



SPONSOR: Rep. Harris & Rep. Michael Smith & Sen. Lockman  
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Hocker, Pettyjohn, Wilson, Buckson, Richardson,  
Huxtable, Cruce, Hoffner

HOUSE OF REPRESENTATIVES  
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 364  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO A DELAWARE ENTERTAINMENT PRODUCTION TAX CREDIT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Part II, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 20F. DELAWARE ENTERTAINMENT PRODUCTION TAX CREDIT

§ 2001F. Purpose.

The purpose of this chapter is to encourage artistic endeavors and investment in Delaware in the film, television, esports, and videogame industries, and the economic opportunities that come with them, by providing a tax credit for qualified production activities in the State.

§ 2002F. Definitions.

As used in this chapter:

(1) "Commercial multi-market distribution" means broadcast of the resulting content from qualified activities inside and outside of the State through theaters, cable networks, over the air broadcast, streaming, digital means, and hardware for distribution of digital interactive media, and such other means of content distribution hereafter developed.

(2) "Loan-out company" means a personal service company contracted with, and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified activity. The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.

(3) a. “Qualified activities” include:

1. The creation of media projects including feature films, series, productions, commercial advertisements, webisodes, music videos, pilots, award shows, game shows, and esports events, which are created for commercial multi-market distribution.

2. Creation of digital interactive entertainment, including videogames, and including subsequent updates and subsequent editions of digital interactive entertainment.

b. “Qualified activities” do not include:

1. Political advertising.

2. Industrial or instructional videos.

3. Content which meets the definition of “obscene” under § 1364 of Title 11.

4. Live or prerecorded athletic events, which do not include esports.

5. Website development.

6. Infomercials, infotainment, or solicitation-based products.

(4) “Qualified company” means a company primarily engaged in or created to engage in qualified activities, which is either incorporated under the laws of Delaware or registered to do business in Delaware. “Qualified company” does not include any business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the State, or a loan made by the State, or a loan guaranteed by the State.

(5) “Qualified expenditure” means as follows:

a. For media projects, “qualified expenditure” means preproduction, production, and postproduction expenditures incurred in the State that are directly used in a qualified production activity, including the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Delaware based travel agency or travel company; insurance costs and bonding, if purchased through a Delaware based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. “Qualified expenditures” includes expenses for all professionals whose work is directly related to the qualified activities including accountants and lawyers.

b. For digital interactive entertainment, “qualified expenditure” means all expenditures in the State directly relating to qualified activities including the following: testing software, source code development, patches, updates, sprites, three-dimensional models, engine development and other back-end programming activities, performance and motion capture, audio production, tool development, original scoring, and level design; costs associated with photography and sound synchronization, lighting and related services; live operations, information technology support, data analysis and activities related to a community of users; rental of facilities and equipment; purchase of prepackaged audio files, video files, photographic files, or libraries; purchase of licenses to use pre-recorded audio files, video, or photographic files; development costs associated with producing audio files and video files to be used in the production of the end product under development. “Qualified expenditure” includes costs for all professionals whose work is directly related to the qualified activities including accountants and lawyers.

c. “Qualified expenditures” does not include expenditures for work or services conducted or rendered outside of the State.

d. “Qualified expenditures” does not include expenditures for marketing or purchase of story rights.

(6) “Qualified production” means a production engaged in qualified activities which have been approved by the Division of Small Business in accordance with § 2005F of this title.

(7) “Esports” means organized, competitive video gaming, where players or teams face off in structured matches, leagues, or tournaments; it blends traditional sports elements like coaching, strategy, training, and spectators with digital gameplay.

#### § 2003F. Delaware Production Tax Credit.

(a) A qualified company is entitled to credit equal to 30% of qualified expenditures for qualified activities against personal income tax, corporate income tax, insurance premium tax, or bank franchise tax imposed under Title 18, Title 5, or under Chapter 11 or Chapter 19 of this title, subject to limitations set forth in this section.

(b) To be eligible for a tax credit under this chapter, a qualified company must demonstrate that its qualified activities resulted in qualified expenditures greater than \$100,000 during any 12 consecutive month period. A qualified company is permitted to aggregate expenditures over the course of the year for multiple projects.

(c) A qualified company eligible for credits under this chapter may transfer, sell, or assign, any or all unused credits, provided that such transfer, sale, or assignment is registered and approved in advance by the Division of Small Business. The Division of Small Business has 60 days in which to approve or deny a transfer under this subsection. The Division of Small Business must provide the Division of Revenue, the Office of the State Bank Commissioner, and the

Department of Insurance with notification of each new approval and Certificate of Completion and each transfer by no later than 5 business days after the end of the month in which the approval, Certificate of Completion, or transfer is issued or made.

(d) Except as otherwise provided, if the amount of credit allowed pursuant to this chapter exceeds the total tax liability of the taxpayer for the tax year for which the credit is claimed, the amount of the credit not used as an offset against personal income tax, corporate income tax, insurance premium tax, or bank franchise tax in said tax year shall not be refunded, but may be carried forward as a credit against the subsequent years' income, insurance premium, or franchise tax liability for a period not exceeding 5 years, and shall be applied first to the earliest tax years possible. This credit may not be carried back to prior tax years.

(e) Credits granted to or acquired by a pass-through entity created or recognized under Delaware law, if not transferred, sold or assigned, may be divided among the partners, members, shareholders, or owners either according to the distributive shares of income of such entity or pursuant to an executed agreement among such partners, members, shareholders, or owners if the agreement documents an alternate method of distribution.

(f) To be eligible for a tax credit under this section, a qualified company must provide opportunities for Delaware residents to serve as interns, in accordance with rules or regulations promulgated by the Division of Small Business.

#### § 2004F. Loan-out withholding.

A production company or its authorized payroll service company shall withhold Delaware income tax at the rate of 6.6% on all payments to loan-out companies for services performed in Delaware by the loan-out company's employees and shall deposit such amounts with the State of Delaware. The amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Delaware and shall be allocated to the loan-out company's employees in proportion to the payments made by the loan-out company to its employees for services performed in Delaware. The production company or the authorized payroll service company which withheld payment under this section shall provide and remit such information, records, documentation, and reports as the Director of Revenue may require to identify the entity or individuals associated with such withholdings. For purposes of this chapter and notwithstanding any other provision in this chapter to the contrary, loan-out company nonresident employees performing services in Delaware shall be considered taxable nonresidents and shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Delaware.

#### § 2005F. Entertainment Production Tax credit; procedures and administration.

(a) The Division of Small Business shall administer this chapter.

(b) The Division of Small Business may promulgate regulations, applications, and forms necessary to implement this chapter. The Division of Small Business may establish reasonable fees for applications and other services provided under this chapter that do not exceed the approximate costs of administering this chapter.

(c) The Division of Revenue, Department of Insurance, and the Office of the State Bank Commissioner may establish regulations and develop all appropriate procedures and applications or other forms for the implementation of all provisions of this chapter which are directly tax-related. The Division of Small Business shall by January 1, 2027, develop appropriate procedures specific to taxpayers who are qualified companies for the approval of audits and for the transfer and sale of credits.

(d) Any person or entity seeking the Delaware entertainment production tax credit under this chapter shall apply to the Division of Small Business. Each applicant shall complete the application, which must include budgets, proof of financing, cast lists, location lists, and any other information requested by the Division of Small Business. The applicant must also submit a Delaware Impact Plan with its application that details how the qualifying activities will benefit the State of Delaware and its residents.

(e) The Division of Small Business shall, upon consideration of the application and such other matters as it deems appropriate, including seeking consultation with the Motion Picture and Television Development Commission to the extent the Division of Small Business deems appropriate, determine whether or not the production constitutes a qualified production and provide a preliminary approval or denial to the applicant within 60 days of the application. Upon completion of a qualified production, the qualified company shall submit an application of completion including the audit as required under § 2007F of this title to the Division of Small Business, and after review, the Division of Small Business may request additional information or documents and must either provide a final approval and Certificate of Completion or a denial. The Division of Small Business must request information or provide a final determination within 60 days of the application of completion.

(f) To claim the Delaware entertainment production tax credit under this chapter the applicant, assignee, purchaser, or transferee of the credit shall attach the Certificate of Completion to the Delaware tax return against which the credit is claimed and submit the tax return to the Division of Revenue, the Office of the State Bank Commissioner, or the Department of Insurance with respect to taxes in this title, Title 18, and Title 5.

#### § 2006F. Appeals.

(a) Where any taxpayer or other person who has applied for approval or certification in accordance with this chapter objects to a noncertification decision by the Division of Small Business, the taxpayer or other person is entitled to appeal the decision to the Secretary of State or the Secretary's designee. The appeal must be filed with the Secretary of

State or the Secretary's designee within 60 days from the issuance of the noncertification decision. The appeal must be conducted in accordance with the Administrative Procedures Act under Chapter 101 of Title 29. Where an appellant has exhausted all administrative remedies, the appellant is entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act under Chapter 101 of Title 29.

(b) Where a taxpayer or other person who is or was engaged in a qualified production in accordance with this chapter is aggrieved by a tax decision which directly affects the person's ability to utilize an approved credit, that person is entitled to pursue an appeal pursuant to the respective administrative procedures of the Department of Finance, the Office of the State Bank Commissioner, or the Department of Insurance. Where an appellant has exhausted all administrative remedies, the appellant is entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act under Chapter 101 of Title 29.

§ 2007F. Audit.

(a) Any person or entity seeking the Delaware entertainment production tax credit under this chapter shall, at their own cost, cause to be conducted a full audit by an independent third-party, certified public accountant. The audit must cover the expenditures for each tax credit for which it seeks a Certificate of Completion and certify that the expenditures were qualified expenditures. The person or entity must attach the results of the audit to their application of completion provided to the Division of Small Business.

(b) Audits must include verification that all payments required to be made on behalf of a loan-out company pursuant to § 2004F of this title were timely and properly remitted and reported to the Division of Revenue, and that each loan-out company was duly licensed, registered, qualified, and otherwise authorized to conduct business in Delaware as required by Title 30.

(c) The Division of Small Business, via regulations, may create alternative audit procedures for a small business where a full audit would be prohibitively expensive.

§ 2008F. Report.

(a) The Division of Small Business, with the input of the Motion Picture and Television Development Commission, Department of Labor, the Department of Finance, the Office of the State Bank Commissioner, and the Department of Insurance, shall issue a report on or before all of the following dates:

(1) December 1, 2028.

(2) December 1, 2030.

(b) The report under subsection (a) of this section shall be delivered to the Governor, the Chair of the Senate Finance Committee, and the Chair of the House Revenue and Finance Committee and must include all of the following:

- (1) The number of applications received, approved, and denied by fiscal year.
- (2) A list and description of each approved project, including credit amount, production type, location, and scale.
- (3) A list and description of each denied project, including applied-for credit amount and general reasons for denial.
- (4) The total amount of credits receiving initial approval and final approval, the total amount of credits actually claimed, outstanding initially-approved credits, and outstanding finally-approved credits, by fiscal year.
- (5) The number of individuals employed in the State by eligible productions, including the following:
  - a. The number of full-time and part time positions.
  - b. The number of resident and nonresident workers.
  - c. The number of direct, indirect, and induced employment.
- (6) Total production spending in Delaware, including the total amount spent on the following categories:
  - a. Wages.
  - b. Facilities and infrastructure.
  - c. Professional film production services.
  - d. Lodging, food, transportation, and other miscellaneous goods and services.
- (7) The net fiscal impact to the State, including total State administrative costs.
- (8) The industry development effects, including all of the following:
  - a. The growth of in-State production infrastructure and vendor development.
  - b. The long-term industry sustainability.
  - c. Talent retention and attraction.
- (9) Comparative analysis with other states.

§ 2009F. Total amount of credits permitted in each fiscal year; priorities.

(a) The maximum amount of credit awards under this chapter in any fiscal year may not exceed \$10,000,000. The Secretary of State, with the input of the Delaware Motion Picture and Television Development Commission and the Division of Small Business, shall determine how that maximum is to be administered such as pro rata or first-come-first-served.

(b) The Secretary of State, with input from the Delaware Motion Picture and Television Development Commission and the Division of Small Business, must prioritize applicants based on the applicant's expected benefit to the State as detailed in the applicant's Delaware Impact Plan. The following applicants must be a priority:

- (1) Applicants that employ a significant amount of Delaware residents.
- (2) Applicants that use Delaware based vendors and facilities.
- (3) Repeat applicants or applicants that have multiple project commitments in the State.
- (4) Applicants that expect to permanently expand their presence in the State.

§ 2010F. Data disclosure and sharing.

(a) By applying for this credit or accepting the transfer of a credit under this chapter, the applicant or transferee agrees to public disclosure of the amount of any credit awarded or transferred.

(b) Notwithstanding any law to the contrary, the sharing of data related to the credit between or among any of the following shall be permitted:

- (1) The Motion Picture and Television Development Commission.
- (2) The Department of State.
- (3) The Division of Revenue.
- (4) The Office of State Bank Commissioner.
- (5) The Department of Insurance.
- (6) The Division of Small Business.

(c) Notwithstanding any law to the contrary, the sharing of data related to payments made and records and returns filed on behalf of a loan-out company and its employees, may be shared with the Department of State and Division of Small Business.

§ 2011F. Sunset clause.

No applications may be submitted after June 30, 2031, though projects having received initial approval prior to that date may receive final approval after such date. Any unused credits that receive final approval may be claimed or carried forward to the extent there exists a portion of the 5-year term set forth in § 2003F(d) of this title that extends beyond that date.

Section 2. This Act takes effect on July 1, 2026.