

1 S.104

2 Introduced by Senators Lyons, Ashe, Ayer, Campbell, Carris, Choate,

3 Flanagan, Giard, Hartwell, Illuzzi, Maynard, Miller, Mullin,

4 Shumlin, Starr and White

5 Referred to Committee on

6 Date:

7 Subject: Taxation; income taxes; tax credits; motion picture industry

8 Statement of purpose: This bill proposes to create a transferable tax credit for
9 the motion picture industry.

10 An act relating to tax credits for the motion picture industry

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 32 V.S.A. chapter 151, subchapter 11K is added to read:

13 Subchapter 11K. Other Tax Credits

14 § 5930gg. MOTION PICTURE INDUSTRY TAX CREDIT

15 (a) As used in this section:

16 (1) "Commission" means the Vermont film commission.

17 (2) "Director" means the director of the Vermont film commission.

18 (3) "Eligible expense" means preproduction, production, and

19 postproduction expenditures directly incurred in Vermont in the taxable year

20 by an eligible production company for the production of a qualified motion

1 picture. This term includes wages and salaries paid to individuals employed in
2 Vermont in the production of the motion picture, but does not include wages or
3 salaries in excess of \$1,000,000.00 for any one individual for any one motion
4 picture; and includes expenditures for the following activities: set construction
5 and operation, editing and related services, photography, sound
6 synchronization, lighting, wardrobe, make-up, and accessories, film
7 processing, transfer, mixing, special and visual effects, music, screenplay
8 purchase, location fees, purchase or rental of facilities and equipment, or any
9 other production expense incurred in Vermont that may be determined by the
10 commission to be an eligible expense. This term does not include expenses
11 incurred for marketing or advertising a motion picture or any amounts paid to
12 persons as a result of their participation in profits from the exploitation of the
13 production.

14 (4) “Eligible production company” means a company, including its
15 subsidiaries, engaged in the business of producing qualified motion pictures;
16 but shall not include any company which is in default, or which is affiliated
17 with, or owned or controlled, in whole or in part, by any person in default, on
18 taxes owed to the state or on a loan made or guaranteed by the state.

19 (5) “Principal photography” means the phase of production during
20 which the motion picture is actually filmed. The term shall not include
21 preproduction or postproduction.

1 (6) “Qualified motion picture” means a feature-length film, video,
2 digital media project, video game, television series of 22 or more episodes,
3 pilot, video on demand, or commercial made in whole or in part in Vermont,
4 for commercial distribution, theatrical or television viewing, or mobile or
5 wireless platforms. “Qualified motion picture” does not mean a television
6 production featuring news, current events, weather, financial market reports, a
7 sporting event, an award show, a production solely for fundraising, a long-
8 form production primarily intended to market a product or service, or a
9 production containing obscene material.

10 (7) “Secretary” means the secretary of the agency of commerce and
11 community development.

12 (8) “State-certified production” means a qualified motion picture
13 certified by the Vermont film commission, pursuant to rules adopted by the
14 commission, and produced by an eligible production company that has signed
15 a viable distribution plan with either a major theatrical exhibitor, a television
16 network, or a cable television program.

17 (b)(1) Qualified motion picture payroll credit. A taxpayer engaged in the
18 making of a qualified motion picture shall be allowed a transferable credit
19 against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title for the
20 employment of persons within the state in connection with the filming or
21 production of one or more qualified motion pictures in the state within any

1 consecutive 12-month period when total production costs incurred in the state
2 within a taxable year equal or exceed \$50,000.00 and such payments for
3 employment constitute Vermont source income. The credit shall be:

4 (A) equal to 25 percent of the total aggregate payroll paid by an
5 eligible production company for employees not residents of this state; and

6 (B) equal to 30 percent of the total aggregate payroll paid by an
7 eligible production company for employees who are residents of this state.

8 (2) For purposes of this subsection, the term “total aggregate payroll”
9 shall not include the salary of any employee whose salary is equal to or greater
10 than \$1,000,000.00.

11 (3) Dollar limit on qualified motion picture tax credit. Transferable tax
12 credits available under this subchapter shall not exceed \$9,000,000.00 in any
13 one taxable year and the awards shall be made for state-certified productions
14 chronologically in the order in which they qualify for the credits, until the
15 \$9,000,000.00 is fully awarded; and credits earned in any year which exceed
16 the \$9,000,000.00 may not be transferred or carried forward.

17 (c) Qualified motion picture expense credit. A taxpayer shall be allowed an
18 additional transferable credit against the taxes imposed by parts 3, 4, and 5 of
19 subtitle 2 of this title equal to 30 percent of all Vermont production expenses,
20 not including the payroll expenses used to claim a credit pursuant to subsection
21 (b) of this section, where the motion picture is also eligible for a credit

1 pursuant to subsection (b) and either Vermont production expenses exceed
2 50 percent of the total production expenses for a motion picture, or at least
3 50 percent of the total principal photography days of the film take place in the
4 state.

5 (d) The director of the commission shall determine by rule criteria for
6 state-certified productions.

7 (e) Upon completion of a state-certified production, the secretary shall
8 review the production expenses and certify the amount of expenses qualified
9 for credit under this section.

10 (f) Any taxpayer applying for a credit of \$100,000.00 or more shall hire a
11 third-party certified public accountant and such accountant shall use Agreed
12 Upon Procedures, as defined by the Auditing Standards Board of the American
13 Institute of Certified Public Accountants, to certify the taxpayer's credit to the
14 secretary.

15 (g) The transferable tax credit shall be taken only against taxes imposed
16 under parts 3, 4, and 5 of subtitle 2 of this title and shall be refundable to the
17 extent provided for in subsection (i) of this section. Any amount of the tax
18 credit that exceeds the tax due for a taxable year may be carried forward by the
19 taxpayer or its transferee, buyer, or assignee to any of the five subsequent
20 taxable years.

1 (h)(1) All or any portion of tax credits issued in accordance with this
2 subsection may be transferred, sold, or assigned to another taxpayer only once.
3 Any tax credit that is transferred, sold, or assigned and taken against taxes
4 imposed by parts 3, 4, and 5 of subtitle 2 of this title shall not be refundable.
5 Any amount of the tax credit that exceeds the tax due for a taxable year may be
6 carried forward by the transferee, buyer, or assignee to any of the three
7 subsequent taxable years from which a certificate is initially issued by the
8 commissioner.

9 (2) An owner or transferee desiring to make a transfer, sale, or
10 assignment shall submit to the commissioner a statement which describes the
11 amount of tax credit for which the transfer, sale, or assignment of tax credit is
12 eligible. The owner or transferee shall provide to the commissioner
13 information as the commissioner may require for the proper allocation of the
14 credit. The commissioner shall provide to the taxpayer a certificate of
15 eligibility to transfer, sell, or assign the tax credit. The commissioner shall not
16 issue a certificate to a taxpayer that has an outstanding tax obligation with the
17 state for any prior taxable year. A tax credit shall not be transferred, sold, or
18 assigned without a certificate.

19 (i)(1) At the written election of a taxpayer entitled to a credit under
20 subsection (b) of this section, the commissioner shall apply the credit against
21 the liability of the taxpayer as determined on its return, as first reduced by any

1 other available credits, and shall then refund to the taxpayer 90 percent of the
2 balance of the credits.

3 (2) The commissioner may require substantiation of a taxpayer's claim
4 for refund under this subsection before payment of the refund.

5 Notwithstanding any law to the contrary, no interest shall accrue on the refund
6 before the commissioner's receipt of the substantiation he or she requested.

7 (3) The commissioner may adopt regulations or other guidelines as he or
8 she deems necessary to implement this subsection.

9 (j) A film production company which receives a credit under this section
10 shall acknowledge the state of Vermont in the end credits of the film.

11 (k) The commissioner, in consultation with the secretary and the director,
12 shall adopt regulations necessary for the administration of this subchapter.

13 Sec. 2. 32 V.S.A. § 9701(45) is added to read:

14 (45) Manufacturing: shall not include motion picture or film production
15 for which a credit has been or will be granted under subchapter 11K of chapter
16 151 of this title.

17 Sec. 3. 10 V.S.A. § 650h is added to read:

18 § 650h. FEE

19 Each taxpayer, transferee, buyer, or assignee of tax credits granted under
20 subchapter 11K of Title 32 shall pay a fee equal to two percent of the

1 aggregate value of such credits to the program fund created by section 650g of
2 this title.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect upon passage and shall apply to qualified motion
5 picture projects begun on or after July 1, 2009 as certified by the secretary.