

MAINE STATE LEGISLATURE

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Legislative Document

No. 1449

H.P. 1005

House of Representatives, April 8, 2009

An Act To Expand Tax Incentives for Visual Media Productions

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WATSON of Bath.
Cosponsored by Senator RECTOR of Knox and
Representatives: CORNELL du HOUX of Brunswick, CROCKETT of Augusta, FLEMINGS
of Bar Harbor, LEGG of Kennebunk, PERCY of Phippsburg, PIOTTI of Unity, WEBSTER of
Freeport.

1 **Be it enacted by the People of the State of Maine as follows:**

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

4 **§13090-L. Visual media production certification**

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

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

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

19 "Media Visual media production" does not include:

- 20 (1) A news, current events or public programming show or a program that
21 includes weather or market reports;
- 22 (2) A talk show;
- 23 (3) A sports event or activity;
- 24 (4) A gala presentation or awards show;
- 25 (5) A finished production that solicits funds; or
- 26 (6) A production produced by a visual media production company if records, as
27 required by 18 United States Code, Section 2257, are to be maintained by that
28 visual media production company with respect to any performer portrayed in that
29 production.

30 B. "Media Visual media production company" means a person engaged in the
31 business of producing a visual media production.

32 C. "~~Media production expense~~" means an ~~expense directly incurred during the~~
33 ~~creation of a media production. This term includes wages and salaries of individuals~~
34 ~~employed in the production on which taxes have been paid or accrued; the cost of~~
35 ~~construction, operations, editing and related services, still and motion photography,~~
36 ~~sound recording and synchronization, lighting, wardrobe and accessories; and the~~
37 ~~rental of facilities and equipment, including location fees. The term does not include~~
38 ~~expenses incurred in marketing and advertising a media production or in printing or~~
39 ~~otherwise disseminating a media production.~~

1 C-1. "Visual media production expense" means expenses directly incurred in the
2 State for preproduction, production and postproduction of a visual media production
3 certified under this section.

4 "Visual media production expense" includes expenditures for set construction and
5 operation; wardrobe, makeup, accessories and related services; photography and
6 sound synchronization; lighting and related services and materials; editing and related
7 services; rental of facilities and equipment; leasing of vehicles; food and lodging for
8 cast and crew; digital and tape editing, film processing and transfer of film to tape or
9 digital format; sound mixing; special and visual effects; total aggregate payroll and
10 fringe benefits; music, if performed, composed or recorded by a Maine musician or
11 released or published by a company based in the State; airfare, if purchased through a
12 travel agency or travel company based in the State; insurance costs or bonding, if
13 purchased through an insurance agency based in the State; payment to a personal
14 services corporation registered as a business in the State for the services of an out-of-
15 state performing artist working in the State; chartering an aircraft for in-state
16 transportation; commercial airfare purchased through a travel agency based in the
17 State for travel within the State or to or from the State; and other similar production
18 expenditures as determined by rule.

19 "Visual media production expense" does not include postproduction expenditures for
20 publication of printed materials, marketing or distribution; barter or trades for goods
21 and services unless state tax is paid on the transaction; donations made to nonprofit
22 corporations that are exempt from income tax under Section 501(c) of the Internal
23 Revenue Code; purchases made on the Internet unless the seller is based in the State;
24 payments to the State or Federal Government; payments to delivery services unless
25 the delivery originates in the State; or salaries of more than \$1,000,000 to any
26 individual in a certified visual media production.

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

28 ~~3. Requirements for media production certificate. Applications for a media~~
29 ~~production certificate must be made on a form prescribed and furnished by the~~
30 ~~department. The applicant must:~~

31 A. ~~Provide the names of the principals involved in the media production and~~
32 ~~contact information for them;~~

33 B. ~~Provide a certificate of insurance for the media production;~~

34 C. ~~Provide financial information that demonstrates that the media production is~~
35 ~~economically sound and that at least \$250,000 of media production expense will be~~
36 ~~incurred in Maine during a period of 12 consecutive months;~~

37 D. ~~Provide data demonstrating that the media production will benefit the people of~~
38 ~~the State by increasing opportunities for employment and will strengthen the~~
39 ~~economy of the State;~~

40 E. ~~Agree to include, in all certified media productions, an on-screen credit for the~~
41 ~~State of Maine. The exact wording and size of that credit must be determined in rules~~
42 ~~adopted by the Maine State Film Office and the department. The Maine State Film~~
43 ~~Office or the department may, at its discretion, exempt media productions from this~~

1 requirement. Rules adopted pursuant to this paragraph are routine technical rules as
2 defined in chapter 375, subchapter 2-A;

3 F. Provide evidence that the media production company is not owned by, affiliated
4 with or controlled by, in whole or in part, a person that is in default on a loan made
5 by the State or a loan guaranteed by the State; and

6 G. Provide any other information required by the department.

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

17 3-A. Visual media production certificate. Applications for a visual media
18 production certificate must be made on a form prescribed and furnished by the
19 department. The applicant must provide a plan for the visual media production certificate
20 that includes:

21 A. The names of the principals involved in the visual media production and contact
22 information for them;

23 B. A certificate of insurance for the visual media production;

24 C. Proof that the visual media production has been fully financed and that a
25 production office has been opened in the State;

26 D. A projected schedule for preproduction, production and postproduction of the
27 visual media production that shows that the production will begin within 60 days
28 after certification is given;

29 E. Financial information that demonstrates that the visual media production is
30 economically sound and that estimates the amount of visual media production
31 expense that will be incurred in the State during the project and the estimated timing
32 of when the expense will be incurred;

33 F. Data demonstrating that the visual media production will benefit the people of the
34 State by increasing opportunities for employment and will strengthen the economy of
35 the State;

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

1 H. Evidence that the visual media production company is not owned by, affiliated
2 with or controlled by, in whole or in part, a person that is in default on a loan made
3 by the State or a loan guaranteed by the State; and

4 I. Any other information required by the department.

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 the requirements of this subsection. If the department determines that
8 the applicant does not qualify for a visual media production certificate, it must inform the
9 applicant of that determination in writing within 4 weeks after receiving the application.
10 As soon as practicable, the department shall issue a visual media production certificate
11 for a visual media production that qualifies. The department shall include with the
12 certificate information regarding qualification for a tax credit certificate pursuant to
13 subsection 4 and procedures for claiming the credit under Title 36, section 5219-DD. The
14 department may not issue visual media production certificates that total more than
15 \$5,000,000 during any fiscal year.

16 4. **Tax credit certificate.** Within 4 weeks ~~of~~ after completion of a certified visual
17 media production, the visual media production company shall confirm its compliance
18 with the requirements of subsection 3 ~~3-A~~ with respect to the certified visual media
19 production. Upon determining compliance by the visual media production company, the
20 department shall issue to the company a tax ~~reimbursement and~~ credit certificate. The tax
21 ~~reimbursement and~~ credit certificate ~~entitle~~ entitles the visual media production company
22 to ~~claim the reimbursement provided by Title 36, chapter 919-A and the credit under Title~~
23 36, section 5219-~~Y~~ 5219-DD. The tax credit certificate must indicate whether the visual
24 media production company is eligible for a Level 1 credit under Title 36, section
25 5219-DD, subsection 1 or a Level 2 credit under Title 36, section 5219-DD, subsection 2.

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

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

35 **Sec. 2. 36 MRSA §191, sub-§2, ¶KK,** as enacted by PL 2007, c. 693, §9, is
36 amended to read:

37 KK. The disclosure to an authorized representative of the Department of Economic
38 and Community Development of information required for the administration of the
39 visual media production credit under section 5219-~~Y~~ 5219-DD, the employment tax
40 increment financing program under chapter 917, ~~the media production reimbursement~~
41 program under chapter 919-A or the Pine Tree Development Zone program under
42 Title 30-A, chapter 206, subchapter 4.

1 **Sec. 3. 36 MRSA §5219-Y**, as enacted by PL 2005, c. 519, Pt. GG, §2, is
2 repealed.

3 **Sec. 4. 36 MRSA §5219-DD** is enacted to read:

4 **§5219-DD. Certified visual media production credit**

5 A visual media production company that has received a tax credit certificate under
6 Title 5, section 13090-L, subsection 4 is allowed a credit against the taxes imposed by
7 this Part as provided in this section.

8 **1. Level 1 credit.** A visual media production company with visual media production
9 expenses of more than \$50,000 but less than \$750,000 is allowed a credit equal to 10% of
10 visual media production expenses for the visual media production or 15% of the visual
11 media production expenses if the visual media production company has been
12 incorporated in the State for at least 2 years on the date that production begins.

13 **2. Level 2 credit.** A visual media production company with visual media production
14 expenses of \$750,000 or more is eligible for a credit equal to 20% of visual media
15 production expenses for the visual media production. A visual media production
16 company with visual media production expenses of \$750,000 or more is eligible for
17 additional incremental credits as follows:

18 A. One percent of visual media production expenses if the visual media production
19 company hires 15% or more of its cast and crew in the State;

20 B. Two percent of visual media production expenses if the visual media production
21 company shoots or produces at least 25% of the project time in Aroostook County,
22 Franklin County, Oxford County, Piscataquis County, Somerset County or
23 Washington County. Project time includes days of preproduction, production and
24 postproduction; and

25 C. Two percent of visual media production expenses if the visual media production
26 company participates in an internship program overseen by the Department of
27 Economic and Community Development, Office of Tourism, Maine State Film
28 Office and a public institution of higher learning.

29 **3. Refundable.** The credit provided by this section is refundable.

30 **4. Limitation.** The credit available under this section may not exceed \$3,750,000
31 per visual media production.

32 **5. Definitions.** Terms defined under Title 5, section 13090-L apply to this section.

33 **Sec. 5. 36 MRSA c. 919-A**, as amended, is repealed.

34 **Sec. 6. Low-interest loan program.** The Finance Authority of Maine shall
35 establish a low-interest loan program for visual media production companies with visual
36 media production expenses of \$750,000 or greater that receive a visual media production
37 certificate under the Maine Revised Statutes, Title 5, section 13090-L, subsection 3-A.

1 Interest rates under this program may not exceed rates paid by the State for borrowing
2 money.

3

SUMMARY

4 This bill makes changes to the State's incentives to provide more effective strategies
5 for attracting visual media productions to the State. It changes the references to "media
6 production" to "visual media production." The existing income tax credit and
7 reimbursement for certain production wages are replaced with a refundable income tax
8 credit that is a percentage of direct production expenditures in the State. Eligible
9 productions must be certified by the Department of Economic and Community
10 Development. Productions with expenditures of more than \$50,000 but less than
11 \$750,000 are eligible for an income tax credit of 10% of expenditures or 15% if the
12 production company has been incorporated in the State for at least 2 years. A production
13 company with eligible expenses of \$750,000 or more is eligible for a base credit of 20%
14 of eligible expenditures with incremental increases if the company hires at least 15% of
15 its cast and crew in the State, spends at least 25% of the project time in certain counties or
16 participates in an internship program overseen by the Department of Economic and
17 Community Development, Office of Tourism, Maine State Film Office. The Finance
18 Authority of Maine is directed to establish a low-interest loan program for visual media
19 production companies with visual media production expenses of \$750,000 or greater that
20 receive a visual media production certificate.