

# SB1595



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1595

Introduced 2/15/2019, by Sen. Elgie R. Sims, Jr.

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/213  
35 ILCS 16/10  
35 ILCS 16/42

Amends the Film Production Services Tax Credit Act of 2008. Provides that Illinois labor expenditures include the first \$200,000 of out-of-state wages paid or incurred by a production company or loan out corporation, subject to withholding payments, and all resident wages paid or incurred by the production company or loan out corporation. Provides that the credit applies on a permanent basis. Effective immediately.

LRB101 08982 HLH 54075 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by  
5 changing Section 213 as follows:

6 (35 ILCS 5/213)

7 Sec. 213. Film production services credit. For tax years  
8 beginning on or after January 1, 2004, a taxpayer who has been  
9 awarded a tax credit under the Film Production Services Tax  
10 Credit Act or under the Film Production Services Tax Credit Act  
11 of 2008 is entitled to a credit against the taxes imposed under  
12 subsections (a) and (b) of Section 201 of this Act in an amount  
13 determined by the Department of Commerce and Economic  
14 Opportunity under those Acts. If the taxpayer is a partnership  
15 or Subchapter S corporation, the credit is allowed to the  
16 partners or shareholders in accordance with the determination  
17 of income and distributive share of income under Sections 702  
18 and 704 and Subchapter S of the Internal Revenue Code.

19 A transfer of this credit may be made by the taxpayer  
20 earning the credit within one year after the credit is awarded  
21 in accordance with rules adopted by the Department of Commerce  
22 and Economic Opportunity.

23 The Department, in cooperation with the Department of

1 Commerce and Economic Opportunity, must prescribe rules to  
2 enforce and administer the provisions of this Section. This  
3 Section is exempt from the provisions of Section 250 of this  
4 Act.

5 The credit may not be carried back. If the amount of the  
6 credit exceeds the tax liability for the year, the excess may  
7 be carried forward and applied to the tax liability of the 5  
8 taxable years following the excess credit year. The credit  
9 shall be applied to the earliest year for which there is a tax  
10 liability. If there are credits from more than one tax year  
11 that are available to offset a liability, the earlier credit  
12 shall be applied first. In no event shall a credit under this  
13 Section reduce the taxpayer's liability to less than zero.

14 For tax years beginning on or after July 1, 2019, in no  
15 event shall the credit under this Section be allowed in an  
16 amount which will reduce the tax to less than zero. If,  
17 however, the amount of credit allowed under this Section for  
18 any taxable year reduces the tax to such amount, any amount of  
19 credit not deductible in such taxable year shall be treated as  
20 an overpayment of tax to be refunded in accordance with this  
21 Section, provided however, that no interest shall be paid  
22 thereon.

23 (Source: P.A. 94-171, eff. 7-11-05; 95-720, eff. 5-27-08.)

24 Section 10. The Film Production Services Tax Credit Act of  
25 2008 is amended by changing Sections 10 and 42 as follows:

1 (35 ILCS 16/10)

2 Sec. 10. Definitions. As used in this Act:

3 "Accredited production" means: (i) for productions  
4 commencing before May 1, 2006, a film, video, or television  
5 production that has been certified by the Department in which  
6 the aggregate Illinois labor expenditures included in the cost  
7 of the production, in the period that ends 12 months after the  
8 time principal filming or taping of the production began,  
9 exceed \$100,000 for productions of 30 minutes or longer, or  
10 \$50,000 for productions of less than 30 minutes; and (ii) for  
11 productions commencing on or after May 1, 2006, a film, video,  
12 or television production that has been certified by the  
13 Department in which the Illinois production spending included  
14 in the cost of production in the period that ends 12 months  
15 after the time principal filming or taping of the production  
16 began exceeds \$100,000 for productions of 30 minutes or longer  
17 or exceeds \$50,000 for productions of less than 30 minutes.

18 "Accredited production" does not include a production that:

19 (1) is news, current events, or public programming, or  
20 a program that includes weather or market reports;

21 (2) is a talk show;

22 (3) is a production in respect of a game,  
23 questionnaire, or contest;

24 (4) is a sports event or activity;

25 (5) is a gala presentation or awards show;

1 (6) is a finished production that solicits funds;

2 (7) is a production produced by a film production  
3 company if records, as required by 18 U.S.C. 2257, are to  
4 be maintained by that film production company with respect  
5 to any performer portrayed in that single media or  
6 multimedia program; or

7 (8) is a production produced primarily for industrial,  
8 corporate, or institutional purposes.

9 "Accredited animated production" means an accredited  
10 production in which movement and characters' performances are  
11 created using a frame-by-frame technique and a significant  
12 number of major characters are animated. Motion capture by  
13 itself is not an animation technique.

14 "Accredited production certificate" means a certificate  
15 issued by the Department certifying that the production is an  
16 accredited production that meets the guidelines of this Act.

17 "Applicant" means a taxpayer that is a film production  
18 company that is operating or has operated an accredited  
19 production located within the State of Illinois and that (i)  
20 owns the copyright in the accredited production throughout the  
21 Illinois production period or (ii) has contracted directly with  
22 the owner of the copyright in the accredited production or a  
23 person acting on behalf of the owner to provide services for  
24 the production, where the owner of the copyright is not an  
25 eligible production corporation.

26 "Credit" means:

1           (1) for an accredited production approved by the  
2 Department on or before January 1, 2005 and commencing  
3 before May 1, 2006, the amount equal to 25% of the Illinois  
4 labor expenditure approved by the Department. The  
5 applicant is deemed to have paid, on its balance due day  
6 for the year, an amount equal to 25% of its qualified  
7 Illinois labor expenditure for the tax year. For Illinois  
8 labor expenditures generated by the employment of  
9 residents of geographic areas of high poverty or high  
10 unemployment, as determined by the Department, in an  
11 accredited production commencing before May 1, 2006 and  
12 approved by the Department after January 1, 2005, the  
13 applicant shall receive an enhanced credit of 10% in  
14 addition to the 25% credit; and

15           (2) for an accredited production commencing on or after  
16 May 1, 2006, the amount equal to:

17                 (i) 20% of the Illinois production spending for the  
18 taxable year; plus

19                 (ii) 15% of the Illinois labor expenditures  
20 generated by the employment of residents of geographic  
21 areas of high poverty or high unemployment, as  
22 determined by the Department; and

23           (3) for an accredited production commencing on or after  
24 January 1, 2009, the amount equal to:

25                 (i) 30% of the Illinois production spending for the  
26 taxable year; plus

1           (ii) 15% of the Illinois labor expenditures  
2           generated by the employment of residents of geographic  
3           areas of high poverty or high unemployment, as  
4           determined by the Department.

5           "Department" means the Department of Commerce and Economic  
6           Opportunity.

7           "Director" means the Director of Commerce and Economic  
8           Opportunity.

9           "Illinois labor expenditure" means salary or wages paid to  
10          employees of the applicant for services on the accredited  
11          production;

12          To qualify as an Illinois labor expenditure, the  
13          expenditure must be:

14               (1) Reasonable in the circumstances.

15               (2) Included in the federal income tax basis of the  
16          property.

17               (3) Incurred by the applicant for services on or after  
18          January 1, 2004.

19               (4) Incurred for the production stages of the  
20          accredited production, from the final script stage to the  
21          end of the post-production stage.

22               (5) Limited to the first \$25,000 of wages paid or  
23          incurred to each employee of a production commencing before  
24          May 1, 2006 and the first \$100,000 of wages paid or  
25          incurred to each employee of a production commencing on or  
26          after May 1, 2006 and prior to July 1, 2019. For

1       productions commencing on or after July 1, 2019, the first  
2       \$200,000 of out-of-state wages paid or incurred by the  
3       production company and loan out corporations qualify,  
4       subject to withholding payments provided for in Article 7  
5       of the Illinois Income Tax Act. Additionally, all resident  
6       wages paid or incurred by the production company and loan  
7       out corporations qualify.

8           (6) For a production commencing before May 1, 2006,  
9       exclusive of the salary or wages paid to or incurred for  
10      the 2 highest paid employees of the production.

11          (7) Directly attributable to the accredited  
12      production.

13          (8) (Blank).

14          (9) Prior to July 1, 2019, paid ~~Paid~~ to persons  
15      resident in Illinois at the time the payments were made.  
16      For a production company commencing production on or after  
17      July 1, 2019, resident and non-resident wages will qualify  
18      as an Illinois labor expenditure.

19          (10) Paid for services rendered in Illinois.

20      "Illinois production spending" means the expenses incurred  
21      by the applicant for an accredited production, including,  
22      without limitation, all of the following:

23          (1) expenses to purchase, from vendors within  
24      Illinois, tangible personal property that is used in the  
25      accredited production;

26          (2) expenses to acquire services, from vendors in



1 Illinois, for film production, editing, or processing; and  
2 (3) before July 1, 2019, the compensation, not to  
3 exceed \$100,000 for any one employee, for contractual or  
4 salaried employees who are Illinois residents performing  
5 services with respect to the accredited production.

6 "Qualified production facility" means stage facilities in  
7 the State in which television shows and films are or are  
8 intended to be regularly produced and that contain at least one  
9 sound stage of at least 15,000 square feet.

10 "Loan out company" means a personal service corporation or  
11 other entity that is under contract with the taxpayer to  
12 provide specified individual personnel, such as artists, crew,  
13 actors, producers, or directors for the performance of services  
14 used directly in a production. "Loan out company" does not  
15 include entities contracted with by the taxpayer to provide  
16 goods or ancillary contractor services such as catering,  
17 construction, trailers, equipment, or transportation.

18 Rulemaking authority to implement this amendatory Act of  
19 the 95th General Assembly, if any, is conditioned on the rules  
20 being adopted in accordance with all provisions of the Illinois  
21 Administrative Procedure Act and all rules and procedures of  
22 the Joint Committee on Administrative Rules; any purported rule  
23 not so adopted, for whatever reason, is unauthorized.

24 (Source: P.A. 97-796, eff. 7-13-12.)

25 (35 ILCS 16/42)

1           Sec. 42. Sunset of credits. This Act is exempt from the  
2 provisions of Section 150 of the Illinois Income Tax Act. ~~The~~  
3 ~~application of credits awarded pursuant to this Act shall be~~  
4 ~~limited by a reasonable and appropriate sunset date. A taxpayer~~  
5 ~~shall not be entitled to take a credit awarded pursuant to this~~  
6 ~~Act for tax years beginning on or after 10 years after the~~  
7 ~~effective date of this amendatory Act of the 97th General~~  
8 ~~Assembly. After the initial 10 year sunset, the General~~  
9 ~~Assembly may extend the sunset date by 5 year intervals.~~

10           (Source: P.A. 97-2, eff. 5-6-11; 97-3, eff. 5-6-11.)

11           Section 99. Effective date. This Act takes effect upon  
12 becoming law.