

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1075

S.P. 444

In Senate, March 9, 2023

An Act to Promote Economic Growth Through Increased Film Incentives

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DAUGHTRY of Cumberland.
Cosponsored by Representative GERE of Kennebunkport, Representative ROEDER of Bangor
and
Senator: INGWERSEN of York.

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

2 **Sec. 1. 5 MRSA §13090-L, sub-§2-A, ¶C-1** is enacted to read:

3 C-1. "Principal photography" means a period in which a visual media production is
4 filmed, shot or recorded. "Principal photography" does not include preproduction or
5 postproduction periods.

6 **Sec. 2. 5 MRSA §13090-L, sub-§2-A, ¶F**, as enacted by PL 2009, c. 470, §1, is
7 amended to read:

8 F. "Visual media production expense" means an expense directly incurred in this State
9 for preproduction, production or postproduction of a visual media production certified
10 under this section. "Visual media production expense" includes ~~wages and salaries of~~
11 ~~individuals employed in the production on which taxes have been paid or accrued if~~
12 ~~those wages do not exceed \$50,000 per individual and payments to a temporary~~
13 ~~employee-leasing company, as defined in Title 36, section 6901, subsection 3-A, and~~
14 ~~other contractual payments for the services of individuals working in the State if those~~
15 ~~payments do not exceed \$50,000 per individual providing services in the production.~~
16 "Visual media production expense" includes the cost of construction; operations;
17 editing and related services; music, photography and film processing, including
18 transferring film to tape or a digital format; sound recording, mixing and
19 synchronization; lighting, makeup, wardrobe and accessories; transportation, not
20 including airfare, unless booked through a travel agent in the State, or lodging; catering
21 and food and lodging for cast members, staff and crew; local insurance and bonding;
22 and the rental of facilities and equipment, including location fees; and fees collected
23 by a temporary employee-leasing company as defined in Title 36, section 6901,
24 subsection 3-A. "Visual media production expense" does not include certified
25 production wages, as defined in Title 36, section 6901, subsection 2, or expenses
26 incurred in marketing or advertising a visual media production or in printing or
27 disseminating a visual media production.

28 **Sec. 3. 5 MRSA §13090-L, sub-§3**, as amended by PL 2009, c. 470, §1, is further
29 amended to read:

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

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

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

36 C. Provide financial information that demonstrates that the visual media production is
37 fully financed and that at least ~~\$75,000~~ \$25,000 of visual media production expense
38 will be incurred for the visual media production certified in accordance with this
39 subsection;

40 D. Provide data reasonably demonstrating that the visual media production will benefit
41 the people of the State by increasing opportunities for employment and will strengthen
42 the economy of the State;

- 1 E. Agree to include, in the certified visual media production, an on-screen credit for
- 2 the State of Maine. The exact wording and size of that credit must be determined in
- 3 rules adopted by the Maine State Film Office and the department. ~~The Maine State~~
- 4 ~~Film Office or the department may, at its discretion, exempt visual media productions~~
- 5 ~~from this requirement.~~ Rules adopted pursuant to this paragraph are routine technical
- 6 rules as defined in chapter 375, subchapter 2-A;
- 7 F. Provide evidence that the visual media production company is not owned by,
- 8 affiliated with or controlled by, in whole or in part, a person that is in default on a loan
- 9 made by the State or a loan guaranteed by the State;
- 10 G. Provide any other information required by the department; ~~and~~
- 11 H. Provide a projected schedule for preproduction, production and postproduction of
- 12 the visual media production that shows that ~~the production~~ the first day of principal
- 13 photography will begin within ~~60 days~~ a reasonable time after certification pursuant to
- 14 this subsection.; and
- 15 I. Agree to withhold, in accordance with Title 36, chapter 827, 6% of all payments
- 16 made to an out-of-state entity known as a loan-out corporation or personal service
- 17 corporation created to hire out the services of one individual, including an actor or
- 18 artist, to a 3rd party.

19 To qualify for a visual media production certificate, a visual media production company
 20 must demonstrate to the satisfaction of the commissioner that the visual media production
 21 company has met, or will meet, the requirements of this subsection. If the department
 22 determines that the applicant does not qualify for a visual media production certificate, it
 23 must inform the applicant of that determination in writing within 4 weeks of receiving the
 24 application. As soon as practicable, the department shall issue a visual media production
 25 certificate for a visual media production that qualifies. The department shall include with
 26 the certificate information regarding the tax credit report under subsection 4 and procedures
 27 for claiming reimbursement under Title 36, chapter 919-A and the credit under Title 36,
 28 section 5219-Y.

29 **Sec. 4. 5 MRSA §13090-L, sub-§4**, as amended by PL 2011, c. 285, §1, is further
 30 amended to read:

31 **4. Certified visual media production ~~report~~ reports.** No later than 4 8 weeks after
 32 completion of principal photography for a certified visual media production, the visual
 33 media production company shall report, in a format specified by the Maine State Film
 34 Office or the department, its compliance with the requirements of subsection 3 with respect
 35 to the certified visual media production to the Maine State Film Office. No later than 8
 36 weeks after completion of the postproduction period for a certified visual media production,
 37 a visual media production company seeking credit for visual media production expenses
 38 incurred in the postproduction period shall report to the Maine State Film Office, in a
 39 format specified by the Maine State Film Office or the department, its compliance with the
 40 requirements of subsection 3 with respect to the certified visual media production.

41 **Sec. 5. 36 MRSA §5219-Y**, as amended by PL 2011, c. 240, §37, is further amended
 42 to read:

43 **§5219-Y. Certified visual media production credit**

1 **1. Credit allowed.** A visual media production company, as defined in Title 5, section
2 13090-L, subsection 2-A, paragraph E, is allowed a credit against the taxes imposed by this
3 Part in an amount equal to ~~5%~~ 25% of its ~~nonwage~~ visual media production expenses, as
4 defined in Title 5, section 13090-L, subsection 2-A, paragraph F, incurred with respect to
5 a certified visual media production as defined in section 6901, subsection 1, if the visual
6 media production company has visual media production expenses of ~~\$75,000~~ \$25,000 or
7 more with respect to that certified visual media production. ~~For purposes of this section,~~
8 ~~"nonwage visual media production expenses" means visual media production expenses as~~
9 ~~defined in Title 5, section 13090-L, subsection 2-A, paragraph F, except that "nonwage~~
10 ~~visual media production expenses" does not include certified production wages as defined~~
11 ~~in section 6901, subsection 2 or any amount that would be included in certified production~~
12 ~~wages but for the \$50,000 limit provided by section 6901, subsection 2.~~

13 A visual media production company is allowed 2 of the following additional credits against
14 the taxes imposed by this Part if it demonstrates in the certified visual media production
15 report required under Title 5, section 13090-L, subsection 4 that it has satisfied the
16 requirements for the additional credit:

17 A. A 3% credit if a portion of the filming occurred in Aroostook County, Franklin
18 County, Kennebec County, Oxford County, Penobscot County, Piscataquis County,
19 Somerset County or Washington County;

20 B. A 2% credit if the screenplay or story is set in the State; or

21 C. A 2% credit if the lead cast member, writer or director is a resident of the State.

22 A visual media production company may not receive additional credits in excess of 5% of
23 the visual media production expenses for a certified visual media production and the
24 cumulative credit allowed under this section may not exceed 30% of the visual media
25 production expenses incurred with respect to a certified visual media production.

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

30 A visual media production company may not receive cumulative credits under this section
31 and section 6902 for visual media production expenses incurred and certified production
32 wages paid with respect to a certified visual media production in excess of \$500,000 for
33 taxable years beginning prior to January 1, 2024, \$750,000 for taxable years beginning on
34 or after January 1, 2024 but prior to January 1, 2027 and \$1,000,000 for taxable years
35 beginning on or after January 1, 2027.

36 **3. Transferability.** A tax credit allowed by this section that is not claimed by the
37 visual media production company may be transferred once per taxable year in whole or in
38 part to any number of taxpayers, business entities or financial institutions in the State as
39 provided in this subsection. The transferred credit is applicable in the year the visual media
40 production company was eligible to claim the credit.

41 A visual media production company that transfers a credit pursuant to this subsection shall
42 notify the State Tax Assessor of the transfer of the tax credit no later than 30 days after the
43 transfer. The notification must include:

1 A. The certification number of the visual media production certified under Title 5,
2 section 13090-L, subsection 3;

3 B. The tax credit balance before and after the transfer;

4 C. The tax identification number of all recipients of the tax credit;

5 D. The amount of credit transferred to each recipient; and

6 E. Any other information required by the State Tax Assessor.

7 A recipient of a credit under this subsection may claim the tax credit only at the time of the
8 transfer. The State Tax Assessor shall administer the transfer of credits pursuant to this
9 subsection.

10 **Sec. 6. 36 MRSA §6901, sub-§2**, as amended by PL 2013, c. 546, §16, is further
11 amended to read:

12 **2. Certified production wages.** "Certified production wages" means wages subject
13 to withholding under section 5250, subsection 1 that are paid by a visual media production
14 company through a payroll company for work on a certified visual media production, an
15 amount paid to a temporary employee-leasing company for personal services rendered in
16 this State by a leased employee in connection with a certified visual media production, an
17 amount paid for the services of a performing artist working in the State in connection with
18 a certified visual media production and other contractual payments for the services of
19 individuals working in the State in connection with a certified visual media production.
20 "Certified production wages" includes only the first ~~\$50,000~~ \$75,000 paid to or with respect
21 to a particular individual for personal services rendered in connection with a particular
22 certified visual media production. "Certified production wages" includes wages paid
23 through an entity known as a loan-out corporation or personal service corporation created
24 to hire out the services of one individual, including an actor or artist, to a 3rd party.

25 **Sec. 7. 36 MRSA §6902, sub-§1**, as amended by PL 2011, c. 240, §46, is further
26 amended to read:

27 **1. Generally.** A visual media production company is allowed a reimbursement in the
28 form of a tax credit equal to ~~12% of certified production wages paid to or with respect to~~
29 an individual who is a resident of Maine and 10% of certified production wages paid to or
30 with respect to an individual who is not a resident of Maine.:

31 A. Twenty-five percent of certified production wages paid to or with respect to above-
32 the-line personnel who are residents of Maine;

33 B. Twenty-five percent of certified production wages paid to or with respect to below-
34 the-line personnel who are residents of Maine; and

35 C. Twenty percent of certified production wages paid to or with respect to below-the-
36 line personnel who are not residents of Maine, except that this credit is reduced to 15%
37 of wages paid within the taxable year beginning January 1, 2024, 10% of wages paid
38 within the taxable year beginning January 1, 2025 and 5% of wages paid within the
39 taxable year beginning January 1, 2026. This credit is not available for wages paid
40 within or after the taxable year beginning January 1, 2027.

41 For the purposes of this subsection, "above-the-line personnel" means producers, directors,
42 writers and cast members and "below-the-line personnel" means individuals who are not

1 above-the-line personnel, including production and postproduction staff and background
2 performers.

3 The credit allowed by this section is nontransferable and may not be carried forward. The
4 credit is refundable in an amount equal to 95% of the amount of the credit otherwise
5 available for the taxable year in which the certified visual media production is completed.
6 Taxpayers claiming a credit under section 5219-W are not eligible for this credit.

7 A visual media production company may not receive cumulative credits under this section
8 and section 5219-Y for certified production wages paid and visual media production
9 expenses incurred with respect to a certified visual media production in excess of \$500,000
10 for taxable years beginning prior to January 1, 2024, \$750,000 for taxable years beginning
11 on or after January 1, 2024 but prior to January 1, 2027 and \$1,000,000 for taxable years
12 beginning on or after January 1, 2027.

13 **Sec. 8. 36 MRSA §6902, sub-§4** is enacted to read:

14 **4. Transferability.** A tax credit allowed by this section that is not claimed by the
15 visual media production company may be transferred once per taxable year in whole or in
16 part to any number of taxpayers, business entities or financial institutions in the State as
17 provided in this subsection. The transferred credit is applicable in the year the visual media
18 production company was eligible to claim the credit.

19 A visual media production company that transfers a credit pursuant to this subsection shall
20 notify the State Tax Assessor of the transfer of the tax credit no later than 30 days after the
21 transfer. The notification must include:

22 A. The certification number of the visual media production certified under Title 5,
23 section 13090-L, subsection 3;

24 B. The tax credit balance before and after the transfer;

25 C. The tax identification number of all recipients of the tax credit;

26 D. The amount of credit transferred to each recipient; and

27 E. Any other information required by the State Tax Assessor.

28 A recipient of a credit under this subsection may claim the tax credit only at the time of the
29 transfer. The State Tax Assessor shall administer the transfer of credits pursuant to this
30 subsection.

31 **Sec. 9. Application.** This Act applies to visual media productions certified by the
32 Department of Economic and Community Development on or after the effective date of
33 this Act.

34 SUMMARY

35 This bill makes multiple changes to the tax credits available to visual media production
36 companies operating in the State. The bill makes the available tax credits refundable and
37 transferable, increases the credits for certain expenses incurred in Maine and for hiring
38 residents of Maine and offers additional credits for visual media productions that are
39 located in certain Maine counties, are set in Maine or have a lead cast member, writer or
40 director who is a Maine resident. The bill also reduces the total expenditures needed to
41 qualify for the credits, extends the time period for visual media production companies to

1 certify with the Department of Economic and Community Development and sets a
2 \$500,000 limit on the total value of the tax credits that increases to \$1,000,000 after January
3 1, 2027. The bill makes other changes necessary for these provisions.