

MAINE STATE LEGISLATURE

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(Filing No. H-598)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1005, L.D. 1449, Bill, "An Act To Expand Tax Incentives for Visual Media Productions"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA §13090-L, as enacted by PL 2005, c. 519, Pt. GG, §1, is amended to read:

§13090-L. Visual media production certification

1. **Generally.** A visual media production company that intends to undertake a visual media production in this State may apply to the department to have the production, or a portion of the production, certified under subsection 3 for purposes of the visual media production reimbursement pursuant to Title 36, chapter 919-A and the credit under Title 36, section 5219-Y.

2. **Definitions.** ~~As used in this section, unless the context otherwise indicates, the following terms have the following meanings.~~

~~A. "Media production" means a single medium or multimedia feature film, television show or series, video, commercial, photographic project, interactive computer or video game or other program intended for a national audience and fixed on film, video tape, computer disk, laser disc or other delivery medium that can be viewed or reproduced and that is exhibited in theaters or by individual television stations or groups of stations, television networks or cable television stations or via other means or licensed for home viewing or use.~~

~~"Media production" does not include:~~

~~(1) A news, current events or public programming show or a program that includes weather or market reports;~~

~~(2) A talk show;~~

~~(3) A sports event or activity;~~

- 1 ~~(4) A gala presentation or awards show;~~
- 2 ~~(5) A finished production that solicits funds; or~~
- 3 ~~(6) A production produced by a media production company if records, as~~
- 4 ~~required by 18 United States Code, Section 2257, are to be maintained by that~~
- 5 ~~media production company with respect to any performer portrayed in that~~
- 6 ~~production.~~

7 ~~B. "Media production company" means a person engaged in the business of~~

8 ~~producing a media production.~~

9 ~~C. "Media production expense" means an expense directly incurred during the~~

10 ~~creation of a media production. This term includes wages and salaries of individuals~~

11 ~~employed in the production on which taxes have been paid or accrued; the cost of~~

12 ~~construction, operations, editing and related services, still and motion photography;~~

13 ~~sound recording and synchronization, lighting, wardrobe and accessories; and the~~

14 ~~rental of facilities and equipment, including location fees. The term does not include~~

15 ~~expenses incurred in marketing and advertising a media production or in printing or~~

16 ~~otherwise disseminating a media production.~~

17 ~~D. "Person" has the same meaning as in Title 36, section 111, subsection 3.~~

18 **2-A. Definitions.** As used in this section, unless the context otherwise indicates, the

19 following terms have the following meanings.

20 A. "Digital media project" means visual and audio content on an electronic, digital

21 medium and created, referred to and distributed electronically. "Digital media

22 project" includes publicly accessible websites, computer multimedia, video and

23 computer games and digital video discs.

24 B. "Maine State Film Office" means the Maine State Film Office established in the

25 Office of Tourism pursuant to section 13090-I.

26 C. "Person" has the same meaning as in Title 36, section 111, subsection 3.

27 D. "Visual media production" means a single-medium or multimedia feature film,

28 television show or series, video, digital media project or photographic project

29 intended for a local, regional, national or international audience and fixed on film,

30 videotape, computer disk, laser disc or other delivery medium that can be viewed or

31 reproduced and that is exhibited in theaters or by individual television stations or

32 groups of stations, television networks or cable television stations or via other means

33 or licensed for home viewing or use. "Visual media production" does not include:

34 (1) A news, current events or public programming show or a program that

35 includes weather or market reports;

36 (2) A talk show;

37 (3) A sports event or activity;

38 (4) A gala presentation or awards show;

39 (5) A finished production that solicits funds; or

1 (6) A production for which records are required to be maintained by 18 United
2 States Code, Section 2257.

3 E. "Visual media production company" means a person engaged in the business of
4 producing a visual media production.

5 F. "Visual media production expense" means an expense directly incurred in this
6 State for preproduction, production or postproduction of a visual media production
7 certified under this section. "Visual media production expense" includes wages and
8 salaries of individuals employed in the production on which taxes have been paid or
9 accrued if those wages do not exceed \$50,000 per individual and payments to a
10 temporary employee-leasing company, as defined in Title 36, section 6901,
11 subsection 3-A, and other contractual payments for the services of individuals
12 working in the State if those payments do not exceed \$50,000 per individual
13 providing services in the production. "Visual media production expense" includes the
14 cost of construction; operations; editing and related services; music, photography and
15 film processing, including transferring film to tape or a digital format; sound
16 recording, mixing and synchronization; lighting, makeup, wardrobe and accessories;
17 transportation; food and lodging for cast and crew; insurance and bonding; and the
18 rental of facilities and equipment, including location fees. "Visual media production
19 expense" does not include expenses incurred in marketing or advertising a visual
20 media production or in printing or disseminating a visual media production.

21 **3. Requirements for visual media production certificate.** Applications for a
22 visual media production certificate must be made on a form prescribed and furnished by
23 the department. The applicant must:

24 A. Provide the names of the principals involved in the visual media production and
25 contact information for them;

26 B. Provide a certificate of insurance for the visual media production;

27 C. Provide financial information that demonstrates that the visual media production
28 is ~~economically sound~~ fully financed and that at least ~~\$250,000~~ \$75,000 of visual
29 media production expense will be incurred ~~in Maine during a period of 12~~
30 ~~consecutive months~~ for the visual media production certified in accordance with this
31 subsection;

32 D. Provide data demonstrating that the visual media production will benefit the
33 people of the State by increasing opportunities for employment and will strengthen
34 the economy of the State;

35 E. Agree to include, in ~~all the certified visual media productions~~ production, an on-
36 screen credit for the State of Maine. The exact wording and size of that credit must
37 be determined in rules adopted by the Maine State Film Office and the department.
38 The Maine State Film Office or the department may, at its discretion, exempt visual
39 media productions from this requirement. Rules adopted pursuant to this paragraph
40 are routine technical rules as defined in chapter 375, subchapter 2-A;

41 F. Provide evidence that the visual media production company is not owned by,
42 affiliated with or controlled by, in whole or in part, a person that is in default on a
43 loan made by the State or a loan guaranteed by the State; ~~and~~

- 1 G. Provide any other information required by the department; and
2 H. Provide a projected schedule for preproduction, production and postproduction of
3 the visual media production that shows that the production will begin within 60 days
4 after certification pursuant to this subsection.

5 To qualify for a visual media production certificate, a visual media production company
6 must demonstrate to the satisfaction of the commissioner that the visual media production
7 company has met, or will meet, the ~~expectations and requirements under paragraphs B, C,~~
8 ~~D, E, F and G~~ requirements of this subsection. If the department determines that the
9 applicant does not qualify for a visual media production certificate, it must inform the
10 applicant of that determination in writing within 4 weeks of receiving the application. As
11 soon as practicable, the department shall issue a visual media production certificate for a
12 visual media production that qualifies. The department shall include with the certificate
13 information regarding ~~qualification for a tax reimbursement and credit certificate~~
14 ~~pursuant to the tax credit report under subsection 4 and procedures for claiming~~
15 ~~reimbursement under Title 36, chapter 919-A and the credit under Title 36, section~~
16 ~~5219-Y.~~

17 **4. Certified visual media production report.** ~~Within~~ No later than 4 weeks of after
18 completion of a certified visual media production, the visual media production company
19 shall confirm report, in a format specified by the Maine State Film Office or the
20 department, its compliance with the requirements of subsection 3 with respect to the
21 certified visual media production to the Maine State Film Office and the State Tax
22 Assessor. ~~Upon determining compliance by the media production company, the~~
23 ~~department shall issue to the company a tax reimbursement and credit certificate. The tax~~
24 ~~reimbursement and credit certificate entitle the media production company to claim the~~
25 ~~reimbursement provided by Title 36, chapter 919-A and the credit under Title 36, section~~
26 ~~5219-Y.~~

27 **5. Department to provide information to State Tax Assessor.** The department
28 shall provide to the State Tax Assessor copies of ~~tax reimbursement and credit certificates~~
29 ~~the visual media production certificate issued in accordance with pursuant to subsection~~
30 ~~4- 3,~~ together with any other information reasonably required by the State Tax Assessor
31 for the administration of visual media production reimbursement under Title 36, chapter
32 919-A and the credit under Title 36, section 5219-Y.

33 **6. Rulemaking.** The department shall develop rules as necessary to administer this
34 section in cooperation with the State Tax Assessor. Rules adopted pursuant to this
35 section are routine technical rules as defined in chapter 375, subchapter 2-A.

36 **7. Report.** The Maine State Film Office shall submit a report by January 15th
37 annually to the joint standing committee of the Legislature having jurisdiction over
38 taxation matters regarding the certification and reporting process pursuant to this section
39 and the visual media production tax credit and reimbursement activities pursuant to Title
40 36, section 5219-Y and Title 36, chapter 919-A. The report must include a description of
41 any rule-making activity related to the implementation of the credit and reimbursement
42 activities, outreach efforts to visual media production companies, the number of
43 applications for the visual media production credit and tax reimbursement, the number of
44 credits and reimbursements granted, the revenue loss associated with the credit and

1 reimbursement and the amount of visual media production expenses generated in the
2 State as a result of the credit and reimbursement.

3 **Sec. 2. 10 MRSA §1100-T, sub-§2, ¶B**, as amended by PL 1999, c. 504, §10, is
4 further amended to read:

5 B. The Maine business must be a manufacturer; must provide a product or service
6 that is sold or rendered, or is projected to be sold or rendered, predominantly outside
7 of the State; must be engaged in the development or application of advanced
8 technologies; must be certified as a visual media production company under Title 5,
9 section 13090-L; or must bring capital into the State, as determined by the authority.

10 **Sec. 3. 10 MRSA §1100-T, sub-§2-A, ¶B**, as amended by PL 1997, c. 774, §1,
11 is further amended to read:

12 B. As used in this subsection, unless the context otherwise indicates, an "eligible
13 business" means a business located in the State that:

- 14 (1) Is a manufacturer;
- 15 (2) Is engaged in the development or application of advanced technologies;
- 16 (3) Provides a service that is sold or rendered, or is projected to be sold or
17 rendered, predominantly outside of the State; or
- 18 (4) Brings capital into the State, as determined by the authority; or
- 19 (5) Is certified as a visual media production company under Title 5, section
20 13090-L.

21 **Sec. 4. 36 MRSA §191, sub-§2, ¶MM**, as reallocated by PL 2009, c. 361, §15, is
22 amended to read:

23 MM. The disclosure to an authorized representative of the Department of Economic
24 and Community Development of information required for the administration of the
25 visual media production credit under section 5219-Y, the employment tax increment
26 financing program under chapter 917, the visual media production reimbursement
27 program under chapter 919-A or the Pine Tree Development Zone program under
28 Title 30-A, chapter 206, subchapter 4.

29 **Sec. 5. 36 MRSA §5219-Y**, as enacted by PL 2005, c. 519, Pt. GG, §2, is repealed
30 and the following enacted in its place:

31 **§5219-Y. Certified visual media production credit**

32 **1. Credit allowed.** A visual media production company, as defined in Title 5,
33 section 13090-L, subsection 2-A, paragraph E, is allowed a credit against the taxes
34 imposed by this Part in an amount equal to 5% of the visual media production expenses,
35 as defined in Title 5, section 13090-L, subsection 2-A, paragraph F, if the visual media
36 company has visual media production expenses of \$75,000 or more. For purposes of this
37 section, "visual media production expenses" does not include wages, salaries,
38 commissions or any other form of compensation or remuneration paid to employees for
39 personal services.

1 2. Limitation. The credit allowed by this section may not reduce the tax otherwise
2 due under this Part below zero and may be used only for the taxable year in which the
3 certified visual media production, as defined in section 6901, subsection 1, is completed.
4 Taxpayers claiming a credit under section 5219-W are not eligible for this credit.

5 **Sec. 6. 36 MRSA §6901**, as enacted by PL 2005, c. 519, Pt. GG, §3, is amended
6 to read:

7 **§6901. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Certified visual media production.** "Certified visual media production" means a
11 visual media production that has been certified by the Department of Economic and
12 Community Development ~~for eligibility as eligible~~ for reimbursement under this chapter
13 in accordance with Title 5, section 13090-L.

14 **2. Certified production wages.** "Certified production wages" means wages that are
15 ~~paid during the project period by a visual media production company that has been issued~~
16 ~~a tax reimbursement certificate in accordance with Title 5, section 13090-L for work on a~~
17 certified visual media production and that are subject to withholding pursuant to chapter
18 827. "Certified production wages" includes payments to a temporary employee-leasing
19 company and payments for the services of performing artists working in the State.
20 "Certified production wages" does not include any wages in excess of \$1,000,000
21 \$50,000 paid to a single individual for personal services rendered in connection with a
22 particular certified visual media production.

23 **3. Commissioner.** "Commissioner" means the Commissioner of Administrative and
24 Financial Services.

25 **3-A. Temporary employee-leasing company.** "Temporary employee-leasing
26 company" means a business that contracts with a visual media production company to
27 supply workers to perform services for a certified visual media production or a private
28 employment agency that contracts with a visual media production company to supply
29 workers to perform services for a certified visual media production on a temporary help
30 basis.

31 **4. Visual media production.** "Media Visual media production" has the same
32 meaning as in Title 5, section 13090-L, subsection 2 2-A, paragraph A D.

33 **5. Visual media production company.** "Media Visual media production company"
34 has the same meaning as in Title 5, section 13090-L, subsection 2 2-A, paragraph B E.

35 ~~**6. Project period.** "Project period" means the period of time, not to exceed 12~~
36 ~~consecutive months, that a media production company is engaged in the business of~~
37 ~~producing a media production or productions.~~

38 **7. Resident of Maine.** "Resident of Maine" means a person who:

39 A. Filed as a resident individual under Part 8 on that person's most recently filed
40 Maine income tax return;

1 B. ~~If no income tax return was required, who could~~ Could have filed as a resident
2 individual under Part 8 if a return had been required in a case where no income tax
3 return was required; or

4 C. Was claimed, or could have been claimed, as a dependent on the Maine income
5 tax return of an individual who filed as a resident individual under Part 8 on the filer's
6 most recently filed Maine income tax return.

7 **Sec. 7. 36 MRSA §6902**, as amended by PL 2009, c. 361, §35, is further amended
8 to read:

9 **§6902. Reimbursement allowed; procedure; audits**

10 1. **Generally.** A visual media production company certified pursuant to Title 5,
11 section 13090-L is allowed a reimbursement equal to 12% of certified production wages
12 paid to employees who are residents of Maine and 10% of certified production wages
13 paid to other employees.

14 2. **Procedure for reimbursement.** Within 6 weeks following ~~receipt~~ submission of
15 ~~a tax reimbursement and credit certificate~~ the certified visual media production report
16 pursuant to Title 5, section 13090-L, subsection 4, a visual media production company
17 shall report to the State Tax Assessor that portion of certified production wages paid
18 ~~during the project period for the certified visual media production~~, together with any
19 additional information the assessor may reasonably require. The assessor shall certify to
20 the State Controller the amounts to be transferred to the visual media production
21 reimbursement account established, maintained and administered by the State Controller
22 from General Fund undedicated revenue within the withholding tax category. The
23 assessor shall pay those amounts to each visual media production company within 90
24 days of the receipt by the assessor of the visual media production company's report.

25 3. **Audit process.** This chapter may not be construed to limit the authority of the
26 State Tax Assessor to conduct an audit of any visual media production company certified
27 pursuant to Title 5, section 13090-L. When the assessor determines that a distribution
28 larger than that authorized by this chapter has been received by any person, the assessor
29 may enforce repayment of the overpayment by assessment pursuant to the provisions of
30 chapter 7 or may apply the overpayment against subsequent reimbursements made
31 pursuant to this chapter. If the assessor determines that an overpayment is the result of
32 fraud on the part of a visual media production company, the assessor may disqualify that
33 company from receiving any future distributions pursuant to this chapter.

34 **Sec. 8. Maine Revised Statutes headnote amended; revision clause.** In the
35 Maine Revised Statutes, Title 36, chapter 919-A, in the chapter headnote, the words
36 "media production reimbursement" are amended to read "visual media production
37 reimbursement" and the Revisor of Statutes shall implement this revision when updating,
38 publishing or republishing the statutes.'

39 **SUMMARY**

40 This amendment replaces the bill. It makes changes to the State's incentives with the
41 intent of providing more effective strategies for growing the Maine visual media
42 production industry by assisting established Maine producers and attracting visual media

1 productions to the State. The amendment modifies the existing income tax credit by
2 changing the calculation of the credit to 5% of the expenses incurred for a single certified
3 visual media production with expenses of \$75,000 or more. It changes the reimbursement
4 for certain production wages by limiting it to wages that do not exceed \$50,000 per
5 individual, by including leased employees and by applying the reimbursement to a single
6 certified visual media production rather than several projects over a specified period of
7 time. The credits are subject to audit by the State Tax Assessor. Eligible productions
8 must be certified by the Department of Economic and Community Development. The
9 Department of Economic and Community Development, Office of Tourism, Maine State
10 Film Office must report annually to the joint standing committee of the Legislature
11 having jurisdiction over taxation matters on the implementation of the credit and
12 reimbursement program. The amendment clarifies that visual media productions under
13 the Maine Revised Statutes, Title 5, section 13090-L are eligible for the Maine Seed
14 Capital Tax Credit Program under Title 10, chapter 110, subchapter 9.

FISCAL NOTE REQUIRED
(See Attached)



124th MAINE LEGISLATURE

LD 1449

LR 623(05)

An Act To Expand Tax Incentives for Visual Media Productions

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

No significant net fiscal impact

Fiscal Detail and Notes

The combined changes in this bill will result in no significant net effect on tax revenue or expenditures. Additional costs to the Department of Economic and Community Development and the Finance Authority of Maine associated with implementing the certification and reporting requirements of this legislation can be absorbed within existing budgeted resources.