

Kansas Film and Digital Media Production Act; National Guard Employment Credits; Sales Tax Exemptions for Community Theaters and Friends of Cedar Crest Association; HB 2097

HB 2097 enacts the Kansas Film and Digital Media Production Development Act (Act), which creates nonrefundable income tax credits and a sales tax exemption for qualifying film production activities to incentivize and promote the growth of film and digital media production and industry in Kansas.

The bill also creates sales tax exemptions for certain not-for-profit theaters and the Friends of Cedar Crest Association and creates income tax credits related to the employment of Kansas residents who are members in good standing of the Kansas Army or Air National Guard (National Guard).

Kansas Film and Digital Media Production Development Act

Kansas Film and Digital Media Industry Development Program

The bill establishes the Kansas Film and Digital Media Industry Development Program (Program) to be administered by the Secretary of Commerce (Secretary) in consultation with the Kansas Creative Arts Industries Commission. The Secretary is authorized to approve and to provide tax incentives for eligible projects, to be certified and approved according to requirements prescribed by the bill. In consideration of projects to approve, the Secretary is required to consider the immediate and potential impact on the growth of the Kansas film and digital media industry.

Eligible projects include new films, videos, or digital projects that are:

- Produced in Kansas;
- Fixed on a media format for viewing or reproduction;
- Intended for multimarket commercial distribution; and
- Anticipated to incur qualified expenditures, as defined by the bill, of at least \$50,000.

Eligible projects do not include:

- News or athletic event coverage;
- Local interest programming or advertising;
- Instructional or corporate videos;

- Projects not intended for multimarket commercial distribution;
- Any portion of a project not shot, recorded, or created in Kansas; or
- Any production of obscene material or an obscene performance, as defined by Kansas law.

To apply for eligibility for the Program, production companies must submit an application to the Secretary for approval. In addition to the application, production companies are required to submit the following to the Secretary prior to commencement of the project, in order to be eligible for the income tax credit and sales tax exemption provided for by the bill:

- Evidence of adequate financing for the project;
- Evidence of general liability insurance of \$1.0 million, or more if required by the Secretary;
- Evidence of workers' compensation coverage in compliance with state law;
- A description of the project, including the project's anticipated:
 - Timeline and completion date;
 - Eligible expenditures, as defined by the bill;
 - Project activities to be conducted in Kansas;
 - Employment of personnel who are Kansas residents;
 - Use of Kansas-based vendors;
 - Construction or contribution of production infrastructure; and
 - Participation in Kansas film and digital media industry development activities; and
- A statement of economic impact of the activities of the project on the region and the state as a whole.

Production companies that enter into an agreement with the Secretary are considered certified projects, for purposes of the bill, and are eligible for the income tax credit and sales tax exemption provided by the bill. The amounts of tax credits, described in more detail below, are to be determined based on amounts of qualified expenditures as determined and approved by the Secretary.

The bill requires any agreement entered into between a production company and the Secretary to include provisions for repayment of tax credits or exemptions should the production company violate the Act or any rules and regulations pertaining to the Act.

For purposes of the bill, production and postproduction expenditures are defined to include costs associated with eligible productions for:

- Various categories of goods and services associated with typical production and postproduction activities, as provided for by the bill;
- Wages or salaries of principal cast members, producers, screenwriters, directors, and crew members;
- Transportation costs;
- Food and lodging;
- Facility rental;
- Insurance costs; and
- Other direct costs associated with generally accepted entertainment industry practice.

For purposes of the bill, production and postproduction expenditures do not include expenditures for:

- Goods, equipment, or vehicles not purchased, rented, or leased in Kansas;
- Production activities or services not conducted in Kansas and services not performed at the filming site unless by a Kansas-based vendor;
- Postproduction activities or services not conducted in Kansas by Kansas-based vendors; or
- Footage shot outside of the state, marketing, story rights, or distribution.

Qualified production and postproduction expenditures, for purposes of the bill, include eligible production and postproduction expenditures actually made by production companies for certified projects. Qualified production expenditures do not include salaries and wages of principal cast members, producers, screenwriters, or directors constituting more than 25 percent of total production expenditures. The Secretary has discretion to limit specified eligible expenditures or total amounts approved as qualified production or postproduction expenditures.

A production company entering into an agreement with the Secretary is required to regularly provide documentation and information as requested by the Secretary to determine qualified expenditures and ensure compliance with the program.

The bill authorizes the Secretary of Revenue and the Secretary of Commerce to adopt rules and regulations to implement its provisions.

Income Tax Credits

The bill creates a nonrefundable income tax credit for tax year 2024 through tax year 2033 for production companies or their affiliates that make qualified expenditures on certified projects.

The credit is equal to 30 percent of qualified production expenditures or 30 percent of qualified postproduction expenses for projects lacking qualified production expenditures.

Certain production-related activities are available for additional credit amounts, as approved by the Secretary, as follows:

- Up to 5 percent of qualified expenditures for one of the following:
 - Multifilm deal;
 - Television series;
 - Production for which total expenditures are at least \$50 million, one-third of which are qualified expenditures approved by the Secretary; or
 - Contributions to film-related infrastructure or workforce development in Kansas; or
- Up to 5 percent for qualified production expenditures for productions in which at least 50 percent of the crew or “above-the-line” personnel (principal cast member, producer, screenwriter, or director) are Kansas residents.

An additional credit amount of up to 5 percent of qualified expenditures is available to a production company that was a previous recipient of an income tax credit provided for under the bill.

Income Tax Credit for Kansas-based Companies

The bill also creates a nonrefundable income tax credit for 25 percent of qualified production expenditures of at least \$25,000 for Kansas-based production companies. For purposes of this credit, eligible projects include projects not intended for multimarket commercial distribution.

This credit can be received in addition to or in lieu of the general income tax credit created by the bill, as determined by the Secretary.

Income Tax Credit General Provisions

The bill specifies that the income tax credits provided for by the bill are to be:

- Applied against the income tax in the tax year such qualified expenditures are made;

- Transferable to any individual or entity subject to income tax in Kansas; and
- Eligible to be carried forward for up to ten future tax years.

Limits on Tax Credit Amounts

The bill further specifies limits on income tax credit amounts as follows:

- The total amount of income tax credits in aggregate cannot exceed \$10 million per tax year;
- Of the aggregate total amount of tax credits per tax year, 10 percent must be designated to Kansas-based production companies;
- The tax credit amount for expenditures on a single individual who is a principal cast member, producer, screenwriter, or director cannot exceed \$500,000; and
- The maximum cumulative amount of credits claimed by a production company in a tax year cannot exceed 40 percent of the total qualified production expenditures for that tax year.

Tax Credit Administration

Regarding administration of tax credit claims, the bill further specifies:

- Claims are to be filed with the Secretary of Revenue and must be submitted within one year of the last eligible expenditure;
 - The Secretary of Revenue is required to grant up to a six-month extension at the request of a production company;
- Claims submitted by a production company must be filed as a single claim;
- The Secretary of Revenue may require claims for closely integrated activities of multiple affiliates to be submitted as a single claim;
- Claims for expenditures made by production companies hired by another production company must be filed by the hiring company;
- Claims must include:
 - A copy of the project certification;
 - A determination of qualified expenditures by the Secretary of Commerce; and

- A report by a Kansas-licensed certified public accountant verifying compliance of expenditures with the bill; and
- Credits claimed by S-corporations, partnerships, or limited liability companies are to be distributed proportionally by shareholders, partners, or members.

Sales Tax Exemption

The bill creates a sales tax exemption for expenditures for certified projects made in Kansas on production and postproduction activities, as defined by the bill.

The bill requires the Secretary, in considering approval of applications for the sales tax exemption, to prioritize expenditures in rural or economically depressed urban areas to the extent feasible. The Secretary is permitted to require that all or a portion of expenditures eligible for the exemption be made with businesses in such areas.

Tax Incentive Reporting

The bill requires the Secretary to provide an annual report to the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development on or before January 31 of each year, beginning in 2025. The bill requires the report to include:

- Amounts and recipients of tax incentives approved during the prior year;
- The amount of tax incentives anticipated for the current year;
- The companies that have applied for and that have been certified for projects; and
- A description of ongoing and completed projects and their impact on the Kansas film and digital media production industry.

The Secretary of Revenue is required to provide the Secretary of Commerce with information as necessary for the report.

Sunset on Tax Incentives

The bill specifies no income tax credits or sales tax exemptions under the Act are to apply or be awarded for expenditures made on or after January 1, 2034.

National Guard Employment Credits

Employer Credit

The bill creates, for tax years 2025 through 2029, a credit applicable to income, privilege, or premium tax of employers of Kansas resident members of the National Guard in good standing equal to 10 percent of the total compensation, excluding retirement, health care, and other benefits, paid to the National Guard member by the employer during the tax year, with a maximum annual credit of \$1,000 per National Guard member per employer.

The bill specifies the credit can be claimed after all other credits and cannot be refunded or carried forward.

Employee Credit

The bill creates, for tax years 2025 through 2029, a credit applicable to the Kansas income tax of Kansas resident members of the National Guard equal to 10 percent of the amount of compensation, excluding retirement, health care, and other benefits, received by the employee, prorated for the number of entire months the individual was a member in good standing of the National Guard during the tax year.

The credit is capped at \$1,000 per taxpayer per year and cannot be refunded or carried forward. If the individual is dishonorably discharged, discharged under other-than-honorable conditions, or discharged for bad conduct from the National Guard, no credit is allowed.

The bill requires the National Guard to annually send a notice by electronic mail to any members during the prior year informing them that they may be eligible for the employee income tax credit provided by the bill.

Community Theater Sales Tax Exemption

The bill enacts a sales tax exemption for purchases of tangible personal property made by the following not-for-profit community theaters:

- Great Plains Theatre (Abilene);
- Music Theatre Wichita;
- Salina Community Theater;
- Theatre Atchison;
- Theatre Lawrence; and
- Topeka Civic Theatre.

Friends of Cedar Crest Sales Tax Exemption

The bill creates a sales tax exemption for purchases and sales of goods made by the Friends of Cedar Crest Association for purposes of preserving and enhancing Cedar Crest and encouraging public awareness of the historic and cultural importance of Cedar Crest.

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