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SENATE BILL NO. 251

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 58.1-439.12:03 of the Code of Virginia, relating to content manufacturing tax credit.

Patrons—Hashmi, Craig, Bagby and Pillion

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:03 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:03. Content manufacturing tax credit.

A. For the purposes of this section:

"Eligible project" means the production of a motion picture or an episodic television series. "Eligible project" does not include any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

"Episodic television series" means a television program consisting of multiple episodes of a single season. In the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

"Physical production infrastructure" means buildings, facilities, and equipment located in the Commonwealth and necessary for the production of eligible projects.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of an eligible project produced in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed; and

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

"Qualifying expenses" does not include any expenses that were exempt from retail sales and use tax pursuant to the provisions of Chapter 6 (§ 58.1-600 et seq.); however, if a taxpayer accrued such expenses at least one year prior to entering into a memorandum of understanding with the Virginia Tourism Authority pursuant to the provisions of subdivision C 3 and such expenses were exempt from retail sales and use tax, such expenses may be counted as qualifying expenses.

B. 1. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2027, any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to

59 receive compensation indirectly when a production company pays a personal service company or an
60 employee leasing company that pays the individual.

61 ~~B. 1.~~ 2. In addition to the refundable credit authorized under ~~subsection A subdivision 1~~, such production
62 company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for
63 Virginia residents employed in connection with the production of a film in the Commonwealth when total
64 production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional
65 credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection
66 with such production when total production costs in the Commonwealth exceed \$1 million.

67 ~~2.~~ 3. In addition to the credits authorized under ~~subsection A and subdivision B 1 and 2~~,
68 such production company shall be allowed an additional refundable credit equal to 10 percent of the total
69 aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew
70 in connection with the production of a film in the Commonwealth.

71 C. 1. ~~For purposes of this section, in the case of an episodic television series, an entire season of episodes~~
72 ~~shall be deemed to be one production.~~

73 ~~2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a~~
74 ~~television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a~~
75 ~~reality television production.~~

76 ~~D. 1.~~ The issuance of refundable tax credits under this section shall be in accordance with procedures,
77 qualifying criteria, and deadlines established by the Department and the Virginia Tourism Authority. The
78 qualifying criteria established by the Virginia Tourism Authority shall take into account whether the
79 production involves physical production within the Commonwealth of Virginia, the number of residents of
80 Virginia that will be employed in the production and the level of compensation they will be paid, the extent to
81 which the production will contribute to the support and expansion of existing production companies in
82 Virginia, the extent to which the production will impact existing local businesses and the local economy, the
83 extent to which the production will involve existing and new companies located in Virginia, *the amount of*
84 *capital investment in the Commonwealth*, and other relevant considerations. The taxpayer shall apply for a
85 credit by submitting such forms as prescribed by the Virginia Tourism Authority, prior to the start of
86 production in Virginia.

87 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding with
88 the Virginia Tourism Authority that at a minimum provides the requirements that the taxpayer must meet in
89 order to receive the credits, including but not limited to the estimated amount of money to be spent in
90 Virginia, the timeline for completing production in Virginia, and the maximum amount of credits allocated to
91 the taxpayer.

92 3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the
93 satisfaction of the Virginia Tourism Authority and completed production in Virginia, the Virginia Tourism
94 Authority shall certify the final tax credit amount to the taxpayer and to the Tax Commissioner. In addition,
95 such certificate shall specify the fiscal year in which such tax credit may be refunded by the Department of
96 Taxation. The tax return filed for the taxable year in which the Virginia production activities are completed
97 shall contain information specifying the amount of tax credit and shall specify the fiscal year in which such
98 tax credit may be refunded. The return must state the name of the production, provide a description of the
99 production, and include a detailed accounting of the qualifying expenses with respect to which a credit is
100 claimed.

101 4. The Virginia Tourism Authority shall report to the Tax Commissioner on an annual basis the amount of
102 tax credits that have been authorized for each fiscal year and the amount of tax credits that may be claimed
103 for the current fiscal year by each taxpayer.

104 5. No interest shall be paid pursuant to § 58.1-1833 on any tax credit issued by the Department under this
105 section.

106 ~~E. D.~~ A taxpayer allowed a credit under this section must maintain and make available for inspection any
107 information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility
108 for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Tourism
109 Authority in order to determine the amount of qualifying expenses.

110 ~~F. E.~~ For purposes of this section, the amount of any credit attributable to a partnership, electing small
111 business corporation (S corporation), or limited liability company may be allocated to the individual partners,
112 shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

113 ~~G. F. 1.~~ The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5
114 million in the 2010-2012 biennium, \$5 million in the 2012-2014 biennium, ~~and~~ \$6.5 million in fiscal year
115 years 2015 through 2023, and \$46.5 million in fiscal year 2024 and each fiscal year thereafter. *In the event*
116 *that \$100 million worth of either new physical production infrastructure or new vendor establishments or*
117 *both in Virginia does not occur by January 1, 2027, the annual amount shall be reduced to \$10 million per*
118 *fiscal year.*

119 2. Beginning with fiscal year 2024, if the amount of credits actually claimed is less than the aggregate

120 *limit specified in subdivision 1, the unclaimed remainder shall be carried over to the next fiscal year and*
121 *added to the aggregate limit for that year.*

122 ~~H.~~ G. The Department of Taxation, in consultation with the Virginia Tourism Authority, must publish by
123 November 1 of each year for the 12-month period ending the preceding December 31 the following
124 information:

125 1. Location of sites used in a production for which a credit was claimed;

126 2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods,
127 services, or compensation paid by the production company;

128 3. Number of people employed in the Commonwealth with respect to credits claimed; and

129 4. Total cost to the Commonwealth's general fund of the credits claimed.

130 Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by the
131 Department, even if such information is not classified, so as to prevent the identification of particular
132 taxpayers, reports, or returns and items.

133 ~~F.~~ H. The Tax Commissioner shall develop guidelines implementing the provisions of this section,
134 including but not limited to the definition of "qualifying expenses" and setting forth the recordkeeping
135 requirements applicable to production companies claiming this credit. Such guidelines shall be exempt from
136 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

INTRODUCED

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