



General Assembly

Substitute Bill No. 176

February Session, 2010

* SB00176CE 031910 *

AN ACT CONCERNING THE FILM TAX CREDIT.

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

1 Section 1. Section 12-217jj of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2010, and applicable to income years commencing on or after*
4 *January 1, 2010*):

5 (a) As used in this section:

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

7 (2) "Department" means the Department of Economic and
8 Community Development.

9 (3) (A) "Qualified production" means entertainment content created
10 in whole or in part within the state, including motion pictures;
11 documentaries; long-form, specials, mini-series, series, sound
12 recordings, videos and music videos and interstitials television
13 programming; interactive television; interactive games; videogames;
14 commercials; any format of digital media, including, prior to January
15 1, 2013, an interactive web site, created for distribution or exhibition to
16 the general public; and any trailer, pilot, video teaser or demo created
17 primarily to stimulate the sale, marketing, promotion or exploitation of
18 future investment in either a product or a qualified production via any

19 means and media in any digital media format, film or videotape,
20 provided such program meets all the underlying criteria of a qualified
21 production.

22 (B) "Qualified production" shall not include any ongoing television
23 program created primarily as news, weather or financial market
24 reports, a production featuring current events, sporting events, an
25 awards show or other gala event, a production whose sole purpose is
26 fundraising, a long-form production that primarily markets a product
27 or service, a production used for corporate training or in-house
28 corporate advertising or other similar productions, for income years
29 commencing on or after January 1, 2013, entertainment content created
30 in whole or in part within the state for an interactive web site, or any
31 production for which records are required to be maintained under 18
32 USC 2257 with respect to sexually explicit content.

33 (4) "Eligible production company" means a corporation, partnership,
34 limited liability company, or other business entity engaged in the
35 business of producing qualified productions on a one-time or ongoing
36 basis, and qualified by the Secretary of the State to engage in business
37 in the state.

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

42 (A) Expenditures incurred in the state in the form of either
43 compensation or purchases including production work, production
44 equipment not eligible for the infrastructure tax credit provided in
45 section 12-217kk, as amended by this act, production software,
46 postproduction work, postproduction equipment, postproduction
47 software, set design, set construction, props, lighting, wardrobe,
48 makeup, makeup accessories, special effects, visual effects, audio
49 effects, film processing, music, sound mixing, editing, location fees,
50 soundstages and any and all other costs or services directly incurred in

51 connection with a state-certified qualified production;

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

63 (C) "Production expenses or costs" does not include the following:

64 (i) On and after January 1, 2008, compensation in excess of fifteen
65 million dollars paid to any individual or entity representing an
66 individual, for services provided in the production of a qualified
67 production and on or after January 1, 2010, compensation subject to
68 Connecticut personal income tax in excess of twenty million dollars
69 paid in the aggregate to any individuals or entities representing
70 individuals, for star talent provided in the production of a qualified
71 production where "compensation" means base salary or wages, and
72 does not include bonus pay, stock options, restricted stock units or
73 similar arrangements; (ii) media buys, promotional events or gifts or
74 public relations associated with the promotion or marketing of any
75 qualified production; (iii) deferred, leveraged or profit participation
76 costs relating to any and all personnel associated with any and all
77 aspects of the production, including, but not limited to, producer fees,
78 director fees, talent fees and writer fees; (iv) costs relating to the
79 transfer of the production tax credits; (v) any amounts paid to persons
80 or businesses as a result of their participation in profits from the
81 exploitation of the qualified production; and (vi) any expenses or costs
82 relating to an independent certification, as required by subsection (c)
83 of this section, or as the department may otherwise require, pertaining
84 to the amount of production expenses or costs set forth by an eligible

85 production company in its application for a production tax credit.

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

90 (7) "State-certified qualified production" means a qualified
91 production produced by an eligible production company that (A) is in
92 compliance with regulations adopted pursuant to subsection (g) of this
93 section, (B) is authorized to conduct business in this state, and (C) has
94 been approved by the department as qualifying for a production tax
95 credit under this section.

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

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

108 (b) [(1)] The Department of Economic and Community
109 Development shall administer a system of tax credit vouchers within
110 the resources, requirements and purposes of this section for eligible
111 production companies producing a state-certified qualified production
112 in the state.

113 [(A)] (1) For income years commencing on or after January 1, 2006,
114 but prior to January 1, 2010, any eligible production company
115 incurring production expenses or costs in excess of fifty thousand

116 dollars shall be eligible for a credit against the tax imposed under
117 chapter 207 or this chapter equal to thirty per cent of such production
118 expenses or costs.

119 [(B)] (2) For income years commencing on or after January 1, 2010,
120 [(i)] (A) any eligible production company incurring production
121 expenses or costs of not less than one hundred thousand dollars, but
122 not more than five hundred thousand dollars, shall be eligible for a
123 credit against the tax imposed under chapter 207 or this chapter equal
124 to ten per cent of such production expenses or costs, [(ii)] (B) any such
125 company incurring such expenses or costs of more than five hundred
126 thousand dollars, but not more than one million dollars, shall be
127 eligible for a credit against the tax imposed under chapter 207 or this
128 chapter equal to fifteen per cent of such production expenses or costs,
129 and [(iii)] (C) any such company incurring such expenses or costs of
130 more than one million dollars shall be eligible for a credit against the
131 tax imposed under chapter 207 or this chapter equal to thirty per cent
132 of such production expenses or costs.

133 [(C)] (c) No eligible production company incurring an amount of
134 production expenses or costs that qualifies for such credit shall be
135 eligible for such credit unless, for income years commencing on or
136 after January 1, 2010, such company conducts (A) not less than [fifty]
137 twenty-five per cent of principal photography days within the state or
138 expends not less than fifty per cent of postproduction costs within the
139 state, and (B) for income years commencing on or after January 1, 2011,
140 not less than twenty-five per cent of its total production in studios
141 located in the state.

142 [(D) (i)] (d) (1) For income years commencing on or after January 1,
143 2009, but prior to January 1, 2010, fifty per cent of production expenses
144 or costs shall be counted toward such credit when incurred outside the
145 state and used within the state, and one hundred per cent of such
146 expenses or costs shall be counted toward such credit when incurred
147 within the state and used within the state.

148 [(ii)] (2) For income years commencing on or after January 1, 2010,
149 no expenses or costs incurred outside the state and used within the
150 state shall be eligible for a credit, and one hundred per cent of such
151 expenses or costs shall be counted toward such credit when incurred
152 within the state and used within the state.

153 [(2)] (e) On and after July 1, 2006, and for income years commencing
154 on or after January 1, 2006, any credit allowed pursuant to this
155 subsection may be sold, assigned or otherwise transferred, in whole or
156 in part, to one or more taxpayers, provided no credit, after issuance,
157 may be sold, assigned or otherwise transferred, in whole or in part,
158 more than three times.

159 [(3)] (f) On and after July 1, 2006, and for income years commencing
160 on or after January 1, 2006, all or part of any such credit allowed under
161 this subsection shall be claimed against the tax imposed under chapter
162 207 or this chapter for the income year in which the production
163 expenses or costs were incurred, or in the three immediately
164 succeeding income years. Any production tax credit allowed under
165 this subsection shall be nonrefundable.

166 [(c)] (g) (1) An eligible production company shall apply to the
167 department for a tax credit voucher on an annual basis, but not later
168 than ninety days after the first production expenses or costs are
169 incurred in the production of a qualified production, and shall provide
170 with such application such information as the department may require
171 to determine such company's eligibility to claim a credit under this
172 section. No production expenses or costs may be listed more than once
173 for purposes of the tax credit voucher pursuant to this section, or
174 pursuant to section 12-217kk, as amended by this act, or 12-217ll, and if
175 a production expense or cost has been included in a claim for a credit,
176 such production expense or cost may not be included in any
177 subsequent claim for a credit.

178 (2) Not later than ninety days after the end of the annual period, or
179 after the last production expenses or costs are incurred in the

180 production of a qualified production, an eligible production company
181 shall apply to the department for a production tax credit voucher, and
182 shall provide with such application such information and independent
183 certification as the department may require pertaining to the amount
184 of such company's production expenses or costs. Such independent
185 certification shall be provided by an audit professional chosen from a
186 list compiled by the department. If the department determines that
187 such company is eligible to be issued a production tax credit voucher,
188 the department shall enter on the voucher the amount of production
189 expenses or costs that has been established to the satisfaction of the
190 department and the amount of such company's credit under this
191 section. The department shall provide a copy of such voucher to the
192 commissioner, upon request.

193 (3) The department shall charge a reasonable administrative fee
194 sufficient to cover the department's costs to analyze applications
195 submitted under this section.

196 [(d)] (h) If an eligible production company sells, assigns or
197 otherwise transfers a credit under this section to another taxpayer, the
198 transferor and transferee shall jointly submit written notification of
199 such transfer to the department not later than thirty days after such
200 transfer. If such transferee sells, assigns or otherwise transfers a credit
201 under this section to a subsequent transferee, such transferee and such
202 subsequent transferee shall jointly submit written notification of such
203 transfer to the department not later than thirty days after such transfer.
204 The notification after each transfer shall include the credit voucher
205 number, the date of transfer, the amount of such credit transferred, the
206 tax credit balance before and after the transfer, the tax identification
207 numbers for both the transferor and the transferee, and any other
208 information required by the department. Failure to comply with this
209 subsection will result in a disallowance of the tax credit until there is
210 full compliance on the part of the transferor and the transferee, and for
211 a second or third transfer, on the part of all subsequent transferors and
212 transferees. The department shall provide a copy of the notification of
213 assignment to the commissioner upon request.

214 [(e)] (i) Any eligible production company that submits information
215 to the department that it knows to be fraudulent or false shall, in
216 addition to any other penalties provided by law, be liable for a penalty
217 equal to the amount of such company's credit entered on the
218 production tax credit certificate issued under this section.

219 [(f)] (j) No tax credits transferred pursuant to this section shall be
220 subject to a post-certification remedy, and the department and the
221 commissioner shall have no right, except in the case of possible
222 material misrepresentation or fraud, to conduct any further or
223 additional review, examination or audit of the expenditures or costs
224 for which such tax credits were issued. The sole and exclusive remedy
225 of the department and the commissioner shall be to seek collection of
226 the amount of such tax credits from the entity that committed the
227 fraud or misrepresentation.

228 [(g)] (k) The department, in consultation with the commissioner,
229 shall adopt regulations, in accordance with the provisions of chapter
230 54, as may be necessary for the administration of this section.

231 Sec. 2. Subsection (b) of section 12-217kk of the 2010 supplement to
232 the general statutes is repealed and the following is substituted in lieu
233 thereof (*Effective July 1, 2010, and applicable to income years commencing*
234 *on or after January 1, 2010*):

235 (b) (1) (A) For income years commencing prior to January 1, 2010,
236 there shall be allowed a state-certified project credit against the tax
237 imposed under chapter 207 or this chapter to any taxpayer that invests
238 in a state-certified project. Such credit may be in the following
239 amounts: (i) For state-certified projects costing greater than fifteen
240 thousand dollars and less than one hundred fifty thousand dollars,
241 each taxpayer may be allowed a tax credit of ten per cent of the
242 investment made by such taxpayer; (ii) for state-certified projects
243 costing one hundred fifty thousand dollars or more, but less than one
244 million dollars, each taxpayer may be allowed a tax credit of fifteen per
245 cent of the investment made by such taxpayer; and (iii) for state-

246 certified projects costing one million dollars or more, each taxpayer
247 may be allowed a tax credit of twenty per cent of the investment made
248 by such taxpayer.

249 (B) For income years commencing on or after January 1, 2010, there
250 shall be allowed a state-certified project credit against the tax imposed
251 under chapter 207 or this chapter to any taxpayer that invests three
252 million dollars or more in a state-certified project in an amount equal
253 to twenty per cent of the investment made by such taxpayer.

254 (2) Eligible expenditures pursuant to this section shall include the
255 following: All expenditures for a capital project to provide buildings,
256 facilities or installations, whether [leased or purchased] a capital lease
257 or purchase, together with necessary equipment for a film, video,
258 television, digital production facility or digital animation production
259 facility; project development, including design, professional consulting
260 fees and transaction costs; development, preproduction, production,
261 post-production and distribution equipment and system access; and
262 fixtures and other equipment.

263 (3) Any credit allowed pursuant to this section may be sold,
264 assigned or otherwise transferred, in whole or in part, to one or more
265 taxpayers, and such taxpayers may sell, assign or otherwise transfer, in
266 whole or in part, such credit. Any taxpayer holding such credit may
267 claim such credit only for the income year in which expenditures were
268 made by the taxpayer for the infrastructure project.

269 (4) Any credit allowed pursuant to this section shall be claimed
270 against the tax imposed under chapter 207 or this chapter. If the
271 amount of the credit allowable under this section exceeds the sum of
272 any taxes due from a taxpayer, any such excess amount of the credit
273 allowable under this section may be taken in any of the three
274 immediately succeeding income years.

275 (5) Any tax credit earned under this section shall be nonrefundable.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217jj
Sec. 2	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217kk(b)

CE *Joint Favorable Subst.*