Legislation Text

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Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections," by adding a new Chapter 19-4500, entitled "Film Industry and Digital Media Incentives," establishing Philadelphia City Film Industry Incentives, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 19 of The Philadelphia Code is hereby amended to read as follows:

TITLE 19. FINANCE, TAXES AND COLLECTIONS

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CHAPTER 19-4500. FILM INDUSTRY AND DIGITAL MEDIA INCENTIVES

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§ 19-4501. Incentives For Film, Video, Or Digital Production

(1) This Code section may be cited as the "Philadelphia Film Industry And Digital Media Advancement Act."

(2) Definitions. As used in this section, the following definitions apply:

(a) Affiliates. "Affiliates" means those entities that are included in the production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(b) Base Investment. "Base Investment" means the aggregate funds actually invested and expended by a production company as production expenditures incurred in the City of Philadelphia that are directly used in a City certified production or City certified productions.

(c) City. "City" means The City of Philadelphia.

(d) Department. "Department" means the Philadelphia Revenue Department.

(e) Film Office. "Film Office" means the Greater Philadelphia Film Office.

(f) Minorities. "Minorities" shall mean persons who are United States citizens, lawful permanent residents of the United States, or non-permanent residents legally authorized to work in the

United States, and who are:

(.1) African American (a person having origins in any of the black racial groups in Africa);

(.2) Hispanic American (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);

(.3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); or

(.4) Native American (a person having origins in any of the original peoples of North America).

(g) Multi-Market Commercial Distribution. "Multimarket Commercial Distribution" means paid commercial distribution with media buys which extend to markets outside the City of Philadelphia.

(h) Office. "Office means the Philadelphia Office of the Director of Finance.

(i) Person or Persons. "Person" or "Persons" shall refer to a natural person or natural persons, respectively.

(j) Production Company. "Production Company" means a company primarily engaged in qualified production activities which have been approved by the Film Office. This term shall not mean or include any form of 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 City, or a loan made by the City, or a loan guaranteed by the City.

(k) Production Expenditures. "Production Expenditures" means preproduction, production, and postproduction expenditures incurred in the City that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures including license fees incurred with Philadelphia companies for sound recordings and musical compositions, 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, in so far as relates to travel to and from Philadelphia; insurance costs and bonding, if purchased through a Philadelphia insurance agency; employment of individuals subject to the payment of taxes under Chapter 19-1500 (Wage and Net Profits Tax) of this Title for days worked in Philadelphia; payments to loan-out companies for services performed in the City; and other direct costs of producing the project in accordance with generally accepted film industry practices.

(l) Qualified Philadelphia Promotion. "Qualified Philadelphia promotion" means a qualified promotion of this City approved by the Office of the City Representative consisting of a qualified movie production which includes a five-second long static or animated logo that promotes Philadelphia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Philadelphia on the project's web page;

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(m) Qualified Production Activities. "Qualified production activities" means the production of new film, video, or digital projects produced in this City and approved by the Film Office, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this City, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Philadelphia.

(n) City Certified Production. "City certified production" means a production engaged in qualified production activities which have been approved by the Film Office in accordance with guidelines promulgated pursuant to this Section. In the instance of a "work for hire" in which one production company or qualified interactive entertainment production company hires another production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(o) Total Aggregate Payroll. "Total aggregate payroll" means the total sum expended by a production company on salaries paid to employees working within the City in a City certified production or productions. For purposes of this paragraph:

(.1) With respect to a single employee, the portion of any salary which exceeds $500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(.2) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(3) Tax Credit. For any production company and its affiliates that invest in a City certified production approved by the Department of Commerce, there shall be allowed a tax credit against the tax imposed under either Chapter 19-1300 (Real Estate Taxes) or Chapter 19-2600 (Business Income or Receipts Taxes), or both, of this Title. However, any such production must include the Philadelphia promotional logo. For purposes of this Subsection, the excess base investment in the City is computed by taking the current year production expenditures in a City certified production. The tax credit shall be calculated as follows:

(a) If the excess base investment in the City equals or exceeds $500,000.00, the production company and its affiliates shall be allowed a tax credit of twenty-five percent (25%) of such excess base investment; or

(b) If the excess base investment in the City equals or exceeds $250,000.00, where thirty percent (30%) of the crew consists of women or minorities, or both collectively but without duplication, the production company and its affiliates shall be allowed a tax credit of twenty-five percent (25%)

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of such excess base investment.

(4) Tax Credit Carry-Forward. Where the amount of such credit or credits exceeds the production company's liability for such taxes in a taxable year, the excess may be taken as a credit against future tax liability for such taxes.

(5) Tax Credit Not Income. Such credits shall not constitute income to the production company.

(6) Transferability Or Sale. Any tax credits with respect to a City certified production earned by a production company previously claimed but not used by such production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Philadelphia taxpayer, subject to the following conditions:

(a) Such production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(b) Such production company shall submit to the Office of the Director of Finance and to the Philadelphia Department of Revenue a written notification of any transfer or sale of tax credits within thirty (30) days after the transfer or sale of such tax credits. The notification shall include such production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Office of the Director of Finance or the Department of Revenue;

(c) Failure to comply with Subsection 19-4301(6) shall result in the disallowance of the tax credit until the production company is in full compliance;

(d) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(e) A transferee shall have only such rights to claim and use the tax credit that were available to such production company at the time of the transfer. To the extent that such production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company; and

(7) Tax Credit Conditions and Limitations. The credit granted under Subsection 19-4301(3) shall be subject to the following conditions and limitations:

(a) The credit may be taken beginning with the taxable year in which the production company has met the investment requirement. For each year in which such production company either claims or transfers the credit, the production company shall attach a schedule to the production company's tax returns for the tax imposed under either Chapter 19-1300 (Real Estate Taxes) or Chapter 19-2600 (Business Income or Receipts Taxes), or both, of this Title, which will set forth the following information, as a minimum:

(.i) A description of the qualified production activities, along with the

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certification from the Film Office;

(.ii) A detailed listing of the employee names, social security numbers, and Philadelphia wages when salaries are included in the base investment;

(.iii) The amount of tax credit claimed for the taxable year;

(.iv) Any tax credit previously taken by the production company against the tax imposed under either Chapter 19-1300 (Real Estate Taxes) or Chapter 19-2600 (Business Income or Receipts Taxes), or both, of this Title;

(.v) The amount of tax credit carried over from prior years;

(.vi) The amount of tax credit utilized by the production company in the current taxable year; and

(.vii) The amount of tax credit to be carried over to subsequent tax years;

(b) In the initial year in which the production company claims the credit granted in Subsection 19-4301(3), the production company shall include in the description of the qualified production activities required by Subsection 19-4301(2)(b) information which demonstrates that the activities included in the base investment or excess base investment equal or exceed: $500,000.00 during such year under Subsection 19-4301(3)(a) or $250,000.00 during such year under Subsection 19-4301(3)(a); and

(c) In no event shall the amount of the tax credit under Subsection 19-4301(3) for a taxable year exceed the production company's tax liability imposed under either Chapter 19-1300 (Real Estate Taxes) or Chapter 19-2600 (Business Income or Receipts Taxes), or both, of this Title. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company against prior years' tax liability imposed under either Chapter 19-1300 (Real Estate Taxes) or Chapter 19-2600 (Business Income or Receipts Taxes), or both, of this Title.

(8) Film Office Guidelines. The Film Office shall determine through the promulgation of guidelines what projects qualify for the tax credits authorized under Subsection 19-4301(3). Certification shall be submitted to the City Revenue Commissioner.

(9) Application Fee. The Film Office shall establish a reasonable application fee to recover its costs associated with certifying projects to be qualified to receive a tax credit under Subsection 19-4301(3).

(10) Full Independent Audit Requirement. Upon the completion of a certified project resulting in a credit of $100,000.00 or more under Subsection 19-4301(3), the production company shall provide copies of a full audit performed by an independent auditor chosen from a list of such firms compiled by the Office of the Finance Director for that purpose. Upon the completion of a certified project resulting in a credit of less than $100,000.00 under Subsection 19-4301(3), the production company shall be subject to a full audit performed by an independent auditor chosen from a list of such firms compiled by the Office of the Finance Director for that purpose at the discretion of the City Revenue Commissioner.

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(11) Revenue Regulations. The City Revenue Commissioner shall promulgate such regulations as are necessary to implement and administer Section 19-4301.

(12) Any production company claiming, transferring, or selling the tax credit shall be required to reimburse the Philadelphia Department of Revenue for any Department-initiated audits relating to a tax credit under Subsection 19-4301(3). This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in Subsection 19-4301(3).

SECTION 2. Effective Date. This ordinance shall take effect immediately.

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