



Senate

General Assembly

File No. 391

January Session, 2009

Substitute Senate Bill No. 249

Senate, April 1, 2009

The Senate Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE FILM PRODUCTION TAX CREDIT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-217jj of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009, and*
3 *applicable to income years commencing on and after January 1, 2009*):

4 (a) As used in this section:

5 (1) "Commissioner" means the Commissioner of Revenue Services.

6 (2) "Commission" means the Connecticut Commission on Culture
7 and Tourism.

8 (3) (A) "Qualified production" means entertainment content created
9 in whole or in part within the state, including motion pictures;
10 documentaries; long-form, specials, mini-series, series, sound
11 recordings, videos and music videos and interstitials television
12 programming; interactive television; interactive games; videogames;

13 commercials; infomercials; any format of digital media, including an
14 interactive web site, created for distribution or exhibition to the
15 general public; and any trailer, pilot, video teaser or demo created
16 primarily to stimulate the sale, marketing, promotion or exploitation of
17 future investment in either a product or a qualified production via any
18 means and media in any digital media format, film or videotape,
19 provided such program meets all the underlying criteria of a qualified
20 production.

21 (B) "Qualified production" shall not include any ongoing television
22 program created primarily as news, weather or financial market
23 reports, a production featuring current events, sporting events, an
24 awards show or other gala event, a production whose sole purpose is
25 fundraising, a long-form production that primarily markets a product
26 or service, a production used for corporate training or in-house
27 corporate advertising or other similar productions, or any production
28 for which records are required to be maintained under 18 USC 2257
29 with respect to sexually explicit content.

30 (4) "Eligible production company" means a corporation, partnership,
31 limited liability company, or other business entity engaged in the
32 business of producing qualified productions on a one-time or ongoing
33 basis, [and] qualified by the Secretary of the State to engage in business
34 in the state, and that conducts at least fifty per cent of its total
35 production in studios located in Connecticut.

36 (5) "Production expenses or costs" means all expenditures clearly
37 and demonstrably incurred in the state in the development,
38 preproduction, production or postproduction costs of a qualified
39 production, including:

40 (A) Expenditures incurred in the state in the form of either
41 compensation or purchases including production work, production
42 equipment not eligible for the infrastructure tax credit provided in
43 section 12-217kk, production software, postproduction work,
44 postproduction equipment, postproduction software, set design, set
45 construction, props, lighting, wardrobe, makeup, makeup accessories,

46 special effects, visual effects, audio effects, film processing, music,
47 sound mixing, editing, location fees, soundstages and any and all other
48 costs or services directly incurred in connection with a state-certified
49 qualified production;

50 (B) Expenditures for distribution, including preproduction,
51 production or postproduction costs relating to the creation of trailers,
52 marketing videos, commercials, point-of-purchase videos and any and
53 all content created on film or digital media, including the duplication
54 of films, videos, CDs, DVDs and any and all digital files now in
55 existence and those yet to be created for mass consumer consumption;
56 the purchase, by a company in the state, of any and all equipment
57 relating to the duplication or mass market distribution of any content
58 created or produced in the state by any digital media format which is
59 now in use and those formats yet to be created for mass consumer
60 consumption; and

61 (C) "Production expenses or costs" does not include the following:
62 (i) On and after January 1, 2008, compensation in excess of fifteen
63 million dollars paid to any individual or entity representing an
64 individual, for services provided in the production of a qualified
65 production; (ii) media buys, promotional events or gifts or public
66 relations associated with the promotion or marketing of any qualified
67 production; (iii) deferred, leveraged or profit participation costs
68 relating to any and all personnel associated with any and all aspects of
69 the production, including, but not limited to, producer fees, director
70 fees, talent fees and writer fees; (iv) costs relating to the transfer of the
71 production tax credits; and (v) any amounts paid to persons or
72 businesses as a result of their participation in profits from the
73 exploitation of the qualified production.

74 (6) "Sound recording" means a recording of music, poetry or
75 spoken-word performance, but does not include the audio portions of
76 dialogue or words spoken and recorded as part of a motion picture,
77 video, theatrical production, television news coverage or athletic event.

78 (7) "State-certified qualified production" means a qualified

79 production produced by an eligible production company that (A) is in
80 compliance with regulations adopted pursuant to subsection (g) of this
81 section, (B) is authorized to conduct business in this state, and (C) has
82 been approved by the commission as qualifying for a production tax
83 credit under this section.

84 (8) "Interactive web site" means a web site, the production costs of
85 which (A) exceed five hundred thousand dollars per income year, and
86 (B) is primarily (i) interactive games or end user applications, or (ii)
87 animation, simulation, sound, graphics, story lines or video created or
88 repurposed for distribution over the Internet. An interactive web site
89 does not include a web site primarily used for institutional, private,
90 industrial, retail or wholesale marketing or promotional purposes, or
91 which contains obscene content.

92 (9) "Post-certification remedy" means the recapture, disallowance,
93 recovery, reduction, repayment, forfeiture, decertification or any other
94 remedy that would have the effect of reducing or otherwise limiting
95 the use of a tax credit provided by this section.

96 (b) [(1)] The Connecticut Commission on Culture and Tourism shall
97 administer a system of tax [credit vouchers] rebates within the
98 resources, requirements and purposes of this section for eligible
99 production companies producing a state-certified qualified production
100 in the state. For income years commencing on or after January 1, 2006,
101 any eligible production company incurring production expenses or
102 costs in excess of fifty thousand dollars shall be eligible for a [credit
103 against] rebate of the tax imposed under chapter 207 or this chapter
104 equal to thirty per cent of such production expenses or costs, provided
105 (A) on and after January 1, 2009, fifty per cent of such expenses or costs
106 shall be counted toward such [credit] rebate when incurred outside the
107 state and used within the state, and one hundred per cent of such
108 expenses or costs shall be counted toward such [credit] rebate when
109 incurred within the state and used within the state, and (B) on and
110 after January 1, 2012, no expenses or costs incurred outside the state
111 and used within the state shall be eligible for a [credit] rebate, and one

112 hundred per cent of such expenses or costs shall be counted toward
113 such [credit] rebate when incurred within the state and used within the
114 state.

115 [(2) On and after July 1, 2006, and for income years commencing on
116 or after January 1, 2006, any credit allowed pursuant to this subsection
117 may be sold, assigned or otherwise transferred, in whole or in part, to
118 one or more taxpayers, provided no credit, after issuance, may be sold,
119 assigned or otherwise transferred, in whole or in part, more than three
120 times.

121 (3) On and after July 1, 2006, and for income years commencing on
122 or after January 1, 2006, any such credit allowed under this subsection
123 shall be claimed against the tax imposed under chapter 207 or this
124 chapter for the income year in which the production expenses or costs
125 were incurred, and may be carried forward for the three immediately
126 succeeding income years. Any production tax credit allowed under
127 this subsection shall be nonrefundable.

128 (c) (1) An eligible production company shall apply to the
129 commission for a tax credit voucher on an annual basis, but not later
130 than ninety days after the first production expenses or costs are
131 incurred in the production of a qualified production, and shall provide
132 with such application such information as the commission may require
133 to determine such company's eligibility to claim a credit under this
134 section. No production expenses or costs may be listed more than once
135 for purposes of the tax credit voucher pursuant to this section, or
136 pursuant to section 12-217kk or 12-217ll, and if a production expense
137 or cost has been included in a claim for a credit, such production
138 expense or cost may not be included in any subsequent claim for a
139 credit.

140 (2) Not earlier than three months after the application in subdivision
141 (1) of this subsection, an eligible production company may apply to the
142 commission for a production tax credit voucher, and shall provide
143 with such application such information and independent certification
144 as the commission may require pertaining to the amount of such

145 company's production expenses or costs to date. If the commission
146 determines that such company is eligible to be issued a production tax
147 credit voucher, the commission shall enter on the voucher the amount
148 of production expenses or costs that has been established to the
149 satisfaction of the commission, and the amount of such company's
150 credit under this section. The commission shall provide a copy of such
151 voucher to the commissioner, upon request.

152 (3) Not later than ninety days after the end of the annual period, or
153 after the last production expenses or costs are incurred in the
154 production of a qualified production, an eligible production company
155 shall apply to the commission for a production tax credit voucher, and
156 shall provide with such application such information and independent
157 certification as the commission may require pertaining to the amount
158 of such company's production expenses or costs. If the commission
159 determines that such company is eligible to be issued a production tax
160 credit voucher, the commission shall enter on the voucher the amount
161 of production expenses or costs that has been established to the
162 satisfaction of the commission, minus the amount of any credit issued
163 pursuant to subdivision (2) of this subsection, and the amount of such
164 company's credit under this section. The commission shall provide a
165 copy of such voucher to the commissioner, upon request.

166 (d) If an eligible production company sells, assigns or otherwise
167 transfers a credit under this section to another taxpayer, the transferor
168 and transferee shall jointly submit written notification of such transfer
169 to the commission not later than thirty days after such transfer. If such
170 transferee sells, assigns or otherwise transfers a credit under this
171 section to a subsequent transferee, such transferee and such
172 subsequent transferee shall jointly submit written notification of such
173 transfer to the commission not later than thirty days after such
174 transfer. The notification after each transfer shall include the credit
175 voucher number, the date of transfer, the amount of such credit
176 transferred, the tax credit balance before and after the transfer, the tax
177 identification numbers for both the transferor and the transferee, and
178 any other information required by the commission. Failure to comply

179 with this subsection will result in a disallowance of the tax credit until
180 there is full compliance on the part of the transferor and the transferee,
181 and for a second or third transfer, on the part of all subsequent
182 transferors and transferees. The commission shall provide a copy of
183 the notification of assignment to the commissioner upon request.]

184 [(e)] (c) Any eligible production company that wilfully submits
185 information to the commission that it knows to be fraudulent or false
186 shall, in addition to any other penalties provided by law, be liable for a
187 penalty equal to the amount of such company's [credit entered on the
188 production tax credit certificate issued under this section] rebate under
189 this section.

190 [(f) The issuance by the commission of a tax credit voucher with
191 respect to an amount of tax credits stated thereon shall mean that none
192 of such tax credits are subject to a post-certification remedy, and that
193 the commission and the commissioner shall have no right, except in
194 the case of possible material misrepresentation or fraud, to conduct
195 any further or additional review, examination or audit of the
196 expenditures or costs for which such tax credits were issued. If at any
197 time after the issuance of a tax credit voucher the commission or the
198 commissioner determines that there was a material misrepresentation
199 or fraud on the part of an eligible production company in connection
200 with the submission of an expense report and the result of such
201 material misrepresentation or fraud was that (1) a specific amount of
202 tax credits was reflected on the tax credit voucher issued in response to
203 such expense report that would not have otherwise been so reflected,
204 and (2) such tax credits would otherwise be subject to a post-
205 certification remedy, such tax credits shall not be subject to any post-
206 certification remedy and the sole and exclusive remedy of the
207 commission and the commissioner shall be to seek collection of the
208 amount of such tax credits from the eligible production company that
209 committed the fraud or misrepresentation, not from any transferee of
210 such tax credits.]

211 [(g)] (d) The commission, in consultation with the commissioner,

212 shall adopt regulations, in accordance with the provisions of chapter
213 54, as may be necessary for the administration of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009, and applicable to income years commencing on and after January 1, 2009</i>	12-217jj

CE *Senate Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Commission on Culture & Tourism	See Below	See Below	See Below
Department of Revenue Services	GF - Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the Commission on Culture and Tourism (CCT) to rebate taxes for certain companies. The bill does not define the process by which CCT must do this. CCT does not have the authority to administer or rebate taxes. It is anticipated that the agency, if able, would utilize staff that currently administer the film tax credit program. The bill does not appropriate funding for the rebates.

Converting the Film Production Tax Credit to a rebate may result in an annual General Fund revenue gain of \$100 million beginning in FY 10 for the corporation business tax and the insurance premiums tax. The revenue gain is due to an anticipated reduction in the number of participants in the Film Production Tax Credits Program.

Unlike the tax credits, companies cannot transfer the rebates. Consequently, a company qualifies for the rebate only if it is liable for the corporation business tax or the insurance premiums tax. Since many production companies are not subject to these taxes because of the way they are organized for tax purposes, fewer of them will be able to take advantage of a rebate.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 249*****AN ACT CONCERNING THE FILM PRODUCTION TAX CREDIT.*****SUMMARY:**

This bill converts the Film Production Tax Credit Program into a tax rebate program. Current law authorizes a transferable 30% credit for eligible film and media production expenses exceeding \$50,000. The credit applies against the corporation and insurance premium tax. Eligible production companies must apply to the Connecticut Commission on Culture and Tourism (CCCT) for a credit voucher, which allows them to claim the tax, carry it forward for up to three consecutive years, or transfer it to another taxpayer.

The bill requires CCCT to rebate a portion of a company's corporation and insurance premium taxes. But it is unclear how CCCT can do so because it has no authority to administer or rebate taxes. The rebate must equal 30% of the company's eligible production expenses, retroactive to January 1, 2009. Unlike the tax credits, companies cannot transfer the rebates. Consequently, a company qualifies for the rebate only if it is liable for these taxes.

This change and another change the bill makes tighten the criteria a production company must meet to qualify for the rebate. A company currently qualifies for credits if the secretary of the state authorizes it to do business here. The bill additionally requires the company to conduct at least half of the total production in Connecticut studios.

By converting the tax credits into rebates, the bill eliminates the process companies must follow to access the credits. The bill does not provide a process for accessing rebates, but it appears CCCT can adopt one by regulations the law authorizes. Because it eliminates the provisions allowing production companies to transfer or assign the

credits, it is unclear if they can continue to do so after July 1, 2009. Lastly, the bill appropriates no funds for the rebates.

The bill retains references (1) to tax credits in current law's definition section and (2) an administrative action that another section of the bill eliminates.

EFFECTIVE DATE: July 1, 2009 and applicable to income years beginning on or after January 1, 2009.

COMMITTEE ACTION

Commerce Committee

House Unfavorable
Yea 13 Nay 1 (03/12/2009)

Commerce Committee

Senate Favorable Substitute
Yea 5 Nay 0 (03/12/2009)