under IC 6-3-2-2.8(2);**
- 27 **(2) a partnership;**
- 28 **(3) a limited liability company; or**
- 29 **(4) a limited liability partnership.**
- 30 **Sec. 4. As used in this chapter, "qualified applicant" means a**
- 31 **person, corporation, partnership, limited liability partnership,**
- 32 **limited liability company, or other entity that is engaged in the**
- 33 **business of making qualified media productions in Indiana.**
- 34 **Sec. 5. (a) As used in this chapter, "qualified media**
- 35 **production" refers to the following:**
- 36 **(1) Any of the following that is produced for any**
- 37 **combination of theatrical or television viewing or as a**
- 38 **television pilot:**
- 39 **(A) A feature length film, including a short feature, an**
- 40 **independent or studio production, or a documentary.**
- 41 **(B) A television series, program, or feature.**
- 42 **(2) A digital media production that is intended for**
- 43 **reasonable commercial exploitation.**
- 44 **(3) An audio recording or a music video.**
- 45 **(4) An advertising message broadcast on radio or television.**
- 46 **(5) A media production concerning:**
- 47 **(A) training; or**
- 48 **(B) external marketing or communications.**
- 49 **(b) The term includes preproduction, production, and**
- 50 **postproduction work.**

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

4 Sec. 6. (a) As used in this chapter, "qualified production
 5 expenditure" means any of the following expenses incurred in
 6 Indiana or expenditures in Indiana made in the direct production
 7 of a qualified media production in Indiana:

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

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

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

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

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

18 (6) Expenditures for editing and related services.

19 (7) Facility and equipment rentals.

20 (8) Food and lodging.

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

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

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

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

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

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

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

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

38 Sec. 8. As used in this chapter, "taxpayer" means an individual
 39 or entity that has any state tax liability.

40 Sec. 9. A qualified applicant that:

41 (1) incurs or makes qualified production expenditures of:

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

45 (B) at least fifty thousand dollars (\$50,000), in the case
 46 of a qualified media production described in section
 47 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter; and

48 (2) satisfies the requirements of this chapter;

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

50 Sec. 10. This section applies to a taxpayer that claims qualified

1 production expenditures of less than six million dollars
 2 (\$6,000,000) in a taxable year for purposes of the tax credit under
 3 this chapter. The amount of the tax credit to which a taxpayer is
 4 entitled under this chapter equals the product of:

- 5 (1) fifteen percent (15%); multiplied by
- 6 (2) the amount of the taxpayer's qualified production
 7 expenditures in the taxable year.

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

- 15 (1) the percentage determined by the corporation under
 16 section 13 of this chapter; multiplied by
- 17 (2) the amount of the taxpayer's qualified production
 18 expenditures in the taxable year.

19 **Sec. 12. (a)** To receive the tax credit provided by this chapter,
 20 a taxpayer must claim the tax credit on the taxpayer's annual state
 21 tax return or returns in the manner prescribed by the department.
 22 The taxpayer shall submit to the department all information that
 23 the department determines is necessary for the calculation of the
 24 credit provided under this chapter.

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

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

34 (b) After receiving an application under subsection (a), the
 35 corporation may enter into an agreement with the applicant for a
 36 tax credit under section 11 of this chapter if the corporation
 37 determines that:

- 38 (1) the applicant's proposed qualified media production:
 39 (A) is economically viable; and
 40 (B) will increase economic growth and job creation in
 41 Indiana; and
- 42 (2) the applicant's proposed qualified media production and
 43 qualified production expenditures otherwise satisfy the
 44 requirements of this chapter.

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

- 47 (1) The percentage to be used under section 11(1) of this
 48 chapter in determining the amount of the tax credit. The
 49 percentage may not be more than fifteen percent (15%).
- 50 (2) Any requirements or restrictions that the applicant must

1 satisfy before the applicant may claim the tax credit.

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

5 Sec. 14. If the amount of the tax credit provided under this
6 chapter to a taxpayer in a taxable year exceeds the taxpayer's state
7 tax liability for that taxable year, the taxpayer is entitled to a
8 refund of the excess.

9 Sec. 15. If a pass through entity is entitled to a tax credit under
10 this chapter but does not have state tax liability against which the
11 tax credit may be applied, a shareholder, partner, or member of
12 the pass through entity is entitled to a tax credit equal to:

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

15 (2) the percentage of the pass through entity's distributive
16 income to which the shareholder, partner, or member is
17 entitled.

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

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

22 (1) that is a qualified production expenditure; and

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

25 Sec. 18. Notwithstanding any other provision, including any
26 reciprocity agreements entered into by the state, a taxpayer that is
27 a corporation or a nonresident person and that claims a tax credit
28 under this chapter (or any successor in interest in any part of the
29 taxpayer) must file an Indiana income tax return for at least the
30 first five (5) years that the taxpayer has income from the qualified
31 media production for which the tax credit was granted.
32 Notwithstanding the income apportionment provisions of IC 6-3
33 and any rules adopted by the department of state revenue, in the
34 case of a corporation or a nonresident person (or any successor in
35 interest in any part of the corporation or nonresident person), the
36 portion of the income from the qualified media production that for
37 purposes of taxation under IC 6-3 is considered to be derived from
38 sources within Indiana is equal to:

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

42 (2) a percentage equal to:

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

46 (B) the total production expenditures for the qualified
47 media production.

48 Sec. 19. (a) If a taxpayer (or any successor in interest of the
49 taxpayer) fails to satisfy any condition of this chapter or any
50 condition in an agreement under section 13 of this chapter, or fails

1 to file tax returns as required by section 18 of this chapter, the
2 corporation may:

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

6 (2) recapture all or a part of the tax credit under this chapter
7 that has been applied to the state tax liability of the taxpayer
8 (or any successor in interest of the taxpayer); or

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

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

13 (1) consents that the taxpayer (and any successor in interest
14 of the taxpayer) will be subject to the jurisdiction of Indiana
15 courts;

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

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

24 **Sec. 20. (a) A tax credit may not be awarded under this
25 chapter for a taxable year ending after December 31, 2011.**

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

27 **SECTION 3. [EFFECTIVE JANUARY 1, 2008
28 (RETROACTIVE)] IC 6-3.1-32, as added by this act, applies to tax
29 credits for qualified production expenditures made after December
30 31, 2007.**

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

(Reference is to SB 97 as introduced.)

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

LONG, Chairperson